

REQUEST FOR QUOTATION

ISSUE DATE: April 10, 2012
RFQ NO: UCM1018TT
DUE DATE: May 3, 2012
TIME: 4:00 p.m. (PT)

If further information is required, please contact: **Terry Thun @ (209) 228-4084** E-mail: tthun@ucmerced.edu

This document can only be issued by a University Purchasing Agent

Please quote your lowest price for the material to be delivered, as specified below. Any deviation from the specifications must be identified and fully described. No charges for package, for drayage or for any other purpose will be allowed over and above the prices quoted on this sheet. University of California standard purchase order terms and conditions apply. A copy of these conditions will be furnished on request. The right is reserved to accept or reject quotation on each item separately, or as a whole, and to waive any irregularities in a quotation. If unable to quote please return this form so marked.

THIS IS NOT AN ORDER

All qualified, interested suppliers are invited to submit quotations for:

Atomic Force Microscope/Scanning Probe Microscopy

for

University of California, Merced

Instructions for Submitting Quotation

The required RFQ sections two (2) and three (3) must be returned with your quotation. This page must be signed by an authorized company representative and returned along with the quotation to indicate acceptance of all terms and conditions of the RFQ.

All bids must be clearly marked: RFQ # UCM1018TT

Provide 1ea. original sealed bid to the following location:

University of California, Merced, Purchasing Department, 1715 Canal Street, Merced, CA 95340. Attn: Terry Thun
Mailing address (for US Postal Service only): 5200 North Lake Road, Merced, CA 95343. Bids must be sealed and received by the bid due date and time.

REQUEST FOR QUOTATION

Purpose

Quotes are being solicited for an atomic force microscope/scanning probe microscopy (AFM/SPM) with included environmental chamber. Specifications are for Agilent Technology and Bruker AFM/SPM. Submittals for technical equivalents are acceptable. The University reserves the right to determine if submitted specifications are a technical equivalent for the University's requirements.

Minimum Bid Acceptance Period

Bids shall be firm offers and shall remain valid for acceptance by UC Merced **60** days following the RFQ closing date.

OSHA ACT

The Seller Warrants and represents that the equipment when delivered shall conform to all applicable standards and requirements of the California Occupational Safety and Health Act.

Audit Requirement

Any agreement resulting from this RFQ shall be subject to an examination and audit by the University and the State of California for a period of three (3) years after final payment. The examination and audit shall be confined to those matters connected with the performance of the agreement, including but not limited to the costs of administering the agreement.

Pricing

The bidder certifies that the price quoted under this request shall be the most favorable the bidder gives to any customer or governmental agency for the same or substantially similar requirements. (please initial) Yes _____ No _____

Bid Sheet (Section 3)

All costs must be detailed as indicated. Partial or incomplete quotations may be rejected as non-compliant.

Fob Point/Invoice Terms

All prices must be FOB University site delivered, net 30 days.

Bid Format

Bids are to be submitted using only our form/format. Supplemental materials submitted by bidder may be used as reference only and any conflicts or rejections of the terms and conditions as stated in the request for quote will not be binding unless accepted in writing by the University. **Submit full specifications with all submittals.** If submitting multiple proposals all submittals must be sent in as individual submittals.

Contract Award In Best Interest

The University reserves the right to accept or reject proposals on each item separately or as a whole, to reject any or all bids without penalty, to waive any informalities or irregularities therein, and to contract as the best interest of the University may require to best meet the needs of the University, as expressed in this RFQ. The University reserves the right to award any resultant contract(s) as a whole, or split award between competing bidders. Selection of a bid does not mean that all aspects of the bid are acceptable to the University. The University reserves the right to negotiate modification of the bid prices, terms and conditions with the lowest responsive, responsible bidder in conjunction with the award criteria contained herein, prior to the execution of a contract, to ensure a satisfactory procurement. The University reserves the right to determine if an alternate item is equal to the specified item and will meet the University's requirement.

Basis for Award

Award will be based upon lowest cost quoted by responsive/responsible Bidder.

Rejection of Bids

Reasons for rejection of bids by University include the following:

- a) Failure to use the bid form furnished by the University of California, Merced Purchasing Department;

- b) Late or incomplete bids will not be accepted. Bids may also be rejected for failure to conform to the rules or requirements contained in the RFQ;
- c) failure to sign the bid by an authorized representative;
- d) proof of collusion among bidders, in which case all bids involved in the collusive action will be rejected;
- e) noncompliance with applicable law, unauthorized additions or deletions, conditional bids, incomplete bids, or irregularities of any kind which may tend to make the bid incomplete, indefinite or ambiguous as to its meaning;
- f) provisions reserving the right to accept or reject an award or to enter into a contract containing terms and conditions that are contrary to those in the solicitation.

