

HARVARD UNIVERSITY
PURCHASE ORDER TERMS & CONDITIONS
(REV 01/03/2022)

The purchase order to which these Purchase Order Terms and Conditions (“Terms and Conditions”) are affixed or are incorporated by reference (together with the Terms and Conditions and any and all appendices, statements of work, and/or exhibits attached hereto or otherwise issued by President and Fellows of Harvard College (“Harvard”) in connection herewith, the “Purchase Order”) is by and between Harvard and Seller (as defined in the Purchase Order) (Harvard and Seller, collectively, the “Parties,” each a “Party”). The Purchase Order constitutes the entire agreement between Harvard and Seller relating to the Goods and/or Services (each as defined in the Prices Section below) and supersedes and replaces any and all prior discussions and agreements between the Parties relating to such Goods and/or Services. Harvard expressly objects to any additions, deletions or differences in the terms or conditions contained in Seller’s quotation, proposal, acknowledgment or other document, whether or not such additions, deletions or differences materially alter this Purchase Order unless such alterations are made in a writing executed by both Parties, which writing explicitly refers to and supersedes or supplements this Purchase Order. Any inconsistencies or conflicts within this Purchase Order will be resolved by giving precedence in the following order: (a) the Terms and Conditions contained herein, (b) any plans, specifications or other documents attached to this Purchase Order or explicitly referenced in these Terms and Conditions; and (c) any other documents incorporated by reference into this Purchase Order and signed by Harvard. Capitalized terms used but not defined herein shall have the meanings ascribed in the Purchase Order. Seller agrees to furnish the goods and services described in the Purchase Order, subject to the Terms and Conditions.

1. Changes. Any changes to the Purchase Order, additional charges or price increases shall be negotiated in advance by the Parties and agreed to in a writing signed by both Parties. If a change causes an increase or decrease in cost and/or time required for performance of the Services and/or delivery of the Goods, an equitable adjustment shall be made and the Purchase Order shall be modified accordingly. If price, terms, shipping date or any other expressed condition of the Purchase Order cannot be achieved or met by Seller, Seller must notify Harvard as soon as practicable and must seek Harvard’s acceptance of any variation in writing prior to shipment or delivery.

2. Prices. Prices or fees for conforming goods specified in the Purchase Order (collectively, the “Goods”) or services described in the Purchase Order (the “Services”) shall include any applicable transportation charges, insurance costs, shipping and handling fees and taxes; provided,

however, Seller shall not include sales tax on the Goods or Services pursuant to the terms set forth in the Taxes Section herein.

3. Terms of Payment and Title.

Unless otherwise agreed in the Purchase Order, Seller will issue an invoice to Harvard upon Acceptance (as defined hereafter) of the Goods or Services. Harvard agrees to pay all amounts due within thirty (30) days of receipt of Seller’s properly issued invoice (less any deposits paid to Seller (if any)) unless otherwise agreed to by the Parties in the Purchase Order; provided, however, Seller shall invoice Harvard and Harvard shall only be obligated to pay such invoice if issued to Harvard subsequent to delivery, receipt and Acceptance of all Goods ordered under the Purchase Order.

Harvard shall have the right to withhold payment if Seller fails to perform any of its contractual commitments. No interest shall be due on any amount unless agreed in writing by Harvard.

4. Delivery of Goods and Services. Seller hereby agrees to on- time delivery of the Goods and/or the Services based upon the timeline set forth in the Purchase Order. If the Purchase Order does not specify a delivery date (the “Delivery Date”) or timeline, Seller shall provide the Goods and/or Services as if time is of the essence. Changes, modifications or any delay resulting from Harvard that prevents Seller from achieving the Delivery Date shall not constitute a breach of this Purchase Order by Seller. If Seller anticipates a delay in the delivery of the Goods and/or Services, Seller shall, as soon as practicable, notify Harvard. Such notification shall not, however, constitute a change to the delivery terms of this Purchase Order. In the event that Seller fails to deliver the Goods and/or Services by the Delivery Date, or Seller fails to deliver conforming Goods and/or Services, Harvard may purchase substitute Goods and/or Services elsewhere and charge Seller for any additional expense incurred relating to the purchase of such substitute Goods and/or Services.

Seller shall deliver all Goods and/or Services in accordance with the terms of the Purchase Order. If delivery of the Goods and/or Services is not complete by the Delivery Date, Harvard may, without liability, and in addition to its other rights and remedies, terminate the Purchase Order, by notice effective when received by Seller, as to Goods and/or Services not yet delivered or rendered. Acceptance of any part of the Purchase Order shall not bind Harvard to Accept (as defined hereafter) any future shipments nor deprive it of the right to return Goods and/or Services already Accepted (as defined hereafter).

