

Tufts University

Terms and Conditions for the Purchase of Goods and Services

1. **Terms and Conditions.** Acceptance of a Tufts University purchase order (hereafter, the “PO”) by the supplier (the “Supplier”) on the terms and conditions hereof shall be evidenced by either (i) the Supplier’s written acknowledgment of the PO or (ii) the Supplier’s commencement of performance. Together, these Terms and Conditions for the Purchase of Goods and Services and the PO shall form the agreement between the Supplier and Tufts University (hereafter, the “**Agreement**”). Supplier and Tufts shall each be a “Party” to the Agreement and collectively, Supplier and Tufts shall be known as the “Parties.”
 - 1.1. The Agreement shall be effective on the date of the PO (“Effective Date”) and shall remain in effect until all obligations set forth in the Agreement have been fulfilled.
 - 1.2. Supplier shall perform all of the services and supply all of the goods set forth in the PO.
 - 1.3. Any employee, agent or consultant of Supplier performing work or supplying goods hereunder shall be bound by the applicable terms and conditions of this Agreement.
 - 1.4. To the extent there exists any inconsistency between this Agreement and the terms of a separately executed agreement between the Parties, such separate agreement shall control, limited to the subject matter therein. The Agreement shall control all subject matter not specifically addressed in such separately executed agreement.
 - 1.5. Except as expressly provided herein, the Agreement supersedes all prior communications, oral or written, between Tufts and the Supplier with respect to the subject matter hereof.
2. **Survival.** Paragraphs 5 (Confidentiality), 6 (Use of Name), 7 (Media Contact), 10 (Ownership/License of Intellectual Property), 12 (Warranty) and 16 (Indemnification) 19 (Controlling Law and Jurisdiction), 20 (Waiver of Jury Trial), and 21 (Notices) of these Terms and Conditions for the Purchase of Goods and Services shall survive any termination of the Agreement.
3. **Terms of Payment.** Payment is due Net forty five (45) days from invoice date upon receipt of Supplier’s undisputed invoice. Contact TSS@tufts.edu for other payment term options.
4. **Changes.** Tufts reserves the right, by notice to Supplier as provided herein, to make reasonable changes in the scope of services and/or products required, in which event a mutually agreeable adjustment will be made to the price, time of performance, and/or other relevant provisions of this Agreement required to be changed thereby. Any claim by Supplier for such adjustment must be made within fifteen (15) calendar days from the date of receipt by Supplier of such change, and such claim is subject to negotiation with Tufts.
5. **Confidentiality.** Confidential information means information marked or otherwise identified in writing by a Party as proprietary or confidential or that, under the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary or confidential. It includes non-public information regarding either Party’s trade secrets, reports, systems, products, features, marketing and promotions, information on employees, customers, alumni, students, systems and business practices. Confidential Information does not include: (i) information which the recipient developed independently; (ii) information which the recipient knew before receiving it under the relevant agreement; or (iii)

information which is or subsequently becomes publicly available or is received from another source, in both cases other than by a breach of an obligation of confidentiality.

Each Party agrees to hold the other Party's Confidential Information in confidence. Each Party will exercise its best efforts to safeguard each other's Confidential Information. Such precautions will be at least as great as those that either Party takes to protect its own Confidential Information, but in no event less than a reasonable degree of protection. Each Party will disclose the other Party's Confidential Information to its employees, agents and consultants only on a need-to-know basis and subject to the confidentiality obligations imposed here. When Confidential Information is no longer necessary to perform any obligation under any part of the Agreement, it will be, at the option of the disclosing Party, returned to its owner or destroyed.

Neither Party will use the other's Confidential Information except in furtherance of this business relationship or disclose the other's Confidential Information except: (i) to obtain advice from legal or financial consultants, or (ii) if such disclosure is directly pursuant to a valid and existing order of a court or other governmental body or agency, in which case the disclosing Party will use its best efforts to give the other Party prompt notice of the requirement so that the disclosure can be contested or limited.

