

# CORNELL UNIVERSITY TERMS AND CONDITIONS OF PURCHASE ORDER

Updated June 19, 2022

**CONTRACT OF SALE** - This is an offer by Cornell University, an Equal Opportunity Affirmative Action Employer, acting through its Procurement Services (hereinafter called "Cornell"), to the Vendor to form a contract of sale. In making this offer, Cornell expressly limits the acceptance of said offer by Vendor to the following terms and conditions set forth in this Purchase Order unless otherwise set forth in a separate mutually executed agreement. Cornell does not accept any prior offers from Vendor relating to the materials or Services named herein which may be contained in Vendor's quotations, correspondence, specifications or discussions. Unless otherwise set forth in a separate mutually executed agreement, the entire agreement between Cornell and Vendor relating to the purchase and sale of the materials, Merchandise or Services described on the face hereof is expressly set forth in this Purchase Order, and no modification or addition to this Purchase Order shall be of any force or effect unless a revised purchase order is issued in writing and approved by an authorized purchasing agent of Cornell, and no modification of or addition to this Purchase Order shall be effected by any failure of either party to reject any form of acknowledgement or purchase order containing different or additional provisions. Acceptance by Vendor of this Purchase Order from Cornell may be signified by Cornell's receipt of an acknowledgement of this Purchase Order signed by an authorized representative of Vendor, or by commencement of performance by Vendor hereunder. The failure of either party to enforce any rights shall not constitute a waiver of such rights or any other rights under this Purchase Order. In the event of any inconsistent or incompatible provisions between this language and the Vendor's terms and conditions set forth in a separate purchase order or offer, this Purchase Order shall take precedence.

**1. SPECIFICATIONS:** As used herein, the word "Specifications" shall mean the specifications, quantities, nature, type, properties, amounts, assortments and other descriptions of and requirements for the materials, articles (hereinafter called "Merchandise") and Services or work (hereinafter called "Services") as stated on the Purchase Order and in the Request for Proposal (if any) pursuant to which this Purchase Order is issued.

**2. INSPECTION AND ACCEPTANCE:** All Merchandise or Services shall be received subject to the right of inspection and rejection by Cornell. Payment for Merchandise or Services by Cornell prior to its inspection shall not constitute acceptance thereof and is without prejudice to any and all claims which Cornell may have against Vendor. In the event Merchandise is received damaged, defective or not to specification or all or part of the Services are done incorrectly, Cornell will notify the Vendor of the problem. Merchandise or Services will be held for thirty days at Vendor's risk and expense pending Vendor's instructions. The Vendor will have a reasonable time period to cure the problem in a manner satisfactory to Cornell. Vendor shall bear the entire cost of repair, or replacement or corrections, whether it be direct or consequential, which includes any cost incurred as a result of Vendor's replacement efforts damaging or destroying other structures or materials. In the event the problem cannot be cured to Cornell's satisfaction within thirty days or any additional period of time to which Cornell consents, Cornell shall have the right to take all necessary steps consistent with law to cure the situation, and back charge the Vendor for any and all additional costs incurred.

**3. CANCELLATION FOR NON-PERFORMANCE:** If Vendor fails to supply the Merchandise or Services as specified or fails to conform to these terms and conditions, Cornell reserves the right (in addition to any other remedies at law or in equity) (a) to purchase the Merchandise or have the Services performed from another source and (b) to cancel this Purchase Order with respect to Merchandise not shipped or Services not completed.

**4. FORCE MAJEURE:** This Purchase Order is subject to cancellation or change by Cornell on written notice to the Vendor in the event of causes beyond Cornell's reasonable control, including, without limitation, acts of God or war, fires, earthquakes, floods, strikes, labor troubles, riots, curtailment or operations due to governmental orders or rulings, a pandemic, an epidemic, a recognized health threat as determined by any federal, state or local government or quasi-governmental authority (including the federal Centers for Disease Control), a governmental or quasi-governmental order or directive to "shelter in place", or any other event, occurrence, order or directive similar to those enumerated above (each, a "Force Majeure Event"). A Force Majeure Event may also include a then-current order, policy, rule or regulation imposed by Cornell University based upon the health and safety of its student body, faculty, staff and/or broader community.

