Georgia State University
Standard Purchase Order Terms & Conditions for Goods and Services

Please note that these Purchase Order Terms and Conditions may be supplemented by additional terms or modified by special instructions included with an Official Purchase Order issued by Georgia State University. In the event of a conflict between these Purchase Order Terms and Conditions and additional terms or special instructions, the latter shall govern.

A. DEFINITIONS. The following words shall be defined as set forth below:

1. “Georgia State University” or “GSU” means the State of Georgia entity identified as The Board of Regents of the University System of Georgia, by and on behalf of Georgia State University.

2. “Purchase Order” means the agreement between Georgia State University and the Vendor as defined by Georgia State University Purchase Order Terms and Conditions.

3. “Vendor” means the provider of the goods and/or services under the Purchase Order.

4. “Quote” means the Vendor’s submitted written quote.

5. “Net 30” means 30 calendar days from the receipt of good and/or services, or the receipt of invoice in GSU Disbursements, whichever occurs later.

B. CONTROLLING TERMS AND CONDITIONS. The terms, conditions, and specifications of the Vendor’s Quote are hereby incorporated by reference and made a part hereof just as if they had been fully set out herein. Any inconsistency or conflict among the provisions of the Purchase Order and any incorporated documents shall be resolved as follows: First, by giving preference to the specific provisions of the Purchase Order; Second, by giving preference to the specific provisions of the eRFQ; and, Third, by giving preference to the specific provisions of the Vendor’s Response. Any pre-printed terms and conditions included on Vendor’s forms or invoices shall be null and void.

C. TERM. The term of the Purchase Order between Georgia State University and the Vendor shall begin on the date of the Purchase Order and end upon completion of all deliverables (the Term), unless terminated earlier in accordance with the controlling terms and conditions. Pursuant to O.C.G.A. Section 50-5-64, this Purchase Order shall not be deemed to create a debt of Georgia State University for the payment of any sum beyond the fiscal year in which the appropriations have been made.

D. DELIVERABLES.

1. Specifications. All goods, services, and other deliverables the Vendor is required to provide under the Purchase Order must comply with the specifications contained in the Purchase Order and any description contained in Vendor’s written quote.

2. Product Shipment and Delivery. All products shall be shipped F.O.B. Destination, freight prepaid and included to the location(s) specified in the Purchase Order. All items shall be at the Vendor’s risk until they have been delivered and accepted by the receiving entity. All items shall be subject to inspection on delivery. Hidden damage will remain the responsibility of the Vendor to remedy without cost to Georgia State University, regardless of when the hidden damage is discovered.

3. Non-Exclusive Rights and No Minimums Guaranteed. The contract created by the Purchase Order is not exclusive. Georgia State University reserves the right to select other Vendors to provide goods and services similar to goods and services described in the Purchase Order during the Term.

E. COMPENSATION.

1. Pricing. The Vendor will be paid for the goods and services sold pursuant to the Purchase Order in accordance with the Purchase Order. Unless clearly stated otherwise in the Purchase Order, all prices are firm and fixed and are not subject to variation. Prices include, but are not limited to freight, insurance, fuel surcharges and customs duties.
2. Billing. The Vendor shall submit an invoice for goods and services supplied to Georgia State University under the Purchase Order at the billing address identified by Georgia State University. Payments will be made Net 30 of receipt of invoice or receipt of goods and services, whichever occurs later.

3. Delay of Payment Due to Vendor’s Failure. If Georgia State University in good faith determines that the Vendor has failed to perform or deliver any service or product as required by the Purchase Order, the Vendor shall not be entitled to any compensation under the Purchase Order until such service or product is performed or delivered. In this event, Georgia State University may withhold that portion of the Vendor’s compensation which represents payment for services or products that were not performed or delivered.

F. TERMINATION.

1. Immediate Termination. Pursuant to O.C.G.A. Section 50-5-64, this Purchase Order will terminate immediately and absolutely if Georgia State University determines that adequate funds are not appropriated or granted or funds are de-appropriated such that Georgia State University cannot fulfill its obligations under the Purchase Order, which determination is at Georgia State University’s sole discretion and shall be conclusive.

2. Termination upon Notice. Following thirty (30) calendar days’ written notice, Georgia State University may terminate the Purchase Order in whole or in part without the payment of any penalty or incurring any further obligation to the Vendor.

