

THE REGENTS OF THE UNIVERSITY OF MICHIGAN

BASIC TERMS AND CONDITIONS FOR PURCHASE OF EQUIPMENT

The following terms and conditions shall be observed. Any Supplier terms and conditions included with Supplier's invoice or any other document provided by Supplier shall be of no effect.

- 1.0 No Document Modifications. Any handwritten changes on the face of this document shall be ignored and have no legal effect unless initialed by both parties.
- 2.0 Definitions. References to Supplier shall mean the firm to which this RFQ is addressed. References to the University shall mean the Regents of The University of Michigan, its employees, assigns, agents, servants and representatives acting for the Regents of The University of Michigan.
- 3.0 "Most Favored Customer" Provision. If Supplier has negotiated pricing, 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 pricing, terms and conditions as Supplier has negotiated to provide a third party under reasonably similar circumstances.
- 4.0 Delivery, Risk of Loss.
 - 4.1 F.O.B Point. Delivery shall be F.O.B. University of Michigan and risk of loss will not pass to the University until the products have been actually received and accepted in satisfactory condition by the University at the destination specified by the University.
 - 4.2 Terms for Freight. All freight costs for delivery of all materials and equipment including component and parts shall be the responsibility of the Supplier and excluded from the purchase prices for products and services. Supplier assumes full responsibility for packing, crating, marking, transporting and liability for loss or damage in transit, notwithstanding any contract by the University to pay freight, express, or other transportation charges.
 - 4.3 Acknowledgement of Delivery Date. As soon as possible after receipt of the contract, Supplier shall notify University Procurement Services as soon as practicable after of a firm delivery date for all products, including components. Emphasis must be placed on shipping all required products, including components in one (1) shipment to the University designated location.
 - 4.4 Delivery Delays by Supplier. If Supplier's acts or omissions result in Supplier's failure to meet the University's delivery requirements and the University requires a more expeditious method of transportation for the products, Supplier shall, at the University's option: (a) promptly reimburse the University the difference in cost between the more expeditious method and the original method, (b) allow the University to reduce its payment of Supplier's invoices by such difference, or (c) ship the products as expeditiously as possible at Supplier's expense and invoice the University for the amount which the University would have paid for normal shipment.

- 4.5 Non Conforming Shipments. Products rejected or products shipped in excess of quantities ordered may be returned to Supplier at Supplier's expense or may be held by the University for disposition in accordance with Supplier's instructions at Supplier's risk. Supplier's failure to provide written instructions within ten (10) days, or such shorter period as may be commercially reasonable under the circumstances, after notice of non-conformity shall entitle the University, at the University's option, to charge Supplier for storage and handling, or to dispose of the goods, without liability to University. Payment for non-conforming goods shall not constitute an acceptance thereof, limit or impair the University's right to assert any legal or equitable remedy, or relieve Supplier's responsibility for latent defects. Any acceptance by the University shall not be deemed a waiver or settlement of any defect or nonconformity in the products or any support services.
- 4.6 Shipping. The products shall be shipped as described in the contract.
- 4.7 Inspection of University Installation/Set-up Site. As applicable, Supplier will confirm before shipment, that all roads, drives, access routes, doorways, hallways, elevators, room sizes, service access spaces, and utilities are accessible and present before making any delivery of product. This confirmation should be made with the final proposal calling any discrepancies or impediments to delivery and installation to the attention of the designated University personnel. Supplier will also confirm that power requirements are compatible with the existing or planned utilities or environmental conditions at the installation/setup site. Electrical plug size shall be compatible with the existing outlet at the installation, set-up and calibration.
- 4.8 Supplier Responsibilities. The Supplier assumes full responsibility for the following:
- 4.8.1 Packing, crating, marking, transporting and liability for loss or damage in transit, notwithstanding any contract by the University to pay freight, express, or other transportation charges.
- 4.8.2 Match-marking the parts to facilitate erection in the field when required or advantageous to the University, for shipping, storage and/or installation purposes, to disassemble the products.
- 4.8.3 Properly marking each package with the contract number and where multiple packages comprise a single shipment, to consecutively number each package including a packing slip identifying the contents of each package including its corresponding package number.
- 4.8.4 Including on bills of lading or other shipping receipts correct classification identification of the goods shipped in accordance with the University's instructions and carrier's requirements. The marks on each package and identification of the goods on packing slips, bills of lading and invoices shall be sufficient to enable the University to easily identify the products purchased. Supplier further agrees to promptly render, after delivery of products or performance of services, correct and complete invoices to the University.
- 4.9 Receiving/Assembly Responsibilities. The receiving, unloading, assembling, erection and connecting of the equipment, components parts and materials will be by others as specified by the University unless otherwise stated in the contract. Supplier shall notify

