

## SECTION 1 - COMMERCIAL ITEMS OR SERVICES CONTRACT GENERAL PROVISIONS CALIFORNIA INSTITUTE OF TECHNOLOGY ("CALTECH")

### 1. OFFER AND CONTRACT

The following terms, with such terms, plans, specifications or other documents as attached or incorporated by reference as set forth on the face of this purchase order, constitute the offer of Caltech to Supplier and shall, when accepted, constitute the entire agreement ("Contract") between Caltech and Supplier. Caltech gives notice of its objection to any different or additional terms. This Contract is valid only as written. If price, terms, shipping date or other expressed condition of this Contract are not acceptable, Caltech must be notified and any variation must be accepted in writing prior to shipment or delivery. This Contract shall be deemed to have been accepted (a) absent written notification of non-acceptance by the Supplier within a reasonable time, or (b) upon timely delivery of the products identified to the shipping address specified on the face of the order.

Supplier will provide the goods and services to be furnished under the Contract ("Services") as an independent contractor and furnish all equipment, personnel and material sufficient to provide the Services expeditiously and efficiently. Supplier will devote only its best-qualified personnel to work under the Contract. Should Caltech inform Supplier that anyone providing the Services is not working to this standard, Supplier will immediately remove such personnel from providing Services and he or she will not again, without each of Caltech's written permission, be assigned to provide Services. At no time will Supplier or Supplier's employees, sub-suppliers, agents, or assigns be considered employees of Caltech for any purpose, including but not limited to workers' compensation provisions.

### 2. TIME OF DELIVERY

Time is of the essence in this Contract. If delivery dates cannot be met, Supplier must notify Caltech immediately. Such notification shall not, however, constitute a change to the terms of this Contract except as the order may be modified in writing by Caltech.

### 3. IMPROPER DELIVERY

In addition to other remedies provided by law, Caltech reserves the right to refuse any goods or services and to cancel all or any part of this Contract if Supplier fails to deliver all or any part of the goods or services in accordance with the terms and conditions of this Contract. Acceptance of any part of this order shall not bind Caltech to accept any future shipments nor deprive it of the right to return goods already accepted.

### 4. ASSIGNMENT SUBCONTRACTING AND AMENDMENT

The Supplier shall have no right to assign or subcontract this Contract or any benefits from this Contract without prior written consent of Caltech. This Contract may only be amended by a writing signed by each of the parties' authorized representatives. Waiver or non-enforcement by either party of a provision of the Contract will not constitute a waiver or non-

enforcement of any other provision or of any subsequent breach of the same or similar provision.

### 5. AUTHORITY OF CALTECH REPRESENTATIVES AND REQUIRED NOTICES; FACSIMILE AND ELECTRONIC SIGNATURES ACCEPTABLE

(a) No order, notice, or direction received by the Supplier shall be binding unless issued or ratified in writing by the Caltech Purchasing Agent, the Director of Procurement Services, or by representatives designated in writing by either of them.

(b) Facsimile (fax) or electronic signature copies of contract documents are just as binding as originally-executed documents.

### 6. CHANGES

Caltech may by a written order to the Supplier, make changes within the general scope of this Contract in: (a) drawings, designs, or specifications; (b) method of shipment or packing; and (c) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this order, an equitable adjustment shall be made in the price or delivery schedule or both, and the order shall be modified in writing accordingly. Any claim by Supplier for adjustment under this Article must be asserted within 30 days from receipt by Supplier of the notification of change; provided, however, that Caltech, if it decides that the facts justify such action, may receive and act upon any such claim asserted prior to final. Nothing in this clause shall excuse Supplier from proceeding with this order as changed.

### 7. FORCE MAJEURE

Neither party shall be liable for damages arising out of failure to deliver or any delay in delivery caused by strikes, lockouts, fires, war, or acts of God. Supplier shall notify Caltech in writing as soon as possible after the commencement of any event triggering a delayed delivery or inability to deliver.

