

## Terms of Service for Procurement & Use Tax Service

This is a legal agreement between the person or organization (“Customer” or “you”) agreeing to these Terms of Service (“**Terms**”) and the Office Professional and Tech Svcs (“**OPTservices**,” “**us**,” or “**we**”). By accepting these Terms and using the service to request a purchase, you represent that you are of legal age and have the authority to bind the Customer to the the terms of this agreement (the “Agreement”).

### 1) ACCESS AND USE OF THE SERVICES.

- a) **Right to Use Services.** “Services” means our Procurement and Use Tax Service. You agree to use the Services in accordance with this agreement. We grant you a limited right to use our Services only for business and professional purposes. Support for the Services is offered on a “best effort” basis. If your affiliates use our Services, you warrant that you have the authority to bind those affiliates and you will be liable if your affiliates do not comply with the Agreement. The Services, software and websites are provided via equipment and resources located in the United States and other locations throughout the world and you consent to having data processed by us in the United States and other locations throughout the world.
- b) **Changes to Services.** We reserve the right to enhance or modify features of our Services but will not materially reduce the core functionality or discontinue any Services unless we provide you with prior notice. We may offer additional functionality to our standard Services or premium feature improvements for an additional cost.
- c) **Proprietary Rights.** You acknowledge that we or our licensors retain all proprietary right, title and interest in the Services, our name, logo or other marks (**OPT Service Marks**), and any related intellectual property rights, including, without limitation, all modifications, enhancements, derivative works, and upgrades thereto. You agree that you will not use or register any trademark, service mark, business name, domain name or social media account name or handle which incorporates in whole or in part the OPT Service Marks or is similar to any of these.
- d) **Procurement**
  - i) Purchase request
    - (1) You may request a purchase via email, fax, or online. In the future, the service may be limited to online only.
    - (2) A submission is complete when it contains the item description and quantity, cost center, and account.
    - (3) Optionally, you may also submit an exact description, product URL, or requested vendor.
    - (4) You agree not to submit requests for which you do not have purchase authority.
  - ii) Our responsibilities
    - (1) We will negotiate with independent manufacturers, suppliers and vendors with respect to price, terms and delivery for requested products.
    - (2) We will enter into purchasing contracts with independent manufacturers and vendors with respect to requested products
    - (3) Unless you specify the vendor, we will make best efforts to purchase from the vendor offering the best value, including total cost, including tax, handling and shipping, and reliability.
    - (4) We will ascertain whether the vendor has collected sales tax. If sales tax would be due if the vendor were in-state, we will collect and pay use tax.

- iii) Your responsibilities
  - (1) You agree that we may use your state or federal licensing to make the purchase on your behalf.
  - (2) You agree that we will not be bound to use a sales tax exemption certificate, if you have one.
  - (3) You agree that your requests will comply with all local, state and federal laws.
  - (4) You agree to inspect all delivered goods and services and to confirm they meet your requirements. You agree to promptly notify us if you wish to return the item. You agree that all products for return will comply with the vendors return policies and fees.
- iv) We may decline to make individual purchases.
- v) We may receive other compensation or incentives from vendors we select. In such case, the price you pay will be no more than the best publicly available price.
- e) **Fees.**
  - i) We will charge you a fee, ("Service Fee") , for the service of procurement, consolidated invoicing and tax payment.
  - ii) We reserve the right to update the Service Fee at any time
  - iii) We will notify you of any price changes by publishing on our website, emailing, quoting or invoicing you.
  - iv) The initial Service Fee is 6% of all purchases.
- f) **Invoices.**
  - i) Approximately every 30 days, we will generate an invoice for all purchases made since the last invoice, plus applicable use tax, plus the Service Fee.
  - ii) We will send you a report by January 31 detailing all purchases and documenting the use taxes paid in the prior year.
  - iii) We may not agree to submit invoices via any customer procure-to-pay online portal or Electronic Data Interchange (EDI) portals. Agreement, if any, is solely at our discretion. Agreement, if any, may be later withdrawn, at our sole discretion.
  - iv) We will provide an EIN with all invoices. We will furnish a W-9 on request.
- g) **Terms**

30 days from the date of invoice, service charge of 1.5% per month, or portion of, on overdue accounts

  - i) You agree to pay according to the above terms and be liable for all charges (currently at the rate of 1.5% PER MONTH, 18% PER ANNUM) on any amount still outstanding beyond the end of the month following the purchase.
  - ii) You agree to be responsible for any collection or legal fees which are incurred by us in the collection of this account.
  - iii) All payments you make to us are final and non-refundable.
  - iv) You agree to be responsible for fees and overdraft charges that we may incur when we attempt to process your payment.
- h) **Sales, Promotional Offers, Coupons and Pricing.** Sales, promotions and other special discounted pricing offers are temporary and any such discounted pricing offers will usually expire without notice. We reserve the right to discontinue or modify any coupons, credits, sales and special promotional offers in our sole discretion.

