

Purchase Order Terms and Conditions

GOODS

1. DEFINITIONS

"Buyer" or "Stanford University" means the Board of Trustees of the Leland Stanford Junior University. "Seller" means the person or entity supplying the goods and/or services under the purchase contract ("Purchase Contract" or "Purchase Order"), and includes all Seller's sales or other agents, subcontractors, employees and distributors thereof. However, specific federal government clauses referenced below, concerning the U.S. Government's right to patents or to audit or inspect records, mean both the U.S. Government and Stanford University.

2. ACCEPTANCE OF THE PURCHASE CONTRACT BY SELLER; RIGHTS AND DUTIES

The Purchase Contract is hereby accepted on the terms set forth herein. Terms in any form which are in addition to or not identical with these Terms will not become a part of any Purchase Contract unless Buyer specifically and expressly agrees in writing that such other terms are accepted. By performing under this Purchase Contract or any part hereof, Seller agrees to and accepts all the provisions of the Purchase Contract and agrees to fully perform. The rights and duties of the Parties shall be subject to and governed by these Terms.

3. ACCEPTANCE BY BUYER; PAYMENT

Buyer shall have a reasonable time (but not less than 30 days) after receipt to inspect the goods tendered by Seller. Buyer at its option may reject all or any portion of such goods which do not in Buyer's sole discretion comply in every respect with each and every term and condition of this Purchase Contract. Buyer may elect to reject any or all goods tendered even if only a portion thereof is nonconforming. If Buyer elects to accept nonconforming goods, Buyer, in addition to its other remedies, shall be entitled to deduct a reasonable amount from the price to compensate Buyer for the nonconformity. Any acceptance by Buyer, even if nonconditional, shall not be deemed a waiver or settlement of any defect in such goods. Buyer shall transmit payment to Seller within thirty (30) days from acceptance of a proper invoice, e.g., one submitted pursuant to a valid purchase order.

4. RISK OF LOSS

Until accepted by Buyer as provided above, Seller shall bear all risk of loss and damage, unless such loss or damage results solely from the active negligence or intentional misconduct of Buyer.

5. SALES AND OTHER TAXES

Unless otherwise specified herein, Seller agrees that the price quoted herein includes all federal, state and local sales, use, excise, transaction, and other taxes, fees and/or assessments.

6. ASSURANCE

If at any time Buyer in good faith determines that it questions Seller's ability or intent to perform, then Seller agrees to provide Buyer with written assurance fully satisfactory to Buyer, in Buyer's sole discretion, of Seller's ability and intent to fully perform. Such assurance shall be provided within the time and in the manner specified by Buyer. Seller shall immediately notify Buyer of any circumstance which may cause Seller to fail to fully perform. Upon Buyer's good faith determination that Seller cannot or will not perform, then Buyer may deem this Purchase Contract to be breached by Seller (unless performance is excused as provided below), may cancel this Purchase Contract, and/or may re-procure from other sources.

7. ASSIGNMENT

Seller shall neither assign any right nor delegate any duty without the prior written consent of Buyer. Notwithstanding any notice of assignment, Buyer's tender of payment to the Seller named herein or to any person reasonably believed by Buyer to be entitled to payment shall fully satisfy Buyer's obligation to pay, and in no event shall Buyer be obligated to pay additional sums or be liable for any damages due to failure to pay the correct party.

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8. EXCUSE

Seller shall be excused for any nonperformance due principally to circumstances which are both beyond its control and not foreseeable, but in no event shall Seller be excused for any inability to obtain goods necessary for Seller's performance, nor for any labor dispute involving employees of Seller, Buyer, any subcontractor of either, any carrier, or any other person.

9. NOTICE OF LABOR DISPUTES

Whenever an actual or potential labor dispute delays or threatens to delay the performance of this order, Seller shall immediately notify Buyer in writing, presenting all relevant information concerning the dispute and its background.

10. WARRANTY

Seller warrants that the goods (a) are of merchantable quality; (b) are fit for the particular needs and purposes of Buyer as may be communicated to Seller; (c) comply with the highest warranties, representations and options expressed by Seller orally or in any written advertisement, correspondence or other document provided to or in the possession of Buyer; (d) comply with all applicable laws, codes and regulations as published by any national, state or local association or group; and (e) are not restricted in any way by patents, copyrights, trade secrets, or any other rights of third parties. If any of the foregoing warranties is breached, Seller agrees to correct all defects and nonconformities, to be liable for all direct, indirect, consequential and other damages suffered by Buyer and any other persons, and to defend, indemnify and hold harmless Buyer from any claim asserted by any person resulting in whole or in part from such breach.

11. DEFAULT

Buyer may, by written notice, terminate this Purchase Contract, in whole or in part, for failure of Seller to perform any of the provisions, including failure to deliver as and when specified. If the Purchase Contract is terminated, Seller shall be liable for all damages, including without limitation:

- (a) the incremental cost of re-procuring the same or similar goods;
- (b) shipping charges for any items Buyer may, at its sole option, return to Seller, including items already delivered, but for which Buyer no longer has any use because of Seller's default; and
- (c) amounts paid by Buyer for any items Buyer received but returns to Seller.

12. CHANGE OR CANCELLATION FOR CONVENIENCE

Buyer shall be obligated to pay Seller only for goods described herein. Buyer, by written notice, may change or terminate all or any part of this Purchase Contract for Buyer's convenience. If such a change results in an increase or decrease in costs to be incurred or time needed to complete performance of this Purchase Contract, then Buyer and Seller will make a fair and equitable modification of their rights and obligations under this agreement, provided however that Buyer will not compensate Seller for any goods not shipped by the date of such change or termination. If such goods are standard items of Seller's inventory, Seller's claim for an equitable adjustment under this paragraph must be submitted to Buyer in writing within 30 days of receipt of notice of change or termination, otherwise all such claims of Seller shall be deemed to have been waived.

13. CONFLICT OF INTEREST

- (a) Buyer's policy requires avoidance of real or apparent conflict of interests. No employee, officer or agent of Buyer shall knowingly participate in the drafting, selection, award or administration of a Request for Proposal, Request for Quotation, or Purchase Contract with Seller if Buyer, or any member of Buyer's immediate family, or Buyer's business or financial interest, has a material financial interest in Seller, or is negotiating or has any arrangement concerning prospective employment with Seller, unless such real or apparent conflict of interest has been disclosed in accordance with Stanford's Conflict of Interest policies and waived by the appropriate reporting authority.

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- (b) No officer, employee or agent of Buyer shall either solicit or accept gratuities, favors or anything of monetary value from Seller, including any contingent fee.
- (c) If Seller has reason to believe any officer, employee or agent of Buyer has violated any provision of this paragraph, Seller immediately shall notify Buyer of the suspected violation by sending notice thereof to Internal Audit, 616 Serra Street, Room 10, Stanford University, Stanford, CA 94305, explaining the situation in full. Seller's failure to so notify Buyer shall be a material breach of this agreement and Buyer, at its option, may terminate this agreement.

14. RECITALS AND INTERPRETATION

Seller acknowledges the following facts and agrees that this Purchase Contract will be executed and interpreted with regard thereto: Buyer is a nonprofit charitable trust and therefore does not accept risks that normally would be acceptable to a commercial enterprise; Buyer is wholly or partially self-insured for liability and property damage; time is of the essence for Buyer and that delays may cause multi-million dollar losses due to loss of contract funds and/or inability to conduct or complete academic courses and/or research projects and/or patient care activities. This Purchase Contract shall not be modified, supplemented, qualified or interpreted by any usage of trade unless actually known to the personnel of Buyer who are involved in this Purchase Contract.

15. INDEMNITY AND WAIVER

Seller agrees to indemnify, defend and hold Stanford harmless from and against, and to waive any and all claims against Stanford for, any and all claims, suits and demands of liability loss or damage whatsoever, including attorneys' fees, whether direct or consequential, (1) on account of any loss, injury, death or damage to any person or property (including without limitation all agents and employees of Seller and Stanford and all property owned by, leased to or used by either Seller or Stanford, or both) or (2) on account of any loss or damage to business or reputation or privacy of any person, arising in whole or in part in any way from Seller's performance or in any way connected with or in any way related to, and regardless of whether such loss, injury, death or damage or person or property results in whole or in part from (a) the negligence or omission of Stanford, (b) any product liability of Stanford or any person, or (c) any strict liability of Stanford or any person. There are excluded from the above indemnity and waiver provisions any such claims, suits and demands of liability, loss or damage resulting solely from Stanford's gross recklessness, active negligence, or willful intent to injure. As used in this indemnity and waiver provision, and for purposes of Seller's insurance, "Stanford" shall be deemed to include Stanford University, its Trustees, Directors, officers, employees, faculty, students, agents, affiliated organizations and their insurance carriers, if any. Seller, at its expense, shall further defend, indemnify and hold harmless the University, its trustees, officers, employees, agents, and students from and against any and all claims and demands which may be made to the extent that it is based on a claim that any products furnished hereunder infringed a patent, copyright, trademark, service mark, trade secret, or other legally protected proprietary right. Seller shall pay all costs, fees, and damages which may be incurred by University for any such claim or action or the settlement thereof. This provision shall survive the expiration of the Purchase Order or Purchase Contract.

16. USE OF UNIVERSITY TRADEMARKS

Seller agrees not to use University's name or other trademarks (together referred to herein as the "Marks"), or the name or trademarks of any related organization, or to quote the opinion of any of University's employees or agents ("Quotes"), either in writing or orally, without the prior written consent of the University's Assistant Vice President of Business Development. This prohibition includes, but is not limited to, use of the Marks or Quotes in press releases, advertising, marketing materials, other promotional materials, presentations, photographs for commercial use, case studies, reports, websites, application or software interfaces, and other electronic media.

17. APPLICABLE LAW, ETC.

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This Purchase Contract and the performance hereunder shall be construed according to the law of California as applied to contracts made and performed within California. The parties hereto agree that any dispute arising under this Purchase Contract shall be resolved in the courts of Santa Clara County or in the Federal District Court for the Northern District of California, Northern Branch, and Buyer and Seller hereby submit themselves to the personal jurisdiction of said courts. All rights and remedies of Buyer and Seller shall be cumulative.

18. COMPLETE AGREEMENT

This Purchase Contract (including these Terms and Conditions), any specifications or additional terms and conditions attached or referenced, and the material described in paragraph 11 above ("Warranty") constitute the entire agreement between Buyer and Seller. Seller's quotation/proposal is incorporated if specifically stated in the Purchase Contract. No other terms or conditions are binding on Buyer unless accepted by it in writing. In the event of a conflict between this Purchase Contract and terms and conditions stated in Seller's quotation/proposal, the terms of this Purchase Contract shall take precedence.

19. PURCHASE ORDER NUMBER

Seller will use best efforts to include Buyer's 8-character Purchase Order number as part of the delivery address on all goods delivered to Buyer and invoicing. Failure to do so will cause Buyer significant delivery difficulties and delays, as well as delays in payments.

