

1. **EXISTING AGREEMENT.** UPMC purchase orders that are issued under a written and fully executed procurement agreement between UPMC ("Buyer") and Supplier are subject to the provisions of that agreement and the terms and conditions contained within that agreement agreed to be controlling.
2. **CONTRACT.** Except as provided in Section 1, UPMC's purchase order, including all of its terms and conditions, together with any documents of UPMC or supplemental terms and conditions of UPMC stated or referenced on the face of the purchase order, constitutes the complete, final and exclusive statement of the contract between UPMC and Supplier. Acceptance of UPMC's order is expressly limited to these terms and conditions. Additional, different or inconsistent terms and conditions proposed by Supplier in its quotation, acknowledgement or acceptance of this purchase order or otherwise, are objected to and rejected. UPMC's acceptance of goods or services from Supplier shall not be deemed to be an acceptance of any such conditional, different, or inconsistent terms and conditions. No changes or additions of any kind to the terms and conditions stated herein, or waiver of any kind shall be binding on UPMC unless agreed to in writing signed by an authorized representative of UPMC. Commencement of performance by Supplier shall be an acceptance of all of UPMC's terms and conditions.
3. **PRICING.** The pricing set forth in the purchase order is exclusive of applicable state sales and use taxes. Such taxes, if any, applicable to the Products and/or Services invoiced to UPMC will be paid by UPMC to Supplier, who will be responsible for remittance of such taxes to the proper governmental authority. At the request of UPMC, Supplier shall provide documentation to UPMC evidencing such remittance and Supplier's authority to collect such taxes. Except as may be specified on purchase order, UPMC shall not be liable for any freight charges, delivery charges, fuel surcharges, service charges, minimum or small order charges, re-stocking or other additional costs or expenses.
4. **ACKNOWLEDGEMENT.** Supplier should review UPMC's purchase order and acknowledge any changes to UPMC prior to invoice submission. The review should include but not be limited to the following UPMC purchase order attributes (contracted price, purchasing UOM, Supplier item ID, manufacturer item ID, due date, and product description). Upon Supplier acknowledgement, UPMC reserves the right to change the purchase order so that a submitted invoice will match the purchase order. If UPMC and the Supplier cannot agree on deltas between the UPMC purchase order and Supplier acknowledgement, a resolution process will be conducted prior to Supplier invoice submission.
5. **PAYMENT TERMS.** All accurate invoices shall be paid in net sixty (60) days from invoice date. In lieu of the standard net sixty (60) day term, UPMC offers an early pay discount of 2% ten (10) day/net thirty (30) days.
6. **FREIGHT.** All shipping and handling charges shall be included in the final price – F.O.B. Destination. Supplier shall bear the risk of loss of the shipment. Upon request by UPMC, Supplier shall initiate and expedite all claims for loss or damage during shipment. Provided that Supplier has complied with the terms of this Agreement, including, without limitation, verification of the validity of the order and address of the shipping location before shipment, Supplier's liability for lost or damaged Products shall be limited to replacement of the Products. In addition to any other remedies available to UPMC, at UPMC's option, damaged Products will be replaced on a rush basis and at no extra cost to UPMC. No invoices will be paid on damaged merchandise until the claims are settled, and the payment discount period, if any, shall be extended accordingly.
7. **CHANGES.** UPMC shall have the right at any time prior to the complete delivery of the goods or services to make changes to the goods and services ordered and changes in packaging, time, place and schedule of delivery, and method of transportation, and Supplier agrees to accept such changes. If any such changes cause an increase or decrease in cost or the time required for performance, and an itemized claim for adjustment is made within thirty (30) days of the notice of change, an equitable adjustment will be made and the applicable terms modified in writing in accordance with the adjustment.