the University of any special handling for unloading the equipment prior to its shipment. The Supplier's representative shall be present at the unloading of the equipment to assist with any special offloading arrangements.

5.0 Acceptance and Inspection of Products.

5.1 General. The University shall have a reasonable time (but not less than thirty [30] days) after receipt to inspect and test the products provided under the contract and reject any or all items that are nonconforming or defective. Products rejected or supplies in excess of quantities ordered may be returned to Supplier at Supplier's expense. Any acceptance by the University shall not be deemed a waiver or settlement of any defect or nonconformity in the products or any support services.

5.2 Factory Acceptance Testing. Supplier agrees that the University shall have the right to enter Supplier's facility at reasonable times with notice to inspect the facility, goods, materials and any property of the University covered under the contract. The University's inspection of the products whether during manufacture, prior to delivery or within a reasonable time after delivery, shall not constitute formal acceptance of any work-in-process or finished goods.

5.3 Start-Up Testing. The delivered products will be installed prior to the University's acceptance and adjusted under the direction of the Supplier's qualified and experienced field start-up engineer and will be operated within its rated capacity and under system design performance conditions to determine satisfaction of performance guarantees specified under the contract.

5.4 Acceptance Testing. Final acceptance of products and components shall be completed by no later than thirty (30) days upon successful installation or as otherwise mutually agreed upon between the parties. All nonconforming or defective products and/or components will be rejected by the University.

5.5 Conditions of Final Acceptance. Final acceptance shall be conditioned upon completion of all final calibration, testing and adjusting of the Supplier's products and related auxiliary equipment as well as release of the Supplier's start-up service engineers by the University, provided the Supplier has fully complied with contract provisions including written University authorized amendments to the contract, any published performance specifications including submittal of all product drawings, operating instructions and maintenance manuals.

6.0 Instruction Manuals. Prior to installation, the Supplier shall be required to provide to the University four (4) complete sets of written instructions covering the proper installation, operation and maintenance requirements of all products furnished under the contract. Instructions shall be contained in a hard-cover type, three or more ringed binder and shall contain uniform sized instruction sheets. Instructions shall essentially consist of the of the following sections: (a) description of system; (b) installation and operating instructions; (c) maintenance requirements for all products; (d) controls and adjustments (e) parts lists (f) system electrical wiring diagrams; and (g) recommended spare parts list.

7.0 Warranties and Representations of Supplier. Supplier acknowledges that the University is relying on these representations and warranties as essential elements to the contract, representing as they do, material inducements, without which the University would not have entered into the contract.

