

VGTI-FLORIDA
STANDARD PURCHASING TERMS AND CONDITIONS

1. DEFINITIONS:

1.1. The term “contract” means the entire written agreement between the parties, including but not limited to the Invitation to Bid or Request for Proposal and its specifications, terms and conditions; solicitation instructions; solicitation addenda and contract amendments, if any; and the purchase order or price agreement document.

1.2. “Contractor” means a person or organization with whom the Oregon Health & Science University Vaccine and Gene Therapy Institute Corporation, a Florida non-profit corporation (VGTI), has contracted for the purchase of goods. The terms “Contractor” and “Seller” as used in the Uniform Commercial Code are synonymous.

2. WORKER’S COMPENSATION: Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this contract shall comply with all applicable workers compensation law and regulations.

3. STANDARD AND SPECIAL TERMS AND CONDITIONS: The terms and conditions printed on this page are standard to VGTI contracts for the purchase of goods. There may also be special terms and conditions in an Invitation to Bid or Request for Proposal which apply only to those contracts.

4. DELIVERY AND PARKING: All deliveries shall be F.O.B. destination with all transportation and handling charges paid by Contractor, unless specified otherwise in the solicitation documents. Responsibility and liability for loss or damage shall remain with Contractor until final inspection and acceptance by VGTI, at which time responsibility shall pass to VGTI except as to latent defects, fraud and Contractor’s warranty obligations. Contractor shall be responsible for parking permits and related fees for vehicles carrying Contractor’s goods. Contractor shall contact VGTI to arrange for proper parking permits, and shall be responsible for all fees incurred. In no event shall VGTI be responsible for any parking permit fees, fines or any other parking related costs.

5. CONTRACTOR STAFF AND USE OF VGTI FACILITIES. Contractor agrees that all Contractor staff performing any services at any VGTI facility shall comply with all applicable VGTI policies, including but not limited to, requirements regarding background and criminal history checks. Contractor and its employees or agents shall have the right to use only those facilities of VGTI that are necessary to perform the services under this Agreement and shall have no right of access to any other facility of VGTI without prior approval of VGTI management. VGTI shall have no responsibility for the loss, theft, disappearance of, or damage to, equipment,

tools, materials, supplies, and other personal property of Contractor or its employees, subcontractors or agents that may be stored, or located on VGTI premises.

6. CONFLICT OF INTEREST: Contractor acknowledges that VGTI uses ethical business practices in its vendor selection and other contracting practices. Contractor certifies that neither it nor its employees or agents have, with and intent to establish or maintain a business relationship with VGTI, provided any gift or sponsorship having more than minimal value: (i) to any person working on behalf of VGTI involved in the negotiation of the contract; (ii) to any VGTI Department or unit procuring items or services under this contract; or (iii) to any person with authority on behalf of VGTI to enter into the contract.

7. INSPECTIONS: Goods furnished under this contract shall be subject to inspection and test by VGTI at times and places as determined by VGTI. If VGTI finds goods furnished to be incomplete or not in compliance with solicitation specifications, VGTI may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price, whichever is equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by VGTI, VGTI may reject the goods and cancel the contract in whole or in part. Nothing in this paragraph shall in any way affect or limit VGTI's rights as a buyer, including, without limitation, the rights and remedies related to rejection and revocation of acceptance under the Uniform Commercial Code.

8. WARRANTIES: Unless otherwise stated, all goods shall be new and current model and shall carry full manufacturer warranties. Contractor warrants all goods delivered to be free from defects in labor, material and manufacture and to be in compliance with solicitation specifications. All implied and expressed warranty provisions of the Uniform Commercial Code and the applicable Florida law, are incorporated in this contract. All warranties shall run to VGTI.

9. CASH DISCOUNT: If VGTI is entitled to a cash discount, the period of computation shall commence on the date the entire order is delivered or the date the invoice is received, whichever is later.

10. PAYMENT: Payment is normally made within 30 days following the date the entire order is delivered and accepted or the date the invoice is received, whichever is later. Interest on any overdue payment may only be charged for non-payment after 45 days and is limited to two-thirds of one percent per month (8% APR) on the outstanding balance.

11. GIFTS AND SPONSORSHIP: Contractor acknowledges that VGTI, in its vendor selection and other contracting practices, does not take into account gifts or sponsorship provided by vendors. Contractor certifies that neither it nor its employees or agents have, with and intent to establish or maintain a business

relationship with VGTI, provided any gift or sponsorship having more than minimal value: (i) to any person working on behalf of VGTI involved in the negotiation of the contract; (ii) to any VGTI department or unit procuring items or services under this contract; or (iii) to any person with authority on behalf of VGTI to enter into the contract.