8. **INSPECTION AND QUALITY ASSURANCE.** All goods and services ordered by UPMC shall be subject before delivery to inspection, tests, and audits by UPMC at reasonable times and places. Supplier agrees to provide access for UPMC to all facilities at all reasonable times for such inspections, tests, and audits, and, at no additional cost, to provide all tools, equipment, and assistance reasonably necessary. Inspection, tests, or audits before delivery to UPMC do not constitute final acceptance nor do they or any other inspecting, testing, or auditing by UPMC, or failure of UPMC to do so, relieve Supplier from exclusive responsibility for furnishing goods or services in full conformance with the purchase. Supplier warrants that it has and will maintain an adequate quality assurance and/or control program for the goods or services ordered and that it makes and maintains adequate authenticated quality control and/or assurance reports, records, certificates, affidavits, and the like relating to the goods or services ordered. Supplier agrees that upon request and at no additional charge, it will promptly furnish authenticated copies of such reports and documents as well as applicable certificates of conformance and/or compliance acceptable to UPMC at the time of or after delivery.
9. **REJECTION.** Goods and services of Supplier shall be received subject to inspection and approval by UPMC after delivery. UPMC may give Supplier notice of rejection or revocation of acceptance ('rejection' herein), notwithstanding any payment, passage of title, approval, prior test or inspection. No inspection, approval, test delay or failure to inspect or test or failure to discover any defect or other nonconformance shall relieve Supplier of any obligations hereunder or impair or waive any right or remedy of UPMC. If it is UPMC's judgment that the goods or services do not conform with the requirements of the order, UPMC shall have the right to reject them and, in addition to its other rights and remedies, UPMC shall have, without limitation, all of the following rights: (1) to return them to Supplier for reimbursement, credit, replacement, or corrections as UPMC may direct; (2) to correct, rework, and/or replace with the additional cost to be charged to and paid by Supplier; and (3) to hold them at Supplier's risk and expense for disposal or correction according to Supplier's instructions. Any goods rejected by UPMC that are returned to Supplier shall be at Supplier's risk and expense with the cost of packaging, handling, inspection, examination, transportation and the like incidental thereto, to be charged to and paid by Supplier. Such goods shall not thereafter be tendered to UPMC for acceptance unless the previous rejection and requirement of correction are disclosed to UPMC in writing.
10. **TERMINATION.** UPMC has the right to terminate this order and Contract for convenience, in whole or in part, at any time upon written notice to Supplier. Unless such termination is due to default of Supplier or failure of Supplier to assure adequate performance, UPMC shall pay Supplier on a pro rata basis for work completed as of the date of termination and upon such payment all equipment, materials, work-in-progress, finished goods, drawings, information, special tooling, and other things for which UPMC has paid shall at UPMC's option become the property of UPMC and be released by Supplier to UPMC upon demand for pick-up and removal. The provisions of this clause are without prejudice to any other rights or remedies of UPMC including those resulting from default by Supplier.
11. **CANCELLATION.** UPMC shall have the right to cancel this order and contract, in whole or in part, if the goods or services are in UPMC's judgment non-conforming or defective or not delivered as scheduled, or if Supplier fails to comply with or fulfill any of the terms and conditions of the order with UPMC's shipping and billing instructions, or if in UPMC's opinion the credit or ability of Supplier to perform becomes impaired, whereupon UPMC shall have the continuing right to obtain the goods or services ordered from another source with any resulting increase in cost thereof charged to and paid by Supplier, all without prejudice to any other rights or remedies of UPMC and in addition thereto.
12. **PAYMENTS.** Payments by UPMC of an invoice from Supplier does not constitute acceptance of the goods or services covered by the invoice. If the work covered by this order may give rise to mechanics' liens or the like, payment shall not be due and the cash discount period shall not commence until Supplier has delivered to UPMC a complete release of all liens arising out of the work or receipt in full covering all labor and materials for which a lien could be filed or a bond satisfactory to UPMC indemnifying it against any lien.