**5. CANCELLATION OR CHANGES FOR CONVENIENCE:** For its convenience, Cornell may cancel this Purchase Order in whole or in part or may change the Specifications or other terms and conditions dealing with quantities, shipment procedures or times or places of performance, by notice in writing to the Vendor specifying the date upon which such cancellation or change shall become effective and the extent to which such performance hereunder shall be cancelled or changed. Cornell and Vendor shall act in good faith to attempt to agree upon a compensatory financial agreement that is fair and equitable under the circumstances, in lieu of the price or prices elsewhere specified in this Purchase Order; such agreement shall be subject to the written approval of any governmental authority concerned with this Purchase Order or the Merchandise or Services.

**6. CANCELLATION FOR CONFLICT OF INTEREST:** This Purchase Order is subject to cancellation if there is found to be a Conflict of Interest between a Cornell employee and Vendor. As used herein, a "Conflict of Interest" may be deemed present in Cornell's reasonable judgement for many reasons, including, but not limited to: (1) a Cornell employee and/or his or her spouse or unemancipated and/or minor children own 10% or more of the assets of an unincorporated organization or 10% or more of outstanding stock of a corporation; and/or (2) an employee receiving any personal financial advantage or compensation from any transaction in which Cornell University might have an interest.

**7. SHIPPING AND ROUTING:** Shipping terms are F.O.B. Cornell University unless otherwise stated on the face of this Purchase Order. Cornell reserves the right to specify a specific delivery location. Any shipments delivered to another location other than specified will be the responsibility of the Vendor to have redelivered to the specific location or reimburse Cornell for any charges in moving the Merchandise to the specific location. All Merchandise must be forwarded by the route taking lowest reasonable transportation rate or in accordance with any special shipping instructions. If Vendor does not comply with the immediately preceding sentence, the difference in freight rate and extra cost of transportation will be Vendor's sole obligation.

**8. EXTRA CHARGES:** No additional charges of any kind, including charges for boxing, packing, transportation or other extras will be allowed unless specifically agreed to in writing by an authorized purchasing agent of Cornell.

**9. PATENTS, COPYRIGHTS, TRADEMARKS AND WARRANTIES:** VENDOR EXPRESSLY WARRANTS THAT ALL MERCHANDISE IS IN ACCORDANCE WITH THE SPECIFICATIONS, IS FIT FOR THE PURPOSE FOR WHICH SIMILAR MATERIALS AND ARTICLES ARE ORDINARILY EMPLOYED, FIT FOR THE PARTICULAR PURPOSE FOR WHICH THE MERCHANDISE HAS BEEN PURCHASED, FREE FROM DEFECTS IN MATERIALS AND/OR WORKMANSHIP, AND MERCHANTABLE, and was not manufactured and is not being priced or sold in violation of any federal, state or local law, including without limitation those relating to health and safety. Vendor further warrants that the Merchandise or any part of the Services performed does not infringe or violate any patents, copyrights, trademarks, intellectual property or the like, and does not unlawfully disclose or make use of any trade secrets and covenants and agrees to hold harmless, defend and indemnify Cornell, and its agents, servants, employees, successors, assigns, customers, trustees and users, against any and all claims, demands or suits and related damages, liabilities, costs and expenses (including attorney's fees) arising out of any such infringement or violation or unlawful use or disclosure of trade secrets. Such warranties shall survive and shall not be deemed waived by delivery or acceptance of, or payment for, the Merchandise or Services.

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**10. SET-OFF:** Cornell shall at all times have the right to set-off any amount owing from the Vendor to Cornell against any amount owing from Cornell to the Vendor.

