



Purchasing Department/Supply Chain Standard Purchase Order Terms and Conditions

Revised 09/30/2021

These Standard Terms and Conditions (“T&Cs”) together with any written offers and purchase orders (the “Purchase Order”) issued by The Ohio State University (“PURCHASER” and includes University and OSUWMC, as applicable) to a supplier (“SELLER”) and/or any other written agreements signed by both parties and any other documents incorporated by reference therein or herein collectively constitute the agreement between the parties (the “Agreement”).

If the Agreement involves the use of United States federal funds, including but not limited to funds from a government grant, government contract, or funds from a subaward or subcontract at any tier relating to a federal government agreement, SELLER shall comply with the applicable provisions of the Office of Research Purchase Order Terms and Conditions at <https://go.osu.edu/ortersandconditions>.

If the Purchase Order is for a construction, improvement, addition, alteration, or installation project, a design/build project, or professional services, SELLER shall comply with the Facilities Operations and Development Special Conditions for Projects (“FOD Special Conditions”) at https://busfin.osu.edu/sites/default/files/special_conditions_rev4.pdf. The FOD Special Conditions, however, DO NOT apply to Purchase Orders issued under Small Scope Project Agreements (also known as “IDIQ Agreements”).

Direct all correspondence relative to the Purchase Order for University purchases to the Purchasing Department, 2650 Kenny Road, Columbus, Ohio 43210-1060 or email BF-PRSM-OSU-PUR@osu.edu. Email invoices for University purchases to apinvoices@osu.edu.

Direct all correspondence relative to the Purchase Order for Wexner Medical Center (“OSUWMC”) purchases to accounts.payable@osumc.edu. Email invoices for OSUWMC purchases to medctrinvoices@osumc.edu. OSUWMC rebates should be mailed to: OSUWMC Financial Services Accounting Manager, 660 Ackerman Rd., Room 426, Columbus, Ohio 43202.

Correct Purchase Order and stock numbers must appear on all packages, invoices, shipping papers, rebates and correspondence. Invoices without Purchase Order numbers will not be processed for payment. Invoice must match on a line-by-line basis, quantity, unit of measure, description, unit price and total amount stated on the Purchase Order. If invoice must differ, do not ship and contact PURCHASER immediately. Packing slips must accompany all shipments. No substitutions, alterations, additions or cancellations are authorized to the Purchase Order without consent of the PURCHASER’s Purchasing Department. As applicable to OSUWMC purchases, unless otherwise agreed to, the effective date of pricing for items purchased pursuant to the Purchase Order will be the 1st day of the second month after the Purchase Order is issued, e.g., if the Purchase Order is issued on May 1st, the price effective date is July 1st; if the Purchase Order is issued May 31st, the price effective date is July 1st.



1. Offer; Acceptance: This written offer is subject to immediate acceptance by SELLER. Unless so accepted, PURCHASER reserves the right to cancel. Either SELLER's written acceptance of the Purchase Order or the shipment or delivery of any confirming article or commencement of performance hereunder shall constitute acceptance of the Purchase Order by SELLER. Each delivery of goods and/or services received by PURCHASER from SELLER shall be deemed to be upon the terms and conditions contained in the Agreement. Notwithstanding PURCHASER's acceptance or payment for any delivery of goods and/or services, or any similar act by PURCHASER, SELLER is deemed to be on notice that PURCHASER objects to any additional or different terms and conditions contained in any acknowledgement, invoice, or other communication from SELLER, except by written instrument executed by PURCHASER.

2. Inspection; Risk of Loss: All goods and/or services delivered hereunder shall be received subject to PURCHASER's inspection, approval and payment therefore shall not constitute acceptance by PURCHASER and is without prejudice to any and all claims that PURCHASER may have against SELLER. PURCHASER's count will be accepted as final and conclusive on all shipments not accompanied by a packing slip. All payments are subject to adjustment for shortage or rejection. All incomplete, defective or non-conforming goods will be rejected and returned, in whole or in part, pursuant to SELLER's instruction and at SELLER's expense. Such rejected goods shall remain at SELLER's risk until returned to SELLER at SELLER's expense. PURCHASER may, at its sole option, demand that SELLER promptly correct, repair or replace all non-conforming goods and/or services at SELLER's sole expense. SELLER further agrees that undiscovered delivery of non-conforming goods and/or services is not a waiver of PURCHASER's right to insist upon further compliance with all specifications. To the extent that the Agreement requires a series of performances by SELLER, PURCHASER prospectively reserves the right to cancel the entire remainder of the Agreement if goods and/or services provided early in the term of the Agreement are non-conforming or otherwise rejected by PURCHASER.

