

MEMORIAL SLOAN KETTERING CANCER CENTER TERMS AND CONDITIONS OF PURCHASE

rev 3.26.19

ACCEPTANCE: Whether construed as an offer, acceptance or confirmation, these terms govern all Purchase Orders ("Order(s)") issued by Memorial Sloan Kettering Cancer Center ("MSK") to the Seller identified on each Order. Fulfillment of any part of an Order, or any other conduct by Seller which recognizes the existence of a contract pertaining to the subject matter of an Order, shall constitute acceptance by Seller of such Order and all of the terms included or referenced on this page (the "Terms"). MSK's submission of the Order is conditioned on Seller's agreement that any terms different from, or in addition to, the Terms, whether communicated orally or in any writing, irrespective of the timing, shall not form a part of the Terms, even if Seller purports to condition its acceptance of the Order on MSK's agreement to such different or additional terms. The Order and the Terms shall constitute the final, complete and exclusive statement of this contract and may be modified or rescinded only by a written instrument executed by an authorized representative of MSK. As an offer, this Order expressly limits acceptance to its terms, and notification of objection to any different or additional terms from Seller in any response to this offer is hereby given. If this Order is construed as an acceptance of the Seller's offer, this acceptance is expressly conditioned on the Seller's assent to any additional or different terms contained in this Order. If this Order is construed as a confirmation of an existing contract, the parties agree that this Order constitutes the final, complete and exclusive terms and conditions of the contract between the parties. If the parties have otherwise executed signed, written contract covering the procurement of the products or services described in the Order, the terms of such agreement shall prevail over any inconsistent terms herein. Regardless of its construction as an offer, acceptance, confirmation or use to place orders for goods or services pursuant to an earlier contract, this Order incorporates by reference all terms of the Uniform Commercial Code providing any protection for MSK, including without limitation all express and implied warranty protection and all remedies. This order is enforceable by MSK directly against Seller, regardless of whether the order was submitted directly to Seller by MSK, or was submitted to Seller by another party on behalf of MSK. No other party shall have any authority to: (a) act for MSK; (b) bind MSK to any agreements or modifications; or (c) otherwise act as agent for MSK.

SHIPPING AND RISK OF LOSS: Shipping and side mark instructions specified on face of the Order must be adhered to unless permission to deviate is given by MSK. Notwithstanding any agreement to pay freight or other transportation charges, delivery will not be deemed complete and all risk of loss shall remain with Seller until the goods have been received and accepted by MSK.

DELIVERY SCHEDULE AND DELAYS IN DELIVERY: It is Seller's responsibility to comply with the delivery schedule. Goods shipped to MSK in advance of schedule may be returned at Seller's expense. In the event Seller is unable to deliver any part or all of the Order, Seller shall immediately notify MSK. Such notice will not limit the remedies available to MSK or the liability of Seller for non-performance.

INSPECTION; REJECTION: All material shall be subject to MSK's inspection and rejection. Goods rejected and returned as defective or not in accordance with this order, shall not be replaced without a

new order. Payment for material or for services on this order rendered prior to inspection shall not constitute acceptance. If any of the goods or services are found at any time to be defective in material or workmanship or otherwise not in conformity with the requirements of the order, including any drawings and specifications, MSK shall have the right, in addition to any other rights which MSK may have under warranties or otherwise, to reject and return such goods at Seller's expense, and such goods shall not be replaced without written authorization from MSK.

WARRANTY: Seller expressly warrants that all goods and services covered by the Order will conform to the specifications, drawings, samples or other descriptions furnished or specified by MSK and will be merchantable, of good material and workmanship and free from defects. Seller expressly warrants that all goods and services covered by the Order, will be fit and sufficient for the purposes intended. All terms and conditions and all representations and warranties of the Seller shall survive delivery. Inspection, testing, acceptance or use of the goods by MSK shall not affect Seller's obligations under this warranty. Upon notice from MSK, Seller, at its own expense, shall promptly replace or correct defects of any goods or services not conforming to the foregoing warranty. If Seller fails to promptly correct defects or replace non-conforming goods or services, MSK may, upon notice to Seller, make such corrections or effect cover at Seller's expense. Seller hereby assigns to MSK all assignable warranty rights with respect to the goods in this Order, including without limitation all rights of Seller under warranties of any manufacturer of any of the goods or any part or component.

