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**Regents of the University of Minnesota (“University”)**

**General Terms and Conditions of Purchase**

**1. Terms, Choice of Law and Forum, and Amendment.** These terms and conditions, terms and conditions on the face of the applicable Purchase Order, and exhibits attached or incorporated by reference are the entire agreement between University and Seller (“Agreement”). University rejects any different or additional terms suggested before or after this Agreement. Any performance hereunder is an acceptance of this Agreement. No amendments to this Agreement will be effective unless in writing, signed by both parties. If this Agreement follows a Request for Proposal (“RFP”) or Request for Bid (“RFB”), the following order of precedence will apply: (a) Agreement, (b) RFP or RFB, and (c) Seller’s Response to the RFP or RFB. Minnesota law, without regard for choice of law considerations, will govern this Agreement. A Minnesota court will hear any action arising out of this Agreement, and Seller consents to jurisdiction in Minnesota. “Seller” includes Seller’s employees, officers, directors, agents, and sub-contractors. “University” includes University’s employees, officers, directors, regents, students, agents, and contractors.

**2. Warranty.** Seller warrants that all goods and services provided under this Agreement (“Goods and Services”) (a) are new, unused, and free from defects in material and workmanship; (b) are the quality and dimensions ordered; (c) comply with representations in Seller’s advertisement, correspondence, or RFP or RFB response; (d) comply with applicable laws, regulations, or codes; and (e) are not restricted by rights of third parties. Seller represents that it is not excluded from participating in federal health care programs including Medicare and Medicaid, and is not debarred or suspended or listed on the General Services Administration’s List of Parties Excluded from Federal Procurement or Nonprocurement Programs. Seller will notify University if it becomes excluded, debarred, or suspended during the term of this Agreement, Seller will correct any breach of warranty at Seller’s sole expense. University does not waive any warranty by acceptance of goods, services or payment, and reserves all rights and remedies.

**3. Inspections and Improper Delivery.** University will have a reasonable time after receipt to inspect Goods and Services and reject any that are nonconforming or in excess of quantities ordered. University may refuse Goods or Services or cancel all or any part of this Agreement if Seller fails to deliver all or any part of the Goods or Services in accordance with this Agreement. University’s failure to inspect the Goods or Services will not relieve Seller of such responsibility. University’s acceptance will not be deemed a waiver of any defect in Goods or Services.

**4. Assignment.** Neither party may assign any part of this Agreement without prior express written consent of the other.

**5. Taxes.** University is exempt from paying Minnesota sales and use taxes. Seller will not charge University for such taxes except as provided in Minnesota Statute, Section 297A.70, Subd. 2.

**6. Delivery.** Delivery will be FOB destination/Seller to pay shipping and freight. If delivery is FOB origin, Seller will insure shipment for its full value, and prepay freight. In any case, Seller is responsible for packing, crating, marking, transporting, and loss or damage in transit. Risk of loss will pass to University upon University’s actual receipt and acceptance of Goods or Services.

**7. Use of University Name or Logo.** Seller will not use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with University, or the name of any representative of University without the written permission of University’s Office University Relations in each instance.

**8. Payment.** University will pay invoices within thirty days of receipt. University may withhold payment for Goods or Services University finds defective, untimely, or otherwise non-conforming. If Seller has negotiated more favorable terms or conditions for the sale of goods or services to another customer, those terms and conditions will be applied to this Agreement. Supplier’s cash discount or other prompt payment discount period will commence on the later of University’s receipt of all Goods and Services or University’s receipt of Seller’s invoice.

**9. Payment Card Industry Data Security Standards (PCI DSS) Compliance.**  As it relates to this Agreement, in the event that Seller may have access to credit or debit card information and/or its Goods and Services may affect the security of a credit or debit card transaction, Seller agrees to the requirements set out in [Cardholder Data Security](https://drive.google.com/file/d/1-3pbppzE83Pg5IuOkH-s56m3gp6Fg94G/view).