13. **CONFIDENTIALITY.** Supplier will maintain UPMC's Proprietary Information and the terms of this Agreement in confidence. Without limiting the generality of the foregoing, Supplier agrees:
- Not to disclose or permit any other person or entity access to UPMC's Proprietary Information or the terms of this Agreement, except that access shall be permitted to an employee, officer, director, agent, representative, external or internal auditors, independent contractors or regulatory authorities of a party requiring access to the same in connection with the party's performance under this Agreement;
 - Not to use, or permit any other person or entity to use, UPMC's Proprietary Information for any purpose other than the performance of this Agreement;
 - To ensure that its employees, officers, directors, agents, representatives, external or internal auditors and independent contractors are advised of the confidential nature of UPMC's Proprietary Information and the terms of this Agreement;
 - Not to alter or remove any identification, copyright or proprietary rights notice which indicates the ownership of any part of UPMC's Proprietary Information;
 - To notify UPMC promptly and in writing of the circumstances surrounding any possession, use or knowledge of UPMC's Proprietary Information or the terms of this Agreement by any entity other than those authorized by this Agreement;
 - Upon request or on termination of this Agreement, to return UPMC's Proprietary Information;
14. **WARRANTIES.** Included in the pricing of each Product is a minimum one (1) year warranty. The warranty for each Product purchased shall commence upon the earlier of the following events: first successful clinical use of Product by UPMC; full clinical acceptance, such acceptance occurring no later than 45 days after supplier delivers and certifies product(s) ready for use. Supplier further warrants that Product shall conform to its product specifications, all FDA approved usage(s), and Supplier's representations regarding the functions and uses for which the Product is marketed. All of the warranties referenced or set forth in this section shall be in addition to all other warranties that may be prescribed by law. In the event that commercially reasonable evidence is produced that the Supplier has provided a product with a material defect in workmanship one of the following remedies will be provided: Repair or modification is agreed upon at Supplier's expense; Supplier provides financial consideration; Service maintenance or warranty extension.
- Manufacturers' Warranties.** Supplier shall provide to UPMC all warranties for Products it receives from its Suppliers and all manufacturers' warranties. Supplier assigns to UPMC, all Suppliers' and manufacturers' warranties and rights of action under these warranties. Supplier authorizes UPMC to enforce all warranties received hereunder and shall provide all cooperation reasonably requested by UPMC in enforcing same. Any manufacturers' or Suppliers' warranties shall be in addition to the warranties provided in this Section and as otherwise provided hereunder.
 - Extension of Warranties.** Supplier's warranties provided in this Section and as otherwise provided herein shall run to and extend to, and are for the benefit of, UPMC, and its respective successors, assigns, customers, patients, and users of Products, and to any other person or entity to whom a Product is transferred.
 - Services Warranty.** Supplier represents and warrants that its employees, agents, and representatives have the skills and qualifications necessary to perform Services under this Agreement in a timely, competent, first class, and professional manner in accordance with the highest industry standards and all applicable governmental requirements, laws, ordinances, rules, and regulations, and that Supplier is able to fulfill the technical service requirements and all other services' requirements for the product or service provided hereunder:
 - Warranties Cumulative.** The warranties provided in this Section and all other warranties hereunder are cumulative and shall apply to any replacement or modification of Products by Supplier or its employees, agents, or representatives, and these warranties provided under this Section are in addition to any warranties provided at law or in equity.
15. **UPMC'S PROPERTY AND PARTS.** All property of any kind supplied by or paid for by UPMC shall be and remain UPMC's property and Supplier agrees to be accountable for it and to maintain it in good condition and repair except to the extent that It is integrated into goods furnished by Supplier to UPMC under this order. Parts of UPMC which have been or are to be processed by Supplier are consigned to Supplier for the work specified and remain UPMC's property. Property and parts of UPMC shall not be used for any purpose except to satisfy this or other orders of UPMC to Supplier. All UPMC's property and parts while in Supplier's custody or control shall be held at Supplier's risk, free of all liens, encumbrances, or security interests of Supplier or third parties, and shall be kept insured by Supplier at Supplier's expense in an amount equal to replacement cost with loss payable to UPMC. Supplier agrees to hold harmless, defend, and indemnify UPMC against all loss or damage to such property or parts against claims of loss or damage arising out of such property of parts while they are in Supplier's custody or control. All property and parts are Subject to removal by UPMC at any time and to return upon UPMC's request.
16. **INDEPENDENT CONTRACTOR.** Supplier is and shall remain an independent contractor. No employee, agent, or representative of Supplier or its subcontractors shall be deemed to be an employee of UPMC. Supplier shall provide all safeguards and take all necessary precautions in connection with work and services performed by or for it relating to this purchase order to prevent the occurrence of any accident, Injury, death, loss, or damage to any person or property and shall be solely responsible therefor. Supplier warrants that all work and services relating to this purchase order will be done in a safe, proper, and workmanlike manner and in compliance with all applicable codes, regulations, laws, standards and specifications concerning safety, performance, and otherwise and, without limitation, including work and services on or to premises controlled by UPMC and to or with property or parts of UPMC. Supplier agrees to indemnify, defend and hold UPMC harmless from all claims based on injury to or by Supplier's employees, agents, or representatives or those of its subcontractors.
