

**ARL PENN STATE  
PURCHASE ORDER  
GENERAL TERMS AND CONDITIONS**

**TERMS:**

- 1. PRICE** – If no price is specified herein, charges shall not exceed Vendor’s standard price for merchandise of like quality and quantity. Vendor warrants that prices charged to University are based on Vendor’s current catalog or published price list of commercial items sold in substantial quantities to the general public.
- 2. PAYMENT** – Payment shall be made for items accepted by the University in accordance with this Purchase Order that have been delivered to the delivery destinations set forth in this order.
- 3. DISCOUNT** – Discount terms must be stated on the invoice. Discounts will be calculated from the date material or the invoice is received and accepted, whichever is later.
- 4. DELIVERY** – The University reserves the right to cancel this order in whole or in part if any shipment of merchandise covered hereby is not received by the date specified on Purchase Order. University Purchase Order Number must be referenced on all invoices, packing lists, and Bills of Lading.
- 5. QUANTITY** – The University’s count will be accepted as final and conclusive on all shipments not accompanied by a packing list. Unless expressly provided for to the contrary on the face of this order, all shipments are to be made F.O.B. Destination, and the Vendor shall bear all cost for cartage, boxing, or containers as required. Goods shipped to the University in excess of the quantities specified on the front page of this Purchase Order may be rejected or returned at Vendor’s expense.
- 6. DELIVERY TIME** – Goods shipped to the University in advance of, or after agreed upon delivery schedules may be rejected or returned at the Vendor’s expense. Time is of the essence.
- 7. INVOICING** – Invoices should be emailed to [Invoices@arl.psu.edu](mailto:Invoices@arl.psu.edu) and must include the Purchase Order Number and the company name (example: “4200000765\_XYZ123 Company”) in the “Subject” line. Should you elect to mail invoices, send original invoice to The Pennsylvania State University, Applied Research Laboratory, P.O. Box 30, State College, PA 16804-0030. All invoices submitted must include the Purchase Order Number. Invoices should be submitted no earlier than the day shipment is made. Individual invoices will be issued for each shipment and each purchase order and must include the following information --
  - (1) Name and address of the Vendor;
  - (2) Invoice date;
  - (3) Purchase Order number and line item number;
  - (4) Description, quantity, unit of measure, unit price and extended price of the items delivered;
  - (5) Shipping number and date of shipment including the bill of lading number and weight of shipment;
  - (6) Terms of any prompt payment discount offered;
  - (7) Name and address to where payment is to be sent;
  - (8) Name, title, and phone number of person to be notified in the event of a defective invoice; and
  - (9) Invoice number
- 8. IDENTIFICATION** –THE UNIVERSITY’S PURCHASE ORDER NUMBER MUST SHOW ON ALL INVOICES, PACKING LISTS, AND BILLS OF LADING.
- 9. COUNTRY OF ORIGIN--** VENDOR MUST SUPPLY COUNTRY OF ORIGIN CERTIFICATE (COO) FOR EACH ITEM DELIVERED TO UNIVERSITY. FAILURE TO PROVIDE COO MAY RESULT IN ITEM(S) BEING RETURNED TO VENDOR AT VENDOR’S EXPENSE AND AT NO CHARGE TO UNIVERSITY.
- 10. RETURN OF UNIVERSITY DATA OR INFORMATION UPON TERMINATION OR EXPIRATION:**  
Upon expiration of a contract or order, or if a contract or order is terminated for any reason, Vendor will (i) deliver to the University, at no additional cost, a current copy of all University data or information in a readily available format, unless the parties mutually agree on a specific format for delivery, and (ii) if requested by the University in writing, completely destroy or erase all other copies of the University’s information or data in Vendor’s or its agents’ possession in any form, including, but not limited to, electronic copies, hard copies, or other memory devices. At the University’s request, Vendor shall certify to the University in writing that is has so destroyed or erased all copies of University data or information and that Supplier shall not make any further use of any of the University information or data.

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**CONDITIONS:**

**1. ACCEPTANCE OF ORDER** – This Purchase Order, when accepted by the Vendor, shall constitute the entire contract between the University and Vendor as agreed to and shall not be changed, altered, amended, supplemented, or canceled without the written approval of an authorized “Purchasing Representative” of The Pennsylvania State University (referred to below as the “University”) as listed on the Purchase Order. Either the Vendor’s written acceptance of this order or the shipment of any conforming article or commencement of performance hereunder or acceptance of University’s payment, shall constitute acceptance of this contract, and no contrary or additional terms or conditions shall apply. Except as otherwise provided herein, no conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement the terms and conditions of this order shall be binding unless hereafter made in writing and signed by the authorized parties. Additional or differing terms or conditions proposed by the Vendor in any format or included in Vendor’s acknowledgement hereof shall be deemed a material alteration of this order, are hereby objected to and rejected, and this offer shall be deemed accepted by Vendor without said additional or different terms. This contract constitutes the entire agreement of the parties.

**2. INSPECTION/ACCEPTANCE** – The Vendor shall only tender for acceptance those items that conform to the requirements of this contract. The University reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The University may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The University must exercise its post-acceptance rights-- (1) Within a reasonable time after the defect was discovered or should have been discovered; and (2) Before any substantial change occurs in the condition of the item, unless the change is due to a defect in the item.

**3. TITLE.** – Unless this Purchase Order specifically provides otherwise, title to items furnished under this order shall pass to the University upon acceptance, regardless of when or where the University takes physical possession.