**10. Termination.** University may terminate this Agreement in whole or in part at its convenience by notice to Seller. Seller will immediately stop all work under this Agreement. University will pay a reasonable termination charge calculated on a pro rata or other equitable basis for Goods or Services performed or provided. University will not pay for work performed or costs incurred after receipt of notice of termination, or for reasonably avoidable costs. University may terminate this Agreement in whole or in part for cause upon seven days’ written notice if Seller fails to comply with any material term or condition. Late delivery of Goods or Services, or delivery of defective or non-conforming Goods or Services will, without limitation, be cause for termination. In the event of such termination, University will not be liable for damages, and reserves all rights and remedies. If it is determined that University improperly terminated this Agreement for cause, then such termination will be deemed to have been for University's convenience.

**11. Independent Contractor.** The relationship between the parties is solely that of independent contractors, not partners, joint venturers, employees, agents, or otherwise. Neither will have any authority to bind the other in any manner, and will not represent or imply that it has such authority.

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**12.** **Non-Waiver.** Waiver by a party of any default or nonperformance will not be a waiver of any subsequent default or nonperformance.

**13. Audit and Retention of Books and Records.** UponUniversity’s request, Seller will inform University of its accounting procedures and practices. University may inspect and copy Seller’s books, records, and documents in any medium to verify Seller’s performance and expenses submitted pursuant to this Agreement. Seller will make such items available for inspection during normal business hours at Seller’s place of business. Seller will retain all such items during the term of this Agreement and for a period of three years after the delivery of the Goods and Services. Seller will retain any items relating to a claim arising out of the performance of this Agreement until the claim has been resolved.

**14. Limitation of Liability.** IN NO EVENT SHALL A PARTY BE LIABLE FOR INDIRECT, CONSEQUENTIAL, INCIDENTAL, LOST PROFITS OR LIKE EXPECTANCY DAMAGES ARISING OUT OF THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH. University’s total obligation under this Agreement is set forth in the “total amount” field on the face of this Agreement.

**15. Changes.** At any time by a written notice, University may change the drawings, designs, specifications, materials, packaging, and the time and place of delivery. Promptly upon receipt of such notice, Seller will either advise that the change will not affect its costs, or give notice of changes in costs, compensation, and the time of completion.

**16. Confidentiality.** Seller will keep confidential and safeguard the security of any information relating to personal, financial, or other non-public data of University it receives during the course of its performance. Seller will comply with all state and federal laws relating to data privacy and security, including, without limitation, the Minnesota Government Data Practices Act; the Gramm-Leach-Bliley Act; the Health Insurance Portability and Accountability Act; the Family Educational Rights and Privacy Act; and the Payment Card Industry Security Standards Council requirements. Seller will assist and cooperate in University's efforts to confirm Seller's compliance with the terms of this section. Seller will (a) permit University to inspect on Seller’s premises Seller’s business records, procedures, rules and practices, and other documentation demonstrating compliance with the safeguards; and (b) make available to University Seller’s employees or representatives who have authority to maintain or are knowledgeable of safeguards. Seller will promptly notify University, in writing, of each instance of unauthorized access, attempted unauthorized access, or use of confidential information that could result in harm or inconvenience to the owner of the information or University; or of any unauthorized disclosure, misuse, alteration, destruction or other compromise of the confidential information. Within thirty days of the termination or expiration of this Agreement, Seller will destroy all records in its possession that contain confidential information, and will deliver to University a written certification of the destruction. Seller will indemnify, defend and hold University harmless from any and all claims, demands, suits, actions, liabilities and expenses (including reasonable attorneys' and investigative fees) arising out of an act or omission by Seller that results in a person having access to or use of customer information in violation of law or this Agreement or the misuse, alteration, destruction or alteration of confidential information in violation of law or this Agreement.

