



STANDARD PURCHASE TERMS AND CONDITIONS

As used herein, the term “Seller” shall mean any bidder, offeror, vendor, service provider or other person or entity responding to this procurement opportunity. Upon award of a contract hereunder, the term “Seller” shall apply to the contract awardee (or contractor). “Buyer” shall mean Community First Health Plans, Inc., a non-profit corporation created by the Bexar County Hospital District d/b/a University Health. Any references to “this contract” or “this Agreement” shall mean any contract or agreement anticipated to ultimately be awarded hereunder regardless of whether a formal contractual document is executed or the award is made through notification of the successful bidder, offeror, vendor, service provider or other person or entity responding to this procurement opportunity without a contractual document labeled as such. In the event no formal contractual document is executed, the contract or agreement shall consist of the RFP/IFB (including the specifications/description of work and General Conditions) Seller's response (as accepted and to the extent it does not conflict with the terms contained herein) and these Standard Purchase Terms and Conditions.

Seller and Buyer agree as follows:

1. **SELLER TO PACKAGE GOODS:** If applicable, Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows:
 - a. Seller’s name and address;
 - b. Container number and total number of containers, e.g. box 1 of 4 boxes; and
 - c. The number of the container bearing the packing slip. Seller shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform to requirements of common carrier and any applicable specifications. Buyer’s count shall be final and conclusive on shipments not accompanied by packing lists.
2. **SHIPMENT UNDER RESERVATION PROHIBITED:** Seller is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of goods.
3. **DELIVERY TERMS AND TRANSPORTATION CHARGES F.O.B.:** If goods are to be delivered pursuant to the contract, destination freight must be pre-paid unless delivery terms are specified otherwise in the procurement solicitation. Buyer agrees to reimburse Seller for transportation costs in the amount specified in either Seller’s bid, or actual costs, whichever is lower, if the quoted delivery terms do not include transportation costs, provided Buyer shall have the right to designate what method of transportation shall be used to ship the goods. If Seller shall fail to make delivery in accordance with the established delivery schedule, the Buyer shall have the right to cancel the purchase in whole or in part and to purchase elsewhere and hold Seller responsible. Buyer reserves the right to invoice Seller for any increased costs incurred by the Buyer on any item purchased elsewhere, when Seller cannot supply according to the terms of the contract.
4. **TITLE AND RISK OF LOSS:** The title and risk of loss of the goods shall not pass to Buyer until Buyer actually receives, takes possession and accepts the goods at the point or points of delivery.
5. **MINIMUM ORDER:** Unless pre-approved by Buyer, minimum order requirements and assessed handling fees by companies are unacceptable terms to the Buyer and will not be honored.
6. **NO REPLACEMENT OR DEFECTIVE TENDER:** Every tender or delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform and the time for performance has expired, then this shall constitute a breach. Seller shall, however, have the right to substitute a conforming tender if the time for performance has not yet expired and the Seller may reasonably notify Buyer of its intention to cure to Buyer’s satisfaction.