HARVARD UNIVERSITY
PURCHASE ORDER TERMS & CONDITIONS
(REV 01/03/2022)

Seller shall not perform any services that are not described in a duly executed Purchase Order without Harvard's prior written authorization, and Harvard shall not be required to pay for such work that has not been so authorized. Seller shall furnish Harvard with written reports and documentation as described in the Purchase Order, herein or upon request. Seller agrees to furnish all labor, equipment, parts, materials, tools and services as are necessary and/or appropriate to provide the Services. Time is of the essence. Seller shall maintain a sufficient quantity of the necessary equipment, parts, materials, and tools to avoid delays in the completion of its work.

5. Shipping. Seller shall substantially pack, mark and ship all Goods in a manner to secure the lowest, reasonable transportation cost and in accordance with the shipping instructions contained in the Purchase Order and the requirements of common carriers. Seller 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. The Parties agree to assist each other in the prosecution of claims against carriers.

6. Acceptance. Harvard's Acceptance of Goods and Services (in whole or in part) from Seller is a condition precedent to Harvard's payment for the Goods and Services. For purposes of these Terms and Conditions, "Acceptance" means the point at which Harvard accepts or is deemed to accept the Goods or Services in accordance with the terms set forth in the Purchase Order. Goods and Services shall be deemed to have been Accepted (i) in the absence of written notification of non-Acceptance by Harvard to Seller within a reasonable period of time, or (ii) upon timely delivery of the Goods and Services to the shipping address specified on the face of the Purchase Order and the examination and confirmation that the Goods and Services conform to their applicable specifications. Prior to Acceptance, title to the Goods remains with Seller; all risks of damage, injury, or loss thereto, or partial or complete destruction thereof, will be borne and assumed by Seller. By way of clarification, Harvard hereby retains the right to reject any non-conforming Goods and Services and shall not be obligated to Accept any non-conforming Goods or Services.

7. Inspection. Payment for the Goods and/or Services provided under the Purchase Order shall not constitute Acceptance thereof. Harvard may inspect and test such Goods and/or Services and reject any or all items that are, in Harvard's sole judgment, non-conforming. Goods or Services rejected or supplies in excess of quantities ordered may be returned to Seller at its expense. Failure by Harvard to inspect and/or test the Goods or Services shall not be deemed Acceptance by

Harvard.

8. Warranties.

a. In addition to Seller's standard warranty relating to the Goods, Seller warrants that the Goods to be delivered pursuant to the Purchase Order (i) are of merchantable quality and free from defects in material or workmanship, (ii) shall conform to all specifications or other descriptions furnished to and approved by the Parties, (iii) comply with all applicable international, federal, state and local laws, rules and regulations (including, without limitation, those concerning health, safety, and environmental standards), and (iv) shall be new and not refurbished or reconditioned, unless expressly agreed in writing by Harvard. In addition, Seller warrants that Harvard shall have good and marketable title to all Goods (including components thereof) purchased pursuant to transactions contemplated under the Purchase Order, free of all liens and encumbrances and other restrictions, and that no licenses are required for Harvard to use such Goods. Seller warrants that the sale, use or incorporation into manufactured products of all Goods furnished hereunder which are not of Harvard's design, composition or manufacture shall be free and clear of infringement of any patent, copyright, trademark or trade secret, or other proprietary right.

b. Seller shall perform the Services in a professional manner, conforming to the highest standards of the industry and the performance criteria provided under the Purchase Order, shall conform to all specifications or other descriptions furnished to and approved by the Parties, in compliance with all requirements of applicable federal, state and/or local laws, regulations, rules, and ordinances (collectively, "Laws"). The Services shall be performed by licensed, fully qualified, well trained, and properly equipped personnel.

c. In addition, Seller represents and expressly warrants as follows:

i. The Purchase Order has been duly authorized, executed, and delivered; the Purchase Order constitutes a valid and binding obligation of the Seller and is fully enforceable against Seller in accordance with these Terms and Conditions; and the Purchase Order is not in conflict with any other agreement by which Seller may be bound.

ii. Seller has inspected or has had the opportunity to inspect the relevant portions of Harvard's premises to the extent that Seller deems necessary, and accordingly, Seller accepts its responsibilities under the Purchase Order with no representations or warranties whatsoever by Harvard relating to the

