

RESEARCH FOUNDATION OF THE CITY UNIVERSITY OF NEW YORK PURCHASE ORDER GENERAL TERMS AND CONDITIONS

These Purchase Order General Terms and Conditions (“Terms and Conditions”), and the Purchase Order together with any exhibits, appendices, addendums, schedules, attachments and amendments hereto (“PO”) constitute the entire agreement between Research Foundation of The City University of New York (“Research Foundation”) and Vendor (Research Foundation and Vendor, collectively, the “Parties”, each a “Party”), relating to the Materials (as defined below) and supersede and replace any and all prior discussions and agreements between the Parties. If any discrepancy, difference or conflict exists between the various provisions of the PO and these Terms and Conditions, the most stringent terms and conditions in favor of the Research Foundation shall govern. Capitalized terms used but not defined herein shall have the meanings ascribed in the PO.

1. Prices. Prices or fees for conforming goods, items or services specified in the PO (collectively, the “Materials”) shall include any applicable transportation charges, insurance costs, shipping and handling fees and taxes, and duties; provided, however, Vendor shall not include sales tax on the Materials pursuant to the terms set forth in Section 8 herein. Vendor agrees that any price reduction made with respect to Materials covered by the PO subsequent to placement by Research Foundation but prior to delivery shall be applied to the PO.

2. Changes. The Research Foundation shall have the right at any time before completion of the PO to make changes unilaterally, and Vendor shall be deemed to have accepted such changes, except in the following instances: A) Any changes to the Materials shall be negotiated in advance by the Parties and agreed to in writing; B) If a change causes an increase or decrease in time and/or cost required for performance of the services, an equitable adjustment shall be made in the purchase price or delivery schedule, or both, and PO shall be modified accordingly.

If price, terms, shipping date or any other condition of the PO cannot be achieved or met by the Vendor, it must notify the Research Foundation immediately following the event that will prevent it from complying with this PO, and must provide Research Foundation with its requested alterations. Research Foundation must accept in writing any variation prior to shipment and delivery. No modification of or waiver of any of the terms in this PO shall be effective without the Research Foundation’s prior written consent. No course of prior dealings, no usage of the trade and no course of performance shall be used to modify, supplement or explain any item used in this PO.

3. Delivery. Unless an alternate day and time is specified in the PO or agreed to in writing by the Project Director, deliveries shall be made between 9 A.M. and 4 P.M. Monday through Friday, excepting College holidays. If delivery of Materials is not completed by the time required herein, Research Foundation reserves the right, in addition to any other rights and remedies available to it, to cancel this PO, to reject the Materials in whole or in part and/or to purchase substitute Materials elsewhere and charge Vendor with any loss incurred. If the PO does not specify a delivery date for the Materials (the “Delivery Date”) or time, Vendor shall provide the Materials as if time is of the essence in this PO and no later than sixty (60) days from issuance of the PO, and shall notify the Project Director in writing of the expected date and time of the delivery.

4. Shipping. All Material must be packed, marked, labeled and shipped to ensure its safe delivery in accordance with good commercial practice and, where incorporated, Vendor’s packaging and shipping specification. Title and all risk of loss or damage in transit shall remain with the Vendor. Title to the Materials shall pass directly from Vendor to the Research Foundation at the time of acceptance of delivery. The Research Foundation PO number and the Vendor’s name must appear on each package, packing list, invoice and the carrier’s shipping ticket.

Shipments sent cash on delivery (“C.O.D.”) without Research Foundation’s prior written consent will not be accepted and will be sent at Vendor’s risk. If the terms of the PO specify that shipping will be paid by Research Foundation, Vendor shall substantially pack, mark and ship all Materials in a manner to secure the lowest, reasonable transportation cost. Vendor shall be liable for any difference in shipping charges arising from its failure to follow the shipping instructions contained herein or properly describe the shipment. Wherever the Research Foundation is to become responsible for the delivery charge, the charge shall be prepaid by the Vendor and included in the total price on the invoice.

5. Cancellation. Research Foundation reserves the right to terminate this PO for any reason and at any time with respect to undelivered Materials by prior written notice to Vendor. To the extent the PO covers stock goods, Research Foundation’s only obligation is to pay for products accepted prior to such cancellation. To the extent the PO covers goods manufactured or fabricated to Research Foundation’s specifications, Vendor shall immediately cease all performance hereunder upon receipt of notice of cancellation, and, if Vendor is not in default, Research Foundation shall reimburse Vendor for the actual, direct cost to Vendor of such goods which have, at the time of such cancellation, been wholly or partially manufactured. Upon payment, title to all such goods shall pass to Research Foundation.

