

Purchase Order Terms and Conditions

1. **DELIVERY; SUBSTITUTIONS; PURCHASE ORDER NUMBER:** Goods will be delivered and services performed during normal business hours. Goods will be delivered to University's address identified in this Purchase Order. If delay in delivery or performance is foreseen, Contractor will give prompt written notice to University's Purchasing Office. Upon notice, University has the right to extend the delivery or performance date in its sole discretion. Contractor will keep University advised at all times of the status of delivery and performance under this Purchase Order. Contractor will only tender for acceptance those goods and services that conform to the requirements of this Purchase Order. Substitutions, cancellations, and price changes will require prior written consent of University. Default in promised delivery or performance or failure to conform to the requirements of this Purchase Order authorizes University to purchase goods or services elsewhere and charge to Contractor any excess cost of such repurchase. Contractor will show this Purchase Order number on all packages, shipments, and invoices.
2. **TITLE AND RISK OF LOSS:** Title to and risk of loss to any goods to be delivered under this Purchase Order will not pass to University until University actually receives and takes possession of such goods at the point of delivery.
3. **WARRANTIES:** In addition to all warranties established by law, Contractor hereby represents, covenants, certifies, warrants and agrees that:
 - (a) it will comply with all requirements of this Purchase Order.
 - (b) if Contractor is a corporation or a limited liability company, it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization, it is duly authorized and in good standing to conduct business in the State of Texas, and the performance of its duties and obligations under this Purchase Order will not result in the violation of any provision of its organizational documents.
 - (c) if Contractor is a partnership, limited partnership, or limited liability partnership, it has all necessary partnership power and has secured all necessary approvals to perform its duties and obligations under this Purchase Order, and the performance of its duties and obligations under this Purchase Order will not result in the violation of any partnership agreement by which Contractor is bound.
 - (d) if Contractor is a corporation or a limited liability company, it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171, *Texas Tax Code*, or is exempt from the payment of such taxes, or is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.
 - (e) in accordance with Section 2155.004, *Texas Government Code*, the individual or business entity named in this Purchase Order is not ineligible to receive the award of or payment under this Purchase Order and this Purchase Order may be terminated and payment withheld if this certification is inaccurate.
 - (f) pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, any payments owing to Contractor under this Purchase Order may be applied directly to any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
 - (g) in accordance with Section 231.006, *Texas Family Code*, the individual or business entity named in this Purchase Order is not ineligible to receive the award of or payment under this Purchase Order and this Purchase Order may be terminated and payment may be withheld if this certification is inaccurate.
 - (h) all goods and services covered by this Purchase Order will conform to the specifications, drawings, samples or other descriptions furnished or adopted by University (collectively "specifications"), and will be new, merchantable, fit for the purpose intended, of best quality and workmanship, and free from all defects. University will have the rights of inspection and approval and may reject and return goods or require reperformance of services at Contractor's expense if defective or not in compliance with the specifications. Defects will not be deemed waived by University's failure to notify Contractor upon receipt of goods or completion of services or by payment of invoice.
 - (i) use or sale of any goods delivered hereunder, except (with respect to patents) goods produced to University's detailed design, will not infringe any adverse valid patent, copyright, trademark or other intellectual property right.
 - (j) the price to be paid by University will be the price contained in Contractor's bid, proposal, or other response to University's solicitation which price Contractor warrants to be no higher than Contractor's current prices on orders by others for goods or services of the kind covered by this Purchase Order for similar quantities to similar customers under similar conditions. In the event Contractor breaches this warranty, the prices will be reduced to Contractor's current prices on orders by others or, in the alternative, University may cancel this Purchase Order without liability to Contractor.
 - (k) if Contractor will provide services under this Purchase Order, then in accordance with Section 2155.4441, *Texas Government Code*, in performing its duties and obligations under this Purchase Order, the Contractor will purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.
 - (l) Contractor warrants, represents, covenants, and agrees that all persons connected with the Contractor directly in charge of providing the goods or performing the services set forth in this Purchase Order are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction, if so required by such laws, rules and regulations.
 - (m) technology provided to University under this Purchase Order will correctly store and process calendar dates.
 - (n) except for the obligation of University to pay Contractor certain fees and expenses pursuant to the terms of this Purchase Order, University will have no liability to Contractor or to anyone claiming through or under Contractor by reason of the issuance of this Purchase Order. Notwithstanding any obligation or liability of University to Contractor, no present or future partner or affiliate of University or any agent, officer, director, employee, or regent of University, The University of Texas System ("U.T. System"), or a U.T. System institution, or anyone claiming under University or U.T. System has or will have any personal liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Purchase Order.
 - (o) Contractor agrees to notify University in writing within thirty (30) days of any changes in facts or circumstances that render any of Contractor's representations and warranties under this section incorrect.
 - (p) the foregoing representations, covenants, certifications, warranties and agreements will survive acceptance of goods as well as performance of services hereunder.
4. **Access by Individuals with Disabilities.** Contractor represents and warrants ("EIR Accessibility Warranty") that the electronic and information resources and all associated information, documentation, and support that it provides to the University under this Agreement (collectively, the "EIRs") comply with the applicable requirements set forth in Title 1, Chapter 213 of the *Texas Administrative Code* and Title 1, Chapter 206, Rule §206.70 of the *Texas Administrative Code* (as authorized by Chapter 2054, Subchapter M of the *Texas Government Code*.) To the extent Contractor becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Contractor represents and warrants that it will, at no cost to University, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. In the event that Contractor is unable to do so, then the University may terminate this Agreement and Contractor will refund to the University all amounts the University has paid under this Agreement within thirty (30) days after the termination date.

