

## SECTION 1 - COMMERCIAL ITEMS OR SERVICES CONTRACT GENERAL PROVISIONS CALIFORNIA INSTITUTE OF TECHNOLOGY ("INSTITUTE")

### 1. OFFER AND CONTRACT

The following terms, with such terms, plans, specifications or other documents as attached or incorporated by reference as set forth on the face of this purchase order, constitute the offer of the Institute to Supplier and shall, when accepted, constitute the entire agreement ("Contract") between the Institute and Supplier. Institute gives notice of its objection to any different or additional terms. This Contract is valid only as written. If price, terms, shipping date or other expressed condition of this Contract are not acceptable, the Institute must be notified and any variation must be accepted in writing prior to shipment or delivery. This Contract shall be deemed to have been accepted (a) absent written notification of non-acceptance by the Supplier within a reasonable time, or (b) upon timely delivery of the products identified to the shipping address specified on the face of the order.

### 2. TIME OF DELIVERY

Time is of the essence in this Contract. If delivery dates cannot be met, Supplier must notify the Institute immediately. Such notification shall not, however, constitute a change to the terms of this Contract except as the order may be modified in writing by the Institute.

### 3. IMPROPER DELIVERY

In addition to other remedies provided by law, the Institute reserves the right to refuse any goods or services and to cancel all or any part of this Contract if Supplier fails to deliver all or any part of the goods or services in accordance with the terms and conditions of this Contract. Acceptance of any part of this order shall not bind the Institute to accept any future shipments nor deprive it of the right to return goods already accepted.

### 4. ASSIGNMENT AND DELEGATION

The Supplier shall have no right to assign this Contract or any benefits from this Contract without prior written notice to the Institute. The Institute's obligation to pay any assignee is subject to such notice and is subject to any claim, defense or offset the Institute may have against the Supplier. Any assignment is subject to the Institute's rights and remedies under UCC Sections 2A-303 and 2A-508 through 2A-522, as applicable. The Supplier is prohibited from delegating any part of the duties required of it by this Contract without the Institute's express consent.

### 5. AUTHORITY OF INSTITUTE REPRESENTATIVES AND REQUIRED NOTICES; FACSIMILE AND ELECTRONIC SIGNATURES ACCEPTABLE

(a) No order, notice, or direction received by the Supplier and issued pursuant to this Contract shall be binding upon either the Supplier or the Institute, unless issued or ratified in writing by the Institute Purchasing Agent, the Director of Procurement Services, or by representatives designated in writing by either of them.

(b) The parties agree that facsimile (fax) or electronic signature copies of contract documents are just as binding as originally-executed documents.

### 6. CHANGES

The Institute may by a written order to the Supplier, make changes within the general scope of this Contract in: (a) drawings, designs, or specifications; (b) method of shipment or packing; and (c) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this order, an equitable adjustment shall be made in the order price or delivery schedule or both, and the order shall be modified in writing accordingly. Any claim by Supplier for adjustment under this Article must be asserted within 30 days from receipt by Supplier of the notification of change; provided, however, that the Institute, if it decides that the facts justify such action, may receive and act upon any such claim asserted prior to final payment under this purchase order. Nothing in this clause shall excuse Supplier from proceeding with this order as changed.

### 7. FORCE MAJEURE

Each party shall not be liable for damages arising out of either its failure to deliver or any delay in delivery caused by strikes, lockouts, fires, war, or acts of God. The Supplier shall notify the Institute in writing as soon as it is reasonably possible after the commencement of any event triggering a delayed delivery or inability to deliver.

### 8. EXISTING COMMERCIAL COMPUTER SOFTWARE – LICENSING

(This Article applies to the acquisition of any existing commercial computer software under this Contract.)

(a) Where the Supplier proposes its standard commercial software license, only those applicable portions that comply with the provisions of this Contract are incorporated into and made a part of this Contract.

