

PURCHASE ORDER AGREEMENT

Updated May 1, 2020

1. **ACKNOWLEDGMENT:** This is an offer by the University of Notre Dame du Lac ("hereinafter called "University"), acting through its Procurement Services, to the Supplier to form a contract of sale. The University does not accept any prior offers from Supplier relating to the materials or services named herein which may be contained in Supplier's quotations, correspondence, specifications or discussions. If there is no other contemporaneously executed written agreement between University and Supplier, this Purchase Order constitutes the entire agreement between the University and Supplier relating to the purchase and sale of the materials or services described in this Purchase Order. No modification or addition to this Purchase Order shall have any legal effect unless the University, by an authorized representative, issues a revised, written Purchase Order and Supplier may not modify or add to this Purchase Order shall be affected by any failure of either party to reject any form of acknowledgement or Purchase Order containing different or additional provisions. Supplier may accept University's offer herein by (a) returning to University a copy of this Purchase Order, executed by an authorized representative of Supplier, or (b) commencing performance hereunder. Any service or shipment received by the University from the Supplier shall be upon the terms and conditions contained herein, notwithstanding any terms or conditions contained in any acknowledgment, invoice, correspondence, quotations, specifications, discussions or other document or communication from the Supplier.
2. **SPECIFICATIONS:** As used herein, the word "Specifications" shall mean the specifications, quantities, nature, type, properties, amounts, assortments and other descriptions of and requirements for the materials, articles (hereinafter called "Merchandise") and Services or work (hereinafter called "Services") as stated on the Purchase Order and in the Request for Proposal (if any) pursuant to which this Purchase Order is issued.
3. **DISPUTES:** In case of a dispute initiated by the Supplier, the Supplier will inform the University within thirty (30) days of the qualifying event. In case of a lawsuit initiated by either party arising out of this Purchase Order or the transaction contemplated hereunder, unsuccessful party agrees to pay the prevailing party's costs and expenses associated with the lawsuit, including, without limitation, reasonable attorney's fees. This Purchase Order shall be governed by and construed under Indiana law. University and Supplier hereby agree that any dispute arising out of this agreement or the purchase contemplated hereunder shall be resolved in the state or federal courts located in St. Joseph County, Indiana. Supplier hereby submits itself to the jurisdiction of said courts and agrees not to challenge the jurisdiction or venue of said courts in the event of a dispute.
4. **CONFIDENTIALITY AND USE OF NAME:** Supplier agrees that it will not release any information relating to this order, including, without limitations, press releases, advertisements, or marketing materials, without prior written approval by the University.
5. **INVOICE:** Upon shipment the Supplier must include:
 - a. A SEPARATE Invoice for EACH Purchase Order referencing the Purchase Order number and, if applicable a BILL OF LADING showing full routing.
 - b. A statement of PAYMENT TERMS as stated on the Purchase Order. The charged price may NOT be higher than that stated in the Purchase Order.
 - c. Supplier's complete remit to NAME and ADDRESS on each invoice.
 - d. Supplier must provide a complete description of labor performed and time expended in maintenance contracts.
 - e. All payments are net thirty (30) days from University invoice acceptance.
6. **PAYMENT:**
 - 6.1 **GOODS:** If this Purchase Order is for the provision of goods, University shall transmit payment to Supplier within thirty (30) days from acceptance of a proper invoice, e.g., one submitted pursuant to a valid Purchase Order.
 - 6.2 **SERVICES:** If this Purchase Order is for the provision of services, Supplier shall submit invoices for services, reimbursable expenses and additional services not more often than once per month to the person and/or office specified in the Purchase Order. If Supplier's fee is stated as an hourly rate, supporting data to be attached to the invoice shall include payroll data identifying each individual, the position, grade or title, number of hours worked, applicable hourly rate and dates worked. Invoices for reimbursable expenses shall be supported by receipts for material, equipment, and rental or other services or charges as appropriate to this Purchase Order at cost with no mark up. Each invoice shall contain a summary of the total amount of previous invoices, this invoice amount, and the unbilled balance of this Purchase Order and its approved Change Orders. If the Supplier believes that any amount included in a current invoice is outside the scope of this Purchase Order, Supplier shall identify the amount and the nature of the work. In addition, the Supplier shall, on a monthly basis, review its progress on the project. If the Supplier, having performed said review, has reason to anticipate a need for additional funding, it shall indicate, on an invoice attachment, the reasons for the anticipated funding increase, its best estimate of the total additional costs and the time impact, if any, on the project completion schedule. Any failure by the Supplier to comply with this section shall be cause for the University to refuse payment to Supplier. Upon submission by Supplier of a valid and fully-supported invoice for Supplier's Services, University will, within thirty (30) calendar days from approval, pay Supplier for Services performed. Invoices for Supplier's Services are to be made out to the University and submitted for approval, to the address stated on the face of this Purchase Order.