6. **Use of Name.** Supplier shall not use the names "Tufts" or "Tufts University", or the name of any school or division thereof, or any logo or insignia of Tufts or of any school or division thereof, or otherwise identify Tufts or any school or division thereof, in any form of publicity or disclosure (other than including Tufts University's name in a list of clients) without the prior consent of Tufts, which consent may be withheld or granted by Tufts in its complete and uncontrolled discretion at any time or times. Any request for any such name use shall be directed to the Office of University Counsel at Tufts.
7. **Media Contact.** Supplier shall not communicate with members of the media or otherwise make any public announcement regarding the goods supplied and/or services performed by Supplier pursuant to this Agreement, or the terms of this Agreement, without the prior written consent of Tufts' Vice President for University Relations or its Director of Public Relations. Any inquiries from the media shall be referred to Tufts' Senior Vice President for University Relations or Director of Public Relations.
8. **Compliance with Law.** Supplier agrees to comply with all applicable federal, state and local laws and regulations applicable to the Agreement and to the performance of services and provision of goods hereunder. Supplier shall be responsible for obtaining all licenses and permits required for the performance of services and provision of goods hereunder. Supplier warrants to Tufts that (i) it has full legal right to enter into this Agreement, and (ii) it has all licenses and permits required to supply goods and/or deliver services covered by this Agreement.

Without limiting the foregoing, M.G.L. Chap. 93H and 201 Code of Mass. Regs. 17.00 et seq. (collectively, the "IS Regulations") mandate certain procedures to safeguard the "Personal Information" (as defined in the IS Regulations) of Massachusetts residents. To the extent that Supplier may have access to Personal Information pursuant to this Agreement, Supplier hereby certifies that it has implemented and will maintain appropriate security measures to protect Personal Information, in accordance with the IS Regulations. Supplier further agrees that, in the event of any suspected or actual breach of security involving such Personal

Information, Supplier will (i) promptly notify Tufts, (ii) comply with the applicable provisions of the IS Regulations and (iii) cooperate with Tufts to investigate and remediate any such breach and to provide notice to affected parties.

If Tufts receives a contract or grant from any department or agency of the United States government or any state government ("Government Contract") or is hired as a subcontractor under a Government Contract, and Supplier shall be paid out of funds from such Government Contract, then Supplier agrees to comply with all applicable flow down provisions of the Government Contract, provided however, that such terms have been disclosed to Supplier prior to Tufts' issuing the applicable purchase order. In accordance with Executive Order 12549, Supplier certifies by entering into this transaction that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.

9. **Tufts Property.** All materials, equipment and similar intellectual property supplied by Tufts to Supplier or purchased or fabricated by Supplier for Tufts (hereinafter sometimes referred to as "Tufts Property") shall be and remain the sole property of Tufts and no title or interest shall pass from Tufts to Supplier under the Agreement. All Tufts Property shall be used only in providing goods and services to Tufts under this Agreement and shall be kept free of any liens or encumbrances. All Tufts Property shall be subject to recovery by Tufts at any time. Upon Tufts' request, or cancellation or termination of the Agreement, Supplier shall deliver all Tufts' Property not previously delivered under the Agreement in good repair, normal wear and tear excepted.
10. **Ownership/License of Intellectual Property.** To the extent Supplier generates any unique drawings, designs, processes, inventions, specifications or other technical information in any form (herein called "Intellectual Property") specifically for Tufts in the course of supplying goods or performing its services under this Agreement, such Intellectual Property shall be deemed to be works made for hire, shall be the sole property of Tufts, and Supplier shall not use, duplicate or disclose such data for any purpose, other than the performance of the work required hereunder, without the prior written consent of Tufts. Supplier hereby assigns to Tufts any interest Supplier may have in such Intellectual Property and Supplier will, upon request by Tufts, promptly execute all applications, assignments, or other instruments which Tufts shall deem necessary or useful in order to apply for and obtain intellectual property protection in the United States and any foreign countries for such Intellectual Property. Notwithstanding anything to the contrary elsewhere in this Agreement, to the extent that any work product of Supplier created pursuant to this Agreement incorporates or requires the use of pre-existing processes, inventions or other intellectual property owned by Supplier prior to this engagement, Supplier hereby grants to Tufts an irrevocable, perpetual, worldwide, non-exclusive license for Tufts and its employees and for those of Tufts Suppliers and prospective Suppliers who are subject to confidentiality obligations as rigorous as those set forth herein to use such pre-existing intellectual property as required solely for Tufts' internal business .
11. **Inspection and Approval; Conformance with Specifications.** Supplier represents and warrants to Tufts that all labor, products, materials and services furnished pursuant to this Agreement shall perform substantially in conformance with all specifications and warranties contained in any written proposal made by Supplier to Tufts, and with those contained in any request for proposals delivered by Tufts to Supplier. All materials shall be

new and of first quality. All materials and work furnished by Supplier shall be subject to final inspection and approval by Tufts after delivery (“Acceptance”), and Tufts reserves the right to reject non-conforming products and services. Notwithstanding prior payment, the Parties expressly agree that payment will not constitute final Acceptance. Supplier agrees, at its own expense, to diligently correct any work and replace any materials deemed unsatisfactory by Tufts.

