



CASE WESTERN RESERVE UNIVERSITY
Terms and Conditions

Part 1: General Terms & Conditions
(Applicable to all Suppliers)

FOR ALL FACILITIES RELATED WORK, THE “OWNER'S GENERAL TERMS AND CONDITIONS” ALSO APPLY UNLESS AN AIA CONTRACT EXISTS. THIS PURCHASE ORDER IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS. BY ACCEPTING THIS PURCHASE ORDER, THE SELLER AGREES TO BE BOUND THEREBY.

1. Formation of Contract. “Supplier” as used in the terms and conditions is the person or entity identified on the face of the Case Western Reserve University (“University”) purchase order which includes all exhibits or attachments expressly incorporated herein (“PO”). Supplier's commencement of work or shipment of goods hereunder (whichever occurs first) is deemed acceptance of the University's offer to purchase contained in this PO. Acceptance of this PO is limited to acceptance of the express terms it contains. The University hereby objects to and rejects any proposal for additional or different terms or any attempt by Supplier to vary in any degree any of the terms of this PO, but such proposal shall not operate as a rejection of this offer to purchase unless such variances are in the terms of the description, quantity, price, or delivery schedule of the goods or services. Such proposal for additional or different terms shall be deemed a material alteration thereof, and this offer shall be deemed accepted by the Supplier without such additional or different terms. If this PO shall be deemed an acceptance of a prior offer by Supplier, such acceptance is limited to the express terms contained in this PO. Additional or different terms or any attempt by Supplier to vary in any degree any of the terms of this PO shall be deemed material and shall be rejected. However, this PO shall not operate as a rejection of the Supplier's offer unless it contains variances in the terms of the description, quantity, price, or delivery schedule of the goods or services.

2. Cancellation or Termination for Convenience. The University reserves the right at any time for its convenience to cancel or terminate this PO as to all or any portion of the goods then not shipped or services then not performed, subject to an equitable adjustment between the parties as to any work or materials (but not to include standard stock) then in progress. Supplier shall not be paid for any amount of lost profits on canceled orders, or for any avoidable costs incurred after receipt of notice of cancellation, including but not limited to any costs incurred by Supplier's suppliers or subcontractors which Supplier could reasonably have avoided. No termination for convenience shall relieve Supplier or University of its obligations as to any goods or services delivered hereunder. Any claim for adjustment hereunder must be asserted within thirty (30) days after the date of Supplier's receipt of notice of cancellation or termination.

3. Cancellation or Termination for Cause. The University may cancel or terminate this PO or any part hereof at any time for cause in the event Supplier fails to comply with any of the terms and conditions of this PO, including, without limitation, late delivery or performance, the delivery of defective or nonconforming goods or services, or failure to provide the University with reasonable assurances of

future performance. In the event of termination for cause, the University shall not be liable to Supplier for any amount, and Supplier shall be liable to University for any and all damages sustained by reason of the default which gave rise to the cancellation or termination.

4. Warranty for Goods. Supplier expressly warrants that all goods furnished under this PO shall conform to all specifications and appropriate standards and will be free from defects, including, where applicable and without limitation, defects in material, workmanship, and title. Supplier warrants that all goods and materials supplied by Supplier are new and not previously used. Supplier warrants that all goods furnished hereunder will be merchantable and will be safe and appropriate for the purposes for which goods and services of that kind are normally used. If Supplier knows or has reason to know the particular purpose for which the University intends to use the goods, Supplier warrants that such goods will be fit for such particular purpose. Supplier warrants that goods furnished will conform in all respects to samples, advertisements and other forms of representation made to the University regarding the goods purchased. Inspection, test, acceptance, or use of the goods furnished hereunder shall not affect the Supplier's obligation under this warranty, and such obligations shall survive inspection, test, acceptance and use. Supplier's warranty shall run to the University, its successors, assigns and customers, and users of products sold by the University. Seller may not negate, exclude, limit, or modify in any way any warranty otherwise available to the University. Seller agrees to promptly replace or correct defects of any goods not conforming to the foregoing warranty, without expense to the University, when notified of such nonconformity by the University, provided the University elects to provide Supplier with the opportunity to do so. In the event of failure of Supplier to correct defects in or replace nonconforming goods promptly, the University, after reasonable notice to Supplier, may make such corrections or replace such goods and charge Supplier the cost incurred by the University in doing so. These warranties are in addition to those otherwise offered by Supplier and the manufacturer. In addition to Supplier's warranty, Supplier shall obtain and pass-through any manufacturer's warranty for goods or materials sold and/or installed during the work and procured by Supplier.