17. **INDEMNIFICATION.** Supplier shall indemnify, defend and hold harmless UPMC, its Affiliates, and its and their respective directors, officers, employees and agents (the "UPMC Indemnified Parties") from and against any and all claims, damages, losses, liabilities, fines, penalties, judgments or amounts paid in settlement (or actions, suits or proceedings, or investigations in respect thereof) and expenses (including, without limitation, all reasonable fees of counsel with whom any UPMC Indemnified Party may consult and all expenses of litigation or preparation therefor) hereafter ("Losses"), which any UPMC Indemnified Party may incur or which may be asserted against any UPMC Indemnified Party in connection with, arising out of or resulting from (in whole or in part) the matters referred to in this Agreement including, without limitation, personal injury caused by Supplier's Products or Services or by Supplier's employees, agents or representatives, which arises out of or relates to this Agreement; provided, however, that the foregoing indemnity agreement shall not apply to the extent Losses are attributable to a UPMC Indemnified Party's gross negligence or willful misconduct.
18. In the event that any claim is made or any action or proceeding is instituted against the UPMC Indemnified Parties alleging that a Product or Service or UPMC's use thereof infringes any patent or copyright, constitutes misappropriation of a trade secret, or violates any other intellectual property or other proprietary right of any third party, Supplier shall defend, indemnify and hold the UPMC Indemnified Parties harmless from all Losses which any UPMC Indemnified Party may incur or which may be asserted against any UPMC Indemnified Party in connection or associated therewith. If UPMC's use of the Product or Service is enjoined or threatened, Supplier shall use its best efforts to, in the priority order indicated, (1) procure for UPMC the right to continue using the Product or Service; (2) modify the Product or Service so as to render it non-infringing while remaining functionally equivalent to the original Product or Service; or (3) provide a substitute non-infringing Product or Service of substantially equal utility acceptable to UPMC, at no additional charge to UPMC, consistent with Supplier's obligations under this Agreement. If none of these alternatives appear to be reasonably feasible, then UPMC may terminate this Agreement and shall receive a prompt refund of all fees

paid during the Term of the Agreement. The indemnity obligations contained in this Section shall survive the termination or earlier expiration of this Agreement, and assignment of any rights hereunder.

19. INSURANCE

- a. Unless otherwise agreed, during the Term of this Agreement, Supplier agrees to purchase and maintain at its own expense, from a company or companies licensed to do business in the Commonwealth of Pennsylvania, such insurance as will protect Supplier, UPMC, its Affiliates, including its and their respective directors, officers, employees and agents and any other legal entity associated with UPMC, collectively herein referred to as (“UPMC”), from and against any and all damages, liabilities, losses, costs, including reasonable attorney’s fees, judgments, expenses, claims and causes of actions of any kind which may arise or result from Supplier’s obligations pursuant to the terms of this Agreement. The insurance required shall be written for not less than the following minimum limits, or greater if required by law:
- b. Worker’s Compensation - Supplier hereby agrees to perform the work described in this Agreement, and further certifies that it has accepted the provisions of the Worker's Compensation and Occupational Disease Acts, as amended and supplemented, insofar as the work covered by this Agreement is concerned, and that it has insured its liability thereunder in accordance with the terms of the said Acts, as evidenced by the certificate of insurance it has caused to be attached hereto upon the execution of this Agreement, or a certificate of exemption form for insurance from the Bureau of Workmen’s Compensation of the Department of Labor and Industry. This policy must include a waiver of subrogation endorsed to the policy in favor of UPMC and its subsidiaries.

COVERAGE	LIMITS
Workers Compensation	Statutory
Employers Liability	\$100,000 each Accident \$500,000 disease policy limit \$100,000 disease each employee
Comprehensive General Liability including, but not limited to Premises Medical with \$10,000 limit, Personal Injury, and Contractual Liability	\$1,000,000 Combined Single Limits for Bodily Injury and Property Damage per Occurrence and \$2,000,000 Annual Aggregate.
