

CITY OF NEW ORLEANS

PURCHASE ORDER TERMS AND CONDITIONS

THIS PURCHASE ORDER forms a contract between the City of New Orleans and the vendor identified on the Order. This Purchase Order is issued under the following terms and conditions:

1. **DEFINITIONS.** In these terms and conditions, the following definitions will apply:
 - **City** is the City of New Orleans.
 - **City Department** is the department which has requisitioned the goods and/or services, and to which the goods and/or services will be delivered.
 - **Deliverables** are the goods, products, materials, and/or services to be provided to the City under a Purchase Order.
 - **Goods** are supplies, materials, or equipment.
 - **Offer** is a complete signed Quote in response to a solicitation from a City Department to obtain Goods and/or Services.
 - **Order** is the Purchase Order.
 - **Purchase Order** (or "**Order**") is an order placed by the City Department for the purchase of Goods and/or Services written on the City's standard Purchase Order form and which, when accepted by the Vendor becomes a contract. The Order is the Vendor's authority to deliver and invoice the City for Goods and/or Services specified, and the City's commitment to accept the Goods and/or Services for an agreed upon price.
 - **Purchasing** refers to the Bureau of Purchasing in the Department of Finance of the City.
 - **Quote** is a complete, properly authorized response to a request by a City Department, which if accepted, would bind the Vendor to perform the resulting Purchase Order.
 - **Services** include all work or labor performed for the City on an independent Contractor basis other than construction.
 - **Vendor** is a person, firm, or entity that sells Goods and/or Services and who made an Offer to the City Department.

2. **OFFER & ACCEPTANCE.** If this transaction is subject to an agreement executed by an authorized representative of the City in a document indicating that it represents the entire and exclusive agreement between the parties, then this Order is issued for administrative convenience only. Otherwise, this Order may be construed as an offer or an acceptance of an offer. If construed as an OFFER, the offer is expressly limited to its terms and any additional or different terms in the Vendor's acceptance are expressly rejected. If construed as an ACCEPTANCE of Vendor's offer, the City rejects any terms of Vendor's offer at variance with or supplemental to this Order and the City expressly conditions its acceptance on Vendor agreeing

to City's Terms and Conditions stated in this Order. Vendor shall be deemed to accept City's Terms and Conditions if Vendor does not reject them within three (3) business days by giving written notice to the appropriate City Department representative, as set forth in the Order, with a copy to the designated representative of Purchasing, identifying the rejected provisions and the reasons therefor. Vendor's rejection contained in a standard invoice or similar transaction document shall be given no effect.

3. CHANGES. The City may at any time by written notice to the Vendor, suspend performance in whole or in part, make changes in designs, specifications, method of shipment or packing, or time or place of delivery or require additional or diminished work ("Change Order"). If any such change causes an increase or decrease in the cost of, or the time required for performance of this Order, the Vendor may request an adjustment by written notice to the City. If approved by the City, the City shall issue an additional Change Order confirming the adjustment. Any claim on account of such change by Vendor shall conclusively be deemed to be waived unless City is notified in writing within thirty (30) days from the date of receipt by Vendor of the Change Order. No Change Order will be binding on City unless authorized by a properly issued Change Order.

4. PACKING & SHIPPING. No charge shall be made by Vendor for packaging, transportation or unpacking, except as stated on the face of the Order. All items shall be packaged, marked and otherwise prepared in accordance with good commercial practices to obtain lowest transportation rates consistent with City's shipping instructions. Vendor shall mark containers with appropriate handling, loading and unpacking instructions, shipping information, order, item and account number, shipment date and name and address of Vendor. An itemized packing list must accompany each shipment. Unless expressly otherwise specified herein, all items shall be delivered within thirty (30) days of this Order and time for delivery shall be deemed a material requirement. Vendor shall promptly notify City by giving written notice to the appropriate City Department representative, as set forth in the Order, with a copy to the designated representative of Purchasing, of any delay in shipment and City shall have the opportunity to cancel the Order and obtain a full refund. For any international shipments, Vendor shall be both the importer and exporter of record and shall obtain and pay for all necessary governmental approvals and permits with respect to shipments under this Order. If instructed by City, the Vendor shall deliver any software or data products by electronic transmission.

