



## UNC HEALTH CARE SYSTEM PURCHASE ORDER TERMS AND CONDITIONS

**THIS PURCHASE ORDER (P.O.)**, effective as of the date noted on the face of the P.O., is by and between the buying entity identified on the face of the P.O. ("BUYER"), and Seller as noted on the face of the P.O. ("SUPPLIER"). This P.O. and any attachments signed by both parties, specifically referencing this document, will be collectively referred to as the "Agreement." These terms and conditions may only be modified with the written agreement of BUYER. No terms or conditions put forward at any time by SUPPLIER shall form any part of this contract. SUPPLIER's execution and return of the acknowledgement copy of the P.O., or the commencement of delivery of Goods or performance of Services, constitutes SUPPLIER's assent to and express acceptance of the P.O. subject to these Terms and Conditions.

- 1. Pre-Existing Agreements.** In the event that SUPPLIER and BUYER are parties to a pre-existing agreement for the goods and or/services contained on the P.O., that prior agreement shall take precedence over this Agreement, and this Agreement shall not apply.
- 2. Agreement Structure.** This Agreement constitutes the only terms and conditions under which BUYER and its Affiliates will purchase products directly and indirectly from SUPPLIER. "Products" shall mean Goods or Services purchased directly or indirectly from SUPPLIER by or for BUYER that may be further described in exhibits, schedules, addenda or other documents attached hereto and incorporated by reference. The documents may include component subparts. In case of conflict or inconsistency between this Agreement and any Attachments, this Agreement shall prevail.
- 3. Term.** Any term associated with this Agreement will be for the timeframe noted on the face of the P.O.
- 4. Termination.** BUYER may terminate this agreement at any time upon written notice. In the event of an early termination, SUPPLIER shall refund BUYER a pro-rated portion of the fees paid for Goods not received or Services not performed.
- 5. Taxes.** Any sales and use taxes shall be invoiced as a separate item. BUYER shall not be responsible for any other taxes, including but not limited to, personal property tax and income tax assessed on SUPPLIER or the Products provided under this Agreement.
- 6. Invoicing, Payment and Credits.** Each invoice shall be issued no earlier than acceptance of the Products by BUYER. Where possible and appropriate, BUYER requires SUPPLIER to invoice BUYER utilizing electronic data interchange (EDI) technology according to BUYER specifications. Do not email or mail an invoice if you are using EDI. Should SUPPLIER not use EDI technology to submit invoices, SUPPLIER should submit a pdf copy to the Accounts Payable department via BUYER's email address: [invoice@unhealth.unc.edu](mailto:invoice@unhealth.unc.edu). BUYER will only accept one invoice per pdf submission and shall not accept several invoices in a single pdf. Important: do not submit any individual invoice more than once to [invoice@unhealth.unc.edu](mailto:invoice@unhealth.unc.edu), and do not mail invoices that you have already emailed. Invoices are accepted via US MAIL also to the address listed below. No invoice shall be dated prior to the date the Products reflected in such invoice are shipped to or are provided to BUYER or its designees. All invoices must reference the applicable Purchase Order number. All questions and notifications for Accounts Payable should be sent to [statements@unhealth.unc.edu](mailto:statements@unhealth.unc.edu) or your AP representative who handles your account). Correspondence should not be sent to [invoice@unhealth.unc.edu](mailto:invoice@unhealth.unc.edu), this inbox is automated.

BUYER agrees to pay SUPPLIER forty-five (45) days from receipt of invoice under the terms of this Agreement. Alternatively, SUPPLIER may opt for payment within ten (10) days of the date of invoice in exchange for a 2% discount off of the invoice, or payment within twenty (20) days of the date of invoice in exchange for a 1% discount off of the invoice.

Regarding SUPPLIER credits to BUYER, all credit and debit documents should be sent to Accounts Payable. Credits, discounts, debits or rebates shall not be withheld and/or applied internally to any individual BUYER department or cost center. The only department allowed to receive credit, discount, or debit documents, disbursements and/or payments is BUYER's Accounts Payable department. Monthly statements should be submitted to [statements@unchealth.unc.edu](mailto:statements@unchealth.unc.edu) to reflect any and all credit, discount and debit balances, and credit hold notifications. All credits, discounts and debits shall be calculated and applied to BUYER within forty-five (45) days of the end of the applicable period. Unapplied cash or unused credits which have aged to 90 days should be refunded to the address below:

UNC Health Care System - Accounts Payable  
4400 Emperor Boulevard  
Durham, NC 27703

**7. Rebates.** Any rebates associated with this contract, if applicable, must be sent to:

UNC Health Care System  
Treasury Services-Cash Dept.  
Attn: Supply Chain Rebates  
5221 Paramount Pkwy, Suite 410  
Morrisville, NC 27560

All rebate check submissions must include appropriate supporting documentation.