### 8. EXISTING COMMERCIAL COMPUTER SOFTWARE – LICENSING

(This Article applies to the acquisition of a license of existing commercial computer software under this Contract, including Commercial-off-the shelf (COTS) software. This Article does not apply to the development of software.)

(a) If the Supplier proposes its standard commercial software license, only those portions of the license that comply with the provisions of this Contract are incorporated into and made a part of this Contract.

(b) If the Supplier does not propose its standard commercial software license until after this Contract has been issued, or at or after the time the computer software is

delivered, such license shall nevertheless be deemed incorporated into and made a part of this Contract under the same terms and conditions as in paragraph (a) above. To receive updates, correction notices, consultation, and similar activities on the computer software, any authorized user may acknowledge receipt of a registration form or card and return it directly to the Supplier; however, such signing shall not add to or alter the terms and conditions of this Contract regardless of any notations on the form or card to that effect.

(c) If the specified computer software is shipped or delivered to Caltech, the Supplier agrees that it has unconditionally accepted the terms and conditions in this Article and that the terms and conditions of this Contract (including the incorporated license) constitute the entire agreement between the parties concerning rights in the computer software.

(d) The computer software may be:

(1) Used, or copied for use, in or with any computer owned or leased by, or for Caltech. Any restrictions on use of the software or distribution of the software to multiple such computers shall be void unless explicitly agreed to by Caltech.

(2) Reproduced for safekeeping (archives) or backup purposes;

(3) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software shall be subject to the same restricted rights; and

(4) Disclosed and reproduced for use by Caltech designees under this Article.

(e) The software may be used by Caltech in support and furtherance of Caltech's obligations to the US Government or other funding organization.

(f) Supplier warrants it has the right to sell, license, or transfer the license for the software furnished to Caltech under this Contract

## 9. COPYRIGHTABLE WORK

Supplier hereby assigns to Caltech the entire copyright, title and interest in copyrightable work generated in the performance of this Contract.

## 10. EXPORT COMPLIANCE

a) LICENSES. The Supplier shall comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799. Absent license exemptions/exceptions, the Supplier shall obtain the appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance.

b) IDENTIFICATION OF EXPORT CONTROLLED ITEMS. The Supplier shall notify Caltech in writing prior to delivery if it will provide any items under this Contract controlled under ITAR (i.e., hardware, software, technology, components, accessories, etc.). Any such item(s) or its packaging shall be properly marked to alert Caltech of the ITAR restrictions upon delivery to Caltech.

## 11. DISPUTES AND GOVERNING LAW

(a) Any dispute arising out of this Contract shall be submitted for resolution to ascending levels of management of the parties. If the dispute cannot be resolved after such

negotiations, either party may pursue any appropriate legal recourse consistent with the provisions of this Contract.

(b) Pending any decision, judgment or settlement of any dispute, Supplier will proceed diligently with performing this Contract.

(c) This Contract and any document to which it is appended shall be construed and enforced under the laws of California. Disputes will be adjudicated in Los Angeles, California.

## 12. INSPECTION AND ACCEPTANCE

Caltech may inspect the work and activities of the Supplier under this Contract in a reasonable and appropriate manner. Final inspection shall be at Caltech's premises unless otherwise agreed in writing. Items rejected as not conforming to this order shall be, at Caltech's option, returned at Supplier's expense, including transportation and handling fees, or corrected or replaced by Supplier. Unless the Supplier removes, corrects or replaces the goods or services within the delivery schedule, Caltech may require its delivery and make an equitable price reduction. Caltech may also opt for a refund of the amount paid under this Contract.

## 13. INSURANCE

(This Article applies when the Supplier will enter Caltech-controlled premises.)

(a) The Supplier shall, provide and maintain during the performance of this Contract the following insurance with Caltech named as an additional insured in policies for comprehensive liability insurance with a carrier licensed and admitted in the State of California:

(1) Workers' Compensation and Employer's Liability Insurance, as required by applicable Federal and State workers' compensation and occupational disease statutes. The Employer's Liability coverage limit shall not be less than One Million Dollars (\$1,000,000, except in states with exclusive or monopolistic funds that do not permit worker's compensation to be written by private carriers.