- 7.1 General Product Warranty. Supplier represents that all products and any support services provided under the contract (a) are new and unused (unless otherwise specified or agreed to in writing by the University) and free from defects in material and workmanship; (b) are of the quality, size, dimension and specifications ordered; (c) meets the highest performance and manufacturing specifications as described in documents or writings made available by the Supplier to the public or the University; (d) comply with all applicable laws, codes and regulations (including any published by any national or statewide association or groups); (e) are not restricted in any way by patents, copyrights, trade secrets, security interest, lien, or any other encumbrances or rights of third parties, and (f) shall have been properly stored, labeled, handled and shipped by Supplier.
- 7.2 Guaranteed Performance. The Supplier must provide a minimum of 95% performance guarantee for all products and components unless otherwise stated in the contract. Repairs and adjustments required other than normal equipment failure will be excluded from this performance calculation, i.e. damage through misuse, power failures, operator errors, etc.
- 7.3 Qualifications. Supplier warrants that it, as well as its employees, agents and subcontractors engaged to provide the products or services under the contract (collectively "Supplier Personnel"), has and will maintain all the skills, experience, and qualifications necessary to provide the services contemplated by the contract, including any required training, registration, certification or licensure.
- 7.4 Conflict of Interest. Supplier warrants that to the best of Supplier's knowledge, there exists no actual or potential conflict between Supplier and the University, and its products and services under the contract, and in the event of change in either Supplier's private interests or products or services under the contract, Supplier will inform the University regarding possible conflict of interest which may arise as a result of the change. Supplier also affirms that, to the best of Supplier's knowledge, there exists no actual or potential conflict between a University employee and Supplier.
- 7.5 Nondiscrimination. Supplier warrants that Supplier is an equal opportunity employer and that, during the performance of the contract, it will comply with Federal Executive Order 11246, as amended, The Rehabilitation Act of 1973, as amended, and the respective regulations thereunder, and the Michigan Civil Rights Act of 1976.
- 7.6 Good Standing. Supplier warrants that Supplier is legally organized entity in good standing under the laws of the state of its organization and, where required, in good standing under the laws of the State of Michigan.
- 7.7 Noninfringement. Supplier warrants that the Supplier's products and/or the University's use of the products, processes, techniques and methodologies provided by Supplier or developed by Supplier shall not infringe upon the copyright, patent or other proprietary rights of others.
- 7.8 Not Excluded. Supplier warrants that neither Supplier, nor, to the best of Supplier's knowledge, Supplier Personnel, is excluded from participating in the Medicare or Medicaid program nor currently debarred or suspended or listed on the General Services Administration's ("GSA") List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Executive Orders 12549 and 12689,

“Department and Suspension”. Supplier shall immediately notify the University if it becomes debarred or suspended during the term of the contract. Supplier further represents that no adverse action by the federal government that will or may result in exclusions from a federal health care program has occurred or is pending or threatened against Supplier or its affiliates, or to the best of its knowledge, against any Supplier Personnel. Supplier agrees that it shall not perform any act that shall cause Supplier to be excluded from a federal health care program or debarred, suspended or listed in the GSA’s List of Parties Excluded from Federal Procurement or Nonprocurement Programs during the term of the contract.

- 7.9 Standard Merchandise. Supplier warrants that the product(s) are of a type and model made available by Supplier generally within the United States and elsewhere and that modifications, if any, of the product are reversible and of only incidental cost to the Supplier.

8.0 Remedies under Warranty Provisions

- 8.1 Product Replacement. The Supplier shall replace, F.O.B. University at a designated site, Freight Allowed/Absorbed the products or any components which are found to be defective or non-conforming during agreed upon warranty period.
- 8.2 Warranty Parts Replacement. The Supplier shall replace the defective or non-conforming products and or components at no cost to the University at F.O.B. University at a designated site/Freight Allowed and the warranty on the replacement components shall not exceed the original agreed upon warranty period.
- 8.3 On-Site Warranty Repairs. If within the Warranty provisions, on site repair and replacement is required by Supplier, the Supplier's obligation shall include, but not be limited to, supervising and performing necessary removal, repair, adjustment and replacement work; transportation including packing, handling, storage and insurance and testing without charge to the University. This obligation shall apply to all or any part of products found to be damaged, defective or non-conforming. All such work shall be performed at the University's facility. In addition, upon mutual contract with the Supplier, the University has the option of effecting such removal, repair, adjustment and replacement itself, in which event Supplier shall reimburse the University for all costs and expenses (including premium & shift time expenses and costs of supervision and material) incurred by the University to perform such work.