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7. **REIMBURSABLE EXPENSE:** In the event that expenses are incurred through this Agreement and the University approves reimbursement, the University will reimburse Supplier only for reasonable actual, documented out-of-pocket expenses submitted in writing to the University within 60 days of incurred expense any expense submitted after which may be unallowable at the University's discretion; approved expenses are described in University policy (available at http://controller.nd.edu/assets/93684/travelpolicy_current.pdf). All expenses shall be passed through to the University without markup. Consultant will provide receipts for all meal expenses (regardless of dollar amount) and for all other expenses of \$25.00 or more, consistent with University policy.
8. **DELIVERY:** Time is of the essence with respect to this order. If the delivery date specified on the face of this order cannot be met, Supplier shall notify University using an acknowledgement of receipt of order and intent to perform without delay for instruction. If delivery is not made on time and in the quantities specified, University shall have the right to cancel this order and hold Supplier liable for any cost of cover or excess cost or damage incurred as a result of the delay. Acceptance by University of a late delivery will not constitute a waiver of a later claim for damages. Supplier agrees to insure the goods during delivery at Supplier's expense and to warrant that all goods will be free from defect and will be of good material and workmanship. If goods delivered by Supplier are defective or not what University contracted for, University reserves the right to return the goods to Supplier, to terminate the contract and to seek damages and expenses incurred. Acceptance of any part of the Order shall not bind University to accept remaining parts of the order or any future shipments nor deprive it of the right to return goods already accepted. The University shall have a reasonable time (but not less than thirty [30] days) after provision of the Services to inspect and/or evaluate the Services provided under this Agreement and reject any or all items that are nonconforming or defective. Any acceptance by the University shall not be deemed a waiver or settlement of any defect or nonconformity in the Services.
9. **FORCE MAJEURE:** University will not be liable for contract default or delay due to acts beyond its reasonable control. Supplier shall inform University, in writing, whenever Supplier becomes aware of an event that could delay or prevent Supplier's performance.
10. **SUBCONTRACTING AND ASSIGNMENT:** Supplier shall not contract, subcontract or assign to a third party any part of this Purchase Order or any rights arising hereunder without first obtaining the express, written approval of University.
11. **AUDITING OF RECORDS:** Supplier hereby grants University and its auditors permission to audit all of Supplier's records related to this Purchase Order and the transactions contemplated hereunder. Throughout the term of this Agreement, and for a period of three years after final payment, or longer if required by law, the University, at its own expense, shall be entitled to perform, or to have performed by a third party of University's choosing, during normal business hours and upon five (5) business days' notice, an on-site audit of any and all records of Supplier necessary to permit the University to evaluate and verify Supplier's compliance with the requirements of this Agreement. Supplier grants the University permission to view and/or copy any books, documents, records, data and information (including data and information stored in electronic form) of Supplier which relate to or have been used in connection with Supplier's performance of this Agreement. Supplier also grants the University permission to interview Supplier's staff and agents as part of the audit. Supplier agrees to provide the University with adequate and appropriate workspace for conducting the audit. If the University, in its sole discretion, determines that an on-site audit is not necessary, Supplier agrees to complete, within thirty(30) days of receipt, an audit questionnaire provided by the University. Any overcharges discovered by the University, or by a third party of University's choosing, shall be paid within thirty (30) days of Supplier's acceptance of the University's written notification of audit findings. Supplier may not unreasonably withhold acceptance of audit findings. Supplier shall include this audit provision in any subcontracts that it may issue under this Agreement. Where Services are being performed on campus some or all of the following additional provisions may, depending on the nature of the work, be appropriate.
12. **STATE AND FEDERAL STATUTES:** Supplier warrants and agrees that it has and will comply with the provisions of the Fair Labor Standards Act and the Walsh-Healey Act and any other applicable state and federal statutes and regulations.
13. **PUBLIC SAFETY AND RISK INVOLVING PROPERTY:** The Supplier shall take all necessary precautions for the safety of employees performing the work, and shall comply with all applicable provisions of Federal, State and Municipal safety laws and building codes as well as regulations of the University's Environmental Health and Safety Department to prevent accidents or injury to persons on, about or adjacent to the premises where the work is being performed. The Supplier shall erect and properly maintain at all times as required by the conditions and progress of the work, all necessary safeguards for the protection of workmen and the public and shall post danger signs warning against the hazards created by the activity/services.
14. **HAZARDOUS OR TOXIC MATERIALS:** Supplier agrees to inform officers, employees, agents, Suppliers, sub-contractors at every tier, and any other party which may come into contact with any hazardous or toxic materials as a result of its performance hereunder of the nature of such materials, and any health and safety or environmental risks associated therewith. Do not use