HARVARD UNIVERSITY
PURCHASE ORDER TERMS & CONDITIONS
(REV 01/03/2022)

premises.

iii. No part, equipment, goods, or material shall in any way degrade or compromise the operation or performance of Harvard's premises.

d. Seller shall obtain and hereby assigns to Harvard any and all standard warranties and indemnities available from any manufacturer, Seller, or subcontractor of services or goods and materials provided in connection with the Purchase Order.

e. In addition to all other remedies available to Harvard at law, at Harvard's option and promptly upon receipt of notice from Harvard, Seller shall at its own expense (i) replace any Goods which are defective, (ii) correct any Goods which are defective, or (iii) refund any payments Harvard has made for, and arrange pick-up or return of, any Goods which are defective. Seller agrees to proceed with the correction of any defects in a manner satisfactory to Harvard. Seller shall assume all risk of loss or damage to Goods which are to be replaced or corrected pursuant to this warranty from the date on which Seller is notified of the defect or non-conformity until the replaced or corrected Goods are received at the destination designated by Harvard. Alternatively, Harvard may at its option repair such defective Goods at Seller's expense. The terms of this paragraph shall not be waived by reason of Acceptance of the Goods or payment therefore by Harvard.

9. Cancellation. Harvard may for any reason and at any time, at its option cancel any unshipped Goods and unperformed Services. To the extent the Purchase Order covers stock Goods, Harvard's only obligation is to pay for Accepted Goods prior to such cancellation. To the extent the Purchase Order covers Goods manufactured or fabricated to Harvard's specifications, Seller shall immediately cease all performance hereunder upon receipt of notice of cancellation, and, if Seller is not in default, Harvard shall reimburse Seller for the actual, direct cost to Seller 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 Harvard. Unless Harvard shall have otherwise instructed Seller, Seller agrees that it will not manufacture Goods in reserve in an amount greater than the number of manufactured Goods that it has shipped to Harvard at any one time.

10. Risk of Loss. Seller assumes all risk of loss of or damage to all Goods ordered and all work in progress, materials, and other items related to the Purchase Order until the same are finally Accepted by Harvard. Seller assumes all risk of loss of or damage relating to any Goods, work in progress, materials, and other items rejected by Harvard until the same are received by

Seller or Accepted by Harvard.

11. Indemnification. To the fullest extent permitted by law, Seller shall indemnify, defend, protect, and hold harmless Harvard and its affiliates, employees, faculty members, students, members of its governing boards and agents (each an "Indemnitee", and collectively, the "Indemnitees") from and against all claims, losses, liabilities, damages, lawsuits, actions, proceedings, arbitrations, taxes, penalties, or interest, associated auditing and legal expenses, and other costs incurred by Indemnitee(s) (including reasonable attorneys' fees and costs of suit) ("Indemnified Claims") arising from : (a) Seller's performance of its obligations under the Purchase Order, (b) Seller's misrepresentation or breach of any representation, warranty, obligation, or covenant of the Purchase Order, (c) any claim, suit or action alleging or arising out of Infringement, which claim, suit, or action Seller agrees to compromise or defend at Harvard's written request, or (d) any other negligent or wrongful act or omission of Seller. Such Indemnified Claims shall include, without limitation, all direct, actual, general, special, and consequential damages.

12. Insurance.

a. Seller shall maintain at all times while carrying out its obligations under this Purchase Order, at its own expense, insurance of the types and in the limits set forth below in this Section. All policies of insurance required pursuant to this Section shall be issued by insurance companies authorized to provide that class of insurance where the Services are to be performed and with a minimum rating of A-: VII by A.M. Best & Company:

1. A fully-paid Commercial General Liability insurance policy in form and amount and with deductibles acceptable to Harvard, but with limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate annual liability with respect to bodily injury, personal injury, property damage and products/operations liability; and

2. Professional liability or errors and omissions insurance in form and amount and with deductibles satisfactory to Harvard, but with limits of not less than \$1,000,000 per claim and \$2,000,000 annual aggregate.

b. If the liability or errors and omissions policies described above are claims-made policies, Seller shall maintain such insurance (directly or through tail coverage) for a period of not less than three years after the termination or expiration of this Purchase Order. The retroactive date applicable to such claims-made

HARVARD UNIVERSITY
PURCHASE ORDER TERMS & CONDITIONS
(REV 01/03/2022)

insurance, if any, must precede the first date on which Services was performed.