9.0 Non-Infringement.

- 9.1 Non-infringement Warranty. Supplier warrants that the Supplier’s products and/or the University’s use of the products, processes, techniques and methodologies provided by Supplier or developed by Supplier shall not infringe upon the copyright, patent or other proprietary rights of others.
- 9.2 Hold Harmless Clause. Supplier agrees to defend, hold harmless and indemnify the University, its successors and customers against all claims, demands, losses, suits, damages, liability and expenses (including reasonable attorney fees) arising out of any suit, claim or action for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, copyright or mask work right by reason of the manufacture, use or sale of the goods or services ordered,

including infringement arising out of compliance with specifications furnished by the University, or for actual or alleged misuse or misappropriation of a trade secret resulting directly or indirectly from Supplier's actions. The University shall have the right to have such litigation monitored by its own counsel.

- 10.0 Assignment of Rights, Title and Interest. Supplier assigns to the University all right, title and interest in and to all trademarks, copyrights, and mask work rights in any material created for the University under the contract. In addition, Supplier grants the University a worldwide, non-exclusive, royalty-free, irrevocable license to repair and have repaired, to reconstruct and have reconstructed the goods ordered as specified by the contract.
- 11.0 Drawings. All drawings, designs, specifications and other data prepared and furnished by the Supplier under the contract shall be the sole property of the University and the University shall be free to disclose such data without restriction. The drawings shall be the type, size, content, etc. as defined by the RFQ and/or technical specifications. If the items to be supplied have been designed in accordance with specifications or data furnished or originated by the University, such items shall not be reproduced except with the approval of the University and all drawings, photographs, data and other written material or information supplied shall at all times remain the property of the University and be returned promptly upon written request.
- 12.0 Payment Terms.
- 12.1 General. In the case of products, payment shall not be due prior to thirty (30) days (a) from the date the invoice is received by the University at the address indicated in the "Bill To" field on the face of the contract or (b) from the date the products are delivered to the destination specified in the "Ship To" field on the face of the contract, *whichever is later*. Invoices presented for payment must be submitted in accordance with instructions contained on the contract including reference to the contract number and submittal to the correct address for processing. The University may withhold payment in whole or in part for products or services found by the University to be defective, untimely, unsatisfactory, or otherwise not conforming to the products description, or not in accordance with all applicable federal, state, and local laws, ordinances, rules and regulations.
- 12.2 Incentivized Payments. Any incentivized payment plans for payment terms for less than thirty (30) days offered by Supplier on the RFQ must include discounted pricing terms for such early payments by University.
- 12.3 Payment Issuance. Upon delivery and acceptance of products at the University's prescribed receiving location in satisfactory condition (refer to Section 5.0) and upon application for payment by Supplier, the University shall make payment to the Supplier of ninety percent (90%) of the value of materials and equipment accepted.
- 12.4 Retainage Payment. The final retainage payment of ten (10)% covering an individual item or shipment of equipment, shall be payable within thirty (30) days upon final acceptance (Refer to Section 5.0) by the University provided the Supplier has met all the requirements of the published performance specifications and all guarantees required under the contract.
- 12.5 Withholding Payments. The University may withhold payment pending receipt of evidence, in such form and detail as the University may direct, of the absence of any liens, encumbrances and claims on the goods or services under the contract. The

University may also withhold payment in whole or in part for products or services found by the University to be defective, untimely, unsatisfactory, or otherwise not conforming to the products description, or not in accordance with all applicable federal, state, and local laws, ordinances, rules and regulations. If payment is withheld, the University will provide written notice to the Supplier within no later than ten (10) days from the receipt of the invoice specifying the reason(s) for the delay in payment.