20. LIVING WAGE

This Purchase Order is subject to the University's "Living Wage and Benefit Guidelines for Stanford Contractors ("The Guidelines"). Supplier represents and warrants that it will comply with The Guidelines as amended by the University from time to time. Supplier acknowledges that failure to comply with The Guidelines will be deemed a material breach of this Purchase Order. Supplier agrees to provide in a timely manner upon University's written request, but in any event not more than 10 business days, written evidence of compliance satisfactory to the University. The Guidelines may be found at: http://fingate.stanford.edu/suppliers/dobusiness/policy_living_wage.html.

21. ANTI-TRUST VIOLATIONS

Buyer and Seller recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the Buyer. Therefore, Seller hereby assigns to the Buyer any and all claims for such overcharges as to goods purchased in connection with this order, except as to overcharges not passed on to the Buyer resulting from antitrust violations commencing after the date of this Purchase Contract or other event establishing the price under this Purchase Contract.

22. ACCESS TO RECORDS

Buyer shall have access to and the right to examine any directly relevant books, documents, papers, and records of Seller involving transactions related to this Purchase Order until the expiration of three (3) years after final payment hereunder. Seller agrees to keep and maintain such records for such period of time. If this agreement is for the provision of services with a value of \$10,000 or more within a 12-month period, then until the expiration of four (4) years after the furnishing of any services pursuant to this agreement, Seller shall make available, upon written request from the Secretary of the U.S. Department of Health and Human Services or from the U.S. Comptroller, such books, documents and records of Seller as are necessary to certify the nature and extent of the reasonable cost of services to Buyer. If Seller enters into an agreement with any related organization to provide services pursuant to this agreement with a value of \$10,000 or more within a 12-month period, such agreement shall contain a clause identical in content to the first sentence of this paragraph. This paragraph shall be of force and effect only to the extent required by P.L. 96-449.

23. GOVERNMENT REQUIRED CLAUSES

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All Federal Grant and/or subcontract purchases are subject to the terms and conditions defined in Public Law 87-653 (Truth in Negotiations) and the Copeland "Anti-Kickback" Act. In addition, the following clauses are incorporated herein by reference according to the amount of this order, and references to Government (or United States) and this Purchase Contract shall be interpreted as necessary to apply to the U.S. Government or the Buyer and Seller, respectively.

FAR Number and Title of Clause, Regardless of Amount:

52.203.11	Certification & Disclosure Re: Payments to Influence Certain Federal Transactions
52.222.4	Contract Work Hours and Safety Standards Act
52.225.13	Restrictions on Certain Foreign Purchases
52.227.10	Filing of Patent Applications-Classified Subject Matter
52.227.11/12/13	Patent Rights
52.247.63	Preference for U.S. Flag Air Carriers
52.247.64	Preference for Privately Owned U.S. Flag Commercial Vessels
252.227.7034	DFAR Patents- Subcontracts DOD only
252.227.7039	DFAR Patents Reporting Subject Inventions DOD only
52.222.21	Prohibition of Non-Segregated Facilities
52.222.26	Equal Opportunity
52.222.35	Affirmative Action for Disabled Veterans of the Vietnam Era
52.222.36	Affirmative Action for Workers with Disabilities
52.222.37	Employment Reports on Disabled Veterans of the Vietnam Era

FAR Number and Title of Clause, Orders over \$100,000: all of the above clauses plus:

52.203.6	Restrictions on Subcontractor Sales to the Government
52.203.7	Anti-Kickback Procedures
52.203.12	Limitation on Payments to Influence Certain Federal Transactions
52.215.2	Audit and Records- Negotiation, Alternative II
52.219.8	Utilization of Small Business Concerns
52.227.1	Authorization and Consent Alternative I
52.227.2	Notice and Assistance Regarding Patent and Copyright Infringement
42 U.S.C. 7401, et. seq.	Clean Air Act
33 U.S.C. 1251, et. seq.	Federal Water Pollution Control Act

FAR Number and Title of Clause, Orders over \$500,000: all of the above clauses plus:

52.219.9	Small Business Subcontracting Plan
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FAR Number and Title of Clause, Orders over \$550,000: all of the above clauses plus:

52.215.12/13	Subcontractor Cost or Pricing Data- Modifications
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24. DATA

Seller agrees to handle data and other information ("Data") with a standard of care at least as rigorous as that specified in Stanford University's guidelines for Data Classification, Access, Transmittal and Storage ("Guidelines"), located at <https://itservices.stanford.edu/security>, and Stanford University's policies concerning information security, which can

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be found at <https://adminguide.stanford.edu/6-3-1> and which are hereby incorporated by reference into the Purchase Contract. Prior to performing services which require access to, transmission of and/or storage of Stanford University's Prohibited or Restricted information, Seller will provide a third party certification verifying its ability to comply with the Guidelines. Seller will not copy, cause to be copied, use, or disclose Data received from or on behalf of Stanford University except as permitted or required by the Purchase Contract, as required by law, or as otherwise authorized by Buyer in writing. Seller will give immediate notice to Buyer of any actual or suspected unauthorized disclosure of, access to or other breach of the Data. In the event of actual or suspected unauthorized disclosure of, access to, or other breach of the Data, Seller will comply with all state and Federal laws and regulations related to such breach, and will cooperate with Buyer in fulfilling its legal obligations. Seller will indemnify Buyer for its violation of this paragraph, including but not limited to the cost of providing appropriate notice to all required parties and credit monitoring, credit rehabilitation, or other credit support services to individuals with information impacted by the actual or suspected breach. Upon termination or expiration of the Purchase Contract, Seller will return or, at Buyer's election, destroy, the Data within 30 days from the conclusion of the Purchase Contract. This paragraph and its indemnity will survive the termination of the Purchase Contract.

25. INTELLECTUAL PROPERTY

Ownership of technical data produced by or for Seller or any of its employees in the course of performing under this Purchase Contract and all proprietary rights therein shall vest in and shall be delivered, upon request, to Buyer. For the purposes hereof, the term "technical data" means technical writing, pictorial reproductions, drawings or other graphical representations, tape recordings, reports, calculations, tables and documents of technical nature, whether copyrightable or copyrighted, which are made in the course of performing as specified. Seller may, however, use data prepared or produced under this Purchase Contract, where such data is otherwise made publicly available or with the specific approval of Buyer.

26. ENVIRONMENTAL HEALTH AND SAFETY

This section applies to all Sellers who supply Stanford University with goods that are not related to facilities or grounds maintenance, construction, demolition, installation of equipment (including furnishings) or products that contain regulated hazardous materials (including consumer products).

Asbestos: In accordance with California Health and Safety Code Section 25915 (Connelly Act) and the Cal/OSHA Asbestos Standard, 8 CCR Section 1529, Seller is hereby notified that in University facilities there are construction materials that are known to contain asbestos. In some areas, asbestos has been identified in one or more of the following construction products: spray-applied fireproofing; pipe, boiler, tank and air duct insulation; air duct seam tape; gaskets; roofing tar, felt and mastic; asbestos-cement pipe, wallboard, and shingles; plaster and acoustical treatments; gypsum board taping compound; vinyl and asphalt floor tile; vinyl sheet flooring; vinyl flooring, base cove, and ceiling tile adhesive; caulking and glazing compound; acoustic ceiling and wall tile; lab fume hood liners, exhaust ducts and counter tops; and fire-rated door core insulation.

Seller shall not disturb building materials and shall stop work and report any inadvertent disturbance of such materials immediately to Stanford Environmental Health and Safety at 650-725-9999. Unless specifically qualified to do so, Seller shall not enter an area that is posted with warning signs or labels indicating the presence of chemical, bio-hazardous or radioactive materials or equipment or areas that may have residual contamination from such materials.

Proposition 65 Notice: Under California Health and Safety Code Sections 25249.5 through 25249.13, asbestos, lead, mercury and polychlorinated biphenyls have been listed as chemicals known to the State of California to cause cancer or reproductive harm. Seller will be working in areas in which some or all of these materials may be present. This notice

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constitutes the warning of the presence of a chemical known to cause cancer or reproductive harm required by Proposition 65. It is Seller's duty to follow all requirements of Proposition 65.

27. STANFORD UNIVERSITY SEXUAL HARASSMENT POLICY FOR CONTRACTORS

Persons who work on Stanford University projects under contract, including supply vendors, must comply with the provisions of the University's Sexual Harassment policy. Stanford defines Sexual Harassment as: "Unwelcome sexual advances, requests for sexual favors, and other visual, verbal or physical conduct of a sexual nature, between persons of the same or different gender, constitute sexual harassment when: (1) It is implicitly or explicitly suggested that submission to or rejection of the conduct will be a factor in academic or employment decisions or evaluations, or permission to participate in a University activity; or (2) The conduct, whether subtle or blatant, has the purpose or effect of interfering with an individual's academic or work performance by creating an intimidating, hostile or offensive academic, work or student living environment, such as persistent and unwanted communication of a sexual nature (e.g., in person, by phone, text, email, via social media) and applies to one incident if sufficiently severe or repeated behaviors over time.

For information, consultation, advice or to lodge a complaint, contact the Sexual Harassment Policy Office at 556 O'Connor Lane, Griffin Drell House, Room 101 Stanford, CA 94305-8210, (650) 724-2120; email to: harass@stanford.edu; website: <http://harass.stanford.edu>.

If Stanford determines that any Stanford employee, student, agent, representative or associate is being sexually harassed by a Contractor employee or subcontractor, the Contractor will immediately remove the employee or subcontractor from any and all Stanford University projects under contract. Contractors must operate in accordance with all federal, state and local laws and regulations, as well as Stanford's Code of Conduct which can be found at: <https://adminguide.stanford.edu/1-1-1>.

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SERVICES

1. DEFINITIONS

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2. EFFECTIVE DATE

The effective dates of this Purchase Contract shall be as stated on the individual Purchase Order.

3. SCHEDULE; LOCATION

The schedule for performance under this Purchase Contract shall be as stated on the individual Purchase Order. The services shall be performed at Stanford University or at a location designated by the University.

4. ACCEPTANCE OF THE PURCHASE CONTRACT BY CONTRACTOR; RIGHTS AND DUTIES

The Purchase Contract is hereby accepted on the terms set forth herein. Terms in any form which are in addition to or not identical with these Terms will not become a part of any Purchase Contract unless Buyer specifically and expressly agrees in writing that such other terms are accepted. By performing under this Purchase Contract or any part hereof, Contractor agrees to and accepts all the provisions of the Purchase Contract and agrees to fully perform. The rights and duties of the Parties shall be subject to and governed by these Terms.

5. SALES AND OTHER TAXES

Unless otherwise specified herein, Contractor agrees that the price quoted herein includes all federal, state and local sales, use, excise, transaction, and other taxes, fees and/or assessments.