**4. RISK OF LOSS** – Unless this Purchase Order specifically provides otherwise, risk of loss or damage to the items provided under this order shall remain with the Vendor until, and shall pass to the University upon, delivery of the items to the University at the destination specified on the Purchase Order.

**5. CHANGES** – The University may from time to time, by written instructions or drawings issued to the Vendor, make changes, issue additional instructions, require additional work, or direct the omission of work previously ordered. The provisions of this agreement shall apply to all such written modifications. Any requested increase or decrease in the total cost or a change to schedule contained in this Purchase Order must be expressly approved in writing by an authorized University Purchasing Representative.

**6. ADDITIONS** – No extra work, additions or alterations will be paid for by the University unless performed pursuant to and in accordance with the written Purchase Order of the University.

**7. CANCELLATIONS** – The University may cancel this Purchase Order at any time, giving notice in writing. In the event of such termination, the Vendor shall immediately stop all work hereunder and shall immediately notify any and all of its suppliers and subcontractors to cease work. An equitable adjustment in price and/or delivery schedule will be negotiated for materials completed or in process at the time of the cancellation notice. The Vendor shall not be paid for any work performed or costs incurred which reasonably could have been avoided. If Vendor cancels this order for any reason other than the University’s uncured material breach following thirty (30) days’ notice to cure, then University shall be entitled to pro-rated refund of all payments made.

**8. FORCE MAJEURE** – Should an event occur beyond the reasonable control of University and Supplier (each a “party”), including but not limited to (1) acts of God, (2) government declarations, (3) war, including armed conflict, (4) strikes or labor disputes (except those involving the employees or agents of the party seeking protection of this clause), (5) epidemic or pandemic, (6) disaster, (7) civil disorder, (8) curtailment of transportation services or facilities which would materially affect a party’s performance of any of its contractual obligations hereunder, or (9) any other cause reasonably beyond the parties’ control (collectively referred to as “occurrences”), which make performance of a party hereunder commercially impracticable, illegal, or impossible to fully perform under any agreement or purchase order as the parties originally contracted- the affected party shall give notice within five (5) business days of the occurrence to the other party, stating the period of time the occurrence is expected to continue. The affected party shall use diligent efforts to end the failure or delay in performance and ensure the effects of the occurrence are minimized. The affected party shall resume the performance of its obligations as soon as reasonably practicable after the removal

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of the cause. In the event that the affected party's failure or delay remains uncured for a period of seven (7) business days' following written notice given by it under this provision, either party may terminate the applicable agreement or purchase order upon five (5) business days' written notice, without liability. All prepaid fees received by the Supplier shall be returned to the University.

**9. TERMINATION FOR DEFAULT** – a) The University may by notice in writing direct Vendor to terminate this Purchase Order or work under this Purchase Order in whole or in part at any time for breach of any one or more of its terms. b) In the event of Vendor's default hereunder, the University may exercise any or all rights accruing to it, both at law including those set forth in Article 2 of the Uniform Commercial Code or in equity. The University shall not be liable to the Vendor for any amount for supplies or services not accepted, and the Vendor shall be liable to the University for any and all rights and remedies provided by law. c) Vendor's obligations under the warranty, patent and confidentiality provisions of this Purchase Order shall survive such termination. If it is determined that the University improperly terminated this contract for default, such termination shall be deemed a termination for convenience under the provisions of the Cancellations clause.

**10. TERMINATION DUE TO LACK OF FISCAL FUNDING** – In the event sufficient funds are not appropriated to the University, or to any one of its departments, to fulfill the requirements of the purchase order, the University may in its sole discretion, terminate this purchase order, in whole or in part, by giving Vendor written notice thereof. In the event the University terminates this Purchase Order due to insufficient funds, this Purchase Order shall terminate on the first day of the University's fiscal year for which the funds are not appropriated.

**11. EXCUSABLE DELAYS** – The Vendor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Vendor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Vendor shall notify the University in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the University of the cessation of such occurrence.

**12. WARRANTY AND INSPECTION** – Vendor warrants all articles sold and materials and work delivered hereunder shall be of good quality and merchantable and fit for use for the particular purpose described in this order and free from any defects and shall at all times be subject to inspection and rejection; but neither the University's inspection nor failure to inspect or reject shall relieve the Vendor of any obligations hereunder. Such inspection shall not exclude any warranties in respect to such goods.

**13. LIENS, CLAIMS AND ENCUMBRANCES** – Vendor warrants and represents that all the goods and materials delivered herein are free and clear from all liens, claims or encumbrances of any kind.

**14. SAMPLES** – May be requested for inspection and approval prior to manufacture or delivery.

**15. PATENTS** – The Vendor warrants that the material delivered, either alone or in combination with other materials, will not infringe on any patents in the United States or any foreign country, or the intellectual property rights of any third parties.

**16. INDEMNIFICATION** – The Vendor agrees to indemnify the University and its officers, directors, employees and agents and hold them harmless from and against all liability, loss and expense (including reasonable legal fees) for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, copyright, or other intellectual property right arising out of the performance of this order, provided the Vendor is reasonably notified of such claims and proceedings. Vendor shall protect, indemnify and save University harmless from and against any damage, cost or liability for any or all injuries (including death) to persons or property arising from actions, errors, omissions, or negligence of Vendor, its directors, officers, employees, agents, contractors or subcontractors, however caused including, but not limited to, any defect in material, any defect in services, workmanship, design of any good furnished, patent and/or copyright infringements or violations, and/or failure to follow or abide by any and all governing laws, ordinances, codes, and regulations. The Vendor shall not enter into any settlement without the University's prior written consent, which shall not be unreasonably withheld or delayed. This indemnity shall not be limited in any way by a limitation of liability clause or similar in Vendor's agreement.

