

NEW MEXICO STATE UNIVERSITY STANDARD TERMS AND CONDITIONS

1. **AGREEMENT.** This Purchase Order is the sole and entire agreement between the parties; any documents incorporated into this agreement are listed explicitly on the front side of this Purchase Order, or are incorporated by implication by the terms of this Purchase Order. Any terms inconsistent with or in addition to this Purchase Order proposed by Seller are deemed rejected unless agreed to in writing by NMSU Procurement Services.
2. **ASSIGNMENT.** This Purchase Order is assignable by the University. Except as to any payment due hereunder, this Purchase Order is not assignable by Seller without written approval from the University.
3. **CHANGES.** The University may make changes within the general scope of this Purchase Order by giving notice to Seller and subsequently confirming such changes in writing. If such changes affect the cost of, or the time required for performance of this Purchase Order, an appropriate equitable adjustment shall be made. No change by Seller shall be recognized without written approval of the University. Any claim of Seller for adjustment under this Paragraph must be made in in writing within thirty (30) days from the date of receipt by Seller of notification of such change. Nothing in this Paragraph shall excuse Seller from proceeding with the performance of the Purchase Order as changed hereunder.
4. **TERMINATION AND DELAYS.** The University may by written notice stating the extent and effective date terminate this Purchase Order for convenience in whole or in part, at any time. The University shall pay Seller as full compensation for performance until such termination: (1) the unit or pro rata order price for the delivered and accepted portion; and (2) incidental damages, not otherwise recoverable from other sources by Seller, as approved by the University, with respect to the undelivered or unaccepted portion of this Purchase Order provided compensation hereunder shall in no event exceed the total Purchase Order price. Such amount will be limited to Seller's actual cost, and may not include anticipated profits. The University shall not be liable for consequential damages. The University may by written notice terminate this Purchase Order in whole or in part for Seller's default if Seller refuses or fails to comply with the provisions of this Purchase order or fails to make progress so as to endanger performance and does not cure such failure within a reasonable period of time. In such event, the University may otherwise secure the materials, supplies or service ordered, and Seller shall be liable for damages suffered by the University hereby, including incidental and consequential damages. If after notice of termination, the University determines Seller was not in default or if Seller's Default is due to failure of the University, termination shall be deemed for the convenience of the University. The rights and remedies of the University provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Purchase Order as used in this paragraph, the word "Seller" includes Seller and his sub-suppliers at any tier.

5. **FOB.** Unless stated otherwise, the price for goods is F.O.B. the place of destination, and the place of destination is the University's designated campus address.
6. **INSPECTION.** The University may inspect, at any reasonable time, any part of Seller's plant or place of business which is related to performance of this Purchase Order. Final inspection will be made at the destination upon completion of delivery of goods and services. Acceptance of delivery shall not be considered acceptance of the goods and/or services furnished. Final inspection shall include any testing or inspection procedures required by the specifications.
7. **ACCEPTANCE AND REJECTION.** If prior to final acceptance, any goods or services are found to be defective or not as specified, or if the University is entitled to revoke acceptance of them the University may reject or revoke acceptance, require Seller to correct without charge within a reasonable time, or require delivery at an equitable reduction in price, at University's option. Seller shall reimburse the University for all incidental and consequential costs related to unaccepted goods or service. Notwithstanding final acceptance and payment, Seller shall be liable for latent defects, fraud, or such gross mistakes as amount to fraud. Acceptance of goods or services shall not waive the right to claim damages for breach of contract.
8. **TITLE AND DELIVERY.** Title to the materials and supplies passed hereunder shall pass to the University upon acceptance at the FOB point specified, subject to the right of the University to reject. For any exception to the delivery date specified, Seller shall give prior notification and obtain approval thereto from the University's Procurement Services Office. Time is of the essence and the Purchase Order is subject to termination for failure to deliver on time.
9. **WARRANTIES.** Seller warrants the goods and/or services furnished to be exactly as specified in this Purchase Order, free from defects in Seller's design, labor, materials and manufacture, and to be in compliance with any drawings or specifications Incorporated herein and with samples furnished by Seller. All applicable UCC warranties expressed and implied are incorporated herein.
10. **PAYMENT TERMS.** Upon written request from Seller for payment, the University shall, within thirty (30) days, issue a written certification of complete or partial acceptance or rejection, with payment to follow within thirty (30) days after certification of acceptance. Late payment charges shall be ½ of 1% per month.
11. **DISCOUNTS.** If prompt payment discounts apply to this Purchase Order any discount time will not begin until materials, supplies, or services have been received and accepted and a correct invoice received by the appropriate University Department. In the event testing is required prior to acceptance the discount time shall begin upon the completion of the tests and acceptance.

