

OREGON INSTITUTE OF TECHNOLOGY ("OIT") – PURCHASE ORDER TERMS AND CONDITIONS

1. DEFINITIONS:

"Contractor" means the party named in the Purchase Order ("PO") with whom OIT has contracted for the purchase of goods or goods and services. The terms "Contractor" and "Seller" as used in the Uniform Commercial Code ("UCC")(Oregon Revised Statutes ("ORS") Chapter 72) are synonymous;

"Purchase Order" or "PO" means the entire written agreement between the parties, including these Purchase Order Terms and Conditions, and any other terms and conditions and agreements referenced on the face of the PO.

2. DELIVERY: Deliveries will be F.O.B Destination. Contractor shall pay all transportation and handling charges. Contractor is responsible and liable for loss or damage until final inspection and acceptance of the Goods. Contractor remains liable for latent defects, fraud, and warranties.

3. INSPECTIONS: OIT may inspect and test the Goods and related Services (collectively, "Goods") at times and places determined by OIT. OIT may reject non-conforming Goods and require Contractor to correct them without charge or deliver them at a reduced price, as negotiated. If Contractor does not cure any defects within a reasonable time, OIT may reject the Goods and cancel the PO in whole or in part. This paragraph does not affect or limit OIT's rights, including its rights under the UCC ORS chapter 72. Nothing in this paragraph is to in any way affect or limit OIT's rights as a Buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

4. PAYMENT: OIT shall pay Contractor within 30 days from (i) the date the Goods are delivered and accepted or (ii) the date the accurate invoice is received, whichever is later. If OIT fails to pay within 45 days of such date, Contractor may assess overdue account charges up to a rate of 2/3% per month (8% APR) or the maximum rate allowed by law on the outstanding balance. (OAR 580-061-0050)

5. OIT PAYMENT OF CONTRACTOR CLAIMS: If Contractor does not pay promptly any claim that is due for Goods or Services furnished to the Contractor by any subcontractor in connection with this PO, the OIT may pay such claim and charge that payment against any payment due to the Contractor under this PO. OIT's payment of a claim does not relieve the Contractor or its surety, if any, from their obligations for any unpaid claims.

6. WARRANTIES: Contractor represents and warrants that the Goods are new, current, and fully warranted by the manufacturer, unless otherwise authorized by OIT. Delivered Goods will comply with specifications and be free from defects in labor, material and manufacture. All UCC implied and expressed warranties are incorporated in this PO. Contractor shall transfer all warranties to OIT.

7. TERMINATION: (i) The parties may terminate this PO by mutual agreement; (ii) OIT may terminate this PO at any time for convenience with written notice to Contractor. Upon receipt of the written notice, Contractor shall stop performance, and OIT shall pay Contractor for Goods or Services delivered and accepted. (iii) OIT may terminate this PO at any time if OIT fails to receive funding, appropriations, or other expenditure authority; (iv) If Contractor breaches any PO provision or is declared insolvent, OIT may terminate this PO for cause with written notice to Contractor, and Contractor shall be liable for all incidental and consequential damages resulting from its breach, including all damages as provided in the UCC.

8. HOLD HARMLESS: *Contractor shall indemnify, defend and hold harmless OIT the State of Oregon and its agencies, their divisions, officers, employees, and agents, from all claims, suits or actions of any nature arising out of or related to the activities of Contractor, its officers, subcontractors, agents or employees under this PO.*

9. GOVERNING LAW, JURISDICTION, VENUE: This PO shall be governed and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of law. Any claim, action, suit, or proceeding between OIT and the Contractor that relates to this PO ("Claim") must be heard exclusively in the Circuit Court of Marion County for the State of Oregon. If the Claim must be brought in a federal forum, then it must be heard exclusively in the US District Court for the District of Oregon. Contractor consents to the in personam jurisdiction of these courts. *Neither this Section nor any other provision of this PO is a waiver by the State of Oregon of any form of defense, sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the US Constitution, or other immunity, from any Claim or from the jurisdiction of any court.*

10. FORCE MAJEURE: Neither party is responsible for delay or default caused by an event beyond its reasonable control. OIT may terminate this PO without liability to Contractor upon written notice after determining the delay or default reasonably prevents performance of this PO.

11. ASSIGNMENT/SUBCONTRACT/SUCCESSORS: Contractor shall not assign, transfer, or subcontract rights (Subcontract) or delegate responsibilities under this PO in whole or in part, without the prior written approval of OIT. This PO's provisions are binding upon and inure to the benefit of the parties to the PO and their respective successors and assigns.

12. ACCESS TO RECORDS: Contractor shall maintain all accounting records relating to this PO according to GAAP and any other records relating to Contractor's performance ("Records") for six (6) years from termination or as otherwise required. Contractor shall grant OIT, and the State of Oregon and its agencies, the Secretary of State Audits Division, the federal government, and their duly authorized representatives access to the Records, including reviewing, auditing, copying, and making transcripts.