Products Liability	\$5,000,000 per occurrence and aggregate
Automobile Liability, including any auto, hired and non-owned autos	\$1,000,000 Combined Single Limits for Bodily Injury and Property Damage Each Accident
Excess Umbrella Liability	\$5,000,000 each Occurrence and Aggregate
Professional E&O Liability Insurance	\$5,000,000 per claim and \$10,000,000 annual aggregate
Cyber Risk (Network Security & Privacy)	\$10,000,000 per claim and \$20,000,000 annual aggregate

- c. Supplier shall name UPMC as an additional insured with respect to the insurance policies identified above, with the exception of Workers’ Compensation and Professional Liability. Certificates of insurance evidencing coverage required above shall be filed with UPMC’s Corporate & Captive Insurance Department, 59th Floor U.S. Steel Building, 600 Grant Street, Pittsburgh, PA 15219, upon execution of this Agreement. Such certificates shall provide that the insurer will give UPMC not less than thirty (30) days advance notice of any material changes in or cancellation of coverage. Supplier shall be responsible for the acts of its employees, agents, and representatives while on UPMC property and, accordingly, shall take all necessary measures to train and equip such personnel properly, and to prevent injury and loss to persons or property located thereon. All subcontractors used by Supplier must maintain and provide, at their own expense, evidence of the insurance coverage identified above.
- d. Supplier agrees that any personal injury to Supplier, to Supplier’s employees, agents or representatives, to third parties, or any property damage resulting solely from performances of Services hereunder by Supplier shall be the responsibility of Supplier. In the event Supplier is self-insured for the coverage required hereunder, it shall provide proof of self-insurance to UPMC by submitting (a) a letter stating that fact, (b) Supplier’s most recent financial statement, and (c) a state certification from the Supplier’s state of incorporation. Without limiting any other provision contained herein, UPMC agrees to (a) notify Supplier in writing after any loss or damage is discovered, (b) furnish Supplier with satisfactory and reasonable proof of such loss or damage, and (c) assist Supplier and Supplier’s insurance carriers to the extent practicable in recovery of any loss. Upon full payment by Supplier or its insurance carrier for such loss or damage, either shall be subrogated to any rights or remedies of UPMC for recovery of such loss. Supplier shall, within a reasonable amount of time, not to exceed thirty (30) days, after receiving evidence of loss, promptly satisfy all claims made by UPMC which the evidence demonstrates are the responsibility of Supplier. In the event of losses or damages to equipment caused by the negligence of Supplier or its workers, Supplier’s liability shall be to the extent of the declared value or replacement cost of the equipment, whichever is greater. Notwithstanding any other provision of this Agreement, it is understood and agreed that Supplier shall not be liable for any loss caused by or resulting from: hostile or war-like action in time of peace or war; direct loss by fire resulting from nuclear reaction or nuclear radiation or radioactive contamination, either controlled or uncontrolled; or theft or damage by others who are not a party to this Agreement, except when the loss or damage is the result of the gross negligence or willful misconduct of Supplier, its agents or workers.
- e. The maintenance of insurance shall not affect the liability of Supplier, such liability to be determined by provisions of the Agreement other than the insurance provisions

- f. **Waiver of Tort Claims for Work-Related Injury** Supplier agrees to obtain or have others at its direction obtain written waivers from any and all personnel employed, contracted or subcontracted by Supplier, directly or indirectly, to provide delivery or other services to or upon the premises of a UPMC entity as provided for herein. Supplier will obtain or cause to be obtained such waivers as will waive and release any and all rights of any Supplier employee, contractor or subcontractor (and their employees, contractors and subcontractors) to bring any action in tort against UPMC or any of its controlled or managed affiliates ("UPMC Entities") for injuries, including death, or damages incurred or claimed to be incurred in the course of providing services under this Agreement on premises owned, leased or operated by a UPMC Entity, except where such injuries, including death or damages are attributable to the gross negligence or willful misconduct of UPMC. Supplier agrees to provide or assure the provision of any and all Worker's Compensation insurance coverage legally required for its employees, contractors and subcontractors (and their employees, contractors and subcontractors) performing services under this Agreement at any premises owned, leased or operated by a UPMC Entity. Supplier further agrees to indemnify, defend, and hold harmless UPMC and the UPMC Entities from and against any liability, damages, fees (including legal fees) and costs incurred by UPMC or UPMC Entities resulting from the failure of Supplier to obtain or cause to be obtained the waivers required under this provision.