12. **EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION.** The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
13. **PATENT AND COPYRIGHT INDEMNITY.** Seller shall Indemnify, defend and hold harmless the University against all losses, liabilities, lawsuits, claims, expenses (including attorneys' fees), costs, and judgments incurred through third party claims of infringement of any copyright, patent, trademark or other intellectual property rights.
14. **INDEMNIFICATION AND INSURANCE.** Seller assumes the entire responsibility and liability for losses, expenses, damages, demands and claims in connection with or arising out of any actual or alleged personal injury (including death) and/or damage or destruction to property sustained or alleged to have been sustained in connection with or arising out of the goods delivered by Seller or the performance of the work by Seller its agents, employees, subcontractors, or consultants, except to the extent or liability arising out of the negligent performance of the work by or willful misconduct of the University. Seller shall indemnify, defend and hold harmless the University, its officers, agents and employees from any and all liability for such losses, expenses, damages, demands, and claims and shall defend any suit or action brought against any or all of them based on any actual or alleged personal injury or damages and shall pay any damage costs and expenses including attorney's fees, in connection with or resulting from such suit or action. Seller will also indemnify, defend and hold harmless the University against any joint and several liabilities as imposed against the University with respect to strict products liability claims attributable to the fault of the Seller.
15. **PAYROLL OR EMPLOYMENT TAXES.** No federal, state, or local income, payroll or employment taxes of any kind shall be withheld or paid by the University with respect to payments to Seller or on behalf of Seller its agents or employees. Seller shall withhold and pay any such taxes on behalf of its employees as required by law. The payroll or employment taxes that are subject to this paragraph include but are not limited to FICA, FUTA, federal personal income tax, State personal income tax, state disability insurance tax, and state unemployment insurance tax. If Seller is not a corporation, Seller further understands that Seller may be liable for self-employment (social security) tax, to be paid by Seller according to law.
16. **WORKERS COMPENSATION.** No workers compensation insurance has been or will be obtained by NMSU on account of Seller or its employees or agents. Seller shall comply with the workers compensation laws with respect to Seller and Seller's employees and agents.