**8. Delivery/Risk of Loss/Title.** Unless otherwise stated on the Purchase Order, all Products are to be shipped FOB Destination. The risk of loss or damage shall not pass to BUYER until the scheduled delivery date and after BUYER has inspected and accepted the Products at the location designated by BUYER for delivery.

**9. Inspection/Acceptance/Rejection/Cure.** Products delivered to or performed on behalf of BUYER are subject to BUYER's rights of inspection and acceptance or rejection for non-conformance. BUYER may, at its option, retain all or some such Products. Any rejected Products may be returned within a reasonable time after notice thereof to SUPPLIER and at SUPPLIER's expense. To the extent SUPPLIER's delivery of Products is not accepted by BUYER, SUPPLIER shall have a reasonable time to fix/cure BUYER's rejection of the Products, not to exceed thirty (30) days. Payment for nonconforming Products shall not constitute acceptance or limit or impair BUYER's right to assert any legal or equitable remedy, or relieve SUPPLIER's responsibility for any defects, latent or otherwise.

**10. Warranty.** SUPPLIER warrants that: (1) any Products provided pursuant to the terms of this Agreement (a) conform to any plans, specifications or drawings, (b) are fit for the purpose for which they are intended, (c) are free and clear of liens, claims and encumbrances, (d) are merchantable and free from defect of title or workmanship, and (e) do not infringe on any patent, copyright, trademark, trade dress, or other intellectual property right; (2) any Services performed pursuant to this Agreement will be performed in a professional, workmanlike manner by qualified, careful, and efficient personnel using good, pertinent, scientific and technical procedures, practices and standards; (3) any software and/or hardware used in the performance of, or offered under the terms of, this Agreement will perform in accordance with any accompanying documentation and does not infringe on any patent, copyright, trademark, trade dress, or other intellectual property right; and (4) any work made for hire deliverables are original, not a derivative work of any other work, and in no way a violation of, or an infringement upon, any patent, copyright, trademark, trade dress, or other intellectual property right. These representations and warranties shall survive inspection, acceptance or payment for the Products, Services or Software delivered hereunder and shall run to BUYER, its parents, subsidiaries, affiliates, heirs, beneficiaries, representatives, successors and assigns, and are not exclusive of any other warranties, express or implied. SUPPLIER is responsible for all loss, liability, cost and expense, including field repair costs, arising out of defects present in Products, Services or Software which result from a breach of this Section. This Section shall survive any termination or expiration of this Agreement and will continue to bind the parties and their successors, parents, subsidiaries, affiliates, heirs, beneficiaries, and representatives.

**11. Quality.** SUPPLIER is responsible for all loss, liability, cost and expense, including field repair costs, arising out of defects present in Products which result from a breach of SUPPLIER's workmanship warranty set forth in the section entitled: Warranty. This Section shall survive any termination or expiration of this Agreement and will continue to bind the parties and their successors and assigns.

**12. Indemnification.** SUPPLIER agrees to defend, indemnify, and hold harmless BUYER, its trustees, officers, directors, employees, successors and assigns, from and against any and all liability, claims, and costs of whatsoever kind and nature, including court costs and reasonable attorney's fees arising out of or from: (a) any death, personal injury or property damage caused by the negligence or intentionally wrongful acts of SUPPLIER or its agents, employees, independent contractors, or subcontractors, (b) the breach by SUPPLIER or its agents, employees, independent contractors or subcontractors of the provisions of this Agreement, including, without limitation, SUPPLIER's breach of the confidentiality obligations herein, any disclosure of patient information, and/or the provisions of the NC Identity Theft Protection Act, (c) infringement by SUPPLIER of a copyright, patent, trademark, trade secret, trade dress, or other intellectual property right of any third party, and (d) any other acts or omissions of SUPPLIER, its agents, employees or subcontractors that may cause BUYER injury or harm. This Section shall survive any termination or expiration of this Agreement and will continue to bind the parties and their successors and assigns.

