

Supplier shall perform all of the Services shown on and called for herein and/or under a purchase order or project order (either being hereinafter referred to as a "PO") issued by Toggled to Supplier. Commencement of Services identified on each such PO shall indicate "Supplier acceptance" to these Terms and Conditions and any on the face of the PO.

SCOPE OF SERVICES -

1.1 Services. Supplier agrees to provide, and Toggled agrees to accept the consulting services and/or goods ("Services") described in a PO.

1.2 Conduct of Services. All work shall be performed in a workmanlike and professional manner, in accordance with the prevailing industry standard of care for the provision of such Services procured by Toggled.

1.3 Reporting. Toggled and Supplier shall develop appropriate administrative procedures for coordinating with each other.

TERMINATION

2.1 Termination. Upon termination of any PO for any reason, Supplier shall promptly deliver to Toggled all work products produced, in part, or in whole, under the PO and within thirty (30) days of said termination, Supplier shall submit to Toggled an itemized invoice for all pre-approved outstanding fees which accrued under this Agreement prior to the date of termination.

FEES, EXPENSES AND PAYMENT

3.1 Fees. In consideration of the Services to be performed and/or goods to be provided by Supplier as described in on the PO, compensation shall be paid to Supplier as detailed in the PO.

3.2 Invoices. Supplier shall invoice Toggled no more often than monthly following provision of the Services, which invoice shall include the compensation and the pre-approved expenses incurred during that period. If the Services being procured by Toggled are for a Toggled client, then Toggled shall pay Supplier within 15 days of receiving payment from Toggled's client. If the Services are for Toggled only, then Toggled shall pay 'net 30' from receipt of an accurate invoice.

RELATIONSHIP OF THE PARTIES

4.1 Independent Contractor. All work performed by Supplier and its personnel in connection with the Services described in this Agreement shall be performed by Supplier as an independent contractor and not as the agent or partner of or joint venture with Toggled for any purpose. Nothing in this Agreement shall be construed as creating or establishing the relationship of employer and employee between Toggled and either Supplier or any employee or agent of Supplier. Supplier agrees it may not subcontract any of the work to be performed under any PO without the prior written consent of Toggled.

4.2 Taxes. Supplier acknowledges that it will be solely responsible for complying with all laws, rules and regulations relating to employment, income and other applicable taxes, worker's compensation, safety and health related matters and that it shall pay all legally required taxes and applicable insurance costs. Supplier shall not be entitled to participate in health or disability insurance, retirement benefits, or other welfare or pension benefits (if any) to which employees of Toggled may be entitled.

4.3 Insurance. Supplier shall maintain in full force and effect for the term of this Agreement all insurance required by law or this Agreement, including (1) Workers' Compensation insurance and such other social insurance as may be required, covering all employees engaged directly or indirectly in the work in such coverage amounts as would satisfy the minimum statutory requirements of (i) the state wherein the work for a PO is being performed and (ii) the state of the principal address or place of business of the Supplier, it being understood that, for the purposes of these general terms and conditions, Supplier procurement of such coverage shall be deemed mandatory, regardless of whether the statute in either or both of the said states permits Supplier to elect not to carry any such coverage;

(2) Automobile Liability Insurance covering all owned, non-owned and hired vehicles in the following amounts: (i) bodily injury, \$500,000 each occurrence, and (ii) property damage, \$500,000 each occurrence, and (3) a General Liability insurance policy in the amount of one million (\$1,000,000) dollars.

If requested by Toggled, the certificates of insurance evidencing the insurance coverage specified herein shall stipulate that Toggled: (a) shall be named an additional insured under such insurance; and (b) shall receive thirty (30) days' prior written notice of any change or cancellation in the aforementioned coverage. It is understood that Toggled does not in any way represent that the types or the limits of insurance specified above are sufficient or adequate to protect Supplier's interests or liabilities. Supplier agrees to, and hereby does, waive subrogation against Toggled under all such insurance and all policies of insurance which Supplier must furnish pursuant to this Section shall contain an endorsement whereby the carrier waives any and all rights of subrogation against Toggled. Supplier shall not violate or knowingly permit to be violated any conditions of the policies of insurance required to be carried under the terms of this Section and shall at all times satisfy the requirements of the insurance company(ies) issuing them.