6. ASSURANCE

If at any time Buyer in good faith determines that it questions Contractor's ability or intent to perform, then Contractor agrees to provide Buyer with written assurance fully satisfactory to Buyer, in Buyer's sole discretion, of Contractor's ability and intent to fully perform. Such assurance shall be provided within the time and in the manner specified by Buyer. Contractor shall immediately notify Buyer of any circumstance which may cause Contractor to fail to fully perform. Upon Buyer's good faith determination that Contractor cannot or will not perform, then Buyer may deem this Purchase Contract to be breached by Contractor (unless performance is excused as provided below) and may re-procure from other sources.

7. ASSIGNMENT

Contractor shall neither assign any right nor delegate any duty without the prior written consent of Buyer. Notwithstanding any notice of assignment, Buyer's tender of payment to the Contractor named herein or to any person reasonably believed by Buyer to be entitled to payment shall fully satisfy Buyer's obligation to pay, and in no event shall Buyer be obligated to pay additional sums or be liable for any damages due to failure to pay the correct party.

8. EXCUSE

Contractor shall be excused for any nonperformance due principally to circumstances which are both beyond its control and not foreseeable, but in no event shall Contractor be excused for any inability to obtain goods or services necessary for Contractor's performance, nor for any labor dispute involving employees of Contractor,

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Buyer, any subcontractor of either, any carrier, or any other person.

9. NOTICE OF LABOR DISPUTES

Whenever an actual or potential labor dispute delays or threatens to delay the performance of this order, Contractor shall immediately notify Buyer in writing, presenting all relevant information concerning the dispute and its background.

10. STANDARD OF PERFORMANCE

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

11. TERMINATION

Buyer may, by written notice, terminate this Purchase Contract, in whole or in part, for failure of Contractor to perform any of the provisions. If the Purchase Contract is terminated, Contractor shall be liable for all damages, including without limitation any incremental cost of re-procuring similar services. In the event of termination, the University shall be liable only for payment in accordance with the payment provisions of this Agreement for all Services performed prior to the effective date of termination. In the event that Contractor terminates under this provision, the University may, at its sole discretion, require that Contractor complete the Services in progress and such completed Services will be subject to approval by the University before payment is made, such approval not to be unreasonably withheld.

12. CHANGE OR CANCELLATION FOR CONVENIENCE

Buyer shall be obligated to pay Contractor only for Services described herein. Any additional services must be approved in writing by Buyer. Buyer may, without invalidating this Purchase Contract, make changes to the Services to be provided hereunder. If such changes cause an increase or decrease in the cost or time required for performance of the Services, an equitable adjustment shall be made in compensation and/or period of performance, and this Purchase Contract shall be amended accordingly in writing. Buyer by written notice may change or terminate all or any part of this Purchase Contract for Buyer's convenience. If such a change results in an increase or decrease in costs to be incurred or time needed to complete performance of this Purchase Contract, then Buyer and Contractor will make a fair and equitable modification of their rights and obligations under this agreement, provided however that Buyer will not compensate Contractor for any services not performed by the date of such change or termination.

13. CONFLICT OF INTEREST

(a) Buyer's policy requires avoidance of real or apparent conflict of interests. No employee, officer or agent of Buyer shall knowingly participate in the drafting, selection, award or administration of a Request for Proposal, Request for Quotation, or Purchase Contract with Contractor if Buyer, or any member of Buyer's immediate family, or Buyer's business or financial interest, has a material financial interest in Contractor, or is negotiating or has any arrangement concerning prospective employment with Contractor.

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- (b) No officer, employee or agent of Buyer shall either solicit or accept gratuities, favors or anything of monetary value from Contractor, including any contingent fee.
- (c) If Contractor has reason to believe any officer, employee or agent of Buyer has violated any provision of this paragraph, Contractor immediately shall notify Buyer of the suspected violation by sending notice thereof to Internal Audit, Stanford University, Stanford, CA 94305, explaining the situation in full. Contractor's failure to notify Buyer shall be a material breach of this agreement and Buyer, at its option, may terminate this agreement.

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Contractor acknowledges the following facts and agrees that this Purchase Contract will be executed and interpreted with regard thereto: Buyer is a nonprofit charitable trust and therefore does not accept risks that normally would be acceptable to a commercial enterprise; Buyer is wholly or partially self-insured for liability and property damage; time is of the essence for Buyer and delays may cause multi-million dollar losses due to loss of contract funds and/or inability to conduct or complete academic courses and/or research projects and/or patient care activities. This Purchase Contract shall not be modified, supplemented, qualified or interpreted by any usage of trade unless actually known to the personnel of Buyer who are involved in this Purchase Contract.

15. INDEMNITY AND WAIVER

Contractor agrees to forever indemnify, defend and hold Stanford harmless from and against, and to waive any and all claims against Stanford for, any and all claims, suits and demands of liability loss or damage whatsoever, including attorneys' fees, whether direct or consequential, on account of: (1) any loss, injury, death or damage to any person or property (including without limitation all agents and employees of Contractor and Stanford and all property owned by, leased to or used by either Contractor or Stanford, or both) or (2) any loss or damage to business or reputation or privacy of any person, arising in whole or in part in any way from, connected to, or related to Contractor's performance, and regardless of whether such loss, injury, death or damage to person or property results in whole or in part from (a) the negligence or omission of Stanford, (b) any product liability of Stanford or any person, or (c) any strict liability of Stanford or any person. There are excluded from the above indemnity and waiver provisions any such claims, suits and demands of liability, loss or damage resulting solely from Stanford's gross recklessness, active negligence, or willful intent to injure. As used in this indemnity and waiver provision, and for purposes of Contractor's insurance, "Stanford" shall be deemed to include Stanford University, its Trustees, Directors, officers, employees, faculty, students, agents, affiliated organizations and their insurance carriers, if any. Contractor, at its expense, shall further defend, indemnify and hold harmless the University, its trustees, officers, employees, agents, and students from and against any and all claims and demands which may be made to the extent that it is based on a claim that any Services furnished hereunder infringed a patent, copyright, trademark, service mark, trade secret, or other legally protected proprietary right. Contractor shall pay all costs, fees, and damages which may be incurred by University for any such claim or action or the settlement thereof.

16. INSURANCE

Unless more specific insurance provisions are attached, the following shall be required of Contractor:

1. Commercial General Liability (bodily injury, property damage, personal injury) with a single limit of not less than \$2,000,000 for a single occurrence;
2. Automobile Liability insurance, with a single limit of not less than \$1,000,000 for a single occurrence.

Commercial General Liability and Automobile Liability insurance policies shall include the following provisions:

- Additional Insureds: The Board of Trustees of the Leland Stanford Junior University, its officers, agents,

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- representatives, students, employees and volunteers shall be included as additional insureds by endorsement.
- **Primary Coverage:** Above insurance shall be primary as respects all other insurance or self-insurance in force. Stanford University and/or Stanford Hospital and Clinics insurance or self-insurance shall be excess and noncontributory.
 - **Cancellation Notice:** Thirty (30) days' prior written notice of cancellation or material change in the insurance must be given to the University.
 - **Waiver of Subrogation:** Contractor and Contractor's insurance companies waive their rights to subrogation against the above named insureds by endorsement.

Worker's Compensation insurance and employer's liability insurance must cover all persons whom the Contractor may employ in carrying out the services hereunder. Worker's compensation insurance will be in accordance with the Worker's Compensation Law of the State of California.

17. USE OF UNIVERSITY TRADEMARKS

Contractor agrees not to use University's name or other trademarks (together referred to herein as the "Marks"), or the name or trademarks of any related organization, or to quote the opinion of any of University's employees or agents ("Quotes"), either in writing or orally, without the prior written consent of the University's Assistant Vice President of Business Development. This prohibition includes, but is not limited to, use of the Marks or Quotes in press releases, advertising, marketing materials, other promotional materials, presentations, case studies, reports, websites, application or software interfaces, and other electronic media.

18. APPLICABLE LAW, ETC.

This Purchase Contract and the performance hereunder shall be construed according to the law of California as applied to contracts made and performed within California. The parties hereto agree that any dispute arising under this Purchase Contract shall be resolved in the courts of Santa Clara County or in the Federal District Court for the Northern District of California, Northern Branch, and Buyer and Contractor hereby submit themselves to the personal jurisdiction of said courts. All rights and remedies of Buyer and Contractor shall be cumulative.

19. COMPLETE AGREEMENT

This Purchase Contract (including these Terms and Conditions), any specifications or additional terms and conditions attached or referenced, and the material described in paragraph 11 above ("Warranty") constitute the entire agreement between Buyer and Contractor. Contractor's quotation/proposal is incorporated if specifically stated in the Purchase Contract. No other terms or conditions are binding on Buyer unless accepted by it in writing. In the event of a conflict between this Purchase Contract and terms and conditions stated in Contractor's quotation/proposal, the terms of this Purchase Contract shall take precedence.

20. PURCHASE ORDER NUMBER

Contractor will use best efforts to include Buyer's 8-character Purchase Order number as part of the delivery address on all goods and services delivered to Buyer. Failure to do so will cause Buyer significant delivery difficulties and delays.

21. LIVING WAGE

This Purchase Order is subject to the University's "Living Wage and Benefit Guidelines for Stanford Contractors ("The Guidelines"). Supplier represents and warrants that it will comply with The Guidelines as amended by the University from time to time. Supplier acknowledges that failure to comply with The Guidelines will be deemed a material breach of this Purchase Order. Supplier agrees to provide in a timely manner upon University's written request, but in any event not more than 10 business days, written evidence of compliance satisfactory to the

Purchase Order Terms and Conditions **SERVICES**

University. The Guidelines may be found at:
http://fingate.stanford.edu/suppliers/dobusiness/policy_living_wage.html.

22. ANTI-TRUST VIOLATIONS

Buyer and Contractor recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the Buyer. Therefore, Contractor hereby assigns to the Buyer any and all claims for such overcharges as to goods and services purchased in connection with this order, except as to overcharges not passed on to the Buyer resulting from antitrust violations commencing after the date of this Purchase Contract or other event establishing the price under this Purchase Contract.

23. ACCESS TO RECORDS

Buyer shall have access to and the right to examine any directly relevant books, documents, papers, and records of Contractor involving transactions related to this Purchase Order until the expiration of three (3) years after final payment under this Contract. Contractor agrees to keep and maintain such records for such period of time. If this agreement is for the provision of services with a value of \$10,000 or more within a 12-month period, then until the expiration of four (4) years after the furnishing of any services pursuant to this agreement, Contractor shall make available, upon written request from the Secretary of the U.S. Department of Health and Human Services or from the U.S. Comptroller, such books, documents and records of Contractor as are necessary to certify the nature and extent of the reasonable cost of services to Buyer. If Contractor enters into an agreement with any related organization to provide services pursuant to this agreement with a value of \$10,000 or more within a 12-month period, such agreement shall contain a clause identical in content to the first sentence of this paragraph. This paragraph shall be of force and effect only to the extent required by P.L. 96-449.