**17. STANDARD INSURANCE REQUIREMENT** – The Vendor and any Subcontractor thereof, shall, at its own expense, carry and maintain the following insurance or self-insurance during the term of this Agreement, in amounts not less than that specified for each type. Such insurance or self-insurance shall be primary and non-contributory to the

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University's insurance and self-insurance coverage. The limits required for the Employers' Liability, Automobile Liability and Commercial General Liability coverages may be satisfied through primary insurance or any combination of primary and umbrella/excess liability insurance as long as the umbrella/excel liability insurance follows the form of the primary coverage.

Failure to procure, carry, and maintain the following insurance or self-insurance shall not relieve the Vendor, and any Subcontractor thereof, of any obligation or liability assumed under the Purchase Order, nor of any obligation or liability imposed by law. In no event shall the liability of the Vendor be limited to the extent of any insurance or self-insurance or the minimum limits required herein. Any self-insured retentions, deductibles, and exclusions in coverage in the insurance required shall be assumed by and at the sole risk of the Vendor.

All insurance policies except the Worker's Compensation must contain a waiver of subrogation against the University. The Vendor or its insurers must provide thirty (30) days advanced written notice to the University of any cancellation or material reduction in the required insurance or self-insurance programs below.

All insurance coverages (except those that are self-insured and approved by the University) must be written with an insurer licensed to conduct business in Pennsylvania and rated not less than A- by A. M. Best.

In the event the Vendor fails to maintain and keep in force the insurance coverages required, the University shall have the right to immediately terminate the Agreement without penalty.

The insurance requirements shall be subject to University review and approval, on an annual basis, during the term of this Purchase Order

- a) **Workers' Compensation** for statutory obligations imposed by workers' compensation and occupational disease laws. **Employers' Liability** insurance shall be provided with limits of not less than \$500,000 for each subcategory of coverage.
- b) **Automobile Liability** insurance (Bodily Injury Liability and Property Damage Liability) for all owned, leased, hired, non-owned vehicles with limits not less than \$1,000,000 Combined Single Limit.
- c) **Commercial General Liability** insurance including coverage for bodily injury, property damage, and personal injury for premises and operations, products and completed operations, contractual liability arising from all operations written on an occurrence basis with limits not less than \$1,000,000, and which must apply to ongoing operations. Medical Expense coverage must be written with a limit of not less than \$10,000 per person. "The Pennsylvania State University" must be named as an additional insured.

**An Insurance Certificate evidencing the above required insurance coverages, limits, primary and non-contributory provisions, the Commercial General Liability additional insured provision, excess following form provisions, and waiver of subrogation provisions, must be provided to the University, with the Certificate Holder as follows:**

The Pennsylvania State University  
c/o Risk Management Office  
Rider Building – Suite 103  
227 West Beaver Avenue  
State College, PA 16801

Prior to commencing work, the Vendor must provide a current certificate of insurance meeting the minimum coverages stated herein to the Purchasing Agent.

- d) **Professional Liability (Errors & Omissions)** insurance if professional services are being provided (by licensed and non-licensed professionals) with limits not less than \$1,000,000 per claim, for damages caused by acts, errors, omissions, and negligent acts of Vendor's employees and agents arising from the performance of professional services.

**18. BANKRUPTCY** – In the event of any proceedings in bankruptcy or insolvency by or against the Vendor, or in the event of the appointment (with or without the Vendor's consent) of an assignee for the benefit of creditors, or of a receiver, the University may cancel this order for default.

**19. PENNSYLVANIA LAW** – Performance of this order and all other matters pertaining thereto shall be governed by the laws of the Commonwealth of Pennsylvania, United States of America, without reference to its conflict of law



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provisions.

**20. DISPUTE RESOLUTION** – Any and all claims, disputes or controversies arising under, out of, or in connection with this Purchase Order, shall be reduced to writing, and communicated to the other party pursuant to the notices section hereof. Each party shall appoint a representative to attempt to amicably negotiate a resolution thereof. If the representatives of the parties have not been able to resolve the dispute within fifteen (15) business days after formal notification of the dispute hereunder, the parties shall have the right to pursue any other remedies legally available to resolve such dispute in either the Courts of the Common Pleas of Centre County of Pennsylvania or in the United States District Court for the Middle District of Pennsylvania, to whose jurisdiction for such purposes the University and Vendor each hereby irrevocably consents and submits. Notwithstanding the foregoing, nothing in this Article shall be construed to waive any rights or timely performance of any obligations existing under this order. The Vendor shall proceed diligently with performance of this order, pending final resolution of any dispute arising under the Purchase Order.

**21. TAXES** – The University is exempt from all Federal Excise Taxes. The Pennsylvania State University is an instrumentality of the Commonwealth of Pennsylvania, and as such, is exempt from Pennsylvania Sales and Use Tax.