c. Upon request, Seller shall promptly submit certificates of said policies to Harvard evidencing that the required coverages are in effect. Each certificate shall name "President and Fellows of Harvard College, its subsidiary and affiliated companies, and officers, directors, members of governing boards, employees and agents of any of them" as additional insureds and shall waive the insurer's rights to recover any insurance payments from Harvard.

d. Seller shall provide at least 30 days' written notice to Harvard prior to any cancellation or non-renewal of coverage, or modification of coverage that would cause it not to comply with the first paragraph of this Section. In the event of cancellation because of non-payment of premium, Seller shall provide Harvard with written notice of the insurer's intent to cancel within 3 business days of Seller's receipt of such notice from the insurer.

e. Coverage afforded Additional Insureds under the Seller's policies shall be primary insurance. Any other insurance or self-insurance available to the Additional Insureds shall be in excess of this insurance and shall not contribute to it.

f. Service Provider shall in addition maintain:

1. Workers' compensation insurance and other legally required insurance in accordance with applicable laws;
2. Employers liability insurance with limits of not less than \$500,000 per accident/injury;
3. Umbrella/excess liability insurance over the insurance described in clauses 12(a)(1), 12(a)(2) and 12(f)(1), with limits of not less than \$1,000,000; and
4. If Seller will be bringing property of material value onto Harvard premises, insurance for such property in an amount no less than the replacement cost.

g. If Seller will collect, host, store, process or transmit Harvard Confidential Information (as defined below), Seller shall maintain adequate cyber security/data breach liability insurance against claims for loss caused by or resulting from unauthorized access to or use of Seller's systems or networks containing such Confidential Information and the remediation thereof. The provisions of Section 12(b), (c), (d) and (e) shall apply to such insurance. Although evidence of certain minimum coverage may be required, nothing contained

herein shall abridge, diminish or affect Seller's responsibility for the consequences of any accidents, occurrences, damages, losses, and associated costs arising out of or resulting from performance or provisions of the Purchase Order.

13. Use of Harvard Names; Advertising or Publication. Neither Seller nor any of its subcontractors or affiliates shall use, or cause or allow to be used, the name "Harvard" (alone or as part of another name, and in any language) or any logos, seals, insignia or other words, names, symbols, images or devices that identify Harvard or any Harvard school, unit, division or affiliate ("Harvard Names") in any advertising or promotional literature, electronic or otherwise, or in any publication whatsoever in connection with the Goods, the Services or the Purchase Order, without prior written approval of, and in accordance with restrictions required by, Harvard. Seller shall not register any Harvard Name in any jurisdiction as a trademark, service mark, domain name, trade name, business or company name or otherwise.

14. Taxes. Harvard is a Massachusetts nonprofit, tax-exempt corporation and is specifically exempt from paying Massachusetts sales taxes (MA Taxpayer ID# 10798176) and federal excise taxes (# 04-73-0256F). Seller shall not charge Harvard for such taxes. Proof of Harvard's exemption from Massachusetts sales taxes and federal excise taxes is available upon request. Seller shall not charge Harvard for any other taxes unless such taxes are specifically identified and itemized in the Purchase Order and any invoice(s).

15. Independent Contractor. Seller, in the performance of its duties hereunder, shall be an independent contractor only, and not an agent, employee, partner, or joint venture of, or with Harvard, and nothing herein shall be deemed to create or imply any relationship other than that of independent contractor. Seller shall have no authority to incur any obligations or expenses on behalf of Harvard or to act in any other manner on behalf of Harvard or in its name. Seller's employees and contractors shall not be entitled to receive any compensation or employee benefits from Harvard.

16. Non-Waiver. Except as otherwise provided in the Purchase Order, any waiver by Harvard of a breach of any provision of the Purchase Order must be in writing and shall not be deemed a waiver of any other or subsequent breach. No delay or omission by Harvard in the exercise or enforcement of any right or remedy provided in the Purchase Order or by law shall be construed as a waiver of such right or remedy. Failure of Harvard to enforce any of its rights hereunder shall not

HARVARD UNIVERSITY
PURCHASE ORDER TERMS & CONDITIONS
(REV 01/03/2022)

constitute a waiver of such rights or of any rights it may have.

17. Severability. In the event that any provision of the Purchase Order shall be held invalid by any court, the remainder of the Purchase Order shall remain in force unless the invalid provision materially affects the rights of the Parties.

18. Successors and Assigns. The Purchase Order is binding on Harvard and Seller and their respective successors, assigns, and legal representatives.

