

## Purchase Order Addendum

This purchase order addendum sets forth the terms and conditions under which an offer is issued to the Seller by the Board of Regents of the University System of Georgia by and on behalf of Kennesaw State University (the "University") for the purchase of goods and/or services described in a University purchase order. The University purchase order, this purchase order addendum and any special or additional terms and conditions referenced by the University purchase order, constitute a binding contract (the "Contract") when accepted by the Seller either by acknowledgement or by shipment or other commencement of work. No quotation, acknowledgement or invoice form containing additional or different terms, or any other revision by Seller of the offer so constituted, shall be valid or binding on the University. If the University purchase order shall be deemed by Seller to be an acceptance of a prior offer, then such acceptance is limited to the terms and conditions set forth in this purchase order addendum and any special or additional terms and conditions referenced by the University purchase order.

Any reference to "contractor" or "supplier" in the University purchase order shall be deemed to be the "Seller" herein.

### A. NO INDEBTEDNESS BEYOND CURRENT FISCAL YEAR

The Contract between the University and Seller shall not be deemed to create a debt of the State for the payment of any sum beyond the fiscal year in which the appropriations have been made. The University's fiscal year commences July 1 and expires June 30 of each calendar year.

### B. DELIVERABLES

1. **Specifications.** The Seller shall provide all goods, services, and other deliverables specified in the University purchase order.
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 University purchase order. All items shall be at the Seller's risk until they have been delivered and accepted by the University. All items shall be subject to inspection upon delivery. Hidden damage will remain the responsibility of the Seller to remedy without cost to the University, regardless of when the hidden damage is discovered.
3. **Non-Exclusive Rights and No Minimums Guaranteed.** The Contract with Seller is not exclusive, and the University reserves the right to select other sellers to provide goods and services similar to goods and services described in the University purchase order. The Contract with Seller does not guarantee any minimum level of purchases unless stated otherwise in the University purchase order.

### C. COMPENSATION

1. **Pricing.** The Seller will be paid for the goods and services sold in accordance with the Contract with Seller. Unless clearly stated otherwise in the University 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. **Billings.** Unless the University otherwise provides, the Seller shall submit, on a regular basis, an invoice for goods and services supplied to the University at the billing address identified by the University purchase order, and the University shall remit payment to the Seller within thirty (30) calendar days of the University's receipt of the invoice. Each invoice issued by Seller must refer to the University purchase order by number in order to be paid.
3. **Delay of Payment Due to Seller's Failure.** If the University in good faith determines that the Seller has failed to perform or deliver any service or product as required by the Contract, the Seller shall not be entitled to any compensation under the Contract until such service or product is performed or delivered. In such event, the University may withhold that portion of the Seller's compensation which represents payment for services or products that were not performed or delivered.

### D. TERMINATION

1. **Immediate Termination.** In accordance with O.C.G.A. Section 50-5-64, the Contract with Seller will terminate immediately and absolutely, should the University determine that adequate funds are not

appropriated or granted or funds are de-appropriated such that the University cannot fulfill its obligations under the Contract, which determination is at the University's sole discretion and shall be conclusive. If the University declares a lack of funding pursuant to this paragraph, the University will not contract for the same goods or services during the remainder of the fiscal year (July 1 – June 30) in which the lack of funding was declared.

2. **Termination upon Notice.** Following thirty calendar days' written notice, the University may terminate the Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Seller.
3. **Payment Limitation in Event of Termination.** In the event of termination by the University of the Contract for any reason, the University shall pay only those amounts, if any, due and owing to the Seller for goods and services actually rendered up to and including the date of termination of the Contract for which the University is obligated to pay. Payment will be made only upon submission of invoices (referencing, in each case, the University purchase order, by number) and proper proof of the Seller's claim. This provision in no way limits the remedies available to the University under the Contract in the event of termination.
4. **The Seller's Termination Duties.** Upon receipt of notice of termination or upon request of the University, the Seller shall cease work and take all necessary or appropriate steps to limit disbursements and minimize costs. The Seller shall immediately cease using and return to the University any personal property or materials, whether tangible or intangible, provided by the University to the Seller. Further, the Seller shall immediately return to the University any payments made by the University for goods and services that were not delivered or rendered by the Seller.