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- hazardous or toxic materials in a manner that will violate University Policies or any state, federal, or municipal environmental health and safety regulations. In situations where the risks are unclear consult with the University Risk Management Services for guidance. Provide complete care and treatment for any injury sustained by any parties coming into contact with any hazardous or toxic materials as a result of Supplier's performance or failure to perform hereunder. At the completion of project Supplier shall remove all unused chemical products and hazardous materials from campus. Transportation of these materials shall be in accordance with all federal, state, and local regulations. Request and receive written approval from University Risk Management Services prior to disposal of any material.
15. **CLEAN UP:** Supplier shall, at all times during the progress of the work, keep the site and adjacent roads and sidewalks free from accumulation of waste matter, dirt, and rubbish. At the completion of the work, all excess materials, earth, etc., shall be removed from the site.
 16. **EQUAL OPPORTUNITY:** University is an equal opportunity, affirmative action employer. Supplier shall not discriminate unlawfully against any employee or applicant for employment, nor shall it deny the benefits of this Purchase Order, to any person on the basis of race, color, national origin, physical or mental disability, age, sex or veteran status. Supplier warrants and agrees that it has and will comply with the applicable provisions of Executive Order 11246, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Vietnam Era Veterans' Readjustment Assistance Act, Section 503 of the Rehabilitation Act and any other applicable state and federal statutes and regulations governing equal opportunity.
 17. **SERVICES:** If this Purchase Order is for services to be performed or delivered by or on behalf of Supplier, then it is also subject to the University's Insurance Requirements and Indemnification Agreement.
 18. **MOST FAVORED CUSTOMER PROVISION.** If Supplier has negotiated terms or conditions for the sale of the products or services to another customer of Supplier which the University deems more favorable than those contained herein, the University may request and shall be afforded the opportunity to purchase those products or services on the same terms and conditions as Supplier has negotiated to provide a third party under reasonably similar circumstances.
 19. **INDEPENDENT CONTRACTOR STATUS OF PARTIES.** It is expressly understood that Supplier is an independent contractor and not the agent, partner, or employee of the University.
 20. **NO THIRD PARTY RIGHTS.** Nothing in this Agreement shall be construed as creating or giving rise to any rights in third parties or persons other than the named parties to this Agreement.
 21. **CODE OF CONDUCT:** Supplier hereby represents and warrants that the goods being purchased were not made under working conditions which otherwise would violate the University of Notre Dame Code of Conduct for Licensees.
 22. **CONTRACT:** If there is a separate written contract in effect between University and Supplier applicable to this transaction and any term thereof is in direct conflict with these terms and conditions, then the terms and conditions of the separate written contract shall govern to the extent of the direct conflict. Supplier is responsible for subcontractor(s). To ensure compliance with federal, state, and local regulations and laws; the Supplier shall require subcontractor(s) to accept the same terms and conditions as this Agreement.
 23. **TERMINATION FOR CONVENIENCE OR CAUSE:** University may terminate the Order or any part thereof for its sole *Convenience*. Upon notice of such termination, Supplier shall immediately stop all work and/or shipment of goods hereunder and cause its suppliers and/or subcontractors to cease their work against the Order. Supplier shall be paid a reasonable termination charge consisting of a pro rata percentage of the Order price reflecting the percentage of work performed prior to notice of termination, plus actual direct costs resulting from termination. Supplier shall not be paid for work performed or costs incurred after date of termination, nor for costs incurred by Supplier's suppliers that Supplier reasonably could have avoided. University may terminate the Order or any part hereof for *Cause* if Supplier defaults, fails to comply with any terms and conditions of the Order, becomes insolvent, ceases operations, liquidates or files for bankruptcy protection. Late delivery of goods or performance of services that are defective or do not conform to the Order shall, without limitation, be causes allowing University to terminate the Order for cause. In this event, University will not be liable to Supplier for any amount; but Supplier shall be liable to University for all losses, damages, and expenses, including costs of cover, resulting from the default that caused the termination.
 24. **WARRANTIES:**
 - 24.1 **FOR GOODS:** If this Purchase Order is for the provision of goods, Supplier warrants that the goods (a) are of merchantable quality; (b) are fit for the particular needs and purposes of the University as may be communicated to Supplier; (c) comply with the highest warranties, representations and options expressed by Supplier orally or in any written advertisement, correspondence or other document provided to or in the possession of the University; (d) comply with all applicable laws, codes and regulations as published by any national, state or local association or group; and (e) are not restricted in any way by patents, copyrights, trade secrets, or any other rights of third parties. If any of the foregoing warranties is breached, Supplier agrees to correct all defects and nonconformities, to be liable for all direct, indirect, consequential and other damages suffered by