**11. INDEMNIFICATION:** Vendor agrees to hold harmless, defend and indemnify Cornell against any and all claims, demands or suits by any persons and against related loss, damages, death or injury to property or persons, liabilities, costs and expenses (including attorneys' fees), which may arise out of performance under this Purchase Order or the use, possession or ownership of the Merchandise related thereto, caused or contributed to by either: (a) the actions or omissions, negligence or willful misconduct (whether or not negligent) by Vendor or Vendor's agents or subcontractors including without limitation such acts or omissions, incident to the presence of the Vendor, its agents, and subcontractors upon Cornell's premises and/or in the course of performance under this Purchase Order; or (b) defective, unsafe or non-conforming Merchandise supplied by Vendor or Vendor's agents or subcontractors; or (c) Vendor's use and possession of Cornell's property as designated in Section 16 below. The term "Cornell" as used in this section includes Cornell and its agents, employees, students, successors, assigns, customers, trustees and users. The obligations set forth in this Section 11 shall expressly survive the expiration or earlier cancellation of this Purchaser Order.

**12. INSURANCE:** Vendor will carry insurance to financially support indemnification of Cornell as provided herein, and shall provide certificates of such insurance upon request. Annual automatic renewals of the certificate(s) of insurance must be requested from the Vendor's insurance carrier and sent to Cornell upon the annual expiration date of the insurance policies. Vendor shall procure, at its sole cost and expense, the insurance coverages set forth below during the term of this Purchase Order:

**Statutory Workers' Compensation Insurance** under the laws of the State of New York and any other laws that may be applicable thereto. Coverage "B," Employer's Liability, must have limits of at least \$1,000,000 per accident for bodily injury and disease. *(This coverage is required for all Vendors unless they are exempt under the laws of New York State or other applicable jurisdiction. Coverage from other states may be substituted by individuals who are residents of other states but working on a temporary basis in New York State. Individuals providing Services on harbor fronts or over the water should provide proof of US Longshoremen and Harbor Workers insurance and/or Jones Act insurance.)*

**Commercial General Liability Insurance:** subject to at least limits of \$1,000,000 each occurrence and \$2,000,000 aggregate. Coverage must be provided for Bodily Injury Liability, Broad Form Property Damage Liability, Contractual Liability and Products and Completed Operations coverage. Completed Operations coverage is to be maintained for a minimum period of three (3) years after completion or earlier cancellation of this Purchase Order. The policy(ies) shall be primary and non-contributory. Cornell shall be included as an additional insured in the policy utilizing additional insured endorsements CG 20 10 07 04 and CG 20 37 07 04 or their equivalents. *(Coverage shall not contain exclusions for claims related to (New York) labor law. Vendor must expressly hold harmless, defend and indemnify Cornell as an additional insured for any suits referencing or seeking recovery under New York Labor Law §§ 200, 240, 240(1), 241, 241(6) and any related sections, and their insurance certificate or accompanying letter from an authorized representative must specifically state the same.)*

**Automobile Liability Insurance:** (based on scope of Services, Merchandise and/or materials) subject to limits of not less than \$1,000,000 combined single limit for each accident. Such Automobile Liability Insurance shall be for all owned, non-owned, and hired automobiles. *(Cornell requires limits of not less than \$5,000,000 for any bus charter services. Aircraft or watercraft travel that is not a ticketed event (e.g. charters) requires higher insurance limits and pre-approval from Cornell Risk Management and Insurance.)*

**Umbrella/Excess Liability Insurance:** subject to limits of not less than \$5,000,000 per occurrence and follow-form of the primary Commercial General Liability, Automobile Liability, and Employers Liability policies. These policies shall contain an endorsement stating that any entity qualifying as an additional insured on the insurance stated in the Schedule of Underlying Insurance shall be an additional insured on the Umbrella/Excess liability policy(ies) and that they apply immediately upon exhaustion of the insurance stated in the Schedule of Underlying Insurance as respects to the coverage afforded to any additional insured.

**All Risk Property Insurance:** providing replacement cost coverage for any property damage to Vendor's property which is caused by a loss of any kind and description to any property brought onto Cornell University premises. Vendor agrees to waive on behalf of itself and its insurance company subrogation against Cornell for any loss or damage, which is covered or should be covered by this insurance.

**Professional Liability/Errors & Omissions Insurance:** subject to \$1,000,000 per claim/\$3,000,000 aggregate covering the activities of the Vendor. The coverage must be maintained during the term of this Purchaser Order and at least three (3) years following its completion or earlier cancellation. Vendor's policy will provide a carve-back to the "Insured versus Insured" exclusion for claims brought by or on behalf of additional insureds.