6. Invoices. Invoices and other related papers must be sent to the individual specified at the delivery point on the date of final delivery and must be rendered in the name of the Research Foundation. Invoices written in pencil will not be acceptable. When billing multiple deliveries, invoices must be segregated by delivery and itemized in the sequence shown in the PO. Bills for services must be submitted with full details regarding materials and labor within five (5) days after completion of work. Total and complete invoice for merchandise must be rendered not later than sixty (60) days after final shipment.

7. Payments. Acceptance of final payment by Vendor constitutes a release of all claims by and all liability to Vendor in connection with this PO. No action may be maintained unless commenced no later than six (6) months after the cause of action accrues.

8. Taxes. The Research Foundation is exempt from the payment of any sales or excise taxes. No taxes are to be included or charged in the purchase price or invoice.

9. Warranty. Vendor warrants that the Materials covered by this PO will conform to the specifications, drawings, samples or other descriptions furnished or specified herein and with all applicable federal, state and local laws and regulations as well as industry standards. It further warrants that Materials will be fit and sufficient for the purpose intended, merchandisable or good material and workmanship free from defect. Unless otherwise specified in the PO, Vendor warrants that all Materials consist of new and unused merchandise. Research Foundation shall have the right of inspection and approval and may reject and return goods or require re-performance of services at Vendor's expense if defective or not in compliance with Research Foundation's specifications. Defects shall not be deemed waived by Research Foundation's failure to notify Vendor upon receipt of goods or completion of services or by payment of invoice.

10. Copyright. All copyrightable works (including but not limited to reports, compilations of data, software or pictorial or graphics) created or prepared by the Vendor in the course of its work shall be "works for hire" (as that term is defined in the copyright laws of the United States) for the Research Foundation and all copyright rights therein are expressly intended to be wholly owned and the copyright to be held by the Research Foundation. To the extent that any such copyrightable works may not, by operation of law, be works for hire, the Vendor hereby assigns to the Research Foundation the ownership of copyright in such items and the Research Foundation shall have the right to obtain and hold in its own name copyrights, registrations and similar protection which may be available in such items. The Vendor agrees to give the Research Foundation or its designees all assistance reasonably required to perfect such rights. The Vendor represents and warrants that it is sole author of any and all such materials, and that they are original works not subject to any prior agreement, lien or other rights.

For avoidance of doubt, the Vendor shall retain ownership rights to all copyrightable works used or provided under this PO that were created prior to and/or outside the scope of this PO ("Vendor Materials"). It is expressly agreed that no ownership of any copyright, intellectual property right or proprietary information existing prior to the commencement of this PO shall be transferred between the parties by virtue of this PO. The Vendor hereby assigns to the Research Foundation an irrevocable, royalty-free, non-transferable, non-exclusive right and license to use, reproduce, make derivative works, display, and perform publicly any Vendor Materials to the extent they are incorporated into any Materials due under this PO. Research Foundation shall not use, copy, distribute, reproduce, transfer, alter, modify or sell Vendor Materials or create derivative works based upon Vendor Materials for any purpose other than expressly provided herein.

11. Indemnification. The Vendor accepts responsibility for damages and injury to persons and property that may result from any act of the Vendor or the Vendor's agent making deliveries. The Vendor agrees to indemnify and hold the Research Foundation, its officers, agents, servants and employees harmless from all claims, losses, liabilities, damages, lawsuits, actions, proceedings, arbitrations, taxes, penalties, interest and other costs arising from the Vendor's performance of its obligations under the PO and any misrepresentation or breach of any representation, warranty, obligation or covenant of the PO. In addition to any other rights or remedies available to it pursuant to this PO or by law, Research Foundation shall have the right, after written notice to the Vendor, to offset the amount of any such cost, loss, damage, expense liability obligation or claim against amounts due from Research Foundation to Vendor under this PO or any other PO.

12. Infringement. The Vendor further warrants that the materials do not contain libelous, plagiarized, injurious or other unlawful matter, and that they do not infringe on the copyright or violate any other right of any person or party whatsoever. The Vendor agrees to indemnify and hold Research Foundation harmless to the extent allowed by law for any damage or loss or expense sustained by Research Foundation, including, but not limited to, attorney's fees arising as a result of any infringement by the Vendor of any copyright, trademark or patent rights or design, systems, drawings, graphs, charts, specifications or printed matter furnished or used by the Vendor in the performance of this PO.