3. Entire Agreement; Order of Precedence: The Agreement constitutes the entire agreement between the parties. Unless otherwise specifically noted by PURCHASER on the face of the Purchase Order, any inconsistency or conflict among the provisions or documents will be resolved by giving precedence in the following order: (i) any other agreement or document signed by authorized signatories of both parties; (ii) the Office of Research Purchase Order Terms and Conditions, as applicable; (iii) T&Cs; (iv) FOD Special Conditions; and (v) the Purchase Order.

4. Shipping: If OSUWMC agrees to pay for shipment, all goods are shipped using the OSUWMC identified shipping vendor and are sent FOB destination, Bill Third Party, suitably packed and prepared according to the shipping vendor's specifications. If the identified shipping vendor is not used, all PURCHASER goods are FOB destination and must be suitably packed and prepared to secure the lowest transportation rates and to comply with all carrier regulations. Unless otherwise provided in the Purchase Order, (a) no invoices shall be issued nor payments made prior to delivery and (b) no charges will be paid by PURCHASER for packing, crating or cartage. Unless freight and other charges are itemized, any discount will be taken on the full amount of invoice.



All shipments of goods scheduled on the same day via the same route must be consolidated. Each shipping container must be consecutively numbered and marked to show the Purchase Order number. The container and the Purchase Order numbers must be indicated on bill of lading. Packing slips must show the Purchase Order number and must be included on each package of LCL shipments and/or with each carload of equipment. PURCHASER reserves the right to refuse or return any shipment or equipment at SELLER's expense that is not marked with the Purchase Order number(s). SELLER agrees to declare to the carrier the value of any shipment under the Purchase Order and the full invoice value of such shipment. If known, clearly identify the "ship to" and "deliver to" addresses on the shipping label.

5. Purchaser's Data:

a. Prohibition of Unauthorized Use of Data.

PURCHASER's Data ("Data") includes all information that PURCHASER discloses to SELLER. Data may include Personal Information that identifies or can be used to identify an individual.

To the extent SELLER's performance under the Agreement involves "Personal Information", that is personally-identifiable information, student records, protected health information, or individual financial information and subject to state or federal or state laws, regulations or rules restricting the use and disclosure of such information, including, but not limited to: the Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g); and the privacy and information security aspects of the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act (45 C.F.R. Part 160 and Subparts A, C, and E of Part 164); or the Payment Card Industry Data Security Standards, SELLER agrees to comply with all applicable federal and state laws, regulations, rules, policies or industry standards restricting the access, use and disclosure of such Personal Information.

SELLER shall maintain an Information Security Program ("ISP") made up of policies, procedures, technical and organizational safeguards, and training designed to protect Data against unauthorized loss, destruction, alteration, access or disclosure. SELLER shall not use or disclose Data received from or on behalf of PURCHASER except as appropriate to perform the services under the Agreement; as required by law, order, regulation, rule, industry standard, subpoena or other legal or administrative process; or as otherwise authorized in writing by PURCHASER.

SELLER agrees to require this same compliance in any of its subcontractor or agency agreements providing services under the Agreement. Any action taken or omission made by SELLER's subcontractor or agent in connection with the Agreement will be deemed to have been taken by SELLER and SELLER shall be responsible to PURCHASER for all such actions or omissions.

b. Security Standards. SELLER represents, warrants and covenants, as applicable, that its ISP protects Data by implementing an industry security and privacy standard and including, at minimum:



- i. Network Security. SELLER maintains network security that includes network firewall provisioning, intrusion detection, network device logging and alerting, and vulnerability scans on externally facing systems in accordance with industry standards.
- ii. Data Security. SELLER complies with applicable standards governing the patch management criticality rankings and patching time frame requirements for its systems and applications including, but not limited to, switches, routers, appliances, servers, workstation PC's, commercial software, and open-source software.
- iii. Data Transmission. SELLER implements secure transmission protocols such as SFTP, SSH, TLS/SSL, and HTTPS when transmitting sensitive data.
- iv. Identity and Access Management. SELLER implements access standards designed to authenticate users, permit authorized access to Data, maintain segregation of duties, and revoke access as part of employee termination or transition.
- v. Data Storage. SELLER maintains appropriate policies, procedures, and controls reasonably designed to secure Data stored by SELLER, its employees, and its suppliers. SELLER or its employee mobile devices, portable or laptop computing devices, or portable media that stores Data shall use appropriate encryption designed to reduce the risk of compromise or misuse. Additionally, the access to Data through such devices must be approved by PURCHASER.
- vi. Return or Destruction of Data. SELLER maintains a record retention policy that determines how records are retained, managed, stored and, where appropriate, destroyed. Since certain information cannot be erased or deleted from electronic systems, SELLER maintains the confidentiality of all retained information until such time as the information is destroyed. Where appropriate, SELLER will maintain a record of destruction, shared with PURCHASER, for all types of Data in its possession.
- vii. Resiliency. SELLER maintains appropriate and effective business continuity and disaster recovery plans to ensure resiliency of Data and business operations.
- viii. U.S. Storage. All Data shall be stored in the United States.
- ix. Privacy. SELLER maintains a privacy policy, which includes, at minimum, processes for accessing, correcting, and requesting deletion of Personal Information. If required by law, regulation, rules or industry standards to fulfill the terms of the Agreement, SELLER will implement processes to obtain individual's consent and requests to opt out. SELLER may not transfer to third parties (unless pursuant to the requirements of the Agreement, and third party uses the Data only for the requirements of the Agreement) or sell Personal Information or re-identify Personal Information that has been de-identified.
- x. Notification of Network or Data Breach. SELLER shall immediately report in writing to PURCHASER any network breach and/or use or disclosure of Data not authorized by