5. Set-off. All claims for money due or to become due from the University shall be subject to deduction or set-off by the University by reason of any counterclaim or amounts owed by Supplier arising out of this or any other transaction with Supplier.

6. Waiver. The failure of the University to object to, or to take affirmative action with respect to, any conduct of Supplier that is in violation of the terms of this PO shall not be construed as a waiver thereof, nor as a waiver of any future breach or subsequent wrongful conduct.

7. Delivery. Wherever this PO sets a date or time for the delivery of goods and services, time is of the essence. The University may regard the failure to deliver in a timely manner as a material breach of these terms and conditions, entitling the University to all rights and remedies at law, in equity, and under the specific remedies of this PO. Title and risk of loss or damage to items ordered herein shall remain with Supplier until delivered to and accepted by the University. All packaging, carting, transportation, and insurance charges are to be paid for by Supplier, unless otherwise specifically stated in the PO. All goods shipped shall be free of liens or encumbrances. Supplier shall furnish satisfactory evidence of freedom from any liens if requested to do by the University.

8. Indemnification. Supplier shall defend and indemnify the University against, and shall hold the University harmless from, any claims made by any person or entity as a result of injuries, damages, expenses, liabilities, and losses incurred by such a person or entity, including without limitation such person's or entity's and the University's legal and other costs and attorney's fees (collectively, "Liabilities"), in connection with, arising out of, or relating to Supplier's performance or failure to

perform pursuant to this PO or Supplier's negligent or willful acts or omissions, except where the Liabilities are a result of the direct and sole negligence of the University. This provision shall survive the termination or completion of the work or expiration of this PO.

9. Insurance. Unless otherwise agreed to in writing by the parties, Supplier must provide to the University's Office of Procurement a Certificate of Insurance with proof of the following amounts of minimum coverage:

a) Commercial General Liability insurance written on **occurrence basis** with the following limits:

General Aggregate Limit	\$2,000,000
Products/Completed Operations	\$2,000,000 aggregate
Personal Injury and Adv. Injury Limit	\$1,000,000 ea. person/organization
Bodily Injury & Property Damage Limit	\$1,000,000 each occurrence
Fire Damage	\$50,000 (any one fire)
Medical Expense	\$5,000 (any one person)

(Pollution Liability Endorsement of \$1,000,000 per occurrence will also be needed in the event hazardous materials are to be involved.)

No exclusions for: Product/Completed Operations; Contractual Liability; Independent Contractors; Personal & Advertising Injury.

b) Automobile Liability: Any Auto Owned, Hired and Non-Owned
(Pollution Liability of \$1,000,000 each accident will also be needed in the event hazardous materials are to be involved.)

Combined Single Limit for Bodily Injury & Property Damage	\$1,000,000
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c) Excess "Umbrella" Liability: \$4,000,000 ea. occurrence/aggregate
The umbrella coverage shall be no more restrictive than underlying coverage.

d) Workers' Compensation: Statutory Coverage as required by law.

e) Employers' Liability. \$1,000,000 each accident; \$1,000,000 each employee – disease; \$1,000,000 aggregate disease University is to be named as an additional insured on all liability policies, except for Workers' Compensation.

The foregoing insurance and limits of coverage are to be considered as minimum requirements under this PO and in no way shall limit Supplier's liability. Each policy of insurance shall be issued in a company or companies licensed to do business in the State of Ohio, maintaining a Best's rating of at least A-, VII, and shall provide for written notification to the University at least thirty (30) days prior to termination or restrictive amendment.

10. Assignment. None of Supplier's duties to perform its obligations under this PO may be delegated or assigned to another person or party without the prior written consent of the University's Office of Procurement and Distribution Services. Any assignment of this PO or subcontract of any duties hereunder without the express prior written consent of Case shall be null and void. The University may

assign this PO to any affiliate, or successor in interest to all or any part of its operations without prior notice to Supplier.

