

PURCHASE ORDER TERMS AND CONDITIONS FOR MATERIALS

The following terms and conditions shall apply to a Purchase Order ("PO") for materials issued by the Issuing Office, which is part of the Pennsylvania State System of Higher Education, an agency of the Commonwealth of Pennsylvania, hereinafter referred to as either the "University" or the "Commonwealth".

1. ACCEPTANCE OF PURCHASE ORDER

This PO, when accepted by the Contractor, shall constitute the entire contract between the University and Contractor as agreed to and shall not be altered, amended, supplemented, or cancelled without the written approval of the Contracting Officer. Either the Contractor's written acceptance of this PO or the shipment of any confirming article hereunder or acceptance of the University's payment, shall constitute acceptance of this contract, and no contrary or additional terms or conditions shall apply. Additional or differing terms or conditions proposed by the Contractor in any format or included in the Contractor's acknowledgement of this PO, shall be deemed a material alteration of this order, and are hereby objected to and rejected.

2. PRICING AND DISCOUNTS

a. Contractor warrants that prices on this PO shall be complete, and no additional charges of any type shall be added without the University's express written consent. Such additional charges include, but are not limited to shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing and crating.

b. The University qualifies for governmental discounts and educational discounts. Unit prices shall reflect these discounts and the Contractor will make those discounts available to the University throughout the term of this Contract.

3. DELIVERY

Unless otherwise specified in the PO: (i) delivery shall be made free on board (FOB) delivery location in accordance with the terms on the PO; (ii) delivery will be made on or before the date and at the location specified on the PO; (iii) no insurance or premium transportation costs will be allowed unless authorized in writing by the designated Contracting Officer; (iv) title passes to University upon delivery of the materials to the specified delivery location and Contractor shall bear all risk of loss or damage to the materials until delivery of the materials to the specified delivery location; and (v) the PO number must appear on all shipping documents, shipping labels, invoices, correspondence and any other documents pertaining to the PO.

4. INSPECTION AND REJECTION

a. The University shall have the right to inspect and/or test all materials delivered under this PO. Neither receipt nor payment for materials shall constitute acceptance. The University may reject any or all items that are discovered to be defective or nonconforming to the specifications of this PO upon receipt or at any later time, as a result of a latent defect.

b. Items shipped in quantities in excess of the University's PO stated requirements may be returned at the Contractor's expense and the Contractor shall bear the risk of loss or damage to such materials until received by the Contractor.

5. CHANGES

The University reserves the right to make changes at any time during the term of this PO by written notice via a change order PO. Such changes may include, but are not limited to:

a. increases or decreases to the quantities resulting from variations between any estimated quantities in this PO and actual quantities necessary to meet the requirements of the University;

b. non-material changes to the materials within the scope of this PO to meet the needs of the University, except in no event shall the cost of any materials ordered exceed any stated not-to-exceed amount for this PO;

c. notification to the Contractor that the University is exercising any PO renewal or extension option; or

d. modification to the time of performance that does not alter the scope of this PO to extend the completion date beyond the Expiration Date of this PO or any renewals or extensions thereof. Any dispute by the Contractor in regard to the performance required by any notification of change shall be handled through this section entitled "CONTROVERSIES".

6. ASSIGNABILITY AND SUBCONTRACTING

a. This PO may not be assigned or subcontracted. The term "assign" shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Contractor provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.

b. Notwithstanding the foregoing, the Contractor may, without the consent of the Contracting Officer, assign its rights to payment to be received under the PO, provided that the Contractor provides written notice of such assignment to the Contracting Officer together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this PO.