24. CODES AND REGULATIONS

All Services performed under this Agreement shall conform to all applicable local, county, state and federal codes and regulations. Unless otherwise provided, the codes and regulations referred to above shall be the latest edition or revision in effect as of the effective date of this Agreement. Nothing in this Agreement shall be construed as requiring or permitting Services that are contrary to the above-referenced codes and regulations.

Contractor further certifies its compliance with the California Labor Code, including Section 2810 therein. Wherever Contractor uses, directly or through subcontract, non-union labor for performance of this Agreement, Contractor will provide to University the data required in the California Labor Code Section 2810 Checklist, which is available [FMS website]. Contractor will, during performance of the Agreement, keep the University apprised of any changes to the provided information. This article 24 only applies to janitorial and security guard contractors, and any construction-related or trade services.

25. GOVERNMENT REQUIRED CLAUSES

All Federal Grant and/or subcontract purchases are subject to the terms and conditions defined in Public Law 87-653 (Truth in Negotiations) and the Copeland "Anti-Kickback" Act. In addition, the following clauses are incorporated herein by reference according to the amount of this order, and references to Government (or United States) and this Purchase Contract shall be interpreted as necessary to apply to the U.S. Government or the Buyer and Contractor, respectively.

FAR Number and Title of Clause, Regardless of Amount:

52.203.11	Certification & Disclosure Re: Payments to Influence Certain Federal Transactions
52.222.4	Contract Work Hours and Safety Standards Act
52.225.13	Restrictions on Certain Foreign Purchases
52.227.10	Filing of Patent Applications-Classified Subject Matter

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52.227.11/12/13	Patent Rights
52.247.63	Preference for U.S. Flag Air Carriers
52.247.64	Preference for Privately Owned U.S. Flag Commercial Vessels
252.227.7034	DFAR Patents- Subcontracts DOD only
252.227.7039	DFAR Patents Reporting Subject Inventions DOD only
52.222.21	Prohibition of Non-Segregated Facilities
52.222.26	Equal Opportunity
52.222.35	Affirmative Action for Disabled Veterans of the Vietnam Era
52.222.36	Affirmative Action for Workers with Disabilities
52.222.37	Employment Reports on Disabled Veterans of the Vietnam Era

FAR Number and Title of Clause, Orders over \$100,000: all of the above clauses plus:

52.203.6	Restrictions on Subcontractor Sales to the Government
52.203.7	Anti-Kickback Procedures
52.203.12	Limitation on Payments to Influence Certain Federal Transactions
52.215.2	Audit and Records- Negotiation, Alternative II
52.219.8	Utilization of Small Business Concerns
52.227.1	Authorization and Consent Alternative I
52.227.2	Notice and Assistance Regarding Patent and Copyright Infringement
42 U.S.C. 7401, et. seq.	Clean Air Act
33 U.S.C. 1251, et. seq.	Federal Water Pollution Control Act

FAR Number and Title of Clause, Orders over \$500,000: all of the above clauses plus:

52.219.9	Small Business Subcontracting Plan
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FAR Number and Title of Clause, Orders over \$550,000: all of the above clauses plus:

52.215.12/13	Subcontractor Cost or Pricing Data- Modifications
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26. DATA

Contractor agrees to handle data and other information ("Data") with a standard of care at least as rigorous as that specified in Stanford University's guidelines for Data Classification, Access, Transmittal and Storage ("Guidelines"), located at http://securecomputing.stanford.edu/dataclass_chart.html, and Stanford University's policies concerning information security, which can be found at <https://adminguide.stanford.edu/6-3-1> and that are hereby incorporated by reference into the Purchase Contract. Prior to performing services which require access to, transmission of and/or storage of Stanford University's Prohibited or Restricted information, Contractor will provide a third party certification verifying its ability to comply with the Guidelines. Contractor will not copy, cause to be copied, use, or disclose Data received from or on behalf of Stanford University except as permitted or required by the Purchase Contract, as required by law, or as otherwise authorized by Buyer in writing. Contractor will give immediate notice to Buyer of any actual or suspected unauthorized disclosure of, access to or other breach of the Data. In the event of actual or suspected unauthorized disclosure of, access to, or other breach of the Data, Contractor will comply with all state and Federal laws and regulations related to such breach, and will cooperate with Buyer in fulfilling its legal obligations. Contractor will indemnify Buyer for its violation of this paragraph, including but not limited to the cost of providing appropriate notice to all required parties and credit monitoring, credit rehabilitation, or other credit support services to individuals with information impacted by the actual or suspected breach. Upon termination or expiration of the Purchase Contract, Contractor will return or, at Buyer's election, destroy, the Data within 30 days from the conclusion of the Purchase Contract. This paragraph and its indemnity will survive the termination of the Purchase Contract.

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SERVICES

27. INTELLECTUAL PROPERTY

Ownership of technical data produced by or for Contractor or any of its employees in the course of performing the services hereunder and of all proprietary rights therein shall vest in and shall be delivered, upon request, to Buyer. For the purposes hereof, the term "technical data" means technical writing, pictorial reproductions, drawings or other graphical representations, tape recordings, reports, calculations, tables and documents of technical nature, whether copyrightable or copyrighted, which are made in the course of performing the services as specified. Contractor may, however, use data prepared or produced under this Purchase Contract, where such data is otherwise made publicly available or with the specific approval of Buyer.

28. COMPENSATION

The Buyer shall pay Contractor the Fee set forth in Contractor's quotation/proposal referenced herein for services satisfactorily performed by Contractor in accordance with this Purchase Contract. If Contractor's Fee is stated as an hourly rate, fractional hours shall be compensated for on a prorated basis. Time necessarily spent in local travel shall not be considered working time. Hours expended by Contractor shall be documented by weekly timesheets. Timesheets shall be provided to the Buyer, upon request. Hourly rates shall include Contractor's fees, cost of operation, including benefits attributable to payroll, overhead, salaries and other administrative expenses. Contractor and the Buyer agree that the Maximum Cost for Contractor's Fees set forth in this Purchase Contract shall not be exceeded without prior written approval by the Buyer and a change order to the Purchase Contract has been issued. The Buyer shall reimburse Contractor on account of expenses paid or incurred by Contractor for travel beyond a 50-mile radius from the Stanford University campus. The amount and extent of reimbursement for travel shall be in accordance with the provisions of Stanford University's Guide Memorandum Number 5-4-2, which can be viewed at <https://adminguide.stanford.edu/5-4-2>. The Buyer will also reimburse Contractor on account of incurred costs for reproduction services as may be required in the performance of this Purchase Contract, and for such purchased services as may be approved in advance by the Buyer, at Contractor's cost. The amount for Contractor's reimbursable expenses, if any, shall be included in Contractor's quotation/proposal. The Total Not to Excess Amount stated on the Purchase Order shall constitute the limit of compensation due to Contractor under this Agreement.

29. PAYMENT

Contractor shall submit invoices for services, reimbursable expenses and additional services not more often than once per month to the person and/or office specified in the Purchase Order. If Contractor's Fee is stated as an hourly rate, supporting data to be attached to the invoice shall include payroll data identifying each individual, the position, grade or title, number of hours worked, applicable hourly rate and dates worked. Invoices for reimbursable expenses shall be supported by receipts for material, equipment, rental or other services or charges as appropriate to this Purchase Contract. Each invoice shall contain a summary of the total amount of previous invoices, this invoice amount, and the unbilled balance of this Purchase Contract and its approved Change Orders. If the Contractor believes that any amount included in a current invoice is outside the scope of this Purchase Contract, Contractor shall identify the amount and the nature of the work. In addition, the Contractor shall, on a monthly basis, review its progress on the project. If the Contractor, having performed said review, has reason to anticipate a need for additional funding, it shall indicate, on an invoice attachment, the reasons for the anticipated funding increase, its best estimate of the total additional costs and the time impact, if any, on the project completion schedule. Any failure by the Contractor to comply with this section shall be cause for the Buyer to refuse compensation under section 28 of this Purchase Contract. Upon submission by Contractor of a valid and fully-supported invoice, for Contractor's Services, and approved by the Buyer, the Buyer will, within 30 calendar days, pay Contractor for Services therefore performed or rendered. Invoices for Contractor's Services are to be made out to Stanford University and submitted for approval, to the address stated on the face of this Purchase Contract. The Purchase Order Number shall be referenced on each invoice.

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30. ENVIRONMENTAL HEALTH AND SAFETY

This section applies to all Contractors who supply Stanford University with services that are not related to facilities or grounds maintenance, construction, demolition, installation of equipment (including furnishings) or products that contain regulated hazardous materials (including consumer products).

Asbestos: In accordance with California Health and Safety Code Section 25915 (Connelly Act) and the Cal/OSHA Asbestos Standard, 8 CCR Section 1529, Contractor is hereby notified that in University facilities there are construction materials that are known to contain asbestos. In some areas, asbestos has been identified in one or more of the following construction products: spray-applied fireproofing; pipe, boiler, tank and air duct insulation; air duct seam tape; gaskets; roofing tar, felt and mastic; asbestos-cement pipe, wallboard, and shingles; plaster and acoustical treatments; gypsum board taping compound; vinyl and asphalt floor tile; vinyl sheet flooring; vinyl flooring, base cove, and ceiling tile adhesive; caulking and glazing compound; acoustic ceiling and wall tile; lab fume hood liners, exhaust ducts and counter tops; and fire-rated door core insulation.

Contractor shall not disturb building materials and shall stop work and report any inadvertent disturbance of such materials immediately to Stanford Environmental Health and Safety at 650-725-9999. Unless specifically qualified to do so, Contractor shall not enter an area that is posted with warning signs or labels indicating the presence or chemical, bio-hazardous or radioactive materials or equipment or areas that may have residual contamination from such materials.

Proposition 65 Notice: Under California Health and Safety Code Sections 25249.5 through 25249.13, asbestos, lead, mercury and polychlorinated biphenyls have been listed as chemicals known to the State of California to cause cancer or reproductive harm. Contractor will be working in areas in which some or all of these materials may be present. This notice constitutes the warning of the presence of a chemical known to cause cancer or reproductive harm required by Proposition 65. It is Contractor's duty to follow all requirements of Proposition 65.