7. **INVOICES AND PAYMENTS:**
Seller shall submit separate invoices, in duplicate, on each purchase order or purchase release after each delivery, or if this contract is one for services, by the 10th day of each month (unless otherwise specified). Each invoice shall indicate the purchase order number and the supply or service agreement number, if applicable. Invoices shall be itemized and transportation charge, if any, shall be listed separately. A copy of the bill of lading and the freight waybill when applicable should be attached to the invoice. Mail to Accounts Payable Department, Community First Health Plans, 12238 Silicon Drive, Suite 100, San Antonio, Texas 78249-3454.
8. **GRATUITIES:** The Buyer may, by written notice to Seller, cancel this contract without liability to Seller if it is determined by Buyer that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Seller or any agent with a view toward securing this contract or securing favorable treatment with respect to the awarding or amending, or the making or any determinations with respect to the performing of the contract. In the event this contract is cancelled by Buyer pursuant to this provision and without limiting any other rights or remedies available to Buyer, Seller shall forfeit the cost incurred by Seller in providing such gratuities.
9. **WARRANTY-PRICE:** The price shall be contained in Seller's bid which Seller warrants to be no higher than Seller's current prices on orders by others for products of the kind and specification covered by this contract for similar quantities under similar or like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the Seller's current prices on orders by others, or in the alternative, Buyer may cancel without liability to Seller for breach.
10. **WARRANTY-PRODUCT:** Seller shall not limit or exclude any implied warranties or warranties mandated by law or regulation and any attempt to do so shall be of no effect and shall render this contract voidable at the option of the Buyer. Seller warrants that the goods furnished will conform to the specifications, drawings and descriptions listed in the bid invitation, and to the sample(s) furnished by Seller if any. In the event of a conflict between the specifications, drawing, and descriptions, the specifications shall govern.
11. **SAFETY WARRANTY:** To the extent applicable, all goods and/or services provided under this Agreement shall meet or exceed the Safety Standards established and promulgated under the Federal Occupational Safety and Health Administration (Public Law 91-596) and its regulations in effect or proposed as of the date of this Agreement. Additionally, all goods provided under this Agreement shall meet or exceed applicable standards established and promulgated by the Food and Drug Administration. In the event Seller fails to make the appropriate repair or correction within a reasonable time, repair or correction made by Buyer will be at Seller's expense.
12. **RIGHT OF INSPECTION:** Buyer shall have the right to inspect the goods (if any) at delivery before accepting them. Buyer shall have the right to review and inspect the progress of any work or services for which award is anticipated to be made hereunder, at all times.
13. **CANCELLATION:** The Buyer reserves the ultimate right for contract cancellation upon immediate notice should products or services be found to be inferior to specifications or if patient care/ human life is threatened.
14. **TERMINATION:**
 - a. **FOR CONVENIENCE:** This contract may be terminated by Buyer upon sixty (60) days' written notice to Seller. Further, the performance of work or delivery of goods under this order may be terminated in whole or in part by the Buyer in accordance with this provision. Termination of work hereunder shall be effected by the delivery to Seller of a "Notice of Termination" thirty (30) days prior to cancellation. In no event shall such termination by Buyer under this Section give rise to any liability on the part of Buyer. Buyer's sole obligation hereunder is to pay Seller for products and/or services ordered and received prior to the date of termination.

- b. **FOR DEFAULT:** This contract may be terminated by Buyer for breach of any material terms or conditions of this contract by the Seller, which breach is not corrected by Seller within ten (10) calendar days after written notice thereof is given to Seller.
 - c. **NON-EXCLUSIVE:** Such rights of termination are in addition to and not in lieu of rights of Buyer set forth in clause.
- 15. **FORCE MAJEURE:** Neither Party shall be required to perform any term, condition, or covenant of this Agreement so long as such performance is delayed or prevented by acts of God, material or labor restriction by any governmental authority, pandemic, civil riot, floods, hurricanes, or other natural disasters, or any other cause not reasonably within the control of Buyer or Seller, and which by the exercise of due diligence Buyer or the Seller is unable, wholly or in part, to prevent or overcome. If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this contract, then such party shall give notice and full particulars of such Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.
- 16. **ASSIGNMENT-DELEGATION:** Seller shall not assign, in whole or in part, its interest and/or obligations in this contract without the written permission of the Buyer. Any attempted assignment or delegation by Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.
- 17. **WAIVER:** No claims or right arising out of a breach of this contract can be discharged unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.
- 18. **MODIFICATIONS:** This contract can be modified only by a subsequent writing signed by both of the parties through their duly authorized agents.
- 19. **GOVERNING LAW AND VENUE:** This Agreement shall be governed by the laws of the State of Texas. Any dispute or action arising out of or relating to this Agreement shall be brought and maintained only in a state court located in Bexar County, Texas. Seller waives any right to bring action in Federal Court based on diversity of citizenship. The prevailing party in any such action shall be entitled to recover from the non-prevailing party the prevailing party's reasonable attorney's fees, unless prohibited by law.
- 20. **ADVERTISING:** In order to protect Buyer's logo, reputation, and established good-will, Seller shall not use the name, business or trade name, trademarks, or service marks of the Buyer without the prior express written consent of Buyer.
- 21. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer or employee of the Buyer shall make recommendations regarding any contract from which the employee stands to gain financial benefit. Any conflict of interest must be declared according to Buyer's policy. Any violation of this section, with the knowledge, expressed or implied, of the person or corporation contracting with Buyer may render the contract void and non-enforceable at the option of the Buyer.
- 22. **RECORDS RETENTION:** Seller agrees to comply with the following requirements governing the maintenance of documentation to verify the cost of services rendered under this contract:
 - a. Until the expiration of four (4) years after the furnishing of such services pursuant to such contract, Seller shall make available, upon written request, to the Buyer, or any of their duly authorized representatives, the contract, and books, documents, and records of Seller that are necessary to certify the nature and extent of such costs, and
 - b. If Seller carries out any of the duties of the contract through a subcontract, with a value or cost of \$10,000 or more over a 12-month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written