**22. ASSIGNMENT** – This Purchase Order, and all obligations hereunder, including provisions of monies due under this order, shall only be assignable with prior written consent of University

**23. ORDER OF PRECEDENCE.** – Any inconsistencies in this order shall be resolved by giving precedence in the following order: (1) These Terms and Conditions, (2) the schedule of supplies/services, exclusive of appendices, specifications, plans of this Purchase Order, (3) appendices, (4) specifications, (5) plans, (6) other documents, exhibits, and attachments of this Purchase Order. Vendor shall immediately bring any inconsistencies to the attention of the University in writing.

**24. BACKGROUND CHECK REQUIREMENTS - POLICY HR99** - Any Vendor doing work on University premises, or to represent the University at non-University locations, must certify that they have read University Policy HR99 and have complied with all relevant aspects as found on the following website: <https://policy.psu.edu/policies/hr99>.

By accepting this purchase order, Vendor certifies that all employees, subcontractors, or volunteers who will work on University premises have successfully passed a background check that meet or exceed the University's standards for the type of work being performed as specified in the University policy.

In addition to the background checks, all individuals, including the employees of any subcontractors engaged by your firm to work on awarded project are required to self-disclose criminal arrests and/or convictions as outlined in the PSU Arrest and Conviction self-disclosure form within a 72 hour period of their occurrence. The self-disclosure form with the listing of convictions that must be reported can be found through a link within University Policy HR99 Background Check Process: <https://policy.psu.edu/policies/hr99>.

All disclosures from the background checks and self-disclosure requirement are to be reported to the Penn State Office of Human Resources (814/865-6247).

Criminal convictions will be reviewed with respect to the nature and gravity of the offense(s); time since conviction; completion of sentence or any other remediation; relevance to the position for which the employee is engaged; and discrepancies between the background check and what the employee self-reported.

Failure to comply with the background check and self-reporting requirements will be considered a breach of contract and grounds for termination of the awarded contract.

**25. CHILD ABUSE REPORTING REQUIREMENTS - POLICY AD72** - All University employees, volunteers, and independent contractors, who in the course of their business, have reasonable suspicion of child abuse are required to make a report as outlined in University Policy AD72 <https://policy.psu.edu/policies/ad72>.

**26. RIGHT TO AUDIT** – The Vendor is responsible for keeping accurate and reasonable records related to its performance and obligations under this order. In particular, records will be kept documenting any price, cost or budget computations required under the order. The Vendor agrees that the University or its duly authorized representative has the right to audit any directly pertinent books, documents, papers and records related to transactions and/or performance of the terms and conditions of the order. The Vendor shall make available to the University or its agents all such records and documents for audit on the Vendor's premises during regular and reasonable working

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hours. The Vendor further agrees to disclose within 90 days of receipt any independent auditors' reports, which bear directly on the performance or administration of this order.

The right to audit shall include periodic examinations of records throughout the term of the order and for a period of 3 years after its termination, or longer if required by law. The right to audit shall also apply to agents and subcontractors hired by the Vendor for the purpose of fulfilling the order. Subcontractors retained by the Vendor on a "cost-plus" basis shall electronically submit invoices of incurred costs on a quarterly basis. The University shall recoup the costs of the audit if the audit detects overcharges that reach or exceed .5 percent of the total order billings. In the event overcharges are detected, Vendor shall repay the University for the costs of the audit and any overcharges by submitting a refund and/or credit to ARL Penn State Purchasing Office within thirty (30) days following said audit. The requirements of this provision shall not apply to any portion of an overcharge that is the subject of a good-faith dispute between the University and Vendor.

**27. SUSPECT COUNTERFEIT ITEMS** - Suspect/counterfeit items or services are a serious concern to the University because they present a potential threat to personal safety, equipment and system reliability and/or compliance with regulatory environmental standards. Failure of a safety or mission critical system due to a Suspect Counterfeit Item(s) could also have security implications at DoD facilities. Notwithstanding other warranty provisions of this Order, Vendor expressly warrants that all items provided under this Order are suitable for the intended or specified use and that no suspect or counterfeit items, component parts or materials have been furnished or delivered to the University under this Order. Unless otherwise specified in this order, the Vendor shall purchase directly from product manufacturers or authorized manufacturer distributors.

Vendor's warranty also extends to labels and/or trademarks or logos affixed, or designed to be affixed, to items supplied or delivered to the University. In the event that a suspect or counterfeit item, as defined herein, is identified and/or delivered to the University, Vendor agrees to comply with all requirements stated in this Clause.

#### **Definitions**

**Suspect Item:** A suspect item is an item of which there is an indication by visual inspection, testing, or other verifiable information, that the item may not conform to established U.S. Government or industry-accepted specifications and national consensus standards.

**Counterfeit Item:** A counterfeit item is one that has been copied or substituted without legal right or authority or whose material, performance, or characteristics have been misrepresented by the vendor, supplier, distributor, or manufacturer.

Vendor shall only provide items and services that meet or exceed all requirements specified in this Order including verifiable compliance with all applicable quality, safety and manufacturing standards including all U.S. Government or industry-accepted specifications and national consensus standards. Examples of such standards include, but are not limited to: Underwriter's Laboratory (UL) Listing, National Fire Protection Association (NFPA), Standard of Mechanical Engineers (ASME), Institute of Electrical and Electronics Engineers (IEEE), Occupational Safety and Health Act (OSHA), American Society for Testing Material (ASTM), Nationally Recognized Testing Laboratory (NRTL), etc.