(2) Commercial General Liability Insurance, including automobiles (owned, non-owned, or leased), completed operations, products, and contractual liability, for a combined coverage limit of not less than Two Million Dollars (\$2,000,000) for all deaths, injuries, and property damage arising from one accident or occurrence.

(3) For Professional Service Providers, they shall maintain Errors and Omissions Insurance, including coverage for personal injury, death, property damage, and contractual liability for a combined coverage limit of not less than Two Million Dollars (\$2,000,000) for each occurrence (Five Million Dollars (\$5,000,000) in the aggregate.) Said insurance shall be maintained for the statutory period during which the professional may be exposed to liability. Supplier shall require that the aforementioned professional liability insurance coverage language also be incorporated into its contract with any other entity with which it contracts for professional services.

(b) Insurance Certificates and Endorsements. Before commencing work under this Contract, the Supplier shall furnish (i) certificates of insurance for the coverages specified in paragraph (a) above, and (ii) an additional insured endorsement naming Caltech as an additional insured to the Contract for the coverage specified above. Such certificates and the endorsement shall provide that any cancellation or material change shall not be effective (i) for such period as the laws of the State in which this Contract is performed, or (ii) until

30 days after the insurer or the Supplier gives written notice to Caltech, whichever period is longer. Also, such certificates and the endorsement shall (i) cover contractual liability assumed under this Contract, and (ii) be primary and non-contributing to any insurance procured by Caltech. The Supplier agrees to permit Caltech to examine its original policies. Should the Supplier neglect or refuse to provide the insurance required, or should such insurance be canceled, Caltech may procure same and the costs shall be deducted from monies then due or to become due to the Supplier.

#### 14. INDEMNIFICATION

(a) Supplier agrees to indemnify and to hold Caltech, its trustees, agents, officers, employees and students, harmless against all costs, claims, liability, loss, damage, and expenses including attorney's fees, arising from or due to any actual or claimed trademark, patent or copyright infringement and any litigation based thereon, regarding any part of the goods and work covered by this purchase order. Supplier shall defend any such litigation brought against Caltech, provided that Caltech notifies Supplier promptly of any such suit. Caltech retains the right to participate in the defense against any such claim or act and the right to consent to any settlement, the consent of which will not be unreasonably withheld. Supplier's obligations shall survive acceptance of the goods and payment by Caltech.

(b) Supplier agrees it will be responsible to Caltech for, and will indemnify, immediately defend and hold harmless Caltech, its trustees, agents, officers, employees and students, from any loss, cost, damage, expense or liability, including attorney's fees, or any suit therefore, by reason of actual or alleged claims of any kind, including but not limited to, property damage or personal injury of whatever kind of character relating to the performance of the work by the Supplier or its lower-tier subcontractors, however caused, including any resulting from any alleged or actual negligent act or omission, regardless of whether such act or omission, regardless of whether such act or omission is active or passive, but excepting only a duty to indemnify to the extent such loss, cost damage, expense or liability is:

(i) Under any construction contract, attributable to the active negligence or willful misconduct of Caltech, its trustees, agents, officers or employees; or

(ii) Under any other contract for either goods or services, attributable to the sole negligence or willful misconduct of Caltech, its trustees, agents, officers or employees.

Caltech retains the right to participate in the defense against any such claim or action, and the right to consent to any settlement, which consent will not unreasonably be withheld.

#### 15. NEW MATERIAL

Unless this Contract specifies otherwise, the Supplier represents that the supplies, are new and are not of such age or so deteriorated as to impair their usefulness or safety. If the Supplier believes that furnishing other than new material will be in Caltech's interest, the Supplier shall so notify the Purchasing Agent in writing and request authority to use such material.