**13. Infringement.** SUPPLIER agrees to defend BUYER from and against any third party claims alleging that the Product furnished and used within the scope of this Agreement infringes or misappropriates a United States patent issued as of the date hereof, copyright, United States trademark or trade secret and will pay all final judgments awarded or settlements entered into on such claims, including attorney's fees. The foregoing indemnity obligation shall not extend to any claims of infringement arising out of or related to (i) a modification of the Product by anyone other than SUPPLIER or its duly authorized agents; (ii) the incorporation into a Product of any information provided by or requested by BUYER; (iii) a combination of the Product with any third party Product, where the infringement or misappropriation would not exist without such combination; or (iv) the use of a version of the Product other than the then-current version, if infringement would have been avoided by using of the then-current version. In the event the Product is held or believed by SUPPLIER to infringe, SUPPLIER may, at its sole option and expense, elect to (a) modify the Product so that it is non-infringing; (b) replace the Product with a non-infringing Product which is functionally equivalent; (c) obtain a license for BUYER to continue to use the Product as provided hereunder; or if none of the (a), (b), or (c) is commercially reasonable, then (d) terminate the Agreement for the infringing Product and refund the fees paid for that Product. This Section states SUPPLIER's entire liability and BUYER's sole and exclusive remedy for any infringement, misappropriation or other claims arising out of the actual or alleged violation of third party intellectual property rights of any kind. SUPPLIER's indemnification obligations under this Section are conditioned upon BUYER (a) giving prompt notice of the claim to SUPPLIER; (b) granting sole control of the defense and settlement of the claim or action to SUPPLIER; and (c) providing reasonable cooperation to SUPPLIER and, at SUPPLIER's request and expense, assistance in the defense or settlement of the claim. This Section shall survive any termination or expiration of this Agreement and will continue to bind the parties and their successors and assigns.

**14. Liability.** EXCEPT AS PROHIBITED BY APPLICABLE LAW, BUYER WILL NOT BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY CLAIMING UNDER THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUE, LOST SAVINGS OR ANY OTHER INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES UNDER ANY PART OF THIS AGREEMENT. This Section shall survive any termination or expiration of this Agreement and will continue to bind the parties and their successors and assigns.

**15. Compliance with Laws; Applicability of BUYER Policies.** SUPPLIER and SUPPLIER personnel, agents, and contractors shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of SUPPLIER's business and the performance of this Agreement, including those of federal, state, and local agencies having jurisdiction and/or authority. SUPPLIER personnel, agents, and contractors that come on-site at BUYER facilities shall be subject to applicable BUYER policies related to health, safety, and other requirements (i.e. immunizations). Applicable laws and regulations that SUPPLIER must comply with include, but are not limited to:

A. Federal and State Work Authorization Verification. Certification Required Pursuant to NCGS §143-48.5: To the extent required by NCGS §143-48.5, SUPPLIER certifies that it and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the N.C. General Statutes, verifying the work authorization of its employees through the federal E-Verify system ([www.uscis.gov](http://www.uscis.gov)).

B. Medicare Record Access. Medicare Record Access. To the extent this Agreement has a value or cost of \$10,000.00 or more in any twelve (12) month period, and in compliance with 42 U.S.C. 1395x (v) (1) (I) and implementing regulations, SUPPLIER agrees, until the expiration of four (4) years after the services are furnished under this Agreement, to allow the Secretary of the Department of Health and Human Services and the Comptroller General access to this Agreement, all applicable purchase orders, and to the books, documents and records of SUPPLIER necessary to verify the nature and extent of the costs of this Agreement. SUPPLIER further agrees that if any of the duties of this Agreement are carried out by a subcontractor of SUPPLIER pursuant to a subcontract with a value or cost of \$10,000.00 or more in any twelve (12) month period, such subcontract will contain a clause to the effect that, until the expiration of four (4) years after the services are furnished under such subcontract, the Secretary of the Department of Health and Human Services and the Comptroller General will have access to such subcontract and to the books, documents and records of the subcontractor necessary to verify the nature and extent of the costs of such subcontract. This Section shall survive any termination or expiration of this Agreement and will continue to bind the parties and their successors and assigns.

C. Equal Employment Opportunity and Facilities Access. During the performance of this contract, SUPPLIER agrees to comply with all Federal, state and local laws respecting discrimination in employment and non-segregation. Where applicable, SUPPLIER agrees to use reasonable efforts to use minority and women owned businesses to provide components and services to SUPPLIER for subsequent integration into Products sold to BUYER.