(b) If the Supplier does not propose its standard commercial software license until after this Contract has been issued, or at or after the time the computer software is delivered, such license shall nevertheless be deemed incorporated into and made a part of this Contract under the same terms and conditions as in paragraph (a) above. To receive updates, correction notices, consultation, and similar activities on the computer software, any authorized user may acknowledge receipt of a registration form or card and return it directly to the Supplier; however, such signing shall not add to or alter the terms and conditions of this Contract.

(c) If the specified computer software is shipped or delivered to the Institute, it shall be understood that the Supplier has unconditionally accepted the terms and conditions in this Article, and that the terms and conditions of this Contract (including the incorporated license) constitute the entire agreement between the parties concerning rights in the computer software.

(d) Supplier understands and agrees that the computer software may be:

(1) Used, or copied for use, in or with any computer owned or leased by, or for the Institute provided the software is not used, nor copied for use, in or with more than one computer simultaneously, unless otherwise permitted;

(2) Reproduced for safekeeping (archives) or backup purposes;

(3) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software shall be subject to the same restricted rights; and

(4) Disclosed and reproduced for use by Institute designees under this Article.

(e) Supplier agrees that the software may be used by the Institute in support and furtherance of its obligations to the US Government or other funding organization.

(f) Supplier warrants it has the right to sell, license, or transfer the license for the software furnished to the Institute under this Contract

## 9. COPYRIGHTABLE WORK

Supplier understands that all copyrightable work generated in performance of this Contract is a "work made for hire" and that all ownership of any copyright in and to such work or any part thereof vests immediately in the Institute. To the extent that any work generated in performance of this Contract might be deemed not to constitute "work made for hire," Supplier hereby assigns to the Institute the entire copyright, right, title and interest in and to such work.

## 10. EXPORT COMPLIANCE

a) LICENSES. The Supplier shall comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, in performing this Contract. Absent license exemptions/exceptions, the Supplier shall obtain the appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance.

b) IDENTIFICATION OF EXPORT CONTROLLED ITEMS. The Supplier shall notify the Institute in writing prior to delivery if it will provide any items under this Contract controlled under the International Traffic in Arms Regulations (ITAR) (i.e., hardware, software, technology, components, accessories, etc.). Any such item(s) or its packaging shall be properly marked to alert the Institute of the ITAR restrictions upon delivery to the Institute.

## 11. DISPUTES AND GOVERNING LAW

(a) Any dispute or claim arising out of, in connection with, or relating to this Contract shall be submitted for resolution to ascending levels of management of the parties. If the dispute cannot be resolved after such negotiations, either party may pursue any appropriate legal recourse not inconsistent with the provisions of this Contract.

(b) Pending any decision, appeal or judgment or the settlement of any dispute, Supplier agrees to proceed diligently with performing this Contract.

(c) This Contract shall be construed and enforced under the laws of California. Disputes will be adjudicated in Los Angeles, California.

## 12. INSPECTION AND ACCEPTANCE

The Institute may inspect the work and activities of the Supplier under this Contract in such manner and at all reasonable times as deemed appropriate. Final inspection shall be at the Institute's premises unless otherwise agreed in writing. Items rejected as not conforming to this order shall be, at the Institute's option, returned at Supplier's expense, including transportation and handling fees, or corrected or replaced by Supplier. Unless the Supplier removes, corrects or replaces the goods or services within the delivery schedule, the Institute may require its delivery and make an equitable price reduction. The Institute may also opt for a refund of the amount paid under this Contract.

## 13. INSURANCE

(This Article applies when the Supplier will enter Institute-controlled premises.)

(a) The Supplier shall, at its own expense, provide and maintain during the entire performance period of this Contract at least the following types and minimum amounts of insurance with the Institute named as an additional insured in policies for comprehensive liability insurance with a carrier licensed and admitted in the State of California:

(1) Workers' Compensation and Employer's Liability Insurance, as required by applicable Federal and State workers' compensation and occupational disease statutes. The Employer's Liability coverage shall be at least \$100,000, except in states with exclusive or monopolistic funds that do not permit worker's compensation to be written by private carriers.

