



# University Terms and Conditions

## Part 1: General Terms & Conditions

(Applies to All Suppliers)

**1. Formation of Contract.** Supplier's commencement of work or shipment of goods (whichever occurs first) constitutes acceptance of the University's offer to purchase contained in any University Purchase Order (herein after referred to as a "PO"). Parts 1 through 5 of this Acceptance Form and Agreement apply to any purchase or other acquisition of goods and/or services from Supplier, including those that are the subject of this PO, by University, any entity owned, directly or indirectly, by the University, any entity managed or controlled by the University, and subsidiaries and divisions of the foregoing unless acquisition is pursuant to a subsequently issued PO of differing terms and conditions. Any proposal for additional or different terms or any attempt by Supplier to vary in any degree any of the terms of this PO in Supplier's acceptance is hereby rejected, but such proposal shall not operate as a rejection of University's offer to purchase set out in the PO. Acceptance of a prior offer by Supplier is limited to the express terms contained in and incorporated by reference into the PO.

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

**3. Termination For Cause.** The University may terminate this PO or any part hereof at any time for cause in the event Supplier fails to comply with any of the terms and conditions of this PO, including without limitation, late delivery or performance, the delivery of defective or non-conforming goods or services, or failure to provide the University with reasonable assurances of future performance. In the event of termination for cause, the University shall not be liable to Supplier for any amount, and Supplier shall be liable to University for any and all damages sustained by reason of the default which gave rise to the termination.

**4. Warranty.** Supplier warrants that all goods and services provided and deliverables under this PO (individually and collectively "goods and services") will conform to all specifications, applicable standards, laws, and regulations, be free from defects including but not limited to defects in material, workmanship, and title, are works made for hire and to the extent not deemed to be such Supplier hereby assigns, and will cause its employees and agents to assign, all right, title, and interest in and to the foregoing to University unless otherwise agreed in writing signed by University. The goods and services will not violate patent, copyright, trade secret rights, or other intellectual property rights of a third party,



will conform in all respects to samples, advertisements, and other Supplier representations, will be merchantable, safe and appropriate for the purposes for which the goods and services are normally used and, if Supplier knows the purpose for which University intends to use the goods and services, such will be fit for that purpose. Supplier also warrants that its price does not include any tax imposed on Supplier by any taxing authority.

Supplier's warranty obligations shall survive inspection, test, acceptance and use. Supplier's warranty runs to University, its successors, assigns, customers, and users of the goods and services. Supplier, at its expense, will promptly replace or correct defects in any nonconforming goods and services, if University elects to provide Supplier the opportunity to do so. University may at its option make such corrections or replace nonconforming goods and services and charge Supplier the costs incurred in doing so. Supplier's warranty herein is in addition to any other Supplier warranty and that of the manufacturer of the goods and services.

**5. Rebates and Credits.** Supplier rebates and credits, including but not limited to those for correction of invoice discrepancies, returned goods, good-faith or performance offsets, and volume/price tier rebates, must be issued in the form of a check made payable to the University of Rochester and sent to Financial Services, Strong Memorial Hospital, P.O. Box 278894, Rochester, NY 14627-8894 or if sending by express mail to The University of Rochester c/o SMH Financial Services, 135 Corporate Woods, Suite 200, Rochester, NY 14623. Checks must be: a) timely delivered and b) clearly labeled "Rebate" specifying either the Supplier's contract or the applicable PO.

**6. Setoff.** All claims for money due or to become due from the University shall be subject to deduction or setoff by the University by reason of any counterclaim arising out of this or any other transaction with Supplier.

**7. Waiver.** The University's delay or failure to enforce any term or condition of this PO shall not operate to waive it. Any such waiver must be expressed by the University in an authorized writing. .

**8. Delivery.** Wherever this PO sets a date or time for the delivery of goods and services, time is of the essence. The University may regard the failure to deliver in a timely manner as a material breach of these terms and conditions, entitling the University to all rights and remedies at law, in equity, and under the specific remedies of this PO. Title and risk of loss or damage to items ordered herein shall remain with Supplier until delivered to and accepted by the University.