#### **E. PATENT/COPYRIGHT INFRINGEMENT INDEMNIFICATION**

Seller 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, the University, its officers, employees, agents and assigns (collectively, the "Indemnified Parties") and 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 the State gives the Seller immediate notice in writing of the institution of such suit (failure to give immediate notice shall not limit Seller's obligations hereunder except to the extent Seller is prejudiced thereby), permits Seller to fully participate in the defense of the same, and gives Seller all available information, assistance and authority to enable Seller to do so. Subject to approval of the Attorney General of the State of Georgia, the University shall tender defense of any such action to Seller upon request by Seller. Seller shall not be liable for any award of judgment against the Indemnified Parties reached by compromise or settlement unless Seller accepts the compromise or settlement. Seller 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 the State unless approved by the State.

In case any of the goods and/or services in any suit is held to constitute infringement and its use is enjoined, Seller shall, at its option and expense:

- (i) Procure for the State the right to continue using the goods and/or services;
- (ii) Replace or modify the same so that it becomes non-infringing; or
- (iii) Remove the same and cancel any future charges pertaining thereto.

Seller, however, shall have no liability to the State if any such infringement claim is based upon or arises out of:

- (i) Compliance with designs, plans or specifications furnished by or on behalf of the University as to the goods and/or services;
- (ii) Use of the goods and/or services in combination with apparatus or devices not supplied by Seller;
- (iii) Use of the goods and/or services in a manner for which the same was neither designed nor contemplated; or

- (iv) The claimed infringement of any patent or copyright in which the University or any affiliate or subsidiary of the University has any direct interest by license or otherwise.

**F. CONFIDENTIAL INFORMATION**

**1. Access to Confidential Data.** The Seller and Seller’s employees, agents and subcontractors may have access to confidential data maintained by the University to the extent necessary to carry out the Seller’s responsibilities under the Contract. The Seller shall presume that all information received pursuant to the Contract is confidential unless otherwise designated by the University. If it is reasonably likely the Seller will have access to the University’s confidential information, then:

- (i) The Seller shall provide to the University a written description of the Seller’s policies and procedures to safeguard confidential information;
- (ii) Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats;
- (iii) The Seller must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Seller in connection with the performance of the Contract; and
- (iv) The Seller shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of the Contract.

The private or confidential data shall remain the property of the University at all times. Some services performed for the University may require the Seller to sign a nondisclosure agreement. Seller understands and agrees that refusal or failure to sign such a nondisclosure agreement, if required, may result in termination of the Contract.

**2. No Dissemination of Confidential Data.** No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of the University, either during the period of the Contract or thereafter. Any data supplied to or created by the Seller shall be considered the property of the University. The Seller must return any and all data collected, maintained, created or used in the course of the performance of the Contract, in whatever form it is maintained, promptly at the request of the University.

**G. INDEMNIFICATION AND INSURANCE**

In the event the Seller, its employees, agents or subcontractors, enter premises occupied by or under the control of the University in the performance of this Contract, the Seller agrees to indemnify and hold harmless the State of Georgia, its officers, employees and agents, from and against any and all claims, demands, costs or expenses (including but not limited to reasonable expenses of the State of Georgia Attorney General’s Office) related to or arising from the negligence or other fault of the Seller, its employees, agents or subcontractors in the performance of this Contract. Seller agrees that it and its subcontractors will maintain public liability and property damage insurance covering the obligations set forth in the foregoing, in the types and amounts as follows:

Workers Compensation (WC):	Required for all Contracts NO EXEMPTIONS
Commercial General Liability (CGL):	
Each Occurrence Limit	\$1,000,000
Personal & Advertising Injury Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products/Completed Ops. Aggregate Limit	\$2,000,000
Automobile Liability	
Combined Single Limit	\$1,000,000

The Seller shall add the "State of Georgia, its officers, employees and agents" as an additional insured under the commercial general and automobile liability policies, providing the University with a certificate of such coverage prior to entering the premises occupied by or under the control of the University. The indemnity obligations of the Seller under this paragraph shall survive termination of this Contract.

