1. DEFINITIONS:

STANDARD TERMS AND CONDITIONS

“Supplier” shall mean any seller furnishing merchandise, services or other work to Rutgers.

“Merchandise” shall mean goods, products, materials or supplies.

“Services” shall mean design, engineering, installation, testing, evaluation, training, maintenance, repair, management, consulting and any other services necessary to fulfill Supplier’s obligations under a Purchase Order.

“Work” shall mean “Merchandise” and “Services” required under this Purchase Order.

“Specifications” shall mean the specifications, qualities, nature, type, properties, amounts and other descriptions of and requirements for the Work as stated in this Purchase Order.

“Subcontractor” shall mean Suppliers, suppliers, and subcontractors of any tier contracting directly or indirectly with Supplier for the performance of Work under the Purchase Order.

1. CONTRACT TERMS AND RULES OF PRECEDENCE: The following terms and conditions, together with any, quotes, bid documents, specifications or other documents as incorporated by reference or as amended in any subsequent writing from Rutgers, shall constitute the entire contract between Rutgers and Supplier and will be referenced as the “Purchase Order”. These terms and conditions shall prevail over any conflicting terms set forth by Supplier unless Rutgers approves in writing to the alternate terms and conditions. All terms and conditions of any Purchase Order shall prevail over the Uniform Commercial Code (UCC) Article 2.

2. OFFER AND ACCEPTANCE: The terms and conditions of the Purchase Order shall be deemed accepted if: (1) Supplier sends an acknowledgment or confirmation of the Purchase Order that agrees with the Purchase Order as to identification of Merchandise, quantity, price and delivery schedule; (2) Supplier commences work on the Purchase Order; (3) Supplier ships all or part of the Merchandise ordered in the Purchase Order; or (4) Supplier gives any other expression of acceptance of the terms and conditions hereof. Rutgers reserves the right to revoke the Purchase Order at any time before acceptance by Supplier.

3. CHANGES: No changes to a Purchase Order shall be made except in writing by Rutgers. RY AND TITLE:

a) Time is of the essence in Supplier’s performance of the Purchase Order. Rutgers is relying upon the promised delivery date, installation and/or service performance set forth in Supplier’s quote, bid or proposal as material and basic to Rutgers’ acceptance. If Supplier fails to deliver or perform as and when promised, Rutgers, in its sole discretion, may cancel its order, or any part thereof, without prejudice to its other rights, return all or part of any shipment made, and charge Supplier with any loss or expense sustained as a result of such failure to deliver or perform as promised.

b) Delivery of Merchandise required by the Purchase Order must be made in the quantities specified by Rutgers. Unless otherwise specified in the solicitation or Purchase Order, delivery shall be made F.O.B. delivery point during Rutgers’ normal business hours. Unless otherwise agreed, items received must be new and in first class condition and, if type of materials normally packaged for protection and convenience in storage, shall be in proper container.

c) Supplier certifies that it has all power and authority to convey ownership of the Merchandise to Rutgers in accordance with the Purchase Order, that the Merchandise is free and clear of all liens and encumbrances, and that Supplier has a good and marketable title to same.
d) Title to and risk of loss shall remain with Supplier until receipt by Rutgers, subject to Rutgers’ right of inspection and rejection in the event of nonconformance. For a reasonable time after delivery and before acceptance, Rutgers shall have the right to inspect and test the Merchandise. Rutgers shall notify Supplier if the Merchandise does not conform to the Purchase Order. At its sole option, Rutgers may return to Supplier any rejected Merchandise. Such rejected goods shall remain at Supplier’s risk until returned to Supplier at Supplier’s expense. Rutgers may, at its sole option, demand that Supplier promptly correct, repair or replace all nonconforming Merchandise at its sole expense. Payment for Merchandise by Rutgers prior to its inspection shall not constitute acceptance thereof and is without prejudice to any and all claims that Rutgers may have against Supplier.