20. **FORCE MAJEURE.** UPMC reserves the right to cancel the contract in whole or in part or to delay delivery or acceptance for causes beyond its control. At UPMC's request, Supplier will hold the goods or services pending UPMC's instructions and UPMC shall be liable only for a reasonable increase in Supplier's direct costs due to such holding.
21. **Compliance: Laws, Regulations, Policies.** Supplier represents and warrants that Products and Services covered by this Agreement, including any that may have been subcontracted per the terms of this Agreement, shall comply at all times with all federal, state, local and any other codes, laws, regulations, standards or ordinances applicable to this Agreement ("Laws"); including but not limited to, licensure, any regulations of hospitals and healthcare services, federal Medicare and Medicaid programs; and the Federal Food, Drug and Cosmetic Act ("FDA").
- The Joint Commission:** With respect to Supplier operations, Supplier shall comply with the Standards of The Joint Commission (TJC), <https://www.jointcommission.org/standards/>.
 - Vendor Compliance standards:** visit <https://www.upmc.com/about/supply-chain/vendor-compliance> for details.
 - Compliance: Required Training** Supplier shall bear any and all costs associated with providing training where such training is required by FDA or any other governmental or regulatory body prior to use of product. These costs include, but are not limited to, travel costs, instrumentation, documentation, certification, and other training materials inclusive of cadavers and related wet lab costs. Supplier agrees to provide, upon request, evidence of successful completion of training. including supporting materials such as coursework, manuals, training documents, policies and other similar evidence. Supplier understands and agrees that provision of such training is not considered a gift, gratuity or kickback as defined by the Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276(c)).
22. **NO SUBCONTRACTING.** Supplier shall not subcontract nor delegate performance of all or any part of its obligations hereunder without the prior written consent of UPMC. UPMC's consent to subcontracting by Supplier shall not relieve Supplier of any of Supplier's duties or obligations hereunder. Supplier shall be liable for all acts or omissions of its subcontractor(s) and anyone employed directly or indirectly by such subcontractor(s). Supplier shall require any subcontractor to maintain adequate and appropriate insurance coverage. In the event that Supplier may utilize a supply partner(s) for some of the goods that UPMC will purchase through this Agreement. UPMC may grant permission to Supplier to subcontract certain services through the named supply partner(s) specified in writing to and approved in writing by UPMC. In the event Supplier elects to change subcontractors, Supplier agrees to notify UPMC of such change immediately and provide UPMC with samples of work performed by the new subcontractor to insure continuity of quality and construction. Failure to notify UPMC could constitute material breach.
23. **Federal Contractor Requirements:** Federal Contractor Requirements: To the degree the Federal Contractor Requirements are applicable to the service(s) or product(s) included on this purchase order, this order/contract is subject to the requirements of 41 CFR 60-1.4 and 29 CFR part 471, Appendix A to Subpart A, which are incorporated into this order/contract by reference, as applicable. In addition, this order/contract is subject to the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), which are incorporated herein by reference, as applicable. The latter two regulations prohibit discrimination against qualified individuals on the basis of protected veteran status and disability and require affirmative action to employ and advance in employment protected veterans and qualified individuals with disabilities.
24. **HIPAA COMPLIANCE.** Supplier agrees that to the extent that Supplier has access to patient information, Supplier shall comply with UPMC's HIPAA Business Associate terms and conditions, including any future modifications thereto, that are found at: <https://www.upmc.com/about/supply-chain/guidelines-for-associates>.