**9. Indemnification.** Supplier shall indemnify, hold harmless, and, if requested, defend, the University and any entity issuing a PO governed by these terms and conditions, their respective trustees, directors, officers, employees, agents, and volunteers (collectively "Indemnitees") from all claims, demands, judgments, fines, replacement costs if damaged property cannot be repaired, damages, losses, and expenses including without limitation legal costs and attorney's fees, (collectively "Liabilities") arising out of Supplier's and Supplier's suppliers and subcontractors acts, omissions, or breach of this PO including but not limited to those resulting in personal injury, including death, and/or damage to property except where the Liabilities are due solely to the negligence or wrongful acts of an Indemnitee. This provision shall survive the termination or completion of the work or expiration of this PO.



**10. Insurance.** Supplier must maintain during the term of any PO the following insurance in at least the amounts below specified. In addition, Supplier must provide to the University's Corporate Purchasing Department a Certificate of Insurance showing such coverage and the requirements set forth after subsection 10(e) below before commencement of work or shipment of goods unless greater coverage amounts are determined to be required by the University's Corporate Purchasing Department:

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

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

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

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

**(b) Automobile Liability:** Any Auto Owned, Hired and Non-Owned

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

Combined Single Limit for Bodily Injury & Property Damage	\$1,000,000 ea. accident/aggregate
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**(c) Excess "Umbrella" Liability** \$3,000,000 ea. occurrence/aggregate

The umbrella coverage shall be no more restrictive than underlying coverage.

**(d) Workers' Comp. & Employers Liability** Statutory Coverage as required by law

Supplier's Certificate of Insurance provided to University's Corporate Purchasing Department must, in addition to confirming coverage amount, must substantiate that Supplier's liability policies, except for professional liability, workers compensation and employers liability, (i) name the University or the entity issuing the PO, if the issuer is other than the University, as an additional insured and cover all of Supplier's projects at all locations owned or operated by the University or the entity issuing the PO, if the issuer is other than the University, (ii) waive any claim of subrogation against the University or the entity issuing the PO, if the issuer is other than the University, and their respective board of trustees, directors, officers, employees, agents, and volunteers, and (iii) be primary and non-contributory to any



other insurance carried by, or available to, the University. The foregoing insurance and limits of coverage in no way will limit Supplier's liability, or the right of the University or the entity issuing the PO, if the issuer is other than the University, to require that Supplier provide other insurance or greater coverage amounts. Each policy of insurance shall be issued by a company or companies licensed to do business in New York State. Supplier will provide written notification to University or the entity issuing the PO, if the issuer is other than the University, at least thirty (30) days prior to termination or restrictive amendment of the above referenced policies, subject to Supplier having notice from its carrier.

(e) If Supplier accesses, receives, creates, transmits, or stores electronic Protected Health Information (ePHI) for the University or any of its Affiliates, **Network Security and Privacy Liability** insurance in an amount not less than \$5,000,000 occurrence/aggregate with deductible/retention of not more than \$150,000, unless otherwise approved by University, covering Supplier and its subcontractors engaged in such activities for network and privacy risks including coverage for unauthorized access, failure of security, breach of privacy perils, wrongful disclosure of information, as well as event management costs and regulatory defense. Such insurance shall be maintained in force at all times during the term such service is being provided.

Supplier's Certificate of Insurance provided to University's Corporate Purchasing Department must, in addition to confirming coverage amount, must substantiate that Supplier's liability policies, except for professional liability, workers compensation and employers liability, (i) name the University or the entity issuing the PO, if the issuer is other than the University, as an additional insured and cover all of Supplier's projects at all locations owned or operated by the University or the entity issuing the PO, if the issuer is other than the University, (ii) waive any claim of subrogation against the University or the entity issuing the PO, if the issuer is other than the University, and their respective board of trustees, directors, officers, employees, agents, and volunteers, and (iii) be primary and non-contributory to any other insurance carried by, or available to, the University. The foregoing insurance and limits of coverage in no way limit Supplier's liability, or the right of the University or the entity issuing the PO, if the issuer is other than the University, to require that Supplier provide other insurance or greater coverage amounts. Each policy of insurance required by this Section 10 and Section 11 below shall be issued by a company or companies with an A- Best rating or better and licensed to do business in New York State. Supplier will provide written notification to University or the entity issuing the PO, if the issuer is other than the University, at least thirty (30) days prior to termination or restrictive amendment of the above referenced policies, subject to Supplier having notice from its carrier. In addition, Supplier shall give notice to University not later than five (5) business days of Supplier's liability reaching or exceeding Supplier's aggregate coverage or knowledge that carriers rating has been decreased. In which event, University shall have no obligation to continue to acquire goods or utilize services from Supplier.