the Agreement, including any reasonable belief that unauthorized access to or acquisition of the Data has occurred. SELLER shall make the report to PURCHASER at security@osu.edu not more than two (2) business days after SELLER reasonably believes there has been such unauthorized use or disclosure. SELLER's report shall identify: (1) the nature of the unauthorized use or disclosure; (2) the network element(s) and/or Data used or disclosed; (3) who made the unauthorized use or received the unauthorized disclosure; (4) what SELLER has done, or shall do, to mitigate any negative effect of the unauthorized disclosure; and (5) what corrective action SELLER has taken, or shall take, to prevent future unauthorized use or disclosure.

SELLER shall comply with all applicable laws, regulations, rules and industry standards that require the notification of individuals in the event of unauthorized release of personally identifiable information, any other event requiring such notification ("Notification Event"). PURCHASER may, in its sole discretion, choose to provide notice to any or all parties affected by a network or data breach, but SELLER shall reimburse PURCHASER for the cost of providing such notification. SELLER further agrees to provide, or to reimburse PURCHASER for its costs in providing, any credit monitoring or similar services that are necessary as a result of SELLER's network or data breach.

c. **Audit.** PURCHASER reserves the right to perform audits of SELLER's ISP as necessary. PURCHASER will provide its request in writing and will work with SELLER to schedule time to conduct the audit.

6. **Travel:** SELLER shall not charge PURCHASER for any travel expenses, meals, and lodging unless expressly authorized in the Agreement. If and to the extent that PURCHASER is responsible for paying for SELLER's travel expenses, meals and lodging, such travel expenses shall be paid in accordance with PURCHASER's Travel Policy at <https://busfin.osu.edu/document/travel-policy-211-pdf>, as may be amended from time to time, and only to the extent such expenses are supported by written, itemized and paid invoices submitted by SELLER to PURCHASER. Any expenses in excess of the amounts prescribed shall be borne by SELLER.

7. **Time Is Of The Essence:** Time for delivery of goods or performance of services under the Agreement is of the essence. Failure of SELLER to meet delivery schedules or deliver within a reasonable time, as interpreted by PURCHASER alone, shall entitle PURCHASER to seek all remedies available to it at law or in equity. SELLER agrees to reimburse PURCHASER for any expenses incurred in enforcing PURCHASER's rights.

8. **Changes:** PURCHASER may at any time and by written notice make changes to drawings and specifications, shipping instructions, quantities and delivery schedules within the general scope of the Purchase Order. Should any such changes increase or decrease the cost of, or the time required for performance of the Purchase Order, an equitable adjustment in the price and/or delivery schedule will be negotiated by PURCHASER and SELLER. Notwithstanding the foregoing, SELLER has an affirmative obligation to give notice if the changes will decrease costs. Any claims for adjustment by SELLER must be



made within thirty (30) days from the date the change is ordered or within such additional period of time as may be agreed upon by the parties.

9. Representations and Warranties: SELLER acknowledges that PURCHASER is relying on these representations and warranties as essential elements to the Agreement, representing as they do, material inducements, without which PURCHASER would not have entered into the Agreement.

a. General Product Warranty. SELLER represents and warrants that all goods and any support services provided under the Agreement, and their production and transportation, as applicable, (i) are new and unused (unless otherwise specified or agreed to in writing by PURCHASER) and free from defects in material and workmanship; (ii) are of the quality, size, dimension and specifications ordered; (iii) meet the highest performance and manufacturing specifications as described in documents or writings made available by SELLER to the public or PURCHASER; (iv) comply with all applicable laws, codes, regulations or ordinances (including any published by any national or statewide association or groups), including but not limited to the Occupational Health and Safety Act, the Federal Transportation Act and the Fair Labor Standards Act, as well as any law, regulation or ordinance noted on the face of the Purchase Order; (v) are not restricted in any way by and do not infringe, misappropriate or violate, any patents, copyrights, trade secrets, security interest, lien, or any other encumbrances or rights of third parties; (vi) shall have been properly stored, labeled, handled and shipped by SELLER, and (vii) do not constitute unfair competition. Without limiting the foregoing, upon PURCHASER's request, SELLER will (a) sign all documents pertinent to assign to PURCHASER any applicable third party manufacturer warranties on the goods and (b) deliver to PURCHASER a formal release of all liens and encumbrances.