D. Access to Persons and Records. Access to Persons and Records. Pursuant to NCGS §143-49, the State Auditor and BUYER's internal auditors shall have access to audit the records of SUPPLIER during and after the term of this Agreement to verify accounts and data affecting fees or performance. This Section shall survive any termination or expiration of this Agreement and will continue to bind their successors and assigns.

E. No Debarment. The parties continually represent that they have not been convicted of a criminal offense related to health care, are not currently under sanction, exclusion, or investigation (civil or criminal by a federal or state enforcement, regulatory, administrative, or licensing agency) or otherwise ineligible for federal or state program participation, and are not currently listed on the General Service Administration List of parties Excluded from the Federal Procurement and Non-Procurement Programs.

F. Reasonable Compensation. It is the intent of the parties that the compensation or any other remuneration pursuant to this Agreement or related Purchase Orders or statements of work are not intended to be, nor shall they be construed as, an inducement, payment or benefit of any kind for the referral of patients or business by one party to the other party or to any other third party. It is the intent of the parties that no compensation or remuneration of any kind be paid under this Agreement to encourage, and that no terms of this Agreement require, referral of federal or state healthcare reimbursement program patients or the purchase of items, goods or services payable by any federal or state healthcare reimbursement program. The parties agree that the terms of this Agreement have been negotiated at arm's length and reflect commercially reasonable terms and fair market value compensation.

G. Medicare Advantage – First Tier, Downstream, and Related Entity Compliance. Any services or other activity performed by SUPPLIER under the Agreement shall be consistent and comply with BUYER's obligations under its agreements with Medicare Advantage organizations as well as all applicable Federal and Medicare laws, regulations, and CMS instructions ("Applicable Law"). SUPPLIER shall, if required to do so as a covered First Tier, Downstream, or Related Entity (FDR), institute, operate, and maintain an effective compliance program appropriate to SUPPLIER's organization and operations to detect, correct and prevent the incidence of non-compliance with CMS requirements and the incidence of fraud, waste and abuse (FWA) relating to the provision of services under this Agreement. BUYER's internal auditor and/or compliance staff shall have access to SUPPLIER's records of FDR compliance during and after the term of this Agreement for verification purposes.

H. Federal Funds. If the Agreement and purchases thereunder uses funds in connection with a United States Government grant or contract, Supplier agrees it will comply with the terms and conditions included in Exhibit A, as applicable.

**16. Insurance.** SUPPLIER will purchase and maintain at all times during the term of this Agreement through an insurer with an A.M. Best rating of "A" or better the following minimum coverages:

A. Workers' Compensation. To the extent SUPPLIER's employees will be physically present on BUYER's facilities in order to comply with the terms of this Agreement, SUPPLIER shall provide and maintain Workers' Compensation Insurance, as required by the laws of North Carolina, including Employers Liability at limits of \$1,000,000, covering all of SUPPLIER's employees who are engaged in any work under this Agreement. If any work is subcontracted, SUPPLIER shall require the subcontractor to provide the same coverage for any of its employees engaged in any work under this Agreement.

B. Commercial General Liability. Commercial General Liability Coverage written on an occurrence basis in the minimum amount of \$1,000,000 per occurrence and \$3,000,000 annual aggregate. Defense cost shall be in excess of the limit of liability. In the event that SUPPLIER maintains a "claims-made" policy instead of an "occurrence" policy, it shall purchase, prior to the termination of such insurance, "tail" coverage to continue and extend coverage complying with this Agreement after the end of the term of the claims-made policy. Continuous coverage and/or "tail" must be in effect for a period of five years following the contract termination.

C. Automobile Liability Insurance. Automobile Liability Coverage covering all owned, hired and non-owned vehicles, used in connection with this Agreement. The minimum combined single limit shall be \$1,000,000 bodily injury and property damage per accident; \$1,000,000 uninsured/underinsured motorist; and \$1,000 medical payment.

D. Professional Liability Insurance. To the extent SUPPLIER is providing healthcare delivery services, SUPPLIER shall provide medical malpractice coverage, for itself, its physicians, and its non-physician health care personnel in amounts of at least \$1,000,000 per medical incident and \$3,000,000 annual aggregate. If SUPPLIER maintains a "claims-made" policy instead of an "occurrence" policy, it shall purchase prior to the termination of such insurance, "tail" coverage to continue and extend coverage complying with this Agreement after the end of the term of the claims-made policy. Continuous coverage and/or "tail" must be in effect for a period of five years following the contract termination.

