

THE UNIVERSITY OF NEW MEXICO ("UNM")
Purchase Order STANDARD TERMS AND CONDITIONS

April 3, 2023

1. ****ACCEPTANCE AND REJECTION.** If prior to final acceptance, any goods or services are found to be defective or not as specified, or if the University is entitled to revoke acceptance of them the University may reject or revoke acceptance, require Seller to correct without charge within a reasonable time, or require delivery at an equitable reduction in price, at the University's option. Seller shall reimburse the University for all incidental and consequential costs related to unaccepted goods or services. Notwithstanding final acceptance and payment, Seller shall be liable for latent defects, fraud, or such gross mistakes as amount to fraud. Acceptance of goods or services shall not waive the right to claim damages for breach of contract.
2. ****AGREEMENT.** This Purchase Order is the sole and entire Agreement between the parties; any documents incorporated into this Agreement are listed explicitly on the front side of this Purchase Order, or are incorporated by implication by the terms of this Purchase Order. Any terms inconsistent with or in addition to this Purchase Order proposed by Seller are deemed rejected unless agreed to in writing by an appropriate University official.
3. ****ASSIGNMENT.** This Purchase Order is assignable by the University. Except as to any payment due hereunder, this Purchase Order is not assignable by Seller without written approval from the University.
4. ****CHANGES.** The University may make changes within the general scope of this Purchase Order by giving notice to Seller and subsequently confirming such changes in writing. If such changes affect the cost of, or the time required for performance of this Purchase Order, an appropriate equitable adjustment shall be made. No change by Seller shall be recognized without written approval of the University. Any claim of Seller for an adjustment under this Paragraph must be made in writing within thirty (30) days from the date of receipt by Seller of notification of such change. Nothing in this Paragraph shall excuse Seller from proceeding with the performance of the Purchase Order as changed hereunder.
5. ****CONFLICT OF INTEREST.** Seller shall disclose to the University Purchasing Department the name(s) of any University employee or member of the Board of Regents who has a direct or indirect financial interest in the Seller or in the proposed transaction. A University employee (or Regent) has a direct or indirect financial interest in the Seller or in the proposed transaction if presently or in the preceding twelve (12) months the employee/Regent or a close relative has an ownership interest in the Seller (other than as owner of less than 1% of the stock of a publicly

traded corporation); works for the Seller, is a partner, officer, director, trustee or consultant to the Seller, has received grant, travel, honoraria or other similar support from the Seller, or has a right to receive royalties from the Seller. Seller shall file a Conflict of interest Disclosure form with the University Purchasing Department.

6. ****DISCOUNTS.** If prompt payment discounts apply to this Purchase Order any discount time will not begin until the materials, supplies, or services have been received and accepted and a correct invoice received by the University's Accounts Payable Department. In the event testing is required prior to acceptance, the discount time shall begin upon completion of the tests and acceptance.
7. ****ECCN REPORTING REQUIREMENT:** Contractor acknowledges that providing goods and services under this Purchase Order is subject to compliance with all applicable United States laws, regulations, or orders, including those that may relate to the export of technical data or equipment, such as International Traffic in Arms Regulations ("ITAR") and/or Export Administration Act/Regulations ("EAR"). Contractor agrees to comply with all such laws, regulations and orders as currently in effect or hereafter amended. Contractor shall not disclose any export-controlled information, or provide any export-controlled equipment or materials to UNM without prior written notice. In the event that UNM agrees to receive such export-controlled information, equipment or materials, Contractor shall: (i) include the Export Control Classification Number (ECCN) on the packing documentation, and, (ii) send an electronic copy of the ECCN number and packing documentation to: ECCN@UNM.EDU.
8. ****ELIGIBILITY FOR PARTICIPATION IN GOVERNMENT PROGRAMS.** Each party represents that neither it nor any of its management or any other employees or independent contractors or Principals as defined in CFR Section 180.995 who will have any involvement in the services or products supplied under this Agreement, have been excluded from participation in any government healthcare program, debarred from or under any other federal program (including but not limited to debarment under the Generic Drug Enforcement Act), or convicted of any offense defined in 42 U.S.C. Section 1320a-7, and that each party, its employees and independent contractors are not otherwise ineligible for participation in federal healthcare programs. Further, each party represents that it is not aware of any such pending action(s) (including criminal actions) against each party or its employees or independent contractors. Each party shall notify the other immediately upon becoming aware of any pending or final action in any of these areas.
9. ****EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION.** The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including

apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

10. ****EXPENSE REIMBURSEMENT.** Per IRS requirements, reimbursements to independent contractors for travel, entertainment or gift expenses must be included in income if an adequate accounting is not provided. For the purposes of this requirement, the University considers requests for reimbursement of these expenses to have not been adequately accounted (billed to the University) if the accounting is not received by the University within one hundred eighty (180) calendar days of when the independent contractor incurred the expense. For any such expenses reimbursed by the University, in which an adequate accounting as described above was not received, the independent contractor will be issued a 1099-MISC, provided the total amount of such reimbursements, combined with any other 1099-reportable payments issued to the independent contractor, exceed the published 1099 reporting threshold for the calendar year in which the payment was made.
11. ****F.O.B.:** Unless stated otherwise, the price for goods is F.O.B. the place of destination, and the place of destination is the University's designated campus address.
12. ****FOREIGN PAYMENTS:** Payment for services performed by a foreign individual or a foreign corporation while in the US may be subject to 30% tax withholding per IRS Publication 515.
13. ****HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA).** The parties agree to enter into a mutually acceptable amendment to this Agreement as necessary to comply with applicable federal laws and regulations governing the use and/or disclosure of individually identifiable health information. Such amendment shall be entered into on or before the date by which hospitals are required to be in compliance with the privacy regulations promulgated under the Health Insurance Portability and Accountability Act of 1996.
14. ****HSC CODE OF ETHICS.** Vendor acknowledges that UNM's Health Sciences Center (UNMHSC) has adopted a code of ethics, which sets forth the ethical values and compliance standards by which the UNMHSC, its component units, and third party vendors, including contractors, will conduct their affairs and conduct their operations. The code of ethics may be found at <http://hsc.unm.edu/policyoffice/ethics.html>
15. ****INDEMNIFICATION AND INSURANCE.** Seller assumes the entire responsibility and liability for losses, expenses, damages, demands and claims in connection with or arising out of any actual or alleged personal injury (including death) and/or damage or destruction to property sustained or alleged to have been sustained in connection with or arising out of the goods delivered by Seller or the performance of the work by Seller its agents, employees, subcontractors or consultants, except to the extent of liability arising out of the negligent performance of the work by or willful misconduct of the University. Seller shall indemnify, defend and hold harmless the University, its

officers, agents, and employees from any and all liability for such losses, expenses, damages, demands, and claims and shall defend any suit or action brought against any or all of them based on any actual or alleged personal injury or damages and shall pay any damage costs and expenses including attorneys' fees, in connection with or resulting from such suit or action. Seller will also indemnify, defend and hold harmless the University against any joint and several liabilities imposed against the University with respect to strict products liability claims attributable to the fault of the Seller.

Seller agrees that it and its subcontractors will maintain general liability, product liability and property damage insurance in reasonable amounts (at least equal to the New Mexico Tort Claims Act limits) covering the above obligation and will maintain workers' compensation coverage covering all employees performing under this Purchase Order on premises occupied by or under the control of the University. The liability of the University will be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1 et seq. NMSA 1978, as amended.

16. ****INDEPENDENT BUSINESS.** Neither Seller nor any of its agents shall be treated as an employee of the University for any purpose whatsoever. Seller declares that Seller is engaged in an independent business and has complied with all federal, state and local laws regarding business permits and licenses of any kind that may be required to carry out the said business and the tasks to be performed under this Purchase Order. Seller further declares that it is engaged in the same or similar activities for other clients and that the University is not Seller's sole or only client or customer.
17. ****INSPECTION.** The University may inspect, at any reasonable time, any part of Seller's plant or place of business, which is related to performance of this Purchase Order. Final Inspection will be made at the destination upon completion of delivery of goods and services. Acceptance of delivery shall not be considered acceptance of the goods and/or services furnished. Final inspection shall include any testing or Inspection procedures required by the Specifications.
18. ****INSTRUMENTALITIES:** Seller shall supply all equipment, tools, materials and supplies to accomplish the designated tasks except as set forth in this purchase order or its attachments.
19. ****MINIMUM WAGE RATES AND PAYROLL SUBMITTALS:** For all federally funded construction projects greater than \$2,000, the contractor and all subcontractors and their tiers shall deliver or mail legible copies of the certified weekly payrolls for all costs/services invoiced for the project awarded resulting from this IFB/RFP to the appropriate oversight agency and UNM's Office of Capital Projects. The Contractor shall certify that all payrolls submitted meet or exceed the applicable wage determination as shown in this IFB/RFP. Contractor shall be responsible for the collection and submittal of all certified payrolls and shall retain a copy of all payrolls for a period of 3 years from the completion of the project. A copy of all certified payrolls shall be sent weekly to UNM Office of Capital Projects. The Contractor shall be responsible for labeling each submittal with the project name; payroll period; and

contractor and/or subcontractor name; each employee's full name and social security number, address and zip code, birth date, sex and occupation, time and day of when employees work week begins, hours worked each day, total hours worked each workweek, basis on which employees' wages are paid, regular hourly pay rate, total daily or weekly straight-time earnings, total overtime earnings for the workweek, all additions to or deductions from the employee's wages, date of payment and the pay period covered by the payment.