7. PAYMENT

a. The Contractor shall issue a separate invoice for each separate shipment. Each invoice shall include: (i) the PO number; (ii) the Contractor's part numbers; and (iii) the quantities shipped. Delays in receipt of materials, acceptance of materials, missing shipping documentation, or corrections to the invoice will be cause for the University to delay payment or withhold payment without losing discount privileges. Cash discounts, if any, shall be computed with receipt of the invoice or materials, whichever is later.

b. The University shall put forth reasonable efforts to make payment by the required payment date. The required payment date is: (a) the date on which payment is due under the terms of this PO; If any payment is not made by the required payment date, the University will only pay interest as determined by the Secretary of Budget in accordance with Act No. 266 of 1982 and regulations promulgated pursuant thereto.

c. The University shall have the option of using the University purchasing card to make payment(s). The University's purchasing card is similar to a credit card in that there will be a small fee that the Contractor will be required to pay and the Contractor will receive payment directly from the card issuer rather than the University. Any and all fees related to this type of payment are the responsibility of the Contractor. In no case will the University allow increases in prices to offset credit card fees paid by the Contractor or any other charges incurred by the Contractor, unless specifically stated in the terms of this PO.

d. The University may make payment(s) through an Automated Clearing House (ACH). If payment is to be made through ACH, the Contractor must submit their ACH information to the University. The Contractor must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the University's ACH remittance advice to enable the Contractor to properly apply the University's payment to the invoice submitted. It is the responsibility of the Contractor to ensure that the ACH information provided to the University is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

8. TAXES

The University is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to make tax free purchases under Registration No. 23740001-K. With the exception of purchases of the following items, no exemption certificates are required and none will be issued: undyed diesel fuel, tires, trucks, gas-guzzler emergency vehicles, and sports fishing equipment. The University is also exempt from Pennsylvania state sales tax, local sales tax, public transportation assistance taxes and fees, and vehicle rental tax. The Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental entities and none will be issued. Nothing in this section is meant to exempt a construction contractor from the payment of any of taxes or fees that are required to be paid with respect to the purchase, use, rental, or lease of tangible personal property or taxable services used or transferred in connection with the performance of a construction contract.

9. WARRANTIES

a. The Contractor warrants to the University, its successors and assigns, that all materials provided hereunder shall be: (i) merchantable; (ii) free from defects in material and workmanship; (iii) free from defects in design; (iv) suitable for the purposes intended; (v) in compliance with all applicable specifications, drawings, and performance requirements; and (vi) for any integrated software provided with the materials, free from any viruses, malicious codes, worm, time bomb, self-help code, or other software code or routine designed to damage, destroy or alter any software, hardware or data, disable any computer automatically, or permit any unauthorized access to any software or hardware.

b. Notwithstanding any manufacturer warranty provided, if any nonconformity under this warranty appears within one (1) year after final acceptance of the materials, the Contractor shall, at the University's option, either (i) promptly and diligently repair, replace or correct such nonconformity at no cost to the University (including any transportation costs associated therewith), or, (ii) accept return of the materials for credit or refund. If any repair, replacement, or correction is not made in a timely manner to the University's satisfaction, then the University may, at its election and in addition to any other remedies available to the University at law or in equity, correct or have corrected such nonconformity at the Contractor's expense.

10. ASSIGNMENT OF ANTITRUST CLAIMS

The Contractor and the University recognize that in actual economic practice, overcharges by the Contractor's suppliers resulting from violations of state or federal antitrust laws are in fact borne by the University. As part of the consideration for the award of this PO, and intending to be legally bound, the Contractor assigns to the University all right, title and interest in and to any claims the Contractor now has, or may acquire, under state or federal antitrust laws relating to the products which are the subject of this PO.

11. LIMITATION OF UNIVERSITY LIABILITY

IN NO EVENT SHALL THE UNIVERSITY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, LOST PROFITS OR OTHER DAMAGES ARISING OUT OF THIS PO. THE UNIVERSITY'S TOTAL OBLIGATION UNDER THIS PO SHALL NOT EXCEED THE COST FOR ALL MATERIALS UNDER THIS PO, WITHOUT REGARD TO THE THEORY OF RECOVERY OR THE NATURE OF THE

CAUSE OF ACTION. THIS PROVISION SHALL NOT BE CONSTRUED TO LIMIT THE SOVEREIGN IMMUNITY OF THE COMMONWEALTH OR OF THE STATE SYSTEM OF HIGHER EDUCATION OR THE UNIVERSITY.