- 13.0 Termination for Convenience. The University may immediately terminate the contract in whole or in part for its sole convenience by giving written notice to Supplier. Upon notice of such termination, Supplier shall immediately stop all work including shipment of the products and cause its suppliers and/or subcontractors to cease their work related to the contract. Upon such termination, Supplier shall be paid for (a) the order price for all products or services which have been completed in accordance with the contract and not previously paid for; and/or (b) the actual costs of work-in-process and raw materials incurred by Supplier in furnishing the products or services under the contract to the extent such costs are reasonable in amount and are properly allocable or apportioned under generally accepted accounting principles to the terminated portion of the contract; less, however, the reasonable value or cost (whichever is higher) of any products or materials used or sold by Supplier with the University's written consent, and the cost of any damaged or destroyed products. The University will make no payments for finished goods, work-in-process or raw materials fabricated or procured by Supplier in amounts in excess of those authorized in delivery releases nor for any undelivered products, which are in Supplier's standard stock or which are readily marketable. Payments made under this Section shall not exceed the aggregate price payable by the University for finished goods which would be produced by Supplier under delivery or release schedules outstanding at the date of termination. Except as provided in this Section, the University shall not be liable for and shall not be required to make payments to Supplier, directly or on account of claims by Supplier's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, and general and administrative burden charges from termination of the contract. Within sixty (60) days from the effective date of termination, Supplier shall submit a comprehensive termination claim to the University, with sufficient supporting data to permit the University's audit, and shall thereafter promptly furnish such supplemental and supporting information as the University shall request. The University, or its agents, shall have the right to audit and examine all books, records, facilities, work material, inventories, and other items relating to any termination claim of Supplier.

In no event shall Supplier be paid for costs incurred or support services performed after receipt of notice of termination, or for costs incurred by suppliers or subcontractors which reasonably could have been avoided.

- 14.0 Termination for Cause Provision. If either the University or Supplier breaches a material provision hereof ("Cause"), the non-breaching party shall give the other party written notice of such Cause. If the Cause is remedied within seven (7) days from the written notice, the notice shall be null and void. If the Cause is not remedied within the specified period, the party giving notice shall have the right to terminate the contract upon expiration of the remedy period.

If a determination is made that the University improperly terminated the contract for cause, then the termination shall be deemed to have been for the University's convenience.

- 15.0 Compliance with Laws, Policies & Procedures. Supplier is advised that the University has established a compliance program to assure compliance with applicable laws and University

policies designed to prevent and detect fraud, waste, and abuse. To the extent applicable to the Products and Services, Supplier shall fully comply with all federal, state, local, and University laws, rules, regulations, ordinances, policies and licenses, including applicable building policies and procedures, the University's Ordinances (reference website <http://www.umich.edu/~regents/ordinance.html>) and any standards of the Centers for Medicare and Medicaid Services ("CMS"), Michigan Department of Community Health ("MDCH") and Joint Commission of Accreditation of Healthcare Organizations ("JCAHO"), all as may be amended from time to time. Supplier acknowledges that Information about (1) the UMHS Compliance Program, (2) UMHS policies and procedures, (3) federal and state false claims and false statements laws, as well as (4) information about whistleblower protection under these laws, is available at <http://www.umich.edu/~purch/Vendors/index.html>. Supplier agrees to further disseminate information about applicable University policies, as necessary, to ensure that all Supplier Personnel and subcontractors, as applicable, involved in providing Products and Services are aware of the existence and location of applicable University policies as well as how and where to make reports to the University regarding any compliance concerns. To the extent that University policies provide for reviews or audits of claims or services arising from the contract, Supplier agrees to participate in such audit insofar as it is relevant and applicable to Supplier Products and Services and Supplier Personnel's interaction with University. If Supplier identifies potential non-compliance with any applicable laws, regulations or policies in connection with the provision of the Products and Services, Supplier shall promptly contact the University of Michigan Compliance Hotline at 866-990-0111 and provide details concerning the suspected wrongdoing sufficient to facilitate an investigation by University.

Supplier shall be solely responsible for insuring that any recommendations made in connection with providing the Products and Services comply with all applicable federal, state, local and University laws, rules, regulations, policies and procedures. Unless otherwise expressly provided for in the contract, Supplier shall obtain and comply with all permits, licenses and similar authorizations that are necessary to provide the Products and Services. By executing the contract, Supplier warrants and represents that it has all legally required licenses and permits needed to provide the Products and Services.

16.0 Insurance.

Insurance Coverages and Levels. Unless more specific insurance provisions are specified, Supplier shall, at Supplier's expense, obtain and maintain the following coverages:

- Commercial General Liability Insurance, including contractual products and completed operations insurance (\$1 million per occurrence/\$3 million annual aggregate).