**11. Licensed Professions.** If Supplier, persons in Supplier's employ, or persons otherwise acting for or on behalf of Supplier are required to maintain professional licenses, certification, or similar credentials in order to perform the purchased services, Supplier warrants that such are held and in effect. Supplier must maintain Professional Liability coverage on all professionals with limits of at least \$1,000,000 per occurrence and \$3,000,000 aggregate, or such other amount as the University may deem appropriate during the term of any PO, and such coverage shall be specified on Supplier's Certificate of Insurance in addition to the other coverage required by Section 10 above. The foregoing



Professional Liability minimum insurance coverage in no way shall limit Supplier's liability, or the right of the University or its Affiliate to require that Supplier provide greater coverage amounts.

**12. Conflict of Interest.** Supplier warrants that no University employee or that of the entity issuing the PO, if other than the University (or close relative or a member of such an individual's household) who (1) owns 5% (or more) stock or other interest in Supplier; (2) serves as an officer, director, employee, proprietor, partner, trustee, or consultant of Supplier; (3) stands to profit financially or personally in any way from the acquisition by the University of goods and/or services from Supplier; or (4) receives compensation in any form or in any amount from Supplier has participated, or will participate, in the decision to acquire good and/or services form Supplier except as forth on University's Supplier Size and Conflict of Interest Certification form provided to the University's Corporate Purchasing Department. Supplier acknowledges its obligation to keep the aforesaid filing current prior to acceptance to further POs.

**13. Confidential Information.** "Confidential Information," means any and all information written and/or oral in whatever form or media pertaining to University and that of the entity issuing the PO, if other than the University, and their operations, that is not generally known or readily ascertainable by other persons or entities including trade secrets, as well as personally identifying information referenced in Part 4, Section C.1 hereof, Protected Health Information as defined in Health Insurance Portability and Accountability Act, and any other information restricted by federal, state, and local statutes, regulations, and ordinances. Confidential Information includes, but is not limited to, technical and non-technical information materials, processes, ideas, and techniques, information pertaining to finances, processes, customers, clients, patients, employees, students, fees, rates, accounting data; statistical data, marketing, research and development plans, projects, and findings, business plans, and the terms of any contracts. As between the University and Supplier, all such Confidential Information, including but not limited to current and future products, processes, and techniques, research findings and data, systems, designs, ideas, computer programs, and related documentation, and technical information disclosed by or learned from the University or the entity issuing the PO, if other than the University, are acknowledged to be University trade secrets or that of the issuing entity. Confidential Information does not include information which Supplier can substantiate by written documentation became available to Supplier on a non-confidential basis from a source other than University provided such source is not bound by a confidentiality obligation of secrecy to University or another party.

Supplier may use Confidential Information only in the performance of its obligations to the University and may disclose such information only to its employees on a need-to-know basis provided Supplier has taken appropriate action to cause such persons not to misuse or disclose any such information, keep such information secure and not store or place same in any country outside the United States of America itself or through the service of any third party acting on behalf of Supplier in storing such information without the written permission of the University. Supplier's standard of care for maintaining the confidentiality and security of Confidential Information shall be no less than is reasonable for the kind and type information involved. Except as provided for in the next sentence, Supplier's obligations hereunder shall continue for five (5) years from the last to occur of (i) the date the particular Confidential Information was disclosed to Supplier or (ii) termination of the contract between Supplier and University pursuant to



which Supplier learned the particular Confidential Information. Supplier's confidentiality obligations imposed by statute, regulation, or ordinance shall continue indefinitely or for such period as is required by the applicable statute, regulation, or ordinance and Supplier's trade secret obligations shall continue for as long as trade secret status is maintained. No later than expiration of Supplier's applicable obligations period, Supplier shall destroy and dispose of Confidential Information in a secure manner. Supplier acknowledges that unauthorized disclosure or use of Confidential Information may cause University irreparable harm, agrees to give University written notice of any such event within two business day of discovery and to take all legal means to minimize any University loss or damage due to any such event. Accordingly, Supplier agrees that University shall have the right to obtain immediate injunctive relief for any breach of this section by Supplier, which shall be in addition to any other rights and remedies that it may have available.

**14. Use of University Name.** Supplier agrees that it will not use the University's name or the fact that Supplier has a contract with the University in any press release, advertising or promotional materials, or public announcement.