b. General Services Warranty. SELLER represents and warrants that all services provided shall conform to the level of quality performed by experts regularly rendering this type of service and be accomplished in a professional and workmanlike manner by qualified and efficient personnel using good, pertinent, scientific and technical procedures, practices and standards. SELLER warrants for ninety (90) days after accepted completion of a requested service that its services are fully satisfactory to PURCHASER and will repair, replace or redo at no additional cost to PURCHASER any unsatisfactory services or, at PURCHASER's option, refund the amount of the compensation paid for such portion.

c. Qualifications. SELLER represents and warrants that it, as well as its employees, representatives, agents and subcontractors engaged to provide the products or services under the Agreement, has and will maintain all the skills, experience and qualifications necessary to provide the services contemplated by the Agreement, including any required training, registration, certification and/or licensure.

d. No Malware. SELLER represents and warrants that any deliverables resulting from the services do not include, and that any method of transmitting said deliverables to PURCHASER will not introduce, any program, routine, subroutine, or data (including malicious software or "malware," viruses, worms and Trojan Horses) that are designed to disrupt the proper operation of the deliverables or any other software or system used by PURCHASER, or which, upon the occurrence of a certain event, the passage of time, or the taking of or failure to take any action, will cause the deliverables resulting from the services or any system or software used in connection therewith to be destroyed, damaged or rendered inoperable.



e. No Conflict of Interest. SELLER warrants that neither SELLER nor its employees, officers or owners have, or whose relative have, a relationship with PURCHASER, that will result in an actual or potential conflict of interest or a violation of the Ohio Ethics Laws, by reason of SELLER entering into the Agreement. In addition, as applicable, neither SELLER nor any employee, agent or other person acting on its behalf will: (i) undertake, cause, or permit any act that would violate any applicable anti-corruption law, including, but not limited to, the U.S. Foreign Corrupt Practices Act, or (ii) make, cause, or permit any offer, promise, or payment of money or any other thing of value to any third party, directly or indirectly, to improperly influence the actions of any person, or to obtain any improper advantage in favor of PURCHASER in connection with any of the goods and/or services.

f. Good Standing; Permits; Licenses. SELLER represents and warrants that: (i) it is legally organized entity in good standing under the laws of the state of its organization and, where required, in good standing under the laws of the State of Ohio and has full power and authority to enter into and fulfill all the terms and conditions of the Agreement; (ii) the officers/representatives of SELLER have full power and authority to execute the Agreement on behalf of SELLER and bind SELLER to all the terms and conditions; and (iii) it has and will timely obtain, at its expense, all permits, licenses and certification required under applicable federal, state and/or local laws and regulations necessary for the performance of the Agreement.

g. Solvency. SELLER represents and warrants that it is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to perform all its duties and obligations and to satisfy all the terms and conditions of this Agreement.

These warranties shall survive inspection, acceptance, passage of title and payment by PURCHASER and termination of the Agreement.

10. Intellectual Property: All deliverables, materials, inventions and discoveries that are made, conceived, discovered, developed, created or otherwise result from the Agreement ("Work Product") will be owned by and are the exclusive property of PURCHASER. PURCHASER and SELLER intend that such Work Product be deemed "work made for hire." If, for any reason, any Work Product is not deemed "work made for hire," SELLER hereby irrevocably assigns to PURCHASER all rights, title, and interest in, and to any and all of the Work Product whether arising from copyright, patent, trademark, know-how, trade secret, or any other state or federal intellectual property law or doctrine. SELLER will execute such further documents and instruments as PURCHASER may request in order to fully vest such rights, title and interest in PURCHASER. SELLER hereby waives any and all rights in and relating to the Work Product, including without limitation, any and all rights arising under 17 U.S.C. 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

11. Name and Trademarks: SELLER shall not publicize or advertise the fact that it has contracted with PURCHASER for goods and/or services. SELLER shall not use PURCHASER's name, trademarks (including logos), or other identifying indicia without the prior written consent of PURCHASER's Office of Trademark and Licensing Services.