4. WARRANTIES: a) Merchandise: Supplier expressly warrants that all Merchandise: (i) is in accordance with the specifications; (ii) is fit for the purpose for which similar materials and articles are ordinarily employed; (iii) is free from defects in materials and/or workmanship, and merchantable; (iv) was not manufactured and is not being priced or sold in violation of any federal, state or local law, including without limitation those relating to health and safety; (v) will perform or be performed according to industry standards; and (v) will not infringe or misappropriate the rights of any third party. These Warranties shall survive acceptance of and payment for the Merchandise and shall be in addition to any other warranties or service guarantee, express or implied, given by Supplier to Rutgers. Replaced and repaired goods shall be warranted for the remainder of the warranty period of six (6) months, whichever is longer. b) Services: Supplier represents, warrants and guarantees that any services provided under the Purchase Order shall be: (1) provided in accordance with the Specifications and correct and appropriate for the purposes contemplated in the Purchase Order; and (2) provided in a skillful, workmanlike and professional manner and consistent with generally accepted industry practices and procedures. c) Equipment: Supplier represents that the equipment offered is the manufacturer’s latest model in production; that parts are all in production and not likely to be discontinued; that trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request may emanate within a 48-hour period or within the time accepted as industry practice; and that during the warranty period the Supplier shall replace immediately any material which is rejected for failure to meet the requirements of the contract or purchase order.

5. CONFLICT OF INTEREST: Supplier warrants that there exists no actual, potential or appearance of conflict between Supplier and Rutgers. Furthermore, Supplier represents that it has not offered (and will not offer during the term of this Purchase Order) any compensation, reward, gift, favor, service, outside employment, reimbursement of expenses, loan, ownership interest, or anything else of value, to any officer, employee, or faculty member of Rutgers as an inducement to enter into this Purchase Order. Supplier will notify Rutgers in writing of any change in conditions that might give the appearance of a conflict of interest.

6. DEBARMENT: By acceptance of this Purchase Order, Supplier warrants that it is not debarred, suspended, proposed for debarment, or declared ineligible by any State or Federal agency.

7. INDEMNIFICATION: Supplier shall indemnify, hold harmless and defend Rutgers, its governors, officers, faculty, students, agents, and employees against any and all damages, suits, actions, claims, liabilities, losses, judgments, costs and expenses arising out of or relating to (i) any personal or bodily injury (including death) or property damage caused by Supplier’s acts, omissions, or breach of this Purchase Order, (ii) any and all claims by Supplier’s employees including those employees of any of its subcontractors, (iii) Supplier’s use or possession of Rutgers property, or (iv) an infringement or misappropriation of any third party intellectual property or proprietary rights (including, without limitation, trademark, trade secret, copyright or patent) by the Services or Work Product. The indemnification obligation is not limited by but is in addition to the insurance obligations contained in this Purchase Order.

8. INSURANCE: Supplier shall, and cause its subcontractors of any tier, to maintain, at its own cost and expense, the insurance policies described herein and submit to Rutgers at execution of this Purchase Order evidence thereof in the form of current certificates of insurance certifying all coverage. All policies and certificates of insurance, except workers compensation, shall be endorsed to name Rutgers as an additional insured and provide for the insurer’s waiver of subrogation in favor of Rutgers. Such coverage shall be deemed primary coverage irrespective of any insurance maintained by Rutgers. All policies and certificates shall contain the provision that the insurance shall not be cancelled for any reason, except after thirty (30) days written notice to Rutgers. The following insurance coverage is the minimum required and shall not relieve the Supplier of any liability where liability for injury, death, and property damage is greater than the insurance coverage.
10. **PREMISES:** Supplier shall confine its facilities, materials, tools and equipment in areas specified by Rutgers for that purpose. Supplier shall on a daily basis and on completion of work, clean up and remove all waste materials, rubbish, tools and machinery and leave adjoining premises, driveways and streets free and clear from all obstructions. At the completion of the work, Supplier shall return Rutgers’ site to its original condition or as otherwise required in the scope of work.

