

EarthScope Purchase Order Terms and Conditions of Sale

1. **Independent Contractor.** Vendor acknowledges that it is an independent contractor to EarthScope, and neither vendor nor vendor's employees shall be deemed for any purpose to be the employee, servant, representative, or agent of EarthScope.
2. **Tax Exempt.** EarthScope represents that it is a 501(c)(3) non-profit corporation and is exempt from sales and use taxes in various states. EarthScope's Federal EIN is available upon request.
3. **Changes.** EarthScope may at any time, by written order, make changes in this Purchase Order. If any ordered change affects the total price or cost of this Purchase Order, EarthScope will make an equitable adjustment in the price or cost. Vendor's failure to agree to the adjustment shall not excuse the vendor from performing this Purchase Order as changed.
4. **Termination.** EarthScope may suspend or terminate all or any part of this Purchase Order for any reason, including termination for default and for circumstances beyond the control of EarthScope, at any time by giving the vendor written notice of such action. The written notice shall specify the date the suspension or termination is effective. EarthScope shall pay vendors for all work satisfactorily performed up to the date of suspension or termination.
5. **Indemnification.** Vendor agrees to indemnify, defend and hold EarthScope, its funding Agency, and the directors, officers and employees of EarthScope and its funding Agency, respectively, harmless from and against any and all claims, demands, suits, actions at law or in equity, or other losses damages, costs, expenses or liability of any kind (including attorneys' fees) resulting from (1) any breach of the terms and conditions of this Purchase Order, (2) bodily injury to or death of a person, (3) any claims made under workers' compensation or similar acts, (4) loss or destruction to any real or personal property (including theft), resulting directly or indirectly from the performance or non-performance of this Purchase Order.
6. **Compliance.** In addition to other provisions contained herein, all purchases by EarthScope under a Federal award shall contain the provisions set forth in Appendix II to Part 200 – Contract Provision for Non-Federal Entity Contracts under Federal Awards, which is incorporated by reference and available on the eCRF website: Contract Provisions for Non-Federal Entity Contracts under Federal Awards or https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200#ap2.1.200_1521.ii.
For the following purchase order thresholds, additional conditions apply based on procurement type as follows:
 - a. **\$2,000.00 or greater:** Vendor complies with the Copeland "Anti-Kick Back" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations 29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States", and the Davis-Bacon Act (40 U.S.C. 3141-3144 and 3146-3148), as supplemented by Department of Labor regulations 29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction."

- b. \$10,000.00 or greater: Vendor complies with Executive Order 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR chapter 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor".
- c. \$25,000.00 or greater: Vendor certifies that it is not suspended, debarred, or otherwise ineligible from entering into funding agreements with any department or other agency of the U.S. Government, or is in receipt of a notice of proposed debarment or suspension. Vendor covenants to notify EarthScope immediately upon receipt of any notice of proposed debarment or suspension, in accordance with 2 CFR part 180 that implements E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (2 CFR, 1989 Comp., p. 235), "Debarment and Suspension".
- d. \$100,000.00 or greater:
 - i. Vendor shall comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3702-3704), as supplemented by Department of Labor regulations (29 CFR Part 5) for construction or the employment of mechanics or laborers.
 - ii. Vendor must file the required certification required by the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to EarthScope.
- e. \$150,000.00 or greater:
 - i. Vendor shall provide access to any books, documents, papers and records directly pertinent to the performance of this Purchase Order for examination by EarthScope, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives for the purpose of making audits, examinations, excerpts and transcriptions. Vendor shall retain records pertinent to this Purchase Order during performance of, and for a period of three (3) years after the expiration or earlier termination, of the Purchase Order.
 - ii. Vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387) each as amended. Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency.