11. Access to Records. Supplier shall preserve and permit the University or any of the University's duly-authorized representatives to examine and audit all directly pertinent books, documents, papers and records of Supplier involving transactions related to this PO for the purpose of making audits, examinations, excerpts and transcripts for a period of three (3) years after final payment hereunder. Supplier agrees to refund to the University any overpayments disclosed by any audit.

12. Publicity. Supplier shall not, in any way or in any form, publicize or advertise the fact that Supplier is supplying goods or providing services to the University without the express prior written approval of the University. Supplier shall not use the University's name or logos for any advertising or other commercial purposes, or otherwise disclose any provisions of this PO, without the express prior written approval of the University.

13. Debarment. Supplier certifies that neither it nor any of its principals (officers, directors, owners, partners, key employees, principal investigators, researchers or management or supervisory personnel) is presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in this transaction or in any federal grant, benefit, contract or program (including but not limited to Medicare and Medicaid and Federal Health Care Programs) by any federal department or agency. (See Executive Orders 12549 and 12689, 45 CFR part 76, 48 CFR part 9; 42 USC sect. 1320a-7). To the extent necessary to assure the accuracy of its certification, Supplier agrees to conduct searches of the List of Parties Excluded from Federal Procurement and Nonprocurement Programs maintained by the General Services Administration (<http://epls.arnet.gov/>) and the List of Excluded Individuals and Entities maintained by the Department of Health and Human Services (<http://oig.hhs.gov>) prior to making its certification. Supplier acknowledges that the certification is a material representation of fact upon which the University is relying in entering into this transaction. Supplier agrees to provide immediate written notice to the University if it learns at any time that its certification was erroneous when submitted or if, during the term of this PO, it, or any of its principals, is debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in this transaction or in any federal grant, benefit, contract or program. If subcontracting is permitted by this PO, Supplier agrees that it will include this clause, without modification, in all subcontracts and subprojects, and in all solicitations for subcontract and subproject proposals. Supplier agrees that debarment, suspension, proposed debarment or suspension, ineligibility or exclusion of Supplier, or any of its principals or subcontractors, shall constitute cause for immediate termination of this PO by the University.

14. Remedies not Exclusive. The remedies available to the University under this PO are not exclusive, but are cumulative and are in addition to such other rights or remedies available to the University by law.

15. Governing Law and Venue. This PO, and all disputes arising under or relating to this PO, shall be governed by the laws of the State of Ohio without regard to its conflict-of-law principles and shall be litigated exclusively in the state or federal courts located in the State of Ohio, County of Cuyahoga. The choice of venue is intended by the parties to be mandatory and not permissive in nature. Each party waives any right it may have to assert the doctrine of *forum non conveniens* or similar doctrine to object to venue with respect to any such proceeding brought in accordance with this section.

16. Modifications. The PO, when accepted as indicated herein, may not be modified, amended, rescinded, or in any way varied, except by a University-issued change order.

17. Electronic/Facsimile Transmission. If the PO or change order is transmitted by electronic means, such transmission shall have the legal significance of a duly executed original delivered to the Supplier.

18. Taxes. The University is a 501(c) (3) organization and is exempt from sales and use taxes. A Federal Tax Exemption Certificate will be furnished upon request.

19. Conflict of Interest. This PO is subject to cancellation if there is found to be a conflict of interest between a University employee and Supplier.

20. Conflict with Provisions in Written Agreement. In the event of a conflict between these terms and conditions and the terms and conditions of a separate written agreement executed by the University and Supplier in connection with a transaction governed hereby, the terms of such written agreement shall prevail.

21. Supplier Diversity Initiative Program (MBE/WBE). Supplier understands that the University voluntarily maintains a Supplier Diversity Initiative Program as part of its efforts to increase participation of minority and women vendors (MBE/WBE) and as a result, Supplier provided to the University its plan on how it intends to use such second-tier MBE/WBE suppliers for the work hereunder. Supplier agrees to adhere to its plan to maintain its second-tier effort and to submit monthly reports on its progress and agrees to do so throughout the term of this PO.