Restriction of Communication

The single point of contact for administrative and technical issues regarding this RFQ is: UC Merced Purchasing Department. Except for the designated contact listed, Bidders are not permitted to communicate with University staff regarding this solicitation during the period between the RFQ issue date and the announcement of award, except during:

- The course of a Bidder's conference, if conducted;
- Oral presentations and site visits, if conducted.

The University reserves the right to reject the bid of Bidder(s) found to be in violation of this provision.

Environmental Sustainability

Whenever possible, contractor should make every reasonable effort to use environmentally preferable products, methods, equipment, packaging and transportation and is responsible for proper disposal of materials in an environmentally responsible manner.

Federal Grants

Orders funded by a grant from the Federal Government are subject to compliance with the standards and requirements set forth in OMB Circular A-110, Appendix A (contract provisions), including (but not limited to) the following, as applicable:

1. Rights to inventions made under a contract or agreement. (The clause is contained in the Department of Commerce Regulations at 37 CFR Part 401.14). For purposes of this order in the referenced clause, the term "contract" shall mean "this order", the term "contractor" shall mean "seller", and the terms "government" and "contracting officer" shall mean "university".
2. Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended.

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). The above provisions are hereby incorporated by reference. The full text of these provisions is available at: <http://www.whitehouse.gov/omb/circulars/a110/a110.html> transcriptions.

Section 3

BID SHEET

<u>Qty.</u>	<u>Description</u>	<u>Unit Price</u>	<u>Ext Price</u>
1 ea	Atomic Force Microscope as per attached specification (Section 4). Include itemized pricing on a separate sheet. Submit Pricing only. Any terms and conditions included with pricing, unless, accepted by the University in writing will not be binding.	_____	_____

TAXABLE \$ _____

Delivery shall be made within _____ Days A.R.O.

SUB TOTAL \$ _____

TAX (7.25%) \$ _____

TOTAL \$ _____

As a supplier of goods and services to the University of California I/we certify that racially segregated facilities will not be maintained nor provided for employees at any establishment under my/our control, and that I/we adhere to the principals set forth in Executive Order 11246 and 11375, and undertake specifically to maintain employment policies and practices that affirmatively promote equality of opportunity for minority group persons and women, to take affirmative steps to hire and promote women, to take affirmative steps to hire and promote women and minority group persons at all job levels and in all aspects of employment, to communicate this policy in both English and Spanish to all persons concerned within the company, with outside recruiting services and the minority community at large to provide the University on request a breakdown of our total labor force by ethnic group, sex, and job category, and to discuss with the University our policies and practices relating to our affirmative action program.

Date Telephone Number (including Area Code)