19. Governing Law. The Purchase Order shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to its rules of conflict of laws. Seller submits to the exclusive jurisdiction of the courts of the Commonwealth of Massachusetts and of the United States of America located in the Commonwealth of Massachusetts (the "Massachusetts Courts") for any litigation arising out of or relating to the Purchase Order and the transactions contemplated hereby (and agrees not to commence any litigation relating thereto except in such courts), waives any objection to the laying of venue of any such litigation in the Massachusetts Courts and agrees not to plead or claim in any Massachusetts Court that such litigation brought therein has been brought in an inconvenient forum. Notwithstanding the foregoing, Harvard may seek and obtain injunctive relief against a breach or threatened breach of Seller's obligations in any court having jurisdiction.

20. Force Majeure. Harvard may delay delivery, performance, or Acceptance of the Goods or Services ordered hereunder in the event of causes beyond its reasonable control. Seller shall hold such Goods or refrain from furnishing such Services at the direction of Harvard, and Seller shall deliver the Goods and Services when the cause effecting the delay is eliminated. Harvard shall be responsible only for Seller's direct additional costs incurred by holding the Goods or delaying performance of the Services at Harvard's request. Causes beyond Harvard's reasonable control shall include, without limitation, government action or failure to act where required; strike or other labor trouble; war; terrorism; pandemic, epidemic, endemic, or outbreak; civil commotion; failure of communications systems; fire or similar catastrophe; and severe weather or other acts of God.

21. Survival of Terms. The provisions of the Purchase Order which by their explicit terms or their manifest intent are to survive, including without limitation those which relate to indemnification and use of Harvard Names, shall survive termination,

cancellation or expiration of the Purchase Order.

22. Termination for Cause – Cancellation. Harvard may, by written notice of default to Seller, terminate this order in whole or in part, should the Seller fail to make satisfactory progress, fail to deliver within the time specified or fail to deliver in strict conformance to specifications or requirements set forth herein. In the event of such termination, Harvard reserves the right to purchase or obtain the supplies or services elsewhere and the defaulting Seller shall be liable for the difference between the prices set forth in this Purchase Order and the actual cost thereof to Harvard. In such case, the prevailing market price shall be considered to be the fair repurchase price. The rights and remedies of Harvard provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Purchase Order.

If, after notice of termination of this Purchase Order under the provisions of this clause, it is determined for any reason that the Seller was not in default under the provisions of this clause, the rights and obligations of the parties shall be the same as if notice of termination had been issued pursuant to the Termination for Convenience Section.

23. Termination for Convenience. Harvard may, by written notice stating the extent and effective date, terminate this Purchase Order for convenience in whole or in part, at any time. Harvard shall pay the Seller, as full compensation for performance until such termination, the unit or pro-rata Purchase Order price for any delivered and accepted portion of the Purchase Order. In no event shall Harvard be liable for any loss of profits on the order or portion thereof so terminated.

24. Remedies. Seller acknowledges that (i) any remedy at law for any violation of the provisions of this Purchase Order including, but not limited to performance or the use of Harvard Names may be inadequate; and (ii) that Harvard may suffer irreparable damage through any such violation. Therefore, in addition to any other remedies it may have, Seller agrees that Harvard may seek to obtain injunctive relief against a breach or threatened breach of such obligations of Seller.

25. Confidentiality and Security. Harvard may disclose to Seller, or Seller may obtain access to, develop or create non-public documents or information about Harvard, its students, employees, agents, partners or representatives, or third parties, including without limitation, personal information, charge card and/or credit data, work product resulting from the services provided, proprietary and confidential information or material concerning or related to Harvard's general

HARVARD UNIVERSITY
PURCHASE ORDER TERMS & CONDITIONS
(REV 01/03/2022)

academic, institutional affairs or other proprietary operations (“Confidential Information”). Seller acknowledges the confidential character of the Confidential Information and agrees and acknowledges that the Confidential Information is the sole, exclusive, and valuable property of Harvard. Accordingly, Seller shall maintain such Confidential Information as strictly confidential and agrees not to reproduce or divulge any of the Confidential Information without Harvard’s prior written consent and not to use the Confidential Information except in the performance of this Purchase Order, whether during or after the term of the Purchase Order. All Confidential Information shall remain the property of Harvard. Upon the expiration of the Purchase Order or, if earlier, upon Harvard’s request, Seller will return or destroy copies of Confidential Information in Seller’s possession, except as is needed to comply with applicable Laws; Seller will continue to be bound by this paragraph with respect to any retained Confidential Information. Seller must adhere to the Rider: Requirements For The Protection of Harvard Personally Identifiable Information (“Personal Data Rider”), if delivering the Goods or Services will require the Seller to maintain or process, host, or otherwise manage, or take custody of or store, or regularly have access to and use, Personal Data (as that term is defined in the Personal Data Rider). In such case, the Personal Data Rider is incorporated herein by reference and may be found located at: <https://procurement.harvard.edu/terms-and-conditions>. If the Seller will directly plug a computer or other device into a network jack at or belonging to Harvard, get credentials (e.g., for HarvardKey or VPN) to access Harvard’s non-guest network, wired or wirelessly, or otherwise access Harvard’s non-guest network, or provide, install, or support any computer or device on a Harvard network, Seller must adhere to the Rider: Requirements for Access to and Protection of the Harvard Network (“Network Rider”). In such case, the Network Rider is incorporated herein by reference and may be found located at <https://procurement.harvard.edu/terms-and-conditions>.