12. **Indemnification:** SELLER shall indemnify and hold harmless PURCHASER and its trustees, officers, directors, employees, representatives and agents from any and all demands, causes of action, losses, liabilities, judgments, damages, claims (including but not limited to claims of negligence), costs and expenses (including but not limited to attorney's fees, and costs related to Data breaches and Notification Events as noted in Section 5), arising from, caused by or related to: (i) the injury or death of any person (including, but not limited to, employees and agents of SELLER in the performance of their duties or otherwise); (ii) damage to property (including property of PURCHASER or other persons), which arise out of or are incident to the goods and services to be provided hereunder; (iii) all claims and liabilities for actual or alleged infringements of any patent, trademark, or similar rights, which arise out of or are incident to the goods and services to be provided hereunder; (iv) allegations that PURCHASER's use of the goods and/or services provided under the Agreement are inconsistent with SELLER's representations and warranties in Section 9 (Representations and Warranties); (v) any negligent or willful act or omission on the part of SELLER or its employees, representatives, agents and subcontractors under the Agreement; and/or (vi) SELLER's breach of the Agreement. Nothing herein shall require indemnification as to any claims against PURCHASER arising from under the Ohio Worker's Compensation law, unless the claim arises out of services performed by SELLER's employees on PURCHASER's property. SELLER's defense of any claim shall be subject to the Ohio Attorney General's right to appoint counsel and approve settlements.

If any claim that arises from SELLER's breach of a non-infringement representation and warranty has occurred, or is likely to occur, SELLER may, at PURCHASER's option, procure for PURCHASER the right to continue using the goods or services, or replace or modify the goods or services so that they become non-infringing (without any material degradation in performance, quality, functionality or additional cost to PURCHASER).

13. **Non-Discrimination:** **If applicable, Executive Order 11246, 29 C.F.R. Part 471, Appendix A to Subpart A, and 41 C.F.R. Parts 60-1.4, 60-1.7, 60-4.3 are incorporated. If applicable, SELLER and subcontractor shall abide by the requirements of 41 C.F.R. 60-300.5(a) and 60-741.5(a). If applicable, these regulations prohibit discrimination against qualified protected veterans and against qualified individuals on the basis of disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.**

14. **Americans with Disabilities Act and Rehabilitation Act:** To the extent applicable, SELLER will comply with all applicable provisions of the Americans with Disabilities Act, the Rehabilitation Act of 1973, and all applicable federal regulations, as amended from time to time ("ADA Laws"). All electronic and information technology and products and services to be used by PURCHASER faculty/staff, students, program participants, or other PURCHASER constituencies must be compliant with ADA Laws. Compliance means that a disabled person can acquire the same information, engage in the same interactions, and enjoy the same services as a nondisabled person, in an equally effective and integrated manner, with substantially equivalent ease of use.

If, and only if, SELLER is providing or selling software to PURCHASER:



a. SELLER acknowledges and warrants that software conforms and shall continue to conform during the term of the Agreement to the W3C Web Content Accessibility Guidelines, version 2.0 (“WCAG 2.0”) at conformance Level AA. SELLER will make commercially reasonable efforts to ensure that the software includes assistive technologies and features and will include accessibility features in any software support documentation and instructions for using the software with assistive technologies.

b. If during the term of the Agreement, SELLER fails to maintain compliance with WCAG 2.0 AA, or PURCHASER otherwise identifies an issue related to accessibility of the software (the “Accessibility Issue”) that renders the application inaccessible, then PURCHASER shall notify SELLER of non-compliance. Within thirty (30) days of PURCHASER’s receipt of a non-compliance notice (“Notice”), SELLER and PURCHASER shall meet and mutually agree upon an appropriate timeline for resolution of the Accessibility Issue(s) (“Initial Meeting”).

c. In the event SELLER fails to: (i) acknowledge receipt of the notice within thirty (30) days of receipt of the Notice; or (ii) establish a mutually agreed upon timeline for resolution within thirty (30) days following the Initial Meeting; or (iii) materially resolve the Accessibility Issue(s) within the agreed-upon timeline, then SELLER will provide a credit against PURCHASER’s next invoice equal to 1/365 of the annual fees for the impacted software per day of delay, for up to a maximum of thirty (30) days, after which PURCHASER may terminate the Agreement and SELLER shall refund to PURCHASER a pro-rata share of any pre-paid fees. For clarity, credits will not exceed 30/365 of such annual fees per notice.

d. SELLER agrees to indemnify and hold harmless PURCHASER from any claims arising out of its failure to comply with the required WCAG guidelines. Additionally, such failure to comply shall constitute a material breach of the Agreement and shall be grounds for termination of the Agreement by PURCHASER.

15. Background Check Policy Statement of Intent: PURCHASER has established a background check policy to promote a safe and secure environment for the campus community. Background checks must be conducted on non-employees as required by the PURCHASER’s Background Check Policy and as may be required by the Agreement and/or the Purchase Order, or where other University policies, or federal or state background check requirements apply. See link for full details: <https://hr.osu.edu/wp-content/uploads/policy415-standards-nonemployee.pdf>.