Signature

Company Name

Print Name

Title

Specifications

Bruker

□ ICON-GB-PKG

Dimension Icon SPM configured for the Active Vibration Isolation Glovebox

- Dimension Icon SPM configured to create complete environmental control solution in conjunction with new Turnkey Glovebox for Dimension Icon (Model ICON-GB-115 or Model ICON-GB-220)
- Achieves Dimension Icon high resolution performance while environment at <1ppm oxygen and water
- MUST be ordered together with Model ICON-GB-115 or Model ICON-GB-220 (based on voltage)
- Includes active vibration isolation table TS-140+50 for use in the glove box. Do NOT order separate vibration isolation
- Includes all electrical connections and feedthroughs needed for operation of Dimension Icon in glovebox
- Enables all Dimension Icon modes and features with the exception of VITA
- Includes modifications to stage control system ensuring maintenance of environmental control and pressure inside glovebox during Dimension Icon stage motion
- Includes glovebox workstation desk which is NOT identical to the regular Icon workstation
- NanoScope V SPM Control Station, our most advanced controller, now includes our proprietary ScanAsyst Mode, using exclusive Peak Force Tapping technology. The NanoScope V includes eleven ADCs (two high speed), eleven DACs (two high speed), four digital lines (two in, two out), three digital lock-ins, eight simultaneous data channels, digital Q control, fourteen software configurable BNC I/O signal connections, Virtual Signal Access, and more. It offers the highest resolution (up to 5k x 5k) and fastest interfaces available with a newly designed graphical user interface rendering more efficiency and easier to use in all modes supported. Also includes a Pentium computer and one 30-inch LCD monitor (100-240V, 50/60Hz, auto switching).
- Dimension Icon Scanning Probe Microscope performs all major SPM imaging techniques including ScanAsyst, TappingMode (air), Contact Mode, Lateral Force Microscopy, PhaseImaging, Lift Mode, MFM, Torsional Resonance Mode, Force Spectroscopy, Force Volume, EFM, Surface Potential, Piezoresponse Microscopy and Force Spectroscopy and MIRO software without additional hardware. PeakForce QNM, HarmoniX, Nanoindentation, Nanomanipulation, Nanolithography, Force Modulation (air and fluid), TappingMode (fluid), Dark Lift, STM, SCM, C-AFM, SSRM, TUNA, TR-TUNA and VITA operating modes are available with additional accessories. Performs imaging techniques on samples up to 210 mm in diameter / 15 mm thick. Stage repeatability (X-Y-axis): unidirectional 2-micron typical; bidirectional less than or equal to 3-micron; video optics 180-micron to 1465-micron aspect ratio of 1.3:1 and includes integrated vacuum pump for sample chuck.
- Icon XYZ Closed-Loop Application Module-ready SPM Scan Head with a nominal range of 90-micron x 90-micron and vertical range of 10-microns, closed-loop operation enabled with thermally compensating sensors in its X, Y, and Z-axis for high accuracy/precision for imaging, positioning, zooming, nanomanipulation and nanolithography.
- 210mm General Purpose Vacuum Chuck
- Includes the powerful NanoScope Analysis software package to support image analysis in real-time with linked communication to NanoScope and NanoDrive software v8.x and later. Features include image processing and analysis history with Undo/Redo functions, a save your work process function, 3D rendering and skin overlay, section, Fourier and bearing analysis, image math, data filtering, force curve analysis, and many rendering options for report formatting. Compatible with all Bruker data file versions.
- Two Contact / tapping (air) cantilever holders (Model DAFMCH), 20 Sharp Nitride Lever probes (Model SNL-10), 40 TappingMode Probes (Model MPP-11100-10, MPP-21100-10, TESPA, OTESPA), 20 Model SCANASYST-AIR probes, 10 Model SCANASYST-FLUID and 10 Model SCANASYST-FLUID+ probes and a set of accessories included
- CE compliant

- REQUIRES five days installation/training (Model ITCS3 + 2 x ITCSA) which must be purchased separately.
- ITCS
 - Two-day Installation and Training for new Systems
 - Two days installation and training at the customer's site for new systems only
 - Allow two weeks advance notice for scheduling
- ICON-GB-115
 - Turnkey Glovebox for Dimension Icon SPM (115V)
 - Custom glovebox solution enables high resolution AFM performance while in an atmosphere of <1ppm Oxygen and <1ppm H₂O
 - MUST be ordered in conjunction with Dimension Icon configured system ICON-GB-PKG
 - Includes custom glovebox manufactured by MBraun and based on the Labmaster series, 3-glove version, with approximate inside dimensions 1500mm(w) x 1000mm (d) x 900mm (h), standard 390/600mm antechamber, and mini 150/400mm antechamber
 - Includes standard MBraun MB20-G touch panel controlled regenerable gas purification system with oxygen and water analyzers
 - Specified attainable purity of <1ppm oxygen and <1ppm water with inert working gas
 - Glovebox premounted onto custom designed rigid stand with thick steel top plate
 - REQUIRES working gas (N₂ or Ar, grade 4.8, 600kPa)
 - INCLUDES the cost of installation and training by a representative from MBraun. Installation timing must be coordinated such that MBraun glove box installation occurs on first day of Bruker AFM installation.
- SAMV
 - Signal Access Module for NanoScope V Controller
 - For use with NanoScope V Control Stations and Dimension or BioScope SPMs
 - For users planning to do custom experimentation involving adding or modifying electronic signals between the NanoScope V Control Station and the Dimension or Bioscope Microscope or SPM Application Modules.
 - Allows user access to most of the signal lines for monitoring and/or manipulation purposes (e.g. for custom experiments):
 - a) to each of 25 signals to and from the Microscope System by means of 50 BNC terminals
 - b) to low voltage analog supply voltages from the NanoScope Controller by means of 3 BNC terminals (output only)
 - c) to 10 signals to and from the Application Modules through 20 BNC connectors
 - d) to the secondary I2C bus from the NanoScope Controller through a 9-pin D-Sub connector (output only)
 - CE compliant
 - NOTE: This item is an active electrical device and exposes high voltages
- ICONEC
 - Electrochemistry Accessory Kit Option for Dimension SPMs
 - Provides a cell for samples of 10mm to 30mm in size to perform electrochemical AFM (ECAFM)
 - Includes EC cell, Icon EC chuck, scanner fluid cell (DTFML-DD-HE) and Viton Splash guard for sample setup and scanning
 - Includes an integrated 60-degree Celsius fluid heating stage in the electrochemistry cell
 - Includes heater controller, multiplexing connector box and interface for customer-provided bipotentiostat
 - REQUIRES customer-provided bipotentiostat. Consult Sales for a recommendation on bipotentiostats.
 - NOTE: All controlling for heating and bipotentiostat is through the instrument's front panels