**Liquor Liability Insurance:** (based on scope of Services, Merchandise and/or materials) with a minimum of \$1,000,000 per occurrence.

**Crime Insurance:** (based on scope of Services, Merchandise and/or materials) with a minimum of \$1,000,000 per occurrence.

**Environmental Liability Insurance:** (based on scope of Services, Merchandise and/or materials) with a minimum of \$5,000,000 per occurrence. The coverage must be maintained during the term of this Purchase Order and at least three (3) years following its completion or earlier cancellation.

**Cyber and Technology Products & Services Liability Insurance:** (based on scope of Services, Merchandise and/or materials): subject to limits of not less than \$5,000,000 for each wrongful act, that provides coverage for:

- a. Liability for network security failures or privacy breaches, including loss or unauthorized access, use or disclosure of Cornell Data, whether by Vendor or any subcontractor or cloud service provider used by Vendor;
- b. Costs associated with a privacy breach, including notification of affected individuals, customer support, forensics, crises management/public relations consulting, legal services of a privacy attorney, credit monitoring and identity fraud resolution services for affected individuals;
- c. Expenses related to regulatory compliance, government investigations, fines, fees/assessments and penalties;
- d. Liability for technological products and services;
- e. PCI fines, fees, penalties and assessments; and
- f. Cyber extortion payment and response costs.

If the Cyber Liability policy is written on a claims-made basis and non-renewed at any time during the term of this Purchase Order, Vendor shall purchase an Extended Reporting Period for at least a two-year period. Vendor's policy will provide a carve-back to the "Insured versus Insured" exclusion for claims brought by or on behalf of additional insureds.

## Other Insurance-Related Requirements

- (i) The limits of insurance stated above for each type of insurance are minimum limits only. In the event that any policy provided by Vendor

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provides limits greater than those stated above, then the additional insureds will be entitled to the full limits of such policy and this Purchase Order shall be deemed to require such full limits. Except with respect to Professional Liability, all policies shall contain a waiver of subrogation. Vendor shall be responsible for all deductibles under its policies and all defense costs if its policies do not cover such expenses. Insurance coverage in the minimum amounts shall not relieve Vendor or any of its subcontractors or agents of any liability, nor shall it preclude Cornell from exercising any rights or taking such other actions as are available to it under the law. Cornell's failure to enforce these requirements shall not be considered a waiver of the requirements. Any changes to these requirements shall only be made in writing and agreed upon by all parties.

- (ii.) All policies required to be maintained shall be issued by an insurance company licensed or authorized to do business in New York State with a rating of A- VII or better by A.M. Best.
- (iii.) All contractors and subcontractors used by Vendor to provide Services under this Agreement shall be required to comply with the insurance requirements in this Purchase Order.
- (iv.) A Certificate of Insurance is required evidencing all coverages outlined above prior to commencement of the Services or delivery of the Merchandise. Further, each policy shall contain provisions giving Cornell at least 30 days written (10 days in the case of non-payment) notice of cancellation, non-renewal, or other change in coverage.
- (v.) Cornell reserves the right to require additional coverage or to increase limits depending upon the liability exposure in the scope of work in this Purchase Order.

**13. TAXES:** Cornell is exempt from Federal Excise Tax - IRS Reg. No. 16-73-0034-F and New York State Sales and Use Tax EX-106514.

**14. ASSIGNMENT:** Vendor agrees that it will not assign this Purchase Order without the prior written consent of Cornell.

**15. SALE OR BANKRUPTCY OF VENDOR'S BUSINESS:** If, during the term of this Purchase Order, the Vendor disposes of its business by sale, transfer, force of law or by any means to another party, all obligations are transferred to such party. In such event, the new owner(s) may, in Cornell's absolute discretion, be required to submit a performance bond in the amount of the open balance of the Purchase Order. In the event of any suspension of payment or the institution of any proceedings by or against Vendor, voluntary or involuntary, in bankruptcy or insolvency, or under the provisions of the Federal Bankruptcy Act, or for the appointment of a receiver or trustee or an assignee for the benefit of creditors of the property of Vendor, Cornell shall have, in addition to the rights stated in the two preceding sentences, the right to cancel this Purchase Order forthwith.