Exceptions:

- 1) Medical diagnostic equipment
- 2) Patient invasive products/equipment
- 3) Products with a purchase price of \$100,000 or more

Above exceptions shall require the levels of (\$2 million per occurrence/\$5 million annual aggregate). Required minimum limits can be met with a combination of primary and excess/umbrella liability insurance policies.

- Worker's Compensation at statutory limits in accordance with the appropriate State of jurisdiction including Employer's liability (with minimum \$500,000).
- Automobile liability for owned, non-owned and hired vehicles minimum limit (\$1 million each accident).

- Supplier agrees to have the Regents of the University of Michigan added as additional insured with respect to Commercial General Liability Insurance for purposes of contract performance and incidents arising out of the contract.
- Supplier agrees to provide the University with thirty (30) days prior written notice of any reduction in limits or cancellation of any of the above insurance.
- If any of the required insurance is on a “claims made” basis and is cancelled during the term of the contract, Supplier agrees to purchase **tail coverage** or **prior acts coverage** so that such insurance is in effect from the date the contract is executed to three (3) years after its termination.
- Supplier shall provide the University with a certificate of the above insurance coverages and amounts. Compliance with the foregoing requirements as to carrying insurance and furnishing evidence of it will not relieve the Supplier of its liabilities and obligations under the contract.

- 17.0 **Indemnity.** Each party shall defend, indemnify and hold harmless the other party, its board members, officers, employees, agents and students (if the University) from and against any costs, losses, damages, liabilities, expenses, demands and judgments, including court costs and attorney fees, which may arise out of the other party’s acts or omissions under the contract for which the indemnifying party would be liable in law or equity.

The indemnifying party shall keep the other reasonably apprised of the continuing status of the claim, including any proceedings resulting from it, and shall permit the other party, at its expense, to participate in the defense or settlement of the claim. When a claim is resolved by the indemnifying party’s payment of money, it shall have final authority regarding defense and settlement. When a claim resolution requires equitable relief against the non-indemnifying party or the indemnifying party has not or will not pay the money required for resolution, the parties shall cooperate regarding defense and settlement.

- 18.0 **Audit.** The Supplier is responsible for keeping accurate and reasonable records related to its performance and obligations under the contract. In particular, records will be kept documenting any price, cost or budget computations required under the contract. The Supplier agrees that the University or its duly authorized representative has the right to audit any directly pertinent books, documents, papers and records related to transactions and/or performance of the terms and conditions of the contract. The Supplier shall make available to the University or its agents all such records and documents for audit on the Supplier’s premises during regular and reasonable working hours within ten (10) business days of a written request for availability. Supplier agrees to either (a) allow the University to make and retain copies of those documents useful for documenting the audit activity and results or (b) sequester the original or copies of those documents the University identifies for later access by the University. The Supplier further agrees to disclose within ninety (90) days of receipt any independent auditors’ reports, which bear directly on the performance or administration of the contract.

The right to audit shall include periodic examinations of records throughout the term of the contract and for a period of three (3) years after its termination. The right to audit shall also apply to agents and subcontractors hired by the Supplier for the purpose of fulfilling the contract. In the event that audits discover substantive findings related to fraud, misrepresentation or non-performance, the University may recoup the costs of the audit work from the Supplier.

- 19.0 **Confidentiality.** Supplier shall keep confidential and not disclose to third parties any information provided by the University or by private individuals, organizations or public agencies during the

course of the contract, including protected customer information regarding customers of the University, as defined under the Gramm-Leach-Bliley Act, unless Supplier has received the prior written consent of the University to make the disclosure or unless required by law or legal process. Only Supplier Personnel with a need to know may have access to or use University information. This obligation of confidentiality does not extend to information that is or shall become through no fault of Supplier available to the general public.