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the University and any other persons, and to defend, indemnify and hold harmless the University from any claim asserted by any person resulting in whole or in part from such breach.

24.2 FOR SERVICES: If this Purchase Order is for the provision of services, Supplier warrants that all services hereunder shall be performed by personnel experienced and highly skilled in their profession and in accordance with the highest applicable standards of professionalism for comparable or similar services. Supplier shall be responsible for the professional quality, timeliness, coordination and completeness of the services. Supplier personnel assigned to perform the services shall be as proposed by Supplier and approved by the University. No such personnel of Supplier shall be reassigned without the approval of the University. Supplier shall use only personnel required for the performance of the services who are qualified by education, training and experience to perform the tasks assigned to them. Supplier agrees to replace any of its employees whose work is considered by the University to be unsatisfactory or contrary to the requirements of the services to be performed hereunder. The University shall not supervise nor control the details of Supplier's services, but rather shall be interested only in the results of Supplier's services.

25. **RISK OF LOSS:** Supplier assumes all risk of loss of or damage to all goods ordered and all work in process, materials, and other items related to this Order until the same are finally accepted by the individual and University department or University who ordered them. Supplier also assumes all risk of loss of or damage to any goods, work in process, materials, and other items rejected by University until the same are accepted by University.
26. **INSPECTION:** Payment for goods or services provided hereunder shall not constitute acceptance thereof. University may inspect and test such goods or services and reject any or all items that are, in University's sole judgement, nonconforming. Goods rejected or supplies in excess of quantities ordered may be returned to Supplier at Supplier's sole expense. Failure by University to inspect and test the goods or services shall not relieve Supplier of responsibility.
27. **INDEMNIFICATION:** Supplier shall indemnify, defend, and hold harmless University, its officers, trustees, agents and employees against and from any and all claims, liabilities, losses, damages and expenses (including without limitation attorney's fees and court costs) arising out of or in connection with any goods or services purchased pursuant to this Purchase Order or from any act, omission, negligence, operation, product or service of Supplier or its employees, agents, servants, suppliers, representatives and subcontractors.
28. **BACKGROUND CHECK:** If fabrication, construction, installation, service, delivery or other work is specified to be conducted on the University's premises, the Supplier and its subcontractor(s), if any, shall perform security clearance background checks on all

Supplier's and/or its subcontractor(s)'s officers, agents, employees, or volunteers assigned to have access to the University's premises. Supplier and/or its subcontractor(s) shall not assign any individuals with criminal backgrounds, including but not limited to registered sex offenders, to perform work or services at the University's premises. The University reserves the right to require Supplier to immediately remove any individuals identified with criminal backgrounds, including but not limited to registered sex offender status, from the University's premises. The University reserves the right to require additional background checks be made on any of Supplier's and its subcontractor(s)'s officers, agents, employees or volunteers assigned to have access to the University's premises.