26. Intellectual Property. All inventions, discoveries, developments, and improvements made or conceived by the Seller in the course of performing the Services (“Inventions”), whether such Inventions are patentable or not, shall become and remain the sole exclusive property of Harvard. All right, title, and interest in and to all data and all copyrights in all deliverables, writings, documents, reports, papers, tabulations, and other works written or made by Seller in the course of performing the Services shall become and remain the sole exclusive property of Harvard. The Seller hereby transfers and assigns all of its right, title and interest in and to all such data and intellectual property to Harvard.

27. Subletting or Assignment. Seller shall not use subcontractors to perform any Services under this Purchase Order without the prior written consent of Harvard. Any reference to subcontractors herein shall not be deemed to authorize the use of subcontractors, unless expressly so stated. Seller shall not assign any of its rights (including without limitation the right to any moneys due or to become due) or delegate any of its obligations under this Purchase Order without the prior written consent of Harvard. Any permitted assignment by Seller of any moneys due or to become due shall be subject to set-off, recoupment or other claim of Harvard against Seller. Seller shall retain full responsibility for the performance of this Purchase Order notwithstanding any permitted use of subcontractors, assignment of rights or delegation of duties. Seller shall be liable to Harvard for the acts and omissions of its subcontractors and assignees.

28. Non-exclusivity. Nothing in this Purchase Order shall be construed as limiting either Party from contracting with another person or entity for the same or similar services covered by this Purchase Order.

29. Audit. (applicable to Purchase Orders greater than \$100k awarded with federal government funds) The federal awarding agency, the Controller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Seller which are directly pertinent to this specific program for the purpose of making audits, examinations, excerpts, and transcriptions.

30. Compliance with Terms of Federal Grant. If the Purchase Order is made with funds obtained by Harvard directly or indirectly from a Federal grant, Seller shall comply with all applicable provisions of Attachment A located at: <https://procurement.harvard.edu/terms-and-conditions>.

31. Compliance with Terms of Federally Awarded Contracts. If the Purchase Order is made with funds obtained by Harvard directly or indirectly from a Federal contract, Seller shall comply with all applicable provisions of Attachment A located at: <https://procurement.harvard.edu/terms-and-conditions>.

32. Harvard Digital Accessibility Requirements. If the Purchase Order requires the Seller to create, produce, or supply a web site or software application to Harvard, the Seller must adhere to the Contract Rider: Harvard Digital Accessibility Requirements, which is

HARVARD UNIVERSITY
PURCHASE ORDER TERMS & CONDITIONS
(REV 01/03/2022)

incorporated herein by reference and is located at:
<https://procurement.harvard.edu/terms-and-conditions>,

33. Compliance with Laws.

a. Debarment, export control, and security-related laws. In accordance with Executive Order 12549 (Debarment and Suspension), by entering into this transaction, Seller certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Where Seller is unable to certify to any of the statements in this certification, it shall provide a written explanation to Harvard. If Seller provides export-controlled products, technology and/or software ("Products") to Harvard, Seller will provide Harvard with a list of ECCNs (Export Control Classification Numbers) for such Products, as well as updates to such list when new Products are added. Seller certifies (and will certify with respect to any updates) that it has (i) conducted proper classification analysis under the EAR or (ii) obtained Official Commodity Classifications (CCATS) from BIS. Additionally, if any Product is on the U.S.M.L., Seller will provide Harvard with the classification and will certify that it conducted proper ITAR analysis or obtained Jurisdiction Classifications Rulings from DDTC. Seller agrees not to provide "covered telecommunications equipment or services", as those terms are defined in FAR 52.204-25, to Harvard in the performance of this contract. Seller represents that it does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services.