4.4 Indemnification. Supplier shall defend, indemnify, and hold harmless Toggled from and against all losses, claims, costs, damages, fines, or other liabilities of any kind, including reasonable attorneys' fees, arising out of or related to Supplier's acts or omissions in connection with the Services to be provided under this Agreement or resulting from breach of a material provision of this agreement.

4.5 IP Indemnification. Supplier will defend, indemnify and hold Toggled and/or any of its Affiliates (as well as their directors, officers and employees) harmless from and against any liability, loss, damage, cost and expense (including without limitation reasonable attorneys fees) suffered as a result of any claim, demand, action or suit made or raised against Toggled (or their directors, officers and employees) by reason of Supplier's infringement of any patent, trade secret, trademark, copyright or any other intellectual property right of any third party in relation to work performed by Supplier. This commitment is conditioned upon Toggled and any of its Affiliates, (i) providing Supplier with prompt written notice of the claim, (ii) giving Supplier sole control of the defense to the claim including settlement negotiations, if any; and (iii) providing, at Supplier's costs, reasonable cooperation in the defense against the claim. Under this commitment, Supplier will indemnify Toggled (as well as its directors, officers and employees) for the payment of (i) any damages awarded by any competent court by way of a final decision, (ii) any settlement indemnity agreed upon by Supplier with Toggled's prior written approval which shall not be unreasonably withheld, and (iii) related costs of investigation and expertise as well as reasonable attorneys fees if any, to the exclusion of any other payment whatsoever. Supplier shall have no obligation under this Section, however, if the alleged infringement arises from Supplier's compliance with specifications or instructions prescribed by Toggled, modifications of Work Product made by Toggled that caused such infringement, or use of the Work Product in combination with other things if such alleged infringement would not have occurred except for such combined use.

CONFIDENTIALITY

5.1 Restrictions. Supplier acknowledges that in order to perform the Services called for in this Agreement, it shall be necessary for Toggled and/or Toggled's client(s) to disclose to Supplier certain confidential or proprietary information ("Confidential Information") of Toggled and/or Toggled's client(s) or allow access to any such information provided by Toggled including any information related to the Services to be provided by Supplier under this PO to any third parties, except with the prior written authorization by Toggled.

Supplier agrees it shall use the information provided by Toggled solely to perform the Services authorized under this PO. Furthermore, Supplier agrees not to manufacture software, parts or components incorporating the Confidential Information for its own account or for the account of a third party unless expressly authorized in advance by Toggled in writing. Supplier agrees that Toggled retains all right, title and interest in all data, samples, drawings, software and prototypes, and Supplier acquires no intellectual property rights under this Agreement. Supplier shall return all Confidential Information and copies thereof (including notes, memoranda or summaries of Confidential Information made by Supplier) to Toggled within ten (10) days upon Toggled's request. Supplier acknowledges that a breach, actual or threatened, of any term or condition of this Agreement may cause irreparable harm to Toggled. Accordingly, Supplier agrees that Toggled shall have the right to seek equitable relief, including injunction and preliminary injunction without the obligation of posting a bond, in addition to all other remedies.

RIGHTS IN WORK PRODUCT

6.1 Work Product Defined. Supplier shall deliver to Toggled all designs, data, documentation, parts, materials, drawings, and information of every kind, in whatever form, first produced or created by Supplier in the performance or arising out of work or rendition of Services for Toggled ("Work Product").

6.2 Ownership of Work Product. Supplier hereby grants and Toggled hereby accepts the entire right, title and interest of Supplier in and to the Work Product and in and to all intellectual property rights including copyrights and trade secrets in or based on the Work Product. Supplier and Toggled hereby agree that any copyrightable portion of the Work Product shall be deemed a "Work for Hire" under the United States Copyright laws. To the extent that any such material may not be considered a Work for Hire under applicable law, Supplier hereby assigns to Toggled the ownership of copyright in such materials, without the necessity of any further consideration, and Toggled shall be entitled to obtain and hold in its own name all copyrights in respect of such materials. If by operation of law any of the Work Product, including all related intellectual property rights, is not owned in its entirety by Toggled automatically upon creation thereof, then Supplier and Supplier's employees agree to assign, and hereby assign to Toggled and its designees the ownership of such Work Product, including all related intellectual property rights.

