

## OHIO UNIVERSITY TERMS AND CONDITIONS

1. Acceptance, Confirmation and Shipping.
  - a. All goods and/or services delivered hereunder will be received subject to University's inspection and approval. Payment for such will not constitute acceptance.
  - b. No additional terms may be added, and Purchase Order may not be changed except by written instrument executed by University. Contractor is deemed to be on notice that University objects to any additional or different terms and conditions contained in any acknowledgment, invoice or other communication from Contractor, notwithstanding University's acceptance or payment for any delivery of goods and/or services.
  - c. All defective or non-conforming goods will be returned pursuant to Contractor's instruction and at Contractor's expense.
  - d. All goods will be shipped to the University's designated destinations as F.O.B. Destination.
  - e. No charge for packing or cartage will be allowed except as approved in writing by the University's Purchasing Department prior to shipment.
  - f. International INCOTERMS, if applicable, are DDP (delivered duty paid). As such, Contractor should include all applicable storage, labor, packing, freight/cartage/delivery, insurance, duty, taxes and custom related documentation charges necessary, as University will not be responsible for any additional fees or activities associated with goods or commencement of work listed on University Purchase Order.
  - g. All packages, shipping units, bills of lading or shipping memorandums must clearly be marked with University Purchase Order number.
2. Intellectual Property. All custom work produced during the performance of this Agreement by Contractor, whether individually or jointly with University faculty, staff or students (collectively "Work Product"), will be deemed to be owned by University. All Work Product that constitutes patentable subject matter is irrevocably assigned to University by this Agreement, together with all patent rights with respect to such Work Product. All Work Product that constitutes copyrightable subject matter under the copyright laws of the United States will be deemed to be a "work made for hire" under the United States copyright laws, and all right, title and interest in and to such Work Product will vest in University. If any Work Product is determined not to be a "work made for hire" under the United States copyright laws, this Agreement will operate as an irrevocable assignment by Contractor to the University of the copyright in and to such Work Product. Notwithstanding the foregoing, Contractor does not convey nor does University obtain any ownership of materials proprietary to Contractor and not developed under this Agreement that Contractor may utilize or provide pursuant to the Services (collectively "Contractor Materials"), except as otherwise agreed upon in writing by the parties. Prior to incorporating any Contractor Materials in any Work Product hereunder, Contractor will first notify University and obtain University's prior written consent to such use or incorporation. To the extent that Contractor Materials are incorporated in whole or in part into any Work Product or other deliverable hereunder, Contractor grants to University, subject to the terms and conditions of this Agreement, a royalty-free, irrevocable, worldwide, non-exclusive, perpetual right to use, distribute, reproduce, modify and prepare derivative works of such Contractor Materials.
3. Warranties. Contractor represents and warrants that the goods and/or services covered by this Agreement will conform to the specifications, drawings, samples or other descriptions furnished or specified by University and will be of satisfactory material and quality production and free from defects; goods delivered by Contractor will be free from any security interest or lien, encumbrance or claim of any third party; and all goods sold and/or services performed under this Agreement do not infringe any patent, trademark, copyright or trade secret and do not constitute unfair competition. These warranties will survive inspection, acceptance, passage of title and payment by University. If any aspect of the above warranty is breached, Contractor will, upon receipt of notice thereof from University and at Contractor's sole cost and expense, promptly repair or replace the defective materials, workmanship, or design or pay the University the costs and expenses incurred by University in conducting such repair or replacement.
4. Contingent Upon Appropriation. Contractor acknowledges that expenditures of University funds are contingent upon availability of lawful appropriations by the Ohio General Assembly. If the General Assembly fails to continue funding for payments and/or other obligations that may be due, the University may terminate this Agreement at its option with respect to goods and/or services not yet provided by Contractor. In that event, University will provide Contractor with evidence demonstrating the lack of appropriation.