12. **Warranty.** Supplier warrants that the services will be performed by appropriately qualified and trained resources, (i) with due care and diligence and to a high standard of quality as is customary in the industry; (ii) in compliance with all applicable specifications and the terms and conditions of the Agreement; and (iii) in accordance with all applicable professional standards for the Supplier’s field of expertise. Supplier shall devote such time, energy, attention and efforts to the services provided hereunder in order to promptly, efficiently, and satisfactorily complete such services. Supplier further warrants that (i) it has the power to convey good title to any Intellectual Property transferred to Tufts pursuant to Section 10, above; (ii) it owns any processes, software, inventions or similar intellectual property which are licensed to Tufts pursuant to Section 10, above and (iii) neither the Services, if any, to be performed under the Agreement, nor any goods or work product to be provided under the Agreement, will violate or infringe the rights of any person, including any contract right or any patent, copyright, trade secret or other property right.
13. **Taxes.** Unless otherwise agreed by Tufts, the prices for any goods, work or services to be provided under the Agreement do not include any state or local sales, use or other taxes. Upon request, Tufts will provide Supplier with a copy of its tax exemption certificate.
14. **Independent Contractor.** In all matters relating to the Agreement and the performance of services and supply of goods under the Agreement, the status of Supplier shall be that of an independent contractor and not that of an employee, co-venturer, agent or partner of Tufts. Supplier shall take all actions reasonably necessary to support such determination. Supplier shall have no power or authority to act on behalf of Tufts or in its name or to bind Tufts, either directly or indirectly, in any manner. Tufts is interested only in the results to be achieved under the Agreement; the manner and method of performing the work shall be under the control of Supplier, except that the work and supply of goods contemplated herein must meet the reasonable approval of Tufts and is subject to Tufts’ general right of inspection to ensure the satisfactory performance and completion thereof. No change in Supplier’s duties as a consultant of Tufts shall be deemed to result in, or be deemed to be, a modification of the terms of the Agreement.
15. **Breach of Agreement, Termination.**
 - 15.1. Tufts may terminate this Agreement at any time, in whole or in part and at the convenience of Tufts, upon not less than thirty (30) days’ written notice to Supplier. Upon any termination of this Agreement, Supplier shall stop work promptly and shall deliver to Tufts all Tufts’ proprietary information, Tufts Property and such work in process or completed articles as Tufts may request. Tufts shall have no liability to Supplier beyond payment for goods supplied to and services properly performed and rendered to and accepted by Tufts prior to the effective date of any notice of termination and for such additional articles specifically requested by and delivered to Tufts.

15.2. In any case where the Supplier has failed to deliver or has delivered non-conforming goods or services (with time being deemed of the essence with respect to adherence to any timetable agreed to in writing by Supplier in the Agreement or in any specifications issued by Supplier), Tufts may deliver a "Notice to Cure" to Supplier, citing the instances of noncompliance. Supplier shall have ten (10) days to reply to the Notice to Cure and indicate why the Agreement should not be terminated and recommend remedies to be taken.

- a. If Supplier and Tufts reach an agreed upon solution, Supplier shall then have thirty (30) days after such agreement (the "Cure Agreement") is reached to cure the noncompliance cited in the Notice to Cure.
- b. If a mutually agreed-upon solution cannot be reached within ten (10) days after receipt of Notice to Cure by Supplier, Tufts reserves the right to terminate this Agreement.
- c. If the mutually agreed upon solution is not implemented to Tufts' reasonable satisfaction within thirty (30) days from the date of the Cure Agreement, Tufts reserves the right to terminate the Agreement.

15.3. The occurrence of any of the following events, unless consented to by Tufts in writing, shall be deemed a breach of the Agreement by Supplier, without Tufts being required to give Supplier an opportunity to cure: (i) Supplier becomes insolvent or makes an assignment for the benefit of creditors; or a receiver or similar officer is appointed to take charge of all or part of Supplier's assets and such condition(s) is not cured within thirty (30) days; or (ii) Supplier violates the provisions of Section 17 of this Agreement.