b. Equal Employment Opportunity.

i. The nondiscrimination clause contained in Section 202 of Executive Order 11246 as amended by Executive Order 11375, 41 C.F.R. part 60-1, relative to equal employment opportunity for all people without regard to equal employment opportunity for all people without regard to race, color, religion, sex or national origin; Section 503 of the Rehabilitation Act of 1973, 20 C.F.R. §§ 741.3, 741.4 relative to nondiscrimination on the basis of physical or mental handicap; and the Vietnam Era Veterans and the implementing rules and regulations prescribed by the Secretary of Labor are hereby made part of this Purchase Order and the Seller will honor such statutes, clauses, Executive Orders, and implementing rules. The Seller will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their

race, sex, creed, color, national origin, handicap, or veteran status. Such action shall include, but not limited to, the following: employment, promotion, demotion or transfer, recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship.

ii. Seller warrants that in performance of this PO it has complied or will comply with all applicable federal, state, and local laws, rules, and regulations, including without limitation the Walsh-Healy Public Contracts Act (41 U.S. Code §§35-45) (if this order is for an amount exceeding \$15,000 and is otherwise subject to the Walsh-Healy Public Contracts Act.

iii. Where applicable, the Equal Employment Opportunity Clauses at 41 CFR 60-1.4(a), 41 CFR 60-300.5(a), and 41 CFR 60-741.5(a) relative to equal employment opportunity and the implementing rules and regulations of the Office of Federal Contract Compliance Programs are incorporated herein by specific reference, as are the "Employee Notice" provisions of 29 CFR Part 471, Appendix A to Subpart A. **This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified protected veterans and 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.**

c. Permits. Seller obtain at its expense and shall give all notices required by, and comply with, all governmental licenses, permits, inspections, and approvals required for its work, including but not limited to those required by the Cambridge Fire Department, Cambridge Inspectional Services Department, Boston Fire Department, and Boston Inspectional Services Department, as applicable. All work, including but not limited to electrical and mechanical work, must abide by all applicable codes and industry standards, as well as by Harvard's then current Construction Guidelines.

d. Fines. Seller shall pay any fines or penalties assessed against Harvard to the extent the assessment of such fines or penalties results from Seller's delay or failure in performing its obligations under this Contract.

e. Release of Liens. All goods supplied and all services performed by Seller pursuant to this Purchase Order shall be free from all liens. Upon Harvard's request,

HARVARD UNIVERSITY
PURCHASE ORDER TERMS & CONDITIONS
(REV 01/03/2022)

Seller shall provide a proper release of liens or other satisfactory evidence of freedom from liens.

34. Compliance with Safety Standards and Premises Regulations. This Section shall only apply if Seller will provide some or all of the Services on property owned or leased by Harvard.

a. OSHA State and Local Regulation. Seller shall ensure that all of its personnel, subcontractors, members of the Harvard community, and the general public are properly protected from potential injury due to any act or omission, or any machinery, equipment or other property owned or operated, by Seller or any of its employees, agents, representatives, suppliers, subcontractors or others for whose conduct Seller may be responsible, as required by the Occupational Safety and Health Act of 1970, and all applicable regulations thereunder, and by all other Laws. Seller shall ensure that all machinery and equipment used in the performance of the work comply with applicable law. If Harvard, in its reasonable judgment, determines that any additional protection is necessary to comply with good management practices or applicable law, Seller shall provide the same at no additional charge. Seller shall be considered to have materially breached this Purchase Order if any safety and health standards or regulations have been breached by the Seller.

b. Lockout/Tagout. In accordance with the Occupational Safety and Health Administration's Lockout/Tagout standard (29 CFR 1910.147), Seller(s) involved in operations related to equipment or machinery lockout that affect Harvard's employees must submit their Energy Control Procedures to Harvard and train affected employees of Harvard prior to the time Seller agrees to the Purchase Order. The cost of training will be the responsibility of Seller. Seller shall also comply with Harvard's Lockout/Tagout policy and procedures.

c. Maintenance of Work Areas. Seller shall keep all work areas clean and neat. All tools, equipment, machinery, and the like shall be removed upon completion of the work or work shift. Subject to the provisions above, Seller shall keep all premises free from the accumulation or discharge of waste materials, whether hazardous or non-hazardous. Seller shall routinely survey its work areas and adjacent space to identify and correct potentially hazardous situations relating to the work. Seller shall provide sufficient barricades, ropes, signs, guards, and other things to warn and secure persons against danger in its work areas.