7. **Prohibition on certain telecommunications and video surveillance services or equipment.** EarthScope is prohibited from obligating or expending grant funds to procure equipment, services, or systems that use covered telecommunications equipment or services from any of the “Prohibited Entities” as identified on the General Services Administration’s Section 889 webpage: <https://889.smartpay.gsa.gov/#/>. Vendor warrants that it complies with §889(f)(3) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232) (“NDAA”) and 2 CFR. §200.216.
8. **Domestic preferences for procurements.** To the greatest extent practicable, EarthScope provides a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). See 2 CFR §200.322.
9. **Intellectual Property.** Should activity pursuant to the procurement involve access to and sharing or transfer of technology subject to patents or other intellectual property rights, such access and sharing or transfer will be provided on terms which recognize and are consistent with adequate and effective intellectual property rights protections for each party.
10. **Marketing and Advertising.** Vendor may not use EarthScope’s name, logo, or information in any advertising or promotional materials without prior written consent and proper citation.
11. **Controlled items.** If Vendor is providing any items, data, or services under this Purchase Order that are controlled by the Department of State, Directorate of Defense Trade Controls, International Traffic in Arms Regulations (ITAR) or Department of Commerce, Bureau of Industry and Security, Export Administration Regulations (EAR), Vendor must notify EarthScope and receive prior authorization before delivery. Vendor agrees that if it fails to notify EarthScope that it is providing controlled items, data, or services, it shall reimburse EarthScope for any fines, legal costs, and other fees imposed by the above named regulatory agencies for any violation of export controls regarding the provided items, data, or services.
12. **Conflict of Interest; Cancellation.** Vendor represents and warrants that there exist no conflicts of interest between Vendor and EarthScope or its employees or any member of employee’s immediate family; and that it has not entered into and will not do so when performing under this Purchase Order, an agreement that would create a conflict with Vendor’s obligations hereunder. Vendor hereby represents and warrants that it has neither received nor given gifts or gratuities to EarthScope, nor participated in any other unethical conduct in connection with this Purchase Order. To the extent that Vendor can no longer make the representations and warranties contained in this Section, Vendor shall notify EarthScope immediately in writing. If, at any time, there is found to be a conflict of interest between any EarthScope employee and Vendor, this Purchase Order is subject to cancellation.
13. **Force Majeure.** If performance of this Contract or any obligation under this Contract is prevented, restricted, or interfered with by causes beyond either party’s reasonable control (“Force Majeure”), and if the party who is unable to carry out its obligations and gives the other party prompt written notice of such event, then the obligations of the party invoking this provision shall be suspended to the extent necessary by such event. The term Force Majeure shall include, without limitation,

acts of God, plague, epidemic, pandemic, outbreaks of infectious disease, or any other public health crisis, including quarantine or other employee restrictions, fire, explosion, vandalism, storm or other similar occurrence, orders or acts of military or civil authority, or by national emergencies, insurrections, riots, wars, strikes, lock-outs, work stoppages or other labor disputes, supplier failures, United States federal government shutdown, or other loss or loss of access to United States federal government funds. The excused party shall use reasonable efforts under the circumstance to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased. An act or omission shall be deemed within the reasonable control of a party if committed, omitted, or caused by such party or its employees, officers, agents, or affiliates.

14. **Governing Law.** This Purchase Order shall be governed, interpreted and enforced according to the laws of the District of Columbia, without regard to its conflict of laws' provisions.
15. **Remedies.** In addition to any remedies set forth herein, EarthScope reserves the right to pursue any and all legal remedies against the vendor in the event of the vendor's breach of any part of this Purchase Order. If EarthScope prevails in any legal action taken against the vendor to enforce any part of this Purchase Order, the vendor shall pay EarthScope's reasonable attorney's fees and costs.
16. **Site Visits.** EarthScope, or any of its designees, has the right, at all reasonable times, to make site visits. Vendor shall provide all reasonable facilities and assistance for the safety and convenience of EarthScope or its designees in the performance of their duties.
17. **Order of Precedence.** Any inconsistency between the Purchase Order and any exhibits or attachments hereto shall be resolved in favor of the Purchase Order.
18. **Assignment.** EarthScope reserves the right to assign this Purchase Order to a third party.
19. **Waiver and Severability.** No provision of this Agreement shall be deemed to have been waived unless such waiver is in writing. Any waiver shall extend only to the particular case, and only in the manner specified, and shall not be construed in any way to be a waiver of any further or other rights hereunder. The invalidity or enforceability of any provision of this Agreement, or any application thereof, shall not affect or impair any other provision or the validity or unenforceability of the remainder of this Agreement, or any other application thereof.
20. **Entire Agreement.** This Purchase Order shall constitute the full and complete understanding and agreement between the parties with respect to the subject matter of the agreement, and all prior and contemporaneous agreements and understandings, oral or written, are superseded by the written terms of this Purchase Order. All modifications must be in writing and signed by an authorized representative of EarthScope. No verbal agreements or conversations with any officer or employee of either party shall affect or modify any of the terms and conditions of this Purchase Order.