13. Insurance. Vendor shall maintain at its own expense at all times until completion of this PO public liability, personal injury, commercial automobile liability, property damage, employer's liability and compensation, and umbrella/excess liability in each case in an amount determined by Research Foundation to be sufficient to protect Research Foundation from any risks and liabilities arising from Vendor's performance of this PO. Vendor shall provide Research Foundation with evidence of such insurance promptly upon request by Research Foundation.

14. Use of Name. Vendor shall not cause or allow the name, logos or marks of "Research Foundation of The City University of New York" (or any variations thereof) or "The City University of New York" (or any of its schools or departments, or any variations thereof) to be used in any advertising or promotional materials, without prior written consent of Research Foundation in each instance.

15. Audit. Vendor agrees that Research Foundation, its authorized representatives and any applicable sponsors that provided the funding to purchase the Materials can inspect Vendor's books and records concerning this PO during all business hours for six years following completion of the PO.

16. Choice of Law. This PO shall be governed by and construed in accordance with the laws of the State of New York without reference to its conflicts of laws principles. All disputes, including tort claims, arising out of or related to this PO shall be interpreted and decided in accordance with the laws of the State of New York. Vendor agrees to submit to jurisdiction of State Federal or Supreme Court located in New York State, New York County.

17. Debarment. Vendor certifies that neither it nor its principals (officers, directors, owners, partners, key employees, principal investigators, researchers or management or supervisory personnel) are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency. If at any time, Vendor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances, it shall promptly notify Research Foundation. In the event Vendor fails to notify Research Foundation, this PO will terminate as of the date of such debarment, suspension, ineligibility and voluntary exclusions, as such failure to notify is considered a material breach of this PO. In the event the Vendor or its principals become debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency, the PO will terminate immediately, as debarment, suspension, ineligibility and voluntary exclusions are considered a material breach.

18. Conflict of Interest. The Vendor affirms that to the best of its knowledge there exists no actual or potential conflict between the Vendor's family, business, or financial interests and its services under this PO. The Vendor will notify the Research Foundation of all changes in any of the interests listed above during the term of this PO and any amendments thereto. The Research Foundation reserves the right in its sole discretion to determine whether or not any of the interests required to be disclosed by this paragraph will disqualify the Vendor from performing the services called for by this PO.

19. Export Control. This PO shall be subject to, and the Vendor agrees to comply and reasonably assist the Research Foundation, upon request, in complying with, all applicable U.S. Government export and import laws and regulations, including but not limited to U. S. Department of Commerce Export Administration Regulations (EAR), 15 CFR 730-774, as applicable, and the U.S. Department of State International Traffic in Arms Regulations (ITAR), 22 CFR 120-132, as applicable. Vendor may not directly or indirectly export, re-export, distribute or transfer any technology, information or materials of any value to the Research Foundation if the technology, information or materials are subject to any Export Administration Regulations or International Traffic in Arms Regulations licensing requirements.

The Vendor confirms that any confidential information disclosed during the course of the work herein does not contain export controlled technology or technical data identified on any U.S. export control list, including but not limited to the Commerce Control List (CCL), 15 CFR 774 and the U.S. Munitions List (USML), 22 CFR 121. In the event the Vendor intends to provide export controlled information, the Vendor will inform Research Foundation that the information or technology is subject to export controls within thirty (30) days prior to the release of such export controlled technology or technical data. Export controlled information or technology will not be released to Research Foundation or CUNY personnel without prior written consent of Research Foundation. If the U.S. government imposes a fine or penalty upon the Research Foundation because of the Vendor's failure to notify the Research Foundation as described herein, Vendor agrees to indemnify and hold the Research Foundation harmless from any and all resulting fines and penalties from such omission.

20. Force Majeure. Research Foundation may delay delivery, performance, or acceptance of the Materials ordered hereunder in the event of causes beyond its reasonable control. Vendor shall hold such Materials at the direction of Research Foundation, and Vendor shall deliver the goods when the cause effecting the delay is eliminated. Research Foundation shall be responsible only for Vendor's direct additional costs incurred by holding or delaying delivery of the Materials at Research Foundation's request. Causes beyond Research Foundation's reasonable control shall include, without limitation, government action or failure to act where required, strike or other labor trouble, war, terrorism, civil commotion, failure of communications systems, fire or similar catastrophe, and severe weather or other acts of God.

