

**WESTERN OREGON UNIVERSITY**  
**STANDARD PERSONAL/PROFESSIONAL CONTRACT PROVISIONS**

- 1. DEFINITIONS.** “Contract” means the entire written purchase order, contract or agreement attached to these Standard Terms and Conditions (“Standard Terms”), these Standard Terms, and any other contracts or agreements including terms and conditions incorporated in the Contract. “Contractor” means a person, entity or organization with whom WOU has contracted for the provisions of services set forth in this Contract. “OAR” means Oregon Administrative Rules. “ORS” means the Oregon Revised Statutes. University and Contractor are each a “Party” and collectively are the “Parties.” “WOU” means Western Oregon University.
- 2. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this contract. The Oregon Department of Higher Education, Oregon Secretary of State, Federal Government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later. Contractor shall promptly remedy any discrepancy from the terms of this Contract and shall reimburse WOU for any and all commitments or expenditures found to be in excess of amounts authorized under this Contract.
- 3. AVAILABILITY OF FUNDS.** WOU certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract within its current biennial appropriation or expenditure limitation, provided, however, that continuation of the contract, or any extension, after the end of the fiscal period in which it is written, is contingent upon a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of WOU's reasonable administrative discretion, to continue to make payments under this Contract.
- 4. BUSINESS DIVERSITY AND EQUITY.** Pursuant to OAR 580-061-0030, Contractor affirmatively states they do not discriminate on the basis of age, disability, national origin, race, religion, marital status, gender, sex, or sexual orientation. Contractor further states they have not discriminated against Minority, Women-Owned or Emerging Small Business Enterprises in obtaining any required subcontracts.
- 5. COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the work to be done under this contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, as amended; Title VI and Title VII of the Civil Rights Act of 1964, as amended; Paragraphs 503 and 504 of the Rehabilitation Act of 1973; Executive Order 11246, as amended; the Family Educational Rights and Privacy Act of 1974, as amended; and ORS Chapter 659, as amended. Furthermore, Contractor must comply with Executive Order 11246 and implementing regulations at 41 CFR part 60.
- 6. FORCE MAJEURE.** WOU shall not be held responsible or liable for any delay or default caused by fire, riot, act of nature, terrorist acts, political sabotage, war or any other cause that is beyond WOU's reasonable control. However, WOU will make reasonable efforts to remove or eliminate any such delays to diligently pursue performance of the affected Contract terms. WOU is entitled to terminate this Contract if any of the aforementioned acts either cause default or unreasonable delay in the performance of the Contract terms.
- 7. GOVERNING LAW.** This contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between University and Contractor that arises out of or relates to performance of this contract shall be brought and conducted solely and exclusively within the Circuit Court for Polk County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought only in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. This paragraph is also not a waiver of any form of immunity, including but not limited to sovereign immunity asserted under the Eleventh Amendment to the United States Constitution. CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.
- 8. HAZARD AND SAFETY COMMUNICATIONS.** Contractor shall notify University prior to using products containing hazardous chemicals to which University employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon University's request, Contractor shall immediately provide Material Safety Data Sheets, as required by OAR 437-155-025, for the products subject to this provision. Furthermore, Contractor acknowledges that all services provided by Contractor shall comply with all federal, state and local health laws, regulations and ordinances including but not limited to Occupational Safety and Health Administration (OSHA) requirements and rules promulgated by the State of Oregon's Workers' Compensation Division.
- 9. INDEMNITY, RESPONSIBILITY FOR DAMAGES.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of work under this contract, or from any act, omission, or neglect of Contractor, its subcontractors, or employees. Contractor shall save, defend, indemnify, and hold harmless WOU and its officers, agents, employees, and members from all claims, suits, and actions of any nature resulting from or arising out of the activities or omissions of Contractor or its subcontractors, officers, agents, or employees acting under this contract.
- 10. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this contract are those of an independent contractor. Contractor is not an officer, employee or agent of WOU as those terms are defined in ORS 30, 265. WOU reserves the right to determine and modify delivery schedule of services and to examine the quality of said services. WOU may not and will not control the means or manner by which Contractor performs the terms of this Contract. Contractor is solely responsible for determining the means of performing services. Nothing in this section precludes Contractor and its employees from abiding and being subject to any and all federal, state and WOU rules involving misconduct, specifically including rules prohibiting sexual harassment.
- 11. INSURANCE.** Upon request by WOU, Contractor shall secure comprehensive general liability insurance with a broad form Commercial General Liability endorsement or insurance and/or Auto Insurance with a minimum combined single unit of not less than \$1,000,000 for each occurrence and \$2,000,000 aggregate, covering bodily injury and property damage, and will include personal and advertising injury liability, products liability and contractual liability coverage. Upon request by WOU, Contractor shall secure professional liability insurance with a combined single limit of not less than \$2,000,000 per occurrence and \$5,000,000 aggregate. Insurance must be issued by an insurance company authorized to do business in Oregon and with an AM Best rating of A- or higher. At all times, Contractor agrees to comply with ORS 656.017 in regards to workers' compensation coverage for itself and subcontractors, if applicable. If insurance is required under this contract, upon request by WOU, Contractor shall supply a valid Certificate of Insurance to WOU. If requested by WOU, additional insurance should include “the State of Oregon, the Board of Trustees for Western Oregon University, and Western Oregon University, their respective officers, employees and members” as additional insured. **Certificates of Insurance shall be sent to Western Oregon University, Attn. (Supervising Representative/Dept), 345 N Monmouth Ave., Monmouth, OR 97361 or emailed to \_\_\_\_\_.**
- 12. NAMES, MARKS AND TRADEMARKS.** Unless permission is expressly provided in writing, Contractor shall not use names, marks or trademarks of WOU.