12. **TERMINATION:** This contract may be terminated by mutual consent of both parties or by VGTI at its discretion. VGTI may cancel an order for goods, in whole or in part, at any time with written notice to Contractor, stating the extent and effective date of termination. Upon receipt of this written notice, Contractor shall stop performance under this contract as directed by VGTI. If this contract is so terminated, Contractor shall be paid in accordance with the terms of the contract for goods delivered and accepted if Contractor's damages arising out of return of the goods cannot be mitigated by the resale as provided in the Uniform Commercial Code or applicable Florida law.

13. **FORCE MAJEURE:** Subject to paragraph 4 concerning risk of loss, neither party to this contract shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond the party's reasonable control. VGTI may terminate this contract upon written notice after determining such delay or default will reasonably prevent successful performance of this contract.

14. **BREACH OF CONTRACT:** Should Contractor breach any of the provisions of this contract, VGTI reserves the right, in addition to other remedies, to cancel this contract upon written notice to Contractor. Contractor shall be liable for any and all damages suffered by VGTI as the result of Contractor's breach of contract, including but not limited to incidental and consequential damages.

15. **HOLD HARMLESS:** Contractor shall indemnify, defend and hold harmless VGTI and its officers, employees, and agents, from all claims, suits or actions of any nature arising out of or related to the activities of Contractor, its officers, subcontractors, agents or employees under or in connection with this contract.

16. **ACCESS TO RECORDS:** Contractor shall maintain all fiscal records relating to this contract in accordance with generally accepted accounting principles and shall maintain any other records relating to this contract in such a manner as to clearly document Contractor's performance hereunder. VGTI and its representatives, and if applicable, the federal government and their duly authorized representatives shall have access to such fiscal records and to all other books, documents, papers, plans and writings of Contractor which relate to this contract, to perform examination, and audits and make excerpts and transcripts.

17. **CONFIDENTIALITY:** VGTI agrees, to the best of its ability, that it will keep strictly confidential and hold in trust all "confidential information" of Contractor.

18. AMENDMENTS: The terms of this contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of VGTI.

19. SEVERABILITY: If any provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.

20. WAIVER: Failure of VGTI to enforce any provision of this contract shall not be a waiver or relinquishment by VGTI of its right to such performance in the future nor of the right to enforce any other provisions of this contract.

21. GOVERNING LAW; JURISDICTION; VENUE: This contract shall be governed and construed in accordance with the laws of the State of Florida, without resort to any jurisdiction's conflict of laws rules or doctrines. Any claim, action, suit, or proceeding (collectively, "the claim") between VGTI and the contractor that arises from or relates to this contract shall be brought and conducted solely and exclusively within the St. Lucie County. Provided, however, if the claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the Southern District of Florida. Contractor hereby consents to the in personam jurisdiction of said courts.

22. ASSIGNMENT/SUBCONTRACTOR/SUCCESSORS: Contractor shall not assign, sell, transfer, or subcontract rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of VGTI. No such written approval shall relieve Contractor of any obligations of this contract, and any transferee or subcontractor shall be considered the agent of Contractor. Contractor shall remain liable to VGTI under the contract as if no such assignment, transfer, or subcontract has occurred. The provisions of this contract shall be binding upon and shall inure to the benefit of the parties to the contract and their respective successors and assigns.

23. COMPLIANCE WITH APPLICABLE LAWS: Contractor shall comply with all federal, state and local laws, codes, regulations and ordinances (including but not limited to those pertaining to electrical, wiring, circuitry, etc.) applicable to the provision of goods under this contract, including, without limitation, the provisions of:

23.1. Title VI of the Civil Rights Act of 1964;

23.2. Section V of the Rehabilitation Act of 1973;

23.3. the Americans with Disabilities Act of 1990 (Pub l No. 101-336) and all applicable Florida law, amendments of, and regulations and administrative rules established pursuant to those laws; and

23.4. all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

24. PAYMENTS REQUIRED: For all goods provided under this contract, Contractor shall:

24.1. pay promptly, as due, all persons supplying labor or material;

24.2. not permit any lien or claim to be filed or prosecuted against VGTI; and

24.3. pay to the Department of Revenue all sums required to be withheld from employees pursuant to applicable law.

25. OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS (OFCCP): The requirements of Executive Orders 13201 and 11246 and 41 CFR part 60 are hereby incorporated by reference.

25.1. EO 13201 <http://www.dol.gov/esa/regs/compliance/ofccp/13201ofp.htm>

25.2. EO 11246 <http://www.dol.gov/compliance/guide/discrim.htm>

26. CONFLICT OF INTEREST: Contractor acknowledges that VGTI uses ethical business practices in its vendor selection and other contracting practices. Contractor certifies that neither it nor its employees or agents have, with an intent to establish or maintain a business relationship with VGTI, provided any gift or sponsorship having more than minimal value: (i) to any person working on behalf of VGTI involved in the negotiation of the contract; (ii) to any VGTI department or unit procuring items or services under this contract; or (iii) to any person with authority on behalf of VGTI to enter into the contract.