11. **PAYMENT:** Rutgers shall pay undisputed invoices within forty-five (45) days of receipt of invoice. If any portion of the Merchandise does not conform to the requirements of the Purchase Order, a corresponding portion of the price may be withheld by Rutgers until the nonconformity is corrected. No additional charges of any kind, including, but not limited to, charges for boxing, packing, transportation, insurance, or container charges, will be allowed unless specifically agreed to in writing by Rutgers.

12. **TAXES:** Rutgers is not subject to any sales or excise taxes. Taxes are not to be included in any quotations or invoices to Rutgers.

13. **TERMINATION OF PURCHASE ORDER:** a) **Termination for Convenience:** Rutgers may terminate the Purchase Order for convenience and without cause at any time, in whole or in part, upon no less than thirty (30) days’ written notice to Supplier. Rutgers shall pay Supplier a proportionate amount of the amount due to Supplier for work completed up to the effective date of termination, plus costs necessarily incurred directly as a result of the termination, subject to Rutgers right to audit Supplier’s books and records. b) **Termination for Cause:** Rutgers may terminate the Purchase Order for cause if Supplier fails to perform in accordance with the terms and conditions of the Purchase Order, fails to perform the work with promptness and diligence, or is otherwise in breach of the terms of the Purchase Order, provided that prior to such termination Rutgers shall provide written notice of its intent to terminate and the reasons therefore. If, after the time provided in such notice for correcting non-performance, such non-performance remains uncorrected, Rutgers may, at its sole option, complete or contract with a third party to complete all or part of Supplier’s obligations under the Purchase Order, and Supplier shall be liable to Rutgers for the costs of performing such obligations and any other damages resulting from Supplier’s failure to perform. c) **Limitation of Damages:** Rutgers’ liability and Supplier’s recovery for any damages arising out of the cancellation of any part of the Purchase Order shall be limited to the lesser of: (1) the reasonable costs incurred by Supplier prior to such cancellation; or (2) the contract balance remaining for the Purchase Order. In no event shall Rutgers be liable to Supplier for consequential or incidental damages.

14. **CONFIDENTIAL/PROPRIETARY INFORMATION:** Except as otherwise required by applicable laws or regulations, including but not limited to, the New Jersey Open Public Records Act, the parties agree to, and to cause their respective affiliates to, keep confidential all non-public information relating to this Purchase Order.

15. **USE OF NAME:** Supplier shall not use Rutgers’ name, insignia, or any logos or symbols of Rutgers, nor issue any publicity releases, including but not limited to, news releases and advertising, relating to this Purchase Order without the prior written consent of Rutgers.

16. **TRADEMARK AND LICENSING:** Supplier agrees to comply with all licensing and trademark policies and procedures for goods sold by Supplier with the Rutgers logo. Requirements may be found at [http://ur.rutgers.edu/trademark/index.shtml](http://ur.rutgers.edu/trademark/index.shtml) All costs associated with this process will be borne by the Supplier.

(1) Commercial General Liability Insurance covering bodily injury, death or property damage with minimum combined single limits of $2,000,000.00 per occurrence and in the aggregate. This policy shall be endorsed to name the Rutgers as an additional insured and include broad form contractual liability, products liability and completed operations coverage. (2) Worker’s Compensation and Employer’s Liability Insurance which provides statutory coverage in accordance with the Worker’s Compensation Laws of the State of New Jersey and Employer’s Liability coverage with limits of not less than: $1,000,000 each employee for Bodily Injury by Accident $1,000,000 each employee for Bodily Injury by Disease $1,000,000 Bodily Injury by Disease policy limit (3) Business Automobile Liability insurance covering all owned, non-owned and hired vehicles with a combined single limit of $1,000,000 each accident and in the aggregate Failure to maintain insurance coverage consistent with the provisions of this Section shall be considered a material breach of contract.
17. **FORCE MAJEURE**: Neither party shall be liable for any failure or delay in performing its obligations hereunder, or for any loss or damage resulting therefrom, due to causes beyond its reasonable control, including but not limited to, acts of God, public enemy or government, riots, fires, natural catastrophe or epidemics. In the event of such failure or delay, the date of delivery or performance shall be extended for a period not to exceed the time lost by reason of the failure or delay; provided that Rutgers may terminate the Purchase Order if the period of failure or delay exceeds fifteen (15) days. Rutgers shall have no obligation to make any payments to Supplier during the period of failure or delay. Each party shall notify the other promptly of any failure or delay in, and the effect on, its performance.