31. STANFORD UNIVERSITY SEXUAL HARASSMENT POLICY FOR CONTRACTORS

Persons who work on Stanford University projects under contract must comply with the provisions of the University's Sexual Harassment policy. Stanford defines Sexual Harassment as: "Unwelcome sexual advances, requests for sexual favors, and other visual, verbal or physical conduct of a sexual nature, between persons of the same or different gender, constitute sexual harassment when: (1) It is implicitly or explicitly suggested that submission to or rejection of the conduct will be a factor in academic or employment decisions or evaluations, or permission to participate in a University activity; or (2) The conduct, whether subtle or blatant, has the purpose or effect of interfering with an individual's academic or work performance by creating an intimidating, hostile or offensive academic, work or student living environment, such as persistent and unwanted communication of a sexual nature (e.g., in person, by phone, text, email, via social media) and applies to one incident if sufficiently severe or repeated behaviors over time. If Stanford determines that any Stanford employee, student, agent, representative or associate is being sexually harassed by a Contractor employee or subcontractor, the Contractor will immediately remove the employee or subcontractor from any and all Stanford University projects under contract. Contractors must operate in accordance with all federal, state and local laws and regulations, as well as Stanford's Code of Conduct which can be found at: <https://adminguide.stanford.edu/1-1-1>. For information, consultation, advice or to lodge a complaint, contact the Sexual Harassment Policy Office at 556 O'Connor Lane, Griffin Drell House, Room 101 Stanford, CA 94305-8210, (650) 724-2120; email to: harass@stanford.edu; website: <http://harass.stanford.edu>.

Purchase Order Terms and Conditions

SMALL CONSTRUCTION PROJECTS

1. DEFINITIONS

"Owner" or "Stanford University" means the Board of Trustees of the Leland Stanford Junior University.

"Contractor" means the person or entity supplying the services under the purchase contract ("Purchase Contract" or "Purchase Order"), and includes all Contractor's sales or other agents, subcontractors, employees and distributors thereof. However, specific federal government clauses referenced below, concerning the U.S. Government's right to patents or to audit or inspect records, mean both the U.S. Government and Stanford University.

2. ACCEPTANCE OF THE PURCHASE CONTRACT BY CONTRACTOR; RIGHTS AND DUTIES

The Purchase Contract is hereby accepted on the terms set forth herein. Terms in any form which are in addition to or not identical with these Terms will not become a part of any Purchase Contract unless Owner specifically and expressly agrees in writing that such other terms are accepted. By performing under this Purchase Contract or any part hereof, Contractor agrees to and accepts all the provisions of the Purchase Contract and agrees to fully perform. The rights and duties of the Parties shall be subject to and governed by these Terms.

3. ACCEPTANCE BY OWNER

Owner shall have a reasonable time (but not less than 30 days) after receipt to inspect the services tendered by Contractor. Owner at its option may reject all or any portion of such services which do not in Owner's sole discretion comply in every respect with each and every term and condition of this Purchase Contract. Owner may elect to reject any or all services tendered even if only a portion thereof is nonconforming. If Owner elects to accept nonconforming services, Owner, in addition to its other remedies, shall be entitled to deduct a reasonable amount from the price to compensate Owner for the nonconformity. Any acceptance by Owner, even if non-conditional, shall not be deemed a waiver or settlement of any defect in such services.

4. CONTRACT DOCUMENTS

The Contract Documents consist of those documents specified in the Purchase Order, which are incorporated herein by reference, and the following documents, which are attached hereto and incorporated herein. If anything in the Contract Documents is inconsistent with these Terms and Conditions, these Terms and Conditions shall govern.

- a. Contractor's Proposal/Bid/Quote, if applicable
- b. Project-specific Drawings, Specifications, Addenda and/or Amendments incorporated by reference only;
- c. [California Labor Code Section 2810 Checklist](#)
- d. [General Conditions for Construction Projects](#)
- e. [Special Conditions for Water Discharge Management and Environmental Pollution Prevention](#)
- f. [Environmental Health & Safety](#)
- g. [Affirmative Action Special Conditions](#)
- h. [Facilities Design Guidelines – Tree and Shrub Protection \(Section 01532\)](#)
- i. [Stanford Area Truck Routes](#)

5. TERM; SCHEDULE

The Term of this Purchase Contract shall be stated in the Purchase Order. The schedule for the work shall also be stated in the Purchase Order, or in a document attached to the Purchase Order and accepted by Owner.

6. DESIGN BUILD PROJECTS

Whenever design-build services are required under the Scope of Work described in a Purchase Order, Contractor shall design, construct and manage construction as directed of the Project for the Owner. Design services shall be procured from licensed design professionals. "Design Work" includes the design of the Project together with the

Purchase Order Terms and Conditions

SMALL CONSTRUCTION PROJECTS

Drawings and Specifications necessary to complete construction of the Project, including all work and services performed by Contractor.

7. ASSURANCE

The Contractor desires to perform the Services, and represents to Owner that it has the economic viability, staffing capacity and requisite skills to fully and completely perform the Services, that it will adhere to project practices at Stanford, that it will visit and carefully inspect the sites and premises of the project, and it will fully satisfy itself concerning any and all existing conditions prior to submitted a bid or estimate for the project. Contractor further agrees to use its best efforts at all times to furnish sufficient labor and materials, and to perform the project in the best, most expeditious and most economical manner consistent with the Owner's interests. If at any time Owner in good faith determines that it questions Contractor's ability or intent to perform, then Contractor agrees to provide Owner with written assurance fully satisfactory to Owner, in Owner's sole discretion, of Contractor's ability and intent to fully perform. Such assurance shall be provided within the time and in the manner specified by Owner. Contractor shall immediately notify Owner of any circumstance which may cause Contractor to fail to fully perform. Upon Owner's good faith determination that Contractor cannot or will not perform, then Owner may deem this Purchase Contract to be breached by Contractor and may re-procure from other sources.

8. ASSIGNMENT

Contractor shall neither assign any right nor delegate any duty without the prior written consent of Owner. Notwithstanding any notice of assignment, Owner's tender of payment to the Contractor named herein or to any person reasonably believed by Owner to be entitled to payment shall fully satisfy Owner's obligation to pay, and in no event shall Owner be obligated to pay additional sums or be liable for any damages due to failure to pay the correct party.

9. EXCUSE

Contractor shall be excused for any nonperformance due principally to circumstances which are both beyond its control and not foreseeable, but in no event shall Contractor be excused for any inability to obtain goods or services necessary for Contractor's performance, nor for any labor dispute involving employees of Contractor, Owner, any subcontractor of either, any carrier, or any other person.

10. NOTICE OF LABOR DISPUTES

Whenever an actual or potential labor dispute delays or threatens to delay the performance of this order, Contractor shall immediately notify Owner in writing, presenting all relevant information concerning the dispute and its background.

11. WARRANTY

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

12. CHANGE OR CANCELLATION FOR CONVENIENCE

Purchase Order Terms and Conditions

SMALL CONSTRUCTION PROJECTS

Owner shall be obligated to pay Contractor only for Services described herein. Any additional services must be approved in writing by Owner. Owner may, without invalidating this Purchase Contract, make changes to the Services to be provided hereunder. If such changes cause an increase or decrease in the cost or time required for performance of the Services, an equitable adjustment shall be made in compensation, period of performance, or both, and this Purchase Contract shall be amended accordingly, in writing. Owner by written notice may change or terminate all or any part of this Purchase Contract for Owner's convenience. If such a change results in an increase or decrease in costs to be incurred or time needed to complete performance of this Purchase Contract, then Owner and Contractor will make a fair and equitable modification of their rights and obligations under this agreement, provided however that Owner will not compensate Contractor for any services not performed by the date of such change or termination.

13. CONFLICT OF INTEREST

- a. Owner's policy requires avoidance of real or apparent conflict of interests. No employee, officer or agent of Owner shall knowingly participate in the drafting, selection, award or administration of a Request for Proposal, Request for Quotation, or Purchase Contract with Contractor if Owner, or any member of Owner's immediate family, or Owner's business or financial interest, has a material financial interest in Contractor, or is negotiating or has any arrangement concerning prospective employment with Contractor, unless such real or apparent conflict of interest has been disclosed in accordance with Stanford's Conflict of Interest policies and waived by the appropriate reporting authority.
- b. No officer, employee or agent of Owner shall either solicit or accept gratuities, favors or anything of monetary value from Contractor, including any contingent fee.
- c. If Contractor has reason to believe any officer, employee or agent of Owner has violated any provision of this paragraph, Contractor immediately shall notify Owner of the suspected violation by sending notice thereof to Internal Audit, Stanford University, Stanford, CA 94305, explaining the situation in full. Contractor's failure to so notify Owner shall be a material breach of this agreement and Owner, at its option, may terminate this agreement.

14. RECITALS AND INTERPRETATION

Contractor acknowledges the following facts and agrees that this Purchase Contract will be executed and interpreted with regard thereto: Owner is a nonprofit charitable trust and therefore does not accept risks that normally would be acceptable to a commercial enterprise; Owner is wholly or partially self-insured for liability and property damage; time is of the essence for Owner and that delays may cause multi-million dollar losses due to loss of contract funds and/or inability to conduct or complete academic courses and/or research projects and/or patient care activities. This Purchase Contract shall not be modified, supplemented, qualified or interpreted by any usage of trade unless actually known to the personnel of Owner who are involved in this Purchase Contract.

15. INDEMNITY AND WAIVER

Contractor agrees to indemnify, defend and hold Stanford harmless from and against, and to waive any and all claims against Stanford for, any and all claims, suits and demands of liability loss or damage whatsoever, including attorneys' fees, whether direct or consequential, (1) on account of any loss, injury, death or damage to any person or property (including without limitation all agents and employees of Contractor and Stanford and all property owned by, leased to or used by either Contractor or Stanford, or both) or (2) on account of any loss or damage to business or reputation or privacy of any person, arising in whole or in part in any way from Contractor's performance or in any way connected with or in any way related to, and regardless of whether such loss, injury, death or damage or person or property results in whole or in part from (a) the negligence or omission of Stanford, (b) any product liability of Stanford or any person, or (c) any strict liability of Stanford or any person. There are excluded from the above indemnity and waiver provisions any such claims, suits and demands of

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liability, loss or damage resulting solely from Stanford's gross recklessness, active negligence, or willful intent to injure. As used in this indemnity and waiver provision, and for purposes of Contractor's insurance, "Stanford" shall be deemed to include Stanford University, its Trustees, Directors, officers, employees, faculty, students, agents, affiliated organizations and their insurance carriers, if any. Contractor, at its expense, shall further defend, indemnify and hold harmless the University, its trustees, officers, employees, agents, and students from and against any and all claims and demands which may be made to the extent that it is based on a claim that any Services or products furnished hereunder infringed a patent, copyright, trademark, service mark, trade secret, or other legally protected proprietary right. Contractor shall pay all costs, fees, and damages which may be incurred by University for any such claim or action or the settlement thereof. This indemnity and waiver provision shall survive the expiration of the Purchase Order or Purchase Contract.

16. INSURANCE

Unless more specific insurance provisions are attached, the following shall be required of Contractor:

1. Commercial General Liability (bodily injury, property damage, personal injury) with a single limit of not less than \$2,000,000 for a single occurrence;
2. Automobile Liability insurance, with a single limit of not less than \$1,000,000 for a single occurrence.