15.4. In the event of any termination for convenience by Tufts, Supplier may recover reasonable cancellation costs, provided Supplier submits a claim for such costs to Tufts within thirty (30) days of receipt of such cancellation notice. The amount of such costs which may be recovered from Tufts shall be established by negotiations between Tufts and Supplier, conducted by each of the respective parties in good faith, and shall include only Supplier's actual costs incurred up to the date of termination and a reasonable profit thereon; provided, however, if Supplier would have sustained a loss on the Agreement, no profit shall be included. The foregoing notwithstanding, in no event shall Tufts' liability to Supplier hereunder exceed the purchase price set forth in the Agreement. Supplier shall make available to Tufts for inspection all inventory included in the claim and all books and records related to the claimed costs. The remedies provided herein with respect to any cancellation for convenience are exclusive and in lieu of any other remedies available at law or equity.

15.5. Any cancellation or termination by Tufts whether for default or otherwise, shall be without prejudice to any claims or damages or other rights of Tufts against Supplier. To the extent any fees or expenses have been prepaid by Tufts, Supplier shall refund a pro rata portion of such fees or expenses. In any action by either party for any default hereunder, the prevailing party shall be entitled to reimbursement of its attorney's fees.

15.6. Without limiting the foregoing, in the event that Tufts believes, in its sole discretion, that the continued presence of the Supplier (or any personnel provided by the Supplier) on the Tufts campus or at a site at which the Supplier (or such person) is performing his/her services threatens the safety or security of members of the university community or persons at such remote site, Tufts reserves the right to immediately suspend the Supplier (or such

person) from further work, remove the Supplier (or such person) from the Tufts campus or such remote site, and, if the Supplier is an individual, immediately terminate the Agreement.

16. Indemnification.

16.1. Contractor shall indemnify, defend and hold Tufts harmless from and against any and all costs, expenses (including reasonable attorneys' fees and disbursements), interest, losses, obligations, liabilities, and damages paid or liability (collectively, "Losses") incurred by Tufts, and any and all third-party claims, demands or actions made ("Claims") against Tufts, to the extent arising, directly or indirectly, out of (i) the negligence of Contractor or its employees, subcontractors or agents in connection with its or their performance of Services, (ii) any negligent act or omission of Contractor or its employees, subcontractors or agents while on Tufts premises, (iii) any willful or intentional misconduct or fraud of Contractor or its employees, subcontractors or agents, or (iv) any breach of Contractor's agreements or warranties under this Agreement.

17. Insurance. The following minimum insurance standards shall apply to all Suppliers performing, selling or distributing products and services at, or for, Tufts University: (i) comprehensive general liability insurance including bodily injury and property damage liability, independent contractors liability and completed operations liability in an amount not less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate, (ii) workers' compensation insurance for all employees in compliance with state law, (iii) automobile liability for Suppliers driving on Tufts University property in an amount not less than \$1,000,000 per occurrence for bodily injury and property damage, including owned, hired and non-owned vehicle coverage, (iv) professional liability in an amount of not less than \$1,000,000 each claim for all professional services and \$2,000,000 aggregate including, but not limited to, architects, engineers, consultants and testing services. Tufts University shall be named as an additional insured on Supplier's general liability, automobile liability and umbrella/excess liability policies pertaining to the work done/service provided/product delivered to Tufts. The Supplier's policies shall include severability of interest or cross liability clause wording. Supplier's insurance must be primary and noncontributory as to any other valid and collectible insurance. Any deductible or Self-Insured Retention (SIR) over \$25,000 requires approval by Tufts. All insurance policies shall be underwritten by US admitted carriers and rated at least "A-" in A.M. Best's Key Rating Guide. If the Supplier's professional liability is on a "claims-made" form, the Supplier is required to maintain such coverage for a minimum of three (3) years (six (6) years for Construction Defect Claims) following completion of the performance or attempted performance of the provisions of this Agreement. The Supplier shall provide a 30-day notice of cancellation or non-renewal of coverage to Tufts. Supplier shall provide certificates of insurance prior to the performance of any services at, or for, Tufts and annual renewal certificates until all work is completed.

18. Assignment and Subcontracting. No Party shall assign or delegate this Agreement or any rights, duties or obligations hereunder to any other person or entity without the prior express written approval of the other Party; provided, that either Party may assign this Agreement or its rights and obligations under this Agreement in connection with a merger, acquisition reorganization, initial public offering or other similar transfer of control. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the successors, legal representatives and assignees of the Parties hereto. Notwithstanding the

foregoing, Tufts may assign this Agreement to a subsidiary or any entity owned or controlled by Tufts upon written notice to Supplier. Any assignment or delegation by either Party shall be conditioned upon the assignee or delegate representing to the other Party that it has agreed to assume all its rights and obligations under this Agreement, and demonstrating to such other Party's reasonable satisfaction that it has the ability to fulfill its obligations specified in this Agreement.