**16. CORNELL'S PROPERTY/ COPYRIGHT OWNERSHIP:** All equipment or material (including without limitation informational material) furnished by Cornell and all data, designs, drawings, output, processes, art work, negatives, engravings, electronic media, jigs, fixtures, dies, tools or patterns charged by the Vendor to Cornell shall, unless otherwise agreed in writing, be the property of Cornell, shall be returned to Cornell at its written request, and shall not be used by Vendor in any of its business except its business with Cornell under this Purchase Order or other purchase orders. Copyright ownership rights to any works developed specifically for Cornell under this Purchase Order is hereby transferred and assigned by Vendor to Cornell University. Any use of the Cornell name, logo, artwork or trademark, or any of its affiliated schools or institutional units, must be licensed by the Collegiate Licensing Company (CLC), or be authorized directly by Cornell. As used herein, the term "Cornell Data" shall mean any and all data, material, books, records and other information provided in any medium (including provided orally) by Cornell to Vendor, including, but not limited to, proprietary data and information.

**17. APPLICABLE LAW:** This Purchase Order and transaction are governed by the laws of the State of New York without regard to conflict of law principles. Vendor shall comply with all applicable federal, state and local laws and regulations.

**18. FEDERAL AND STATE FUNDING:** If this Purchase Order is funded by New York State or federal funds (designated on the face of the Purchase Order), it shall be deemed executory to the extent of New York State or federal monies being available to Cornell and no liability on account thereof shall be incurred by Cornell beyond monies available for the purpose. Vendor shall comply with all applicable federal, state and local laws and regulations. If this Purchase Order is funded by the federal government (as designated on the face of the Purchase Order), Vendor is subject to compliance with the standards and requirements as set forth in 2 CFR 200.327, Contract Provisions, and Appendix II to Part 200. The procurement requirements contained in the above referenced Uniform Guidance are incorporated herein by reference, and Vendor is required to comply with all applicable federal acquisition regulations if this Purchase Order is funded by federal funds (as designated on the face of the Purchase Order), including, but not limited to, the following, as amended from time to time:

#### **Applies to all orders**

Pricing Adjustment - DFAR 252.243-7002

Notice to the Government of Labor Disputes - FAR 52.222-1 Preference for U.S. Flag Air Carriers - FAR 52.247-63

Use of U.S. Flag Commercial Vessels - FAR 52.247-64 Buy American Act Supplies - FAR 52.225.3

Disputes - FAR 52.233-1

Hazardous Materials Identification & Material Safety Data - FAR 52.223-3 Americans With Disabilities Act of 1990 PL 101-33642 U.S.C§ 12101 et seq.

Authorization & Consent - FAR 52.227-1

Duty Free Entry – DFAR 252.225-7013

Reporting of Overseas Subcontracts – DFAR 252.225-7025

Rights in Technical Data—Noncommercial Items – DFAR 252.227-7013

Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program – DFAR 252.227-7018

Validation of Restrictive Markings on Technical Data – DFAR 252.227-7037

Drug Free Workplace Cost or Pricing Data – Modifications – FAR 52.223-6 Restrictions on Certain Foreign Purchases – FAR 52-225-13

Patents – Subcontracts – DFAR 252.227-7034

Patents--Reporting of Subject Inventions – DFAR 252.227-7039

#### **Equal Opportunity Compliance**

**Vendor and all subcontractors shall abide by the requirements of 41 CFR §§ 60-1.4(a) and 1.4(b), 60-4.3(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

**LOBBYING:** Vendor certifies, to the best of its knowledge and belief that no federal appropriated funds have been paid, by or on behalf of the Vendor, to

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any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, or Member of Congress, an officer or employee of Congress, or an employee or a Member of Congress in connection with this federally-funded subcontract, the Vendor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions and as required by title 31 U.S.C., section 1352. The Vendor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Execution of this subcontract constitutes certification by Vendor as imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **Applies if order is over \$2,500**