20. ****OTHER APPLICABLE LAWS.** Any provision required to be included in a purchase order of this type by any applicable and valid executive order, federal, state or local law, ordinance, rule or regulation shall be deemed to be incorporated herein.
21. ****OWNERSHIP: Ownership of Documents -** All documents which are prepared by the Vendor/Contractor or any member of the consulting team that form a part of its services under this Agreement are the sole property of the University of New Mexico and such works may not be reproduced nor distributed without the express written consent of the University of New Mexico and shall be delivered to UNM upon termination and or completion of this Agreement if UNM so requests. The Vendor/Contractor shall be responsible for the protection and/or replacement of any original documents in its possession. UNM shall receive all original drawings and the Vendor/Contractor shall retain a reproducible copy.

Work Made for Hire - For the consideration payable under this Agreement, the work product required by this Agreement shall be considered a work made for hire within the meaning of that term under the copyright laws of the United States, applicable common law and corresponding laws of other countries. UNM, shall have the sole right and authority to seek statutory copyright protection and to enjoy the benefits of ownership of the work. The party performing the work hereby assigns all rights, title and interest in and to the work to UNM and shall require all members of the consulting team to agree in writing that they assign all right, title and interest in work product required by the Agreement to UNM.

Inventions. For the consideration payable under this Agreement, the Vendor/Contractor agrees to report any invention arising out of the Work required by this Agreement to UNM. UNM shall have sole right and authority to seek statutory patent protection under United States and foreign patent laws and to enjoy the benefits of ownership of the invention, whether or not the invention was required of the Vendor/Contractor or member of the consulting team as part of the performance of Work. The Vendor/Contractor hereby assigns all right, title and interest in and to inventions made in the course of the Work to UNM and agrees to execute and deliver all documents and do any and all things necessary and proper to effect such assignment. Vendor/Contractor shall require all members of the Consulting Team to

agree in writing that they will execute and deliver all documents and do any and all things necessary and proper to effect assignment of inventions arising out of the Work required by this Agreement to UNM.

Survival of Provision. This provision shall survive expiration and termination of this Agreement.

22. ****PATENT AND COPYRIGHT INDEMNITY.** Seller shall indemnify, defend and hold harmless the University against all losses, liabilities, lawsuits, claims, expenses (including attorneys' fees), costs, and judgments incurred through third party claims of infringement of any copyright, patent, trademark or other intellectual property rights.
23. ****PAYMENT TERMS.** Upon written request from Seller for payment, the University shall, within 30 days, issue a written certification of complete or partial acceptance or rejection, with payment to follow within 30 days after certificate of acceptance. Late payment charges shall be ½ of 1% per month.
24. ****PAYROLL OR EMPLOYMENT TAXES.** No federal, state, or local income, payroll or employment taxes of any kind shall be withheld or paid by the University with respect to payments to Seller or on behalf of Seller its agents or employees. Seller shall withhold and pay any such taxes on behalf of its employees as required by law. The payroll or employment taxes that are the subject to this paragraph include but are not limited to FICA, FUTA, federal personal income tax, state personal income tax, state disability insurance tax, and state unemployment insurance tax. If Seller is not a corporation, Seller further understands that Seller may be liable for self-employment (Social Security) tax, to be paid by Seller according to law.
25. ****PENALTIES.** The Procurement Code. Section 13-1-28 at seq. NMSA 1978, as amended imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose criminal penalties for bribes, gratuities, and kickbacks.
26. ****SAFEGUARDING OF CONFIDENTIAL DATA:** The item(s) or service(s) specified in this Purchase Order may require Vendor to create, receive from or on behalf of University, or have access to records or systems containing Personal Identifying Information ("PII"). Without limitation, PII may be in the form of social security numbers; driver's license numbers; other government-issued identification numbers; account numbers; credit card or debit card numbers; security codes; access codes; passwords; biometric data; Family Educational Rights and Privacy Act ("FERPA") protected data; Health Insurance Portability and Accountability Act ("HIPAA") protected data; Gramm-Leach-Bliley Act ("GLBA") protected data; data falling under the definition of Controlled Unclassified Information pursuant to federal law ("CUI"); data protected by the European Union (EU) General Data Protection Regulation (GDPR); and other similar personal identifying information and protected data. Any and all PII provided by the University to the Vendor, or which the Vendor acquires through its own efforts in rendering or providing any goods or services under this Agreement, shall be considered

confidential, be held in strict confidence and shall be released to the Vendor's own personnel, agents, sub-vendors, and sub-consultants only to the extent necessary to provide or perform the goods or services required by this Agreement.