E. Umbrella Liability Insurance. To include coverage in amounts of at least \$5,000,000. Coverage shall include Commercial General Liability, and, if applicable, Workers' Compensation, Automobile, and Professional Liability. If SUPPLIER maintains a "claims-made" policy instead of an "occurrence" policy, it shall purchase prior to the termination of such insurance, "tail" coverage to continue and extend coverage complying with this Agreement after the end of the term of the claims-made policy. Continuous coverage and/or "tail" must be in effect for a period of five years following the contract termination.

Providing and maintaining adequate insurance coverage is a material obligation of SUPPLIER. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. SUPPLIER shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Agreement.

SUPPLIER will notify BUYER promptly upon receipt of notice of the termination, cancellation, lapse, or reduction of such insurance. SUPPLIER will notify BUYER within five (5) days of its receipt of notice that a claim or lawsuit has been filed against it, its employees, agents, or representatives arising out of the Products provided under this Agreement. In that event, SUPPLIER will provide to BUYER all non-privileged information concerning such claim or lawsuit upon BUYER's request.

SUPPLIER will name BUYER as an additional insured under its Comprehensive General Liability and Umbrella Liability Insurance policies and provide a copy of its Certificate of Coverage upon request. This Section shall survive any termination or expiration of this Agreement and will continue to bind the parties and their successors and assigns.

**17. Material Adverse Change.** In the event SUPPLIER experiences a Material Adverse Change in its business operations, SUPPLIER will promptly notify BUYER in writing of such Material Adverse Change no later than five (5) days after such change occurs. For purposes of this subsection, the term “Material Adverse Change” will include any change (whether related to financial considerations or otherwise) that affects (i) SUPPLIER’s ability to perform its obligations under this Agreement, (ii) BUYER’s rights and remedies under this Agreement, or (iii) the validity or enforceability of this Agreement. If, in the reasonable opinion of BUYER, SUPPLIER’s Material Adverse Change is likely to negatively affect SUPPLIER’s performance of its obligations hereunder, BUYER will be entitled to request reasonable assurances of performance from SUPPLIER, which SUPPLIER will provide in writing within seven (7) days of BUYER’s written request. If such assurances are not adequate as determined by BUYER, BUYER will be entitled to immediately terminate this Agreement and/or any subsidiary agreements (including Statements of Work, Purchase Orders, and Work Orders) upon written notice to SUPPLIER, notwithstanding the Term Section of this Agreement.

**18. Governing Law.** This Agreement will be governed by the laws of the State of North Carolina, except to the extent that the issue arising under the Agreement is governed by federal law, and the parties consent and submit to the jurisdiction and venue of the State and Federal Courts located in North Carolina. This Section shall survive any termination or expiration of this Agreement and will continue to bind the parties and their successors and assigns.

**19. Confidentiality.**

A. *Confidential Information of SUPPLIER.* SUPPLIER acknowledges that BUYER is a state agency subject to the North Carolina Public Records Act (N.C.G.S. § 132-9). To the extent permitted by applicable law, BUYER will maintain the confidentiality of SUPPLIER’s information so designated (including, but not limited to, SUPPLIER’s Trade Secrets as defined in N.C.G.S. § 66-152), provided that SUPPLIER has formed a good faith opinion that such information is protected under North Carolina law. If an action is brought pursuant to N.C.G.S. § 132-9 or other authority to compel BUYER to disclose information SUPPLIER has designated as confidential, SUPPLIER agrees that it will intervene in and participate in the action to defend BUYER and its agents. SUPPLIER agrees to indemnify and hold BUYER and its agents harmless from any and all damages, costs, and attorneys’ fees awarded against BUYER or its agents in any such action. This Section shall survive any termination or This Section shall survive any termination or expiration of this Agreement and will continue to bind the parties and their successors and assigns.

B. *Confidential Information of BUYER.* SUPPLIER agrees to hold BUYER Confidential Information (as defined herein) in strictest confidence, including but not limited to, (a) using any BUYER Confidential Information solely for the purposes required in this Agreement; (b) disclosing BUYER Confidential Information only to persons who have a need to know such information in order to perform services pursuant to this Agreement and who are bound by these restrictions, and (c) returning to BUYER its Confidential Information upon BUYER’s request or upon the termination of this Agreement, whichever occurs first. For purposes of this Agreement, “BUYER Confidential Information” shall include: 1) classes of information whose confidentiality BUYER is obligated or allowed by federal or state law to protect, including (but not limited to) patient information, employee information, and competitive health care information, 2) information designated by BUYER as confidential, and 3) any information SUPPLIER should reasonably understand to be confidential. SUPPLIER further agrees to have its agents execute the BUYER Confidentiality Statement if and as reasonably required by BUYER.