- ICONHC35-250
 - -35°C to 250°C High Temperature Heater/Cooler Package for Dimension SPMs
 - Provides sample heating and temperature control from -35°C to 250°C for samples in air or other inert gases
 - Includes peristaltic pump, reservoir, gas and fluid manifold, tubing and accessories specially configured to operate together
 - Includes Bruker Thermal Applications Controller (TAC) heater/cooler controller with digital readout
 - Includes -35 to 100-degree element, ambient to 250-degree element, cantilever holder with tip heating, stage base with purge ports, and other accessories.
 - For contact or TappingMode operation in air
 - Compatible with most SPM modes and Application Modules. (Some modes may require separate cantilever holder. Temperature range for some modes may be limited by condensation, oxidation, or cantilever holder limitations.)
 - NOT compatible with fluids

Agilent Technologies

N9411A Series 5500 AFM/SPM. Closed loop 8-port glass environmental chamber – Series 5100 or 5500

- Flip stand – Series 5100 or 5500
- Standard sample plate – Series 5100, 5400, or 5500
- AFM/LFM detector and N9533A AFM nose cone for multi-purpose scanners
- Fluid cell kit, Kel-F, 15.6 mm – Series 5100, 5400, or 5500
- Series 5500 microscope electronics only with option 010

N9610A AFM/SPM controller, closed loop enabled- Series 5400 or 5500

- Include PC (standard)
- Include dual LCD monitors (standard)
- PicoView AFM control software with PicoImage
- Analysis software
- N9797B-1FP PicoImage Basic application – fixed perpetual license

N9624B Triple lock-in AC mode controller, AAC mode only – Series 5400 or 5500. N9624B Series 5400, 5500, 5600 compatibility.

N9521A Multi-purpose scanner, 90 um, 670 nm low coherence – Series 5100 or 5500

N9446A Glove box – Series 5100 or 5500

N9451A Video microscope – Series 5100 or 5500

N9901B Installation, 2 days

N9647A Controlled temp sample plate, ambient to 250 deg C – Series 5100, 5400, Or 5500

N9654A Temperature controller; 0.1 K accuracy, w/ interface connection kit

APPENDIX A UNIVERSITY OF CALIFORNIA

Terms and Conditions of Purchase

ARTICLE 1 - The materials, supplies or services covered by this order shall be furnished by Seller subject to all the terms and conditions set forth in this order including the following, which Seller, in accepting this order, agrees to be bound by and to comply with in all particulars and no other terms or conditions shall be binding upon the parties unless hereafter accepted by them in writing. Written acceptance or shipment of all or any portion of the materials or supplies, or the performance of all or any portion of the services, covered by this order shall constitute unqualified acceptance of all its terms and conditions. The terms of any proposal referred to in this order are included and made a part of the order only to the extent it specifies the materials, supplies, or services ordered, the price therefor, and the delivery thereof, and then only to the extent that such terms are consistent with the terms and conditions of this order.

ARTICLE 2 - INSPECTION. The services, materials and supplies furnished shall be exactly as specified in this order free from all defects in Seller's performance, design, workmanship and materials, and, except as otherwise provided in this order, shall be subject to inspection and test by University at all times and places. If, prior to final acceptance, any services and any materials and supplies furnished therewith are found to be incomplete, or not as specified, University may reject them, require Seller to correct them without charge, or require delivery of such materials, supplies, or services at a reduction in price which is equitable under the circumstances. If Seller is unable or refuses to correct such items within a time deemed reasonable by University, University may terminate the order in whole or in part. Seller shall bear all risks as to rejected services and, in addition to any costs for which Seller may become liable to University under other provisions of this order, shall reimburse University for all transportation costs, other related costs incurred, or payments to Seller in accordance with the terms of this order for unaccepted services and materials and supplies incidental thereto. Notwithstanding final acceptance and payment, Seller shall be liable for latent defects, fraud or such gross mistakes as amount to fraud.

ARTICLE 3 - CHANGES. University may make changes within the general scope of this order in drawings and specifications for specially manufactured supplies, place of delivery, method of shipment or packing of the order by giving notice to Seller and subsequently confirming such changes in writing. If such changes affect the cost of or the time required for performance of this order, an equitable adjustment in the price or delivery or both shall be made. No change by Seller shall be allowed without written approval of University. Any claim of Seller for an adjustment under this Article must be made in writing within thirty (30) days from the date of receipt by Seller of notification of such change unless University waives this condition in writing. Nothing in this Article shall excuse Seller from proceeding with performance of the order as changed hereunder.