**15. Assignment.** None of Supplier's duties or obligations under this PO may be delegated or assigned to another person or entity without the written consent of the University's Corporate Purchasing Department. The University may assign this PO to any Affiliate, or successor in interest to all or any part of its operations without prior notice to Supplier.

**16. Debarment.** Supplier certifies that neither it nor any of its Principals (officers, directors, owners, partners, key employees, principal investigators, researchers or management or supervisory personnel) is presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in this transaction or in any federal grant, benefit, contract or program (including but not limited to Medicare and Medicaid and Federal Health Care Programs) by any Federal department or agency, or in the case of Medicaid, by the New York State Department of Health (See 42 CFR Part 1001; Executive Orders 12549 and 12689, 10 NYCRR 504.7). To the extent necessary to assure accuracy of its certification, Supplier agrees to conduct searches of the List of Parties Excluded from Federal Procurement and Nonprocurement Programs maintained by the General Services Administration (<http://epls.arnet.gov/>), the List of Excluded Individuals and Entities maintained by the Department of Health and Human Services (<http://oig.hhs.gov>), and the List of Restricted, Terminated or Excluded Individuals maintained by the Office of the New York State Medicaid Inspector General at <http://www.omig.ny.gov/index.php/fraud/medicaid-terminations-and-exclusions> prior to making its certification. Supplier acknowledges that the certification is a material representation of fact upon which University is relying in entering into this transaction. Supplier agrees to provide immediate written notice to University if it learns at any time that its certification was erroneous when submitted or if, during the term of this PO, it, or any of its Principals, is debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in this transaction or in any federal grant, benefit, contract or program, including Medicare, Medicaid and other Federal Health Care Programs. If subcontracting is permitted by this PO, Supplier agrees that it will include this clause, without modification, in all subcontracts and subprojects, and in all solicitations for subcontract and subproject proposals. Supplier agrees that debarment, suspension, proposed debarment or suspension, ineligibility



or exclusion of Supplier, or any of its Principals or subcontractors shall constitute cause for immediate termination of this Agreement by University.

**17. Access to Records.** Until the expiration of four (4) years after the furnishing of services provided under this Agreement, Supplier will make available to the Secretary, U.S. Department of Health and Human Services, and to the U.S. Comptroller General, and their representatives, this Agreement and all books, documents and records necessary to certify the nature and extent of the costs of those services. If Supplier carries out the duties of the contract with a subcontract worth \$10,000 or more over a 12 month period, with another organization, the subcontract will also contain an access clause to permit access by the Secretary, Comptroller General, and their representatives to the other organization's books and records. In addition, Supplier shall preserve and permit University or any of University's duly-authorized representatives to examine and audit all directly pertinent books, documents, papers and records of Supplier involving transactions related to this PO for the purpose of making audits, examinations, excerpts and transcripts for a period of three (3) years after final payment hereunder. Supplier agrees to refund to University any overpayments disclosed by any audit.

**18. Applicable Law.** This PO shall be governed by the laws of the State of New York without giving effect to its conflict of law principles, and Supplier and the University consent to and acknowledge that the courts located in Monroe County, New York, shall have sole and exclusive venue and jurisdiction to adjudicate any dispute arising under or relating to this PO.



## Part 2: Service Terms

(Applies to all Suppliers providing Services)

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

**S2. Standard of Care.** Supplier will provide sufficient and competent personnel and supervision thereof and will timely and properly perform the subject services with the high degree of care, skill, expertise, and diligence that should be exercised by suppliers regularly engaged in the business or profession of performing such services.

**S3. Hazardous Materials.** If Supplier intends to bring onto the premises or take away from the University any hazardous chemicals or intends to engage in any activities which might reasonably be expected to create a danger or hazard to employees or other persons at the University, then in advance of any such activity, Supplier shall submit to the Office of Environmental Health & Safety (EH&S) for review and approval its program for compliance with the hazard communication requirements of 29 CFR 1910.1200 and its schedule and methods for performing such activities. Supplier will adhere to its approved program in the performance of all work to be done on University premises. Supplier is given notice hereby that the University has a hazard communication program pursuant to the aforementioned regulation, and that Supplier should obtain further information regarding that program by contacting URMES at 585-275-3241.