## **H. WARRANTIES**

1. **Warranties.** The Seller represents and 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 Seller's industry. The warranties expressed in the University 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 Seller. Acceptance by the University shall not relieve the Seller of its warranty or any other obligation under the Contract.
2. **Originality and Title to Concepts, Materials, and Goods Produced.** Seller represents and warrants that all concepts, materials, goods and services produced, or provided to the University under the Contract shall be wholly original with the Seller or that the Seller has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and works. Work provided hereunder shall be "work made for hire" and shall be the property of the University. The Seller represents and warrants that title to any property assigned, conveyed or licensed to the University is good and that transfer of title or license to the 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 Contract.** The Seller represents and warrants that it has full authority to enter into the Contract 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 the University

## **I. CONTRACT ADMINISTRATION**

1. **Compliance with the Law.** The Seller, its employees, agents, subcontractors and assigns shall comply with all applicable federal, State, and local laws, rules, ordinances, regulations and orders now or hereafter in effect when performing under the Contract. Seller and Seller's personnel shall also comply with all State and University policies and standards in effect during the performance of the Contract, including but not limited to the University's policies and standards relating to personnel conduct, security, safety, confidentiality, and ethics. The provisions of O.C.G.A. Section 45-10-20 et seq. (pertaining to conflicts of interest) have not and will not be violated under the terms of this Contract.
2. **Drug-free Workplace.** The Seller hereby certifies as follows:
  - (i) Seller will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of this Contract; and
  - (ii) If Seller has more than one employee, including Seller, Seller shall provide for such employee(s) a drug-free workplace, in accordance with the Georgia Drug-free Workplace Act as provided in O.C.G.A. Section 50-24-1 et seq., for the duration of this Contract; and
  - (iii) Seller will secure from any subcontractor hired to work on any job assigned under this Contract the following written certification: "As part of the subcontracting agreement with (Seller's Name), (Subcontractor's Name) certifies to the Seller that a drug-free workplace will be provided for the subcontractor's employees during the performance of this Contract pursuant to paragraph 7 of subsection (b) of Code Section 50-24-3."

Seller may be suspended, terminated, or debarred if it is determined that:

- (i) Seller has made false certification herein above; or
  - (ii) Seller has violated such certification by failure to carry out the requirements of O.C.G.A. Section 50-24-3(b).
3. **Amendments.** The Contract may be amended in writing by mutual consent of the parties. All amendments to the Contract 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 Contract. The Contract is intended only to benefit the University and the Seller.
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 Contract without regard to the choice of law provisions of state law. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Contract, 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 the State of Georgia.
6. **Integration.** The Contract 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 Seller at the address identified in the University purchase order.
8. **Severability.** If any provision of the Contract 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 Contract.
9. **Time is of the Essence.** Time is of the essence with respect to the performance of the terms of the Contract.
10. **Debarred, Suspended and Ineligible Status.** Seller certifies that the Seller and/or any of its subcontractors have not been debarred, suspended or declared ineligible by any agency of the State of Georgia. Seller will immediately notify the University if Seller is debarred by the State of Georgia or placed on the Consolidated List of Debarred, Suspended and Ineligible Sellers by a federal entity.
11. **Taxes.** The University is exempt from certain sales and use taxes. Seller certifies it is either (a) registered with the Georgia State Department of Revenue, collects, and remits State 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 either party.
13. **Independent Contractor.** Seller acknowledges and agrees that it is an independent contractor and is not an employee, agent, partner, or joint venturer of or with the University. Seller shall not be entitled to participate in any vacation, medical or other fringe benefit or retirement program of the University and shall not make claim of entitlement to any such employee program or benefit. Seller shall be solely responsible for the payment of withholding taxes, FICA, State of Georgia, and other such tax deductions on any payments or earnings made, and University shall have no responsibility therefor. Seller agrees to indemnify and reimburse the University from any claim or assessment by any taxing authority arising from this paragraph. Seller further agrees to keep confidential any and all information about the University and its current or former employees that is not currently in the public domain, which may be disclosed to or learned in carrying out duties and activities under this Contract.
14. **Transition Cooperation and Cooperation with other Contractors.** Seller agrees that upon termination of this Contract for any reason, it shall provide sufficient efforts and cooperation to ensure an orderly and efficient transition of services to the University or another contractor. The Seller shall provide full disclosure to the University and the third-party contractor about the equipment, software, or services required to perform services for the University. The Seller shall transfer licenses or assign agreements for any software or third-party services used to provide the services to the University or to another contractor.