Additional detailed information is available at the Department of Energy (DOE) Training Manual on [Suspect/Counterfeit Awareness](#)

Vendor shall have a quality assurance program that detects and prevents suspect/counterfeit items from being furnished or used in the performance of work under this Order. If requested by the University, Vendor shall furnish a certificate of compliance with delivery stating that all items fully comply with all requirements of this Order.

The Vendor may choose to identify to the University certifications held to applicable standards such as ISO/IEC 20243, Mitigating Maliciously Tainted and Counterfeit products or other similar standards, to satisfy this contract requirement. This can be completed by sending the certification to the ARL Penn State Purchasing Manager at [Purchasing@arl.psu.edu](mailto:Purchasing@arl.psu.edu).

In the event that the Vendor identifies or suspects that a suspect/counterfeit item may have been delivered under this Order, Vendor shall immediately notify the University Purchasing Agent. Vendor shall document and provide all available information regarding any item or service furnished under this Order that is suspected to be a suspect/counterfeit item, component, subcomponent part or material. The University shall impound the item(s). The Vendor may be required to replace such item(s) with item(s) acceptable to the University and shall be liable for all

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costs relating to the impoundment, removal, and replacement of the item(s). Vendor shall indemnify the University, its agents, and third parties for any financial loss, injury, or property damage resulting directly or indirectly from material, components, or parts that are not genuine, original, and unused, or not otherwise suitable for the intended purpose. This includes, but is not limited to, materials that are defective, suspect, or counterfeit; materials that have been provided under false pretenses; and materials or items that are materially altered, damaged, deteriorated, degraded, or result in product failure.

Detection of any or suspect/counterfeit item(s) leading to evidence of deliberate misrepresentation of any supplied item(s), including components, subcomponent parts or materials used in the item(s), may result in an investigation into the validity of certification, fraud, and/or forgery. Because falsification of information or documentation may constitute criminal conduct; the University will notify cognizant Department of Defense officials and the Office of the Inspector General.

Note: If this Order provides for the use of credit cards, their use in no way relieves the Vendor from complying with all requirements of this Clause.

For questions or to report suspect or counterfeit items or materials email or call the ARL Penn State Purchasing Manager at [Purchasing@arl.psu.edu](mailto:Purchasing@arl.psu.edu) / 814-865-2588.

**28. PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT** – The Pennsylvania State University (PSU) on or after August 13, 2019, is prohibited from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Vendor is prohibited from providing to or quoting to The Pennsylvania State University any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. By accepting the University Purchase Order or by providing a quotation in response to any inquiry from any University employee, the Vendor certifies that it **WILL NOT** provide covered telecommunications equipment or services to PSU in its performance under this purchase order or any purchase order that may result from Vendor quotation provided to PSU. The Vendor shall provide the additional disclosure information as is required under this section and agrees to abide by the Reporting Requirements contained in this section.

(a) *Definitions.* As used in this section—

*Backhaul* means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

*Covered foreign country* means The People's Republic of China.

*Covered telecommunications equipment or services* means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

*Critical technology* means—

(1) Defense articles or defense services included on the United States Munitions List set forth in the

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International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

*Interconnection arrangements* means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

*Reasonable inquiry* means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

*Roaming* means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

*Substantial or essential component* means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) *Prohibition.*

(1) The Pennsylvania State University (PSU) on or after August 13, 2019, is prohibited from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Vendor is prohibited from providing to or quoting to The Pennsylvania State University any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) *Reporting requirement.*

(1) In the event the Vendor identifies covered telecommunications equipment or services provided to University as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Vendor is notified of such by a subcontractor at any tier or by any other source, the Vendor shall report the information in paragraph (c)(2) of this clause to the ARL Purchasing Office (purchasing@arl.psu.edu).

(2) The Vendor shall report the following information pursuant to paragraph (c)(1) of this clause

(i) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.



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(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(d) *Subcontracts.* The Vendor shall insert the substance of this clause, including this paragraph (d) in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

(e) *Representation.* The Vendor represents that—

(1) It **WILL NOT** provide covered telecommunications equipment or services to The Pennsylvania State University in the performance of any contract, subcontract or other contractual instrument resulting from any solicitation or in the performance under this purchase order. The Vendor shall provide the additional disclosure information as required at paragraph (c)(1) of this section.

**29. PENNSYLVANIA DEPARTMENT OF AGRICULTURE – ORDER OF QUARANTINE AND TREATMENT; SPOTTED LANTERNFLY** which establishes rules for all businesses that may move regulated articles within and from the areas covered by the Quarantine including permit requirements, employee training, and inspections. All employees of the business responsible for driving any vehicle or conveyance, or handling, shipping, packaging or loading any regulated article must comply with the Quarantine. Details on the PA Bulletin official quarantine order can be found at: <https://www.pabulletin.com/secure/data/vol48/48-21/825.html>.