**20. Force Majeure.** If a party’s performance is made impracticable or inadvisable for any reason beyond its reasonable control, including but not limited to, riots, wars, terrorist acts, executive order, fires, accidents, explosions, natural disasters, or epidemics, then the time allowed for performance shall be extended on a day-to-day basis. The delayed party promptly will provide written notice of any such event causing a delay in performance, which notice will describe the basis for the delay, the estimated duration, and the steps being taken to mitigate the delay. In the event that such delay lasts longer than thirty (30) days, BUYER shall have the option to terminate the Agreement immediately upon written notice.

**21. Relationship of the Parties.** The parties are independent entities and neither party is an agent, servant, representative, partner, joint venturer or employee of the other or has any authority to assume or create any obligation or liability of any kind on behalf of the other. This Section shall survive any termination or expiration of this Agreement and will continue to bind the parties and their successors and assigns.

**22. Waiver, Amendment, Assignment.** No amendment, assignment or waiver of this Agreement or its terms and conditions is valid unless in writing, specifically refers to this Agreement and is approved and signed by authorized representatives of both parties. Any amendment or waiver will be limited to the specific situation for which it is given. No other action or failure to act (including inspection, failure to inspect, acceptance of late deliveries, or acceptance of or payment for any Products) will constitute a waiver of any rights. This Section shall survive any termination or expiration of this Agreement and will continue to bind the parties and their successors and assigns.

**23. Notice.** Any notice required or permitted by this Agreement will be in written in English and delivered by (i) certified or registered mail, return receipt requested, postage prepaid, (ii) nationally recognized overnight courier mail, or (iii) by facsimile or electronic mail if confirmed by either methods (i) or (ii) above and addressed as follows or to such other addresses as may be designated on the face of this P.O.

UNC Health Care System - Supply Chain  
4400 Emperor Boulevard  
Durham, NC 27703  
ATTENTION: Executive Director Sourcing & Contracting  
Facsimile: (919) 957-5786  
[supplychaincontracts@unhealth.unc.edu](mailto:supplychaincontracts@unhealth.unc.edu)

**24. Interpretation.** Whenever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is found to violate a law, it will be severed from the rest of the Agreement and ignored and a new provision deemed added to this Agreement to accomplish to the extent possible the intent of the parties as evidenced by the provision so severed. The headings used in this Agreement have no legal effect. If any provision of this Agreement is found to be legally invalid or unenforceable for any reason, the remaining provisions of the Agreement shall remain in full force and effect provided the fundamental rights and obligations remain reasonably unaffected. This Section shall survive any termination or expiration of this Agreement and bind each party's successors and assigns.

**25. Remedies Not Exclusive.** Except as may be otherwise provided in this Agreement, the rights or remedies of the parties hereunder are not exclusive, and either party will be entitled alternatively or cumulatively, subject to the other provisions of this Agreement, to damages for breach, to an order requiring specific performance, or to any other remedy available at law or in equity.

**26. Advertising.** SUPPLIER shall not use the award of this Agreement or its participation in this Agreement as part of any marketing, news release or commercial advertising in any form without the prior written consent of BUYER. This Section shall survive any termination or expiration of this Agreement and will continue to bind the parties and their successors and assigns.

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**EXHIBIT A**  
**Federal Funds Provisions**

If the Agreement and purchases thereunder uses funds from a United States Government grant or contract, SUPPLIER agrees it will comply with the terms and conditions included in this Exhibit D. If SUPPLIER is not otherwise aware of whether the funds are sourced from a Federal grant or contract, then SUPPLIER shall inquire of BUYER. SUPPLIER agrees to flow down all applicable clauses to lower-tier subcontractors, if any.

**C.1. Federal Government Contract Provisions.** If the Agreement involves use of funds in connection with a Federal government contract, SUPPLIER will meet the following requirements, as applicable:

**The contractor and any subcontractors shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin, and for inquiring about, discussing or disclosing compensation. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.**

In addition, for Agreements involving funds in connection with a Federal government contract, BUYER will specify certain provisions from the Federal Acquisition Regulations ("FAR") and such Federal agency supplemental acquisition requirements as may be applicable to be incorporated into the Agreement by reference.