request, to the Buyer, or any of their duly authorized representatives, the subcontract, and books, documents, and records of such organization that are necessary to verify the nature and extent of such costs.

23. **EMPLOYMENT OF PERSONNEL:** Seller agrees to employ, at its own expense, all personnel required in performing the services under this contract. Personnel employed by Seller shall not be employees of, nor have any contractual relationship with Buyer. All personnel engaged in the work shall be fully qualified and shall be authorized or licensed to perform such work as required. This contract does not create an employment relationship, partnership, or joint venture between the Seller, its subcontractors or employees and the Buyer. Neither the Seller nor its subcontractors or employees shall be deemed employees of the Buyer for any purpose whatsoever, and neither shall be eligible to participate in any benefit program provided by the Buyer.

24. **SUBCONTRACTS:**

- a. The Seller may utilize the services of specialty subcontractors on those parts of the work which, under normal contracting practices, are performed by specialty subcontractors.
- b. The Seller shall not award any work to any subcontractor without prior written approval of Buyer, which approval will not be given until the Seller submits to Buyer a written statement concerning the proposed award to the subcontractor. The statement will be required prior to award and shall include:
 - (1) A description of the supplies or services to be called for by the subcontract; and
 - (2) Identification of the proposed subcontractor.
- c. The Seller shall be as fully responsible to Buyer for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by the subcontractor, as Seller is similarly responsible for the acts and omissions of persons directly employed by Seller.
- d. The Seller shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Seller by the terms of this contract insofar as applicable to the work of subcontractors and to give the Seller the same power as regards terminating any subcontract that Buyer may exercise over the Seller under any provision of this contract.
- e. Nothing contained in this contract shall create any contractual relation between any subcontractor and Buyer.
- f. Neither consent by the Buyer to any subcontract nor any provisions thereof nor approval of the Seller's procurement system shall be construed to be a determination of the acceptability of any subcontract price or of any amount paid under any subcontract or to relieve the Seller of any responsibility for performing under this contract, unless such approval or consent specifically provides otherwise.
- g. The Seller agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost-basis.
- h. By submission of a bid or proposal (as the case may be) the Seller agrees that he/she/it will indemnify, defend and hold Buyer harmless from all claims growing out of any demands of subcontractors, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this contract. The Seller shall, at Buyer's request, furnish satisfactory evidence that all obligations of the nature hereinabove designated be paid, discharged or waived. If the Seller fails to do so, then Buyer may, after having served written notice, withhold from the Seller's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Seller shall be resumed, in accordance with the terms of this contract. In no event shall the provisions of this sentence be construed to impose any obligations upon Buyer to benefit either the Seller or his Surety.
- i. All substitution of subcontractors will require written approval from Buyer.