3. Payment Limitation in Event of Termination. In the event of termination of the Purchase Order for any reason by Georgia State University, Georgia State University shall pay only those amounts, if any, due and owing to the Vendor for goods and services actually rendered up to and including the date of. Payment will be made only upon submission of invoices and proper proof of the Vendor’s claim. This provision in no way limits the remedies available to Georgia State University under the Purchase Order in the event of termination.

4. Vendor’s Termination Duties. Upon receipt of notice of termination or upon request of Georgia State University, the Vendor shall cease work under the Purchase Order and take all necessary or appropriate steps to limit disbursements and minimize costs. Vendor shall immediately cease using and return to Georgia State University any personal property or materials, whether tangible or intangible, provided by Georgia State University to the Vendor. Further, the Vendor shall immediately return to Georgia State University any payments made by Georgia State University for goods and services that were not delivered or rendered by the Vendor.

G. PATENT/COPYRIGHT INFRINGEMENT INDEMNIFICATION. Vendor shall, at its own expense, be entitled to and shall have the duty to participate in the defense of any suit instituted against the State of Georgia, Georgia State University, and their officers, employees, agents and volunteers (collectively, the “Indemnified Parties”) and to indemnify the Indemnified Parties against any award of damages and costs made against the Indemnified Parties by a final judgment of a court of last resort in such suit insofar as the same is based on any claim that any of the goods and/or services constitutes an infringement of any United States Letters Patent, trademark, trade dress, copyright or other intellectual property right, provided Georgia State University gives the Vendor notice in writing of the institution of such suit (failure to give prompt notice shall not limit Vendor’s obligations hereunder except to the extent Vendor is prejudiced thereby), permits Vendor to fully participate in the defense of the same, and gives Vendor available information, assistance and authority to enable Vendor to do so. Subject to approval of the Attorney General of Georgia of the State of Georgia, Georgia State University shall tender defense of any such action to Vendor upon request by Vendor. Vendor shall not be liable for any award of judgment against the Indemnified Parties reached by compromise or settlement unless Vendor accepts the compromise or settlement. Vendor shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement shall be binding upon Georgia State University unless approved by Georgia State University. Vendor’s indemnification obligation shall survive termination of the Purchase Order.

If of the goods and services are held to constitute infringement and a court of competent jurisdiction enjoins the use thereof, Vendor shall, at its option and expense:
1. Procure for Georgia State University the right to continue using the goods and/or services;
2. Replace or modify the same so that it becomes non-infringing; or
3. Remove the same and cancel any future charges pertaining thereto.

Vendor shall have no liability to Georgia State University for infringement based upon or arising out of:
1. Compliance with designs, plans or specifications furnished by or on behalf of Georgia State University as to the goods and/or services;
2. Use of the goods and/or services in combination with apparatus or devices not supplied by Vendor;
3. Use of the goods and/or services in a manner for which the same was neither designed nor contemplated; or
4. The claimed infringement of any patent or copyright in which Georgia State University or any affiliate or subsidiary of Georgia State University has any direct interest by license or otherwise.

H. INSURANCE AND BONDS. Vendor shall provide all insurance and all required bonds in accordance with the Purchase Order.

I. WARRANTIES.
1. Warranties. The Vendor represents and expressly warrants that all aspects of the goods and services provided or used by it are merchantable and shall at a minimum conform to the standards in the Vendor’s industry. The warranties expressed in the Purchase Order are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by the Vendor. Acceptance by Georgia State University shall not relieve the Vendor of its warranty or any other obligation under the Purchase Order.

2. Originality and Title to Concepts, Materials, and Goods Produced. Vendor represents and warrants that all the concepts, materials, goods and services produced, or provided to Georgia State University pursuant to the terms of the Purchase Order shall be wholly original with the Vendor or that the Vendor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and works. Vendor represents and warrants that title to any property assigned, conveyed or licensed to Georgia State University is good and that transfer of title or license to Georgia State University is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance.

3. Authority to Enter into Purchase Order. The Vendor represents and warrants that it has full authority to enter into the Purchase Order and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to Georgia State University.

J. PURCHASE ORDER ADMINISTRATION
1. Compliance with the Law. The Vendor, its employees, agents, and sub-Vendors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders now or hereafter in effect when performing under the Purchase Order. The provisions of O.C.G.A. Section 45-10-20 et seq. have not and must not be violated under the terms of this Purchase Order.