(2) Comprehensive Liability Insurance, including automobiles (owned, non-owned, or leased), completed operations, products, and contractual liability, for a combined single limit of not less than \$1,000,000 for all deaths, injuries, and property damage arising from one accident or occurrence.

(3) For Professional Service Providers, they shall maintain Errors and Omissions Insurance, including coverage for personal injury, death, property damage, and contractual liability in an amount not less than One Million Dollars (\$1,000,000) for each occurrence (Two Million Dollars [\$2,000,000] general aggregate.) Said insurance shall be maintained for the statutory period during which the professional may be exposed to liability. Supplier shall require that the aforementioned professional liability insurance coverage language also be incorporated into its contract with any other entity with which it contracts for professional services.

(b) Insurance Certificates and Endorsements. Before commencing work under this Contract, the Supplier shall furnish (i) certificates of insurance for the coverages specified in paragraph (a) above, and (ii) an additional insured endorsement naming the Institute as an additional insured to the Contract for the coverage specified above. Such certificates and the endorsement shall provide that any cancellation or material change shall not be effective (i) for such period as the laws of the State in which this Contract is performed, or (ii) until 30 days after the insurer or the

Supplier gives written notice to the Institute, whichever period is longer. Also, such certificates and the endorsement shall (i) cover contractual liability assumed under this Contract, and (ii) be primary and non-contributing to any insurance procured by the Institute. The Supplier agrees to permit the Institute to examine its original policies, should the Institute so request. Should the Supplier neglect or refuse to provide the insurance required, or should such insurance be canceled, the Institute shall have the right to procure same and the costs shall be deducted from monies then due or to become due to the Supplier.

#### **14. INDEMNIFICATION**

Supplier agrees to indemnify and to hold the Institute harmless against all costs, claims, liability, loss, damage, and expenses including legal fees, arising from or due to any actual or claimed trademark, patent or copyright infringement and any litigation based thereon, regarding any part of the goods and work covered by this purchase order. Supplier shall defend any such litigation brought against the Institute, provided that Institute notifies Supplier promptly of any such suit. Supplier's obligations shall survive acceptance of the goods and payment by the Institute.

The Supplier agrees it will be responsible to the Institute for, and will indemnify, immediately defend and hold harmless the Institute, its trustees, officers, and employees, from any loss, cost, damage, expense or liability, including attorney's fees, or any suit therefore, by reason of actual or alleged claims of any kind, including but not limited to, property damage or personal injury of whatever kind of character, arising out of or in connection with the performance of the work hereunder by the Supplier or its lower-tier subcontractors, however caused, including any resulting from any alleged or actual negligent act or omission, regardless of whether such act or omission, regardless of whether such act or omission is active or passive, but excepting only a duty to indemnify to the extent such loss, cost damage, expense or liability is:

(a) Under any construction contract, attributable to the active negligence or willful misconduct of the Institute, its trustees, agents, officers or employees; or

(b) Under any other contract for either goods or services, attributable to the sole negligence or willful misconduct of the Institute, its trustees, agents, officers or employees.

#### **15. NEW MATERIAL**

Unless this Contract specifies otherwise, the Supplier represents that the supplies, are new and are not of such age or so deteriorated as to impair their usefulness or safety. If the Supplier believes that furnishing other than new material will be in the Institute's interest, the Supplier shall so notify the Purchasing Agent in writing and request authority to use such material.

#### **16. ORDER OF PRECEDENCE**

To the extent there is inconsistency among any documents relating to this order, the inconsistency will be resolved in these order of priority:

- (a) These General Provisions;
- (b) The details specified on the order, or description of products or services;
- (c) The Supplier's contract provisions.

#### **17. PAYMENT**

(a) Invoices shall be submitted in duplicate to the attention of the Institute's Accounts Payable Department, unless otherwise specified, and shall contain this information: (i) Contract number, (ii) item number, (iii) description of supplies or services, (iv) size, (v) quantity, (vi) unit price, (vii) extended totals and (viii) any other information which may be specified on the face of this Contract. Any state sales or use taxes or Federal excise taxes shall be shown separately on the invoice.