- i) **Disputes; Delinquent Accounts.** You must notify us of any fee dispute within 15 days of the invoice date, and once resolved, you agree to pay those fees within 15 days. We may also suspend or terminate your Services if you do not pay undisputed fees.
  - j) **Taxes and Withholding.**
    - i) We agree to comply with MA GL Chapters 64H and 64I.
    - ii) In all cases, you will pay the amounts due under this Agreement to us in full without any right of set-off or deduction.
- 2) **TERM AND TERMINATION.**
- a) **Term.** The terms of this Agreement become effective upon your enrollment in the service.
  - b) **Termination for Cause.**
    - i) Either party may terminate the Agreement
      - (1) if the other party breaches its material obligations and fails to cure within 30 days of receipt of written notice, or
      - (2) if the other party becomes insolvent or bankrupt, liquidated or is dissolved, or ceases substantially all of its business.
    - ii) We may suspend service or terminate immediately if you breach any section of this agreement.
    - iii) We may decline further purchases at our sole discretion if there is any overdue balance, or if the total balance due on your account exceeds a limit which we may set.
  - c) **Effect of Termination.**
    - i) If the Agreement or any Services are terminated, you will immediately discontinue all use of the terminated Services, except that upon request, within 30 days we will provide you with reporting of year-to-date purchasing and use tax collection.
    - ii) We have no obligation to maintain your information after that period.
    - iii) Neither party will be liable for any damages resulting from termination of the Agreement, and termination will not affect any claim arising prior to the effective termination date, whether or not for caus.
  - d) **Survival.**
    - i) The provisions of ..... [fill in provisions here] survive any termination of the Agreement.
- 3) **YOUR ACCOUNTS.** You are solely responsible for
- a) all use of the Services by you and your users,
  - b) providing notices or obtaining consent as legally required in connection with the Services. We do not send emails asking for your usernames or passwords, and to keep your accounts secure, you should keep all usernames and passwords confidential. We are not liable for any loss that you may incur if a third party uses your password or account. We may suspend the Services or terminate the Agreement if you, your users, or attendees are using the Services in a manner that is likely to cause harm to us. You agree to notify us immediately and terminate any unauthorized access to the Services or other security breach.
- 4) **COMPLIANCE WITH LAWS.**
- a) In connection with the performance and use of the Services under the Agreement, each party agrees to comply with all applicable laws, rules and regulations including, but not limited to export, privacy, and data protection laws and regulations.
  - b) If necessary and in accordance with applicable law, we will cooperate with local, state, federal government authorities with respect to the Services.

- c) Notwithstanding any other provision in these Terms, we may immediately terminate the Agreement for non compliance with applicable laws.
- 5) **WARRANTIES.**
  - a) We make no warranty about the quality, performance or suitability to any purpose of goods or services procured for you.
  - b) You agree that in no case are we responsible for any damage or injury arising from the products or services we procure for you.
- 6) **INDEMNIFICATION.**
  - a) You will indemnify and defend us against any third party claim resulting from damage or injury from the products or services we procure for you, and you agree to pay reasonable attorney's fees, court costs, damages finally awarded, or reasonable settlement costs with respect to any such claim. We will promptly notify you of any claim and cooperate with the you in defending the claim. You will reimburse us for reasonable expenses incurred in providing any cooperation or assistance. You will have full control and authority over the defense and settlement of any claim, except that:
    - i) any settlement requiring us to admit liability requires prior written consent, not to be unreasonably withheld or delayed, and
    - ii) we may join in the defense with our own counsel at our own expense.
- 7) **LIMITATION ON LIABILITY.**
  - a) **LIMITATION ON INDIRECT LIABILITY.** NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY OR TO ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL LOSS, EXEMPLARY OR OTHER DAMAGES, WHETHER DIRECT OR INDIRECT, ARISING OUT OF OR RELATING TO: (i) LOSS OF DATA, (ii) LOSS OF INCOME, (iii) LOSS OF OPPORTUNITY, (iv) LOST PROFITS, (v) COSTS OF RECOVERY OR ANY OTHER DAMAGES, HOWEVER CAUSED AND BASED ON ANY THEORY OF LIABILITY, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR VIOLATION OF STATUTE, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. SOME JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY.
  - b) **LIMITATION ON AMOUNT OF LIABILITY.** EXCEPT FOR YOUR INDEMNIFICATION OBLIGATIONS, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE TOTAL CUMULATIVE LIABILITY OF EITHER PARTY AND THEIR RESPECTIVE LICENSORS AND SUPPLIERS ARISING OUT OF THIS AGREEMENT IS LIMITED TO THE SUM OF THE AMOUNTS PAID FOR THE SERVICE FEES DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE INCIDENT GIVING RISE TO THE LIABILITY. THE FOREGOING DOES NOT LIMIT YOUR OBLIGATIONS TO PAY ANY UNDISPUTED FEES AND OTHER AMOUNTS DUE UNDER ANY ORDER.
- 8) **ADDITIONAL TERMS.**
  - a) **Ownership**

It is understood and agreed by the parties hereto that absolute title to all goods and services procured by us on your behalf shall immediately vest in you.
  - b) **Non-exclusive**