22. Equal Employment Opportunity As applicable, Supplier and its subcontractors shall comply with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR, part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor" as well as 29 C.F.R. Part 471, Appendix A to Subpart A, which are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals on the basis of race, color, religion, sex, national origin, veteran status, or disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified minorities and females, qualified protected veterans, and qualified individuals with disabilities. Further, sellers who (1) are not otherwise exempt as provided by 41 CFR 60-1.5, (2) have 50 or more employees and, (3) have a contract, subcontract or purchase order amounting to \$50,000 that is necessary to the completion of a covered federal contract or subcontract are hereby notified of their obligations to file EEO Standard Form 100 and to prepare an affirmative action plan(s) as required under the regulations set forth above. Supplier and its subcontractors shall abide by the requirements of 41 CFR §§ 60-300.5(a) and 60-41.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

23. Export Controls. Supplier agrees that it will not provide or make accessible to the University any export-controlled materials (including, without limitation, equipment, information and/or data) without first informing the University of the export-controlled nature of the materials and obtaining from the University's Compliance Office its prior written consent to accept such materials as well as any specific instructions regarding the mechanism pursuant to which such materials should be passed to the University.

24. Compliance with Applicable Laws. Supplier agrees to comply with all applicable federal, state, and local laws and regulations. In addition, Supplier agrees to comply with the policies, rules, and regulations of the University and its insurers while on University premises. To verify compliance with the foregoing, Supplier will permit University officials to inspect Supplier's on-site operations at any time.

25. Nondiscrimination. Supplier shall adhere to the University's nondiscrimination policy and shall not discriminate on the basis of race, religion, age, sex, color, disability, sexual orientation, gender identity/expression, national or ethnic origin, political affiliation, or status as a disabled veteran or other protected veteran under U.S. federal law.

26. University Confidential Data; Confidential Information. Supplier may be furnished with or given access to knowledge, information, data, and confidential or privileged documents in writing or orally (collectively, "Confidential Data"). All Confidential Data are deemed confidential and proprietary to University, including but not limited to, financial information or other personal information concerning the University, its employees, or its students, and shall remain the property of the University. If Supplier gains access to confidential information which is not required to fulfill its obligations under this PO, Supplier is subject to the terms and conditions of this provision. Violation of confidentiality obligations of this section, or the threat of violation, shall entitle University to (i) obtain injunctive relief without the posting of bond and (ii) terminate this PO immediately without penalty of any kind. Supplier's obligations and University's rights under this section shall survive termination of the PO. With respect to the Confidential Data, Supplier shall:

- a) maintain Confidential Data as University's confidential information.
- b) use the Confidential Data solely for the purpose of fulfilling its obligations under the PO.
- c) safeguard against use or disclosure of Confidential Data in accordance with the requirements of this PO and applicable law.
- d) use reasonable efforts to protect the Confidential Data and in any event no less than the degree of care that it would use to protect its own confidential information.
- e) sign and deliver a written, itemized receipt therefore, if the University so requests.
- f) develop, document, use, and keep current appropriate procedural, physical, and electronic safeguards, sufficient to comply with the requirements of the law, and to prevent any use or disclosure of University data or information other than as provided by this PO. Supplier agrees to notify the University of the location of any Confidential Data disclosed by the University or created by Supplier and held by, or under the control of, Supplier or those to whom Supplier has disclosed such Confidential Data.
- g) report to the University any use or disclosure of the information not provided for by this PO of which it becomes aware within two (2) days of Supplier's discovery of such use or disclosure. In the report, Supplier shall provide the following information: (1) the nature of the use or disclosure; (2) the information used or disclosed; (3) who made the use or disclosure; and (4) what corrective action will be taken by Supplier as a result of the use or disclosure. Supplier shall take any other actions available to it to mitigate any detrimental effects of the use or disclosure.
- h) disclose Confidential Data only to employees, affiliated personnel, and/or contract personnel who are directly responsible for the services making use of the Confidential Data.
- i) ensure that any employee, agent, or contractor to whom it provides Confidential Data agrees to the same restrictions and conditions set forth in this PO that apply to Supplier.
- j) require that the agents or subcontractors notify Supplier of any instances of which they are aware that the confidentiality of the Confidential Data has been breached and report the information set forth in this section.
- k) upon termination or expiration of the PO, return or destroy all Confidential Data to the University, at University's option.

l) not use the Confidential Data for itself or for any other person or business, or divulge or convey to any person or business any such Confidential Data during, or at any time after the termination of the PO.

The obligations set forth in this section shall survive the termination or expiration of this PO for any reason.