Commercial General Liability, Automobile Liability and any Excess Insurance policies shall include the following provisions:

- Additional Insureds: The Board of Trustees of the Leland Stanford Junior University, its officers, agents, representatives, students, employees and volunteers shall be included as additional insureds by endorsement.
- Primary Coverage: Above insurance shall be primary as respects all other insurance or self-insurance in force. Stanford University and/or Stanford Hospital and Clinics insurance or self-insurance shall be excess and noncontributory.
- Cancellation Notice: Thirty (30) days' prior written notice of cancellation or material change in the insurance must be given to the University.
- Waiver of Subrogation: Contractor and Contractor's insurance companies waive their rights to subrogation against the above named insureds by endorsement.

Worker's Compensation insurance and employer's liability insurance must cover all persons whom the Contractor may employ in carrying out the services hereunder. Worker's compensation insurance will be in accordance with the Worker's Compensation Law of the State of California. Proof of insurance and required endorsements for Contractor and any sub-Contractors shall be submitted to and approved by Owner prior to commencement of Services.

17. USE OF UNIVERSITY TRADEMARKS

Contractor agrees not to use University's name or other trademarks (together referred to herein as the "Marks"), or the name or trademarks of any related organization, or to quote the opinion of any of University's employees or agents ("Quotes"), either in writing or orally, without the prior written consent of the University's Assistant Vice President of Business Development. This prohibition includes, but is not limited to, use of the Marks or Quotes in press releases, advertising, marketing materials, other promotional materials, presentations, photographs for commercial use, case studies, reports, websites, application or software interfaces, and other electronic media.

18. APPLICABLE LAW, ETC.

This Purchase Contract and the performance hereunder shall be construed according to the law of California as applied to contracts made and performed within California. The parties hereto agree that any dispute arising under this Purchase Contract shall be resolved in the courts of Santa Clara County or in the Federal District Court for the Northern District of California, Northern Branch, and Owner and Contractor hereby submit themselves to the

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personal jurisdiction of said courts. All rights and remedies of Owner and Contractor shall be cumulative.

19. CODES AND REGULATIONS

All Services performed under this Agreement shall conform to all applicable local, county, state and federal codes and regulations. Unless otherwise provided, the codes and regulations referred to above shall be the latest edition or revision in effect as of the effective date of this Agreement. Nothing in this Agreement shall be construed as requiring or permitting Services that are contrary to the above-referenced codes and regulations.

Contractor further certifies its compliance with the California Labor Code, including Section 2810 therein. Wherever Contractor uses, directly or through subcontract, non-union labor for performance of this Agreement, Contractor will provide to University the data required in the California Labor Code Section 2810 Checklist, which is available on the FMS website. Contractor will, during performance of the Agreement, keep the University apprised of any changes to the provided information. This article 24 only applies to janitorial and security guard contractors, and any construction-related or trade services.

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21. PURCHASE ORDER NUMBER

Contractor will use best efforts to include Owner's 8-character Purchase Order number as part of the delivery address on all goods and services delivered to Owner. Failure to do so will cause Owner significant delivery difficulties and delays.

22. LIVING WAGE

This Purchase Order is subject to the University's "Living Wage and Benefit Guidelines for Stanford Contractors ("The Guidelines"). Supplier represents and warrants that it will comply with The Guidelines as amended by the University from time to time. Supplier acknowledges that failure to comply with The Guidelines will be deemed a material breach of this Purchase Order. Supplier agrees to provide in a timely manner upon University's written request, but in any event not more than 10 business days, written evidence of compliance satisfactory to the University. The Guidelines may be found at:

http://fingate.stanford.edu/suppliers/dobusiness/policy_living_wage.html.

23. ACCESS TO RECORDS

Owner shall have access to and the right to examine any directly relevant books, documents, papers, and records of Contractor involving transactions related to this Purchase Order until the expiration of three (3) years after final payment hereunder. Contractor agrees to keep and maintain such records for such period of time. If this agreement is for the provision of services with a value of \$10,000 or more within a 12-month period, then until the expiration of four (4) years after the furnishing of any services pursuant to this agreement, Contractor shall make available, upon written request from the Secretary of the U.S. Department of Health and Human Services or from the U.S. Comptroller, such books, documents and records of Contractor as are necessary to certify the nature and extent of the reasonable cost of services to Owner. If Contractor enters into an agreement with any related organization to provide services pursuant to this agreement with a value of \$10,000 or more within a 12-month period, such agreement shall contain a clause identical in content to the first sentence of this paragraph. This

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paragraph shall be of force and effect only to the extent required by P.L. 96-449.

24. GOVERNMENT REQUIRED CLAUSES

All Federal Grant and/or subcontract purchases are subject to the terms and conditions defined in Public Law 87-653 (Truth in Negotiations) and the Copeland "Anti-Kickback" Act. In addition, the following clauses are incorporated herein by reference according to the amount of this order, and references to Government (or United States) and this Purchase Contract shall be interpreted as necessary to apply to the U.S. Government or the Owner and Contractor, respectively.

FAR Number and Title of Clause, Regardless of Amount:

52.203.11	Certification & Disclosure Re: Payments to Influence Certain Federal Transactions
52.222.4	Contract Work Hours and Safety Standards Act
52.225.13	Restrictions on Certain Foreign Purchases
52.227.10	Filing of Patent Applications-Classified Subject Matter
52.227.11/12/13	Patent Rights
52.247.63	Preference for U.S. Flag Air Carriers
52.247.64	Preference for Privately Owned U.S. Flag Commercial Vessels
252.227.7034	DFAR Patents- Subcontracts DOD only
252.227.7039	DFAR Patents Reporting Subject Inventions DOD only
52.222.21	Prohibition of Non-Segregated Facilities
52.222.26	Equal Opportunity
52.222.35	Affirmative Action for Disabled Veterans of the Vietnam Era
52.222.36	Affirmative Action for Workers with Disabilities
52.222.37	Employment Reports on Disabled Veterans of the Vietnam Era

FAR Number and Title of Clause, Orders over \$100,000: all of the above clauses plus:

52.203.6	Restrictions on Subcontractor Sales to the Government
52.203.7	Anti-Kickback Procedures
52.203.12	Limitation on Payments to Influence Certain Federal Transactions
52.215.2	Audit and Records- Negotiation, Alternative II
52.219.8	Utilization of Small Business Concerns
52.227.1	Authorization and Consent Alternative I
52.227.2	Notice and Assistance Regarding Patent and Copyright Infringement
42 U.S.C. 7401, et. seq.	Clean Air Act
33 U.S.C. 1251, et. seq.	Federal Water Pollution Control Act

FAR Number and Title of Clause, Orders over \$500,000: all of the above clauses plus:

52.219.9	Small Business Subcontracting Plan
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FAR Number and Title of Clause, Orders over \$550,000: all of the above clauses plus:

52.215.12/13	Subcontractor Cost or Pricing Data- Modifications
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25. DATA

Contractor agrees to handle data and other information ("Data") with a standard of care at least as rigorous as that specified in Stanford University's guidelines for Data Classification, Access, Transmittal and Storage ("Guidelines"), located at http://securecomputing.stanford.edu/dataclass_chart.html, and Stanford University's policies concerning information security, which can be found at <https://adminguide.stanford.edu/6-3-1> and which are hereby incorporated by reference into the Purchase Contract. Prior to performing services which require access

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to, transmission of and/or storage of Stanford University's Prohibited or Restricted information, Contractor will provide a third party certification verifying its ability to comply with the Guidelines. Contractor will not copy, cause to be copied, use, or disclose Data received from or on behalf of Stanford University except as permitted or required by the Purchase Contract, as required by law, or as otherwise authorized by Owner in writing. Contractor will give immediate notice to Owner of any actual or suspected unauthorized disclosure of, access to or other breach of the Data. In the event of actual or suspected unauthorized disclosure of, access to, or other breach of the Data, Contractor will comply with all state and Federal laws and regulations related to such breach, and will cooperate with Owner in fulfilling its legal obligations. Contractor will indemnify Owner for its violation of this paragraph, including but not limited to the cost of providing appropriate notice to all required parties and credit monitoring, credit rehabilitation, or other credit support services to individuals with information impacted by the actual or suspected breach. Upon termination or expiration of the Purchase Contract, Contractor will return or, at Owner's election, destroy, the Data within 30 days from the conclusion of the Purchase Contract. This paragraph and its indemnity will survive the termination of the Purchase Contract.

26. INTELLECTUAL PROPERTY

Ownership of technical data produced by or for Contractor or any of its employees in the course of performing the services hereunder and of all proprietary rights therein shall vest in and shall be delivered, upon request, to Owner. For the purposes hereof, the term "technical data" means technical writing, pictorial reproductions, drawings or other graphical representations, tape recordings, reports, calculations, tables and documents of technical nature, whether copyrightable or copyrighted, which are made in the course of performing the services as specified. Contractor may, however, use data prepared or produced under this Purchase Contract, where such data is otherwise made publicly available or with the specific approval of Owner.

27. COMPENSATION

The Owner shall pay Contractor the Fee set forth in Contractor's quotation/proposal referenced herein for services satisfactorily performed by Contractor in accordance with this Purchase Contract. If Contractor's Fee is stated as an hourly rate, fractional hours shall be compensated for on a prorated basis. Time necessarily spent in local travel shall not be considered working time. Hours expended by Contractor shall be documented by weekly timesheets. Timesheets shall be provided to the Owner, upon request. Hourly rates shall include Contractor's fees, cost of operation, including benefits attributable to payroll, overhead, salaries and other administrative expenses. If the Fee is set forth as a Lump Sum, such Fee shall be paid by Owner after completion of the project and acceptance by Owner. If the Fee is set forth as a progress payment, such Fee shall be paid in accordance with Article 9 of the General Conditions. Article 9 also applies to payments of Lump Sum and hourly fees. The person or department stated in the Purchase Order shall receive invoices compliant with all requirements herein. Contractor and the Owner agree that the Maximum Cost for Contractor's Fees set forth in this Purchase Contract shall not be exceeded without prior written approval by the Owner and a change order to the Purchase Contract has been issued.

28. PAYMENT

Contractor shall submit invoices for services, reimbursable expenses and additional services not more often than once per month. If Contractor's Fee is stated as an hourly rate, supporting data to be attached to the invoice shall include payroll data identifying each individual, the position, grade or title, number of hours worked, applicable hourly rate and dates worked. Invoices for reimbursable expenses shall be supported by receipts for material, equipment, rental or other services or charges as appropriate to this Purchase Contract. Each invoice shall contain a summary of the total amount of previous invoices, this invoice amount, and the unbilled balance of this Purchase Contract and its approved Change Orders. If the Contractor believes that any amount included in a current invoice is outside the scope of this Purchase Contract, Contractor shall identify the amount and the nature

Purchase Order Terms and Conditions

SMALL CONSTRUCTION PROJECTS

of the work. In addition, the Contractor shall, on a monthly basis, review its progress on the project. If the Contractor, having performed said review, has reason to anticipate a need for additional funding, it shall indicate, on an invoice attachment, the reasons for the anticipated funding increase, its best estimate of the total additional costs and the time impact, if any, on the project completion schedule. Any failure by the Contractor to comply with this section shall be cause for the Owner to refuse compensation under section 27 of this Purchase Contract. Upon submission by Contractor of a valid and fully-supported invoice, for Contractor's Services, and approved by the Owner, the Owner will, within 30 calendar days, pay Contractor for Services therefore performed or rendered. Invoices for Contractor's Services are to be made out to Stanford University and submitted for approval, to the address stated on the face of this Purchase Contract. The Purchase Order Number shall be referenced on each invoice.