19. **Controlling Law.** This Agreement and the performance of the Parties hereunder shall be governed and construed in accordance with the laws of Massachusetts, excluding that State's choice-of-law principles, and all claims relating to or arising out of this Agreement or any SOW, or the breach of this Agreement or any SOW, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of Massachusetts, excluding that State's choice-of-law principles. The Parties agree that the state and federal courts located in eastern Massachusetts shall have jurisdiction over any dispute that is litigated and any dispute that is arbitrated shall be settled by binding arbitration with hearings in Boston, MA, pursuant to the rules of the American Arbitration Association, using expedited procedures to the extent available.
20. **Waiver of Jury Trial.** Each Party waives the right to a jury trial in connection with any dispute arising out of the Agreement.
21. **Notices.** Any notices required or permitted to be given or made under this Agreement shall be in writing and shall be deemed given when delivered personally or via reputable national overnight carrier, or shall be deemed received after three days of mailing by certified mail, return receipt requested to the relevant party's address. A copy of any notice to Tufts shall also be sent to the Office of University Counsel, Ballou Hall, Tufts University, Medford, MA 02155.
22. **Amendment.** No revision of this Agreement shall be valid unless made in writing and signed by duly authorized representatives of the Parties.
23. **Conflict of Interest.** Supplier acknowledges that University and Federal policies prohibit Tufts employees from accepting gifts or gratuities from suppliers, subcontractors and contractors. This includes the use of property or facilities, gift certificates, entertainment, or other favors of value extended to employees or their families. The applicable Business Conduct Policy is found on the Tufts website at <http://finance.tufts.edu/policies/>. Supplier agrees to use all reasonable efforts and diligence to ensure that its officers, employees and subcontractors comply with Tufts' policy.
24. **Severability.** If any provision of the Agreement shall be declared void, illegal or unenforceable, the remaining provisions of the Agreement shall be valid and enforceable to the extent permitted by applicable law.
25. **No Waiver.** The failure of Tufts in any one or more instances to enforce one or more of the terms or conditions of the Agreement or to exercise any right in the Agreement shall not be construed as a waiver of such term, condition or right.
26. **Title; Risk of Loss; Release of Liens and Claims.** Title to all products (other than software products) and services will vest in Tufts upon the delivery to Tufts. Risk of loss for products purchased will pass to Tufts upon Tufts' receipt and acceptance at Tufts'

premises. Supplier will furnish Tufts with a complete "Release of Liens and Claims" at intervals requested by Tufts and before final payment is made. If any lien is filed or remains unsatisfied after final payment, Supplier will indemnify Tufts for all costs incurred in discharging such lien.

27. **Force Majeure.** Any delay or failure of either party (the "Affected Party") in the performance of its required obligations hereunder shall be excused if and to the extent delays by or acts or orders of any governmental body or changes in laws or government regulations, or any other similar cause or causes beyond the reasonable control of such party, provided that (i) written notice of such delay or suspension is given by such party to the other party within 72 hours of such event, which notice shall set forth in detail the nature of each delay; (ii) such party shall use all commercially reasonable efforts to minimize the extent of such force majeure delay and (iii) additional expense or other adverse financial conditions shall not be deemed force majeure. Upon receipt of a notice of force majeure, the time for the Affected Party's performance shall be extended for a period of time reasonably necessary to overcome the effect of such delays and such party's sole remedy shall be reimbursement for the additional cost of such delays; provided, further, that other party may terminate this Agreement by written notice to the affected party within ten (10) business days of receiving the affected party's notice of force majeure, in which event the other party shall receive a refund of all monies paid hereunder for goods and services which has failed to deliver, which are non-conforming or which have failed to achieve Acceptance.
28. **Suspension of Work.** Tufts may order Supplier in writing to suspend, delay or interrupt all or any part of the work hereunder for a period not to exceed ninety (90) consecutive days. An adjustment shall be made for any increase in the cost of performance of this Agreement (excluding profit) necessarily caused thereby. An adjustment shall also be made in the delivery or performance dates and any other contractual provisions affected thereby. However, no adjustment shall be made for any suspension, delay or interruption to the extent that performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of Supplier. Also, no adjustment shall be made under this clause for any suspension, delay or interruption for which an equitable adjustment is provided for or excluded under any other provision of this Agreement. No claim under this clause shall be allowed unless the claim, in an amount stated, is asserted in writing within fifteen (15) days after the termination of such suspension, delay or interruption.