- 20.0 Changes, Alterations and Modifications to Products or Support Services. The University may at any time by a written notice change the drawings, designs, specifications, materials, packaging, and the time and place of delivery and/or completion of the products and services to be provided under the contract. Promptly upon receipt of the details of any change, Supplier shall either advise the University that the change will not affect its costs, or furnish: (a) a breakdown of estimated cost and changes resulting from the requested change, and (b) a statement of any necessary changes in the time of delivery. Supplier's failure to advise the University within ten (10) days of the effect of any change in cost or delivery time shall constitute Supplier's consent to conform to the change without change to pricing or without change in other terms and conditions of the contract. If the change causes a material increase or decrease in costs, than an equitable adjustment of the pricing to be paid to Supplier shall promptly be negotiated by the University and Supplier and incorporated as an amendment to the contract.
- 21.0 Assurance. If at any time the University in good faith determines that it is insecure with respect to Supplier's ability or intent to fully perform, then Supplier agrees to provide the University with written assurance fully satisfactory to the University, in the University's sole discretion, of Supplier's ability and intent to fully perform. The assurance shall be provided within the time and in the manner specified by the University. Supplier immediately shall notify the University of any circumstance that may cause Supplier to fail to fully perform. Upon the University's good faith determination that Supplier cannot or will not perform, then the University may deem the contract to be breached by Supplier and may repurchase from other sources.
- 22.0 Miscellaneous.
- 22.1 Use of the University Name and Marks. The University acknowledges Supplier's right to make public statements regarding the existence of the contract, its terms and conditions and an accurate description of the products or services being supplied without the consent of the University. However, other than as permitted by the previous sentence, Supplier may never make any public statement (for example a press release or any form of advertisement) describing the University's relationship with Supplier or the University's endorsement of Supplier or Supplier's product without the prior written consent of the University's Office of Communications. The University may withhold its consent in its absolute discretion. Supplier acknowledges that the University will require ten (10) business days to consider any request for consent. Likewise, Supplier may not use any University Trademark without prior consent obtained through the procedure described above.
- 22.2 Use of Premises or the University Property. Supplier shall neither use nor allow Supplier Personnel to use any part of the University premises or property for any purpose other than the delivery, installation, testing, training and maintaining of the products as may be required under the contract. Without limiting the generality of the statement above, supplier shall not use the University in any manner that might jeopardize the Medicare

provider status of the University or the tax exemptions or casualty insurance of the University.

- 22.3 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. Supplier and Supplier Personnel are not employees of the University and are not entitled to tax withholding, Worker's Compensation, unemployment compensation, or any employee benefits, statutory or otherwise. Supplier shall not have any authority to enter into any contract or contract to bind the University and shall not represent to anyone that Supplier has such authority.
- 22.4 Assignment. Supplier may not subcontract, assign or transfer the contract or any interest or claim under the contract without prior written approval of the University. Notwithstanding any consent by the University to any assignment, Supplier shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the contract unless specifically released from the requirements, in writing, by the University. The Supplier shall retain the right to pledge payment(s) due and payable under the contract to third parties.
- 22.5 Notices. Any notice to either party must be in writing, signed by the party giving it, and served to the addresses indicated on the Request for Quotation (or to such other addressee as may be later designated by written notice) by personal delivery, recognized overnight courier service, or by the United States mail, first-class, certified or registered, postage prepaid, return receipt requested. All such notices shall be effective when received, but in no event later than three (3) days after mailing.
- 22.6 Entire Contract, Amendment. The contract constitutes the entire understanding between the parties with respect to the subject matter and may not be amended except by a contract signed by Supplier and an authorized representative of the University.
- 22.7 Severability. The terms of the contract are severable. If any term or provision is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of the provisions shall continue to be valid and enforceable.
- 22.8 Governing Law, Construction and Venue. The contract shall be governed by and construed under the laws of the State of Michigan without regard for principles of choice of law. Any claims, demands, or actions asserted against The Regents of the University of Michigan shall be brought in the Michigan Court of Claims. Supplier, its successors and assigns, consent to the jurisdiction of the Washtenaw County Circuit Court for the State of Michigan with respect to any claims arising under the contract.
- 22.9 Headings. The paragraph headings in the contract are inserted for convenience only and shall not be construed to limit or modify the scope of any provision of the contract.
- 22.10 Waiver. No delay or omission by either party to exercise any right or remedy under the contract shall be construed to be either acquiescence or the waiver of the ability to exercise any right or remedy in the future.
- 22.11 Survivability. Provisions surviving termination or expiration of the contract are those which on their face affect rights and obligations after termination or expiration and also

include provisions concerning indemnification, confidentiality, warranty and choice of law and venue.