12. COMPLIANCE WITH LAW

The Contractor shall comply with all applicable federal, state and local laws, regulations and ordinances in the performance of this PO.

13. DEFAULT

a. The University may, subject to the provisions of the section entitled "FORCE MAJEURE," and in addition to its other rights under this PO, declare the Contractor in default by written notice thereof to the Contractor, and terminate (as provided in the section entitled "TERMINATION") the whole or any part of this PO for any of the following reasons:

- 1) Failure to deliver awarded item(s) within the time specified in this PO or as otherwise specified;
- 2) Failure to provide an item(s) that is in conformance with the specifications referenced in this PO;
- 3) Delivery of a defective item or refusal to remove a defective item;
- 4) Insolvency, bankruptcy or placed into receivership;
- 5) Assignment made for the benefit of creditors;
- 6) Breach of any provision of this PO;
- 7) Failure to comply with representations made in the Contractor's bid or offer; or
- 8) Failure to comply with applicable industry standards, customs, and practices.

b. The rights and remedies of the University provided in this section shall not be exclusive and are in addition to any other rights and remedies provided under this PO or by law. The University's failure to exercise any rights or remedies provided in this section shall not be construed to be a waiver of the University's rights or remedies with respect to any event of default or any succeeding event of default.

c. Following exhaustion of the Contractor's administrative remedies as set forth in the section entitled "CONTROVERSIES," the Contractor's exclusive remedy shall be to seek damages in the Commonwealth of Pennsylvania Board of Claims.

14. TERMINATION

The University has the right to terminate this PO for any of the following reasons and such termination shall be effective upon written notice to the Contractor:

a. **TERMINATION FOR CONVENIENCE:** The University may terminate this PO for its convenience without penalty or recourse if the University determines termination to be in its best interest. Upon receipt of the written notice, the Contractor shall immediately stop all work as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the University. The Contractor shall be paid for work satisfactorily completed prior to the effective date of the termination, and this shall be the Contractor's sole remedy against the University in the event of termination under this provision. In no event shall the Contractor be entitled to recover loss of profits, loss of use of money, or administrative or overhead costs.

b. **NON-APPROPRIATION:** The University's obligation to make payments during any University fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds for the purpose of this PO. The University shall have the right to terminate this PO because of the non-availability of funds (grant, state and/or federal) for the University to pay for the materials, including, but not limited to, the reservation of funds. The Contractor shall be paid for materials satisfactorily provided prior to the notice of non-appropriation. The Contractor may be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies delivered under this PO. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs.

c. **TERMINATION FOR CAUSE:** The University shall have the right to terminate this PO for Contractor default under the section entitled "DEFAULT," upon written notice to the Contractor. The University shall also have the right, upon written notice to the Contractor, to terminate this PO for other cause as specified in the PO or by law. If it is later determined that the University erred in terminating this PO for cause, then, at the University's discretion, this PO shall be deemed to have been terminated for convenience under subparagraph a. above.

15. CONTROVERSIES

a. In the event of a controversy or claim arising from this PO, the Contractor must, within six (6) months after the cause of action occurs, file a written claim with the Contracting Officer for a determination, stating all grounds upon which the Contractor asserts a controversy or claim. The written claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum. At the time the claim is filed, or within sixty (60) days thereafter, either Party may request mediation through the Commonwealth of Pennsylvania's Office of General Counsel Mediation Program.

b. If the Contractor or the Contracting Officer requests mediation, and the other Party agrees, the Contracting Officer shall promptly make arrangements for mediation. Mediation shall be scheduled so as to not delay the

issuance of the final determination beyond the required 120 days after receipt of the claim if mediation is unsuccessful.

c. If mediation is not agreed to, or if resolution is not reached through mediation, the Contracting Officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the Contracting Officer and the Contractor. The Contracting Officer shall send his/her written determination to the Contractor. If the Contracting Officer fails to issue a final determination within the 120 days (unless extended by consent of the Parties), the claim shall be deemed denied. The Contracting Officer's determination shall be the final order of the University.

d. Within fifteen (15) days of the mailing date of the determination denying a claim, or within 135 days of filing a claim if no extension is agreed to by the Parties, whichever occurs first, the Contractor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Contractor shall proceed diligently with the performance of this PO in a manner consistent with the determination of the Contracting Officer and the University shall compensate the Contractor pursuant to the terms of this PO.