25. **NOTICES.** All notices, demands, requests, consents, approvals and other communications required or permitted hereunder must be in writing and will be effective upon receipt if delivered personally to such party, or by nationally recognized overnight courier service, or if sent by facsimile transmission with confirmation of delivery, to the address set forth below or to such other address as any party may give to the other in writing for such purpose:

UPMC Supply Chain Management
U.S Steel Tower
600 Grant Street, 59th Floor
Pittsburgh, PA 15219

26. **LIMITATION ON UPMC'S LIABILITY.** In no event shall UPMC be liable for consequential, incidental, or special damages of any kind or for damages in excess of the price allocable to the portion of the goods or services on which the claim is based. Action on any claim against UPMC must commence within one year after the cause of action has accrued.
27. **PRESERVATION OF RIGHTS.** No delay or omission on the part of UPMC to exercise any right or power arising hereunder will impair any such right or power or be considered a waiver of any such right or power or any acquiescence therein, nor will the action or inaction of UPMC impair any right or power arising hereunder. UPMC's rights and remedies hereunder are cumulative and not exclusive of any other rights or remedies which UPMC may have at law or in equity.
28. **ILLEGALITY.** In case any one or more of the provisions contained herein should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.
29. **GOVERNING LAW AND JURISDICTION.** The transaction provided for in the purchase order will be deemed to be made in Pennsylvania. This Agreement and the rights and liabilities of the parties hereto determined will be interpreted in accordance with the laws of the state of Pennsylvania, excluding its conflict of laws rules. Supplier hereby irrevocably consents to the exclusive jurisdiction of any state or federal court for the county or judicial district of Allegheny County, Pennsylvania, and consents that all service of process be sent by nationally recognized overnight courier service directed to the Supplier at the Supplier's address set forth herein and service so made will be deemed to be completed on the Business Day after deposit with such courier; provided that nothing herein will prevent

the UPMC from bringing any action, enforcing any award or judgment against any security or against any property of the Supplier within any other county, state or other foreign or domestic jurisdiction. UPMC and Supplier agree that the venue provided above is the most convenient forum for both the UPMC and the Supplier, and Supplier waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Agreement.

30. **RIGHT TO AUDIT.** Supplier shall allow UPMC or persons authorized by and acting on behalf of UPMC, including its independent public accountants, and federal and state governmental and bank regulatory authorities having jurisdiction over UPMC's business, reasonable access during normal business hours to the books, records, procedures and facilities of Supplier related to this Agreement to inspect, review, examine and audit such books, records, procedures and facilities. Supplier shall reasonably cooperate with UPMC, such other persons authorized by UPMC and any governmental and bank regulatory authorities in the conduct of such examination and audit, including giving them access for discussion of any audit, to officers and the independent public accountants of Supplier. Any third party provider, subcontractor or agent of Supplier in the performance of this Agreement shall be required by Supplier to grant UPMC, its authorized persons and such governmental and bank regulatory authorities the same access and audit rights.
31. **OTHER PROVISIONS.** The provisions hereof and in the purchase order set forth the entire agreement between UPMC and Supplier. UPMC's failure to assert any right is not a waiver of it or any other right. Time is of the essence. All money due to Supplier is Subject to deduction or set-off by UPMC to cover any counterclaim arising out of this or any other transaction with Supplier. If the development of goods or the services performed by Supplier and paid for by UPMC under this order result in patentable, copyrightable, or proprietary property, all rights, title, and interest thereto shall belong to and be assigned to UPMC, unless otherwise specified in writing.
32. **ELECTRONIC COMMERCE.** Supplier acknowledges that UPMC currently uses, or will in the future use, an electronic "business to business" framework to facilitate the transmission of Key Documentation relating to the purchase of Products hereunder. For purposes of this provision "Key Documentation" includes but is not limited to purchase orders, order acknowledgements, advanced shipping notices (ASN), change orders, invoices and other similar documentation which form a part of the Contract. Supplier acknowledges and agrees that (i) it has in place currently, or will implement as soon as possible after execution hereof, a means to accommodate information, such as described above, from a system designated by UPMC to facilitate transmission of Key Documentation electronically, and (ii) Key Documentation transmitted hereunder by such methods will not be deemed invalid solely because transmitted or executed electronically. To the extent required by UPMC, each authorized representative of a party will adopt a unique, verifiable digital identification consisting of symbols or codes to be transmitted with each electronic transmission, and use of such digital identification will be deemed for all purposes to constitute a "signature" and will have the same effect as a signature on a written document.