Contract Work Hours & Safety Standards Act-Overtime Compensation - FAR 52.222-4 Affirmative Action for Workers with Disabilities - FAR 52.222-36 Service Contract Act of 1965 as Amended – FAR 52.222-41 **Applies for Service and Construction Contracts over \$3,000** Employment Eligibility Verification – FAR 52.222-54

## **Applies if order is over \$10,000**

Equal Opportunity - FAR 52.222-26

Utilization of Small Business Concerns – FAR 52.219-8 Prohibition of Segregated Facilities – FAR 52.222-21

Instructions to Offerors—Competitive Acquisition - FAR 52.215-1 Audit and Records - FAR 52.215-2

Walsh Healy Public Contracts Act - FAR 52.222-19 & 20

Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans - FAR 52.222-35

## **Applies if order is over \$25,000**

Integrity of Unit Prices – FAR 52.215-14

Notice & Assistance Regarding Patent & Copyright Infringement-FAR 52.227-2 Debarment and Suspension - FAR 52.209-5 & 6

Responsibility for Supplies - FAR 52.246-16

## **Applies if order is over \$100,000**

Anti-kickback - FAR 52.203-7

Restrictions of Subcontractor Sales to Government - FAR 52.203-6

Limitation on Payments to Influence Certain Federal Transactions – FAR 52.203-12 Price Reduction for Defective Cost or Pricing Data - FAR 52.214-27

Subcontractor Cost or Pricing Data - FAR 52.214-28

Waiver of Limitation on Severance Payments to Foreign Nationals - FAR 52.237.9

Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies – DFAR 252.203-7001 Oral Attestation of Securing

Responsibilities- DFAR 252.204-7005

## **Applies if order is over \$250,000**

Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors – FAR 52.223-99

## **Applies if order is over \$500,000**

Small Business Subcontracting Program – FAR 52.219-9 Subcontractor Cost or Pricing Data – Modifications - 52.215-12/13

**19. PREVAILING WAGE:** Prevailing Wage applies as stated in New York State EXHIBIT A, or when a vendor is required to pay prevailing wage when performing services in a state-owned facility on the campus. A listing of the facilities can be found at this link: [http://www.fs.cornell.edu/fs/fs\\_facilFind.cfm](http://www.fs.cornell.edu/fs/fs_facilFind.cfm). For rates on prevailing wage, contact New York State Department of Labor, Bureau of Public Works at Building 12, W.A. Harriman Campus, Albany, NY 12240 (phone 518-457-9000, 888-469-7365), and information can be found at this link: <http://www.labor.ny.gov/formsdocs/wp/pwformsandpublications.shtm>.

**20. UNION LABOR:** Cornell University has entered into an agreement with the Tompkins-Cortland Building Trades Council which requires that all labor performed for Cornell within Tompkins County by certain trades be performed by union labor. These trades are: electricians and line workers, painters, plumbers, steamfitters, control mechanics, welders, refrigeration mechanics, carpenters, masons, sheet metal workers and building trade laborers. Vendors performing such work must comply with the Tompkins-Cortland Building Trades Council agreement.

**21. PAYMENT:** Vendor shall be paid after receipt of properly prepared invoices in accordance with Cornell's invoicing instructions for Merchandise or Services delivered to and accepted by Cornell, as further set forth below in this section. Any adjustments in Vendor's invoice due to shortages, rejection or other failure to comply with the provisions of this Purchase Order may be made by Cornell before payment. Discount periods shall commence after the latest of final acceptance of Services, delivery, receipt of any required documentation, or receipt of invoice. Delays in receiving the invoice at the address listed on this Purchase Order, errors or omissions on the invoice, or lack of supporting documentation required by the terms of this Purchase Order, will be cause for withholding settlement without losing prompt payment discount privilege. Invoices must be accompanied by transportation receipt if transportation is payable as a separate item. Original invoices, if mailed, shall be mailed in duplicate immediately after each shipment in accordance with the instructions on this Purchase Order. If mailed, only one (1) of these invoices shall be identified as "Original." If Vendor elects to use paper or email invoices, all payments are due either (i) Net 60 after the receipt of invoice if receiving check payments, or (ii) Net 45 after the receipt of invoice if enrolled to receive direct deposit payments. If Vendor elects to register for electronic invoicing and direct deposit payments through the Automated Clearing House (ACH), all payments are due Net 30 after the receipt of invoice.