### Part 3: Federal Compliance Terms

(Applies to Suppliers as mandated by federal laws and regulations)

**F1. Compliance.** All goods and services sold hereunder shall be produced, sold, delivered and furnished in compliance with all laws and regulations applicable to procurement under loans, grants or other financial support of the United States government agency or agencies which have provided that support. If the PO is issued using funds from a United States Government grant or contract, Supplier agrees it will comply with the terms and conditions included in this Part 3. If Supplier is not otherwise aware of whether the funds are sourced from a federal grant or contract, then Supplier shall inquire of the University. Supplier agrees to flow down all applicable clauses to lower-tier subcontractors, if any. In the event of any conflict among the clauses applicable to the PO, including those not applicable solely to federal grants, the most stringent clause will apply.

**F2. Equal Opportunity.** University and Supplier shall comply with all Federal equal employment opportunity obligations under 41 CFR 60-1.4(a), 60-300.5(a), 60-741.5(a) and federal labor law obligations under 29 CFR 471, appendix A to subpart A. **University and Supplier and its subcontractors shall abide by the requirements of**

- **41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans;**
- **41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.**

**F3. Termination for Cause.** If the PO is in excess of the Simplified Acquisition Threshold (\$150,000), Supplier acknowledges and agrees that University may terminate this PO or any part hereof at any time for cause in the event Supplier fails to comply with any of the terms and conditions of this PO, including without limitation, late delivery or performance, the delivery of defective or nonconforming goods or services, or failure to provide the University with reasonable assurances of future performance. In the event of termination for cause, the University shall not be liable to Supplier for any amount, and Supplier shall be liable to University for any and all damages sustained by reason of the default which gave rise to the termination.

**F4. Termination for Convenience.** In the PO is excess of \$10,000, Supplier acknowledges and agrees that University reserves the right at any time for its convenience to cancel this PO as to all or any portion of the goods then not shipped or services then not performed, subject to an equitable adjustment between the parties as to any work or materials (but not to include standard stock) then in progress. Supplier shall not be paid for any amount of lost profits on canceled orders, or for any avoidable costs incurred after receipt of notice of cancellation, including but not limited to any costs incurred by Supplier's suppliers or subcontractors which Supplier could reasonably have avoided. No termination for convenience shall relieve Supplier or University of its obligations as to any goods or services delivered hereunder. Any claim for adjustment hereunder must be asserted within thirty (30) days after the date of Supplier's receipt of notice of cancellation.



**F5. Equal Employment Opportunity (Construction Contracts).** For all POs that qualify as "federally assisted construction contracts" as defined in 41 CFR Part 60–1.3, Supplier agrees to comply with the terms of the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive PO 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964 – 1965 Comp., p. 339), as amended by Executive PO 11375, "Amending Executive PO 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."

**F6. Davis Bacon Act, as amended (40 U.S.C. 3141 – 3148).** If the PO is in excess of \$2,000 and pertains to construction or repair, and further, if required by Federal program legislation, Supplier shall comply with the Davis-Bacon Act (40 U.S.C. 3141—3148) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, Supplier is required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, Supplier shall be required to pay wages not less than once a week.

**F7. Copeland "Anti-Kickback" Act (40 U.S.C. 3145).** If the PO is in excess of \$2,000 and pertains to construction or repair, Supplier shall comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides in part that Supplier shall be 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 it is otherwise entitled.

**F8. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** If the PO is in excess of \$100,000 and involves the employment of mechanics or laborers, Supplier shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR part 5). Under 40 U.S.C. 3702 of the Act, Supplier shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic shall 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.

**F9. Rights to Inventions Made Under a Contract or Agreement.** If the PO is for the performance of experimental, developmental, or research work, Supplier shall provide for the rights of the Federal Government and University in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.



**F10. Clean Air Act (42 U.S.C. 7401—7671q) and the Federal Water Pollution Control Act (33 U.S.C. 1251 1387), as amended.** If the PO is in excess of \$150,000 Supplier shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (427401—7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251—1387). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**F11. Energy Policy and Conservation Act (42 U.S.C. 6201).** Supplier agrees to comply with all mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

**F12. Debarment and Suspension (E.O.s 12549 and 12689)** Supplier represents and warrants that it is not listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM) in accordance with OMB guidelines at 2 CFR 180 that implement E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549.

**F13. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** If the PO is for \$100,000 or more, Supplier and its subcontractors shall file the certification required by this statute and associated regulations. Each tier certifies 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 shall 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 University.