The full text (as updated, amended, or revised) of the FAR clauses may be found at <https://www.acquisition.gov/far/>. By their terms, not all listed provisions of the FAR apply to every Agreement. BUYER may choose to flow down additional clauses when necessary to satisfy BUYER's contractual obligations.

Where necessary to make the language of the FAR clauses applicable to the Agreement, the term "contractor" shall mean "SUPPLIER," and the term "contract" or "subcontract" shall mean "Purchase Order," and the terms "government," "contracting officer," and equivalent terms and phrases shall mean "University."

**Provisions Applicable to Purchases of "Commercial Items."** The following provisions may be required for Agreements involving the acquisition of "commercial items" (as defined at FAR 52.202-1). In general, a "commercial item" is a product or service that is available to the general public in the commercial marketplace. For non-commercial transactions involving funds on a federal contract, consult with BUYER for specification of terms.

FAR 52.202-1	Definitions
FAR52.203-13	Contractor Code of Business Ethics and Conduct
FAR52.203-17	Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights
FAR 52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements
FAR 52.219-8	Utilization of Small Business Concerns



FAR 52.222-21	Prohibition of Segregated Facilities
FAR 52.226-6	Promoting Excess Food Donation to Nonprofit Organizations
FAR52.222-26	Equal Opportunity
FAR 52.222-35	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans
FAR52.222-36	Affirmative Action for Workers with Disabilities
FAR52.222-37	Employment Reports on Veterans
FAR52.222-40	Notification of Employee Rights Under the National Labor Relations Act
FAR 52.222-41	Service Contract Labor Standards
FAR52.222-50	Combating Trafficking in Persons
FAR 52.222-51	Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements
FAR 52.222-53	Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements
FAR52.222-54	Employment Eligibility Verification
FAR 52.224-3	Privacy Training
FAR 52.232-40	Providing Accelerated Payments to Small Business Subcontractors
FAR 52.244-6	Subcontracts for Commercial Items

**C.2. Agreements involving funds on a federal grant, cooperative agreement, or other federal financial assistance governed by [2 CFR, Subtitle A](#).**

*Where federal funds are utilized in connection with this procurement, SUPPLIER who supplies goods and/or services certifies and represents its compliance with the following clauses, to the extent such clauses are applicable to the subject matter of the procurement. As a recipient of certain federal grant funds, BUYER is required by federal law and regulation to include these clauses in any contract related to procurements involving federal funds in connection with a federal grant, cooperative agreement, or other federal financial assistance. The following federal provisions (in addition the BUYER Master Purchase Agreement General Terms and Conditions above) may apply consistent with the Uniform Guidance found at 2 C.F.R. Part 200, Subpart D, §§ 321, 322, 323, 327, and Appendix II.*

*When the Agreement involves the use of funds from the U.S. Department of Health and Human Services (“HHS”), applicable HHS terms may apply. Where the Agreement involves the use of funds from the National Institutes of Health (“NIH”), applicable NIH terms may apply.*

*In the event of any conflict between the clauses applicable to the Agreement, including those not applicable solely to federal grants, the most stringent clauses will apply.*

**a. Equal Employment Opportunity.** Applies to all Agreements that qualify as “federally assisted construction contracts” as defined in 41 CFR part 60-1.3. SUPPLIER agrees to comply with Executive Order 11246, “Equal Employment Opportunity,” as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” *2 CFR Part 200, Appendix II(C).*

**b. Davis-Bacon Act, as amended (40 USC 3141-3148).** If the Agreement qualifies as a prime construction contract and is in excess of \$2,000, and is required by Federal programs legislation, SUPPLIER shall comply with the Davis-Bacon Act, as supplemented by Department of Labor regulations at 29 CFR part 5 (“Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). Under this law, SUPPLIER is required to pay wages to laborers and mechanics at a rate not less than the minimum wage specified in a wage determination made by the Secretary of Labor. In addition, SUPPLIER is required to pay wages not less than once a week. *2 CFR Part 200, Appendix II(D).*

**c. Copeland “Anti-Kickback” Act (40 USC 3145).** If the Agreement qualifies as a prime construction contract and is in excess of \$2,000, SUPPLIER shall comply with the Copeland “Anti-Kickback” Act, as supplemented by Department of Labor Regulations at 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”). The Act provides in part that SUPPLIER is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which the person is otherwise entitled. *2 CFR Part 200, Appendix II(D).*