5. ANTITRUST LAWS; CLAIMS FOR OVERCHARGES: Contractor warrants and represents that neither Contractor nor any party acting on behalf of Contractor has violated the antitrust laws of the United States or of the State of Texas. Contractor hereby assigns to University any and all claims for overcharges associated with this Purchase Order which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., or of the State of Texas, Tex. Bus. & Comm. Code Sec. 15.01, et seq.

6. INDEPENDENT CONTRACTOR: In performing any duties and obligations under this Purchase Order, Contractor is, and undertakes performance thereof as, an independent contractor, with sole responsibility for all persons employed in connection therewith, including without limitation, exclusive liability for the payment of all federal, state, and local unemployment and disability insurance premiums and fees and all social security and other taxes and contributions payable in respect of such persons, from and against which liability Contractor agrees to indemnify, exonerate and hold harmless University.

7. INDEMNITY: CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS UNIVERSITY, THE BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM ("BOARD") AND THE STATE OF TEXAS AND THEIR OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY THE "INDEMNIFIED PARTIES") FROM AND AGAINST ALL ACTIONS, SUITS, DEMANDS, COSTS, DAMAGES, LIABILITIES AND ALL OTHER CLAIMS, INCLUDING REASONABLE ATTORNEYS' FEES (COLLECTIVELY "CLAIMS"), ARISING OUT OF, IN CONNECTION WITH OR RESULTING FROM THIS PURCHASE ORDER OR THE GOODS OR SERVICES PROVIDED UNDER THIS PURCHASE ORDER, TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OR THE WILLFUL MISCONDUCT OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS OR SUPPLIERS. IN ADDITION, CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF, IN CONNECTION WITH OR RESULTING FROM THIS PURCHASE ORDER OR THE GOODS OR SERVICES PROVIDED UNDER THIS PURCHASE ORDER. The duties and obligations under this Section will survive expiration or termination of this Purchase Order for any reason.

8. INSURANCE: If this Purchase Order requires the presence on University's premises of Contractor's employees, agents, suppliers or permitted subcontractors (if any), Contractor agrees to maintain and to cause its agents, suppliers and permitted subcontractors (if any) to maintain the following insurance coverages for at least the specified limits:

<u>Coverages</u>	<u>Limits</u>
Workers' Compensation	Statutory Limits
Employer's Liability	\$1,000,000 per accident and employee
Commercial General Liability (including contractual liability)	\$1,000,000 per occurrence
Product/Completed Ops	\$1,000,000 aggregate
Auto Liability	\$1,000,000 combined single limit

All policies (except Workers' Compensation) will name University, the Board and their officers and employees as Additional Insureds. A Waiver of Subrogation in favor of University and the Board and thirty (30) day notice of cancellation is required on all policies. Certificates of insurance verifying the foregoing requirements will be provided to University prior to commencement of any services under this Purchase Order.

9. VENUE; CHOICE OF LAW: Bexar County, Texas, will be the proper place of venue for suit on or in respect to this Purchase Order. This Purchase Order and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof will be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.