**F14. Federal Acquisition Regulations.** Incorporated herein by reference are those provisions of the FAR which by their terms are to be flowed down to a procurement of the sort provided for here. All such provisions are incorporated with the same force and effect as if they were given in full text and apply to Supplier as Contractor, including provisions for the further flow-down of such provisions to subcontracts entered into by Supplier. The FAR provisions are available on-line at <https://www.acquisition.gov/?q=browsefar>. By their terms, not all provisions apply to this transaction. In particular, and without limitation to the foregoing, in the acquisition of "commercial items" or "commercial components" (as those are defined 48 CFR 52.202-1), FAR provisions are not required to be included, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under 48 CFR Part 15:

- 52.219-8, Utilization of Small Business Concerns (15 U.S.C. 637 (d)(2) and (3))(see 52. 244-6 (c) (l)(i) for applications if any) to Supplier and sub-contractor of Supplier;
- 48 C.F.R. 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246) as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity, and as supplemented by regulations at 41 CFR, part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.";



- 48 C.F.R. 52.222-35, Equal Opportunity for Veterans (Sep 2010) (38 U.S.C. 4212(a));
- 48 C.F.R. 52.222-36, Affirmative Action for Workers with Disabilities (Oct 2010) (29 U.S.C. 793);
- 48 C.F.R. 52.222-40, Notification of Employee Rights under the National Labor Relations Act (DEC 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40;
- 48 C.F.R. 52.222-50, Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104(g));
- 52.247-64, Preference for Privately Owned U.S. Flagged Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).



## Part 4: Other Compliance Terms

(Section C1 applies to all Suppliers)

**C1. Compliance Responsibilities.** Supplier and all goods and services provided by Supplier will comply with all applicable federal, state, and local statutes, regulations, and ordinances, including but not limited to New York State laws concerning social security numbers and other personally identifiable information, the Health Insurance Portability Accountability Act (HIPAA), the Health Information Technology for Economic and Clinical Health Act (HITECH), and the Family Educational Rights and Privacy Act (FERPA), and with the rules and regulations of the University (collectively, the “Applicable Requirements”). Supplier will ensure it has an effective administrative, technical and physical controls environment to comply with above and its obligations pursuant to this Agreement. At no cost or expense to University, Supplier shall promptly notify the University and, if directed to do so by the University, all others required to be notified by Applicable Requirements of any breach of the foregoing by Supplier, its employees, and agents and will permit University officials to inspect Supplier's on site operations, if any, at any time. The foregoing will not limit or bar any other remedies or recourse the University may have against Supplier for other damages and expenses resulting from the breach.

(Section C2 applies to all contracts involving health care)

**C2. Medical Facility Responsibility.** To the extent required by Section 400.4(a)(4) of Title 10 New York Codes, Rules and Regulations if Supplier is to provide any services for a medical facility that has been issued an operating certificate or certificate of approval by the New York State Department of Health, the parties agree that notwithstanding any other provision in this Agreement, the facility remains responsible for ensuring that any service provided pursuant to this Agreement complies with all pertinent provisions of Federal, State and local statutes, rules and regulations. This Section in no way abrogates or diminishes Suppliers duties and obligations pursuant to this Agreement.

(Section C.3 applies to all Suppliers furnishing or authorizing Medicaid health care items or services on behalf of the University, performing billing or coding functions, or is involved in monitoring of health care provided by the University)

**C3. University Compliance Policy.** Supplier certifies that it has read, and will take reasonable steps to make its employees providing healthcare items or performing services under this Agreement aware of, the University of Rochester Compliance Policy for Healthcare Contractors and Agents found at <http://www.urmc.rochester.edu/purchasing/complianceeducationpolicy.cfm>. Supplier further agrees to adhere to the terms of the Policy. Failure to adhere to the terms of the Policy shall constitute a material breach of this Agreement.



## Part 5: Health Information Terms

(Applies to Suppliers that are Business Associates under the Rules, as defined in P1 below)

**P1. Definitions.** Terms used herein shall have the meanings ascribed to them in the Health Insurance Portability and Accountability Act, 42 U.S.C. §1320d (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act of 2009, 42 U.S.C. 17901 (“HITECH”), and the federal privacy and security regulations issued pursuant to HIPAA and HITECH and codified at 45 C.F.R. parts 160 and 164, as may be amended from time to time (the "Rules"). “PHI” shall mean Protected Health Information that Supplier receives, uses, creates, maintains or transmits on behalf of University under the PO. Any provision in any agreement between Supplier and University regarding the limitation or exclusion of liability or damages will not apply to any of the rights and obligations of the parties under this Part 5 or breach thereof.