ARTICLE 4 - TERMINATION A. University may, by written notice stating the extent and effective date, cancel and/or terminate this order for convenience in whole or in part, at any time. University shall pay Seller as full compensation for performance until such termination: (1) the unit or pro rata order price for the performed and accepted portion; and (2) a reasonable amount, not otherwise recoverable from other sources by Seller as approved by University, with respect to the unperformed or unaccepted portion of this order, provided compensation hereunder shall in no event exceed the total order price.

B. University may by written notice terminate this order for Seller's default, in whole or in part, at any time, if Seller refuses or fails to comply with the provisions of this order, or so fails to make progress as to endanger performance and does not cure such failure within a reasonable period of time, or fails to perform the services within the time specified or any written extension thereof. In such event, University may purchase or otherwise secure services and, except as otherwise provided herein, Seller shall be liable to University for any excess costs occasioned University thereby. If, after notice of termination for default, University determines that the Seller was not in default or that the failure to perform this order was due to causes beyond the control and without the fault or negligence of Seller (including, but not restricted to, acts of God or of the public enemy, acts of University, acts of Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, and delays of a subcontractor or supplier due to such causes and without the fault or negligence of the subcontractor or supplier), termination shall be deemed for the convenience of University, unless University shall determine that the services covered by this order were obtainable by Seller from other sources in sufficient time to meet the required performance schedule.

C. If University determines that Seller has been delayed in the work due to causes beyond the control and without the fault or negligence of Seller, University may extend the time for completion of the work called for by this order, when promptly applied for in writing by Seller; any extension granted shall be effective only if given in writing. If such delay is due to failure of University, not caused or contributed to by Seller, to perform services or deliver property in accordance with the terms of the order, the time and price of the order shall be subject to change under the Changes Article. Sole remedy of Seller in event of delay by failure of University to perform shall, however, be limited to any money actually and necessarily expended in the work during the period of delay, solely by reason of the delay. No allowance will be made for anticipated profits.

D. The rights and remedies of University provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this order.

E. As used in this Article, the word "Seller" includes Seller and its subsuppliers at any tier.

ARTICLE 5 - LIABILITY FOR UNIVERSITY - FURNISHED PROPERTY. Seller assumes complete liability for any tooling, articles or material furnished by University to Seller in connection with this order and Seller agrees to pay for all such tooling, articles or material damaged or spoiled by it or not otherwise accounted for to University's satisfaction. The furnishing to Seller of any tooling, articles, or material in connection with this order shall not, unless otherwise expressly provided, be construed to vest title thereto in Seller.

ARTICLE 6 - TITLE. Title to the material and supplies purchased hereunder shall pass directly from Seller to University at the f.o.b. point shown, or as otherwise specified in this order, subject to the right of University to reject upon inspection.

ARTICLE 7 - PAYMENT, EXTRA CHARGES, DRAFTS. Seller shall be paid, upon submission of acceptable invoices, for materials and supplies delivered and accepted or services rendered and accepted. University will not pay cartage, shipping, packaging or boxing expenses, unless specified in this order. Drafts will not be honored. Invoices must be accompanied by shipping documents or photocopies of such, if transportation is payable and charged as a separate item.

ARTICLE 8 - CHARACTER OF SERVICES. Seller, as an independent contractor, shall furnish all equipment, personnel and material sufficient to provide the services expeditiously and efficiently during as many hours per shift and shifts per week and at such locations as the University may so require and designate.

ARTICLE 9 - FORCED, CONVICT, AND INDENTURED LABOR A. By accepting this order, Seller hereby certifies that no foreign-made equipment, materials, or supplies furnished to the University pursuant to this order will be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction.

B. Any Seller contracting with the University who knew or should have known that the foreign-made equipment, materials, or supplies furnished to the University were produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction, when entering into a contract pursuant to the above, may have any or all of the following sanctions imposed:

(1.) The contract under which the prohibited equipment, materials, or supplies were provided may be voided at the option of the University.

(2.) Seller may be removed from consideration for University contracts for a period not to exceed 360 days.

ARTICLE 10 - INDEMNITY. A. General. Seller shall defend, indemnify, and hold harmless University, its officers, employees, and agents, from and against all losses, expenses (including attorneys' fees), damages, and liabilities of any kind resulting from or arising out of this agreement and/or Seller's performance hereunder, provided such losses, expenses, damages and liabilities are due or claimed to be due to the negligent or willful acts or omissions of Seller, its officers, employees, agents, subcontractors, or anyone directly or indirectly employed by them, or any person or persons under Seller's direction and control.