**22. TAX WITHHOLDING FOR DOMESTIC AND FOREIGN VENDORS:** All payments from Cornell to Vendor under this transaction may be subject to tax withholding. Cornell reserves the sole right and discretion to withhold tax where it believes it is required to do so under the tax laws of any jurisdiction. By accepting this Purchase Order, the Vendor is relinquishing all claims against Cornell for any amounts withheld and remitted by Cornell to a tax authority. It is the Vendor's sole responsibility to provide Cornell with timely, complete, accurate, and legible forms and/or documents necessary to claim a reduction or elimination of withholding taxes (e.g., Form W-8BEN); Cornell reserves the sole right and discretion to make these determinations as well as whether such forms and/or documents are sufficient to reduce or eliminate withholding tax on any payment to the Vendor.

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**23. ANIMAL USE FACILITIES-HAZARD COMMUNICATION:** Certain facilities at Cornell may be used for research, testing or teaching with animals. Some individuals may be at greater risk for health symptoms and effects from direct or indirect exposure to animals. Individuals with medical conditions such as immunocompromised health status, allergies, pregnancy or anticipated pregnancy may be at greater risk. It is the responsibility of the Vendor to inform its employees of associated potential risks and take appropriate action with respect to their health and safety. Questions regarding the presence of animals in a specific facility may be directed to the Cornell Project Manager, Construction Manager or Facility Manager.

**24. RIGHT TO AUDIT:** Throughout the term of this Purchase Order, and for a period of three years after final payment, or longer if required by law, Cornell, at its own expense, shall be entitled to perform, or to have performed by a third party of Cornell's choosing, during normal business hours and upon five (5) business days' notice, an on-site audit of any and all records of Vendor necessary to permit Cornell to evaluate and verify Vendor's compliance with the requirements of this Agreement. Vendor grants Cornell permission to view and/or copy any books, documents, records, data and information (including data and information stored in electronic form) of Vendor which relate to or have been used in connection with the performance of this Agreement. Vendor also grants Cornell permission to interview Vendor's staff and agents as part of the audit. Vendor agrees to provide Cornell with adequate and appropriate workspace for conducting the audit if conducted on-site. If Cornell, in its sole discretion, determines that an on-site audit is not necessary, Vendor agrees to complete, within 30 days of receipt, an audit questionnaire provided by Cornell. Any overcharges discovered by Cornell, or by a third party of Cornell's choosing, shall be paid within 30 days of Vendor's acceptance of Cornell's written notification of audit findings. Vendor may not unreasonably withhold acceptance of audit findings. Vendor shall include this audit provision in any subcontracts that it may issue under this Purchase Order. **Where Services are being performed on campus or on other Cornell-controlled property, and/or depending on the nature of the Services, Merchandise or work to be performed, some or all of the following additional provisions shall apply.**

**25. CHANGES IN THE WORK:** Cornell shall determine the amount by which the Purchase Order consideration is to be increased or decreased by a change order.

**26. RISKS ASSUMED BY THE VENDOR:** The Vendor solely assumes all risks, except those risks caused by defects in the drawings or specifications prepared or furnished by Cornell or the applicable architect, for loss or damage, occurring prior to Cornell's acceptance of all work, to all or any part of the work covered by the Purchase Order and for all claims, losses and damages for bodily injury, including death, and property damage arising out of or as a result of or in connection with the performance by the Vendor of the work covered by the Purchase Order. The Vendor agrees to indemnify and save harmless Cornell from all claims, losses and damages described above. The Vendor's obligations under this section shall not be deemed waived, limited or discharged by the enumeration in this Purchaser Order or any other document of the kinds and amounts of insurance that it is required to and/or does procure.

**27. PUBLIC SAFETY AND RISK INVOLVING PROPERTY:** The Vendor shall take all necessary precautions for the safety of employees performing the work, and shall comply with all applicable provisions of federal, New York State, municipal and local safety laws and building codes as well as regulations of the Cornell's Environmental Health and Safety to prevent accidents or injury to persons on, about or adjacent to the premises where the work is being performed. The Vendor shall erect and properly maintain at all times as required by the conditions and progress of the work, all necessary safeguards for the protection of workmen and the public and shall post danger signs warning against the hazards created by the activity/services.