**P2. Permitted or Required Uses and Disclosures of PHI by Supplier.** Except as otherwise and further limited under the PO, Supplier may (a) use and disclose PHI only as reasonably necessary to perform its obligations under the PO, and provided that such use or disclosure would not violate the Rule if done by the University; (b) use PHI for its proper management and administration and to carry out its legal responsibilities; and (c) disclose PHI to a third party for the purpose of Supplier’s proper management and administration or to carry out its legal responsibilities, provided that: (i) the disclosures are required by law; or (ii) Supplier obtains reasonable written assurances from the third party that the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party, and the third party agrees to notify Supplier of any instances of which it becomes aware in which the confidentiality of the PHI has been breached. If Supplier’s obligation under the PO include provision of data aggregation services to the University, Supplier may use and aggregate PHI for such purposes; Supplier’s use of PHI for any other data aggregation must be approved in writing in advance by the University.

**P3. Restriction on Use or Disclosure of PHI.** Supplier will request, use and disclose the minimum amount of PHI necessary to meet its obligations under the PO. Supplier will not use or disclose PHI other than as permitted or required by the PO or as required by law.

**P4. Safeguards.** Supplier will use appropriate safeguards to prevent use or disclosure of PHI other than as permitted under the PO. Supplier will implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic PHI.

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

**P6. Reporting.** Supplier will promptly report to the University any use or disclosure of PHI that is not permitted under the PO, including breaches of unsecured PHI, and any security incident, of which Supplier becomes aware; provided that Supplier is not required to report inconsequential incidents of the



nature that occur on a daily basis, such as scans, pings, or other unsuccessful attempts to penetrate computer networks or servers containing electronic PHI maintained by Supplier.

**P7. Breach Notification.** Supplier will notify University of any breach of unsecured PHI, within five (5) days after Supplier's discovery of such breach. Within thirty (30) days of discovery of the breach, Supplier will provide a written follow-up report to University including: (a) the date of the breach; (b) the date of discovery of the breach; (c) a description of the types of PHI involved; (d) identification of each individual whose PHI has or may have been accessed, acquired or disclosed; and (e) any other details needed to assess the risk of harm to the affected individual(s). Supplier will cooperate in University's risk assessment and take any steps requested by University to assist University in complying with statutory and regulatory breach notification requirements. University will be responsible for notifying affected individuals, the Secretary of Health and Human Services, and the media of any breach, as required by HITECH; Supplier will not take any such actions except at the express written request of University. Supplier will pay or reimburse the reasonable actual costs incurred by University for notifying affected persons and for all reasonable mitigation efforts directly related to the breach. Supplier will also investigate the breach, mitigate losses, and protect against future similar breaches, and will provide a written report to University describing its investigation, conclusions, and processes implemented to avoid future breaches within a reasonable timeframe. The foregoing will not limit or bar any other remedies or recourse the University may have against Supplier for damages and expenses resulting from the breach.

**P8. Agents and Subcontractors.** Supplier will ensure that all of its subcontractors and agents that create, receive, maintain or transmit PHI on behalf of the University or Supplier agree, in writing, to essentially the same restrictions, conditions and requirements with respect to the use and/or disclosure of PHI that apply to Supplier, and to implement reasonable and appropriate safeguards to protect such PHI, including monitoring subcontractor compliance.

**P9. Access.** At the request of University, Supplier will provide access to PHI in a designated record set to the University of University's designee to permit the University to meet the Rules' access requirements, in the reasonable time and manner specified by the University.

**P10. Amendment of PHI.** At the request of University, Supplier will make amendment(s) to PHI in a designated record set in order to permit the University to meet the Rules' amendment requirements, in the reasonable time and manner specified by the University.

**P11. Open Books.** Supplier will make its internal practices, policies, procedures, books and records relating to the use and disclosure of PHI available to the Secretary of Health and Human Services in the reasonable time and manner specified by the Secretary, for purposes of the Secretary determining the University's compliance with the Rules.