#### 16. ORDER OF PRECEDENCE

To the extent there is inconsistency among any documents relating to this order, the inconsistency will be resolved in these order of priority:

(a) These General Provisions;

(b) The details specified on the order, or description of products or services;

(c) The Supplier's contract provisions.

#### 17. PAYMENT

(a) Invoices shall be submitted in duplicate to the attention of Caltech's Accounts Payable Department, unless otherwise specified, and shall contain this information: (i) Contract number, (ii) item number, (iii) description of supplies or services, (iv) size, (v) quantity, (vi) unit price, (vii) extended totals and (viii) any other information which may be specified on the face of this Contract. Any state sales or use taxes or Federal excise taxes shall be shown separately on the invoice.

(b) Caltech shall pay the Supplier, upon the submission of proper invoices, the prices stipulated in this Contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this Contract.

(c) Caltech shall make its best effort to make payments within the net period specified in the Contract, measured from receipt of the goods or services at the destination or the date of receipt of the invoice, whichever is later. Discount time periods will be measured from the same date. Payment shall be deemed to have been made on the date the check is mailed or on the date on which an electronic funds transfer was made. Caltech will not be liable for or pay a surcharge, interest, or any penalty because of Caltech's payment not being made within the net period specified in the Contract or the date of payment by electronic funds transfer.

(d) Payment for goods or services under this paragraph will not waive or otherwise affect the right of Caltech to inspect such goods or services or to reject, or revoke acceptance of, nonconforming goods.

(e) 5) *Overpayments*. If the Supplier becomes that Caltech has overpaid on an invoice payment, the Supplier shall (i) Remit the overpayment along with a description of the overpayment to Caltech's Accounts Payable Department including the (A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment); (B) Affected contract number and delivery order number, if applicable; (C) Affected contract line item or subline item, if applicable; and (D) Supplier point of contact. (ii) Provide a copy of the remittance and supporting documentation to Caltech Purchasing Agent.

#### 18. USE OF NAME

Supplier agrees not to use the name or trademarks of Caltech or any member its staff in sales promotional work or advertising, or in any form of publicity, without the prior written permission of Caltech.

#### 19. TITLE AND RISK OF LOSS

(a) Title to deliverables shall pass to Caltech upon formal acceptance by Caltech, regardless of when or where Caltech takes physical possession, unless the Contract specifically provides for earlier passage of title.

(b) Risk of loss shall pass to Caltech until deliverables have been actually received and accepted by Caltech at the destination specified. Supplier assumes all responsibility for packing, crating, marking, transportation and liability for loss or damage in transit, notwithstanding any agreement by Caltech to pay freight, express or other transportation charges. Supplier agrees to trace lost or delayed shipments at the request of Caltech.

## 20. TAXES

(a) Except as may be otherwise provided in this order, the contract price includes all Federal, State, and local taxes and duties. Regarding transactions for which Caltech may be exempt from any tax or duty, Caltech will provide, upon request, evidence to support its claim to such exemption.

(b) Caltech will comply with all Federal and State income tax laws regarding withholding and year-end tax reporting.

(c) The Internal Revenue Service (IRS) requires Caltech to have on file a Taxpayer Identification Number (TIN) for every US person or US business that receives a payment, regardless if the payment is tax reportable or not. This information is on IRS Form W-9. US Citizens and Resident Aliens must complete a Form W-9 before receiving any payments from Caltech. A TIN can be: a Social Security Number (SSN) an Individual Taxpayer Identification Number (ITIN) or an Employer Identification Number (EIN). Failure to provide a TIN will cause delay of payment and/or backup withholding.

(d) Foreign businesses providing services in the US for Caltech must provide the appropriate IRS Form W-8 (i.e., Form W-8BEN, W-8ECI, or W-8IMY).

(e) Foreign individuals providing services in the US for Caltech must provide an IRS Form W-8BEN or IRS Form 8233 depending on the appropriate tax withholding treatment.