It is understood and agreed by the parties that the relationship hereby created is not exclusive, that we may provide this service to other clients, and that you may enter into purchasing agreements with other services.

c) **Non Agency**

We shall have no authority to bind you except upon written order or authorization.

d) **Geographical Limitations.**

- i) This service is currently offered only in the United States.
- ii) The tax compliance service is currently offered only within the following jurisdictions:

(1) Massachusetts

- e) **Beta Services.** We may offer you access to beta services that are being provided prior to general release, but we do not make any guarantees that these services will be made generally available ("**Beta Services**"). You understand and agree that the Beta Services may contain bugs, errors and other defects, and use of the Beta Services is at your sole risk. We have no obligation to provide technical support and we may discontinue provision of Beta Services at any time in our sole discretion and without prior notice to you. These Beta Services are offered "AS-IS", and to the extent permitted by applicable law, we disclaim any liability, warranties, indemnities, and conditions, whether express, implied, statutory or otherwise. If you are using Beta Services, you agree to receive related correspondence and updates from us, and acknowledge that opting out may result in cancellation of your access to the Beta Services. If you provide feedback ("**Feedback**") about the Beta Service, you agree that we own any Feedback that you share with us. For the Beta Services only, these Terms supersede any conflicting terms and conditions in the Agreement, but only to the extent necessary to resolve conflict.
- f) **No Class Actions.** You may only resolve disputes with us on an individual basis and you agree not to bring or participate in any class, consolidated, or representative action against us or any of our employees or affiliates.
- g) **Security Emergencies.** If we reasonably determine that the security of our Services or infrastructure may be compromised due to hacking attempts, denial of service attacks, or other malicious activities, we may temporarily suspend the Services and we will take action to promptly resolve any security issues. We will notify you of any suspension or other action taken for security reasons.
- h) **Assignment.**
  - i) Neither party may assign its rights or delegate its duties under the Agreement either in whole or in part without the other party's prior written consent, which shall not be unreasonably withheld, except that either party may assign the Agreement to an affiliated entity, or as part of a corporate reorganization, consolidation, merger, or sale of all or substantially all of its assets.
  - ii) Any attempted assignment without written consent will be void.
  - iii) This Agreement will bind and inure to the benefit of each party's successors or assigns.
- i) **Notices.**
  - i) Notices must be sent by personal delivery, overnight courier or registered mail.
  - ii) We may also provide notice to the email last designated on your account, electronically via postings on our website, in-product notices, or our self-service portal or administrative center.
  - iii) Unless specified elsewhere in this Agreement, notices should be sent to us at 304 S. Jones Blvd, Suite 3586, Las Vegas, NV 89107, and we will send notices to the address last designated on your account.

- iv) Notice is given (a) upon personal delivery; (b) for overnight courier, on the second business day after notice is sent, (c) for registered or certified mail, on the fifth business day after notice is sent, (d) for email, when the email is sent, or (e) if posted electronically, upon posting.
- j) **Entire Agreement.**
  - i) This Agreement sets forth the entire agreement between us relating to the Services and supersedes all prior and contemporaneous oral and written agreements, except as otherwise permitted. Nothing contained in any document submitted by you will add to or otherwise modify the Agreement.
  - ii) We may update the Terms from time to time, which will be identified by the last updated date, and may be reviewed at <http://optservices.net/terms-of-service.pdf>. Your continued access to and use of the Services constitutes your acceptance of the then-current Terms.
- k) **General Terms.**
  - i) Both parties are independent contractors and nothing in this Agreement creates a partnership, agency, fiduciary or employment relationship between the parties.
  - ii) No person or entity not a party to the Agreement will be a third party beneficiary.
  - iii) Our authorized distributors do not have the right to modify the Agreement or to make commitments binding on us.
  - iv) Failure to enforce any right under the Agreement will not waive that right.
  - v) Unless otherwise specified, remedies are exclusive.
  - vi) The Agreement may be agreed to online, or executed by electronic signature and in one or more counterparts.
  - vii) No party will be responsible for any delay or failure to perform under the Agreement due to force majeure events (e.g. natural disasters; terrorist activities, activities of third party service providers, labor disputes; and acts of government) and acts beyond a party's reasonable control, but only for so long as those conditions persist.
  - viii) This Agreement is governed by the internal substantive laws of the Commonwealth of Massachusetts, without respect to its conflict of laws principles. Any action related to this Agreement shall be brought only in the state and federal courts of the Commonwealth of Massachusetts and both parties waive any objection to the personal jurisdiction of and venue in such courts.
  - ix) If any provision of this Agreement is found to be invalid by any court having competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of this Agreement, which shall remain in full force and effect.
  - x) No waiver of any term of this Agreement shall be deemed a further or continuing waiver of such term or any other term.

l) Last Updated: November 26, 2018

EXECUTED BETWEEN THE PARTIES BELOW THIS \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Signature of Client

\_\_\_\_\_, duly authorized agent of \_\_\_\_\_  
Name of Signatory (Client) Name of Signatory Organization