21. Non-discrimination. The Vendor will comply with all applicable local, state and federal laws governing equal employment opportunity and non-discrimination.

A. The Vendor represents and agrees to comply with the requirements of the Civil Rights Law of 1964, as amended, the Age Discrimination Employment Act of 1967, as amended, the Federal Rehabilitation Act of 1973, as amended and Executive Order No. 11246 as amended and as supplemented in Department of Labor Regulations, 41 CFR. Part 60. The Vendor also agrees to observe all applicable regulations contained in 45 CFR. Part 84 and 28 CFR Part 41.

B. (1) The Vendor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status.

B. (2) If directed to do so by the Commissioner of Human Rights, the Vendor will send to each labor union or representative of workers with which the vendor has or is bound by a collective bargaining or other agreement or understanding, a notice, to be provided by the State Commissioner of Human Rights, advising such labor union representative of the Vendor's agreement under clauses (1) through (6) (hereinafter called "non-discrimination clauses"). If the contractor was directed to do so by the contracting agency as part of the bid or negotiation of this contract, the Vendor shall request such labor union or representative to furnish a written statement that such labor union or representative will not discriminate because of race, creed, color, sex national origin, age, disability or marital status, and that such labor union or representative will cooperate within the limits legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses and the that it consents and agrees that the recruitment, employment and the

terms and conditions of employment under this contract shall be in accordance with the purpose and provisions of these non-discrimination clauses. If such labor or representative fails or refused to comply with such a request that it furnish such a statement, the Vendor shall promptly notify the State Commissioner of Human Rights of such failure or refusal.

B. (3) If directed to do so by the Commissioner of Human Rights, the Vendor will post and keep posted in conspicuous places, available to employees and applicants for employment notices to be provided by the State Commissioner of Human Rights setting forth the substance of the provisions of clauses (1) and (2) and such I) provision of the State's law against discrimination as the State Commissioner of Human Rights shall determine.

B. (4) The Vendor will state, in all solicitations or advertisement for employees placed by or on behalf of the Vendor, that all qualified applicants will be afforded equal opportunities without discrimination because of race, creed, color, sex, national origin, age, disability or marital status.

B. (5) The Vendor will comply with the provisions of sections 290-299 of the Executive Law and with the Civil Rights Law, will furnish all information and reports deemed necessary by the State Commissioner of Human Rights under these non-discriminatory clauses and such sections of the Executive Law and will permit access to the Vendor's books, records and accounts by the State Commissioner for the purposes of investigation to ascertain compliance with these non-discrimination clauses and such sections of Executive Law and with the Civil Rights Law.

B. (6) This PO maybe forthwith canceled terminated or suspended, in whole or in part by the Research Foundation upon the basis of a finding made by State Commissioner of Human Rights that the Vendor has not complied with these non-discrimination clauses, and the Vendor may be declared ineligible for future contracts made by our on behalf of the State or a public authority or agency of the State Commissioner of Human Rights that the Vendor has established and is carrying out a program in conformity with the provisions of these non- discrimination clauses. Such findings shall be made by the State Commissioner of Human Rights after conciliation efforts by the Commissioner, notice thereof has been afforded the Vendor to be heard publicly in accordance with the Executive Law. Such sanctions may be imposed and remedies involved independently of or in addition to sanctions and remedies otherwise provided by law.

22. Assignment. Assignment of this PO or of any interest herein or of any money to become due hereunder shall be void, unless Vendor receives the Research Foundation's prior written consent.

23. Notices. The mailing of all notices, by certified mail, return receipt requested, addressed to the other Party shall be deemed sufficient notice to that Party.

24. Survival. The rights and obligations of the parties set forth in this Section and Sections **7, 9, 10, 11, 12, 14, 15, 16** and any right or obligation of the Parties in this PO which, by its express terms or nature and context is intended to survive termination or expiration of this PO, will survive any such termination or expiration. If any provision of this PO is declared invalid under any applicable law, such provision shall be inapplicable and deemed omitted, but the remaining provisions of this PO shall be given effect in accordance with the intent of the parties hereto.

25. Headings. The headings used in this PO and its division into sections, exhibits, appendices, and other subdivisions do not affect its interpretation.

26. Additional Terms for Federally Funded Purchase. If this Purchase Order placed under United States government grant, cooperative agreement, or contract obtained by Research Foundation of CUNY directly or indirectly, Vendor must comply with the applicable provisions of [Attachment A](#).