5. ADA and Software. If this Agreement involves software that a student(s) will use, the Contractor as Licensor acknowledges and understands that its software is being licensed by Ohio University to be provided to its students. Licensor acknowledges and understands that as a public institution of higher education that receives federal funding, Ohio University is required to comply with the Americans with Disabilities Act, 42 U.S.C. 12101 et seq. and Section 504 of the Rehabilitation Act 29 USC 701 et. Seq. Licensor agrees that its software will comply with the Americans with Disabilities Act, 42 U.S.C. 12101 et seq. and Section 504 of the Rehabilitation Act, 29 USC 701 et seq. as those laws apply to Ohio University, will be accessible to individuals with disabilities, and will meet current Web Content Accessibility Guidelines. Licensor agrees that failure to provide an accessible product is a breach of Agreement.
6. Invoicing/Payment.
  - a. Hard copy invoices must be mailed to Ohio University, 160 W Union St, Room 205, Athens, OH 45701. Invoices may also be sent electronically to [accountspayable@ohio.edu](mailto:accountspayable@ohio.edu) referencing PO # in subject line with name of Contractor and invoice number. Invoices must reference Purchase Order number and match PO on line by line basis to ensure prompt payment. University will have the option of using any method of payment including credit card, ACH, or check. Any cash discounts offered will be accepted.
  - b. University payment terms are NET30 days, to be calculated by date goods are received; date the invoice is received; or date of installation or acceptance, whichever is later.
7. Independent Contractor.
  - a. Contractor agrees that it is an independent contractor, and not an agent, partner, or employee of the University. Contractor understands that it does not have the authority to sign agreements, notes, or obligations, or to make purchases or dispose of property for or on behalf of the University.
  - b. Contractor's personnel are not employees/agents of the University at any time for any purpose. This includes application of the Fair Labor Standards Act, Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code and for state revenue and tax laws, state worker's compensation laws and state unemployment insurance laws.
  - c. Contractor accepts full responsibility for payment of taxes including without limitation, unemployment compensation insurance premiums, all income tax deductions, social security deductions, and any and all other taxes or payroll deductions required for all employees engaged by the Contractor in performance of Services authorized by this Agreement.
  - d. Employees of Contractor who provide personal services to University are not public employees by virtue of those services and are not entitled to membership in any Ohio public pension system. Contractor does not have authority to sign anything that obligates the University including agreements and notes or to make purchases or dispose of property for or on behalf of the University except as expressly provided in this Agreement.
8. Insurance. Contractor will meet University's insurance requirements and maintain all insurance required by University for the duration of this Agreement. Current insurance requirements can be found at: [http://www.ohio.edu/riskandsafety/riskmanagement/ requirements.htm](http://www.ohio.edu/riskandsafety/riskmanagement/requirements.htm).
9. Compliance with Laws. The parties will comply with all applicable federal, state and local laws, regulations and ordinances and University's policies (which may be found at [www.ohio.edu/policy](http://www.ohio.edu/policy)) ("Applicable Laws") that pertain to the goods, services and activities contemplated by this Agreement and to contractors supplying State of Ohio instrumentalities. Without limiting the foregoing, all

goods and/or services provided by Contractor pursuant to this Agreement will comply with all Applicable Laws. If professional licensing or certification constitutes a qualification for Contractor's performance under this Agreement, Contractor will make immediately available, at the University's request, a copy of said certification or licensure. The Contractor warrants that it has complied with all federal, state and local laws regarding business permits and licenses of any kind.

10. Force Majeure: Neither party will be responsible for any delay or failure in performance resulting from strike, lockout, failure of power, fire, acts of God, terrorism, riots, insurrection, war or other similar reason beyond the reasonable control of such party ("Force Majeure Event"). When either party has knowledge of any Force Majeure Event that will delay or affect its performance, such party will immediately notify the other party. The time for performing any obligation may be extended for a period equivalent to the period of such Force Majeure Event at the sole discretion of University.
11. Taxes. The parties acknowledge that the goods and/or services provided hereunder are exempt from Ohio sales tax and federal excise tax, including federal transportation tax. An exemption certificate is available, upon request, from the University Procurement office.