5. RISK OF LOSS. Vendor shall bear all risk of loss on items covered by this Order until final acceptance by the City, at the destination specified on the face of this Order, except for loss occasioned solely by the negligence of City. Any "F.O.B." designation does not vary the foregoing risk of loss provisions. Vendor shall replace any lost or damaged media containing licensed software or data upon request at a price not exceeding the reasonable cost of media duplication, packaging and shipping.

6. PRICES. Vendor shall complete this Order at the prices stated herein. Any total dollar amount stated for services shall be considered a fixed price or, for services rendered on an hourly basis, a "not to exceed" aggregate limit to complete the work described. If no prices are stated, they shall be commercially reasonable prices and subject to City's written approval. Any items delivered at unstated prices determined by City to be unacceptable shall be removed at Vendor's expense. City shall be entitled to any reduction in prices announced within thirty (30) days after Vendor delivers the item. Expenses to be reimbursed, if any, are limited to Vendor's actual cost and must be substantiated by original receipts (travel expenses must be authorized in writing by City and are limited to coach class airfare and most economical ground transportation and lodging, in accord with City's travel policy). Unless expressly shown on the

face of this Order, the price for software or services includes all applicable permits, third party royalties and license fees. City is a tax-exempt entity for Louisiana State taxes and most other taxes. Vendor shall remit in a timely manner to governmental authorities all levies, duties, fees and taxes on this Order. Vendor shall thereafter defend, indemnify and hold City harmless from any failure to collect, remit or pay taxes and levies, including any interest or penalties imposed thereon. As a condition of final payment, Vendor shall, upon request, furnish standard lien waivers.

7. INVOICING & PAYMENT . Vendor shall immediately upon shipment or performance of work (or at such milestones as are identified herein) send an invoice, including the number of this Order and any item numbers, accompanied by any bill of lading or express receipt. Unless otherwise specified herein, invoices are payable within a reasonable time after receipt of a properly-issued invoice and of the goods and/or services contemplated therein, provided the original invoice and any required backup documentation are duly received by City Department. Payment shall not be construed as City's acceptance, which shall remain subject to City's right to inspect and other rights hereunder and at law. City may setoff any amount owed to Vendor against any amount owed by Vendor (or its affiliates) to City. Any additional or different contract terms appearing on Vendor's invoice form are expressly rejected.

8. COMPLIANCE WITH LAWS & POLICIES. Vendor shall at all times comply with and provide all stipulations, representations, certifications and building codes required by all applicable laws and regulations with respect to any in-transit and destination jurisdictions for items and services supplied under this Order. Vendor shall ensure that any of its personnel performing work on City's premises, or accessing City's computer systems do so with City's permission and according to all applicable security and workplace policies. Vendor shall comply with all laws governing the importation, exportation or transfer of technology across national boundaries, shall obtain all necessary permits and governmental authorizations and approvals necessary to the performance of this Order and shall defend, indemnify and hold City harmless from any claim to the contrary. Hazardous substances shall be conspicuously labeled and properly handled and disposed of at all times, in accordance with state and federal laws and regulations.

9. INSPECTION. All items covered by this Order may be inspected and tested by City at reasonable times and places and with Vendor's reasonable assistance. If any items covered by this Order are defective or nonconforming, City may upon written notice to Vendor: (i) rescind this Order as to such items, (ii) accept such items with a reasonable reduction in price, or (iii) reject such items and require the delivery of conforming replacements. If replacements are requested and Vendor fails to deliver such replacements promptly, City may: (i) replace or correct such items and charge Vendor all reasonable costs of cover incurred by City, or (ii) terminate this Order for default as provided in Section 14 "Termination." No inspection, tests, approval (including design approval), or acceptance of items shall relieve Vendor from responsibility for latent defects, material misstatements or omissions, or Vendor's warranty obligations. Manufacture or production of items subject to City's approval of a prototype, sample or design shall not proceed until such approval is given. Rejected items and scrap materials shall be promptly removed by Vendor without cost to City.