27. Price, Payment, and Invoicing. Payment is net 45 from invoice date, unless otherwise expressly agreed to in writing by the parties. For the price set forth in this PO, Supplier agrees to fulfill all of its obligations, duties, responsibilities, and requirements for the successful completion of the provision of goods and services specified, including, if applicable, the furnishing by Supplier of all supervision, labor, materials and other supplies in accordance with the terms and conditions set forth herein. The University agrees to pay Supplier for the goods and services provided in accordance with the provisions of this PO. Unless a written change order is issued by the University Office of Procurement, the parties agree that payment to Supplier shall not exceed the amount set forth in the PO, and under no theory of law, either legal or equitable, will Supplier be entitled to any monies in excess of the amount specified on the PO. Supplier shall provide complete and accurate information on the University Supplier Information form. Payment will not be processed until the University receives a completed Supplier Information form. Invoices must be submitted to the University as set forth in this PO. As payment for the goods and services, Supplier shall only accept a P-Card, a University check, or a wireless transfer of funds. Supplier shall accept no other form of payment, including personal credit cards.

28. Use of Name. Supplier shall not use of the name or logo of the University for any purpose, without the express prior written consent of the University Marketing and Communications office.

29. Headings and Captions. Headings and captions in this PO are to facilitate reference only, do not form a part of this PO, and shall not in any way affect the interpretation hereof.

30. Entire Agreement. This PO, including all documents expressly incorporated herein by reference, is the entire agreement between the parties with regard to the subject matter hereof and supersedes any and all prior communications, representations and agreements, whether written or oral. In the event of a conflict or inconsistency between this PO and any exhibits expressly attached hereto, these terms and conditions shall control unless otherwise stated.

31. Tobacco Free Campus Policy (Effective July 1, 2017)

To foster a healthy culture and environment, Case Western Reserve University is a tobacco-free campus. For purposes of this policy, the terms set forth below shall have the following meaning:

- "Tobacco" refers to any product containing tobacco in any form. Tobacco products include, but are not limited to, cigarettes (clove, bidis, kreteks, ecigarettes); cigars and cigarillos; pipes; all forms of smokeless tobacco; any other smoking devices that use tobacco, such as hookahs; and any other existing or future smoking, tobacco or tobacco-related products.
- "CWRU Property" refers to all interior space owned, rented or leased by CWRU and all outside property or grounds owned or leased by CWRU, including parking areas and private vehicles while they are on CWRU property and CWRU vehicles.

This policy applies to all persons on CWRU property, regardless of their purpose for being there (e.g., staff, faculty, students, patients, visitors, contractors, subcontractors, etc.).

- CWRU prohibits the use of tobacco products at all times on campus property.

- The university is committed to providing support to the entire population who wishes to stop using tobacco products. Faculty, staff and students should refer to the [Resources section](#) of the tobacco free website if they need assistance with tobacco cessation.
- The success of this policy requires a collaborative effort of the entire CWRU community. Staff, faculty and students on campus will engage in positive and respectful communication and interactions in regards to this policy. Concerns will be addressed in a respectful and thoughtful manner.
- The sale, advertising, sampling and distribution of tobacco products and tobacco-related merchandise is prohibited on all CWRU property.
- Use of university funds for purchase of tobacco or tobacco-related products is prohibited, unless such use is permitted under the exception stated below.
- Tobacco use may be permitted for authorized research with prior approval of the Office of the Provost, and, in the case of smoking, the review and recommendation of the university's Department of Environmental Health & Safety.

Compliance

Compliance with this policy is the responsibility of all members of the CWRU community. This policy will be enforced with all individuals present on the CWRU campus. An individual may inform someone using tobacco on campus property of this policy and request the tobacco user comply. Repeated issues of non-compliance with this policy should be brought to the attention of the Office of Student Conduct and Compliance (with students) or the Department of Human Resources (with staff and faculty). Contractors, vendors, and visitors must also comply with is policy while on campus property.

Additional information regarding this policy is available online at: <http://case.edu/tobaccofree/>

Part 2: Service Terms

(Applicable to all Suppliers providing Services with and without Supplying Goods)

S1. Independent Contractor. Supplier is an independent contractor, and shall not act or purport to act as an agent, representative or employee of the University. Supplier is not an agent of the University, has no authority to act as the agent of the University, and shall not hold itself out as such. Supplier will determine the means and methods of performing its services. Supplier will supply all equipment, tools, materials, parts, supplies and labor (and the transportation of the same) required to perform except as the University has otherwise agreed in writing. The University shall have no responsibility for the loss, theft, mysterious disappearance of, or damage to equipment, tools, materials, supplies, and other personal property of Supplier or its agents or employees that may be brought onto University premises or stored at University, except for damage caused by the direct and sole negligence of the University.