16. Public Contract Eligibility: SELLER warrants that it (and any of its employees, contractors, or agents) is not ineligible to participate in federal or state public procurement contracts or is otherwise excluded from participation in federal or state health care programs, has not been convicted of a criminal offense related to health care, is not included on the List of Excluded Individuals/Entities, System for Award Management, Ohio Medicaid Provider Exclusion Suspension, Findings for Recovery (Ohio Revised Code 9.24), or Ohio Department of Developmental Disabilities Abuser database registries or lists. SELLER further agrees that if this warranty is deemed to be false, the Agreement shall be void ab initio as between the parties and SELLER shall immediately repay to PURCHASER any funds paid under the Agreement, or an action for recovery may be immediately commenced by PURCHASER for the recovery of said funds.



17. Payment Card Industry Data Security Standard: If, in the course of its engagement with PURCHASER, SELLER has access to or will collect, access, use, store, process, dispose of, disclose, or otherwise influence the security of payment cardholder data, SELLER represents and warrants that it is responsible for (i) the security of cardholder data that it possesses or otherwise stores, processes or transmits, or to the extent that it could impact the security of SELLER's cardholder data environment; (ii) providing all cardholder data payment processing services for every merchant account for which it is processing such payments; and (iii) managing and maintaining all Payment Card Industry Data Security Standard requirements as then in effect (PCI DSS). In addition, SELLER has the appropriate safeguarding measures to protect cardholder data, and, at a minimum, shall, at its own cost and expense, fully comply with the Payment Card Industry Data Security Standard; provided that if SELLER provides services to PURCHASER that are directly involved in transmitting, processing or storing cardholder data on behalf of PURCHASER (as the merchant) or that control or could impact the security of such cardholder data, SELLER has entered into a separate PCI Third Party Service Provider Agreement, which may be found at <https://busfin.osu.edu/document/third-party-service-provider-pci-contract-addendum> and is hereby incorporated by reference. SELLER shall maintain appropriate business continuity procedures and systems to ensure security of cardholder data in the event of a disruption, disaster or failure of its primary data systems. In the event of any suspected, alleged or confirmed loss, disclosure, theft or compromise of cardholder data or card transaction information relating to cardholder data services (a "Compromised Data Event"), SELLER shall immediately notify (i) the Office of the Chief Information Officer by leaving a voicemail at 614-688-5650 and sending an email to security@osu.edu, (ii) the Office of the Treasurer by sending a fax to 614-292-7568, and (iii) in the manner required in the PCI DSS requirements and applicable law. Upon SELLER's suspected or actual discovery of a Compromised Data Event, SELLER shall not alter or destroy any related records and will maintain complete and accurate documentation regarding any modifications made to the records. If the systems under control of SELLER or a direct or indirect third party vendor under contract with SELLER or any additional parties under contract with the third party are at fault in connection with the Compromised Data Event, SELLER shall indemnify and hold harmless PURCHASER and its trustees, officers, directors, employees, representatives and agents from any and all demands, causes of action, losses, liabilities, judgments, damages, claims (including but not limited to claims of negligence), costs and expenses (including but not limited to attorney's fees), arising therefrom, caused thereby, related thereto, or resulting therefrom. SELLER's defense of any claim shall be subject to the Ohio Attorney General's right to appoint counsel and approve settlements.

18. Insurance: During the term of the Agreement, SELLER shall procure and maintain the insurance coverage specified below, on standard policy forms and with insurance companies authorized to do business in the State of Ohio. SELLER shall demonstrate that each policy listed below is underwritten by a carrier with at least an A.M. Best Rating of A-VII. Upon PURCHASER's request, SELLER will provide a certificate of insurance evidencing the following:

a. Workers' Compensation Insurance as required by the laws of the State of Ohio and Employers Liability insurance with limits not less than \$1,000,000 per accident/per employee covering all officers and employees of SELLER who are in any way engaged in or connected with the Purchase Order. SELLER shall require its agents, independent contractors, sub-suppliers and subcontractors, who are in any way engaged in



or connected with the Purchase Order to maintain the same insurance and limits as required herein of SELLER.

b. Commercial General Liability: Limits of no less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate for bodily injury, including death, personal injury, contractual liability, property damage, products/completed operations, and liability arising from its agents, independent contractors, sub-suppliers and subcontractors. Such insurance policy shall include (i) "The Ohio State University and its Board of Trustees" as an additional insured with respect to the provision of services or goods provided under the Purchase Order and (ii) a waiver of subrogation in PURCHASER's favor. This coverage is primary as to any other valid and collectable insurance in force and SELLER will not seek contribution from any other insurance, which is applicable to this loss, available to the additional insured, such other insurance shall be on an excess and non-contributory basis.

c. Comprehensive Automobile Liability Insurance: Covering the operation of all motor vehicles used by SELLER or its agents in connection with the Purchase Order, affording protection in an amount of not less than \$1,000,000 combined single limit with respect to personal injury, death, or damage to property. Coverage shall include all owned, non-owned or hired vehicles.

d. If the Purchase Order involves professional services, Professional Liability Insurance, including errors and omissions, in an amount not less than \$1,000,000 per incident and \$3,000,000 in the aggregate.

e. If the Purchase Order involves products that could cause environmental damage, Pollution Liability Insurance with a limit of \$5,000,000 per occurrence, providing coverage for and against liability for pollution damage and pollution clean-up including as provided for under applicable federal, state and local laws and regulations.