(b) The Institute shall pay the Supplier, upon the submission of proper invoices, the prices stipulated in this Contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this Contract.

(c) The Institute shall make its best effort to make payments within the net period specified in the Contract, measured from receipt of the goods or services at the destination or the date of receipt of the invoice, whichever is later. Discount time periods will be measured from the same date. Payment shall be deemed to have been made on the date the check is mailed or on the date on which an electronic funds transfer was made. The Institute will not be liable for or pay a surcharge, interest, or any penalty because of the Institute's payment not being made within the net period specified in the Contract or the date of payment by electronic funds transfer.

(d) Payment for goods or services under this paragraph will not waive or otherwise affect the right of the Institute to inspect such goods or services or to reject, or revoke acceptance of, nonconforming goods.

(e) 5) *Overpayments*. If the Supplier becomes that the Institute has overpaid on an invoice payment, the Supplier shall (i) Remit the overpayment along with a description of the overpayment to the Institute's Accounts Payable Department including the (A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment); (B) Affected contract number and delivery order number, if applicable; (C) Affected contract line item or subline item, if applicable; and (D) Supplier point of contact. (ii) Provide a copy of the remittance and supporting documentation to the Institute Purchasing Agent.

#### **18. USE OF NAME**

Supplier agrees not to use the name or trademarks of the Institute or any member its staff in sales promotional work or advertising, or in any form of publicity, without the prior written permission of the Institute.

#### **19. TITLE AND RISK OF LOSS**

(a) Title to supplies furnished under this Contract shall pass to the Institute upon formal acceptance by the Institute, regardless of when or where the Institute takes physical possession, unless the Contract specifically provides for earlier passage of title.

(b) Risk of loss shall not pass to the Institute until goods called for in this Contract have been actually received and accepted by the Institute at the destination specified. Supplier assumes all responsibility for packing, crating, marking, transportation and liability for loss or damage in transit, notwithstanding any agreement by Institute to pay freight, express or other transportation charges. Supplier agrees to trace lost or delayed shipments at the request of the Institute.

## 20. TAXES

(a) Except as may be otherwise provided in this order, the contract price includes all Federal, State, and local taxes and duties. Regarding transactions for which the Institute may be exempt from any tax or duty, the Institute will provide, upon request, evidence to support its claim to such exemption.

(b) The Institute will comply with all Federal and State income tax laws regarding withholding and year-end tax reporting.

(c) The Internal Revenue Service (IRS) requires the Institute to have on file a Taxpayer Identification Number (TIN) for every US person or US business that receives a payment, regardless if the payment is tax reportable or not. This information is on IRS Form W-9. US Citizens and Resident Aliens must complete a Form W-9 before receiving any payments from the Institute. A TIN can be: a Social Security Number (SSN) an Individual Taxpayer Identification Number (ITIN) or an Employer Identification Number (EIN). Failure to provide a TIN will cause delay of payment and/or backup withholding.

(d) Foreign businesses providing services in the US for the Institute must provide the appropriate IRS Form W-8 (i.e., Form W-8BEN, W-8ECI, or W-8IMY).

(e) Foreign individuals providing services in the US for the Institute must provide an IRS Form W-8BEN or IRS Form 8233 depending on the appropriate tax withholding treatment.

## 21. TERMINATION

(a) For Cause. The Institute may terminate this Contract, or any part, for cause if any default occurs by the Supplier, or if the Supplier violates any Contract terms and conditions, or fails to provide the Institute, upon request, with adequate assurances of future performance. In the event of termination for cause, the Institute shall not be liable to the Supplier for any amount for supplies or services not accepted, and the Supplier shall be liable to the Institute for such damages as would give the Institute the benefit of the bargain, put the Institute in the same position that it would have been in if the Supplier had not breached the Contract and any and all rights and remedies provided by law. If it is determined that the Institute improperly terminated this Contract for cause, such termination shall be deemed a termination for convenience.

