

**OREGON STATE UNIVERSITY
STANDARD TERMS AND CONDITIONS FOR SERVICES**

These Standard Terms and Conditions for Services shall govern the purchase by OSU from the Contractor and shall replace and supersede any terms and conditions presented by Contractor or any sales quotations, order acknowledgements, or similar forms unless otherwise specified in the Solicitation Documents or on the face of the Purchase Order issued by OSU.

1. DEFINITIONS:

As used in this Contract, the terms set forth below are defined as follows:

- a. "Contract" means only 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 and its Attachments and Addenda, if any; and
 - ii. The Purchase Order Issued by OSU
- b. "Contractor" means a person or organization with whom OSU has contracted for the provision of services pursuant to this Contract;
- c. "Contractor Intellectual Property" means any intellectual property owned by Contractor and developed independently from Contractor's performance of this Contract;
- d. "OAR" means the Oregon Administrative Rules;
- e. "ORS" means the Oregon Revised Statutes;
- f. "OSU" means the State of Oregon, acting by and through the State Board of Higher Education, on behalf of Oregon State University.
- g. "Solicitation Document" means the Request for Quotes, Invitation to Bid, Request for Proposals, or any other written document issued by OSU that outlines the required specifications necessary to submit a responsive quote, bid, proposal, or any other response;

2. ACCEPTANCE OF SERVICES:

Services furnished under this Contract are subject to acceptance by OSU. If OSU finds services furnished to be incomplete or not in compliance with the Contract, OSU, at its sole discretion, may either reject the services, require Contractor to correct any defects without charge, or negotiate with Contractor to reduce the price, whichever OSU deems appropriate under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by OSU, OSU may reject the services and cancel the Contract in whole or in part.

3. ACCESS TO RECORDS:

Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. OSU, the Oregon State Board of Higher Education, Oregon Secretary of State, federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Contractor shall maintain such books and records for OSU's review for at least six years beyond the Term of the Contract unless OSU authorizes a shorter period in writing. Contractor shall promptly remedy any discrepancies involving deviation from the terms of this Contract and shall promptly reimburse OSU for any commitments or expenditures found by OSU to have been in excess of amounts authorized by OSU.

4. AFFIRMATIVE ACTION:

Pursuant to OAR 580-061-0030, Contractor certifies that Contractor has not discriminated against Minority, Women or Emerging Small Business Enterprises in obtaining any required subcontracts.

5. APPLICABLE LAW; JURISDICTION AND VENUE.

- a. This Contract is governed and shall be construed in accordance with the laws of the State of Oregon, without resort to any other jurisdiction's conflict of law rules or doctrines. Any claim, action, or suit between OSU and Contractor that arises out of or relates to performance of this Contract must be brought and conducted solely and exclusively within the Circuit Court for Marion County, for the State of Oregon.
- b. Notwithstanding the foregoing paragraph, if a claim must be brought in federal forum, it must be brought and adjudicated solely and exclusively in the United States District Court for the District of Oregon. This paragraph applies to a claim brought against OSU only to the extent Congress has validly abrogated OSU's sovereign immunity and is not consent by OSU to be sued in federal court. This paragraph is also not a waiver by OSU of any form of immunity, including without limitation sovereign immunity and immunity based on the Eleventh Amendment to the United States Constitution.
- c. Except as set forth in the paragraph above, the parties consent to in personam jurisdiction in the above courts and waive any objection to venue and any objection that the forum is inconvenient.

6. ASSIGNMENT/SUBCONTRACT/SUCCESSORS:

Contractor shall not assign, sell, transfer, or subcontract rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of the OSU Procurement and Contract Services Department, and any attempt by Contractor to assign, sell, transfer, or subcontract rights or delegate responsibilities under this Contract, without first acquiring written approval of the OSU Procurement and Contract Services Department, is void. No such written approval from OSU relieves Contractor of any obligations of this Contract, however, and any assignee, new owner, transferee or subcontractor will be considered an agent of Contractor. Contractor shall remain liable to OSU under the Contract as if no such assignment, sale, transfer, or subcontract had occurred. The provisions of this Contract are binding upon and will inure to the benefit of the parties to the Contract and their respective permitted successors and assigns.

7. COMPLIANCE WITH APPLICABLE LAW:

The parties shall at all times comply with all federal, state and local laws, regulations, executive orders and ordinances pertaining to their respective businesses, products or services, employment obligations, and the subject matter of this Contract. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Paragraphs 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated.

8. CONFIDENTIALITY:

This Contract is subject to the limitations and conditions of the Oregon Public Records Law, ORS 192.410-192.505.

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9. EXPORT CONTROL:

Contractor acknowledges that OSU has students and faculty who are foreign nationals who may work with the services, product or technology received from Contractor pursuant to this Contract. Contractor represents that it has informed OSU in writing, prior to executing this Contract if it is providing OSU 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.

