

University of Miami Purchase Order Terms and Conditions

1. **Existing Agreement.** If there is a fully executed agreement between University of Miami (“University”) and the party providing the University with products and/or services (“Counterparty”) covering the subject matter of a Purchase Order (“Existing Agreement”), that Purchase Order will be governed by the terms of the Existing Agreement.
2. **Entire Agreement.** Except as set forth in Section 1 above, these POC together with any scope(s) of work or order form(s) with which they are associated, shall constitute the entire agreement (“Agreement”) between the University and Counterparty. Except as otherwise set forth in these POTC, in the event of conflict between a statement of work or order form and these POTC, these POTC shall govern. Acceptance of the University’s Purchase Order will constitute acceptance of these POTC. There are no oral agreements with respect to the subject matter of this Agreement which are not fully expressed herein. No representations, understandings or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein. University will not be bound by any shrink-wrap terms and conditions or clickwrap, browswrap, sign-in-wrap, scrollwrap, or other similar online terms and conditions of any kind, regardless of when opened or clicked or by whom, even if Counterparty’s documentation or website states otherwise. This Agreement can only be modified by a writing signed by authorized representatives of both parties.
3. **No Exclusivity or Commitments.** Counterparty hereby acknowledges that this Agreement is not exclusive and that University may freely contract with any other party concerning the subject matter hereof. University makes no purchase commitments under this Agreement, other than as set forth in the relevant statement of work or order form.
4. **Fees, Invoicing and Payment Terms.** The total fees for all services, deliverables, and/or products to be provided under this Agreement are set forth in the applicable statement(s) of work or order form(s), the first of which is attached as Appendix A. Each statement of work or order form must be signed by authorized signatories of each Party and must reference this Agreement. Each statement of work or order form must specify (i) the specific services to be performed and/or products or deliverables to be provided, (ii) the term of the statement of work or order form, (iii) any relevant timeline or milestones for delivery of all services, deliverables and/or products, (iv) an itemized list of all fees and costs, (v) key personnel for each Party, including their contact information, and (vi) if different from those set forth herein, payment terms, including an invoicing schedule. Any changes to the compensation, services, deliverables and/or products in a statement of work or order form must be memorialized in writing and signed by authorized signatories of each Party. Counterparty must adhere to the following invoicing requirements. All invoices must (i) be sent via email to University’s Accounts Payable Office with copy to the relevant department; (ii) follow any specific invoicing requirements set forth in the relevant statement of work or order form, but in no event may Counterparty issue an invoice later than 90 days following the date the corresponding services were rendered by Counterparty, or in the case of products, later than 90 days from the date University accepted the products; and (iii) reference University’s purchase order number (“Invoicing Requirements”). University shall not be in breach of this Agreement or subject to any penalties where an invoice fails to adhere to the Invoicing Requirements.
5. **Shipping and Delivery.**
 - i. Any products supplied by Counterparty shall be shipped Free On Board (F.O.B.) Destination, freight costs pre-paid and added to invoice. Title to the products shall be held by Counterparty during shipment and transferred to University upon delivery. All risk of loss shall be borne by Counterparty until products are delivered to and accepted by University. Counterparty shall pack, mark, and ship any products in accordance with any instructions provided by University. A packing list must accompany each case or parcel containing products, showing University’s Purchase Order number and a complete description of contents. All barrels, boxes, bags crates or other packages must be labeled with tag (linen tag preferred) securely fastened to packages, showing Counterparty’s name and University’s Purchase Order number. If not possible to attach tags, information must be printed on packages. Drop shipments and partials must be treated similarly.
 - ii. Delivery must be made within the time specified in the relevant order form. If products are not delivered timely, University reserves the right to cancel the order or any part thereof. Collect Payment on Delivery shipments are not acceptable without prior written approval by University. University will not be responsible for any products delivered to any destination other than the delivery address specified in the relevant order form. Deliveries are accepted between 8:30 AM to 4:00 PM EST, Mondays through Fridays, excluding holidays. Perishable products must be shipped so as to arrive at University’s facilities Monday through Friday between 8:30 AM and 4:00 PM EST.
6. **Acceptance and Returns.** University shall have the right to inspect and test all products received at University’s facility prior to acceptance or rejection and may refuse to accept products which do not conform to the

University of Miami Purchase Order Terms and Conditions

Counterparty's written specifications, applicable certifications, any requirements referenced in the relevant agreement, or any other requirements of University, where applicable. If University rejects products, Counterparty shall pay for return freight and all other expenses associated with the return of the rejected products. University shall have the option to request a replacement, in which event Counterparty shall replace the rejected products within seven (7) days of University's request and pay for freight and all other associated expenses. University shall not issue any payments to Counterparty until the products provided hereunder have been accepted by University.