With regards to FERPA, Vendor agrees that as a contractor for institutional services, Vendor is subject to the re-disclosure regulations in 34 CFR 99.3 and that Client hereby directs the use and maintenance of the educational records.

- 1) With regards to CUI, Vendor agrees that all data determined by the U.S. Government to be CUI, shall be controlled and protected by safeguards that meet or exceed the requirements identified below, as identified in Executive Order 13556, "Controlled Unclassified Information," and its implementing regulations (32 CFR Part 2000, 44 USC 3554, 44 USC 3555). These requirements include but are not limited to: For information classified by the U.S. Government as CUI "basic," safeguards must meet those defined in NIST 800-171 with the NIST 800-53 "moderate" safeguards;
- 2) For information classified by the U.S. Government as CUI "specific," (e.g., HIPAA, which has a "security rule" and a "privacy rule,") safeguards must meet those defined in the most recent publications of the relevant laws and their implementing regulations.

PII shall not be released by Vendor to any other person or organization without the prior written consent and approval of the University and, if the PII is not owned by the University, by the information owner/ data subject. Vendor represents, warrants and certifies that it complies with all University policies regarding protection of PII and with the New Mexico Data Breach Notification Act. ("NMDBNA"). At the request of University, Vendor shall provide University a written summary of the procedures Vendor uses to safeguard PII and a summary of any security and privacy audits or assessments of Vendor's procedures performed by Vendor's consultants or other external entities.

Vendor further represents, warrants, and certifies that it will:

- 1) hold PII in the strictest confidence and will not use or disclose information except as
 - (a) permitted or required by the Agreement or these Terms and Conditions,
 - (b) required by law, or
 - (c) otherwise authorized by University and the information owner, if not the University, in writing;
- 2) implement and maintain a comprehensive information security program that contains administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and

availability of PII that it creates, maintains, receives, stores, or transmits on behalf of the University. Such information security program shall at a minimum, conform to those updated standards promulgated by the National Institute of Standards and Technology, Center for Internet Security ("NIST-CIS"), the Payment Card Industry (PCI) Security Standards or Software Security Framework, or other equally robust relevant standards;

(3) continually monitor its operations and take any action necessary to assure the information is safeguarded in accordance with the terms of this Agreement; and,

(4) contractually bind and ensure that its agents, sub-vendors or sub-consultants adhere to the provisions set forth in this section;

Upon termination of this Agreement or when Vendor no longer reasonably requires PII to perform its obligations under this Agreement, whichever is sooner, Vendor agrees to, at the direction of University, either:

a) recover and return in a format approved by University all PII provided by University or created by Vendor under this Agreement, including all PII that may be in the possession of Vendor's subcontractors or agents; or,

b) destroy, in a manner that permanently renders the data unusable, unreadable and undecipherable, all PII provided by University or created by Vendor under this Agreement, including all PII that may be in the possession of Vendor's subcontractors or agents.

If Vendor becomes aware that PII is subject to a security or privacy breach in which PII is, or is reasonably believed to have been, accessed by an unauthorized person in any manner, Vendor shall immediately inform University of such breach in writing, shall identify to University the persons whose PII was compromised, shall detail to the extent possible the causes of the breach, shall take all necessary measures to ensure that further PII is not compromised, and shall immediately begin all actions necessary to comply with the notification obligations contained in the NMDBNA. Within seven (7) days of discovery of the breach, Vendor shall provide to University its written plan to comply with the NMDBNA. Vendor agrees that the obligations set forth in the NMDBNA are its own, and not those of the University; however, Vendor shall fully cooperate with University in any mitigation or notification actions undertaken by University due to the security breach. Upon completion of all actions required under the NMDBNA, Vendor shall certify to University that such actions have been completed. Vendor's actions in complying with the NMDBNA shall not entitle it to further compensation.