## **COMPLIANCES:**

As a supplier of materials or services to The Pennsylvania State University, (including its Commonwealth Campuses) suppliers must comply with the following:

- 1. OSHA** – Products shall meet, and be in compliance with, the current applicable prescribed standards of the Federal Occupational Safety and Health of Act of 1970 in effect on the date of this order.
- 2. EXECUTIVE ORDER #11246**, as amended, governing Federal Contractors and Pennsylvania Executive Order 1972-1.
- 3. EXECUTIVE ORDER #11246**, as amended, stating that a Federal Contractor with a contract in excess of \$50,000 must require each subcontractor with 51 or more employees and a subcontract of \$50,000 or more to maintain a written affirmative action plan. Therefore, the University requests assurances that a written affirmative action plan has been prepared.
- 4. EXECUTIVE ORDER #11246**, as amended, requiring a Federal Contractor to obtain a certificate from all subcontractors with contracts in excess of \$10,000 that the subcontractor does not and will not maintain employee facilities in a segregated manner, or permit its employees to perform services in a facility under the subcontractor's control where segregated facilities are maintained.
- 5. THE PENNSYLVANIA HUMAN RELATIONS COMMISSION** regulations in 16 PA Code, Chapter 49, whereby the contractor shall not discriminate against any applicant for employment because of regard to race, color, religious creed, ancestry, handicap or disability, national origin, age or sex.
- 6. SECTION 503 VOCATIONAL REHABILITATION ACT as amended** (orders over \$10,000) relating to the hiring, retention, and promotion of qualified individuals with disabilities, and the applicable rules and regulations (41 CFR 60-741).
- 7. VIETNAM ERA VETERANS READJUSTMENT ASSISTANCE ACT (VEVRAA)** of 1974 as amended, 38 U.S.C. 4212 for orders over \$100,000 as implemented by Department of Labor Regulations, 41 CFR 60-300, requiring Affirmative Action and Nondiscrimination obligations of federal contractors and subcontractors regarding disabled veterans, recently separated veterans, active duty wartime or campaign badge veterans, and armed forces service medal veterans.
- 8. EXECUTIVE ORDER #11625** for orders over \$10,000 by other than personal service contractors, regarding Utilization of Minority Business Enterprises.
- 9. EXECUTIVE ORDER #11625** for orders over \$100,000 regarding Minority Business Enterprises Subcontracting

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Program.

**10. PUBLIC LAW 95-507** for orders over \$ 150,000 regarding Small Businesses and Small Disadvantaged Businesses.

**11. WITH RESPECT TO PURCHASE ORDERS** issued under contracts with the Government of the United States, Executive Order #12800, which includes the Notification of Employee Rights Concerning Payment of Union Dues or Fees, including specifically the provisions of Section 2 (a), (1), (2), (3) and (4), unless otherwise exempted by rules, regulations, or orders of the Secretary of Labor.

**12. PURCHASE ORDERS IN EXCESS OF \$150,000:**

- A. Vendor agrees that the University, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment on this Purchase Order, have access to and the right to examine any pertinent books, documents, papers, and records of such Vendor involving transactions related to this Purchase Order.
- B. By submitting a signed proposal or quotation in response to the University's solicitation, Vendor certifies that pursuant to Executive Orders 12549 and 12689 and the implementing rules it presently is not debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.
- C. Vendor shall comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). By submitting a signed proposal or quotation in response to the University's solicitation, Vendor certifies that Vendor will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Vendor shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

**13. Clean Air Act(42 U.S.C. 7401 et seq.) and the Federal Water Pollution Prevention and Control Act as amended (33 U.S.C. 1251 et seq.):** Vendor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act(42 U.S.C. 7401 et seq.) and the Federal Water Pollution Prevention and Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Regional Office of the Environmental Protection Agency and the appropriate Federal awarding agency.

**14. PURCHASE ORDERS IN EXCESS OF \$2,000 FOR CONSTRUCTION OR \$2,500 FOR REPAIR:** Vendor shall comply with the Copeland Anti-Kickback Act (18 U.S.C. 874 and 40 U.S.C. 276c) as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").

**15. WALSH-HEALY PUBLIC CONTRACTS ACT:** If this Purchase Order is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount which exceeds, or may expect to exceed, \$10,000 and is otherwise subject to the Walsh-Healey Public Contracts Act as amended (41 U.S.C. 35), there are hereby incorporated reference to all representations and stipulations required by said Act and regulations issued there under by the Secretary of Labor, such representation and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor.

**16. DEBARMENT AND SUSPENSION** – Vendors shall fully comply with the requirements stipulated in Subpart C of 45 CFR 620, entitled "Responsibilities of Participants Regarding Transactions". The Vendor is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 45 CFR 620, entitled "Covered Transactions", includes a term or condition requiring compliance with Subpart C. The Vendor also is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transaction. The Vendor acknowledges that failing to disclose the information required under 45 CFR 620.335 may result in termination of the order, or pursuance of other available remedies, including suspension and debarment. Vendors may access the System for Award Management (SAM) website at <https://sam.gov/SAM/> .

**17. RIGHTS TO INVENTIONS MADE UNDER FEDERAL GOVERNMENT GRANTS, CONTRACTS AND COOPERATIVE AGREEMENTS** – Purchase orders issued for the performance of experimental, developmental, or research work under Federal Government grants, contracts and cooperative agreements shall provide for the rights of the Federal Government and the Vendor (subcontractor) in any resulting invention in accordance with 37 CFR part

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401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

**18. VENDORS DEALING WITH MINORS** – Any Vendor dealing with minors, under the age of 18, on University premises or representing The Pennsylvania State University at non-University locations, must adhere to University Policy AD39 and comply with all relevant aspects as found on the following website:

<https://policies.psu.edu/policies/ad39>. This includes all employees, subcontractors, and volunteers.

**19. ADA COMPLIANCE** – The Pennsylvania State University is dedicated to ensuring accessibility to programs, services, and activities in accordance with the [Americans with Disabilities Act, Title II](#).