7. **Warranty.**

- i. **Products.** Counterparty warrants that any products supplied hereunder: (1) conform to Counterparty's specifications; (2) are merchantable, of good quality and free from defects, whether patent or latent, in materials, design or workmanship; (3) conform to or exceed the higher grading standards recognized by Counterparty's industry; and (5) do not infringe on the patent, copyright, trademark, or any other proprietary rights of a third party. Counterparty further warrants that it has full right, title, and authority over the products supplied and that such products are free and clear from all liens and encumbrances, and free of asbestos. Additionally, if Counterparty warrants that to the extent products include any software, said software shall not contain any software routine, code, or instruction, hardware component or combination of the foregoing which permits unauthorized access to University's network or University's Confidential Information or can disable, delete, modify, damage or erase software, hardware or data.
- ii. **Services.** Counterparty warrants that all services shall be performed in a professional and workmanlike manner, by properly trained personnel, in accordance with generally accepted industry practices, and in a manner that complies with all applicable laws and regulations.
- iii. All warranties provided herein shall run to University and its successors and assigns.

8. **Applicable Laws.** The Counterparty shall comply with all laws, rules, and regulations applicable to the performance of its obligations under this Agreement, including, but not limited to, the following:

Counterparty agrees to comply with those laws, regulations, or orders that may relate to the export of technical data and equipment, such as International Traffic in Arms Regulations ("ITAR") and/or Export Administration Regulations ("EAR"), as may be amended, and agree to comply with all such laws, regulations or orders. Counterparty will not export, directly or

indirectly, any confidential information without first obtaining any required export license or government approval and written permission from University.

Counterparty agrees to comply with United States Foreign Corrupt Practices Act ("FCPA"). Anti-bribery provisions of the FCPA make it unlawful to bribe foreign government officials to obtain or retain business. The Parties are familiar with the FCPA, its prohibitions and purposes, and will not undertake any actions that may violate the FCPA. Counterparty agrees to comply with applicable United States laws, regulations, or orders, to the extent applicable, regarding the privacy of personally identifiable student education records ("Education Records"), as such term is defined under the Family Educational Rights and Privacy Act and regulations promulgated under the Act ("FERPA").

The Health Insurance Portability and Accountability Act ("HIPAA") establishes national standards that govern the protection of an individual's protected health information ("PHI"), as defined by HIPAA regulations, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164. Should Counterparty come into contact with any PHI, Counterparty shall (i) immediately undertake all applicable regulatory obligations toward the PHI; (ii) promptly notify the University of the same in writing; and (iii) where required by University, enter into University's Business Associate Agreement ("BAA"). If the parties have executed a BAA, the BAA shall govern with respect to all matters regarding PHI, except to the extent the BAA explicitly states otherwise.

The European General Data Protection Regulation ("GDPR") imposes specific obligations on University with regard to its relationships with vendors engaged in Processing of Personal Data, as those terms are defined in Article 4 of the GDPR. For purposes of this Section, the term GDPR includes Regulation (EU) 2016/679, together with any additional implementing legislation, rules or regulations that are issued by applicable supervisory authorities. Words and phrases in this Section shall have the meanings given to them in Article 4 of the GDPR. To the extent that Counterparty is engaged in the Processing of Personal Data, Counterparty shall be deemed a Processor and shall comply with all requirements under the GDPR which are applicable to Processors of Personal Data. Counterparty shall immediately notify University of same and shall execute University's Data Processing Addendum. Any provisions required to be included herein by any applicable and valid Federal, State or local law, ordinance, rule, or regulation shall be deemed to be incorporated herein.

9. **Sustainable and Fair Trade Procurement.** University is committed to purchasing products that have earned the Energy Star label and the certified fair trade designation. As such, Counterparty shall notify the University in writing whether if any of its products meet these criteria.
10. **Term and Termination.** Unless otherwise set forth in the

University of Miami Purchase Order Terms and Conditions

relevant statement of work or order form, this Agreement shall commence on the date University of Miami issues a Purchase Order and continue until parties have fully performed their obligations under the relevant statement of work or order form.