6.3 Incidents and Further Assurances. Supplier shall perform any acts that may be deemed necessary or desirable by Toggled to evidence more fully the transfer of ownership of all materials designated under this Section to Toggled, including, but not limited to, the making of further written assignments in a form determined by Toggled, and other assistance as necessary to file for and to secure patent rights in the U.S. and any foreign countries.

If and to the extent Supplier may be entitled to claim any ownership interest in the Work Product generated or developed by Supplier under this Agreement, Supplier hereby transfers, grants, conveys, assigns, and relinquishes exclusively to Toggled all of Supplier's right, title, and interest in and to such materials under copyright and trade secret law.

6.4 Pre-existing Materials. To the extent that any preexisting rights are embodied or reflected in the Work Product, Supplier hereby grants to Toggled the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (1) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such preexisting rights and any derivative works thereof and (2) authorize others to do any or all of the foregoing.

WARRANTY

7.1 SUPPLIER warrants that all Services will be performed in a professional manner. SUPPLIER further warrants the deliverables as described in the PO shall perform as described therein. Except for Supplier's obligations under 4.5 and 5.1, NEITHER TOGGLED NOR SUPPLIER SHALL BE LIABLE TO EACH OTHER OR TO ANY THIRD PARTY FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN

CONNECTION WITH THIS AGREEMENT, EVEN IF THE PARTIES HAD KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES.

MISCELLANEOUS

8.1 Force Majeure. Supplier shall not be liable to Toggled for any failure or delay caused by events beyond Supplier's control, including, without limitation, failure or delays in transportation or communication, not the fault of Supplier, labor disputes, shortages of labor, fuel, or raw materials.

8.2 Governing Law. This Agreement shall be governed by and construed under the laws of the state of Michigan, without regard to that state's conflict of laws principles. Each party accepts unconditionally the jurisdiction and venue of the Circuit Court for the County of Oakland, Michigan or, if federal jurisdiction is established, the United States District Court for the Eastern District of Michigan with respect to any action arising under this Agreement. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. Each Party waives its right to a jury trial in the event of any dispute arising under or relating to this Agreement. Each party agrees that money damages may not be an adequate remedy for breach of the provisions of this Agreement, and in the event of such breach, the aggrieved party shall be entitled to seek specific performance and/or injunctive relief (without posting a bond or other security) in order to enforce or prevent any violation of this Agreement.

This PO, when funded in whole or in part with federal funds, includes the requirement that the vendor to whom it is issued comply as required under the law with the terms and conditions of Executive Order 11246, as amended, Section 503 of the [Rehabilitation Act of 1973](#), as amended, and The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended. Compliance information may be obtained at: <http://www.dol.gov/elaws/ofccp.htm>.

8.3 Notices. All notices required or permitted hereunder shall be in writing addressed to the respective parties as set forth herein, unless another address shall have been designated, and shall be delivered by hand or by registered or certified mail, postage prepaid.

8.4 Assignment. Supplier may not assign this Agreement, in whole or in part, without the prior written permission of Toggled.

8.5 Waiver. The failure of Toggled to enforce at any time any provision of this Agreement shall not be construed to be a waiver of the right of Toggled thereafter to enforce any such provisions.

8.6 Severability. If any provision of this Agreement is held to be invalid, such provision shall be interpreted so as to best accomplish the intent of the parties within the limits of applicable law, and all remaining provisions shall continue to be valid and enforceable.

8.7 Non-Compete. Upon Supplier acceptance of the PO, Supplier acknowledges that he is not in violation of any non-compete or other restrictive agreement with another party, and agrees to indemnify Toggled for any claim of any kind resulting from any non-compete or other restrictive agreement. Supplier agrees not to provide comparable work to Toggled's competitors for a period of one year after completion of the project work as described on the PO or SOW.

8.8 Entire Agreement. These Terms and Conditions and any accompanying PO are incorporated herein by reference, and constitute the entire agreement of the parties hereto and supersede all prior representations, proposals, discussions, and communications, whether oral or in writing. In the event that the work to be performed by Supplier is for a Toggled client, then the terms and conditions binding Toggled shall also bind Supplier and shall take precedence over any conflicting terms in this Agreement. This Agreement may be modified only in writing and shall be enforceable in accordance with its terms when signed by the party sought to be bound. No terms in a Supplier's proposal or quote shall be binding on Toggled and are hereby rejected.