10. ASSIGNMENT, SUBCONTRACTING, AND DELEGATION: Contractor may not assign any of its rights or subcontract or delegate any of its obligations under this Purchase Order without University's prior written consent. Any assignment, subcontract or delegation attempted by Contractor in violation of this provision will be void and ineffective for all purposes.

11. ENTIRE AGREEMENT; MODIFICATIONS: This Purchase Order supersedes all prior agreements, written or oral, between Contractor and University and will constitute the entire agreement and understanding between the parties with respect to the subject matter hereof. This Purchase Order and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by University and Contractor.

12. LOSS OF FUNDING: Performance by University under this Purchase Order may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board. If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then University will issue written notice to Contractor and University may terminate this Purchase Order without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of University.

13. CONTRACTOR'S BREACH OF CONTRACT CLAIMS: To the extent that Chapter 2260, *Texas Government Code*, is applicable to this Purchase Order and not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, will be used by University and Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. The chief business officer of University will examine Contractor's claim and any counterclaim and negotiate with the Contractor in an effort to resolve such claims. The parties hereto specifically agree that (1) neither the issuance of this Purchase Order by University nor any other conduct, action or inaction of any representative of University relating to this Purchase Order constitutes or is intended to constitute a waiver of University's or the State's sovereign immunity to suit; and (2) University has not waived its right to seek redress in the courts.

14. HIPAA COMPLIANCE: Contractor agrees to keep private and to secure any information provided by University that is considered either Individually Identifiable Health Information ("IIHI") by the Health Insurance Portability and Accountability Act of 1996, codified at 42 USC § 1320d through d-8 ("HIPAA"), or Protected Health Information ("PHI") as promulgated in 45 CFR Part 164 ("HIPAA Privacy Regulations") and 45 CFR Part 142 ("HIPAA Security Regulations"). Contractor agrees to only use and disclose PHI (i) received from University, (ii) used, created, received, maintained or disclosed by University, or (iii) otherwise associated with University (collectively, "University PHI") as required to perform the services outlined in this Purchase Order, which services may include the proper management and administration of this Purchase Order and data aggregation services for the health care operations of University. Contractor will not use or further disclose University PHI other than as permitted under this Purchase Order and Contractor will use appropriate safeguards to prevent the use or disclosure of University PHI for any reason other than as provided by this Purchase Order. Contractor agrees to promptly notify University of any use or disclosure of University PHI not permitted under this Purchase Order. Contractor agrees to notify University of its corrective actions to cure any breaches of this

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Section, HIPAA, or the HIPAA Privacy Regulations as soon as possible. Contractor understands that University may terminate this Purchase Order immediately without liability to Contractor if Contractor's actions are not successful in remedying the breach. University may also report the problem to the Secretary of Health and Human Services. Contractor will require any of its agents or subcontractors who receive University PHI to be bound by the same restrictions and conditions set forth in this Purchase Order. Contractor agrees to comply with §164.524 (Access of Individuals to PHI), 164.526 (Amendment of PHI) and 164.528 (Accounting of Disclosures of PHI) of the HIPAA Privacy Regulations. Contractor agrees to make its internal practices, books, and records relating to the use and disclosure of University PHI available to the Secretary of Health and Human Services or University for purposes of determining the Contractor's compliance with the HIPAA Privacy Regulations. After Contractor has completed working with or using University PHI, Contractor agrees to return or destroy all University PHI, if feasible, and if not feasible, Contractor agrees to continue to protect University PHI from wrongful uses and disclosures. If Contractor decides to destroy University PHI under this Purchase Order, Contractor will maintain a record of the proper destruction of University PHI or provide University with notice and certification of proper destruction of University PHI.

15. STATE AUDITOR'S OFFICE: Contractor understands that acceptance of funds under this Purchase Order constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), 73.115(c) and 74.008(c), *Texas Education Code*. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors (if any).

16. NOTICES: Notwithstanding any other requirements for notices given by a party under this Purchase Order, if Contractor intends to deliver written notice to University pursuant to Section 2251.054, *Texas Government Code*, then Contractor will send that notice to University as follows:

Mailing Address : (Via U.S. Mail)

The University of Texas Health Science Center at San Antonio
Vikki Ross, Director of Purchasing
FAX : 210-562-6290
EMAIL : purchadmin@uthscsa.edu

MSC7962
7703 Floyd Curl Dr.
San Antonio, TX 78229-3900

University may change this contact information by written notice to Contractor.