10. HAZARDOUS SUBSTANCE AND ENVIRONMENTAL LAW. "Hazardous Substance" means any pollutant, contaminant, hazardous or toxic substance or waste, solid waste, petroleum or any byproduct thereof, or any other chemical, substance or material listed or identified in or regulated by any Environmental Law. "Environmental Law" means any federal, state, local or other governmental statute, regulation, law or ordinance dealing with the

protection of human health, natural resources and/or the environment now or hereafter in effect including, without limitation, any and all claims or causes of action based upon such governmental statute, regulation, law or ordinance. Vendor shall comply with all Environmental Laws. Vendor shall notify City in writing by giving written notice to the appropriate City Department representative, as set forth in the Order, with a copy to the designated representative of Purchasing, of every article ordered or supplied under this Order or stored or used by Vendor on City property that contains Hazardous Substances or substances for which the law requires a Material Safety Data sheet. Such notification shall be given prior to the shipment or introduction of such substances onto City property and shall include, at a minimum, information regarding the substance including but not limited to Material Safety Data Sheets. City shall be able to, at all times, inspect any Hazardous Substances introduced onto or intended to be introduced onto City property by Vendor.

11. LIABILITY FOR DAMAGES.

11.1. Indemnity.

11.1.1. To the fullest extent permitted by law, Vendor will indemnify, defend, and hold harmless the City, its agents, employees, officials, insurers, self-insurance funds, and assigns (collectively, the "Indemnified Parties") from and against any and all claims, demands, suits, and judgments of sums of money accruing against the Indemnified Parties: for loss of life or injury or damage to persons or property arising from or relating to any act or omission or the operation of Vendor, its agents, subcontractors, or employees while engaged in or in connection with the discharge or performance of any work under the Order; and for any and all claims and/or liens for labor, services, or materials furnished to Vendor in connection with the performance of work under the Order.

11.1.2. Vendor's indemnity does not extend to any loss arising from the gross negligence or willful misconduct of any of the Indemnified Parties, provided that neither Vendor nor any of its agents, subcontractors, or employees contributed to such gross negligence or willful misconduct.

11.1.3. Vendor has an immediate and independent obligation to, at the City's option: (a) defend the City from or (b) reimburse the City for its costs incurred in the defense of any claim that actually or potentially falls within this indemnity, even if: (a) the allegations are or may be groundless, false, or fraudulent; or (b) Vendor is ultimately absolved from liability.

11.2. Insurance.

11.2.1. If this Order involves any provision of service to City, Vendor shall procure and maintain the following minimum scope of insurance during the term of this Order, unless the Order or any contract signed by both parties pertaining to this Order states otherwise. Coverage shall be at least as broad as the following:

- i. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 or similar acceptable to the City, covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general

aggregate limit shall be twice the required occurrence limit.

- ii. Automobile Liability: ISO Form Number CA 00 01 or similar acceptable to the City covering any auto (Symbol 1, or Symbols 7, 8, 9), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$500,000 Combined Single Limit per accident for bodily injury and property damage.
- iii. Workers' Compensation: as required by the State of Louisiana, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
- iv. Professional Liability (Errors and Omissions): with limits no less than \$1,000,000 per claim, as required.