27. PAYMENT OF CONTRACTOR CLAIMS: If Contractor fails, neglects or refuses to pay promptly, as due, any claim for labor or services furnished to the Contractor or any subcontractor by any person in connection with the goods provided under this contract, VGTI may pay such claim and charge the amount of the payment against funds due or to become due the Contractor under this contract. The payment of a claim by VGTI pursuant to this paragraph 21 shall not relieve the Contractor or its surety, if any, from its obligation with respect to any unpaid claims.

28. INSURANCE:

28.1. If Contractor (including agents, employees, or subcontractors of Contractor) is required to perform work on VGTI premises, Contractor shall maintain in force at its own expense each of the insurances listed below:

28.1.1. Commercial General Liability insurance with a minimum limit of not less than \$1,000,000 per occurrence and \$3,000,000 annual aggregate for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this contract.

28.1.2. Automobile Liability insurance with a minimum limit of not less than \$1,000,000 per occurrence and \$3,000,000 annual aggregate for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.

28.1.3. These insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Florida, and must also have an A.M. Best rating of A or better. If written on a claims-made basis, the commercial general insurance shall be maintained for a period of not less than two years following termination of this contract. VGTI and its officers and employees shall be included as an additional insured in these insurance policies.

28.2. Contractor shall furnish acceptable insurance certificates to VGTI prior to performing the services under this contract. The certificate will specify all of the parties who are additional insureds. If requested, complete policy copies shall be provided to VGTI. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

28.3. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days written notice from the Contractor or its insurer(s) to VGTI.

29. SAFETY AND HEALTH REQUIREMENTS: Goods and services provided under this contract shall comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Florida safety and health requirements, including those of the State Worker's Compensation Division.

30. RECYCLABLE PRODUCTS: Contractor shall use recyclable products to the maximum extent economically feasible in the performance of this contract. Contractor shall specify the minimum percentage of recycled product in the goods provided.

31. MATERIAL SAFETY DATA SHEET: Contractor shall provide VGTI with a Material Safety Data Sheet for any goods provided under this contract which may

release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use. In addition, Contractor must label, tag or mark such goods.

32. **FEDERAL HEALTH CARE PROGRAM ELIGIBILITY:** Contractor represents and warrants that it is not excluded from participation, and is not otherwise ineligible to participate, in a “Federal health care program” as defined in 42 U.S.C. Section 1320a-7b(f) or in any other government payment program. In the event Contractor is excluded from participation, or becomes otherwise ineligible to participate in any such program during the Term, Contractor will notify VGTI in writing within three (3) days after such event, and upon the occurrence of such event whether or not such notice is given to VGTI, VGTI may immediately terminate this contract upon written notice to Contractor. VGTI will not make any payments under this contract during any period of debarment, ineligibility or exclusion from participation.

33. **DISPUTE RESOLUTION:** VGTI and Contractor agree to first enter into negotiations to resolve any controversy, claim or dispute (“dispute”) arising under or related to this Agreement. The parties agree to negotiate in good faith to reach a mutually agreeable resolution of such dispute within a reasonable period of time. If good faith negotiations are unsuccessful, then such dispute will be mediated by a mutually-acceptable mediator to be chosen by the parties within fifteen (15) business days after written notice by one of the parties demanding mediation. Neither party may unreasonably withhold consent to the selection of the mediator and the parties agree to share the cost of the mediation equally. Such mediation will take place in Port St. Lucie, Florida. If the dispute cannot be resolved by the parties through negotiation or mediation within forty-five (45) days of the date of the initial demand for mediation by one of the parties, then either party may seek resolution of the dispute as otherwise provided in this Agreement and by law.

34. **HIPAA / BUSINESS ASSOCIATE REQUIREMENTS:** If Contractor's performance under this Agreement involves or requires the disclosure to or use by Contractor of VGTI's "Individually Identifiable Health Information" (as that term is defined by the Health Insurance Portability and Accountability Act and regulations promulgated pursuant thereto (“HIPAA”)), then the following provisions apply:

- (i) Contractor will use and disclose Individually Identifiable Health Information received from, or created or received by Contractor on behalf of, VGTI in the course of its performance under this Agreement (“PHI”) only as required for such performance, as permitted herein or as required by law, and Contractor will use all appropriate safeguards to prevent any use or disclosure of PHI other than as allowed in this Agreement. All PHI (in whatever form) is the exclusive property of VGTI.
- (ii) Contractor shall not, and shall ensure that its directors, officers, employees, contractors and agents (collectively, “Contractor Representatives”) do not, use or

disclose PHI in any manner constituting a violation of 45 CFR §160 and 164 (“Privacy Standards”) if done by VGTI.