University may terminate this Agreement, or any statement of work or order form executed pursuant to this Agreement, in whole or in part, for convenience, upon 30 days' prior written notice to Counterparty.

Unless instructed otherwise by an authorized representative of University, upon receipt of such notice, Counterparty shall immediately discontinue all services affected and cease delivery of any additional products.

11. **No Liability.** No Liability: UNIVERSITY SHALL NOT, IN ANY EVENT, BE LIABLE TO COUNTERPARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, REGARDLESS OF THE NATURE OF THE DAMAGES.
12. **Confidentiality** Counterparty agrees that it will treat all University information and data as confidential, including without limitation, information related to University's business operations, financial information, trade secrets, Personal Data (defined as any information related to an identified or identifiable person and any other additional data deemed to be personal data under the applicable data protection laws and regulations, irrespective of whether such information is in the public domain), and any other sensitive data or information that a reasonable person would understand is of a confidential or non-public nature ("Confidential Information"). Confidential Information includes information that is in oral, written, electronic or any other tangible form, whether it is designated as confidential or it is unmarked. Confidential Information excludes information that (a) is already in the public domain at the time of disclosure; (b) becomes a part of the public domain not as a result of acts or omissions of Counterparty or its agents; (c) is disclosed to Counterparty by a third party legally entitled to make such disclosure; or (d) is independently developed by Counterparty without using the Confidential Information. These exclusions do not apply to Personal Data. Counterparty shall not disclose Confidential Information to any third party without prior written permission from an authorized representative of the University. Counterparty shall protect the Confidential Information according to commercially acceptable standards and no less rigorously than it protects its own sensitive data and information. Counterparty shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted Confidential Information received from or on behalf of University. Counterparty shall require all agents and employees, and

any authorized third parties, including subcontractors, to adhere to the same or substantially similar restrictions and conditions on the use and disclosure of Confidential Information that apply to the Counterparty under this Agreement.

Counterparty shall not use, disclose, sell, transfer, transmit or otherwise make available or accessible University's Confidential Information, regardless of form or format for any business or commercial purpose other than as expressly permitted by this Agreement. Counterparty shall not and shall not allow any agent, contractor, or employee to create, transmit, store, or maintain University Confidential Information containing PHI outside the United States. Counterparty shall report to University any unauthorized or unlawful access to or use, disclosure, alteration, or loss of Confidential Information. Counterparty shall provide the report to University within five (5) business days of Counterparty learning of such unauthorized or unlawful access to or use, disclosure, alteration, or loss. Counterparty's report shall identify: (i) the nature of the unauthorized or unlawful access to or use, disclosure, alteration, or loss, including without limitation the root cause and identities of persons or entities responsible and whom the Confidential Information was accessed by or disclosed to; (ii) the Confidential Information accessed, used, disclosed, altered, or lost; (iii) the identities of all affected individuals to the extent the unauthorized or unlawful access, use, disclosure, alteration, or loss of Confidential Information includes Personal Data; (iv) what corrective action Counterparty has taken or will take to mitigate the harmful effects of the unauthorized or unlawful access to or use, disclosure, alteration, or loss of Confidential Information; and (v) what corrective action Counterparty has taken or will take to prevent future similar incidents

Notwithstanding anything to the contrary in this Agreement, if Counterparty becomes required by law or judicial process to disclose any Confidential Information, the Counterparty shall provide University prompt written notice of such requirement so that University may seek a protective order or other appropriate remedy to prevent such disclosure. Where University is not able to prevent disclosure, Counterparty shall be permitted without liability to disclose only that portion of the Confidential Information that it is advised in the opinion of its counsel it is legally required to disclose and no more. Counterparty shall take all reasonable steps to preserve the confidentiality of the Confidential Information. Notwithstanding anything to the contrary in this Agreement, or any prior understanding or agreement between the Parties, University shall have the right to disclose the terms of this Agreement to its attorneys, accountants, consultants, and other third parties utilized

University of Miami Purchase Order Terms and Conditions

by University in the ordinary course of its business ("Permitted Third Parties") on a 'need-to-know' basis. 'Need-to-know' means the Permitted Third Party's duties or obligations to University necessitate disclosure. This section shall survive termination or expiration of this Agreement