**17. Insurance.** Unless more specific insurance provisions are attached, the following shall apply. At all times during its performance under this Purchase Order, Seller shall obtain and keep in force i) Commercial General Liability insurance, including coverage for bodily injury and property damage, products and completed operations, liability assumed under an insured contract, pollution liability (if requested by University), with limits of not less than $1,000,000 each occurrence and $2,000,000 annual aggregate. Such insurance will be primary, non-contributory, and include a waiver of subrogation; ii) Automobile Liability with limits not less than $1,000,000 each occurrence CSL; iii) Workers Compensation to the extent required by law; including Employers Liability with limits not less than $500,000 each accident, $500,000 each employee/disease, $500,000 policy limit/disease; iv) Professional Liability/Errors & Omissions, if applicable, with limits not less than $1,000,000 each claim/annual aggregate. Prior to the commencement of work, Seller shall provide a certificate of insurance evidencing such insurance, shall name the Regents of the University of Minnesota as an additional insured. Seller shall provide for notification to University within at least thirty (30) days prior to expiration or cancellation of such insurance.

**18. Environmental Compliance.** "Hazardous Substance" means any substance regulated by any federal, state, local or other governmental statute, regulation, law or ordinance for the protection of human health, natural resources and/or the environment now or hereafter in effect, and as amended, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Minnesota Environmental Response and Liability Act, and Minnesota Statute, Section 116.70-.74 regarding chlorofluorocarbon. Seller will comply with all environmental laws. Seller will notify University of every article ordered or supplied under this Agreement, or stored or used by Seller on University property that contains Hazardous Substances or substances for which the law requires a Material Safety Data Sheet. Seller will give such notification prior to the shipment or introduction of such substances onto University property and will include, at a minimum, information regarding the substance including but not limited to Material Safety Data Sheets. University will have the right to inspect any Hazardous Substances that Seller has introduced or intends to introduce onto University property at all times. In addition, if this Agreement is in excess of $100,000, Seller will comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act as amended. University will report all violations to the federal awarding agency and the Regional Office of the Environmental Protection Agency.

**19. If Goods or Services are for building construction or repair in the amount of $2,000 or more**.

 A. Seller will Comply with the Copeland “Anti-Kickback” Act and related regulations. Seller will not induce any person to give up any part of the compensation to which such person is otherwise entitled. By accepting this Agreement, Seller (a) certifies that it has not directly or indirectly paid kickbacks to University for the purpose of obtaining this or other University agreement; (b) agrees to cooperate fully with any investigation involving a possible violation of the Act; (c) agrees to report any suspected violations of the Act to University’s Director of Audits; and (d) certifies that it has provided no fees, gifts, gratuities, compensation, or anything of value in violation of Minnesota Statute, §15.43.

 B. Seller will comply with the Davis-Bacon Act and related regulations. Seller will pay wages to laborers and mechanics at a rate not less than the minimum wages specified in wage determinations made by the Secretary of Labor, and agrees that such wages will be paid not less than once a week.

**20. Contract Work Hours and Safety Standards Act.** If this Agreement is for goods or services for building construction or repair in the amount of at least $2500 if only one trade or occupation is required to complete the work, or the contract sum is at least $25,000 if more than one trade or occupation is required to complete the work, Seller will comply with the Contract Work Hours and Safety Standards Act and related regulations. No laborer or mechanic will be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials, or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