17. OPEN RECORDS: All information, documentation and other material submitted by Contractor in connection with this Purchase Order may be subject to public disclosure under Chapter 552, *Texas Government Code* ("Chapter 552"). University strictly adheres to Chapter 552 and interpretations of Chapter 552 rendered by the courts and the Texas Attorney General.

18. PUBLICITY: No disclosure, description, or other communication of any sort will be made by Contractor to any third person of the fact of University's purchase of goods or services hereunder, or of the details and characteristics thereof without University's prior written consent. Anything furnished to Contractor by University pursuant to this Purchase Order including without limitation samples, drawings, patterns, and materials will remain the property of University, will be held at Contractor's risk, and will be returned to University upon University's request, and no disclosure or reproduction thereof in any form will be made without University's prior written consent. It is the policy of University, that no endorsement by University, be stated or implied by Contractor for any of Contractor's products or services. All materials utilizing the name or trademarks of University, or The University of Texas in advertising, marketing and sales promotion materials must be submitted to University, Office of Public Affairs via U.S. Mail for prior written approval.

Mailing Address: (Via U.S. Mail)

The University of Texas Health Science Center at San Antonio
Mary Etlinger DeLay, Chief of Staff and Communications

MSC7834
7703 Floyd Curl Dr.
San Antonio, TX 78229-3900

19. VENDOR EMPLOYEE BACKGROUND CHECK: Prior to commencement of work under certain Purchase Orders (as determined by University), upon University's request, Contractor will submit a comprehensive list of all individuals that will require access to University's premises in connection with the performance of Contractor's duties and obligations under this Purchase Order. The list must include the following information regarding each individual identified on the list: **Full Legal Name, Complete Legal Address, Texas State Driver's License Number, and Date of Birth**. The information will only be used by University's Police Department to conduct background checks. Only those individuals that in University's determination have a satisfactory background check will be permitted on University's premises. Contractor will be responsible for each person identified on the list and will not knowingly list persons who have a history of violent or grossly negligent behavior.

20. PICTURE IDENTIFICATION BADGE: Each employee that will require access to University's premises in connection with the performance of Contractor's duties and obligations under this Purchase Order will be required to wear a picture identification badge (issued by University) while on the University's premises. University will issue a badge only to Contractor's employees and permitted subcontractor's employees that successfully pass the background check (ref. Section 19.) Contractor will pay University a \$10.00 fee for each badge issued. University will refund \$8.00 of the original fee paid to University upon return of the badge to the University's Police Department within 10 days after complete performance of the Contractor's duties and obligations under this Purchase Order.

21. SEVERABILITY: If any provision of this Purchase Order is for any reason held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision; and this Purchase Order will be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Purchase Order.

22. PROTECTING CONFIDENTIALITY OF SOCIAL SECURITY NUMBERS ("SSNs"): All computer information systems acquired or developed under this Purchase Order (Reference: University of Texas System Business Procedures Memorandum 66-10-04, <http://www.utsystem.edu/bpm/66.htm>):

- (a) must use SSNs only as a data element or alternate key to a database and not as a primary key to a database;
- (b) must not display SSNs visually (such as on monitors, printed forms, system outputs) unless required by law or permitted by this policy (UT System BPM 66-10-04);
- (c) must include name and directory systems that are capable of being indexed or keyed on a unique identifier and not on SSNs; and
- (d) may automatically cross-reference between SSNs and other information through the use of conversion tables within the computer information system or through other technical mechanisms.

If Contractor (1) creates, (2) receives from or on behalf of University, or (3) has access to, records or record systems containing social security numbers (collectively, the "Records"), Contractor represents, warrants, and agrees that it will: (1) hold the Records in strict confidence and will not use or disclose the Records except as (a) permitted or required by this Purchase Order, (b) required by law, or (c) otherwise authorized by University in writing; (2) safeguard the Records according to commercially reasonable administrative, physical and technical standards that are no less rigorous than the standards by which Contractor protects its own confidential information; and (3) continually monitor its operations and take any action necessary to assure that the Records are safeguarded in accordance with the terms of this Purchase Order. At the request of University, Contractor agrees to provide University with a written summary of the procedures Contractor uses to safeguard the Records.

If an impermissible use or disclosure of any of the Records occurs, Contractor will provide written notice to University within one (1) business day after Contractor's discovery of that use or disclosure. Contractor will promptly provide University with all information requested by University regarding the impermissible use or disclosure.