**13. NOTICES.** Any notice shall be deemed validly given if provided in writing to the other party via email, fax, registered or by certified or registered mail to the respective addresses of WOU and Contractor.

**14. ORIGINAL WORKS.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of University. University and Contractor intend that such Work Product be deemed "work made for hire" of which University shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to University all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as University may reasonably request in order to fully vest such rights in University. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC '106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

**15. PUBLIC RECORDS LAW.** This Contract is subject to the limitations and conditions of the Oregon Public Records Law, ORS 192.410-192.505. Specifically, Contractor acknowledges and understands that information disclosed to WOU may be subject to public disclosure. Furthermore, Contractor acknowledges and agrees that WOU is not in breach of this Contract if, according to WOU's interpretation of public records law, it discloses or maintains records of any information provided by Contractor. WOU shall promptly notify the Contractor of any request where public information provided by the Contractor to WOU is directly requested.

**16. RECYCLED MATERIALS.** In accordance with WOU's commitment to best practices in sustainability, Contractor agrees to use recyclable materials and products to the maximum extent that is economically feasible while performing the terms of this Contract.

**17. REPRESENTATIONS AND WARRANTIES. (a) Contractor's Representations and Warranties.** Contractor represents and warrants to University that (1) Contractor has the power and authority to enter into and perform this Contract, (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms, (3) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards, and (4) Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. **(b) Warranties Cumulative.** The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

**18. SEVERABILITY.** If any term or 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 term or provision held to be invalid.

**19. SURVIVAL.** The terms and conditions of this Contract that by their sense and context are intended to survive termination or expiration shall survive.

**20. SUBCONTRACTS, ASSIGNMENTS AND SUCCESSORS IN INTEREST.** Contractor shall not enter into any subcontracts for any of the work required by this contract, or assign or transfer any of its interest in this contract, without obtaining prior written approval from WOU. Contractor shall remain liable for any and all obligations contained within the Contract regardless of any subcontract or assignment. The provisions of this contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.

**20. TAX COMPLIANCE CERTIFICATION.** Contractor hereby affirms, under penalty of perjury, as provided in ORS 305.385(6), that to the best of Contractor's knowledge Contractor is not in violation of any of the tax laws described in ORS 305.380(4).

**21. TERMINATIONS. (a)** This contract may be terminated at any time by mutual consent of the parties, or by either party upon thirty (30) days' notice to the other party. **(b)** In addition, the University may terminate this contract effective upon delivery of notice to Contractor, or at such later date as may be established by the University, if (i) Federal or state laws, regulations or guidelines are modified, changed, or interpreted in such a way that either the Work under this Contract is prohibited or University is prohibited from paying for such Work from the planned funding source; or (ii) Any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this contract is for any reason denied, revoked, or not renewed. **(c)** This contract may also be terminated by University for default (including breach of contract) if (i) Contractor fails to provide services or materials called for by this contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms, and after receipt of notice from University, fails to correct such failures within ten business days.

**22. TERMINATION DUE TO NONAPPROPRIATION OF FUNDS.** If sufficient funds are not provided in future legislatively approved budgets of University (or from applicable Federal, state, or other sources) to permit University in the exercise of its reasonable administrative discretion to continue this contract, or if University or program for which this contract was executed is abolished, the University may terminate this contract without further liability by giving Contractor not less than thirty (30) days notice. In determining the availability of funds from the Oregon Legislature for this contract, University may use the budget adopted for it by the Joint Ways and Means Committee of the Oregon Legislative Assembly.

**23. TERMINATION REMEDIES. (a)** In the event of termination pursuant to Sections 21(a) and (b)(i) and 22, Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by the University, less previous amounts paid and any claim(s) which the University has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this subsection, Contractor shall pay any excess to University upon demand. **(b)** In the event of termination pursuant to Sections 21(b)(ii) or (c), University shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under these subsections, the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 21(a). **(c)** Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless University expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to University all documents, information, works-in-progress and other property that are or would be deliverables had the Contract been completed. Upon University's request, Contractor shall surrender to anyone University designates, all documents, research or objects or other tangible things needed to complete the Work.

**24. THIRD PARTY BENEFICIARIES.** University and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

**29. WAIVER.** The failure of University to enforce any provision of this contract shall not constitute a waiver by University of that or any other provision.

**MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES AND ALL NECESSARY UNIVERSITY APPROVALS HAVE BEEN OBTAINED. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.**