11.2.2. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

- i. Additional Insured Status: Contractor will provide, and maintain current, a Certificate of Insurance naming The City of New Orleans, its departments, political subdivisions, officers, officials, employees, and volunteers are to be covered as "Additional Insureds" on the CGL policy and Auto Liability policy with respect to liability arising out of the performance of this agreement. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used). The Certificate of Insurance, as evidence of all required coverage, should name the City of New Orleans Risk Manager as Certificateholder and be delivered via U.S. Mail to 1300 Perdido Street, 9E06—City Hall, New Orleans, LA 70112.
- ii. Primary Coverage: For any claims related to this contract, Contractor's insurance coverage shall be primary insurance as respects the City, its departments, political subdivisions, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City shall be non-contributing to Contractor's coverage.
- iii. Claims Made Policies: The retroactive date must be shown and must be before the date of the contract or the beginning of work. If the coverage is canceled or non-renewed, and not replaced with another claims-made policy, Contractor must purchase "extended reporting" coverage for minimum of five (5) years after the termination of this agreement.
- iv. Waiver of Subrogation: Contractor and its insurers agree to waive any right of subrogation which any insurer may acquire against the City by virtue of the payment of any loss under insurance required by this contract.
- v. Notice of Cancellation: Each insurance policy required above shall provide that coverage shall not be canceled, except with prior notice to the City of no less than sixty (60) days.
- vi. Acceptability of Insurers: Insurance is to be placed with insurers licensed

and authorized to do business in the State of Louisiana with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

11.2.3. PROPRIETARY RIGHTS. Vendor represents and warrants that items and services supplied under this Order will not infringe any third party patent, trade secrets, copyrights or other intellectual property rights and Vendor will defend, indemnify and hold City harmless from all damages, costs and expenses (including reasonable legal fees) from any claim to the contrary. Vendor shall have the right to control the defense or settlement of any such claim at its own expense. All proprietary or confidential information obtained by Vendor from City in connection with this Order is received in confidence, shall remain the property of City and shall be used and disclosed by Vendor only to the extent necessary for the performance of this Order. Remedies at law being inadequate for the City, and any breach of the provisions hereof causing irreparable injury to the City, the provisions of this Section may, in addition to other relief, be enforced by a temporary or permanent injunction without necessity of posting bond.

12. SOFTWARE & DATA.

12.1. Specially Commissioned Works. Unless agreed in writing, any specially commissioned software or other works of authorship, including custom modifications to pre-existing works, produced under this Order shall to the extent of such custom work be deemed "work for hire" and assigned to and owned exclusively by City at the time of creation. Vendor shall upon request and at no additional charge execute any document reasonably requested by City to vest ownership of such work in City or its designee. Any pre-existing software or components embedded in a delivered item shall be identified by the Vendor in advance and shall be deemed licensed for use as an integral part of the deliverable, including the right to sublicense if Vendor is on notice that such item will be incorporated into a product to be distributed by City. If source code or configurable technology has been provided, then this license includes the right of City to create derivative works. The licenses granted are without financial obligation to Vendor other than payment of the prices set forth in this Order.

12.2. Software Products. Any off-the-shelf software or data products specified in this Order shall, unless otherwise specified or agreed in writing, be deemed licensed to City on a one-time license fee, paid-up, non-exclusive, perpetual basis and City (and its affiliates) shall be deemed authorized to use such items: (a) in the case of software typically licensed on a single machine basis, then on a single workstation and a backup laptop computer by one individual, and (b) for software typically installed on a computer server, then on a computer server and remotely by the number of client workstations connected by network that are within the technical capacity of such software; provided, however, that if per-machine or per-user charges are specified in this Order, then City may only use such software on the number of computers for which stated fees are paid. The foregoing licenses may be transferred without imposition of transfer fees, provided the originally installed copy is permanently deleted. City shall be entitled to ongoing product support and maintenance (including interim fixes, releases and new versions of the same or successor product) at no cost for ninety (90) days after acceptance and thereafter at the annual support fees set forth herein or, if not so specified, then at published rates not to exceed 15% of the original license fee per annum, less any discounts hereunder are consistently applied. Vendor shall use commercial anti-virus software to remove viruses capable of being detected in software prior to shipping and shall indemnify City from damage caused by its failure

to exercise reasonable care. Vendor waives any right to use “electronic self-help” to repossess software.