12. Termination for Cause.
  - a. If a party commits a material breach of this Agreement, then the non-breaching party may terminate this Agreement for cause, so long as the non-breaching party first provides breaching party with a written notice of the breach and breaching party fails to cure the breach within ten business days of receipt of the notice (or, if the breach by its nature cannot reasonably be cured within ten business days, then non-breaching party may terminate if the breaching party fails to begin to cure the breach within ten business days of receipt of the notice and works diligently thereafter to cure the breach). Such termination will be without prejudice to any other rights, recourses and remedies that may be available to the non-breaching party.
  - b. The Contractor, upon receipt of suspension or termination, will comply with the following: cease work on the suspended or terminated activities; suspend or terminate all subcontracts relating to the suspended or terminated activities; take all necessary or appropriate steps to limit disbursements and minimize costs; and, if requested by the University, furnish a report, as of the date of receipt of notice of suspension or termination describing the status of all Services under this Agreement including without limitation, results accomplished, conclusions resulting from its Services to date plus all other matters as the University may require.
  - c. The University will not be liable for any further claims, and the claims submitted by the Contractor will not exceed the total amount of consideration stated in this Agreement. In the event of suspension or termination, Contractor will return to the University within 15 days any payments made by the University where the Contractor has not rendered Services.
13. Termination for Convenience. University may terminate this Agreement for its convenience and without cause at any time upon thirty days prior written notice to Contractor. Upon receipt of such notice of termination for convenience, Contractor will immediately cease work and follow other instructions from University. University will pay Contractor for services rendered and/or goods provided before the date of termination. Termination under this section will not affect the rights or remedies of either party then-existing or that may thereafter accrue.
14. Limitation of Liability.
  - a. The University's liability for damages, whether in contract or in tort, will not exceed the total amount of compensation payable to Contractor under this Agreement.
  - b. IN NO EVENT WILL THE UNIVERSITY BE LIABLE FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, EVEN IF THE UNIVERSITY IS ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
  - c. NOTWITHSTANDING ANY LANGUAGE TO THE CONTRARY, THE CONTRACTOR WILL BE LIABLE FOR ANY PERSONAL INJURY OR DAMAGE TO THE UNIVERSITY IN PERFORMING THE SERVICES, INCLUDING DAMAGE TO REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY, CAUSED BY ITS FAULT OR NEGLIGENCE.
15. Indemnification.
  - a. Contractor will indemnify and hold harmless University, its trustees, officers, employees and agents and the State of Ohio from and against all losses, costs, damages, judgments, expenses, demands, claims (including but not limited to negligence) and liabilities of every kind and description, including attorneys' fees and court costs, arising from Contractor's performance of this Agreement, Contractor's failure to perform any portion of this Agreement, Contractor's breach of any provision of these Terms and Conditions (including but not limited to its warranty of non-infringement), and any injury, death or property damage caused by the goods and/or services provided hereunder. Contractor's defense of any claim will be subject to the Ohio Attorney General's right to appoint counsel and approve settlements on behalf of University. Contractor agrees that notwithstanding any other terms exchanged by the parties, University will have no obligation to indemnify Contractor for any reason.
  - b. Contractor at its own expense will defend and hold harmless University from any judgment against University to the extent that such judgment is based on a claim that software used within the scope of this Agreement infringes any patents, copyrights, license or other property rights of a third party. University will promptly notify Contractor in writing of any such claims. To the extent University is named in such claim, University and the Ohio Attorney General will have the right to approve all legal counsel used in the defense of such claim and the right to approve any settlement regarding the claim.
16. Confidentiality.
  - a. "Confidential Information" is all information, in any format, reasonably considered by a party to be confidential, sensitive and/or proprietary that is designated by a party as confidential in writing at or within a reasonable time after disclosure. Notwithstanding the foregoing, Confidential Information is not information that (i) is or becomes publicly available absent a breach of this Agreement; (ii) was lawfully known to the receiver of the information without an obligation to maintain its confidentiality; (iii) is received from another source who can disclose it lawfully and without an obligation to maintain its confidentiality; or (iv) is independently developed. The parties will use commercially reasonable efforts (at least as protective as efforts undertaken by a party to protect its own Confidential Information) to prevent disclosure of each other's Confidential Information to third parties. In the event of an unauthorized disclosure of Confidential Information, the party responsible for the disclosure will immediately notify the other party and will reasonably cooperate with the affected party to mitigate the disclosure and prevent further unauthorized disclosures.