If Social Security numbers, credit card numbers or other similar data that may be used to damage a person's credit rating are disclosed to or accessed by an unauthorized

person, or if the confidentiality of such information is otherwise breached, Vendor shall pay for and arrange at no further cost to University or the information owner a minimum of two years of credit monitoring and identity protection service offered by at least one of the three major credit bureaus (Equifax, Experian, TransUnion).

In addition to any other indemnity provided by Vendor, in the event of a security breach involving PII, Vendor agrees to indemnify, defend with counsel approved by University, and hold harmless University from, for and against any and all: losses; liabilities; lawsuits; claims; expenses (including attorneys' fees and attorneys' fees expended in enforcing this provision); costs; civil, regulatory and administrative penalties; and judgments incurred through third- party claims of violation of the NMDBNA, HIPPA FERPA, GLBA, GDPR, or otherwise related to a security breach caused by Vendor's own acts or omissions.

In addition to any other termination rights set forth in this Agreement and any other rights at law or equity, if University reasonably determines that the Vendor has breached any obligations set forth in this section, University may immediately terminate this Agreement without notice or opportunity to cure.

27. ****TAX SEGREGATION (CONSTRUCTION RELATED PROJECTS):** In the performance of construction related services under this solicitation, the Seller agrees to work with and cooperate with the University's Tax Cost Segregation Consultant. The University's tax cost segregation consultant will be responsible for coordination, oversight and analysis of the effective application of New Mexico Gross Receipts Tax for each general contractor involved with the construction projects at UNM. Such services of the segregation consultant will be performed in accordance with New Mexico Statutes and relative regulations governing the application of New Mexico gross receipts tax to tangible personal property acquisition made by UNM for various construction projects.

28. ****TERMINATION AND DELAYS.** The University may by written notice stating the extent and effective date, terminate this Purchase Order for convenience in whole or in part, at any time. The University shall pay Seller as full compensation for performance until such termination: (1) the unit or pro rata order price for the delivered and accepted portion: and (2) incidental damages, not otherwise recoverable from other sources by Seller, as approved by the University, with respect to the undelivered or unaccepted portion of this Purchase Order provided compensation hereunder shall in no event exceed the total Purchase Order price.

Such amount will be limited to Seller's actual cost, and may not include anticipated profits. The University shall not be liable for consequential damages. The University may by written notice terminate this Purchase Order in whole or in part for Seller's default if Seller refuses or fails to comply with the provisions of this Purchase Order or fails to make progress so as to endanger performance and does not cure such failure within a reasonable period of time. In such event, the University may otherwise secure the materials, supplies or services ordered, and Seller shall be liable for damages

suffered by the University thereby, including incidental and consequential damages. If after notice of termination, the University determines Seller was not in default, or if Seller's default is due to failure of the University, termination shall be deemed for the convenience of the University. The rights and remedies of the University provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Purchase Order as used in this paragraph, the word "Seller" includes Seller and Seller's sub-suppliers at any tier.

29. ****TITLE AND DELIVERY.** Title to the materials and supplies passed hereunder shall pass to the University upon acceptance at the FOB point specified, subject to the right of the University to reject. For any exception to the delivery date specified, Seller shall give prior notification and obtain approval thereto from the University's Purchasing Department. Time is of the essence and the purchase order is subject to termination for failure to deliver on time.
30. ****WARRANTIES.** Seller warrants the goods and/or services furnished to be exactly as specified in this Purchase Order, free from defects in Seller's design, labor, materials and manufacture, and to be in compliance with any drawings or specifications incorporated herein and with any samples furnished by Seller. All applicable UCC warranties express and implied are incorporated herein.
31. ****WORKERS COMPENSATION.** No workers compensation insurance has been or will be obtained by UNM on account of Seller or its employees or agents. Seller shall comply with the workers compensation laws with respect to Seller and Seller's employees and agents.
32. ****WORKMANSHIP/COOPERATION:** All work shall be done in a neat, workman-like manner using acceptable equipment and methods consistent with that level of care and skill ordinarily exercised by members of the profession/trade and in accordance with sound professional/trade standards and ethical practice. The Seller will cooperate with the University and other contractors and coordinate their work involving other contractors through the University's authorized representative.
33. ****WORKPLACE REQUIREMENTS:** The University of New Mexico (UNM) requires contractors doing business with the university must make a good faith effort to ensure that they and their subcontractors shun sweatshop practices and adhere to workplace and wage laws. UNM requires that all contractors who enter into contracts will to the best of their knowledge and their subcontractors comply with all state, national and international law in regard to workplace and wage laws.