d. Access to Premises. Harvard shall provide the Seller reasonable access to the premises, which may be

limited to times specified by Harvard in advance. Seller shall not unnecessarily interfere with the normal operations of Harvard or others and shall not unnecessarily obstruct or encumber any Harvard or non-Harvard premises. Harvard shall at all times have access to the work site to inspect and approve of the work conducted on the premises.

e. Personnel Identification. All Seller personnel shall carry identification provided by Seller that contains a photograph of such personnel and states the personnel's full name, company name, address, telephone number, name of immediate supervisor, and, if required, the identification number assigned to Seller by Harvard. Seller personnel shall wear appropriate uniforms as provided by Seller.

f. Miscellaneous Safety Policies. Seller's personnel shall comply at all times with the applicable sign in/sign out procedures of Harvard. Seller shall not de-energize or energize any energy source (electrical or mechanical), interfere with any utility service (electricity, water, gas, steam etc.), or interfere with any fire protection system, without the prior consent of Harvard. Seller shall not cause or produce any unusual, noxious or objectionable smokes, gasses, vapors or odors; overload any floor, ceiling, wall or fixture; remove, replace or install any locks; perform any act on Harvard premises which might invalidate any insurance policies carried by either Party; commit any nuisance or trespass; interfere with the effectiveness or accessibility of building mechanical or electrical systems other than such as is known to Harvard Project Manager and is unavoidable in the performance of Seller's duties hereunder; or mar, deface or damage any Harvard property. Seller shall comply with Harvard's smoking policy.

g. Hazardous Materials Precautions.

i. *Environmental laws.* The Seller shall comply with and conform to all requirements of applicable environmental Laws, including but not limited to the Clean Water Act and the Spill Prevention Control and Countermeasure ("SPCC") regulations (40 CFR 112.1-112.7). Prior to agreeing to this Purchase Order, Seller must submit to Harvard and obtain Harvard's written approval of the following:

1. a list of all hazardous materials to be used by Seller as defined by the Occupational Safety and Health Act of 1970 and relevant regulations thereunder including but not limited to the Hazard Communication Standard (29 CFR 1910.1200);
2. a Material Safety Data Sheet (MSDS)

HARVARD UNIVERSITY
PURCHASE ORDER TERMS & CONDITIONS
(REV 01/03/2022)

for each hazardous material listed;

3. the location of all hazardous materials stored at Harvard;

4. a description of the containment provided and other measures to be taken to prevent releases to the environment; and

5. the disposal of hazardous or contaminated waste used in the process of performing the work, including but not limited to solvents, degreasers, contaminated solids, batteries, capacitors, Freon, filters, asbestos, fuels, PCB's, pesticides, acids, caustics, sealants, adhesives, paints, strippers, and petroleum based liquids, shall be the responsibility of the Seller as the generator in accordance with all applicable Laws. No such waste shall be disposed of through Harvard's disposal system or on Harvard owned or controlled property.

ii. *Asbestos.* The parties shall share any knowledge they may have of any asbestos on or near the work sites, and Seller shall use its best efforts to avoid disturbing or affecting any asbestos. Seller shall comply with Harvard's Asbestos Operations and Maintenance Policy (available from Asbestos Operations & Maintenance). If any asbestos is anticipated to be disturbed or affected by Seller, Seller shall notify Harvard's Project Manager as well as Harvard's Director of Environmental Health and Safety, by telephone promptly confirmed in writing, as far in advance as possible (and Seller shall give such notice immediately if asbestos is found). Seller shall not proceed with any related work and shall not take any action relating to the asbestos without the prior written approval of the Director of Environmental Health and Safety. Harvard reserves the right to make all decisions regarding asbestos removal, disposal, and remediation as it sees fit in accordance with applicable Laws. Seller shall provide such cooperation as Harvard shall reasonably request.

iii. *Discharges.* If any Seller discharges hazardous materials, as defined by applicable Laws, on Harvard or non-Harvard premises, Seller shall notify Harvard immediately and shall take full responsibility for all necessary remedial action at its sole expense in compliance with the requirements of all applicable Laws and in accordance with Harvard policies and procedures. Without limitation of the foregoing, Seller shall keep Harvard fully informed of any discharge and the remedial action being taken, and shall provide Harvard with such assurances as it may require

concerning public safety and the environment. Harvard also reserves to itself the right to clean up at the expense of Seller. This right includes, without limitation, selecting cleanup Sellers and Licensed Site Professionals, obtaining EPA identification numbers, and signing Hazardous Waste Manifests.