25. **HOLD HARMLESS AND INDEMNITY:** To the extent not prohibited by the laws of the State of Texas, Seller agrees to indemnify and hold harmless the Buyer, its officers, agents and/or employees from and against any and all liability and costs (including attorney's fees) incurred in connection with any claims or demands for damages of any nature whatsoever, including but not limited to bodily injury, death, personal injury or property damage arising from or caused by the intentional or negligent acts or failure to act of Seller, its officers, agents and/or employees, successors or assigns. Seller indemnifies, saves, and holds harmless Buyer against all claims, demands, actions, or causes of action of whatsoever nature or character, as permitted by law, arising out of or by reason of the execution or performance of the work provided for herein and further agrees to defend, at its sole cost and expense, any action or proceeding commenced for the purpose of asserting any claim of whatsoever character arising hereunder.
26. **INSURANCE:** Seller shall obtain and maintain in full force and effect for the duration of this Agreement, and any extensions hereof, at Seller's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed::

	TYPE	Amount
1.	Worker's Compensation & Employer's Liability	Statutory Amount \$500,000/\$500,000/\$500,000
2.	Broad Form Commercial General Liability including coverage for (but not limited to: Independent Contractors Contractual Liability Personal Injury Products/Completed Operations Advertising Injury Professional Liability	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent with an aggregate of not less than \$2,000,000 \$600,000 each occurrence/\$1,200,000 aggregate
3.	Automobile Liability (any auto)	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent in excess or umbrella coverage
4.	Data Handling and Cybersecurity* Liability*	Amount commensurate with risk
5.		

*If applicable to the operations of Seller under this Agreement

Buyer shall be entitled, upon request and without expense, to received copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by Buyer, and may require the deletion, revisions, or modification or particular policy terms, conditions, limitations or exclusions (except where policy revisions are established by law or regulation binding upon either of the parties hereto or the underwriter of such policies). Seller shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to Buyer as the address provide below within ten (10) days of the requested change. Seller shall pay any costs resulting for said changes.

Seller agrees that with respect to the above required insurance, all insurance policie3s are to contain or be endorsed to contain the following provisions:

Name Buyer, its Board of Directors, officers, officials, employees, and volunteers as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with Buyer, with the exception of the worker's compensation and professional liability policies;

Provide and endorsement that the "other insurance" clause shall not apply to Community First Health Plans, Inc. or University Health where they are additional insureds shown on the policy;

Workers' compensation and employers' liability policies shall provide a waive of subrogation in favor or Buyer and University Health

Nothing herein contained shall be construed as limiting in any way the extent to which Seller may be held responsible for payments of damages to persons or property resulting from Seller's or its subcontractors' performance of the work covered under this Agreement.

It is agreed that Seller's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by Community First Health Plans, Inc. or University Health for liability arising out of operations under this Agreement.

It is understood and agreed that the insurance required is in addition to and separate from any other obligations contained in this Agreement.