B. Proprietary Rights. Seller shall indemnify, defend, and hold harmless University, its officers, agents, and employees against all losses, damages, liabilities, costs, and expenses (including but not limited to attorneys' fees) resulting from any judgment or proceeding in which it is determined, or any settlement agreement arising out of the allegation, that Seller's furnishing or supplying University with parts, goods, components, programs, practices, or methods under this order or University's use of such parts, goods, components, programs, practices, or methods supplied by Seller under this order constitutes an infringement of any patent, copyright, trademark, trade name, trade secret, or other proprietary or contractual right of any third party. The foregoing shall not apply unless University has informed Seller as soon as practicable of the suit or action alleging such infringement. Seller shall not settle such suit or action without the consent of University. University retains the right to participate in the defense against any such suit or action.

C. Products. Seller shall fully indemnify, defend, and hold harmless University from and against any and all claim, action, and liability, for injury, death, and property damage, arising out of the dispensing or use of any of Seller's product provided under authorized University orders. In addition to the liability imposed by law on the Seller for damage or injury (including death) to persons or property by reason of the negligence, willful acts or omissions, or strict liability of the Seller or his agents, which liability is not impaired or otherwise affected hereby, the Seller hereby assumes liability for and agrees to save University harmless and indemnify it from every expense, liability or payment by reason of any damage or injury (including death) to persons or property suffered or claimed to have been suffered through any act or omission of the Seller. The University agrees to provide Seller with prompt notice of any such claims and to permit Seller to defend any claim or suit, and that it will cooperate fully in such defense.

ARTICLE 11 - DECLARED VALUATION OF SHIPMENTS. Except as otherwise provided on the face of this order, all shipments by Seller under this order for University's account shall be made at the maximum declared value applicable to the lowest transportation rate or classification and the bill of lading shall so note.

ARTICLE 12 - WARRANTY. Seller agrees that the supplies or services furnished under this order shall be covered by the most favorable commercial warranties the Seller gives to any customer for the same or substantially similar supplies or services, or such other more favorable warranties as specified in this order. The rights and remedies so provided are in addition to and do not limit any rights afforded to University by any other article of this order. Such warranties will be effective notwithstanding prior inspection and/or acceptance of the services or supplies by the University.

ARTICLE 13 - ASSIGNMENT AND SUBCONTRACTING. This order is assignable by University. Except as to any payment due hereunder, this order may not be assigned or subcontracted by Seller without written approval of University. In case such consent is given, it shall not relieve Seller from any of the obligations of this Agreement and any transferee or subcontractor shall be considered the agent of Seller and, as between the parties hereto, Seller shall be and remain liable as if no such transfer or subcontracting had been made.

ARTICLE 14 - EQUAL OPPORTUNITY AFFIRMATIVE ACTION. Expressly, Seller shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, religion, sex, gender identity, pregnancy, physical or mental disability, medical condition (cancer-related or genetic characteristics), ancestry, marital status, age, sexual orientation, citizenship, or service in the uniformed services (as defined by the Uniformed Employment and Reemployment Rights Act of 1994). Seller shall prohibit retaliation against any employee or person seeking employment for bringing a complaint of discrimination or harassment pursuant to this Article 14, or participating in the complaint process. Seller shall undertake affirmative action to assure equal employment opportunity for minorities and women, for persons with disabilities, and for covered veterans. Seller shall provide the University, upon request, a breakdown of its labor force for minorities and women, within job categories, and shall discuss with the University Seller's policies and practices related to its affirmative action programs.

ARTICLE 15 - The clauses contained in the following paragraphs of the Federal Acquisition Regulations are incorporated by reference. The full text is available upon request:

FAR 52.222-04 Contract Work Hours and Safety Standards Act – Overtime Compensation

FAR 52.222-26 Equal Opportunity

FAR 52.204-11 American Recovery and Reinvestment Act - Reporting Requirements (if funded by a federal contract with Recovery Act funds)

ARTICLE 16 - WORK ON UNIVERSITY OR GOVERNMENT PREMISES. If Seller's work under this order involves performance by Seller at University or United States Government owned sites or facilities, the following provisions shall apply:

A. Liens. Seller agrees that at any time upon request of University he will submit a sworn statement setting forth the work performed or material furnished by subcontractors, suppliers and materialmen, and the amount due and to become due to each, and that before the final payment called for hereunder, will if requested, submit to University a complete set of vouchers showing what payments have been made for materials and labor used in connection with the work called for hereunder. Seller shall: (1) Indemnify and hold harmless University from all claims, demands, causes of action or suits, of whatever nature, arising out of the services, labor and materials furnished by Seller or its subcontractors under this order, and from all laborers', materialmen's and mechanics' liens upon the real property upon which the work is located or any other property of University; (2) Promptly notify University in writing, of any such claims, demands, causes of action, or suits brought to its attention. Seller shall forward with such notification copies of all pertinent papers received by Seller with respect to any such claims, demands, causes of action or suits and, at the request of University shall do all things and execute and deliver all appropriate documents and assignments in favor of University of all Seller's rights and claims growing out of such asserted claims as will enable University to protect its interest by litigation or otherwise. The final payment shall not be made until Seller, if required, shall deliver to University a complete release of all liens arising out of this order, or receipts in full in lieu thereof, as University may require, and if required in either case, an affidavit that as far as it has knowledge or information, the receipts include all the labor and materials for which a lien could be filed; but Seller may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to University to indemnify it against any claim by lien or otherwise. If any lien or claim remains unsatisfied after all payments are made, Seller shall refund to University all monies that the latter may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorneys' fees.

A. Cleaning Up. Seller shall at all times keep University premises where the work is performed and adjoining premises free from accumulations of waste material or rubbish caused by its employees or work of any of its subcontractors, and, at the completion of the work; shall remove all rubbish from and about the building and all its and its subcontractors' tools, scaffolding, and surplus materials, and shall leave the work "broom clean" or its equivalent, unless more exactly specified. In case of dispute between Seller and the subcontractors employed on or

about the structure or structures upon which the work is to be done, as herein provided, as to responsibility for the removal of the rubbish, or in case the same be not promptly removed as herein required, University may remove the rubbish and charge the cost to Seller.

B. Employees. Seller shall not employ on the work any unfit person or anyone not skilled in the work assigned to him or her, and shall devote only its best-qualified personnel to work under this order. Should University deem anyone employed on the work incompetent or unfit for his or her duties and so inform Seller, Seller shall immediately remove such person from work under this order and he or she shall not again, without written permission of University, be assigned to work under this order. It is understood that if employees of University shall perform any acts for the purpose of discharging the responsibility undertaken by the Seller in this Article 15, whether requested to perform such acts by the Seller or not, such employees of the University while performing such acts shall be considered the agents and servants of the Seller subject to the exclusive control of the Seller.

C. Safety, Health and Fire Protection. Seller shall take all reasonable precautions in the performance of the work under this order to protect the health and safety of employees and members of the public and to minimize danger from all hazards to life and property, and shall comply with all health, safety, and fire protection regulations and requirements (including reporting requirements) of University. In the event that Seller fails to comply with said regulations or requirements of University, University may, without prejudice to any other legal or contractual rights of University, issue an order stopping all or any part of the work; thereafter a start order for resumption of work may be issued at the discretion of the University. Seller shall make no claim for extension of time or for compensation or damages by reason of or in connection with such work stoppage. The safety of all persons employed by Seller and its subcontractors on University premises, or any other person who enters upon University premises for reasons relating to this order, shall be the sole responsibility of Seller. Seller shall at all times maintain good order among its employees and shall not employ on the work any unfit person or anyone not skilled in the work assigned to him or her. Seller shall confine its employees and all other persons who come onto University's premises at Seller's request or for reasons relating to this order and its equipment to that portion of University's premises where the work under this order is to be performed or to roads leading to and from such work sites, and to any other area which University may permit Seller to use. Seller shall take all reasonable measures and precautions at all times to prevent injuries to or the death of any of its employees or any other person who enters upon University premises. Such measures and precautions shall include, but shall not be limited to, all safeguards and warnings necessary to protect workers and others against any conditions on Owner's premises which could be dangerous and to prevent accidents of any kind whenever work is being performed in proximity to any moving or operating machinery, equipment or facilities, whether such machinery, equipment or facilities are the property of or are being operated by, the Seller, its subcontractors, the University or other persons. To the extent compliance is required, Seller shall comply with all University safety rules and regulations when on University premises.

ARTICLE 17 - INSURANCE Seller shall defend, indemnify, and hold the University, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages that are caused by or result from the negligent or intentional acts or omissions of Seller, its officers, agents, or employees. Seller, at its sole cost and expense, shall insure its activities in connection with the work under this order and obtain, keep in force, and maintain insurance as follows:

A. Comprehensive or Commercial Form General Liability Insurance (contractual liability included) with limits as follows:

- Each Occurrence \$1,000,000.00
- Products/Completed Operations Aggregate \$2,000,000.00
- Personal and Advertising Injury \$1,000,000.00
- General Aggregate (Not applicable to the Comprehensive Form) \$ 2,000,000.00

If the above insurance is written on a claims-made form, it shall continue for three years following termination of this Agreement. The insurance shall have a retroactive date of placement prior to or coinciding with the effective date of this Agreement.