In addition to any other termination rights set forth in this Purchase Order and any other rights at law or equity, if University reasonably determines that Contractor has breached any of the restrictions or obligations set forth in this Section, University may immediately terminate this Purchase Order without notice or opportunity to cure.

In the event of a breach or threatened breach of the restrictions and obligations set forth in this Section, Contractor agrees that University cannot be reasonably or adequately compensated in damages. Accordingly, Contractor acknowledges and agrees that a breach by Contractor of the provisions of this Section will cause University irreparable injury and damage. Contractor, therefore, expressly agrees that University will be entitled to injunctive and other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Section.

Contractor agrees that within thirty (30) days after the expiration or termination of this Purchase Order, for any reason, all Records created or received from or on behalf of University will be (1) returned to University, with no copies retained by Contractor; or (2) if return is not feasible, destroyed. Thirty (30) days before destruction of any of the Records, Contractor will provide University with written notice of Contractor's intent to destroy the Records. Contractor will confirm to University in writing the destruction of the Records.

If Contractor discloses any of the Records to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor by this Section.

The restrictions and obligations under this Section will survive expiration or termination of this Purchase Order for any reason.

23. NON-WAIVER OF DEFAULTS: Failure of any party to declare any default by any other party immediately upon occurrence thereof, or delay by any party in taking any action in connection therewith, will not waive such default; rather, a party will have the right to declare any default at any time and take such action as might be lawful or authorized, either at law or in equity.

24. FORCE MAJEURE: Neither party will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control, including, but not limited to, acts of God, employee strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character. Contractor will use commercially reasonable best efforts to mitigate the impact of any such event or occurrence so that University may continue to provide healthcare services during such period.

25. INVOICE; PAYMENT: At least ten (10) days before the end of each calendar month during the term of this Purchase Order and within 10 days after complete performance of this Purchase Order, Contractor will submit to University at the following address an itemized invoice including this Purchase Order number and covering the goods delivered to and the services performed for University to that date:

The University of Texas Health Science Center at San Antonio
P.O. Box 40310
San Antonio, TX 78229-3900

Each invoice will be accompanied by documentation that University may reasonably request to support the invoice amount.

University will remit payments under this Purchase Order in accordance with the Texas Prompt Payment Act (the "Prompt Payment Act"), Chapter 2251, *Texas Government Code*. Pursuant to the Prompt Payment Act, University's payment will be deemed late on the 31st day after the later of (a) the date the goods procured under this Purchase Order are received; (b) the date performance of the services under this Purchase Order is completed, or (c) the date University receives an invoice for the goods or services. University will pay interest on past due payments at an annual rate equal to the sum of (a) one percent, plus (b) the annual prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year (University's fiscal year begins September 1) that does not fall on a Saturday or Sunday.

26. FREIGHT TERMS: For any and or all shipments coming to University will be FOB DESTINATION FREIGHT PREPAID. Imports and Exports will be handled on a case by case basis by UTHSCSA Customs Broker of record.

27. TAXES: University is an agency of the State of Texas and an institution of higher education. University claims an exemption from taxes under Chapter 20, Title 122A, Revised Civil Statutes of Texas, for purchases of tangible personal property from any contractor and/or any shipper. The goods delivered under this Purchase Order are being secured for the exclusive use of the State of Texas. Notwithstanding its exemption from certain state taxes, University will be responsible for any taxes (except corporate income taxes, franchise taxes, and taxes on Contractor's personnel, including personal income tax and social security taxes) from which University is not exempt. Contractor will provide reasonable cooperation and assistance to University in obtaining any tax exemptions to which University is entitled.

28. TERMINATION: Either party may terminate all or any undelivered portion of the goods or services procured under this Purchase Order as follows: (i) at any time for convenience and without cause, upon thirty (30) days' written notice to the other party (Contractor may only cancel with cause and must provide documentation to UTHSCSA on an individual case by case basis); or (ii) in the event of a material failure to perform in accordance with the terms of this Purchase Order, the non-defaulting party may terminate this Purchase Order upon fifteen (15) days' written notice of termination setting forth the nature of the material failure; provided, that, the material failure is through no fault of the terminating party. The termination will not be effective if the material failure is fully cured prior to the end of the fifteen-day period.