  - b. Notwithstanding the foregoing, Contractor acknowledges that University records are subject to disclosure under the Ohio Public Records Act. When the University receives a request involving Contractor's information, including this Agreement, the University will notify Contractor immediately of the request. Contractor will have 15 days to obtain an order prohibiting the disclosure or a protective order to protect the disclosure of any information. Contractor's failure to obtain an order prohibiting the disclosure within the 15-day period constitutes a waiver of any claim Contractor may have against the University for disclosure of the information.
  - c. A party will return or destroy the other party's Confidential Information when reasonably requested to do so by that party. The parties will use any information and materials exchanged between them solely for the purposes contemplated by this Agreement.
17. Nondiscrimination. Contractor acknowledges and agrees that Contractor does not discriminate in employment on the basis of race, color, religion, sex, age, ethnicity, national ancestry, national origin,

sexual orientation, pregnancy, gender, gender identity or expression, military service or veteran status, and mental or physical disability.

- 18. **No Findings for Recovery.** Contractor warrants that it is not subject to an unresolved Finding for Recovery under Ohio Revised Code Section 9.24. Contractor agrees that if this representation is deemed to be false, this Agreement will be void ab initio, and Contractor must immediately repay all funds paid under this Agreement.
- 19. **Use of Name.** Neither party may not use the name, logos or identifying marks of the other party in any advertisement, promotional materials, press release or other public statement or on its website unless it first obtains the express written permission of the other party.
- 20. **Choice of Law; Venue.** This Agreement will be governed by and construed in accordance with the laws of the State of Ohio, without regarding to any choice of law principles. Any litigation arising from or related to this Agreement may be brought only in the federal or state courts of Ohio with appropriate jurisdiction, and the parties irrevocably consent to the jurisdiction and venue of such courts. Any litigation seeking monetary damages from University will be filed in the Ohio Court of Claims.
- 21. **Notices.** All notices required or permitted to be given under this Agreement will be made to the parties at their respective addresses listed on the reverse, and such notice will be effective on the date given when provided personally, three days after being mailed by certified mail (return receipt requested) or one day after having been delivered to a nationally-recognized express delivery service for overnight delivery. A party may reasonably amend its notice address(es) upon written notice to the other party.
- 22. **Drug-Free Workplace.** Contractor will comply with all applicable federal, state and local laws regarding smoke-free and drug-free work places and will make a good faith effort to ensure that any of its employees or permitted subcontractors engaged in the work being performed hereunder do not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.
- 23. **Campaign Contributions.** Contractor warrants that neither Contractor nor its partners, officers, shareholders, or spouses of any such person, has made contributions in excess of the limitations.
- 24. **No Third Party Beneficiaries.** Nothing in this Agreement will create any rights or benefits in persons not parties to this Agreement.
- 26. **Paragraph Headings.** The paragraph headings in this Agreement are inserted only as a matter of convenience as a reference, and in no way define, limit or describe the scope or intent of this Agreement.
- 27. **Non-Waiver.** No waiver of any provision of this Agreement will be effective unless it is in writing and signed by the party against whom it is sought to be enforced. Failure or delay by either party to enforce any rights under this Agreement will not be construed as a waiver of such rights, and a waiver by either party of a default in one or more instances will not be construed as a continuing waiver or as a waiver in other instances.
- 28. **Severability.** Provisions of Agreement are divisible. The parties intend to comply fully with all applicable laws, and this Agreement will be construed consistently with all such laws. If any court holds part or all of any provision of this Agreement as invalid, such invalidity will not affect balance of that provision or remaining provisions in this Agreement, which will remain in full force and effect.