10. FORCE MAJEURE:

Neither OSU nor Contractor shall be held responsible for delay or default caused by fire, riot, act of nature, terrorist acts, or other acts of political sabotage, or war where such cause was beyond, respectively, OSU's or Contractor's reasonable control. Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligations under this Contract. However, if a default or delay due to a force majeure event continues for an unreasonable time, as determined by OSU, then OSU is entitled to terminate the Contract.

11. GOVERNMENT EMPLOYMENT STATUS:

Contractor certifies that it is not currently employed by the federal government and not an employee of OSU.

12. INDEMNITY, RESPONSIBILITY FOR DAMAGES:

- a. Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, any willful or negligent act or omission of Contractor, its subcontractors, or employees under this Contract. Contractor shall save, defend, indemnify, and hold harmless OSU, the Oregon State Board of Higher Education, the State of Oregon and their agencies, subdivisions, officers, directors, agents, members, and employees from all claims, suits, and actions resulting from or arising out of the willful or negligent acts or omissions of Contractor or its subcontractors, officers, agents, or employees acting under this Contract.
- b. Without limiting the generality of this section a., Contractor expressly agrees to defend, indemnify, and hold OSU, the Oregon State Board of Higher Education, the State of Oregon and their agencies, subdivisions, officers, directors, agents, members, and employees harmless from any and all claims, suits, actions, losses, liabilities, costs, expenses and damages arising out of or related to any claims that the services or any other tangible or intangible goods delivered to OSU by Contractor that may be the subject of protection under any state or federal intellectual property law or doctrine, or OSU's use thereof infringes any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any third party; provided, that OSU shall provide Contractor with prompt written notice of any infringement claim.
- c. Contractor shall have control of the defense and settlement of any claim that is subject to a. or b.; however, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without first receiving from the Oregon Attorney General, in a form and manner determined appropriate by the Attorney General, authority to act as legal counsel for the State of Oregon, nor shall Contractor settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Contractor is prohibited from defending the State of Oregon, or is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.

13. INDEPENDENT CONTRACTOR STATUS:

The services to be rendered under this Contract are those of an independent contractor. OSU reserves the right (a) to determine and modify the delivery schedule for the services and (b) to evaluate the quality of the services; however, OSU may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the services. Contractor is not an officer, employee or agent of OSU as those terms are used in ORS 30.265.

14. INSURANCE:

Contractor shall secure at its own expense and keep in effect during the term of this Contract general liability or professional liability insurance as deemed applicable by OSU with limits of not less than four million dollars (\$4,000,000) aggregate, unless otherwise specified in writing by OSU. Insurance policies are to be issued by an insurance company authorized to do business in the State of Oregon with a rating of A or better, or as deemed acceptable by OSU. If requested, Contractor shall provide proof of insurance of said insurance policy. If any of the liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration commiserate with the statute of limitations for tort claims in Oregon.

15. INVOICES AND PAYMENT TO CONTRACTOR:

Contractor shall send invoices to OSU for services accepted by OSU to OSU's Department at the address specified in the Purchase Order. Contractor shall include in each invoice:

- a. The Purchase Order number;
- b. The quantity of goods ordered, the quantity of goods delivered, the date goods were delivered, the price per unit;
- c. A detailed description of any services performed, the dates services were performed, the rate or rates for services performed, and the total cost of services; and
- d. The total amount due and the payment address.

OSU shall pay Contractor for services performed at the prices and rates specified herein. Contractor shall look solely to OSU for payment of all amounts OSU owes to Contractor. Payment of OSU contracts is normally made within 30-45 days following the date the the invoice is received. After 45 days, Contractor may assess overdue account charges up to a maximum of two-thirds of one percent (2/3 of 1%) per month or eight percent (8%) per annum on the outstanding balance (ORS 293.462).

16. NOTICE:

Unless otherwise specified, any notice pursuant to this Contract shall be validly given if in writing and given to the other party, via e-mail, fax, or by registered or certified mail, postage prepaid, to the respective addressees of Contractor and OSU.