- (iii) Contractor agrees that any request to VGTI for disclosure of PHI shall be limited to the minimum necessary to accomplish Contractor’s purpose under this Agreement.
- (iv) Contractor shall immediately notify VGTI in writing of any use or disclosure of PHI other than as allowed by this Agreement, and, to the extent practicable, shall mitigate any harmful effect of such use/or disclosure.
- (v) Contractor shall ensure that each of the Contractor Representatives having access to PHI, agree to comply with these restrictions and conditions.
- (vi) If Contractor maintains Records for VGTI that are a part of VGTI’s Designated Record Set (“DRS”), Contractor will: (i) within 10 days of a request from VGTI for access to an individual’s PHI contained in the DRS, provide copies of such PHI to VGTI; (ii) within 10 days of a request from VGTI for an amendment of an identified individual’s PHI in a DRS, make available the PHI for amendment and incorporate such amendment into PHI maintained by Contractor as required by the Privacy Standards; and (iii) within 5 days of Contractor’s receipt from an individual of a request for access to PHI or for an amendment of PHI, forward that request to VGTI in writing.
- (vii) Within 10 days of notice from VGTI that VGTI has received a request for an accounting of disclosures of an individual’s PHI, Contractor shall make available to VGTI such information in Contractor’s possession and as necessary for VGTI to make the accounting required by 45 CFR §164.528, including: (i) the date of the disclosure occurring after April 16, 2003, but no more than 6 years prior to the date of the request, (ii) the name and if known the address of the entity or person who received the PHI, (iii) a brief description of the PHI disclosed, and (iv) a brief statement of the purpose and basis of the disclosure, (collectively, “Disclosure Information”). If the request for an accounting of disclosures of PHI is delivered to Business Associate, then Business Associate shall within 5 business days of receipt, forward such request to VGTI. Business Associate hereby agrees to implement an appropriate record keeping process to enable it to comply with these requirements and shall maintain a record of Disclosure Information for a period of 6 years from the date of each disclosure. Contractor may elect to satisfy its obligations by entering the information required by this subparagraph directly into an VGTI web-based accounting-of-disclosures tool (“Accounting of Disclosures System”). To so elect, Contractor must contact the VGTI Privacy Officer, obtain access to the Accounting of Disclosures System and thereafter input into that system, all information required under this subparagraph in conformance with instructions provided by VGTI.

(viii) Contractor shall make its internal practices, books and records relating to the use and disclosure of PHI available to the Secretary for purposes of determining VGTI's compliance with the Privacy Standards.

(ix) Compliance with Security Regulations. Beginning no later than April 21, 2005 and continuing thereafter, with respect to any electronic PHI that Business Associate creates, receives, maintains, or transmits, Business Associate shall:

i. Implement Administrative Safeguards, Physical Safeguards and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic PHI, as required by the Security Standards;

ii. Ensure that any agent, including a subcontractor, to whom it provides such electronic PHI agrees to implement reasonable and appropriate safeguards to protect it;

iii. Report to VGTI any attempted or successful unauthorized access, use, disclosure, modification, or destruction of electronic PHI, or interference with system operations in an Information System, of which it becomes aware; and

iv. Authorize termination of the Existing Agreements, if VGTI determines that the Business Associate has violated a material term of this Agreement.

v. Capitalized terms used in this Paragraph shall have the meaning given them in the Security Standards.

(x) VGTI may terminate this Agreement upon ten (10) days written notice to Contractor if VGTI determines in its sole discretion that Contractor has violated a material term of these requirements and such breach is not cured within such ten (10) day period. Upon termination of this Agreement for any reason, Contractor shall either return or destroy all PHI maintained by Contractor in any form retaining no copies. If the return or destruction is not feasible, Contractor shall extend the aforementioned protections to such PHI and such PHI shall be used or disclosed solely for such purpose(s) that make the return or destruction of such PHI infeasible.

(xi) Notwithstanding any limitation on damages contained herein, Contractor shall indemnify and hold VGTI harmless from and against any and all liability and costs, including attorneys' fees, arising out of or related to a breach of these requirements by Contractor, its agents or subcontractors.

(xii) Contractor agrees to amend this Agreement as necessary to allow each party to comply with (i) the Privacy Standards, (ii) the Standards for Electronic Transactions (45 CFR parts 160 and 162) and (iii) the Security Standards,

(collectively, the “Standards”), as they are amended from time to time by the Secretary.

(xiii) Capitalized terms used in this paragraph without definition, have the meanings assigned to them in the Privacy Standards. The terms and conditions of this paragraph shall supersede any conflicting or inconsistent terms in the Agreement.