13. WARRANTIES. Vendor warrants that items furnished hereunder will: (i) be free from material defects in design, material and workmanship; (ii) be suitable for any particular purposes made known to Vendor in advance; (iii) function together as a unit if City notified Vendor that it was relying on Vendor’s skill or judgment to select items that will function as such; (iv) be materially accurate to specification and process date-related data in a manner compliant with industry-standard requirements (for items of such nature); (v) substantially conform with any related sample, model, documentation, description, labeling or literature supplied by Vendor, and (vi) substantially conform to any specific requirements of this Order. Unless otherwise agreed in writing, all hardware and items are transferred to City free and clear of all liens and encumbrances. Unless designated as “reconditioned” or “used,” all hardware and replacement parts are warranted to be new. Services are warranted by Vendor to be performed in a professional and workmanlike manner in substantial compliance with applicable specifications. If items are found within twelve (12) months after acceptance (or such longer period as specified by Vendor and incorporated herein) not to be as warranted, City may require the work to be corrected or may return all defective items (and other items supplied by Vendor that are materially diminished thereby) to Vendor, at Vendor’s expense, for replacement or credit as City may direct. Replacements are warranted for the latter of the remaining original warranty period or ninety (90) days.

14. TERMINATION. City may at any time by written notice to Vendor suspend or cancel this Order or any part thereof without cause. City shall pay Vendor a reasonable cancellation charge, determined by City in good faith, for work-in-process (not exceeding the price for cancelled items) to the extent Vendor’s costs for such items cannot be mitigated. Off-the-shelf items that are readily marketable and any rented facilities that can be readily rebooked shall not be subject to a cancellation charge. If Vendor materially fails to comply with this Order and does not remedy such failure within seven (7) days after written notice, City may, in addition to any other remedy, terminate all or any part of this Order by written notice to Vendor without any liability and may affect “cover” by purchasing substitute items elsewhere. In such event, Vendor shall be liable to City for any excess cost and expense of cover. If this Order is terminated, City may require Vendor to transfer title and deliver to City any fully or partially completed items and materials, parts, plans, drawings, information, and contract rights that Vendor produced or acquired for the performance of the terminated work, subject to reasonable compensation as set forth above.

15. FORCE MAJEURE. Except for the obligation to indemnify, whenever a period of time is herein prescribed for the taking of any action by any party hereto, the party shall not be liable or responsible for, and there shall be excluded from the computation of such period of time, any delays due to abnormally severe and unusual weather conditions or other acts of God, shortages of labor or materials (not caused by the party seeking the benefit of this paragraph), riots, terrorism, acts of public enemy, war, sabotage, court order, or any other cause whatsoever beyond the reasonable control of any such party. To seek the benefit of this paragraph, a party must promptly provide notice in writing to the other party stating: (1) that an event triggering this paragraph has occurred; (2) the anticipated effect on the party’s performance; and (3) the expected duration of the delay.

16. RELATIONSHIP. Vendor is an independent contractor of City and is not an employee, partner, joint-venturer or franchisee. Vendor is not entitled to participate in any employee benefit plan of City. Vendor represents that it has other substantial sources of revenue, will file its tax returns and pay tax as an independent contractor for this relationship and will defend, indemnify

and hold City harmless from any claim to the contrary. Indeed, it is expressly agreed and understood between the parties hereto that the Vendor, acting as an independent agent, shall not receive any sick and annual leave benefits from the City.

17. CHOICE OF LAW & FORUM. The parties agree that that the laws of the State of Louisiana shall govern the validity, construction, interpretation, and effect of this Order, without regard to its conflicts of laws provisions. As to any and all disputes arising out of or in connection with the Order and any documents attached hereto and made a part hereof the Vendor hereby consents and yields to the jurisdiction of the Civil District Court for the Parish of Orleans, and expressly waives any (A) pleas of jurisdiction based upon Vendor's residence and (B) right of removal to federal court based upon diversity of citizenship.. The United Nations convention on contracts for international sale of goods and the Unfair Contracts Act in the United Kingdom shall not apply to this agreement. Any claim against the City shall be initiated by Vendor within one (1) year after the claim arises, or be forever barred.