**d. Contract Work Hours and Safety Standards Act (40 USC 3701-3708).** If the Agreement is in excess of \$100,000 and involves the employment of mechanics or laborers, the SUPPLIER shall comply with the Contract Work Hours and Safety Standards Act, as supplemented by Department of Labor regulations at 29 CFR part 5. Under the Act, the SUPPLIER is required to compute the wages of every mechanic and laborer on the basis of a standard forty-hour work week. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which 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 contracts for transportation or transmission of intelligence. *2 CFR Part 200, Appendix II(E).*

**e. Rights to Inventions Made Under a Contract or Agreement.** If the Agreement is for the performance or assignment of experimental, developmental, or research work that is under a “funding agreement” SUPPLIER will provide for the rights of the Federal Government and the University with respect to any resulting invention by complying 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 implementing regulations issued by the awarding agency. *2 CFR Part 200, Appendix II(F).*

**f. Clean Air Act (42 USC 7401 et seq.) and the Federal Water Pollution Control Act (33 USC 1251 et seq.), as amended.** If the Agreement is in an amount in excess of \$150,000, SUPPLIER shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act. Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency. *2 CFR Part 200, Appendix II(G).*

**h. Debarment and Suspension (Executive Orders 12549 and 12689).** SUPPLIER represents and warrants that it is not listed on the government-wide Excluded Parties List System in the System for Award Management, in accordance with

the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 and 12689. The Excluded Parties List contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. *2 CFR Part 200, Appendix II(H)*.

**i. Byrd Anti-Lobbying Amendment (31 USC 1352).** If the Agreement is in an amount of \$100,000 or more, the SUPPLIER and each subcontractor of the SUPPLIER shall file the certification required under this Amendment. Each tier shall certify to the tier above 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 any 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. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the University. *2 CFR Part 200, Appendix II(I)*.

**j. Procurement of Recovered Materials.** SUPPLIER must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, which requires SUPPLIER to make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

- Competitively within a timeframe providing for compliance with the Contract performance schedule;
- Meeting Contract performance requirements; or
- At a reasonable price.

Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines web site: <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>. *2 CFR Part 200, § 323*.

**k. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.** If the Agreement involves federal loan or grant funds, such funds shall not be used to procure or obtain equipment, services, or systems that use "covered telecommunications equipment or services" as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); and telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. *2 CFR Part 200, § 216*.

**l. Domestic Preference for Procurements.** If the Agreement involves federal grant funds or other federal financial assistance, SUPPLIER will, as appropriate and to the extent consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

For purposes of this section: (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States; and (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber. *2 CFR Part 200, § 322*.

**m. Program Monitoring.** SUPPLIER agrees to assist and cooperate with BUYER or the Federal funding agency or their duly designated representatives in the monitoring of the project or projects to which this Agreement relates, and to provide in form and manner approved by BUYER such monitoring reports, progress reports, and the like as may be required and to provide such reports at the times specified.

**n. No Obligation by Federal Government.** The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to BUYER, SUPPLIER, or any other party pertaining to any matter resulting from the Agreement.

**o. Compliance with Federal Law, Regulations, and Executive Orders.** This is an acknowledgement that federal financial assistance may be used to fund all or a portion of the Agreement. SUPPLIER will comply with all applicable Federal law, regulations, executive orders, the policies of the federal agency(ies) providing funding, procedures, and directives.

**p. Federal Seals, Logos, and Flags.** In addition to the prohibitions of the BUYER Master Agreement Terms and Conditions above, SUPPLIER shall not use the seal(s), logos, crests, or reproductions of flags of a federal agency providing funding herein, or likenesses of federal agency officials without specific pre-approval of the relevant federal agency.

**q. System for Awards Management.** SUPPLIER shall be responsible to ensure that it has checked the federal System for Awards Management (SAM) <https://www.sam.gov/SAM/> and the State Debarred Vendors Listing, <http://www.pandc.nc.gov/actions.asp> to verify that Contractors or sub-Recipients have not been suspended or debarred from doing business with federal or State government.

**r. Compliance with HHS and NIH Requirements.** When applicable, SUPPLIER shall comply with the terms and conditions required by the policy requirements as set forth in the HHS Grants Policy Statement, available at <http://www.hhs.gov/grants/grants/grants-policies-regulations/> and the NIH Grants Policy Statement, available at <http://grants.nih.gov/policy/nihgps/index.htm>.