S2. Standard of Care. Supplier will provide adequate and competent staff and supervision thereof, and will in all respects perform with at least that degree of care, skill and diligence normally exercised by persons regularly engaged in Supplier's business or profession.

S3. Hazardous Materials. If Supplier intends to bring onto the premises or take away from the University any hazardous chemicals or intends to engage in any activities which might reasonably be expected to create a danger or hazard to employees or other persons at the University, then in advance of any such activity, Supplier shall submit to the Department of Occupational and Environmental Safety (DOES) for review and approval its program for compliance with the hazard communication requirements of 29 CFR 1910.1200 and its schedule and methods for performing such activities. Supplier will adhere to its approved program in the performance of all work to be done on University premises.

Supplier is given notice hereby that the University has a hazard communication program pursuant to the aforementioned regulation, and that Supplier should obtain further information regarding that program by calling DOES at 216-368-2907.

S4. Licensed Professions. Supplier represents and warrants that Supplier (and each person or entity, if any, acting for or on behalf of Supplier) has all licenses, certificates, and other professional credentials required by law to perform the purchased services. If Supplier, persons in Supplier's employ, or persons otherwise acting for or on behalf of Supplier are so required to maintain professional licensure, certification or similar credentials in order to perform the purchased services, then in addition to the requirements set forth in Part I, section 9 above, Supplier must maintain Professional Liability coverage on all professionals with limits of at least \$1,000,000 per occurrence and \$3,000,000 aggregate. If professional liability insurance is required under this section, then proof of such coverage shall be included in Supplier's Certificate of Insurance.

S.5. Warranty for Services. Supplier expressly warrants that all services provided under this PO shall conform to all specifications, University requirements, samples, advertisements and other forms of representation made to the University regarding the services and will be free from defects, including, where applicable and without limitation, defects in material, workmanship, and title for one year following the University's acceptance of the services. Inspection, test, acceptance, or use of the services hereunder shall not affect the Supplier's obligation under this warranty, and such obligations shall survive inspection, test, acceptance, and use. Supplier's warranty shall run to the University, its successors, assigns and customers, and users of the services. Seller may not negate, exclude, limit, or modify in any way any warranty otherwise available to the University. Seller agrees to promptly replace, repair, or correct defects of any defect, malfunction, or non-conformity not conforming to the foregoing warranty, without expense to the University, within a reasonable time after it is notified of such defect, malfunction, or nonconformity by the University, provided the University elects to provide Supplier with the opportunity to do so. In the event of failure of Supplier to correct defect, malfunction, or nonconformity promptly, the University, after reasonable notice to Supplier, may make such corrections or replacements and charge Supplier the cost incurred by the University in doing so. These warranties are in addition to those otherwise offered by Supplier.

S.7 Ownership of Documents and Materials. The University and Supplier intend that the results of the services to be rendered by Supplier are considered a work made for hire. Supplier agrees that such work will be the sole and exclusive property of the University. If for any reason the work would not be considered a work made for hire, Supplier hereby transfers all right, title, and interest in such work to the University. Further, Supplier agrees that the University will have a non-exclusive, irrevocable, paid-up license to use any other information or materials provided by Supplier during the performance of services under this PO.

S.8 Records. Supplier shall keep accurate records and books of account showing all charges, disbursements, and expenses made or incurred by Supplier in performing the services. The University may, upon reasonable notice and during normal business hours, examine Supplier's books and records relating to performance of the Services from time to time during the term of this PO and at any time within three (3) years after its termination. Such examination shall specifically include the right to audit Supplier's compliance with its confidentiality obligations hereunder.

S.9 Reports. The University may request written reports from time to time during the performance of the services. Such reports shall be in a form satisfactory to University.

Part 3: Federal Compliance Terms **(Applicable to Suppliers Paid with Federally-Sourced Funds)**

F1. Applicability. The terms of this Part 3 apply to the purchase of any goods and services by the University using federally-sourced funds. If Supplier is not otherwise aware of whether the funds are sourced from a federal grant or contract, then Supplier shall inquire of the University.