16. FORCE MAJEURE

a. Neither Party will incur any liability to the other if its performance of any obligation under this PO is prevented or delayed by an event or circumstance beyond its control, regardless of whether it was foreseeable, that was not caused by the Party who is unable to perform (the "nonperforming Party"), provided the nonperforming Party complies with the provisions of this section. Causes and circumstances beyond a Party's control may include, but are not limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade or other labor disputes affecting either Party, and freight embargoes. Causes and circumstances beyond a Party's control do not include a strike or other labor unrest that affects only one Party or an increase in prices.

b. The nonperforming Party shall notify the other Party of the event or circumstance a Party believes is beyond its control as soon as practicable, and in writing, no later than five (5) days after the date on which the nonperforming Party becomes aware, or should have reasonably become aware, that such event or circumstance would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under this PO is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay and all reasonable efforts being undertaken to attempt performance, limit delay and limit damages. The nonperforming Party shall have the burden of proving that such event or circumstance delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the other Party may reasonably request, including providing updates regarding the event or circumstance as it is ongoing. After receipt of such notification, the Party receiving notice of the event or circumstance may elect to cancel this PO, or to extend the time for performance as reasonably necessary to compensate for the delay.

c. In the event of a declared emergency by competent governmental authorities, the University, by notice to the Contractor, may suspend or cancel all or a portion of this PO.

17. NONDISCRIMINATION

The Parties shall comply with all applicable local, state and federal statutes, regulations and executive orders governing equal employment opportunity, non-discrimination and immigration.

18. CONTRACTOR RESPONSIBILITY

For the purpose of these provisions, the term Contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the Commonwealth of Pennsylvania (Commonwealth). The term Contractor includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

a. The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.

b. The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.

c. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes,

or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.

d. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.

e. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

f. The Contractor may search the current list of suspended and debarred Commonwealth contractors by visiting the eMarketplace website at <http://www.emarketplace.state.pa.us> and clicking the Debarment List tab.

19. CONTRACTOR INTEGRITY

a. It is essential that those who seek to contract with the Commonwealth observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth contracting and procurement process.

b. DEFINITIONS. For purposes of this section, the following terms shall be defined as follows:

- 1) "Affiliate" means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
- 2) "Consent" means written permission signed by a duly-authorized officer or employee of the University, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the University shall be deemed to have consented by virtue of the execution of this PO.
- 3) "Contractor" means the individual or entity that has entered into this PO with the University.
- 4) "Contractor Related Parties" means any affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, or owners of 5% or more interest in the Contractor.
- 5) "Financial Interest" means either: (a) Ownership of more than a five percent interest in any business; or (b) holding a position as an officer, director, trustee, partner, employee, or any position of management.
- 6) "Gratuity" means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or POs of any kind. The exceptions set forth in the Governor's Code of Conduct, Executive Order 1980-18, the 4 Pa. Code §7.153(b), shall apply.
- 7) "Non-bid Basis" means a PO awarded or executed by the University with Contractor without seeking bids or proposals from any other potential bidder or offeror.

c. In furtherance of this policy, Contractor agrees to the following:

- 1) Contractor shall maintain the highest standards of honesty and integrity during the performance of this PO and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern Contracting or procurement with the Commonwealth.
- 2) Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity provisions conspicuously in easily accessible and well-lit places customarily frequented by employees and at or near where the services are performed, shall satisfy this requirement.
- 3) Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive, or any other published standard of the Commonwealth in connection with performance of work under this PO, except as provided in this PO.
- 4) Contractor shall not have a financial interest in any other Contractor, subcontractor, or supplier providing services, labor, or material under this PO, unless the financial interest is disclosed to the University in writing and the University consents to Contractor's financial interest. Contractor shall disclose the

financial interest to the University at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of this PO signed by Contractor.