Insurance coverage(s) provided under the Purchase Order shall not limit or restrict in any way the liability of SELLER arising under or in connection with the Purchase Order. Such insurance shall not be canceled or terminated without ten (10) days prior written notice of any cancellation or termination. If any of the required insurance expires or otherwise lapses during the term of the Purchase Order, SELLER shall provide PURCHASER with new certificates of insurance as evidence that the required insurance has been renewed.

19. Force Majeure: Neither PURCHASER nor SELLER shall be liable or responsible for any delay or failure in performance resulting from any cause beyond their control, including, but without limitation to war, strikes, pandemics, epidemics, quarantine restrictions, freight embargoes, blockades, governmental or quasi-governmental order, civil disturbances and acts of nature. When SELLER has knowledge of any actual or potential force majeure or other conditions which will delay or threatens to delay timely performance of the Agreement, SELLER shall immediately give notice thereof, including all relevant information with respect to what steps SELLER is taking to complete delivery of the goods and/or services to PURCHASER. In the event that SELLER's delay remains uncured for a period of ten (10) days following written notice given by it under this Section, PURCHASER may thereafter terminate the Agreement upon five (5) days' written notice



20. Confidentiality: As between SELLER and PURCHASER, all PURCHASER confidential information is the property of PURCHASER, and no license or other rights are granted or implied hereby. Except as otherwise noted in Section 5, SELLER agrees that it will keep confidential all information regarding the features of any equipment, tools, gauges, patterns, designs, drawings, engineering data or other technical or proprietary information furnished by PURCHASER, and will use such items only in the production of goods and/or services under the Agreement. Upon the completion or termination of the Agreement, SELLER shall immediately return all confidential information to PURCHASER or shall make other disposition of the confidential information as directed by PURCHASER. SELLER acknowledges that PURCHASER has a statutory obligation to provide all public records upon request, unless such records are specifically exempted from disclosure, pursuant to Section 149 et seq. of the Ohio Revised Code, as amended. SELLER's obligations with respect to PURCHASER's confidential information under this Section will remain in effect for the term of the Agreement and for five (5) years after the termination of the Agreement.

21. Assignments; Subcontracts: SELLER may not assign, subcontract or transfer any of its interests in the Agreement, nor any money due or to become due without the prior written consent of PURCHASER, which consent may be withheld by PURCHASER in its sole discretion. PURCHASER's consent to any assignment or subcontract will not relieve SELLER of any of its duties or obligations under the Agreement. The Agreement will be binding upon and will inure to the benefit of the parties and SELLER's authorized successors and assignees. Any assignment made without such consent shall be deemed void.

22. Taxes: Sales to PURCHASER are exempt from Ohio sales tax (Ohio Revised Code Section 5739.02) and certain federal excise taxes, neither of which shall be charged to PURCHASER in connection with any goods or services procured subject to the Agreement. Unless otherwise specified in the Agreement, all prices shall be inclusive of all applicable taxes, fees, or similar charges, if any, including but not limited to, applicable sales, use, or excise taxes, import duties, value added taxes, permit fees, or license fees. Any such taxes, fees, or similar charges not included in the price shall be paid by SELLER.

23. Termination:

a. Except as otherwise provided in Sections 1 and 2 above, the Agreement may be terminated at any time without cause by PURCHASER upon thirty (30) days' prior written notice to SELLER.

b. The Agreement may be terminated immediately by PURCHASER for breach by SELLER of the Agreement, provided that PURCHASER has provided SELLER with notice of such breach and SELLER has failed to cure within ten (10) days of receipt of such notice. In the event of such a default, PURCHASER may procure the goods and services from other sources and SELLER will be liable to PURCHASER for any excess costs PURCHASER incurs.

c. PURCHASER may terminate the Agreement at any time if SELLER files a petition in bankruptcy, or is adjudicated bankrupt; or if a petition in bankruptcy is filed against SELLER and not discharged within thirty (30) days; or if SELLER becomes insolvent or makes an assignment for the benefit of its creditors or an arrangement pursuant to any bankruptcy law; or if a receiver is appointed for SELLER or its



business; or ceases to conduct its normal and customary business and operations; or suffers a material adverse change in financial condition.

d. Upon termination, SELLER shall refund to PURCHASER all prepaid amounts for goods or services not delivered or performed. If the Agreement is terminated pursuant to this Section, subject to the provision of any transition services, PURCHASER will pay SELLER, as full compensation under the Agreement the portion of goods or services delivered or performed and accepted prior to the effective date of termination based on the unit prices in the Agreement, or, if no unit prices are provided, the pro rata amount of the total order price based on the amount delivered or performed. In no event will compensation paid previously under the Agreement together with compensation paid under this Section exceed the total Agreement price.