## 21. TERMINATION

(a) For Cause. Caltech may terminate this Contract, or any part, for cause if any default occurs by the Supplier, or if the Supplier violates any Contract terms and conditions, or fails to provide Caltech, upon request, with adequate assurances of future performance. In the event of termination for cause, Caltech shall not be liable to the Supplier for any amount for supplies or services not accepted, and the Supplier shall be liable to Caltech for such damages as would give Caltech the benefit of the bargain, put Caltech in the same position that it would have been in if the Supplier had not breached the Contract and any and all rights and remedies provided by law. If it is determined that Caltech improperly terminated this Contract for cause, such termination shall be deemed a termination for convenience.

(b) For Convenience. Caltech reserves the right to terminate this Contract, or any part, for its sole convenience. If such termination occurs, the Supplier shall immediately stop all work and shall immediately cause all of its subcontractors to cease work. Subject to the terms of this Contract, the Supplier shall be paid a percentage of the Contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Supplier can demonstrate to the satisfaction of Caltech, using its standard record keeping system, have resulted from the termination. The Supplier shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(c) Survival. Upon expiration or termination of this Contract, the following provisions will survive: EXPORT COMPLIANCE; DISPUTE AND GOVERNING LAW; WARRANTIES; COPYRIGHTABLE WORK; INDEMNIFICATION; USE OF NAME; AND CONFIDENTIALITY.

## 22. WARRANTY

In addition to the warranties set forth in the Contract, Supplier makes the following warranties. Supplier acknowledges

that failure to comply with any of the warranties in the Contract will constitute a material breach of the Contract and Caltech by mutual agreement will have the right to terminate the Contract without damage, penalty, cost or further obligation.

(a) General Warranties. Supplier agrees that the Services furnished under the Contract will be covered by the most favorable warranties Supplier gives to any customer for the same or substantially similar services, or such other more favorable warranties as specified in the Contract. The rights and remedies so provided are in addition to and do not limit any rights afforded to Caltech by any other provision of the Contract. Supplier expressly warrants all goods and services delivered under this Contract to be free from defects in material and workmanship and to be of the quality, size and dimensions ordered. This express warranty shall not be waived by reason of the acceptance of the goods or services or payment by Caltech. The Supplier shall provide Caltech with a copy of any standard warranty which is normally offered on a commercial product deliverable under this Contract. The commercial product warranty shall be deemed to be incorporated by reference and Caltech shall be entitled to all rights under such warranty.

(b) Permits and Licenses. Supplier agrees to procure all necessary permits and licenses and abide by all applicable laws, regulations and ordinances of the United State and of the state, territory and political subdivision or any other country in which the Services are provided.

(c) Warranty and Quiet Employment. Supplier warrants that Supplier has the right to use all intellectual property that will be needed to provide Services.

## 23. OCCUPATIONAL SAFETY AND HEALTH ACT

By accepting this Contract, Supplier certifies that all products and services provided conform to current OSHA requirements.

## 24. EQUAL EMPLOYMENT OPPORTUNITY

This Contract is subject to the requirements of Executive Orders 11246 and 11375 and the rules and regulations of the Secretary of Labor (41 CFR Chapter 60) in promoting Equal Employment Opportunities.

## 25. AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM WAR

This Contract is subject to the requirements of Public Laws 92-540 and 93-508, Executive Order 11701, and the regulations of the Secretary of Labor (41 CFR Part 60-250) in promoting employment opportunities for disabled and Vietnam veterans.

## 26. AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS

This Contract is subject to the requirements of Section 503 of the Rehabilitation Act of 1973, Public Laws 93-112 and 93-516, Executive Order 11758 and the regulations of the Secretary of Labor (41 CFR Part 60-471) in promoting affirmative action in employment of the handicapped.

## 27. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION

This Contract, if it is of a character specified in the Contract Work Hours and Safety Standards Act (40 USC §3701 et. seq), is subject to the Act, including overtime requirements and penalties for violation.