29. STANFORD UNIVERSITY SEXUAL HARASSMENT POLICY FOR CONTRACTORS

Persons who work on Stanford University projects under contract must comply with the provisions of the University's Sexual Harassment policy. Stanford defines Sexual Harassment as: "Unwelcome sexual advances, requests for sexual favors, and other visual, verbal or physical conduct of a sexual nature, between persons of the same or different gender, constitute sexual harassment when: (1) It is implicitly or explicitly suggested that submission to or rejection of the conduct will be a factor in academic or employment decisions or evaluations, or permission to participate in a University activity; or (2) The conduct, whether subtle or blatant, has the purpose or effect of interfering with an individual's academic or work performance by creating an intimidating, hostile or offensive academic, work or student living environment, such as persistent and unwanted communication of a sexual nature (e.g., in person, by phone, text, email, via social media) and applies to one incident if sufficiently severe or repeated behaviors over time.

For information, consultation, advice or to lodge a complaint, contact the Sexual Harassment Policy Office at 556 O'Connor Lane, Griffin Drell House, Room 101 Stanford, CA 94305-8210, (650) 724-2120; email to: harass@stanford.edu; website: <http://harass.stanford.edu>.

If Stanford determines that any Stanford employee, student, agent, representative or associate is being sexually harassed by a Contractor employee or subcontractor, the Contractor will immediately remove the employee or subcontractor from any and all Stanford University projects under contract. Contractors must operate in accordance with all federal, state and local laws and regulations, as well as Stanford's Code of Conduct which can be found at: <https://adminguide.stanford.edu/1-1-1>.

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BUSINESS ASSOCIATE ADDENDUM

The following Business Associate Addendum is applicable in situations where the Seller has access to Protected Health Information to perform a Service on Stanford University's behalf:

This Addendum (the "Addendum") is entered into as of **the Purchase Order date**, and supplements and amends the terms of the «ProjName» (the "Agreement"), dated **the Purchase Order date** (The "Agreement Effective Date"), by and between The Board of Trustees of the Leland Stanford Junior University ("Covered Entity") and **Seller** ("Business Associate"). Covered Entity and Business Associate are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

Covered Entity wishes to disclose certain information to Business Associate pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (defined below). Both Parties are required to comply with the Health Information Technology Economic and Clinical Health ("HITECH") Act, as well as the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the privacy regulations promulgated pursuant to HIPAA, including, but not limited to, 45 C.F.R. Parts 160 and 164 Subpart E (the "Privacy Regulation"), and the security regulations promulgated pursuant to HIPAA, including, but not limited to 45 C.F.R. Parts 160 and 164 Subpart C (the "Security Regulation"), as may be amended from time to time. This Addendum sets forth the terms and conditions pursuant to which Protected Health Information, including electronic Protected Health Information will be handled by Business Associate and third parties during the term of the Agreement and after its termination. The Parties agree as follows:

1. DEFINITIONS

All capitalized terms shall have the meaning set forth in HITECH and regulations issued thereunder, HIPAA and regulations issued thereunder (including but not limited to the HIPAA Privacy and Security Rules), and applicable state privacy law, including but not limited to the Confidentiality of Medical Information Act (COMIA) and state breach notification laws (including but not limited to California Health and Safety Code § 1280.15 and Civil Code § 1798.82 et seq., as these may be amended from time to time).

Terms used but not otherwise defined in this Addendum shall have the same meaning as those terms in HITECH, HIPAA, the HIPAA Privacy Regulation or Security Regulation, or applicable state privacy and breach notification laws, as they are currently drafted and as they are subsequently updated, amended, or revised.

2. PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION

2.1 Services. Pursuant to the Agreement, Business Associate provides services ("Services") for Covered Entity that involve the use and disclosure of Protected Health Information. Except as otherwise specified herein, Business Associate may use all Protected Health Information directly necessary to perform its obligations under the Agreement, provided that such use does not violate HITECH, HIPAA or the Privacy or Security Regulation and such use is expressly permitted by this Addendum. In conducting activities under this Agreement that involve the use and/or disclosure of Protected Health Information, Business Associate shall limit the use and/or disclosure of Protected Health Information to the minimum amount of information necessary to accomplish the intended purpose of the use or disclosure. To the extent Business Associate is performing one of Covered Entity's obligations under HIPAA and HITECH, Business Associate agrees to comply with the legal requirements that apply to Covered Entity in the performance of such obligation. Moreover, Business Associate may disclose Protected Health Information for the purposes authorized by this Addendum only, (i) to its employees, Subcontractors (as defined below) and agents, in accordance with Section 3(g), (ii) as directed by Covered Entity in accordance with this Addendum, or (iii) as otherwise permitted by the terms of this Addendum including, but not limited to, Section 2.2 below. Any other use and/or disclosure not permitted or required by this Addendum ("Unauthorized Use and/or Disclosure") is

Purchase Order Terms and Conditions

BUSINESS ASSOCIATE ADDENDUM

prohibited.

- 2.2 **Business Activities of Business Associate.** Business Associate may use and disclose Protected Health Information if necessary for the proper management and administration of Business Associate or to meet its legal responsibilities; provided, however, that such Protected Health Information may be disclosed to third parties for such purposes only if the disclosures are required by law or Business Associate obtains assurances from the person to whom the information is disclosed that:
- a. the information will remain confidential;
 - b. the information will be used or further disclosed as required by law or for the purpose for which the information was disclosed to the person; and
 - c. the person will notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- 2.3 **Additional Activities of Business Associate.** In addition to using the Protected Health Information to perform the Services set forth in Section 2.1 of this Addendum, Business Associate may use Protected Health Information for Data Aggregation purposes for the Health Care Operations of Covered Entity only, if expressly authorized under the Agreement. Under no circumstances may Business Associate disclose Covered Entity's Protected Health Information to a third party pursuant to this Section 2.3 absent Covered Entity's explicit written authorization.
- 2.4 **Prohibition on Sale of Protected Health Information.** Business Associate agrees to comply with the prohibition of sale of Protected Health Information without authorization unless an exception under 45 C.F.R §164.508 applies.

3. RESPONSIBILITIES OF BUSINESS ASSOCIATE WITH RESPECT TO PROTECTED HEALTH INFORMATION

Business Associate hereby agrees to do the following:

- a. use and/or disclose the Protected Health Information only as permitted or required by this Addendum or as otherwise Required by Law. Business Associate shall not, without the prior written consent of Covered Entity, disclose any Protected Health Information on the basis that such disclosure is Required by Law without first notifying Covered Entity so that Covered Entity shall have an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such disclosure, Business Associate shall refrain from disclosing the Protected Health Information until Covered Entity has exhausted all alternatives for relief. Business Associate shall require reasonable assurances from third parties receiving Protected Health Information in accordance with Section 2.2 hereof that such third parties will provide Covered Entity with similar notice and opportunity to object before disclosing Protected Health Information on the basis that such disclosure is Required by Law.
- b. report to the designated Privacy Officer of Covered Entity, in writing, any breach or any Unauthorized Use and/or Disclosure of which Business Associate becomes aware as soon as possible, and at least within five (5) days of Business Associate's discovery of such Unauthorized Use and/or Disclosure. In the event of a Breach or Unauthorized Use or Disclosure that arises from the acts or omissions of Business Associate or its employees, Subcontractors, agents, or representatives, and that requires notification of government

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BUSINESS ASSOCIATE ADDENDUM

agencies and patients, Business Associate will cooperate fully with Covered Entity and will carry out the notification requirements subject to Covered Entity's prior approval of any written reports, unless Covered Entity elects to carry out the notifications.

- c. report to the designated Privacy Officer of Covered Entity, in writing, any Breach or any Security Incident of which it becomes aware as soon as possible, and at least within five (5) days of Business Associate's discovery of such Security Incident. In the event of a Breach or Unauthorized Use or Disclosure that arises from the acts or omissions of Business Associate or its employees, subcontractors, agents, or representatives, and that requires notification of government agencies and patients, Business Associate will cooperate fully with Covered Entity and will carry out the notification requirements subject to Covered Entity's prior approval of any written reports, unless Covered Entity elects to carry out the notifications.
- d. mitigate, to the greatest extent possible, any deleterious effects from any Unauthorized Use and/or Disclosure of Protected Health Information of which Business Associate becomes aware.
- e. mitigate, to the greatest extent possible, any deleterious effects from any Security Incident of which Business Associate becomes aware.
- f. comply with the Security Rule to maintain the security of the Protected Health Information including electronic Protected Health Information and to prevent Unauthorized Use and/or Disclosure of such Protected Health Information. Business Associate shall maintain and implement a comprehensive written information privacy and security program that complies with HITECH, HIPAA, and the regulations and guidance issued thereunder by the U.S. Department of Health and Human Services ("HHS"). Without limitation, this includes administrative, technical and physical safeguards that are appropriate to the size and complexity of Business Associate's operations and the nature and scope of its activities to reasonably and appropriately protect the privacy, confidentiality, integrity and availability of Protected Health Information. In addition to any safeguards required by law and as set forth in this Addendum, Business Associate shall use any and all appropriate safeguards to prevent Unauthorized Use or Disclosure of Covered Entity's Protected Health Information.
- g. require any person(s) to whom Business Associate delegates a function, activity, or service, or any person (s) who create, receive, maintain or transmit Protected Health Information ("Subcontractors") and agents that receive or use, or have access to, Protected Health Information to enter into a business associate agreement that, (i) complies with the HITECH and HIPAA, (ii) includes to the same restrictions, conditions and obligations concerning Protected Health Information that apply to Business Associate pursuant to this Addendum; (iii) not to subcontract or assign its rights and obligations under the Agreement without obtaining Business Associate's and Covered Entity's prior written consent; and (iv) ensures that all subcontractors of Business Associate's Subcontractor enter into Business Associate Agreements. Before allowing any subcontractor or agent that is not organized under the laws of any state within the United States ("Foreign Subcontractor") to use or disclose, or have access to, Protected Health Information, Business Associate shall obtain the prior written consent of Covered Entity, which consent may be withheld in Covered Entity's sole discretion. Notwithstanding anything to the contrary in the Agreement, and in addition to any other remedies available to Covered Entity under this Addendum, the Agreement or at law, if Business Associate breaches the terms of this Section 3.g. of this Addendum, Business Associate shall pay Covered Entity one hundred thousand dollars (\$100,000.000), representing reasonably pre-estimated liquidated damages and not a penalty.