27. **CONTRACTING AUTHORITY PROTECTION:** Any and all of the employees of Seller while engaged in the performance of any work required by Buyer under this contract shall be considered employees of Seller only and not of Buyer, and any and all claims that may arise from the Workers Compensation Act on behalf of said employees while so engaged, and any and all claims made by any third party as a consequence of any act or omission on the part of Seller's employees while so engaged in any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of Seller.
28. **EFFECT OF EXTENSIONS OF TIME:** Granting of or acceptance of extensions of time to complete the work or furnish the labor or materials will not operate as a release to the Seller from the covenants and conditions of this contract.
29. **CHANGES AND MODIFICATIONS:**
 - a. If, during the performance of any work or services under this contract, the Seller finds it impracticable to comply strictly with the specifications, the Seller will notify the Buyer immediately in writing.
 - b. Any proposals by Seller that vary or add to this contract shall be construed as additional terms or modifications and shall not become part of this contract unless accepted in writing by the Buyer.
 - c. All changes in the work or services contemplated in the solicitation and award hereunder, shall be made only with the prior approval of the Buyer and only by appropriate written change order. The Buyer may, at any time, by a written change order, and without notice to the Surety (if any); make changes within the general scope of this contract. If the change affects the Seller's costs, then the Buyer shall also make an equitable adjustment in the Seller's compensation, after compliance by the Seller with the price request procedure provided below.
 - d. Where the Buyer foresees issuing a change order affecting Seller's costs, a price request will be issued to the Seller. Unless otherwise specified therein, the Seller shall fully respond to the price request within ten (10) days of issuance.
30. **PARTIAL INVALIDITY:** If any term, provision, covenant, or condition of this contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

31. **TITLES AND HEADINGS FOR CONVENIENCE ONLY:** As used throughout this contract, titles and headings of sections are for convenience only, and shall not be used to aid in interpretation of the provisions contained herein.
32. **COVENANT AGAINST CONTINGENT FEES:** The Seller warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach or violation of this warranty, Buyer shall have the right to annul this contract without liability or at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
33. **NON-COLLUSION:** The Seller represents and warrants that: (i) its bid/proposal is genuine and not sham or collusive or made in the interest or in behalf of any person not therein named; (ii) that Seller has not, directly or indirectly, induced or solicited any other person to submit a sham bid/proposal, or refrained any other person, firm, or corporation from submitting a bid/proposal; and (iii) that the Seller has not in any manner sought by collusion to secure itself an advantage over any other bidder/proposer. If at any time it shall be found that the person, firm, or corporation to whom a contract has been awarded has, in presenting any bid/proposal, colluded with any other party or parties, then the contract so awarded shall be voidable by Buyer; and the Seller shall be liable to Buyer for all loss or damage which Buyer may suffer thereby.
34. **TIME OF THE ESSENCE:** The time of Seller's performance of all of the covenants, conditions and agreements of this contract is of the essence to this contract.
35. **REJECTION OF BIDS or PROPOSALS:** Buyer reserves the right to reject any and all bids or proposals (as applicable).
36. **PREPARATION COSTS:** All costs related to responding to this contract, including (if applicable) the cost of any oral presentations required, shall be the sole responsibility of and shall be borne by Seller.
37. **ACCEPTANCE OF FINAL PAYMENT:** The acceptance by the Seller of final payment shall be and shall operate as a release of Buyer on all claims and all liability to the Seller for all things done or furnished in connection with this work and for every act and neglect of Buyer and others relating to or arising out of this work. No payment, however, final or otherwise, shall operate to release the Seller or the Seller's Surety or Sureties from any obligation under this contract or Performance and Payment Bond (if any).
38. **CLAIMS OF NON-PAYMENT/LIMITATIONS:** Unless otherwise agreed in writing or as provided in section 7, above, Seller must invoice Buyer for all accrued claims of monies owed, once a month for the supplies or work performed in the previous month. In the event of non-payment, prior to seeking any judicial recourse, Seller must provide written notice to Buyer within ninety (90) days of the date any invoice is not paid by Buyer. Written notice to Buyer must include documentation which substantiates Seller's claim that payment is justified, including, without limitation, reference to specific applicable contract provisions. **SELLER MUST BRING SUIT WITHIN TWO YEARS OF THE TRIGGERING EVENT FOR ANY CLAIMS RELATED TO THIS CONTRACT, INCLUDING BUT NOT LIMITED TO ANY AMOUNTS CLAIMED TO BE DUE FROM BUYER, OR BE FOREVER BARRED.**
39. **RIGHT TO AUDIT:** At any time during the term of this Agreement and for a period of four (4) years thereafter Buyer or a duly authorized audit representative of Buyer, at its expense and at reasonable times, reserves the right to audit Seller's records and books relevant to all services provided under this Agreement. In the event such an audit by Buyer reveals any errors/overpayments by Buyer, Seller shall refund Buyer the full amount of such overpayments within thirty (30) days of such audit findings, or Buyer, at its option, reserves the right to deduct such overpayments from any amounts Buyer is required to pay Seller under this Agreement or any Purchase Order.