- (b) Is currently in, or in the future enters, the public domain other than through a breach of this Contract or through other acts or omissions of Supplier;
- (c) Is obtained lawfully from a third party, or;
- (d) Is required to be disclosed by legal process.

**28. ANTI-KICKBACK ENFORCEMENT ACT OF 1986**

This Contract is subject to the Anti-Kickback Enforcement Act of 1986, Public Law 99-634 (41 U.S.C. 51-58). By accepting this order, Seller certifies it has not paid kickbacks directly or indirectly to any Caltech employee to obtain this or any other Caltech purchase order or to obtain favorable treatment in a Caltech matter.

**33. SEVERABILITY**

If a provision of this Contract becomes, or is determined to be illegal, invalid, or unenforceable, that will not affect the legality, validity or enforceability of any other provision of the Contract or of any portion of the invalidated provision that remains legal, valid, or enforceable.

**29. SUSTAINABILITY**

To support Caltech's desire for a more sustainable Campus, Caltech reserves the right to contract with suppliers who demonstrate such appropriate regard to the following and shall make their best effort to (a) give appropriate regard to protecting the natural environment in the recommendation, sourcing, and provision of products to Caltech, (b) practice a "no paper catalogue" and online option for available products and services, (c) not send Caltech hard copy marketing materials, (d) minimize the packaging of any materials sold and delivered to Caltech, (e) used recycled materials and implement a take-back program, and (f) provide Supplier's recycling and sustainability policies and procedures and outline any and all sustainable services Supplier provides regarding this Contract.

**34. LIENS**

Supplier agrees that at any time upon request of Caltech, Supplier will submit a sworn statement setting forth the work performed or material furnished by sub-suppliers and material men, and the amount due and to become due to each, and that before the final payment called for under this Contract, will upon Caltech's request submit a complete set of vouchers showing what payments have been made for such work performed or material furnished. Supplier will promptly notify Caltech in writing of any claims, demands, and causes of action, liens or suits brought to its attention that arises out of this Contract. Caltech will not be obligated to make final payment until Supplier, if required, delivers to Caltech a complete release of all liens arising out of this Contract, or receipts in full in lieu thereof, as Caltech may require, and if required in either case, an affidavit that as far as it has knowledge or information, the receipts include all the labor and materials for which a lien could be filed; but Supplier may, if any sub-supplier refuses to furnish a release or receipt in full, furnish bond satisfactory to Caltech to indemnify it against any claim by lien or otherwise. If any lien or claim remains unsatisfied after all payments are made, Supplier will refund to all monies that Caltech may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorneys' fees.

**30. BANKRUPTCY**

- (a) If the Supplier enters bankruptcy proceedings, whether voluntary or involuntary, the Supplier shall furnish written notification of the bankruptcy to Caltech's Purchasing Agent within five days of the initiation of the proceedings. This notification will include the date on which the bankruptcy petition was filed and the identity of the court in which the bankruptcy petition was file.
- (b) The Supplier shall to the maximum extent permitted by law: (1) continue to ensure that Caltech has the right of access to all areas of the facilities and records involved in this order; and (2) provide Caltech access to documents delivered in place or held at the Supplier's facility or provide electronic copies thereof. The Supplier shall ensure that the trustee, receiver, liquidator and court, knows of this access requirement.
- (c) These obligations remain in effect until final payment under this order.

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**31. NO THIRD PARTY RIGHTS**

Nothing in this Contract is intended to make any person or entity that is not a signer to this Contract a third-party beneficiary of any right created by this Contract or by operation of law.

**32. CONFIDENTIALITY**

Supplier will use its best efforts to keep confidential any information provided by Caltech and marked "Confidential Information," or any oral information conveyed to Supplier by Caltech and followed by a written communication within thirty (30) days that the information is Confidential Information. This non-disclosure provision will not apply to any of the following:  
(a) Information which Supplier can demonstrate by written records was known to Supplier prior to the effective date of this Contract (unless covered by a separate confidentiality obligation between such parties);