**P12. Accounting of Disclosures.** Supplier will document disclosures of PHI and information related to such disclosures as would be required for the University to respond to an individual's request for an accounting of disclosures of PHI in accordance with the Rules' requirements; and will provide such information to the University in a reasonable time and manner specified by the University, to permit the



University to respond to an individual's request for an accounting of disclosures of PHI in accordance with the Rule's requirements.

**P13. Return or Destruction of PHI.** Within thirty (30) days of the termination of the PO, Supplier will return to the University or destroy all PHI in its possession or control, including such PHI that is in the possession of Supplier's subcontractors and agents, and if feasible, retain no copies of such PHI. If Supplier considers return or destruction of the PHI infeasible, Supplier will notify the University of the conditions that make return or destruction infeasible, and if the University agrees that return or destruction is infeasible, Supplier may retain the PHI, provided that it will extend all protections contained in the PO to its use and/or disclosure of any retained PHI, provided that it will limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

**P14. Implementation of Safeguards.** Supplier will use appropriate safeguards, and comply with the Security Standards for the Protection of Electronic PHI (ePHI) set forth in Subpart C of 45 CFR Part 164, to prevent Use or Disclosure of PHI other than as provided for by the PO, including but not limited to: (a) ensuring HIPAA-compliant encryption of all data in motion, including but not limited to portable data storage devices (e.g. tape backups, USB Drives, DVD, CD); end user mobile computing devices (e.g. laptops, tablets, and phones), wired and wireless network transmission; (b) performing an annual HIPAA risk assessment, and sharing corrective action plan items with University at its request; (c) at University's request, completing the University's vendor risk assessment questionnaire; (d) completing security scanning for vulnerabilities at least quarterly, promptly remediating identified issues, and sharing results with University at its request; or permitting University to conduct security scanning and penetration testing of Supplier's systems; and (e) permitting University to audit Supplier's security program, and remediating any identified compliance violations within a reasonable timeframe; provided that University will not be under any obligation to conduct such audits; and provided further that if Supplier does not remediate any compliance violations to the satisfaction of University, University may terminate the PO.

**P15. Remedies.** In the event of a material breach of this Part 5 by Supplier, the University may at any time thereafter, and in its sole discretion, either: (a) notify Supplier of the breach in writing, providing an opportunity for Supplier to cure the breach, and terminate the PO if Supplier does not cure the breach within the time specified by the University in such notice; or (b) immediately terminate the PO on written notice to Supplier.

**P16. Modifications.** Supplier agrees that if University modifies this Part 5 to comply with any changes in the applicable laws and regulations, the modified Part 5 apply to Supplier upon its receipt of notice from the University that such modifications have been made.

**P17. Notices.** Supplier will send all notices to University under this Part 5 in writing, to: Chief Privacy Officer, University of Rochester, 601 Elmwood Avenue, Box 700, Rochester, New York 14642, or by fax to the Chief Privacy Officer at (585) 784-6163.





## Acceptance Form

*Please complete, print, sign, and mail all pages of this Form and Agreement, Your Company's Size Certification and Conflict Information Form, and Your Company's Certificate of Insurance and Endorsements to: We prefer that all pages be scanned and emailed to: [Supplier\\_Information@ur.rochester.edu](mailto:Supplier_Information@ur.rochester.edu).*

*University of Rochester Corporate Purchasing  
44 Celebration Drive, Suite 2.200  
Rochester, NY 14620-2664*

The Company below identified ("Supplier") agrees that the University of Rochester's Terms and Conditions set out on the preceding pages apply to all business with the University, and any entity owned, directly or indirectly, by the University, any entity managed or controlled by the University, and subsidiaries and divisions of the foregoing (collectively "Affiliates") if any business is awarded to Supplier by any of the foregoing. All of the foregoing entities are entitled to the benefits of any Supplier offering to any of the foregoing, whether prior to or subsequent to Supplier's acceptance of these terms and conditions. The foregoing may issue their own purchase orders incorporating the above referenced terms and conditions except all references therein to the University shall be deemed to be to only to the issuer if it is other than the University except as noted therein.

**Reference Number:**

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**Company Name:**

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**Address:**

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**City, State, Zip:**

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*Authorized Representative:*

**Signature:**

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**Name (print):**

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**Title:**

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**Date**

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*Terms and conditions printed on Supplier's standard sales and other documents shall not apply to quotations submitted or any resulting contract or purchase order.*

June 14, 2018