**21. Prevailing Wage Rates on Project Work Site**. If this Agreement is for Goods or Services for building construction or repair for at least $2,500 if only one trade or occupation is required to complete the work, or at least $25,000 if more than one trade or occupation is required (“Project”), Seller and subcontractors at all tiers (“Firms”) will pay laborers, workers and mechanics performing work on a Project site (“Workers”) at least the applicable Prevailing Wage Rate determined by the Minnesota Department of Labor and Industry, including applicable overtime plus benefits contributions. Seller is responsible for compliance by all Firms. Seller will post and maintain a copy of the applicable Prevailing Wage Rate Schedules and Prevailing Hours of Labor in a conspicuous place accessible to all Workers. At University’s request, Firms will furnish copies of certified payroll records (U.S. Department of Labor form WH-347) for Workers to University Contract Agent (defined as the purchasing representative who issues the “Notice to Proceed” to the Contractor). Firms will submit the records to the Contract Agent within seven business days of the date of the request. If the request covers future pay periods, or is ongoing in nature, Firms will submit the records to the Contract Agent within seven business days of the last day of each pay period covered by the request. Firms should submit the records as a .pdf file. University will retain copies of the certified payroll records and make them available to the Minnesota Department of Labor and Industry at its request. Not complying with this section is a material breach of contract. Seller may cure the breach by immediately commencing payment at Prevailing Wage Rates and overtime, and promptly making restitution to laborers, workers, and mechanics who have been underpaid. If the breach is not cured, Seller will immediately pay University the total amount of the underpayment of wages plus five percent. These damages are not a penalty but are specified so University may reimburse the underpaid. Seller will hold University harmless and indemnify University from all loss, cost or expense arising out of Seller’s or Firms’ failure to pay Prevailing Wage Rates or overtime.

**22. Rights of the Federal Government to Inventions Made Under a Contract or Agreement.** To the extent this Agreement involves the performance of experimental, developmental, or research work, the rights of the federal Government and University to any resulting inventions will be determined in accordance with 37 CFR part 401 and implementing regulations issued by the awarding agency.

**23. Byrd Anti-Lobbying Amendment.** If this Agreement is in excess of $100,000, Seller certifies 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 an 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. Seller will also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Seller will ensure compliance herewith by Seller’s subcontractors.

**24. Affirmative Action, Equal Employment Opportunity, and Targeted Group Business.** University of Minnesota is committed to the policy that all persons will have equal access to its programs, facilities, and employment without regard to race, color, creed, religion, sex, age, marital status, disability, public assistance status, veteran status, or sexual orientation, and is committed to transacting business only with firms who follow these practices. Seller must apply every good faith effort to ensure implementation of this policy in their practices of employment, upgrade, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, or selection for training, including apprenticeship. Seller will maintain non-segregated facilities for their employees and not allow its employees to perform services at any segregated facilities under its control. Seller will also develop and have on file for each of its establishments such written Affirmative Action Plans as may be required by the Secretary of Labor. Additionally, this Agreement is subject to, and Seller agrees to comply with, the requirements of all Executive Orders, regulations, and statutes prohibiting discrimination, promoting equal employment opportunities, promoting affirmative action, and promoting the policy that small business concerns owned and controlled by socially and economically disadvantaged will have maximum practicable opportunity to participate in University’s bidding process. University incorporates by reference its Targeted Group Business Policy and Affirmative Action Policy into this Agreement and Seller agrees to comply with those policies. If applicable, Seller certifies that it has received a certificate of compliance from the Minnesota Commissioner of Human Rights for its affirmative action plan.

**25. “Flow-down”.** If University notifies Seller on the face of the Purchase Order that it is using federal funds to procure the goods or services provided, this Agreement will incorporate the federal requirements set forth in Exhibit B (available at <http://purchasing.umn.edu/docs/FederalFlowdown.pdf>) and Seller will adhere to such additional requirements. In addition, if the price is in excess of $10,000, **University and Seller shall abide by the requirements of 41 CFR 60-741.5(a), which prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities**. If the price is in excess of $100,000, **University and Seller shall abide by the requirements of 41 CFR 60-300.5(a), which prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans**.

**26. Anti-Trust Violations.** Seller recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the buyer. Seller hereby assigns to University, as the buyer of Goods and Services all claims for such overcharges as to Goods and Services.