18. AFFIRMATIVE ACTION. Vendor shall not maintain or provide racially segregated facilities for employees at any establishment under his control. Vendor agrees to adhere to the principles set forth in Executive Orders 11246 and 11375, and to undertake specifically: to maintain employment policies and practices that affirmatively promote equality of opportunity for minority group persons and women; to take affirmative steps to hire and promote women and minority group persons at all job levels and in all aspects of employment; to communicate this policy in both English and Spanish to all persons concerned within his company, and to discuss with City his policies and practices relating to his Affirmative Action program.

19. COMPLETE CONTRACT. The Order supersedes and replaces all prior written or oral communications with regard to the terms, obligations, and conditions of this Order. The Order may be amended only by Change Order. City's waiver of any provision hereof shall be effective only if contained in a Change Order.

20. ORDER BINDING. This Order is not assignable by either party unless authorized by a Change Order. Any attempt to the contrary shall be void and of no legal effect

21. CONFLICT BEWTEEN DOCUMENTS. In the event of any conflict between the provisions of these Terms and Conditions and any other Terms and Conditions issued by the City or Vendor, the terms and conditions contained in this document shall control. However, if the City and the Vendor enter into a formal contract pertaining to this Order, that contract shall control, and the terms contained in said contract shall supersede any conflicting terms contained herein or in the Order.

22. CONFLICT OF INTEREST. In the interest of ensuring that efforts of the Vendor do not conflict with the interests of the City, and in recognition of the Vendor's responsibility to the City, the Vendor agrees to decline any offer of employment if its independent work on behalf of the City is likely to be adversely affected by the acceptance of such employment. The initial determination of such a possibility rests with the Vendor. It is incumbent upon the Vendor to notify the City and provide full disclosure of the possible effects of such employment on the Vendor's independent work on behalf of the City. Final decision on any disputed offers of other employment for the Vendor shall rest with the City.

23. NON-EXCLUSIVITY. This Order is non-exclusive and the Vendor may provide work and/or services to other clients, subject to the City's approval of any potential conflicts with the performance of this Order and the City may engage the services of others for the provision of some or all of the work and/or services to be performed pursuant to this Order.

24. NO THIRD PARTY BENEFICIARIES. The Order is executed for the exclusive benefit of the City and the Vendor, and the City and the Vendor expressly disclaim any intent to benefit anyone not a party hereto.

25. SEVERABILITY. If a court of competent jurisdiction finds any provision of the Order to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law, or, if reformation is not possible, the unenforceable provision will be fully severable and the remaining provisions of the Order will remain in full force and effect and will be construed and enforced as if the unenforceable provision was never a part the Order.

26. CONSTRUCTION OF AGREEMENT. Neither party will be deemed to have drafted the Order. The Order has been reviewed by all parties and will be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. No term of the Order will be construed or resolved in favor of or against the City or the Vendor on the basis of which party drafted the uncertain or ambiguous language. Where appropriate, the singular includes the plural, and neutral words and words of any gender include the neutral and other gender.

27. SURVIVAL. All representations and warranties and all obligations concerning ownership, indemnification, payment, remedies, jurisdiction, venue, choice of law, and warranties shall survive the expiration, suspension, or termination of the Order and continue in full force and effect.

28. NON-WAIVER. The failure of the City to insist upon strict compliance with any provision of the Order, to enforce any right or to seek any remedy upon discovery of any default or breach of the Vendor at such time as the initial discovery of the existence of such noncompliance, right, default or breach shall not affect or constitute a waiver of the City's right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.

29. REMEDIES CUMULATIVE. No remedy set forth herein or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to a party. Rather, each remedy shall be deemed distinct, separate and cumulative and each may be exercised from time to time as often as the occasion may arise or as may be deemed expedient.