- 22.12 Execution. The contract may be executed in duplicate, each of which when executed and delivered shall be an original. The parties acknowledge and agree that the contract has been mutually discussed, negotiated, and drafted by the parties.
- 22.13 No Third Party Rights. Nothing in the contract shall be construed as creating or giving rise to any rights in third parties or persons other than the named parties to the contract.
- 22.14 Force Majeure. Neither Supplier nor the University shall be liable for failure to perform its respective obligations under the contract when failure is caused by fire, explosion, water, act of God, civil disorder or disturbances, strikes, vandalism, war, riot, sabotage, weather and energy related closings, or like causes beyond the reasonable control of the party ("Force Majeure Event"). In the event that either party ceases to perform its obligations under the contract due to the occurrence of a Force Majeure Event, the party shall: (a) as soon as practicable notify the other party in writing of the Force Majeure Event and its expected duration; (b) take all reasonable steps to recommence performance of its obligations under the contract as soon as possible, including, as applicable, abiding by the disaster plan in place for the University. In the event that any Force Majeure Event delays a party's performance for more than thirty (30) calendar days following notice by the delaying party pursuant to the contract, the other party may terminate the contract immediately upon written notice.
- 22.15 Tax Exempt Status. Supplier acknowledges that the University is a tax-exempt institution, granted such status by authorized taxing units of State of Michigan, and is exempt from Federal Excise Tax and Michigan General Sales Tax (see Michigan Public Act 167 of 1933. Section 4 as amended).
- 22.16 Dispute Resolution. Supplier and the University will attempt to settle any claim or controversy arising from the contract through consultation and negotiation in good faith and a spirit of mutual cooperation. The dispute will be escalated to appropriate higher-level managers of the parties, if necessary. Unless either party has issued a notice of termination, Supplier agrees to continue shipment of product while resolving any outstanding invoices or payment issues.
- 22.17 Freedom of Information Act. Nothing in the contract shall in any way limit the ability of the University to comply with any laws or legal process concerning disclosures by public bodies. The parties acknowledge that any responses, materials, correspondence or documents provided to the University are subject to the State of Michigan Freedom of Information Act ("Act") and may be released to third parties in compliance with that Act or any other law will not constitute a breach or threatened breach of the contract.
- 22.18 Supplier Damage to University Property. Without regard to any other section of the contract, Supplier shall be responsible for the costs to return to "as was" condition from any damage caused to the building, grounds, or other equipment and furnishings caused in whole or part by Supplier Personnel while performing activities arising under the contract. Supplier shall immediately report in writing the occurrence of any damage to the Building/Project Manager.

- 22.19 Supplier Clean-Up. Supplier will remove all packing materials and rubbish from University premises associated with Supplier's delivery of the product.
- 23.0 Confidentiality of Health Information. The parties agree that Supplier's provision of the products under the contract does not qualify Supplier as a "Business Associate" of the University as defined in regulations promulgated under the Health Insurance Portability and Accountability Act of 1996, (which act and regulations as amended, restated and superseded from time to time, are collectively referred to as "HIPAA"). Supplier will take all necessary steps to ensure Supplier Personnel do not seek or obtain access to protected health information created, maintained or received by the University. In the event the scope of Supplier's services in support of the product changes or HIPAA changes (including governmental guidance offered on HIPAA) such that the University concludes the contract must be amended or further documents executed to ensure the University's compliance with HIPAA, the parties agree to promptly take all actions necessary to ensure the University compliance with HIPAA.
- 24.0 Buy American/Buy Michigan
Preference will be given to goods or services manufactured or provided by Michigan businesses if they are competitively priced and of comparable quality. Preference will be given to goods or services manufactured or provided in America if they are competitively priced and of comparable quality.