29. **INSURANCE:** Supplier shall procure and maintain such insurance as shall protect Supplier, and any Subcontractor hired by Supplier performing work or providing services for the University of Notre Dame du Lac, Notre Dame, Indiana ("Owner"), from claims for damages which may arise from said performance of work, provision of services, or from any act or omission, whether by Supplier or by any Subcontractor or by anyone directly or indirectly employed by either of them. Such insurance shall be at Supplier's sole expense and meet the minimum requirements set forth below.

A. Scope and Minimum Limits of Insurance Coverage

1. Commercial General Liability insurance coverage for claims resulting from bodily injury or property damage resulting from Supplier's operations including:
 - a. Premises and operations,
 - b. Products and completed operations,
 - c. Contractual liability insurance for the obligations assumed by the Supplier under this agreement,
 - d. Personal injury liability,
 - e. Fellow Employee coverage,
 - f. Premises Medical Payments,
 - g. Explosion, collapse and underground ("XCU").

Minimum Limits of Insurance

- \$1,000,000 each occurrence bodily injury and property damage,
\$1,000,000 personal and advertising injury,
\$1,000,000 products and completed operations aggregate
\$1,000,000 general aggregate
\$ 100,000 damage to rented premises
\$10,000 medical expense (any one person)
2. Automobile Liability insurance covering all owned, hired and non-owned vehicles.
\$1,000,000 combined single limit per accident for bodily injury and property damage.
 3. Worker's Compensation insurance as required by applicable law or regulations or statutes and Employer's Liability insurance.
Worker's Compensation coverage as required by law



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\$500,000 Employer's Liability – Each Accident
\$500,000 Employer's Liability – Disease – Each Employee
\$500,000 Employer's Liability – Disease – Aggregate

4. Umbrella/Excess Liability

\$5,000,000 each occurrence and policy aggregate

B. Additional Required Scope and Minimum Limits of Insurance Coverage (As Applicable)

1. Aircraft, Rotor-Wing and Unmanned Aerial Vehicles: If any aircraft, helicopter (rotor-wing) or unmanned aerial vehicle (drone) is to be used by or on behalf of Supplier, Owner must be notified in writing at least ten (10) business days in advance to determine that adequate insurance coverage, as determined by Owner, is in place. Required limits of insurance will be determined based on the scope of operations.

2. Professional Liability: Supplier shall maintain Professional Liability insurance covering all professional work or services provided to the Owner.
\$1,000,000 per claim and in the aggregate

3. Cyber Liability: Supplier shall maintain coverage to respond to cyber liability and data breach claims providing, at a minimum: (1) Security and Privacy Liability, defense and indemnity for liability and damages (including investigations, fines, and penalties) resulting from any failure to protect, misuse, misappropriation, unauthorized disclosure, or other breach of private information and personally identifiable information and Owner's data; and (2) Event Management, including but not limited to data breach notification, public relations, forensics, credit monitoring and related costs.
\$1,000,000 per claim and in the aggregate.

4. Pollution Liability: Supplier shall maintain pollution liability or environmental impairment liability insurance covering all work or services provided to the Owner, providing, at a minimum: (1) damage to the environment; and (2) instance of non-compliance with any local, state, or federal statute, regulation, or order.
\$1,000,000 per claim and in the aggregate

C. Deductibles and Self-Insured Retentions

Any Supplier deductibles or self-insured retentions above \$10,000 must be declared to and approved by the Owner. At the option of Owner, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Owner, its subsidiaries, officers, directors, trustees, volunteers and employees, or (ii) the Supplier shall procure a bond guaranteeing payment of all losses and defense costs.

D. Other Insurance Provisions

1. Claims-made coverage:

The Owner will not accept a "claims-made" policy, except with respect to professional liability, cyber liability and pollution liability, if required.

2. Owner as additional insured:

Owner and its subsidiaries, officers, directors, trustees, volunteers, and employees shall be named as additional insureds under the Comprehensive General Liability insurance policy (Form CG 20 10 and CG 20 37 or its combined equivalent), the Automobile Liability policy and the Excess/Umbrella Liability policy.

3. Primary and Non-contributory insurance:

All insurance provided hereunder shall be primary and non-contributory.

4. Supplier's failure to comply:

General Liability, Excess/Umbrella Liability and Automobile Liability policies shall stipulate that Supplier's failure to comply with reporting provisions of the policies shall not affect coverage provided to Owner and its subsidiaries, officers, directors, trustees, volunteers and employees.

5. Waiver of Subrogation:

The Worker's Compensation, Employer's Liability and Automobile Liability insurer(s) shall agree to waive all rights of subrogation against Owner and its subsidiaries, officers, directors, trustees, volunteers and employees.

6. Notice of Cancellation:

Each insurance policy required by this insurance clause shall state that coverage shall not be canceled or non-renewed except after thirty (30) days' prior written notice has been given to Owner.

E. Acceptability of Insurance

Insurance is to be placed with insurers which are acceptable to the Owner. In general, the company must be at least A-,V (rating) by A.M. Best Company, Inc.. Lower limits of coverage may be accepted by the Owner at its sole discretion. Exceptions will be reviewed on a case by case basis by the Owner.

F. Verification of Coverage

Supplier shall furnish Owner with certificates of insurance that clearly identify all insurance coverage and special conditions as required by this Agreement. The certificates are to be signed by a person authorized by the insurer to bind coverage on its behalf. Owner reserves the right to require certified copies of endorsements affecting coverage required by this insurance clause or to require a certified copy of any or all required insurance policies, at any time.

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G. Insurance Limits

Owner's failure to object to certificates of coverage that do not provide the minimum levels of coverage required by this Agreement shall not relieve or decrease the liability of the Supplier to provide the coverages required by this Agreement. The limits of insurance specified in this Agreement are minimums and the Owner does not in any way represent that the insurance or the limits of insurance specified in this Agreement are sufficient or adequate to protect the Supplier's interests or liabilities.

H. Provision of Services

Nothing herein shall be construed as a guarantee, promise, representation or commitment by Owner that Supplier will be retained by Owner to provide goods, labor, or services of any kind during or throughout the contract term.

I. Liability and Indemnification

Supplier assumes liability and expressly agrees to defend and indemnify the Owner for all claims, losses, expenses, judgments, fines, penalties, attorneys' fees, and any other costs or damages (collectively "Claims") sustained or alleged to have been sustained in connection with, or to have arisen out of the act or omission of Supplier, its Subcontractor(s), or the employees or agents of Supplier or its Subcontractor(s). Said Claims shall include, but are not limited to, those arising from or related to injury, death, damages to property or the environment, damages arising out of the use of aircraft, helicopters, unmanned aerial vehicles, motor vehicles, or watercraft, damages from the breach of professional duties and obligations, and from cybersecurity failure/data breaches and/or any instance of non-compliance with any local, state, or federal statute, regulation, or order. The foregoing obligation to defend and indemnify Owner shall not apply to the extent that said Claims arise out of the sole negligence of the trustees, officers, agents, or employees of the Owner.

Additional information concerning insurance requirements can be found at: <https://treasury.nd.edu/risk-and-insurance-management/programs-and-resources/insurance-requirements-and-indemnification-agreements-contractors-vendors-or-service-providers/>.

30. ANIMAL USE FACILITIES-HAZARD COMMUNICATION:

Certain facilities may be used for research, testing or teaching with animals. Some individuals may be at greater risk for health symptoms and effects from direct or indirect exposure to animals. Individuals with medical conditions such as

immunocompromised health status, allergies, pregnancy or anticipated pregnancy may be at greater risk. It is the responsibility of the Supplier to inform their employees of associated potential risks and take appropriate action with respect to their health and safety.

31. HUMAN CELLS OR TISSUE: Supplier shall not sell or attempt to sell to the University any product that is of human tissue obtained through elective abortion or derived cell lines obtained through elective abortion or products produced from those cell lines.

32. LIMITATIONS: University shall not be liable to Supplier, its employees, representatives, agents, suppliers, or subcontractors for any lost profits or other incidental or consequential damages. University's liability on any claim for loss, damage or expense arising out of or in connection with this Agreement shall not exceed the price of the goods or services which give rise to the claim. University shall not be liable for penalties or fines of any kind. Any action, suit or proceeding caused by any alleged breach of this Agreement by University must be commenced within one (1) year after the cause of action accrued.

33. PATENTS/COPYRIGHTS: Supplier agrees to indemnify University and hold University harmless from and against all claims, liability, losses, damages, and expenses, including without limitation legal fees and costs, arising from or due to any actual or claimed trademark, patent, or copyright infringement and any litigation based thereon, with respect to any part of the goods and work covered by the Purchase Order. Supplier shall pay to defend any such litigation brought against University. The Supplier's obligations hereunder shall survive acceptance of the goods and payment therefore by University.

34. SEVERABILITY: If any part of this Agreement is found to be illegal or unenforceable, that part shall be severed from the contract and the rest of this Agreement shall be enforceable as written.

35. TAX EXEMPTION: University's federal taxpayer ID is 35-0868188. University is an Indiana not-for-profit, tax exempt organization and is thus exempt from sales tax in Indiana under Indiana NFP #00018092450000, as well as many other states. University is also exempt from certain federal excise taxes (Federal exemption certificate 35-91-0070F). Supplier shall not charge University for such taxes. Proof of exemption is available upon request.

36. FOB DESTINATION: All shipments hereunder shall be FOB Destination, Supplier paid.

37. CANCELLATION FOR CONFLICT OF INTEREST: This order is subject to cancellation if the University determines that there is a conflict of interest between a University's employee and Supplier; or Supplier conduct.

38. EXTRA CHARGES: No additional charges of any kind, including without limitation charges for boxing, packing, transportation or other extras or fees will be allowed unless specifically agreed to in writing by an authorized purchasing agent of University.



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39. SET-OFF: University shall at all times have the right to set-off any amount owing from the Supplier to University against any amount owing from University to the Supplier. At University's option, repayment, in lieu of set-off, may be required.
40. INTELLECTUAL PROPERTY/WORK FOR HIRE. Any and all work, deliverables and/or intellectual property (including, but without limit, the work itself in whatever medium displayed, and any derivative works in whatever medium displayed) that may be developed for the University pursuant to this Agreement is deemed a "work for hire" and as such is the sole and exclusive property of the University. In the event, however, that the work performed by the Supplier for University pursuant to this Agreement is not deemed a "work for hire," the Supplier hereby assigns any and all of its rights in such work, the deliverables under this Agreement, and/or associated intellectual property to the University.
41. PROPERTY/ COPYRIGHT OWNERSHIP: All equipment or material (including without limitation informational material) furnished by the University and all data, designs, drawings, output, processes, art work, negatives, engravings, electronic media, jigs, fixtures, dies, tools, or patterns charged by the Supplier to the University shall, unless otherwise agreed in writing, be the property of the University, shall be returned to the University at its written request, and shall not be used by Supplier in any of its business except its business with the University under this or other Purchase Orders. Copyright ownership rights to any works developed specifically for the University under this purchase order is hereby transferred and assigned to the University. Any use of the University of Notre Dame name, logo, artwork or trademark must be licensed by the the University, or be authorized directly by the University.
42. WEB CONTENT ACCESSIBILITY. In accordance with the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973, all web pages, web functionality, websites or web applications developed or provided under this Agreement will attempt to conform to the W3C Web Content Accessibility 2.0 Level AA Guidelines that can be found at <https://www.w3.org/WAI/WCAG20/quickref/>. Suppliers hosting websites or providing web design services or web-based products, if required, can provide written evidence that their product or service addresses each of the WCAG 2.0, Level AA criteria. For any area of noncompliance, Supplier should describe any planned remediation roadmaps, including timelines and steps that will be taken to achieve full compliance, as well as interim workarounds to enable access by individuals with disabilities. Supplier may be required to demonstrate how to use the product with assistive technology, and may be required to undergo third-party accessibility testing. Supplier must provide contact information to facilitate more detailed inquiries.
43. Export Controls. For all products or services purchased from the Supplier under this Agreement that are subject to U.S. federal export control laws and regulations, the Supplier will provide the proper Export Control Classification Numbers (ECCN) at time of order. Supplier's information will include the proper ECCN if the item is controlled under the U.S. Commerce Control List of the Export Administration Regulations ("EAR") or the proper United States Munitions List Category if the item is controlled under the U.S. International Traffic in Arms Regulations ("ITAR"). The Supplier agrees that the University shall have the right to terminate this Agreement, without penalty, and return any received product based on such notification.
44. FEDERAL CONTRACTS AND GRANTS: The Supplier warrants that it is neither debarred nor suspended, and that it has not been proposed or declared ineligible for the award of contracts or grants by any Federal agency. At any time the Supplier becomes debarred or suspended, the Supplier shall notify the University in writing within 30 days. The Supplier agrees to comply with all applicable Federal, state, and local laws and regulations.
45. If this order utilizes Federal funds, the Supplier is required to comply with all applicable federal acquisition regulations and provisions of 2 CFR Part 200 –Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, as well as any additional statutory and administrative requirements are incorporated by reference. These requirements may include, but are not limited to, the following under Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards:
- In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.
- (A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- (C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p.

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339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance 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 that each contractor or subrecipient must 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 or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance 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, each contractor must 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 one and a half 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 must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 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.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. 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

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member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
(J) See §200.322 Procurement of recovered materials.

(k) Pricing Adjustment - DFAR 252.243-7002 Notice to the Government of Labor Disputes - FAR 52.222-1 Preference for U.S. Flag Air Carriers - FAR 52.247-63 Use of U.S. Flag Commercial Vessels - FAR 52.247-64 Buy American Act Supplies - FAR 52.225-3 Disputes - FAR 52.233-1 Hazardous Materials Identification & Material Safety Data - FAR 52.223-3 Americans With Disabilities Act of 1990 PL 101-33642 U.S.C§ 12101 et seq. Authorization & Consent - FAR 52.227-1 Duty Free Entry - DFAR 252.225-7013 Reporting of Overseas Subcontracts - DFAR 252.225-7025 Rights in Technical Data—Noncommercial Items - DFAR 252.227-7013 Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program - DFAR 252.227-7018 Validation of Restrictive Markings on Technical Data - DFAR 252.227-7037 Drug Free Workplace Cost or Pricing Data - Modifications - FAR 52.223-6 Restrictions on Certain Foreign Purchases - FAR 52-225-13 Patents - Subcontracts - DFAR 252.227-7034 Patents--Reporting of Subject Inventions - DFAR 252.227-7039

Applies if order is over \$2,500 Contract Work Hours & Safety Standards Act-Overtime Compensation - FAR 52.222-4 Affirmative Action for Workers with Disabilities - FAR 52.222-36 Service Contract Act of 1965 as Amended - FAR 52.222-41 Applies for Service and Construction Contracts over \$3,000 Employment Eligibility Verification - FAR 52.222-54

Applies if order is over \$10,000 Equal Opportunity - FAR 52.222-26 Utilization of Small Business Concerns - FAR 52.219-8 Prohibition of Segregated Facilities - FAR 52.222-21 Instructions to Offerors—Competitive Acquisition - FAR 52.215-1 Audit and Records - FAR 52.215-2 Walsh Healy Public Contracts Act - FAR 52.222-19 & 20 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans - FAR 52.222-35

Applies if order is over \$25,000 Integrity of Unit Prices - FAR 52.215-14 Notice & Assistance Regarding Patent & Copyright Infringement-FAR 52.227-2 Debarment and Suspension - FAR 52.209-5 & 6 Responsibility for Supplies - FAR 52.246-16

Applies if order is over \$100,000 Anti-kickback - FAR 52.203-7 Restrictions of Subcontractor Sales to Government - FAR 52.203-6 Limitation on Payments to Influence Certain Federal Transactions - FAR 52.203-12 Price Reduction for Defective Cost or Pricing Data - FAR 52.214-27 Subcontractor Cost or Pricing Data - FAR 52.214-28 Waiver of Limitation on Severance Payments to Foreign Nationals - FAR 52.237-9 Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies - DFAR 252.203-7001 Oral Attestation of Securing Responsibilities- DFAR 252.204-7005.

Applies if order is over \$500,000 Small Business Subcontracting Program - FAR 52.219-9 Subcontractor Cost or Pricing Data - Modifications - 52.215-12/13
Applies if order is over \$700,000 FAR 52.219-9 - Small Business Subcontracting Plan

Affirmative Action. The Parties hereby incorporate the following: **This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a), as applicable to them. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.** This contractor and subcontractor shall also abide by 29 CFR Part 471, Appendix A to Subpart A.