**27. Export Controls (International Traffic in Arms Regulations and Export Administration Regulations).** Before furnishing goods, software, services or technical data that are on the U.S. Munitions List (22 C.F.R. pt. 121) or in the 500- or 600-series of the Commerce Control List (15 C.F.R. pt. 774), Seller will notify University that such items are export controlled. Seller will ship export-controlled items only after University’s Export Controls Officer has furnished written confirmation that University is prepared to accept delivery of such items.

**28. Notices/Administration.** Except as otherwise provided in this Agreement, all notices, will be in writing and will be delivered either personally, by facsimile, by electronic mail with confirmed delivery, by a recognized overnight courier service, or by United States mail (first-class, certified or registered, postage prepaid, return receipt requested) to the other party at its address as set forth on the face of this Agreement, with a copy to Office of the General Counsel, University of Minnesota, 360 McNamara Alumni Center, 200 Oak Street SE, Minneapolis, MN  55455, Phone: 612-624-4100, Fax: 612-626-9624.

**29. Acknowledgement.** Seller certifies that it provided to University its correct taxpayer I.D. number, and it is not subject to backup withholding because (a) it is exempt from such withholding, (b) the IRS has not notified it that it is subject to backup withholding, or (c) the IRS has notified it that it is no longer subject to backup withholding. If Seller has been notified by the IRS that it is currently subject to backup withholding, it must cross out and initial the preceding clause and notify University in writing at Purchasing Services, 1300 South Second Street, Suite 277, Minneapolis, MN 55454-1082.

**30. University Order Number.** Seller agrees to place University Purchase Order Number shown on the face of this Agreement on all packages, invoices, packing slips, notices, and correspondence related to this Agreement.

**31. Fund Availability; Government Funds Contingency.** Financial obligations of University payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. University’s payment obligations are subject to and contingent upon the continuing availability of government funds for the purposes of this Agreement.

**32. Severability.** If any provision of this Agreement is invalid or unenforceable, the remainder of the provisions, or the application of such provision to persons other than those as to which it is held invalid or unenforceable, will not be affected and the remainder of the provisions will be valid and enforceable to the fullest extent permitted by law.

**33. Assurance.** If University determines in good faith that it is insecure with respect to Seller’s ability or intent to fully perform, Seller will provide University with written assurance of Seller’s ability and intent to fully perform. Seller will provide such assurance within the time and in the manner specified by University. Seller will immediately notify University of any circumstance that may cause Seller to fail to fully perform. Upon University’s good faith determination that Seller cannot or will not perform, University may deem the Seller to have breached and terminated this contract.

**34. Bankruptcy.** If Seller institutes or has a case instituted against it under the United States Bankruptcy Code, Seller will furnish University adequate assurance of its ability to perform all material obligations of the Agreement within fourteen days of receipt of a written request. Within sixty days of the institution of the bankruptcy filing, Seller will petition to assume or reject this Agreement. Seller will diligently prosecute said petition. If Seller fails to do so, University will be entitled to petition the court to reject this Agreement and will be entitled to all remedies for breach, including damages, right to cure and right to cover.

**35. Survivability.** All of the terms and conditions of this Agreement will survive the delivery of goods, the provision of services, and the expiration or termination of this Agreement.

36. **Prohibited Telecommunications and Video Surveillance Equipment and Services.** If applicable, Seller warrants that it shall not furnish to the University any product or service which uses as a substantial or essential component of any system, or as a critical technology as part of any system, telecommunications and surveillance equipment manufactured by any company the United States Congress has determined to represent a threat to secure communication as part of the 2019 National Defense Authorization Act, Pub. L. No. 115-232 Section 889. In particular Seller warrants it will not furnish any items that are (or contain) telecommunications or video surveillance equipment or services produced or provided by: (a) Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (including any affiliates or subsidiaries of these companies); or (b) any entity identified by the Department of Defense as being owned or controlled by, or otherwise connected to, the government of the People's Republic of China.