2. Drug-free Workplace. The Vendor hereby certifies as follows:
   a. Vendor will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of this Purchase Order; and
   b. If Vendor has more than one employee, including Vendor, Vendor shall provide for such employee(s) a drug-free workplace, in accordance with Georgia Drug-free Workplace Act as provided in O.C.G.A. Section 50-24-1 et seq., throughout the duration of this Purchase Order; and
   c. Vendor will secure from any sub-Vendor hired to work on any job assigned under this Purchase Order the following written certification: "As part of the sub-Purchase Ordering agreement with (Vendor's Name), (Sub-Vendor's Name) certifies to the Vendor that a drug-free workplace will be provided for
the sub-Vendor's employees during the performance of this Purchase Order pursuant to paragraph 7 of subsection (b) of Code Section 50-24-3."

Vendor may be suspended, terminated, or debarred if it is determined that Vendor has made false certification hereunder or if Vendor has violated such certification by failure to carry out the requirements of O.C.G.A. Section 50-24-3(b).

3. **Amendments.** The Purchase Order may be amended in writing by mutual consent of the parties. All amendments to the Purchase Order must be in writing and fully executed by duly authorized representatives of the parties.

4. **Third Party Beneficiaries.** There are no third-party beneficiaries to the Purchase Order. The Purchase Order is intended only to benefit Georgia State University and the Vendor.

5. **Choice of Law and Forum.** The laws of the State of Georgia shall govern and determine all matters arising out of or in connection with this Purchase Order without regard to the choice of law provisions of law. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Purchase Order, such proceeding shall solely be brought in a court or other forum of competent jurisdiction within Fulton County, Georgia. This provision shall not be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity, which may be available to Georgia State University of Georgia.

6. **Integration.** The Purchase Order represents the entire agreement between the parties.

7. **Notice.** Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to the person who signed the Purchase Order on behalf of Georgia State University.

8. **Severability.** If any provision of the Purchase Order is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of the Purchase Order.

9. **Time is of the Essence.** Time is of the essence with respect to the performance of the terms of the Purchase Order.

10. **Debarred, Suspended and Ineligible Status.** Vendor certifies that neither it nor any of its sub-Vendors have been debarred, suspended or declared ineligible by any agency of the State of Georgia. Vendor will immediately notify Georgia State University if Vendor is debarred by the State of Georgia or placed on the Consolidated List of Debarred, Suspended and Ineligible Vendors by a federal entity.

11. **Taxes.** Georgia State University is exempt from certain sales and use taxes. By executing the Purchase Order the Vendor certifies it is either (a) registered with Georgia State University Department of Revenue, collects, and remits Georgia State University sales and use taxes as required by Georgia law, including Chapter 8 of Title 48 of the O.C.G.A.; or (b) not a “retailer” as defined in O.C.G.A. Section 48-8-2.

12. **Force Majeure.** Neither party will be liable to the other party for nonperformance resulting from labor strikes, riots, wars, acts of governmental authorities preventing performance, extraordinary weather conditions or other natural catastrophe, or any other cause beyond the reasonable control or contemplation of the party.

13. **Obligations Beyond Purchase Order Term.** The Purchase Order shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to the Purchase Order. All obligations of the Vendor incurred or existing under the Purchase Order as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of the Purchase Order.

14. **Transition Cooperation and Cooperation with other Vendors.** Vendor agrees that upon termination of this Purchase Order for any reason, it shall provide sufficient efforts and cooperation to ensure an orderly and efficient transition of services to Georgia State University or another Vendor. The Vendor shall provide full disclosure to Georgia State University and the third-party Vendor about the equipment, software, or services required to perform services for Georgia State University. The Vendor shall transfer licenses or
assign agreements for any software or third-party services used to provide the services to Georgia State University or to another Vendor.

15. Certification of Non-collusion. By accepting and acting on a Purchase Order, Vendor warrants that the Vendor’s Quote is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a response for the same materials, supplies, equipment, or services and is in all respects fair and without collusion or fraud. The supplier understands and agrees that collusive bidding is a violation of state and federal law and may result in fines, prison sentences, and civil damage awards.

16. Software Licenses. Software licenses required for use of any or all goods or services provided on the Purchase Order shall not be valid or enforceable until and unless they have been reviewed and approved by Georgia State University Department of Legal Affairs, and if required, fully executed by authorized representatives of both Georgia State University and the software Licensor.

17. Anti-boycott. Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Contract not to engage in, a boycott of Israel, as defined in O.C.G.A. 50-5-85.