- 5) Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:
- (a) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
 - (b) been suspended, debarred or otherwise disqualified from entering into any PO with any governmental agency;
 - (c) had any business license or professional license suspended or revoked;
 - (d) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation, or anti-trust; and
 - (e) been, and are not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit, along with its bid, proposal or PO, a written explanation of why such certification cannot be made and the University will determine whether a PO may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the Effective Date of this PO through the Expiration Date. Accordingly, the Contractor shall have an obligation to immediately notify the University in writing if at any time during the term of this PO it becomes aware of any event that would cause the Contractor's certification or explanation to change. Contractor acknowledges that the University may, in its sole discretion, terminate this PO for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the PO.

d. Contractor shall comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.) regardless of the method of award. If this PO was awarded on a non-bid Basis, Contractor must also comply with the requirements of Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a).

e. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity provisions has occurred or may occur, including, but not limited to, contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Contracting Officer or the Office of the State Inspector General in writing.

f. Contractor, by submission of its bid or proposal or execution of this PO and by the submission of any bills, invoices or requests for payment pursuant to this PO, certifies and represents that it has not violated any of these Contractor Integrity provisions in connection with the submission of the bid or proposal, during any PO negotiations or during the term of this PO, to include any extensions thereof. Contractor shall immediately notify the Contracting Officer in writing of any actions for occurrences that would result in a violation of these Contractor Integrity provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General, the University and the Commonwealth for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

g. Contractor shall cooperate with the Office of the State Inspector General, the University and the Commonwealth in any investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of a Commonwealth investigator, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the investigating Commonwealth agency to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this PO. Contractor shall incorporate the obligations set forth in this section in any agreement, PO or subcontract it enters into in the course of the performance of this PO solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of PO between the University and any such subcontractor, and no third-party beneficiaries shall be created thereby.

h. For violation of any of these Contractor Integrity provisions, the University may terminate this and any other PO with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all additional costs and expenses incurred in obtaining another Contractor to complete performance under this PO, and debar and suspend Contractor from doing business with the

Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, policy or otherwise.

20. COMMONWEALTH EMPLOYEE ETHICS

a. The Commonwealth Procurement Code, 62 Pa.C.S. § 101 *et seq.*, provides that any attempt by a Commonwealth employee to realize personal gain through public employment by conduct inconsistent with the proper discharge of the duties of the employee is a breach of a public trust and that Commonwealth employees must avoid conflict of interest or improper use of confidential information. 62 Pa. C. S. § 2302(a).

b. Pursuant to the Public Official and Employee Ethics Act ("Ethics Act"), 65 Pa.C.S. § 1101 *et seq.*, subject to certain statutory exceptions, "public officials" or "public employees" as defined by the Ethics Act, 65 Pa.C.S. § 1102, are prohibited from: a) using the authority of their public positions to obtain a private pecuniary benefit (financial gain that is not authorized in law) for themselves, member(s) of their immediate family, or businesses with which they or member(s) of their immediate family are associated; and b) using any confidential information received from their public positions to obtain a private pecuniary benefit (financial gain that is not authorized in law) for themselves, member(s) of their immediate family, or businesses with which they or member(s) of immediate family are associated. 65 Pa.C.S. § 1103(a).

c. "State advisors" and "State consultants" as those terms are defined in the State Adverse Interest Act, 71 P.S. § 7761 *et seq.*, having recommended to the State agency that he or she serves, either in the making of a PO or a course of action of which the making of a PO is an express or implied part, are prohibited from "hav[ing] an adverse interest" in such PO, as that term is defined in the statute. A State employee, as that term is defined in the statute, is prohibited from having an adverse interest in a PO with the State agency by which he or she is employed and from influencing, or attempting to influence, the making of or supervise or in any manner deal with any PO in which the employee has an adverse interest. For purposes of this section, State agency shall refer to the Pennsylvania State System of Higher Education.

d. The Contractor must report any known or suspected violations of the provisions of this section to the University or the Office of the Chancellor, attn.: Chief Counsel.