24. General; Miscellaneous:

a. **Governing Law.** The Purchase Order shall be governed by the laws of the State of Ohio, without reference to any choice of laws rules. Any claim, action or suit between PURCHASER and SELLER will be brought and conducted solely and exclusively in a court of competent jurisdiction in Franklin County, Ohio. In no event will any part of the Agreement be construed as a waiver by PURCHASER of its sovereign and governmental immunities.

b. **Waiver.** Failure of PURCHASER to act immediately in response to a breach of the Agreement by SELLER shall not constitute a waiver of breach. Waiver of PURCHASER of any default by SELLER hereunder shall not be deemed a waiver of any subsequent default by SELLER.

c. **Notices.** All notices under the Agreement shall be sent to the respective addresses on the face page of the Purchase Order by certified mail, return receipt requested, by overnight courier service, or by personal delivery and will be deemed effective upon receipt. In the event an addressee refuses to accept delivery, however, then notice shall be deemed to have been served on the date of said refusal of delivery. Postage, delivery charges and other charges shall be paid by the sender. A party may change its address for notice by written notice complying with the requirements of this Section.

d. **Compliance with Laws.** SELLER shall be responsible for compliance with any and all applicable federal, state and local laws, ordinances, regulations and PURCHASER's policies and rules, including Tobacco Free Ohio State Policy 7.20 and Sexual Misconduct Policy 1.15, which may be found at www.osu.edu/policies, as well as, if applicable, the OSUWMC Vendor Policies, at <https://wexnermedical.osu.edu/utility/footer/supplier-interaction>, with respect to the provision of goods and services under the Agreement. Notwithstanding any other provision of the Agreement, SELLER acknowledges and agrees that the Agreement is subject to and governed by the provisions of Ohio Revised Code 9.27.

e. **Independent Contractor.** SELLER is an independent contractor, and neither SELLER nor SELLER's employees, agents, or other representatives shall be considered PURCHASER's employees or agents. SELLER is retained by PURCHASER only for those purposes and to the extent set forth in the



Agreement. All individuals employed by SELLER who provide personal services to PURCHASER are not public employees for purposes of Chapter 145 of the Ohio Revised Code, as amended.

f. Free Trade. Pursuant to Ohio Revised Code 9.76(B), SELLER warrants that SELLER is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, including Israel, and will not do so during the contract period.

g. No End User Agreements. If SELLER requires PURCHASER or its employees to accept a shrink wrap, click-through, end user license, or other similar agreement ("End User Agreement"), the terms of the End User Agreement that conflict or are inconsistent, with the terms of the Agreement or PURCHASER's policies and/or procedures will be void.

h. Records; Audit. SELLER is responsible for keeping accurate and reasonable records related to its performance and obligations under the Agreement. In particular, records will be kept documenting any price, cost or budget computations required under the Agreement. SELLER agrees that PURCHASER or its duly authorized representative has the right to audit any directly pertinent books, documents, papers and records related to transactions and/or performance of the terms and conditions of the Agreement. The right to audit shall include periodic examinations of records throughout the term of the Agreement and for a period of three (3) years after its termination. The right to audit shall also apply to agents and subcontractors hired by SELLER for the purpose of fulfilling the Agreement. In the event that audits discover substantive findings related to fraud, misrepresentation or nonperformance, PURCHASER may recoup the costs of the audit work from SELLER.

i. Parking. SELLER shall obtain all parking permits and/or decals required while performing any work on PURCHASER's premises. If needed, SELLER should contact CampusParc.
<https://osu.campusparc.com/> (link is external).

j. Survival. All provisions of the Agreement that anticipate performance after the termination of the Agreement, and all provisions necessary or appropriate to interpret and enforce such provisions, shall survive termination of the Agreement.

k. No Third Party Beneficiaries. PURCHASER and SELLER are the only parties to the Agreement and are the only parties entitled to enforce its terms. Nothing in the Agreement gives, is intended to give, or will be construed to give any benefit or right, whether directly, indirectly or otherwise, to third persons, unless such third persons are individually identified by name and expressly described in the Agreement as intended beneficiaries.

l. Severability. Each section, term, covenant, condition or provision of the Agreement shall be valid and enforceable to the fullest extent permitted by law, and if any such section, term, covenant, condition or provision of the Agreement, or the application thereof to SELLER or any circumstance, shall ever be held to be invalid, illegal or unenforceable by a court or judicial officer, such section, term, covenant, condition, or provision shall be deemed replaced by a term or provision that is valid and enforceable and that comes closest



to expressing the intention of the invalid, illegal, or unenforceable section, term, covenant, condition, or provision.