F2. Compliance. All goods and services sold hereunder shall be produced, sold, delivered and furnished in compliance with all laws and regulations applicable to procurement under loans, grants or other financial support of the United States government agency or agencies which have provided that support ("Funding Agency"). This includes, but is not limited to, the Procurement Standards set forth in Subpart C of OMB Circular A-110 and the applicable provisions of the Federal Acquisition Regulation, together with any additions or supplements thereto promulgated by the Funding Agency ("FAR").

F3. Access to Records. The access to records set forth in paragraph 11 of Part 1 above shall apply to the Funding Agency, the Controller General of the United States and any duly authorized representatives thereof.

F4. Equal Employment Opportunity. As applicable, Supplier and its subcontractors shall comply with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR, part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," as well as 29 C.F.R. Part 471, Appendix A to Subpart A, which are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals on the basis of race, color, religion, sex, national origin, veteran status, or disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified minorities and females, qualified protected veterans, and qualified individuals with disabilities. Further, sellers who (1) are not otherwise exempt as provided by 41 CFR 60-1.5, (2) have 50 or more employees and, (3) have a contract, subcontract or purchase order amounting to \$50,000 that is necessary to the completion of a covered federal contract or subcontract are hereby notified of their obligations to file EEO Standard Form 100 and to prepare an affirmative action plan(s) as required under the regulations set forth above.

F5. Anti-Kickback. Supplier, if engaged hereby for construction or repair in an amount in excess of \$2000, shall comply with (a) the Copeland "Anti-Kickback" Act (18 U.S.C. 874), 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").

F6. Davis-Bacon, as amended. Supplier, if engaged hereby for construction or repair in an amount in excess of \$2000, shall comply with the Davis-Bacon Act (40 U.S.C. 276a to a-7), as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction").

F7. Contract Work Hours and Safety Standards. Supplier, if engaged hereby for construction in an amount in excess of \$100,000 or other work that involves the employment of mechanics or laborers, shall comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5).

F8. Rights to Inventions Made Under a Contract or Agreement. All rights of the Federal Government and the University to any resulting inventions are reserved to them in accordance with 37 CFR Part 401,

"Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements" and any applicable implementing regulations.

F9. Environmental. Supplier, if engaged hereby for an amount in excess of \$100,000, shall comply with all applicable standards, orders and regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*). Violations must be reported to Purchaser and/or federal agencies as required under OMB Circular A-110.

F10. Anti-Lobbying. Supplier, if engaged hereby for an amount in excess of \$100,000, shall comply with the requirements of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), by providing to Purchaser all certifications required thereunder regarding the disclosure of the use of funds for lobbying.

F11. Flow-Down. Supplier will assure that any subcontract let hereunder includes clauses F3 through this F11, where such inclusion is required under OMB Circular A-110.

F12. Federal Acquisition Regulation. Incorporated herein by reference are those provisions of the FAR which by their terms are to be flowed down to a procurement of the sort provided for here. All such provisions are incorporated with the same force and effect as if they were given in full text and apply to Supplier as Contractor, including provisions for the further flow-down of such provisions to subcontracts entered into by Supplier. A listing of FAR provisions is available from Purchaser on Supplier's request or on-line at <http://www.arnet.gov/far/>. By their terms, not all listed provisions apply to this transaction. In particular, and without limitation to the foregoing, in the acquisition of "commercial items" or "commercial components" (as those are defined 48 CFR 52.202-1), FAR provisions are not required to be included, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under 48 CFR Part 15:

- a) 52.219-8, Utilization of Small Business Concerns (15 U.S.C. 637 (d)(2) and (3)) (see 52. 244-6(c)(1)(i) for applications if any to Supplier and sub-contractor of Supplier);
- b) 52.222-26, Equal Opportunity (E.O. 11246);
- c) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212(a));
- d) 52.222-36, Affirmative Action for Workers with Disabilities (20 U.S.C. 793);
- e) 52.247-64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241).