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- h. make available all records, books, agreements, policies and procedures relating to the use and/or disclosure of Protected Health Information to the Secretary of the U.S. Department of Health and Human Services (or any officer or employee of HHS to whom the Secretary of HHS has delegated such authority) for purposes of determining Covered Entity's compliance with the Privacy Regulation and Security Regulation after the compliance dates, respectively, of those regulations, subject to attorney-client and other applicable legal privileges. Business Associate shall immediately notify Covered Entity upon receipt by Business Associate of any complaint or request for access by the Secretary of HHS and shall provide Covered Entity with a copy thereof as well as a copy of all materials disclosed pursuant thereto.
- i. upon reasonable prior written notice, make available during normal business hours at Business Associate's offices all records, books, agreements, policies and procedures relating to the use and/or disclosure of, and security of, Protected Health Information to Covered Entity for purposes of enabling Covered Entity to determine Business Associate's compliance with the terms of this Addendum.
- j. document such disclosures of Protected Health Information as necessary to enable Covered Entity to respond to an individual's request for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528, as it may be amended to comply with HITECH. Specifically, Business Associate shall maintain a record of all disclosures of Protected Health Information, including the date of the disclosure, the name and, if known, the address of the recipient of the Protected Health Information, a brief description of the Protected Health Information disclosed, and the purpose of the disclosure (including an explanation of the basis for such disclosure).
- k. within 10 days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an individual for an accounting of the disclosures of the individual's Protected Health Information in accordance with 45 C.F.R. § 164.528, as it may be amended to comply with HITECH. In the event that an individual requests an accounting of disclosures directly from Business Associate or its agents or Subcontractors, Business Associate must notify Covered Entity in writing within five (5) days of the request; Covered Entity shall be responsible for preparing and delivering to the individual any such accounting requested.
- l. subject to Section 6.3 below, return to Covered Entity or destroy, within 30 days of the termination of this Addendum and/or the Agreement, the Protected Health Information in its possession and retain no copies (which for purposes of this Addendum shall include, without limitation, destruction of all backup tapes).
- m. using or disclosing Protected Health Information, Business Associate agrees to comply with all applicable provisions of the HITECH Act and any implementing regulations adopted there under.

4. RESPONSIBILITIES OF BUSINESS ASSOCIATE WITH RESPECT TO HANDLING OF DESIGNATED RECORD SET

In the event that the Protected Health Information received by Business Associate pursuant to the Agreement constitutes a Designated Record Set, Business Associate hereby agrees to do the following:

- a. at the request of, and in the time and manner designated by Covered Entity, provide access to the Protected Health Information to Covered Entity for inspection or copying, to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.524. In the event that an individual requests access to Protected Health Information directly from Business Associate or its agents or Subcontractors, Business Associate must

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notify Covered Entity in writing within five (5) days of the request; Covered Entity shall be responsible for delivering to the individual the information he or she has requested.

- b. at the request of, and in the time and manner designated by Covered Entity, make any amendment(s) to the Protected Health Information that Covered Entity directs pursuant to 45 C.F.R. § 164.526. In the event that any individual requests an amendment of Protected Health Information directly from Business Associate or its agents or Subcontractors, Business Associate must notify Covered Entity in writing within five (5) days of such request; Covered Entity will then direct Business Associate to amend its Protected Health Information, as may be appropriate based on the individual's request.

5. REPRESENTATIONS AND WARRANTIES OF BUSINESS ASSOCIATE

Business Associate represents and warrants to Covered Entity that all of its employees, agents, representatives, Subcontractors and members of its Workforce, whose services may be used to fulfill obligations under the Agreement or this Addendum are or shall be appropriately informed of the terms of this Addendum.

6. TERM AND TERMINATION

- 6.1 **Term.** This Addendum shall become effective on the Agreement Effective Date and shall continue in effect until termination or expiration of the Agreement, subject to the provisions of Section 8.1, unless terminated as provided in this Section 6.
- 6.2 **Termination by Covered Entity.** As provided under 45 C.F.R. § 164.504(e)(2)(iii), Covered Entity may immediately terminate this Addendum and the Agreement if Covered Entity knows of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of Business Associate's obligations under the provisions of this Addendum. Alternatively, if Covered Entity has determined that Business Associate has breached a material term of this Addendum and does not immediately terminate the Agreement and this Addendum, then Covered Entity shall: (i) provide Business Associate written notice of the existence of an alleged material breach; and (ii) afford Business Associate an opportunity to cure the alleged material breach within 5 days. In the event that Business Associate does not cure the breach within 5 days, Covered Entity may terminate, the Agreement, if feasible (as determined by Covered Entity), or if termination is not feasible, report the problem to the Secretary of HHS.
- 6.3 **Effect of Termination.** Upon termination of the Agreement and this Addendum pursuant to this Section 6, Business Associate shall return or destroy all Protected Health Information that Business Associate and its agents and Subcontractors still maintain in any form. If such return or destruction is not feasible, then Business Associate will so notify Covered Entity in writing, and shall (a) extend any and all protections, obligations, limitations and restrictions contained in this Addendum to Protected Health Information retained by Business Associate, its agents and its Subcontractors after the termination of the Agreement and this Addendum, and (b) limit any further uses and/or disclosures to those purposes that make the return or destruction of the Protected Health Information infeasible.

7. INDEMNIFICATION

Business Associate agrees to indemnify, defend and hold harmless Covered Entity and its affiliated corporations and entities and their officers, agents and employees (collectively, Covered Entity's "Indemnities") against all actual and direct losses, liabilities, damages, claims, costs or expenses (including reasonable attorney's fees) they may suffer as the result of third party claims, demands, actions, investigations, settlements or judgments against them arising from or in connection with any breach of this Addendum or of any warranty hereunder or from any

Purchase Order Terms and Conditions

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negligence or wrongful acts or omissions, including failure to perform its obligations under the Privacy Regulation and Security Regulation, by Business Associate or its employees, directors, officers, Subcontractors, agents or other members of its Workforce. In addition, and without limiting the foregoing, in the event of a HITECH Breach that requires notification of government agencies and patients, Business Associate will cover all costs of complying with such legal requirements if the breach arises from actions or omissions of Business Associate or its employees, Subcontractors, representatives, or agents. To the extent that the Agreement contains a provision that limits Business Associate’s liability under the Agreement, Business Associate’s obligation to indemnify Covered Entity and its Indemnitees under this Section 7 shall be excluded from such limitation of liability. Business Associate’s obligation to indemnify Covered Entity and its Indemnitees shall survive the expiration or termination of this Addendum for any reason.

8. MISCELLANEOUS

- 8.1 **Survival.** The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 3, 6.3, 7, 8.5, 8.8 and 8.10, solely with respect to Protected Health Information Business Associate retains in accordance with Section 6.3 because it is not feasible to return or destroy such Protected Health Information, shall survive termination of this Addendum indefinitely. In addition, Section 4 shall survive termination of this Addendum, provided that Covered Entity determines that the Protected Health Information being retained pursuant to Section 6.3 herein constitutes a Designated Record Set.
- 8.2 **Entire Agreement; Amendments; Waiver.** This Addendum constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes any previous agreements between the Parties relating to the same subject matter. This Addendum may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.
- 8.3 **No Third Party Beneficiaries.** Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.
- 8.4 **Notices.** Any notices to be given under this Addendum to a Party shall be made via U.S. Mail or express courier to such Party’s address set forth below, and/or via facsimile to the facsimile telephone numbers listed below.

	If to Covered Entity	If to Business Associate
To:	Stanford University Building 170, Room 206 Stanford, CA 94305-2065 Attention: Privacy Officer Fax: 650-723-3628	Seller’s address noted on the face of the Purchase Order Attn: CEO/President Fax: N/A
With a copy to:	Stanford University Office of General Counsel Main Quad, Building 170	Insert Address Seller’s Legal Department Attn:

Purchase Order Terms and Conditions **BUSINESS ASSOCIATE ADDENDUM**

	Stanford, CA 94305 M/C 2038 Attention: Senior University Counsel Fax: 650-736-2495	Fax: N/A
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Each Party may change its address and that of its representative for notice by giving notice thereof in the manner provided above in this Section 8.4.

- 8.5 **Counterparts; Facsimiles.** This Addendum may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.
- 8.6 **Effect of Agreement.** Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Agreement shall remain in full force and effect.
- 8.7 **Interpretation.** The provisions of this Addendum shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provisions in this Addendum. The Parties agree that any ambiguity in this Addendum shall be resolved in favor of a meaning that complies and is consistent with the Privacy Regulation and Security Regulation.
- 8.8 **Governing Law.** This Addendum shall be governed by and construed in accordance with the laws of the State of California, without application of principles of conflicts of laws. The Parties hereto agree that any dispute arising under this contract shall be resolved in the California State courts of Santa Clara County, California, or in the Federal District Court for the Northern District of California sitting in San Francisco, California, and the Parties hereby submit themselves to the personal jurisdiction of said courts.
- 8.9 **Amendment to Comply with Law.** The Parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. The Parties agree to take such action as is necessary to implement the standards and requirements of HITECH and regulations there under, HIPAA, the Privacy Regulation, the Security Regulation, and other applicable laws relating to the security or confidentiality of Protected Health Information. The Parties further agree that if current or future federal or state laws, rules, or regulations adversely impact a Party's performance under the Agreement or this Addendum, the Parties will negotiate in good faith to amend the Agreement and/or this Addendum, as necessary, to be consistent with the requirements of HITECH and regulations there under, HIPAA, the Privacy Regulation, the Security Regulation, or other applicable laws, as the same may be amended from time to time. Covered Entity may terminate the Agreement and this Addendum in the event that the Parties are unable to modify the Agreement and/or Addendum to remain in full compliance with HITECH and regulations there under, HIPAA, the Privacy Regulation, the Security Regulation or other applicable law.
- 8.10 **Injunctions.** Covered Entity and Business Associate agree that any violation of the provisions of this Addendum may cause irreparable harm to Covered Entity. Accordingly, in addition to any other remedies available to Covered Entity at law, in equity, or under this Addendum, in the event of any violation by Business Associate of any of the provisions of this Addendum, or any explicit threat thereof, Covered Entity shall be entitled to an injunction or other decree of specific performance with respect to such violation or explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages.

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BUSINESS ASSOCIATE ADDENDUM

- 8.11 **State Law.** Nothing in this Addendum shall be construed to require or permit Business Associate to use or disclose Protected Health Information without written authorization from an individual who is a subject of the Protected Health Information, or written authorization from any other person, where such authorization would be required under state law for such use or disclosure.