21. AUDIT

The University and the Commonwealth of Pennsylvania shall have the right, at reasonable times and at a site designated by the University, to audit the books, documents and records of the Contractor to the extent that the books, documents and records relate to costs or pricing data for this PO. The Contractor agrees to i) maintain records which will support the prices charged and costs incurred for this PO for a period of three (3) years from date of final payment; and ii) give full and free access to all records to the University, the Commonwealth of Pennsylvania and their authorized representatives.

22. RIGHT OF OFFSET

The Contractor acknowledges and agrees that the University may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth of Pennsylvania against any payments due the Contractor under any contract with the Commonwealth of Pennsylvania.

23. RIGHT TO KNOW LAW

The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this PO.

24. APPLICABLE LAW

This PO shall be governed by, interpreted, and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provision) and the decisions of the Pennsylvania courts. The Contractor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Contractor agrees that any such court shall have *in personam* jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

25. MISCELLANEOUS

a. PUBLICITY: Contractor shall not reference or use the name of the Commonwealth of Pennsylvania, the State System of Higher Education, the University or, any official, employee, unit or department or any logo, trademark or symbol associated with any of the above for commercial promotion. News releases or other publicity pertaining to this PO shall not be made without the prior written approval of the University.

b. INTEGRATION: This PO, including all referenced documents, constitute the entire agreement between the Parties. No agent, representative, employee or officer of either the University or the Contractor has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with this PO, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the Parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of this PO. No modifications, alterations, changes, or waiver to this PO or any of its terms shall be valid or binding unless accomplished by a mutually agreed upon written amendment to this PO.

c. **CONTROLLING TERMS AND CONDITIONS:** The terms and conditions of this PO shall be the exclusive terms of agreement between the Contractor and the University. All quotations requested and received from the Contractor are for obtaining firm pricing only. Other terms and conditions or additional terms and conditions included or referenced in the Contractor's quotations, invoices, business forms, or other documentation shall not become part of the Parties' agreement and shall be disregarded by the Parties, unenforceable by the Contractor and not binding on the University unless specifically referenced as being incorporated into this PO. In the event any quote or offer provided to the University contains terms and conditions or an embedded link to terms and conditions, such terms and conditions will be of no force or effect, regardless of any statement of incorporation or prevailing status.

d. **SEVERABILITY:** If any provision of this PO is held by a court of competent jurisdiction to be contrary to law or rendered unlawful by a legislative act, such provision shall be interpreted to be modified so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this PO shall remain in full force and effect.

e. **SURVIVAL:** The terms and conditions of this PO that, by their sense and context, are intended to survive termination or expiration hereof shall so survive.

f. **NOTICE:** Any written notice to any Party under this PO shall be deemed sufficient if delivered personally, or by facsimile, teletype, electronic or digital transmission (provided such delivery is confirmed), or by a recognized overnight courier service with confirmed receipt, or by certified or registered United States mail, postage prepaid, return receipt requested, and sent to the other Party at the address set forth on this PO. In the case of an alleged breach of this PO, a copy of the written notice to the University shall also be provided to the following: University Legal Counsel, 2300 Vartan Way, Suite 207, Harrisburg, PA 17110.

g. **LEGISLATIVE AND POLICY UPDATES:** The parties acknowledge that it may be necessary from time to time to modify the provisions of this PO to comply with legislative or policy updates, including updates to policies of the Pennsylvania State System of Higher Education. In such cases, the University will notify the Contractor of the necessary changes and the parties will incorporate such changes into an amendment to this PO.

h. **THIRD PARTY BENEFICIARY:** The University and the Contractor are the only Parties to this PO and are the only Parties entitled to enforce its terms. Nothing in this PO gives or is intended to give or shall be construed to give or provide any benefit or right, directly or indirectly, to third parties.

i. **INDEPENDENT CONTRACTOR:** In performing its obligations under this PO, the Contractor will act as an independent contractor and not as an employee or agent of the University. The Contractor will be responsible for providing all materials requested in this PO whether or not Contractor provides them directly. Further, the Contractor is the sole point of contact with regard to all contractual matters, including payment of any and all charges resulting from this PO.