B. Business Automobile Liability Insurance for owned, scheduled, non-owned, or hired automobiles with a combined single limit not less than one million dollars (\$1,000,000.00) per occurrence.

(REQUIRED ONLY IF SELLER DRIVES ON UNIVERSITY PREMISES IN THE COURSE OF PERFORMING WORK FOR UNIVERSITY, INCLUDING MAKING DELIVERIES.)

C. Professional Liability Insurance with a limit of \$ _____ dollars per occurrence with an aggregate of not less than \$ _____ dollars.

If this insurance is written on a claims-made form, it shall continue for three years following termination of this Agreement. The insurance shall have a retroactive date of placement prior to or coinciding with the effective date of this Agreement.

D. Workers' Compensation as required by California State law.

It is understood that the coverage and limits referred to under a., b., and c. above shall not in any way limit the liability of Seller. Seller shall furnish the University with certificates of insurance evidencing compliance with all requirements prior to commencing work under this Agreement. Such certificates shall:

- (1) Provide for thirty (30)-days advance written notice to the University of any modification, change, or cancellation of any of the above insurance coverage.
- (2) Indicate that The Regents of the University of California has been endorsed as an additional insured for the coverage referred to under a. and b. This provision shall only apply in proportion to and to the extent of the negligent acts or omissions of Seller, its officers, agents, or employees.
- (3) Include a provision that the coverage will be primary and will not participate with nor be excess over any valid and collectible insurance or program of self-insurance carried or maintained by the University.

ARTICLE 18 - PERMITS. Seller agrees to procure all necessary permits or licenses and abide by all applicable laws, regulations and ordinances of the United States and of the state, territory and political subdivision in which the work under this order is performed. Seller shall be liable for all damages and shall indemnify and save University harmless from and against all damages and liability which may arise out of failure of Seller to secure and pay for any such licenses or permits or to comply fully with any and all applicable laws, ordinances and regulations.

ARTICLE 19 - COOPERATION. Seller and its subcontractors, if any, shall cooperate with University and other vendors and contractors on the premises and shall so carry on their work that other cooperating vendors and contractors shall not be hindered, delayed or interfered with in the progress of their work, and so that all of such work shall be a finished and complete job of its kind.

ARTICLE 20 - WAIVER OF DEFAULT. Any failure of University at any time, or from time to time, to enforce or require the strict keeping and performance by Seller of any of the terms or conditions of this order shall not constitute a waiver by University of a breach of any such terms or conditions and shall not affect or impair such terms or conditions in any way, or the right of University at any time to avail itself of such remedies as it may have for any such breach or breaches of such terms or conditions.

ARTICLE 21 – USE OF UNIVERSITY NAME. Seller shall not use the University name, trade name(s) and/or marks (logo's) or any derivation thereof, in any form or manner in advertisements, reports, or other information released to the public, or place the University name, trade name(s) and/or marks (logo's) or any derivation thereof on any consumer goods, product, or service for sale or distribution to the public, without the express, prior written approval from a duly authorized official of the University.

ARTICLE 22 - TAXES. Seller shall pay all contributions, taxes and premiums payable under federal, state, local, and foreign laws measured upon the payroll of employees engaged in the performance of work under this order. Seller shall be responsible and pay for all federal, state, local, and foreign taxes, as applicable, based on seller's income. Seller shall pay all applicable sales, use, excise, transportation, privilege, occupational and other taxes applicable to materials and supplies furnished or work performed hereunder and shall save University harmless from liability for any such contributions, premiums, and taxes. University is subject to California sales and use tax unless the good or service purchased is specifically exempted by statute. It is preferred that Seller invoice University for applicable sales and use tax on the same invoice as the good or service.

ARTICLE 23 - OTHER APPLICABLE LAWS. Any provision required to be included in a contract of this type by any applicable and valid federal, state or local law, ordinance, rule or regulations shall be deemed to be incorporated herein.

ARTICLE 24 – GOVERNING LAW. The law of the State of California, except its conflicts of laws provisions, shall govern this Appendix and any document to which it is appended. The exclusive jurisdiction for any and all actions arising out of or brought under this Agreement is in court of competent jurisdiction, federal or state, situated in the county in the State of California in which the University campus is located or, where the procurement covers more than one campus or the Office of the President, the exclusive venue is Alameda County, California.

Rev. 09/01/2011