- 29. **Inspection/Audit.** During performance of this Agreement and for a period of seven years after its completion, Contractor will maintain auditable records in a manner consistent with generally accepted accounting procedures of all charges pertaining to this Agreement and will make such records available to University as University may reasonably require for inspection, examination, or audit, etc. The Contractor will keep separate business records for this project, including records of disbursements made and obligations incurred in the performance of this Agreement. The Contractor will support these records with contracts, invoices, receipts, vouchers and other data as appropriate. All audits of Contractor by the University will be conducted in a manner that does not unreasonably interfere with the conduct of a Contractor's business. If any such audit discloses a deficiency, Contractor will promptly pay to the University any deficiency and, if the deficiency is material, the cost of the audit.
- 30. **Conflict of Interest.** No personnel of Contractor or member of the governing body of any locality or other public official or employee of any such locality in which, or relating to which, the work under this Agreement is being carried out, and who exercise any functions or responsibilities in connection with the review or approval of this Agreement or carrying out of any such work, will, prior to the completion of said work, voluntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to carrying out said work. Any such person who acquires an incompatible or conflicting personal interest, on or after the effective date of this Agreement, or who involuntarily acquires any such incompatible or conflicting personal interest, will immediately disclose this interest to University in writing. Thereafter, he or she will not participate in any action affecting the work under this Agreement, unless University will determine in its sole discretion that, in the light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest. Contractor represents, warrants, and certifies that it and its employees engaged in the administration or performance of this Agreement are knowledgeable of and understand the Ohio Ethics and Conflicts of Interest laws. Contractor further represents, warrants, and certifies that neither Contractor nor any of its employees will do any act that is inconsistent with such laws and Executive Order.
- 31. **Ethical Conduct:** It is expected once an agreement or Purchase Order is issued, Contractors (awarded or not awarded) will not undertake any actions that might interfere with, or be detrimental to, the contractual obligations of University. The University reserves the right to take any and all actions deemed appropriate in response to unethical conduct by a Contractor. Such actions include, but are not limited to establishing guidelines for campus visits by Contractor, and/or removal of a Contractor from University's supplier list.
- 32. **Absence of Sanctions.** Contractor represents that neither it nor any of its owners, officers, or employees have been sanctioned by or excluded from participation in any federal or state health care program, including Medicare and Medicaid. Contractor agrees that if it or any such individual associated with it should become the subject of an investigation relating to health care fraud, abuse, or misconduct, or should be sanctioned by or excluded from participating in any federal or state health care program, including Medicare and Medicaid, it will immediately notify the University of such event and the University will have the right to immediately terminate this Agreement without penalty or cost.
- 33. **Access to Records.** In the event it is determined that Section 952 of the Omnibus Reconciliation Act of 1980 (P.L. 96-499) and regulations adopted pursuant thereto apply to this Agreement, the parties agree, for a period of four years after performance hereby, to make available to the Secretary of Health and Human Services or the Comptroller General of the United States, or any of their duly authorized representatives, upon written request therefore, this Agreement and its or their books and records necessary to certify the nature and extent of the costs thereof. If any portion of this Agreement is to be performed through a sub-contract with a related organization at a cost in excess of Ten Thousand Dollars (\$10,000.00) over a twelve (12) month period, such sub-contract will contain this requirement.
- 34. **Debarment.** Contractor certifies that Contractor is not currently now nor will be during the term of this Agreement suspended or debarred by the Federal Government or State of Ohio from participating in Federal or State funded projects.
- 35. **Entire Agreement.** This Agreement (including the Purchase Order, if any) sets forth the entire understanding between the parties and supersedes all prior agreements, whether oral or written. This Agreement may not be modified or amended except by a writing signed by both parties. No substitutions, alterations, additions or deletions to the goods and/or services ordered will be permitted without the written consent of University.
- 36. **Authority to Contract.** Each party represents that it has the full power and authority to enter into this Agreement and to convey the rights herein conveyed, specified in Ohio Revised Code Section 3517.13.