**28. HAZARDOUS OR TOXIC MATERIALS:** Vendor shall inform officers, employees, agents, other vendors, sub-contractors at every tier, and any other party which may come into contact with any hazardous or toxic materials as a result of its performance hereunder of the nature of such materials, and any health and safety or environmental risks associated therewith. Vendor shall not use hazardous or toxic materials in a manner that will violate Cornell University Policies or any state, federal, or municipal environmental health and safety regulations. In situations where the risks are unclear, Vendor shall consult with Environmental Health and Safety (EH&S) for guidance. Vendor shall provide complete care and treatment for any injury sustained by any parties coming into contact with any hazardous or toxic materials as a result of Vendor's performance or failure to perform hereunder. At the completion of project, Vendor shall remove all unused chemical products and hazardous materials from campus. Transportation of these materials shall be in accordance with all federal, state, and local regulations. Vendor shall request and receive written approval from EH&S prior to disposal of any material.

**29. DISPOSAL OF WASTE MATERIAL AND TITLE:** Prior to start of work and first payment, Vendor shall prepare and submit "Contractor Waste Material Disposal Plan" ([form link](#)) to Cornell's identified representative. The plan shall identify the waste transportation and treatment, storage or disposal (TSD) companies which will manage all waste material and any site(s) for disposal of the waste material. The "Vendor Waste Material Disposal Plan" form, together with definitions associated with the form waste descriptions, is attached to this Purchase Order. Vendor must use this form to document waste disposal methods and locations. Vendor shall be responsible for the proper cleanup, containment, storage and disposal of any hazardous material/chemical spill occurring during its work. For Cornell University owned hazardous waste, EH&S will oversee, approve or effect the proper disposal. Title, risk of loss, and all other incidents of Cornell ownership to waste material shall vest in Vendor at the time Vendor or any transporter acting on its behalf takes physical possession of waste material. Vendor must complete and maintain full records of the chain of custody and control, including certificates of disposal or destruction, of all waste materials loaded, transported and/or disposed. Vendor shall deliver all such records to Cornell in accordance with applicable laws and regulations and any instructions from Cornell in a timely manner and in any event prior to final payment(s) under this Purchase Order.

**30. CLEAN UP:** Vendor shall, at all times during the progress of the work, keep the site and adjacent roads and sidewalks free from accumulation of waste matter, dirt and rubbish. At the completion of the work, all excess materials, earth, etc., shall be removed from the site.

**31. WEB CONTENT ACCESSIBILITY.** In accordance with the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973, all web pages, web functionality, websites or web applications developed or provided under this Purchase Order will attempt to conform to the W3C Web Content Accessibility 2.0 Level AA Guidelines that can be found at <https://www.w3.org/WAI/WCAG20/quickref/>. Vendors hosting websites or providing web design services or web-based products, if required, can provide written evidence that their product or service addresses each of the WCAG 2.0, Level AA criteria. For any area of noncompliance, Vendor should describe any planned remediation roadmaps, including timelines and steps that will be taken to achieve full compliance, as well as interim workarounds to enable access by individuals with disabilities. Vendors may be required to demonstrate how to use the product with assistive technology, and may be required to undergo third-party accessibility testing. Vendor must provide contact information to facilitate more detailed inquiries.

**32. GDPR COMPLIANCE.** If the Services, Merchandise, work and/or activities contemplated hereunder involve the processing (as such term is defined under the Regulation (EU) 2016/679 (General Data Protection Regulation, or "GDPR")) by the Vendor of personal data (as defined in the GDPR) of which Cornell is the controller (as defined in the GDPR), regardless of whether such personal data constitutes Cornell Data, then Cornell and the Vendor agree to complete/execute a Personal Data Processing Agreement (PDPA) to the extent to which the GDPR applies to such processing (in addition to the provisions

**CORNELL UNIVERSITY TERMS AND CONDITIONS OF PURCHASE ORDER**

Updated June 19, 2022

of this Purchase Order and any other documents entered into between the parties).