University's responsibility under this Purchase Order will be limited to payment for only those goods properly delivered and services properly performed prior to the termination date set forth in the notice of termination. Under no circumstances will Contractor be entitled to payment for special, indirect, incidental, consequential damages (including lost or anticipated profits, unabsorbed overhead, or interest on borrowing) as a result of termination of this Purchase Order.

29. INSTALLATION: If installation of goods is procured under this Purchase Order, Contractor will properly install or set up the goods in accordance with the manufacturer's recommendations. Contractor will remove from University's premises, and properly dispose of, or recycle, all waste materials, including packaging. Contractor will not deposit waste materials in University waste receptacles.

30. CONFORMANCE WITH AND SUBORDINATION TO LAW:

The parties acknowledge that University is an agency of the State of Texas and under the Constitution and laws of the State of Texas possesses certain rights and privileges, is subject to certain limitations and restrictions, and only has such authority as is granted to it under the Constitution and laws of the State of Texas. Notwithstanding any provision of this Purchase Order, nothing in this Purchase Order is intended to be, nor will it be construed to be, a waiver of the sovereign immunity of the State of Texas or a prospective waiver or restriction of any of the rights, remedies, claims, and privileges of the State of Texas. Notwithstanding the generality or specificity of any provision of this Purchase Order (including, without limitation, any provision pertaining to indemnification, a cap on liability, a limitation of damages, or a waiver or limitation of rights, remedies, representations or warranties), the provisions of this Purchase Order, as those provisions pertain to University, are enforceable only to the extent authorized by the Constitution and laws of the State of Texas. University will not be required to perform or refrain from performing any act that would violate the laws or Constitution of the State of Texas. In compliance with all applicable federal, state and local, laws, regulations, codes, ordinances, and orders and with those of any other body or authority having jurisdiction, all goods delivered or services provided pursuant to this Purchase Order will conform to standards established for such goods and services by any applicable federal, state, or local laws, regulations, codes, ordinances, and orders, including without limitation those standards promulgated by the federal Occupational Safety and Health Administration (OSHA) and the Texas Hazard Communication Act, Chapter 502, *Texas Health and Safety Code*.

31. FEDERAL FUNDING PROVISIONS: If this Purchase Order is made with federal funds awarded to University, the following provisions are made a part of this Purchase Order, as applicable:

(a) **Equal Employment Opportunity.** Contractor agrees to comply with E.O. 11246, "Equal Employment Opportunity," as amended by E.E. 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."

(b) **Copeland "Anti-kickback" Act (18 U.S.C. 874 and U.S.C. 276c).** When the value of this Purchase Order exceeds \$2,000 for construction or repair, Contractor and any subcontractors will comply with Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Sub-contractors on Public Buildings or Public Works Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient will 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 he is otherwise entitled. University is bound to report all suspected or reported violations to the federal awarding agency.

(c) **Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7).** When required by federal program legislation and the value of this Purchase Order exceeds \$2,000, Contractor and any subcontractors will comply with the Davis-Bacon Act (40 U.S.C. 276a- to a-7) 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, contractors will be 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, contractors will be required to pay wages not less than once a week. Should the Davis-Bacon Act apply to this Purchase Order, this Contract is conditioned upon the acceptance by the Contractor of the wage determination. University is bound to report all suspected or reported violations to the federal awarding agency.

(d) **Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 USC 1251 et seq.), as amended.** When the value of this Purchase Order exceeds \$100,000, the Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.). University is bound to report violations to the federal awarding agency and the Regional Office of the Environmental Protection Agency.

(e) **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** When the value of this Purchase Order exceeds \$100,000, the Contractor and its subcontractors are required to file the required Anti-Lobbying Certification certifying 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 a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. 1352. Contractor and its subcontractors will also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures will be forwarded from tier to tier up to University.

(f) **Debarment and Suspension (E.O.s 12549 and 12689).** When the value of this Purchase Order exceeds \$25,000, the Contractor, by accepting this Purchase Order, certifies that neither it nor its principle employees have been debarred, suspended, or otherwise excluded by agencies to receive federal funds.

(g) **Rights to Inventions Made Under this Purchase Order.** If this Purchase Order is made for the performance of experimental, developmental, or research work, rights to inventions made under this Purchase Order will, when applicable, be covered by 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements."

(h) **Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333).** When the value of this Purchase Order exceeds \$2,000 for construction or \$2,500 for all other purposes and when the employment of mechanics or laborers is required, Contractor will comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR Part 5). Under Section 102 of the Act, each contractor will 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 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic will 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.