Part 4: Health-Record Terms

(Applicable to All Suppliers with Access to Protected Health Information)

P1. Definitions. Terms used herein shall have the meanings ascribed to them in the federal privacy and security regulations issued pursuant to the Health Insurance Portability and Accountability Act ("HIPAA") and codified at 45 C.F.R. Parts 160 and 164, as may be amended from time to time ("the Rule"). "University-PHI" shall mean Protected Health Information that Supplier receives, uses, creates, maintains, or transmits on behalf of the University under this PO.

P2. Permitted or Required Uses and Disclosures of University-PHI by Supplier. Except as otherwise limited under this PO, Supplier may (a) use and disclose University-PHI only as reasonably necessary to perform its obligations under the PO, provided that such use or disclosure would not violate the Rule if done by the University; (b) use University-PHI for its proper management and administration and to carry out its legal responsibilities; and (c) disclose University-PHI to a third party for the purpose of Supplier's proper management and administration or to carry out its legal responsibilities, provided that: (i) the

disclosures are required by law; or (ii) Supplier obtains reasonable assurances from the third party that the University-PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party, and the third party notifies Supplier of any instances of which it becomes aware in which the confidentiality of the University-PHI has been breached.

P3. Restriction on Use or Disclosure of University-PHI. Supplier will not use or disclose University-PHI other than as permitted or required by this PO or as required by law. If required by law to disclose University-PHI, Supplier shall notify University, prior to disclosure, with sufficient time to enable University to oppose any such disclosure.

P4. Safeguards. Supplier will use appropriate administrative, physical, and technical safeguards (1) protect the confidentiality, integrity, and availability of the University's electronic PHI and (2) to prevent any use or disclosure of University-PHI other than as permitted by this PO.

P5. Mitigation. Supplier will mitigate, to the extent practicable, any harmful effect that is known to Supplier of a use or disclosure of University-PHI by Supplier in violation of the requirements of this PO.

P6. Reporting. Supplier will immediately report to the University any use or disclosure of University-PHI not permitted by this PO or security incident of which Supplier becomes aware.

P7. Agents and Subcontractors. Supplier will ensure that all of its agents and subcontractors that receive, use, or have access to University-PHI agree, in writing, to essentially the same restrictions and conditions on the use and/or disclosure of University-PHI that apply through this PO to Supplier with respect to such information, and to implement reasonable and appropriate safeguards to protect such University-PHI.

P8. Access. At the request of, and in the reasonable time and manner specified by, the University, Supplier will provide access to University-PHI in a designated record set to the University, or, if directed by the University, to an individual in order to permit the University to meet the applicable Rule's access requirements.

P9. Amendment of University-PHI. At the request of, and in the reasonable time and manner specified by, the University, Supplier will make amendment(s) to University-PHI in a designated record set, in order to permit the University to meet the Rule's amendment requirements.

P10. Open Books. Supplier will make its internal practices, books and records, including policies and procedures, relating to the use and disclosure of University-PHI, available to the Secretary of Health and Human Services ("Secretary"), in the reasonable time and manner specified by the Secretary, for purposes of the Secretary's determining the University's compliance with the Rule.

P11. Accounting of Disclosures. Supplier will document disclosures of University-PHI and information related to such disclosures as would be required for the University to respond to an individual's request for an accounting of disclosures of University-PHI in accordance with the Rule's requirements and will provide such information to the University in a reasonable time and manner specified by the University to permit the University to respond to an individual's request for an accounting of disclosures of University-PHI in accordance with the Rule's requirements.

P12. Return or Destruction of University-PHI. Within thirty (30) days of the termination of the PO, Supplier will return to the University or destroy all University-PHI in its possession or control, including such University-PHI that is in the possession of Supplier's subcontractors and agents, and if feasible, retain no copies of such University-PHI. If Supplier considers return or destruction of the University-PHI infeasible, Supplier will notify the University of the conditions that make return or destruction infeasible, and if the University agrees that return or destruction is infeasible, Supplier may retain the University-PHI, provided that it will extend all protections contained in this PO to its use and/or disclosure of any retained University-PHI, and limit any further uses and/or disclosures to the purposes that make the return or destruction of the University-PHI infeasible.

P13. Remedies. In the event of a material breach of this Part 4 by Supplier, the University may at any time thereafter, and in its sole discretion, either: (a) notify Supplier of the breach in writing, providing an opportunity for Supplier to cure the breach, and terminate this PO if Supplier does not cure the breach within the time specified by the University in such notice; or (b) immediately terminate this PO on written notice to Supplier.