13. **Publicity/Use of Name.** Counterparty will not use the University's or its employees' names, logos, or trademarks in publicity, marketing materials or otherwise without prior written approval of an authorized representative of University, in University's sole discretion.
14. **Indemnification.** Counterparty shall indemnify, defend and hold harmless University, its officers, trustees, employees, agents, representatives, vendors, and contractors from and against any and all losses, costs, penalties, fines, damages, claims, expenses (including reasonable attorney's fees and court costs through the appellate level) or liabilities arising out of, resulting from, or in connection with the products and services provided under this Agreement, including without limitation, by reason of (1) any damage or injury (including death) to persons or property caused by Counterparty or any of its agents; (2) any act or omission of Counterparty or anyone acting on Counterparty's behalf; (3) Counterparty's material breach of this Agreement; (4) Counterparty's violation of applicable law; or (5) Counterparty's infringement of any patent, copyright, trademark, trade secret or any other intellectual property rights of a third party..
15. **Additional Remedies.** Remedies set forth herein shall not be considered the University's exclusive remedies, and University shall be entitled to seek any additional remedies available to University per applicable law.
16. **Excluded Parties.** Counterparty represents and warrants that Counterparty and any of its directors, officers, employees, contractors, subcontractors, or agents providing services under this Agreement: (a) are not Sanctioned Persons (as that term is defined below); (b) have not been listed in the current Cumulative Sanction List of the Office of Inspector General for the United States Department of Health and Human Services for currently sanctioned or excluded individuals or entities; (c) have not been listed on the General Services Administration's List of Parties Excluded individuals or entities; (d) have not been listed on the General Services Administration's List of Parties Excluded from Federal Programs; and (e) have not been convicted of a criminal offense related to health care. Counterparty shall notify the University promptly, but in no event later than (5) business days from when Counterparty is no longer able to make such representations, and University may, at its sole discretion, terminate this Agreement upon written notice to Counterparty.
For the purposes of this agreement, "Sanctioned

Persons," are individuals or entities that: (i) are currently excluded, suspended, debarred, or otherwise ineligible to participate in Federal or State health care programs; (ii) have been convicted of a criminal offense related to the provision of health care items or services but have not yet been excluded, debarred or otherwise declared ineligible; or (iii) are currently excluded on a state exclusion list or HHS/OIG List of Excluded Individuals/Entities (LEIE) (available through the Internet at <http://www.oig.hhs.gov>).

17. **Tax Exemption.** University is tax exempt and shall provide a certificate of such tax- exempt status upon written request by Counterparty. Counterparty shall not invoice University for taxes for which University is exempt.
18. **Insurance.** Counterparty agrees to carry and keep in full force, at its expense, in relation to this Agreement: (1) a policy of comprehensive general liability coverage, including personal injury, property damage, and contractual liabilities with limits of no less than \$1,000,000 per occurrence and \$2,000,000 aggregate, (2) a policy of products liability coverage, where applicable, in the amount of \$1,000,000 per occurrence and \$3,000,000 in aggregate, (3) worker's compensation coverage in statutorily prescribed amounts, (4) auto liability coverage, if applicable, with limits of no less than \$1,000,000 per occurrence and in aggregate, (5) professional liability coverage, where applicable, in the amount of \$1,000,000 per occurrence and \$3,000,000 in aggregate, (6) cyber liability and data breach coverage, where applicable, with limits of no less than \$5,000,000 per occurrence, and (7) any other necessary coverage as reasonably requested by the University in writing. Certificate of Insurance shall name University as an additional insured and certificate holder. All policies carried by Counterparty, as a result of this Agreement, shall expressly waive any right of subrogation on the part of the insurer and/or the Counterparty against the University. University reserves the right to modify the University's insurance requirements or request additional coverage by Counterparty or higher coverage amounts at University's discretion.
19. **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Florida without giving effect to its conflict of law provisions. Any dispute under this Agreement shall be subject to the exclusive jurisdiction of the state and federal courts residing in Miami-Dade County, Florida. Each party hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of any action in Miami-Dade County, Florida.
20. **Notices.** All legal notices required or permitted to be given or made under this Agreement shall be in writing and shall be delivered to the following email addresses: 1) sourcing.supplychain@miami.edu and 2)

University of Miami Purchase Order Terms and Conditions

academic.sourcing@miami.edu.

21. **Survival.** This Section 21 and the terms of the following Sections shall survive the termination or expiration of this Agreement: Warranty, Compliance with Laws, No Liability, Confidentiality, Publicity/Use of Name, Indemnification, Governing Law and Venue, and Notices.