18. **NOTICES**: Any notice required under the Purchase Order shall be in writing and sent to Supplier and Rutgers at their respective addresses identified on the Purchase Order.

19. **INDEPENDENT CONTRACTOR**: Supplier shall operate as an independent contractor under the terms of this Purchase Order and not as an agent or employee of Rutgers.

20. **LAWS; CODES; RULES; REGULATIONS**: Supplier must comply with all local, state, and federal laws, rules and regulations applicable to this Purchase Order. Supplier and its subcontractors, at their own expense, shall obtain all necessary licenses and permits relating to performance of the work.

21. **COMPLIANCE**: Each party certifies that it shall not violate the federal anti-kickback statute, set forth at 42 U.S.C. §1320a-7b (b) ("Anti-Kickback Statute"), or the federal "Stark Law," set forth at 42 U.S.C. § 1395nn ("Stark Law"), with respect to the performance of its obligations under this Agreement.

22. The Supplier has received a copy of RBHS's Code of Conduct and RBHS's Stark Law and Anti-Kickback Statute Policies and Procedures. RBHS's Code of Conduct is available at http://rbhs.rutgers.edu/complweb/code/conduct.pdf. RBHS's Stark Law and Anti-Kickback Statute Policies and Procedures are available at the following web addresses:

   - https://policies.rutgers.edu/10021-currentpdf
   - https://policies.rutgers.edu/10024-currentpdf
   - https://policies.rutgers.edu/10023-currentpdf

23. Each party shall ensure that its individuals providing service under the agreement who meet the definition of "Covered Persons" (as such term is defined in the "Corporate Integrity Agreement between the Office of Inspector General of the Department of Health and Human Services and the University of Medicine and Dentistry of New Jersey", as amended by a letter agreement dated May 1, 2013 between OIG and Rutgers, available at https://ethics.umdnj.edu/mtrxprod/documents/CIA_agree_RU_UMDNJ.pdf) shall comply with RBHS's Compliance Program, in

24. **NON-DISCRIMINATION IN EMPLOYMENT**: Rutgers is an equal opportunity employer and federal contractor or subcontractor. Consequently, Rutgers and the Supplier (and its subcontractors, if any) agree that, as applicable, they will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) and that these laws are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. Rutgers and the Supplier (and its subcontractors, if any) also agree that, as applicable, they will abide by the requirements of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., the Civil Rights Act of 1964, Title VII, 42 U.S.C.A. § 2000e et seq., the Age Discrimination in Employment Act, 29 U.S.C.A. § 621 et seq., the Americans with Disabilities Act, 42 U.S.C.A § 12101 et seq., Executive Order 11246, the Vietnam Era Veterans Readjustment Assistance Act of 1974 and Section 503 of the Vocational Rehabilitation Act of 1973, Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws, and all other laws guaranteeing equal employment including the training related to the Anti-Kickback Statute and the Stark Law.

25. **ADDITIONAL AFFIRMATIVE ACTION REQUIREMENTS**: If this Purchase Order is for $50,000 or greater, and is for a goods or service contract as defined by N.J.A.A 17:27, Exhibit A is incorporated herein by reference. If this Purchase Order is for $50,000 or greater, and is a construction contract as defined by N.J.S.A. 17:27, Exhibit B is incorporated herein by reference.
Supplier is required to provide Rutgers with a copy of either a federally approved Affirmative Action program or a certificate of Employment Information Report. If neither form is available the Supplier must provide a copy of the completed AA 302 or AA201 form. Certificates must be mailed to University Procurement Services, Rutgers, The State University of New Jersey, Attn: Affirmative Action Administrator, 3 Rutgers Plaza, ASB III, 2nd Floor, New Brunswick, NJ 08901