40. **COMPLIANCE WITH LAWS AND REGULATIONS:** Seller shall comply, and upon request, Seller shall submit evidence of such compliance, with all State and federal certifications, regulations, or licensure requirements pertaining to the services provided hereunder. Seller agrees to give immediate notice to Buyer in the case of suspension or revocation, or initiation of any proceeding that could result in suspension or revocation, of licensure or of any circumstance that would cause Seller to be noncompliant with any such statutes, rules, regulations, standards, or directives.
41. **CONFIDENTIAL INFORMATION:** Seller acknowledges that in connection with the services to be performed under this contract by Seller, Seller or Seller's employees may be acquiring and making use of certain proprietary or confidential information of the Buyer which includes, but is not limited to, management reports, financial statements, internal memoranda, reports, patient lists, and other materials or records of a proprietary nature ("Confidential Information"). Seller shall not use any such information for its own benefit or make such information available to any person, firm, corporation, or other organization, whether or not directly or indirectly affiliated with Seller, unless required by law. Therefore, in order to protect the Confidential Information, Seller shall not after the date hereof use the Confidential Information except in connection with the performance of services pursuant to this contract, or divulge the Confidential Information to any third party, unless the Buyer consents in writing to such use or divulgence or disclosure is required by law.
42. **CONFIDENTIAL PATIENT INFORMATION:** If Seller will have access to patients and patient records, Seller shall adequately instruct all personnel that may provide services pursuant to this contract, regarding the confidentiality and privacy of patients and patients' medical records. All such instructions shall be in accordance with the formal policies and rules of the Buyer and with all federal and state laws and regulations regarding patient and medical record confidentiality. Seller shall not store or maintain any Protected Health Information (PHI) on systems outside the United States or permit access to PHI by offshore personnel. In addition, no work performed by Seller, its affiliates or subcontractors shall use or involve Client Data off-shore that would qualify as PHI. Seller assumes full responsibility for any breach of confidence by its personnel with regard to the provision of services under this contract.
43. **PUBLICITY:** Seller agrees that it shall not publicize this Agreement or disclose, confirm or deny any details thereof to third parties or use any photographs or video recordings of Buyer's employees or patients or use Buyer's name in connection with any sales promotion or publicity event without the prior express written approval of Buyer.
44. **AUTHORITY:** Only the President/CEO or a person designated by the President/CEO in writing or otherwise authorized in Buyer's purchasing policy has authority to bind the Buyer to any contractual commitments, order changes in the scope of work or otherwise incur any costs on behalf of the Buyer. Seller shall not claim, AND WAIVES ANY DEFENSE OR CLAIM THEY MAY HAVE, OF APPARENT AUTHORITY, in accepting direction from any unauthorized person claiming to represent the Buyer.
45. **PRIORITY:** The provisions of these Terms and Conditions constitute material terms of the offer and award of a contract hereunder. By submission of a bid or proposal, Seller agrees that these Terms and Conditions shall take priority in the event of a conflict of terms, over any terms contained in a contract document (if any) provided by Seller and executed by Buyer regardless of whether the contract document contains any clause to the effect that the contract document constitutes the whole agreement between the parties and supersedes any prior agreements. No language contained in a contract document provided by Seller and executed by Buyer shall be construed as to waive or modify the terms contained herein unless such contract document contains a clause specifically agreed to by Buyer as evidenced by Buyer's authorized representative's initials placed immediately after the clause that is intended to override this provision.