17. **INDEPENDENT BUSINESS.** Neither Seller nor any of its agents shall be treated as an employee of the University for any purpose whatsoever. Seller declares that Seller is engaged in an independent business and has complied with all federal, state and local laws regarding business permits and licenses of any kind that may be required to carry out the said business and the tasks to be performed under this Purchase Order. Seller further declares that it is engaged in the same or similar activities for other clients and that the University is not Seller's sole or only client or customer.
18. **SELLERS EMPLOYEES AND AGENTS.** Seller shall have complete charge and responsibility for persons employed by Seller and engaged in the performance of the specified work. The Seller, its agents and employees state that they are independent contractors and not employees of the university.
19. **PENALTIES.** The Procurement Code, Section 13-1-38 et seq. NMSA 1978, as amended imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose criminal penalties for bribes, gratuities and kickbacks.
20. **CONFLICT OF INTEREST.** Seller shall disclose to the University Procurement Services Office the name(s) of any University employee or member of the Board of Regents who has a direct or indirect financial interest in the Seller or the proposed transaction. A university employee (or Regent) has a direct or indirect financial interest in the Seller or in the proposed transaction if presently or in the proceeding twelve (12) months the employee/regent or a close relative has an ownership interest in the Seller (other than as owner of less than 1% of the stock of a publicly traded corporation); works for the Seller, is a partner, officer, director, trustee or consultant to the Seller, has received grant, travel, honoraria or other similar support from the Seller or has a right to receive royalties from the Seller. Seller shall file a Conflict of Interest Disclosure form with the University Procurement Services Office.
21. **OTHER APPLICABLE LAWS.** Any provision required to be included in an agreement of this type by any applicable and valid executive order, federal state or local law, ordinance, rule or regulation shall be deemed to be incorporated herein.
22. **ECCN REPORTING REQUIREMENT:** Contactor acknowledges that providing goods and services under this Purchase Order is subject to compliance with all applicable United States laws, regulations, or orders, including those that may relate to the export of technical data or equipment, such as International Traffic in Arms Regulations ("ITAR") and/or Export regulations and orders as currently in effect or hereafter amended. Contractor shall not disclose any export-controlled information, or provide any export controlled equipment or materials to NMSU without prior written notice. In the event that NMSU agrees to receive such export-controlled information, equipment or materials, Contractor shall: (i) include Export control Classification Number (ECCN) on the packing documentation, and (ii) send an electronic copy of the ECCN number and packing documentation to: purchasing@nmsu.edu.

23. **FOREIGN PAYMENTS:** Payment for services performed by a foreign individual or a foreign corporation while in the US may be subject to 30% tax withholding per IRS Publication 515.
24. **GRAMM-LEACH-BLILEY ACT:** Pursuant to the Gramm-Leach-Bliley Act and the regulations set forth at 16 CFR Part 314, New Mexico State University (“university”) requires its Service Providers to implement and maintain appropriate safeguards for the protection of Customer Information. Accordingly, the Service Provider shall implement and maintain a comprehensive information security program that contains administrative, technical and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of confidential Customer Information that it creates, receives, maintains, or transmits on behalf of the University. In addition, the Service Provider will require and ensure that any of its agents, sub-contractors, or sub-consultants, to which it provides confidential Customer Information of the University, implement appropriate security measures to protect Customer Information of the University.

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

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

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

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

25. **HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)** The parties agree to enter into a mutually acceptable amendment to this Agreement as necessary to comply with applicable federal laws and regulations governing the use and/or disclosure of individually identifiable health information. Such amendment shall be entered into on or before the date by which hospitals are required to be in compliance with the privacy regulations promulgated under the Health Insurance Portability and Accountability Act of 1996.
26. **INSTRUMENTALITIES:** Seller shall supply all equipment, tools, materials and supplies to accomplish the designated tasks except as set forth in this purchase order or its attachments.
27. **OWNERSHIP:** Ownership of documents-All documents which are prepared by the Vendor/Contractor or any member of the consulting team that form a part of its services under this Agreement are the sole property of New Mexico State University and such works may not be reproduced nor distributed without the express written consent of the New Mexico State University and shall be delivered to NMSU upon termination and/or completion of this Agreement if NMSU so requests. The Vendor/Contractor shall be responsible for the protection and/or replacement of any original documents in its possession. NMSU shall receive all original drawings and the Vendor/Contractor shall retain a reproducible copy.

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

Inventions. For the consideration payable under this Agreement, the Vendor/Contractor agrees to report any invention arising out of the Work required by this Agreement to NMSU. NMSU shall have sole right and authority to seek statutory patent protection under United States and foreign patent laws and to enjoy the

benefits of ownership of the invention, whether or not the invention was required of the Vendor/Contractor or member of the consulting team as part of the performance of Work. The Vendor/Contractor hereby assigns all right, title and interest in and to inventions made in the course of the Work to NMSU and agrees to execute and deliver all documents and do any and all things necessary and proper to effect such assignment. Vendor/Contractor shall require all members of the Consulting Team to agree in writing that they will execute and deliver all documents and do any and all things necessary and proper to effect assignment of inventions arising out of Work required by this Agreement to NMSU.

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