26. PREVAILING WAGE: a) “Public Works” Projects: Vendors awarded Purchase Orders by Rutgers for all “public works” projects, as defined by the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.26 et seq. (“PWA”), shall adhere to all requirements of the PWA. The PWA, N.J.S.A. 34:11-56.26(5), defines “public works” as “construction, reconstruction, demolition, alteration, custom fabrication, repair work, maintenance work, including painting and decorating.” Vendor guarantees that neither it nor any Subcontractor it might employ to perform Work covered by this Purchase Order has been suspended or debarred by the Commissioner of Labor and Workforce Development for violation of the provisions of the PWA. Vendor agrees that it shall comply with the provisions of the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48, where required. Certified payroll records shall be submitted to Rutgers c/o the project manager for the project for each payroll period within ten (10) days of payment of wages in accordance with N.J.A.C. 12:60-62. The Vendor is also responsible for obtaining and submitting all Subcontractors’ certified payroll records. b) Building Services: With respect to any Purchase Order for “Building Services,” the employees of the Vendor or its Subcontractor shall be paid prevailing wage for “Building Service” rates, as provided in N.J.S.A 34:11-56.60. N.J.S.A 34:11-56.59 defines “Building Services” as “any cleaning or building maintenance work, including but not limited to sweeping, vacuuming, floor cleaning, cleaning of rest rooms, collecting refuse or trash, window cleaning, engineering, securing, patrolling or other work in connection with the care, securing, or maintenance of an existing building.” The prevailing wage shall be adjusted annually during the term of this Purchase Order.

27. FEDERAL FUNDING: If this Purchase Order is funded by the federal government, Supplier is required to comply with all applicable federal laws, which are hereby incorporated by reference as if they were set forth herein, including, but not limited to all laws, regulations and rules. Procurements made with federal funds are subject to compliance with the standards and requirements as set for in 2CFR, Part 215, OMB Circular A-133, Paragraph 5. All procurement requirements contained in the above Circular are incorporated herein by reference.

28. ARRA FUNDING: If this Purchase Order is funded from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, Supplier is required to comply with all applicable laws, hereby incorporated by references as if they were set forth herein including, but not limited to the Davis-Bacon Act and Buy American Act.

29. SUBCONTRACTING OR ASSIGNMENT: This Purchase Order may not be subcontracted or assigned by Supplier, in whole or in part, without the prior written consent of Rutgers’ University Procurement Services Department. Any such attempt at assignment or delegation without Rutgers written consent shall be void. Nothing in this Purchase Order shall be construed as creating any contractual relationship between any subcontractor and Rutgers, nor shall this Purchase Order be construed as conveying any third party beneficiary rights on any subcontractor.

30. GOVERNING LAW; JURISDICTION: This Purchase Order shall be governed by the laws of the State of New Jersey, Each party irrevocably submits to the exclusive jurisdiction of the courts of the State of New Jersey and the United States District Court for the District of New Jersey for the purpose of any suit, action, proceeding or judgment relating to or arising out of the Purchase Order.

31. SEVERABILITY: If any provision(s) of the Purchase Order is found by a New Jersey court of competent jurisdiction to be illegal or otherwise unenforceable, such provision(s) shall be deemed not to be a part of the Purchase Order and the remaining provisions shall remain in full force and effect.

32. NON-WAIVER: The failure of Rutgers in any one or more instances to insist upon the performance of any of the terms or conditions of this Purchase Order or to exercise any right hereunder shall not be construed as a waiver or relinquishment of the future performance of any such terms or conditions or the future exercise of any such right.

33. BANKRUPTCY: In the event the Supplier files for bankruptcy protection, this Purchase Order is automatically null and void, and is terminated without further notice.

34. MAINTENANCE OF RECORDS: Supplier shall maintain records for Merchandise and Services furnished under this Purchase Order for a period of three (3) years from the date of final payment. Such records shall be made available to Rutgers upon request for the purpose of conducting an audit.