**20. PRODUCT ACCESSIBILITY** – The University is committed to purchasing or recommending electronic and information technology (EIT) that provides the same programs, benefits and services to individuals with disabilities that they do to individuals without disabilities except when it is technically unfeasible to do so.

EIT includes, but is not limited to, the following:

- Telecommunications products (such as telephones)
- Information kiosks and transaction machines
- Internet and intranet websites
- Multimedia
- Automated teller machines
- Electronic books and electronic book reading systems
- Search engines and databases
- Course management systems
- Classroom technology and multimedia
- Personal response systems (“clickers”)
- Office equipment

For Information and Communications Technology (ICT), Vendor must ensure that products or services provided under this Agreement conform to the W3C Web Content Accessibility Guidelines, version 2.1 (WCAG 2.1) at conformance levels A and AA and any applicable accessibility standards identified in a fully completed [Supplier Accessibility Statement](#). Vendor will provide to the University. To the extent that the Vendor’s products or services fail to meet accessibility standards, the Vendor shall describe, by using the [Accessibility Roadmap](#) its plan for Vendor's products' or services' conformance to the aforementioned accessibility standards. Vendor will support the University in providing equally effective alternate access for non-conforming products or services by providing alternate access workarounds until such time the product is fully conformant to any applicable accessibility standards identified in the [Accessibility Roadmap](#) and WCAG 2.1 A and AA.

Vendor agrees to use commercially reasonable efforts to promptly respond to and resolve complaints regarding accessibility of its products or services. Failure to comply with the terms of this section shall constitute a breach of this Agreement and the University may terminate this Agreement in its sole discretion. Failure to exercise its termination rights under this section does not constitute a waiver of those rights.

**21. FERPA** - If Vendor receives from or on behalf of the University, or by reason of this order or contract has access to information or data which is protected by the Family Education Rights and Privacy Act, 20 U. S. C. Section 1232g, and any regulations promulgated pursuant thereto (“FERPA”) (all such University data or information “FERPA Data”), then in addition to these Purchasing Terms and Conditions, the terms and conditions of the University’s FERPA Data Addendum or the University’s Addendum for Hosting Sensitive Penn State Data shall control Vendor’s receipt, access to and/or use of FERPA data.

**22. SOCIAL RESPONSIBILITY** – Fulfilling the mission of The Pennsylvania State University for those we serve requires the highest standards of integrity, responsibility, and respect, and we encourage our vendors to aspire to those same standards, particularly when on campus or engaging with members of the University community. The University has adopted the Global Sullivan Principles of Social Responsibility. We also encourage our vendors to adopt and follow these principles.

**23. NON-DISCRIMINATION** - During the performance of this order, the Vendor agrees that it will not discriminate against any employee or applicant for employment because of age, race, color, ancestry, national origin, religion, creed, service in the uniformed services (as defined in state and federal law), veteran status, sex, sexual orientation, marital or

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family status, pregnancy, pregnancy-related conditions, physical or mental disability, gender, perceived gender, gender identity, genetic information or political ideas, or any other basis prohibited by law.

**24. VENDOR CONDUCT** - The University is committed to equal access to programs, facilities, admission and employment for all persons, in an environment free of harassment and free of discrimination. Conduct constituting harassment or discrimination in the University environment, as prohibited by University Policy AD85 and AD91, is subject to corrective action.

**25. CONFIDENTIAL INFORMATION** – “Confidential Information” shall mean any and all University data, Personal Data, sound, image, video or other files, including applications, that are provided to, uploaded to, stored or otherwise accessible by Supplier/Contractor/Subcontractors (each a “Recipient”), which may or may not be unmarked, and other proprietary information which is specifically marked as proprietary or confidential and which is disclosed by PSU in any form in connection with this contract. “Personal Data” includes, but is not limited to, personal identifiers such as name, address, phone number, date of birth, Social Security Number, and student or personnel identification number; FERPA Data (as defined by 20 U.S.C. Section 1232g and the regulations promulgated pursuant thereto); cardholder data; IP address; driver’s license number; other state-or-federal identification numbers such as passport, visa or state identity card numbers; account number or credit or debit card number, or an account number or credit card number in combination with any required security code, access code or password that would permit access to an individual’s financial account; health information as defined in applicable statutes, laws, and regulations; and such other data and information as may be specified by applicable law as “Personal Data” or the equivalent thereof.

During the term of this contract and indefinitely after the date of termination of this contract, Recipient (a) shall treat as confidential all Confidential Information provided by PSU, (b) shall not use such Confidential Information except as expressly permitted under the terms of this contract or otherwise previously authorized in writing by PSU, (c) shall implement reasonable procedures to prohibit the disclosure, unauthorized duplication, misuse or removal of such Confidential Information, and (d) shall not disclose such Confidential Information to any third Party. Without limiting the foregoing, Recipient shall use at least the same procedures and degree of care to prevent the disclosure of Confidential Information as it uses to prevent the disclosure of its own confidential information of like importance, and shall in any event use no less than reasonable procedures and a reasonable degree of care.

Upon becoming aware of a security breach in which University Confidential Information is used or disclosed in a manner not covered by the contract, or in violation of any applicable state or federal laws, Recipient will report to PSU any security incident immediately upon being aware of such a breach and take corrective steps to remedy the breach as requested by University. Such report will be made to the Penn State Privacy Office at 227 West Beaver Avenue, Suite 103, State College, PA 16801. Phone (814) 863-3049.