13. COMPLIANCE WITH APPLICABLE LAWS: Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as amended (Rules), including: (i) Titles VI and VII of Civil Rights Act of 1964; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990; (iv) Executive Order 11246; (v) The Age Discrimination in Employment Act of 1967, and the Age Discrimination Act of 1975; (vi) The Vietnam Era Veterans' Readjustment Assistance Act of 1974; (vii) ORS Chapter 659; (viii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; (ix) all federal and state laws governing the handling, processing, packaging, storage, labeling, and delivery of food products; and (x) all regulations and administrative rules established pursuant to the foregoing laws.

14. WORKERS' COMPENSATION: Contractor shall comply with ORS 656.017 and provide the

required workers' compensation coverage, unless exempt under ORS 656.126(2). Contractor shall ensure that its Subcontractors, if any, comply with these requirements.

15. SAFETY AND HEALTH REQUIREMENTS: Contractor represents and warrants that the Goods comply with all federal and Oregon safety and health requirements.

16. MATERIAL SAFETY DATA SHEET: Contractor shall provide OIT with a Material Safety Data Sheet for any Goods which may release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use (OAR 437-002-0360 and 29 CFR 1910.1020). Contractor shall label, tag or mark such Goods.

17. RECYCLABLE PRODUCTS: Unless otherwise required, Contractor shall use recycled and recyclable products to the maximum extent economically feasible in the performance of the PO.

18. AMENDMENTS: All amendments to this PO must be in writing, signed by OIT.

19. SEVERABILITY: If a court of competent jurisdiction declares any provision of this PO to be invalid, the other provisions and the rights and obligations of the parties remain in effect.

20. WAIVER: OIT's failure to enforce any provision of this PO is not a waiver or relinquishment by OIT of its rights to such performance in the future or to enforce any other provisions.

21. AWARD TO FOREIGN CONTRACTOR: If Contractor is not registered to do business or has no office in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this PO. OIT may withhold final payment under this PO until Contractor has met this requirement.

22. TAX CERTIFICATION: Contractor hereby certifies under penalty of perjury: (a) it is not subject to backup withholding because (i) it is exempt from backup withholding, (ii) it has not been notified by the IRS that it is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that it is no longer subject to backup withholding; and (b) per ORS 305.385(6) it is not in violation of any Oregon tax laws described in ORS 305.380(4).

23. EXPORT CONTROL: Contractor acknowledges that OIT has students and faculty who are foreign nationals who may work with services, product or technology received from Contractor pursuant to this PO. Contractor represents that it has informed OIT in writing, prior to acceptance of this PO if it is providing OIT any product or technology subject to the U.S. Export Administration Act of 1979, the Export Administration Regulations and the International Traffic in Arms Regulations, and if so, under what Commerce Control List number(s) or U.S. Munitions List Number(s) it is controlled.

24. OIT NAME AND TRADEMARK: Contractor shall not use names, marks or trademarks identifying OIT, or any department or office of OIT, or in any other way identify OIT without prior written approval from the OIT Office of Marketing and Communication.

25. INSURANCE: Contractor shall secure at its own expense and keep in effect during the term of the performance under this PO, general liability or professional liability insurance as deemed applicable by OIT with limits not less than one million dollars (\$1,000,000) per occurrence with an aggregate amount of \$2,000,000, unless otherwise specified in writing by OIT. If requested, Contractor shall provide proof of insurance of said insurance policy.

26. ORDER OF PRECEDENCE: This PO includes the documents listed below, which, in the event of any conflicts among them, must be interpreted in the following order of precedence: i) The solicitation document issued by OIT and its attachments and addenda, if any; and ii) this Purchase Order including its Terms and Conditions, Contractor's bid, proposal or quote. *In the event Contractor's bid, proposal or quote contains a requirement that its terms and conditions are superior to the above order of precedence, then Contractor acceptance of this PO constitutes a complete and absolute waiver of such requirement.*

27. EMPLOYMENT STATUS AND CONFLICTS: Contractor certifies that it is not currently employed by the federal government and it is not an employee of the Oregon University System. Contractor further certifies that it has not offered any gifts, financial incentive or other enticements to an OIT employee, an OIT employee relative as defined in ORS 244.020(15), or an employee's or relative's business in exchange for a contract.

28. INDEPENDENT CONTRACTOR STATUS: The services to be rendered under this PO are those of an independent contractor. Contractor is solely and entirely responsible for any applicable state and federal taxes applicable to this PO. Contractor's employees are not entitled to any of the benefits that OIT provides its employees.

29. TRAVEL AND EXPENSE REIMBURSEMENT: If any travel or expense reimbursement is authorized in this PO, OIT will only reimburse Contractor in accordance with the OIT Contractor Travel Reimbursement Policy, hereby incorporated by reference.

30. INTELLECTUAL PROPERTY: All inventions, discoveries, work of authorship, trade secrets or other tangible or intangible items and intellectual property rights created by Contractor pursuant to this PO, including derivative works and compilations, together the "Work Product", and whether or not such Work Product is considered a work made for hire or an employment to invent, shall be the exclusive property of OIT.

31. TIME IS OF THE ESSENCE: Contractor agrees that time is of the essence under this PO.

32. MERGER: THIS PURCHASE ORDER CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. THERE ARE NO UNDERSTANDINGS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS PO. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS PO SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER IS EFFECTIVE ONLY IN THE INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN.