The University of Texas Southwestern Medical Center
Purchase Order Terms and Conditions

1. DELIVERY; SUBSTITUTIONS; INVOICES; SALES TAX: Contractor will keep University advised at all times of the status of delivery or performance under this Purchase Order. If delay is foreseen, Contractor will give prompt written notice to University. Upon notice, University may extend the delivery date in its sole discretion. 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 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. University, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on the goods and services covered by this Purchase Order, in accordance with Section 151.309, Texas Tax Code, and Title 34 Texas Administrative Code (“TAC”) Section 3.322. Contractor understands and agrees that payments under this Purchase Order may be subject to the withholding requirements of Section 3402(l) of the Internal Revenue Code.

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) Contractor will comply with all requirements of this Purchase Order.
   (b) If Contractor is a corporation, partnership, limited partnership, limited liability partnership, or limited liability company, it is duly organized, validly existing and in good standing under the laws of the state of its organization and is duly authorized and in good standing to conduct business in the State of Texas.
   (c) If Contractor is a taxable entity as defined by Chapter 171, Texas Tax Code (“Chapter 171”), Contractor is not currently delinquent in the payment of any taxes due under Chapter 171, or Contractor is exempt from the payment of those taxes, or Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
   (d) Pursuant to Section 403.055(h), Texas Government Code, any payments owing to Contractor under this Purchase Order may be applied to any debt or delinquent taxes that Contractor owes the State of Texas, until such debt or delinquent taxes are paid in full.
   (e) In accordance with Sections 2155.004 and 2155.006, Texas Government Code, Contractor 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 these certifications are inaccurate.
   (f) 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.
   (g) 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 University's 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.
   (h) 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 under this Purchase Order, or of the details and characteristics of the goods or services, without University's prior written consent. Anything furnished to Contractor by University pursuant to this Purchase Order including 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.
   (i) Contractor is familiar with and is in full compliance with its obligations, if any, under all applicable federal, state and local, laws, regulations, and ordinances (collectively, “Applicable Laws”).
   (j) All goods delivered or services provided pursuant to this Purchase Order will conform to standards established for such goods and services by all Applicable Laws, including 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 (“Texas hazard Communication Act”).
   (k) Contractor is familiar with and in full compliance with the Texas Hazard Communication Act and will provide either (1) a Material Safety Data Sheet (“MSDS”) for each product Contractor, its employees, agents or subcontractors brings on University’s premises, or (2) a statement of exemption if the product is not covered by the Texas Hazard Communication Act.
   (l) Use or sale of any goods delivered under this Purchase Order, 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.
   (m) The price to be paid by University will be that contained in Contractor's bid or proposal, which 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 its 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.
   (n) Contractor will make records of Contractor's costs, reimbursable expenses and payments pertaining to this Purchase Order available to University or its authorized representative during business hours and retain those records for four (4) years after final payment or abandonment of the project, unless University otherwise instructs Contractor in writing.
   (o) If this Purchase Order requires Contractor's presence on University's premises or in University's facilities, Contractor will cause its employees, representatives, agents, and subcontractors to become aware of, fully informed about, and in full compliance with all applicable University rules and policies, including those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access restrictions.
   (p) Contractor has not given or offered to give, nor does Contractor intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this Purchase Order.
   (q) The foregoing representations, covenants, certifications, warranties and agreements will survive acceptance of goods as well as performance of services under this Purchase Order.
4. **ACCESS BY INDIVIDUALS WITH DISABILITIES.** Contractor represents and warrants (the “EIR Accessibility Warranty”) that the electronic and information resources and all associated information, documentation, and support that it provides to University under this Purchase Order (collectively, the “EIRs”) comply with the applicable requirements set forth in 1 TAC Chapter 213 and 1 TAC Section 206.70 (as authorized by Subchapter M, Chapter 2054, 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 any 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 fails or is unable to do so, then University may terminate this Purchase Order and Contractor will refund to University all amounts University has paid under this Purchase Order 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 of or 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 services 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 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 WILL 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 DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS’ FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING (COLLECTIVELY “CLAIMS”) BY ANY PERSON OR ENTITY, 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 ACTS, OMISSIONS OR WILLFUL MISCONDUCT OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS OR SUPPLIERS. IN ADDITION, CONTRACTOR WILL 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.

8. **INSURANCE:** If Contractor’s employees, agents, suppliers or subcontractors will be present on University’s property, Contractor will maintain and cause its agents, suppliers and subcontractors (if any) to maintain the following insurance coverages for at least the specified limits:

<table>
<thead>
<tr>
<th>Coverages</th>
<th>Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Workers’ Compensation</td>
<td>Statutory Limits</td>
</tr>
<tr>
<td>Employer’s Liability</td>
<td>$1,000,000 per accident and employee</td>
</tr>
<tr>
<td>Commercial General Liability (including contractual liability)</td>
<td>$1,000,000 per occurrence</td>
</tr>
<tr>
<td>Personal &amp; Advertising Injury</td>
<td>$1,000,000 per occurrence</td>
</tr>
<tr>
<td>Product/Completed Ops</td>
<td>$1,000,000 aggregate</td>
</tr>
<tr>
<td>Business Auto Liability</td>
<td>$1,000,000 combined single limit</td>
</tr>
<tr>
<td>General Aggregate</td>
<td>$2,000,000 per policy limit</td>
</tr>
</tbody>
</table>

All policies (except Workers’ Compensation) will name University, the Board, and their officers and employees as Additional Insured. 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. Contractor will endorse all policies to require insurance carriers to notify University of cancellation, termination, material change, or non-renewal of any policy.

9. **VENUE; CHOICE OF LAW:** Dallas 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 of this Purchase Order will be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.

10. **ASSIGNMENT AND DELEGATION:** Contractor may not assign any of its rights or delegate any of its obligations under this Purchase Order without University’s prior written consent. Any assignment or delegation attempted by Contractor in violation of this clause 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 in writing.

12. **BREACH OF CONTRACT CLAIMS:** To the extent that Chapter 2260, Texas Government Code, is applicable to this Purchase Order and is 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 Contractor in an effort to resolve such claims. The parties specifically agree that (i) neither the execution 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 (ii) University has not waived the right to seek redress in the courts.

13. **SUBCONTRACTING:** Contractor will use good faith efforts to subcontract the goods or services performed under this Purchase Order in accordance with the Contractor’s Historically Underutilized Business Subcontracting Plan (“HSP”) submitted in connection with this Purchase Order, if any. Except as specifically provided in the HSP, Contractor will not subcontract any of its duties or obligations under this Purchase Order, in whole or in part. This Purchase Order is subject to 34 TAC Section 20.14. Contractor will comply with all of its duties and obligations under 34 TAC Section 20.14. In addition to other rights and remedies, University may exercise all rights and remedies authorized by 34 TAC Section 20.14.
14. **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.

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 providing all records requested. Contractor will include this provision in all contracts with subcontractors.

16. **LIMITATIONS:** The Parties are aware that there may be constitutional and statutory limitations on the authority of University (a state agency) to enter into certain terms and conditions of this Purchase Order, including terms and conditions (if any) relating to liens on University’s property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys’ fees; dispute resolution; indemnities; and confidentiality (collectively, the “Limitations”), and terms and conditions related to the Limitations will not be binding on University except to the extent authorized by the laws and Constitution of the State of Texas.

17. **Ethics Matters; No Financial Interest.** Contractor and its employees, agents, representatives and subcontractors have read and understand University's Conflicts of Interest Policy available by contacting the Purchasing Department at 5323 Harry Hines Blvd. Dallas, TX 75390-9056, University’s Standards of Conduct Guide, (available by request at the same address), and applicable state ethics laws and rules at www.utsystem.edu/ogc/ethics. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause University employees to violate University’s Conflicts of Interest Policy, provisions described by University’s Standards of Conduct Guide, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

18. **NOTICES:** Except as otherwise provided by this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Purchase Order will be in writing and will be sent via certified mail, hand delivery, overnight courier, facsimile transmission (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below) as provided below, and notice will be deemed given (i) if delivered by certified mailed, when deposited, postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier, facsimile (to the extent a facsimile number is set forth below) or email (to the extent an email address is set forth below), when received:

If to University:  
Darr Oney, Assistant Director Acquisitions Supply  
UT Southwestern Medical Center  
5323 Harry Hines Blvd.  
Dallas, TX 75390-9056  
Darr.oney@utsouthwestern.edu  

with copy to:  
Shawn Cohenour, Director, Office of Contracts Management  
UT Southwestern Medical Center  
5323 Harry Hines Blvd.  
Dallas, TX 75390-9062  
Shawn.cohenour@utsouthwestern.edu

If to Contractor:  
__________________________  
__________________________  
Attention:  

or other person or address as may be given in writing by either party to the other in accordance with this Section.

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:

If to University:  
Darr Oney, Assistant Director Acquisitions Supply  
UT Southwestern Medical Center  
5323 Harry Hines Blvd.  
Dallas, TX 75390-9056  
Darr.oney@utsouthwestern.edu  

with copy to:  
Shawn Cohenour, Director, Office of Contracts Management  
UT Southwestern Medical Center  
5323 Harry Hines Blvd.  
Dallas, TX 75390-9062  
Shawn.cohenour@utsouthwestern.edu

or other person or address as may be given in writing by University to Contractor in accordance with this Section.
19. **UNDOCUMENTED WORKERS:** The *Immigration and Nationality Act* (8 United States Code 1324a) ("Immigration Act") makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the Form I-9 Employment Eligibility Verification Form ("I-9 Form") as the document to be used for employment eligibility verification (8 Code of Federal Regulations 274a). Among other things, Contractor is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by law. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual’s national origin or citizenship status. If Contractor employs unauthorized workers during performance of this Purchase Order in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by law, University may terminate this Purchase Order. Contractor represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.

20. **STATE OF TEXAS COMPUTER EQUIPMENT RECYCLING PROGRAM CERTIFICATION:** Pursuant to Section 361.965, Texas Health and Safety Code, Contractor certifies that it is full compliance with the *State of Texas Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act* set forth in Subchapter Y, Chapter 361, Texas Health and Safety Code, and the rules adopted by the Texas Commission on Environmental Quality under that Act as set forth in 30 TAC Chapter 328. Contractor acknowledges that this Purchase Order may be terminated and payment may be withheld if this certification is inaccurate.

21. **RESPONSIBILITY FOR INDIVIDUALS PERFORMING WORK; CRIMINAL BACKGROUND CHECKS:** Each individual who is assigned to perform services under this Purchase Order will be an employee of Contractor or an employee of a subcontractor engaged by Contractor. Contractor is responsible for the performance of all individuals performing services under this Purchase Order. Prior to commencing services, Contractor will (1) provide University with a list ("List") of all individuals who may be assigned to perform services, and (2) have an appropriate criminal background screening performed on all the individuals. Contractor will determine on a case-by-case basis whether each individual assigned to perform services is qualified to provide the services. Contractor will not knowingly assign any individual to provide services on University’s campus who has a history of criminal conduct unacceptable by University beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character ("force majeure occurrence"). Provided, however, in the event of a force majeure occurrence, Contractor agrees to use its best efforts to mitigate the impact of the occurrence so that University may continue to provide healthcare services during the occurrence.

22. **FORCE MAJEURE:** Neither party hereto 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 acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character ("force majeure occurrence"). Provided, however, in the event of a force majeure occurrence, Contractor agrees to use its best efforts to mitigate the impact of the occurrence so that University may continue to provide healthcare services during the occurrence.

23. **TERMINATION:**
   (a) Upon written notice to Contractor, University may terminate this Purchase Order, in whole or in part, without cause. If University terminates without cause, University will pay Contractor all reasonable costs incurred up to the date of termination. Under no circumstance will University pay Contractor for anticipatory or lost profits.
   (b) In the event of a material failure by Contractor to perform in accordance with the terms of this Purchase Order ("default"), University may terminate this Purchase Order upon ten (10) days’ written notice of termination setting forth the nature of the default; provided that, the default is through no fault of University. Termination will not be effective if the default is fully cured by Contractor prior to the end of the ten-day period.

24. **PRESS RELEASES:** Except when defined as part of the Work, Contractor will not make any press releases, public statements, advertisement or other promotional materials using the name or logo of University or the name of any University employee, or referring to the Agreement or the engagement of Contractor as an independent contractor of University, or the purchase of goods or services by University, without the prior written approval of University. Requests for prior written approval of any such releases, public statements, advertisements or other promotional materials must be directed to University’s Vice President – Communications, Marketing and Public Affairs.

25. **DISCRIMINATION PROHIBITED:** University and Contractor will abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a) (collectively, the "Regulations"). The Regulations (1) prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and (2) prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, the Regulations require that University and Contractor take affirmative action to employ and advance in employment, individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.