

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

August 7, 2009

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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. ****ELIGIBILITY FOR PARTICIPATION IN GOVERNMENT PROGRAMS.** Each party represents that neither it nor any of its management or any other employees or independent contractors 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.
8. ****EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION.** In performing the services required under this Purchase Order, each party shall be an equal opportunity employer and shall conform to all affirmative action and other applicable requirements; accordingly, each party shall neither discriminate nor permit discrimination in its operations or employment practices against any person or group of persons on the basis of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap or medical condition, sexual preference, prior military involvement or any other manner prohibited by law.
9. ****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.
10. ****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.

11. ****GRAMM-LEACH-BLILEY ACT:** Pursuant to the Gramm-Leach-Bliley Act and the regulations set forth at 16 CFR Part 314, the University of New Mexico ("University") requires its Service Providers to implement and maintain appropriate safeguards for the protection of Customer Information. Accordingly, the Service Provider shall implement and maintain a comprehensive information security program that contains administrative, technical and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of confidential Customer Information that it creates, receives, maintains, or transmits on behalf of the University. In addition, the Service Provider will require and ensure that any of its agents, sub-contractors, or sub-consultants, to which it provides confidential Customer Information of the University, implement appropriate security measures to protect confidential Customer Information of the University.

Service Provider shall not use or disclose covered data and information received from or created on behalf of the University except as permitted or required by this Agreement, as required by law, or as otherwise authorized in writing by the University. Upon becoming aware of a security breach in which University Customer Information is used or disclosed in a manner not authorized or covered by this Agreement, including any reasonable belief that an unauthorized individual has accessed a database containing covered data and information, or in violation of any applicable state or federal laws, Service Provider will report to the University any security incident immediately upon being aware of such a breach and take such corrective steps/action to remedy the breach as requested by the University and required by law.

Upon termination, cancellation, expiration or other conclusion of this Agreement, Service Provider shall return to the University covered Customer Information and data unless the University requests in writing that such Customer Information and data be destroyed. Service Provider shall complete such return or destruction not less than 30 days after the conclusion of this Agreement. Within such 30 day period, Service Provider shall certify in writing to the University that such return or destruction has been completed. To the extent return or destruction is not feasible; this Agreement shall remain in full force and effect.

Service Provider means any person or entity that receives, maintains, processes, or otherwise is permitted access to Customer Information through its direct provision of services to a financial institution. The Gramm-Leach-Bliley Act broadly defines "financial institution" as any institution engaging in the financial activities enumerated under the Bank Holding Company Act of 1956, including "making, acquiring, brokering, or servicing loans" and "collection agency services". Because higher education institutions participate in financial activities, such as processing student financial aid and student loans, FTC regulations consider them financial institutions for purposes of the Gramm-Leach-Bliley Act.

Customer Information means any record containing nonpublic information as defined in 16 CFR 313.3(n), about a customer of a Financial Institution, whether in paper, electronic or other form that the University has obtained from a customer in the process of offering a financial product or service including offering student aid and loans to students as defined in 12 CFR 225.28. Any and all Customer Information provided by the University to the Service Provider or which the Service Provider acquires through its own efforts in rendering or providing any goods or services under this Agreement, shall be considered confidential and held in strict confidence and shall only be released to the Service Provider's own personnel, agents, sub-contractors and sub-consultants only to the extent necessary to provide or perform the goods and/or services required by this Agreement. Such information shall not be released by the Service Provider to any other person or organization without the prior written

consent and approval of the University.

12. **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.
13. **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.

14. **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.
15. **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.
16. **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.

17. ****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.
18. ****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.

19. ****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.

20. ****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.
21. ****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.

22. ****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.
23. ****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.

24. ****PROTECTION OF CONFIDENTIAL DATA:** Service Provider agrees to abide by the limitations on re-disclosure of personally identifiable information from education records set forth in The Family Educational Rights and Privacy Act (34 CFR § 99.33 (a)(2) and with the terms set forth below. 34 CFR 99.33 (a)(2) states that the officers, employees and agents of a party that receives education record information from the Institution may use the information, but only for the purposes for which the disclosure was made.

Definition: Covered data and information (CDI) includes paper and electronic student education record information supplied by Institution, as well as any data provided by Institution's students to the Service Provider.

Acknowledgment of Access to CDI: Service Provider acknowledges that the Agreement allows the Service Provider access to CDI.

Prohibition on Unauthorized Use or Disclosure of CDI: Service Provider agrees to hold CDI in strict confidence. Service Provider shall not use or disclose CDI received from or on behalf of Institution (or its students) except as permitted or required by the Agreement, as required by law, or as otherwise authorized in writing by Institution. Service Provider agrees not to use CDI for any purpose other than the purpose for which the disclosure was made. If the Family Policy Compliance Office of the U.S. Department of Education determines that the Service Provider improperly disclosed personally identifiable information obtained from Institution's education records, Institution may not allow the Service Provider access to education records for at least five years.

Return or Destruction of CDI: upon termination, cancellation, expiration or other conclusion of the Agreement. Service Provider shall return all CDI to Institution or, if return is not feasible, destroy any and all CDI. If the Service Provider destroys the information, the Service Provider shall provide Institution with a certificate confirming the date of destruction of the data.

Maintenance of the Security of Electronic Information: Service Provider shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted CDI received from, or on behalf of Institution or its students. These measures will be extended by contract to all subcontractors used by Service Provider.

Reporting of Unauthorized Disclosures or Misuse of Covered Data and Information: Service Provider shall, within one day of discovery, report to Institution any use or disclosure of CDI not authorized by this agreement or in writing by Institution. Service Provider's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the CDI used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Service Provider has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Service Provider has taken or shall take to prevent future similar unauthorized use or disclosure. Service Provider shall provide such other information, including a written report, as reasonably requested by Institution.

Indemnity: Service Provider shall defend and hold Institution harmless from all claims, liabilities, damages, or judgments involving a third party, including Institution's costs and attorney fees, which arise as a result of Service Provider's failure to meet any of its obligations under this agreement.

Note: Inclusion of data by students into the terms of the contract will depend upon the contract and may not be needed.

25. ****SELLER'S EMPLOYEES AND AGENTS.** Seller shall have complete charge and responsibility for persons employed by Seller and engaged in the performance of the specified work. The Seller, its agents and employees state that they are independent contractors and not employees of the University. Seller, its agents and employees shall not accrue leave, retirement, insurance, bonding or any other benefit afforded to employees of the University as a result of this Purchase Order.
26. ****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.
27. ****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.
28. ****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.
29. ****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.

30. ****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.
31. ****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.