(b) For Convenience. The Institute reserves the right to terminate this Contract, or any part, for its sole convenience. If such termination occurs, the Supplier shall immediately stop all work and shall immediately cause all of its subcontractors to cease work. Subject to the terms of this Contract, the Supplier shall be paid a percentage of the Contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Supplier can demonstrate to the satisfaction of the Institute, using its standard record keeping system, have resulted from the termination. The Supplier shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

## 22. WARRANTY

Supplier expressly warrants all goods and services delivered under this Contract to be free from defects in material and workmanship and to be of the quality, size and dimensions ordered. This express warranty shall not be waived by the acceptance of the goods or services or

payment by Institute. The Supplier shall provide the Institute with a copy of any standard warranty normally offered on a commercial product deliverable under this Contract. The commercial product warranty shall be deemed incorporated by reference and the Institute shall be entitled to all rights under such warranty.

## 23. OCCUPATIONAL SAFETY AND HEALTH ACT

By accepting this Contract, Supplier certifies that all products and services provided conform to current OSHA requirements.

## 24. EQUAL EMPLOYMENT OPPORTUNITY

This Contract is subject to the requirements of Executive Orders 11246 and 11375 and the rules and regulations or the Secretary of Labor (41 CFR Chapter 60) in promoting Equal Employment Opportunities.

## 25. AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM WAR

This Contract is subject to the requirements of Public Laws 92-540 and 93-508, Executive Order 11701, and the regulations of the Secretary of Labor (41 CFR Part 60-250) in promoting employment opportunities for disabled and Vietnam veterans.

## 26. AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS

This Contract is subject to the requirements of Section 503 of the Rehabilitation Act of 1973, Public Laws 93-112 and 93-516, Executive Order 11758 and the regulations of the Secretary of Labor (41 CFR Part 60-471) in promoting affirmative action in employment of the handicapped.

## 27. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION

This Contract, if it is of a character specified in the Contract Work Hours and Safety Standards Act (40 USC 327-333), is subject to the Act, including overtime requirements and penalties for violation.

## 28. ANTI-KICKBACK ENFORCEMENT ACT OF 1986

This Contract is subject to the Anti-Kickback Enforcement Act of 1986, Public Law 99-634 (41 U.S.C. 51-58). By accepting this order, Seller certifies it has not paid kickbacks directly or indirectly to any Institute employee to obtain this or any other Institute purchase order or to obtain favorable treatment in an Institute matter.

## 29. SUSTAINABILITY

To support the Institute's desire for a more sustainable Campus, the Institute reserves the right to contract with suppliers who demonstrate such appropriate regard to the following and shall make their best effort to (a) give appropriate regard to protecting the natural environment in the recommendation, sourcing, and provision of products to the Institute, (b) practice a "no paper catalogue" and online option for available products and services, (c) not send the Institute hard copy marketing materials, (d) minimize the packaging of any materials sold and delivered to the Institute, (e) used recycled materials and implement a take-back program, and (f) provide Supplier's recycling and sustainability policies and procedures and outline any and

all sustainable services Supplier provides regarding this Contract.

**30. BANKRUPTCY**

(a) If the Supplier enters bankruptcy proceedings, whether voluntary or involuntary, the Supplier shall furnish written notification of the bankruptcy to the Institute's Purchasing Agent within five days of the initiation of the proceedings. This notification will include the date on which the bankruptcy petition was filed and the identity of the court in which the bankruptcy petition was file.

(b) The Supplier shall to the maximum extent permitted by law: (1) continue to ensure that the Institute has the right of access to all areas of the facilities and records involved in this order; and (2) provide the Institute access to documents delivered in place or held at the Supplier's facility or provide electronic copies thereof. The Supplier shall ensure that the trustee, receiver, liquidator and court, knows of this access requirement.

(c) These obligations remain in effect until final payment under this order.

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