Exceptions: Notwithstanding the above, Recipient shall not have liability with regard to any Confidential Information that: (a) was generally available to the public at the time it was disclosed, or becomes generally available to the public through no fault of the recipient; (b) was known to the Recipient at the time of disclosure as shown by written records in existence at the time of disclosure; (c) was developed independently by the Recipient prior to the disclosure, as shown by written records in existence prior to the disclosure (d) is disclosed with the prior written approval of University; (e) becomes known to the Recipient from a source other than University without breach of this contract by the Recipient and in a manner which is otherwise not in violation of University’s rights; or (f) is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the Recipient shall provide reasonable advance notice to enable University to seek a protective order or otherwise prevent such disclosure.

**26. TOBACCO AND SMOKE-FREE CAMPUS** - As part of the University’s strategic priority to enhance health and wellness, the University has adopted a tobacco and smoke-free policy across all campuses, for which all faculty, staff, students, and third party visitors must comply all. All relevant aspects of University Policy AD32 can be found on the following website: <https://policies.psu.edu/policies/ad32>.

**27. SUSPECT COUNTERFEIT ITEMS** - Suspect/counterfeit items or services are a serious concern to the University because they present a potential threat to personal safety, equipment and system reliability and/or compliance with regulatory environmental standards. Failure of a safety or mission critical system due to a Suspect Counterfeit Item(s) could also have security implications at DoD facilities. Notwithstanding other warranty provisions of this Order, Vendor expressly warrants that all items provided under this Order are suitable for the intended or specified use and that no suspect or counterfeit items, component parts or materials have been furnished or delivered



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to the University under this Order. Unless otherwise specified in this order, the Vendor shall purchase directly from product manufacturers or authorized manufacturer distributors.

Vendor's warranty also extends to labels and/or trademarks or logos affixed, or designed to be affixed, to items supplied or delivered to the University. In the event that a suspect or counterfeit item, as defined herein, is identified and/or delivered to the University, Vendor agrees to comply with all requirements stated in this Clause.

**Definitions**

Suspect Item: A suspect item is an item of which there is an indication by visual inspection, testing, or other verifiable information, that the item may not conform to established U.S. Government or industry-accepted specifications and national consensus standards.

Counterfeit Item: A counterfeit item is one that has been copied or substituted without legal right or authority or whose material, performance, or characteristics have been misrepresented by the vendor, supplier, distributor, or manufacturer.

Vendor shall only provide items and services that meet or exceed all requirements specified in this Order including verifiable compliance with all applicable quality, safety and manufacturing standards including all U.S. Government or industry-accepted specifications and national consensus standards. Examples of such standards include, but are not limited to: Underwriter's Laboratory (UL) Listing, National Fire Protection Association (NFPA), Standard of Mechanical Engineers (ASME), Institute of Electrical and Electronics Engineers (IEEE), Occupational Safety and Health Act (OSHA), American Society for Testing Material (ASTM), Nationally Recognized Testing Laboratory (NRTL), etc.

Additional detailed information is available at the Department of Energy (DOE) Training Manual on [Suspect/Counterfeit Awareness](#)

Vendor shall have a quality assurance program that detects and prevents suspect/counterfeit items from being furnished or used in the performance of work under this Order. If requested by the University, Vendor shall furnish a certificate of compliance with delivery stating that all items fully comply with all requirements of this Order.

The Vendor may choose to identify to the University certifications held to applicable standards such as ISO/IEC 20243, Mitigating Maliciously Tainted and Counterfeit products or other similar standards, to satisfy this contract requirement. This can be completed by sending the certification to the ARL Penn State Purchasing Manager at [mpd2@arl.psu.edu](mailto:mpd2@arl.psu.edu).

In the event that the Vendor identifies or suspects that a suspect/counterfeit item may have been delivered under this Order, Vendor shall immediately notify the University Purchasing Agent. Vendor shall document and provide all available information regarding any item or service furnished under this Order that is suspected to be a suspect/counterfeit item, component, subcomponent part or material. The University shall impound the item(s). The Vendor may be required to replace such item(s) with item(s) acceptable to the University and shall be liable for all costs relating to the impoundment, removal, and replacement of the item(s). Vendor shall indemnify the University, its agents, and third parties for any financial loss, injury, or property damage resulting directly or indirectly from material, components, or parts that are not genuine, original, and unused, or not otherwise suitable for the intended purpose. This includes, but is not limited to, materials that are defective, suspect, or counterfeit; materials that have been provided under false pretenses; and materials or items that are materially altered, damaged, deteriorated, degraded, or result in product failure.

Detection of any or suspect/counterfeit item(s) leading to evidence of deliberate misrepresentation of any supplied item(s), including components, subcomponent parts or materials used in the item(s), may result in an investigation into the validity of certification, fraud, and/or forgery. Because falsification of information or documentation may constitute criminal conduct; the University will notify cognizant Department of Defense officials and the Office of the Inspector General.

Note: If this Order provides for the use of credit cards, their use in no way relieves the Vendor from complying with all requirements of this Clause.

For questions or to report suspect or counterfeit items or materials email or call the ARL Penn State Purchasing Manager at [mpd2@arl.psu.edu](mailto:mpd2@arl.psu.edu) / 814-865-2588.



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**28. OTHER COMPLIANCES** – The Vendor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this Purchase Order.