17. ORIGINAL WORKS:

All inventions, discoveries, work of authorship, trade secrets or other tangible or intangible items and intellectual property rights created by Contractor pursuant to this Contract, 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 OSU. OSU and Contractor agree that such original works of authorship are "work made for hire" of which OSU is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created pursuant to this Contract is not "work made for hire," Contractor hereby irrevocably assigns to OSU any and all of its rights, title, and interest in all original Work Product created pursuant to this Contract, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual

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property law or doctrine. Upon OSU's reasonable request, Contractor shall execute such further documents and instruments necessary to fully vest such rights in OSU. Contractor forever waives any and all rights relating to original Work Product created pursuant to this Contract, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

In the event that Work Product created by Contractor under this Contract is a derivative work based on Contractor intellectual property, or is a compilation that includes Contractor intellectual property, Contractor hereby grants to OSU an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Contractor intellectual property employed in the Work Product, and to authorize others to do the same on OSU's behalf. In the event that Work Product created by Contractor under this Contract is a derivative work based on third party intellectual property, or is a compilation that includes third party intellectual property, Contractor shall secure on OSU's behalf and in the name of OSU an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the third party intellectual property employed in the Work Product, and to authorize others to do the same on OSU's behalf.

18. OSU NAME AND TRADEMARK:

Contractor's shall not use names, marks or trademarks identifying OSU, or any department or office of OSU, or in any other way identify OSU without prior written approval from OSU's Office of University Advancement.

19. PARKING:

Contractors doing business on the OSU campus may be required to have a permit to park, if utilizing restricted street parking or parking lots. Contractor parking permits may be picked up from OSU's Office of Transit & Parking Services.

20. RECYCLABLE PRODUCTS:

Contractors will use recyclable products to the maximum extent economically feasible in the performance of the Contract.

21. REMEDIES FOR CONTRACTOR'S DEFAULT:

In the event Contractor is in default, OSU may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to: (a) rejection of the services, (b) requiring Contractor to correct any defects without charge, (c) negotiation with Contractor to sell the services to OSU at a reduce price, (d) termination of the Contract, (e) withholding all moneys due for the services Contractor has failed to deliver within any scheduled completion dates or has performed inadequately or defectively, (f) initiation of an action or proceedings for damages, specific performance, or declaratory or injunctive relief, or (g) exercise of its right of set off. These remedies are cumulative to the extent the remedies are not inconsistent, and OSU may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

22. RETIREMENT SYSTEM STATUS:

Contractor is not a contributing member of the Public Employees' Retirement System and will be responsible for any federal or state taxes applicable to payment under this Contract. Contractor will not, by virtue of this Contract, be eligible for federal Social Security, employment insurance, workers' compensation or the Public Employees' Retirement System, except as a self-employed individual.

23. SAFETY AND HEALTH REQUIREMENTS/HAZARD COMMUNICATION:

Services supplied under this Contract shall comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon safety and health requirements, including those of the State of Oregon Workers' Compensation Division. Contractor shall notify OSU prior to using products containing hazardous chemicals to which OSU employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon OSU's request, Contractor shall immediately provide Material Safety Data Sheets, as required by OAR 437-155-025, for the products subject to this provision.

24. SEVERABILITY:

The invalidity, illegality or enforceability of any provision of this Contract shall not affect the validity, legality or enforceability of any other provision of this Contract, which shall remain in full force and effect and shall be liberally construed in order to effectuate the purpose and intent of this Contract.

25. SEXUAL HARASSMENT:

The State Board of Higher Education has adopted polices applicable to Contractors that prohibit sexual harassment, and Contractor's company and employees are required to adhere to OSU's policy prohibiting sexual harassment in their interactions with members of the OSU community.

26. SURVIVAL:

The terms and conditions of this Contract that by their sense and context are intended to survive termination or expiration hereof shall so survive.

27. TAX COMPLIANCE CERTIFICATION:

Contractor certifies under penalty of perjury that Contractor is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620.

28. TERMINATION:

This Contract may be terminated at any time by mutual consent of both parties or by OSU upon thirty (30) days' notice in writing and delivered by certified mail or in person to the other party. In addition, OSU may terminate this Contract at any time by written notice to Contractor if (a) Federal or state statutes, regulations or guidelines are modified or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract; (b) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; or (c) OSU fails to receive sufficient legislative appropriations (or from applicable federal, state, or other sources) to permit OSU, in the exercise of its reasonable administrative discretion, to fulfill its obligations under this Contract, or if the OSU program for which this Contract was executed is abolished. This Contract may also be terminated by OSU for default (including breach of contract) if (a) Contractor fails to timely provide services or materials called for by this Contract; or (b) Contractor fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms and conditions, and after receipt of written notice from OSU, fails to correct such failures within ten (10) days. The rights and remedies of OSU provided in the above clause related to defaults (including breach of contract) by Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

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29. THIRD PARTY BENEFICIARY:

OSU and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third parties.

30. WAIVER:

Failure of OSU to enforce any provision of this Contract will not constitute a waiver or relinquishment by OSU of the right to such performance in the future nor of the right to enforce any other provision of this Contract.

31. WORKERS' COMPENSATION:

The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Contract are subject employers under the Oregon Workers' Compensation law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, unless such employees are exempt under ORS 656.126.

32. MERGER:

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