CHANGE ORDERS: MSK shall have the right to make changes in the Order, but no additional charge will be allowed unless authorized in writing by MSK. If such changes affect delivery or the amount to be paid by MSK, Seller shall notify MSK immediately and negotiate an adjustment.

PAYMENT: As full consideration for Seller's satisfactory provision of the products or performance of the services, MSK will pay Seller's invoice as specified on face of the Order. No charges of any kind will be allowed unless specifically agreed to by MSK in writing. MSK's standard method of invoice submission is via MSK's electronic supplier portal. Unless a waiver is granted by MSK, payment will only be made on invoices received through MSK authorized mechanisms. Seller understands and acknowledges that Seller is responsible for all of Seller's own federal, state and local income and other taxes, including FICA and Medicare taxes, as well as liability and workman's compensation insurance. MSK will report to the IRS any payments made to Seller for work performed or any other items such as reimbursable travel.

PRICE CHANGES: The prices specified in the Order are guaranteed by Seller against manufacturer's or Seller's own price decline and against legitimate competition until date of shipment. If prior to final shipment, Seller sells or offers to sell goods substantially of the same kind as ordered, at lower prices or on terms more favorable than those stated in the Order, the prices and terms herein shall be automatically revised to equal the lowest prices and most favorable terms and payment shall be made accordingly. In the event MSK becomes entitled to such lower

prices, but has already made payment at the higher price, Seller shall promptly refund the difference in price to MSK. Discount terms begin with the receipt of invoice or goods, whichever is later.

NON-ASSIGNMENT: This order is placed upon the condition that the Seller shall not assign it or any interest therein, including payment due or to become due, without MSK's prior written consent.

SET-OFF: MSK shall be entitled at all times to set-off any amount owing from Seller to MSK or any of MSK's affiliated companies against any amounts due to Seller with respect to the Order.

COMPLIANCE WITH LAWS: Each party represents and warrants that such party is in full compliance with all applicable federal, state, local, and applicable credentialing bodies' laws, ordinances, rules, regulations and orders ("Applicable Laws"), including but not limited to (i) all laws, rules, and regulations pertaining to: Medicare, Medicaid, and other federally funded state entitlement programs promulgated by the United States Department of Health and Human Services including its Office of the Inspector General and the Centers for Medicare and Medicaid Services, and (ii) all rules, regulations and standards promulgated by The Joint Commission. Each party shall maintain compliance with all Applicable Laws as they now exist or as they may be subsequently amended, renumbered, revised or promulgated, throughout the term of this Order, and to use its best efforts to notify the other party of any change in the Applicable Laws of which it becomes aware that might affect the obligations of either party under this Order. In the event of a violation by a party of the Applicable Laws, or an investigation into an alleged violation, Seller and MSK shall each take all measures necessary to promptly remedy any such violation with the other party and its legal representatives in the investigation and defense of any such claim or action, to the extent that the parties' interests are not adverse to one another.

ANTI-KICKABCK LAW: The parties agree and acknowledge that nothing in this Order contemplates or requires, or is intended to be an obligation or inducement for, the purchase, lease, or order of any good, facility, service or item, or the recommending of or arranging for the purchase, lease or order of any good, facility, service or item, for which payment may be made in whole or in part under a federal health care program. The parties also agree and acknowledge that nothing in this Order is intended to be an obligation or inducement for the referral of an individual to any party for the furnishing or arranging of an item or service for which payment may be made in whole or in part under a federal health care program. All consideration under this Order is consistent with fair market value in an arms'-length transaction for the goods or services provided, and has not been determined in a manner that takes into account the volume or value of any referrals or other business between the parties for which payment may be made by a federal health care program.

PRIVACY: The parties shall treat as private and confidential, in accordance with all applicable federal, state and local laws, rules and regulations governing the privacy and confidentiality of individually identifiable health information, including, without limitation, Administrative Simplification subtitle of the Health

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Insurance Portability and Accountability Act of 1996 and any regulations and official guidance promulgated thereunder, all individually identifiable health information used or disclosed pursuant to the Order. Seller agrees to immediately notify MSK if it anticipates it will have access to patient health information and agrees to enter into a Business Associate Agreement.

TERMINATION: At any time and by written notice, MSK may terminate for convenience: (i) the Order; or (ii) its obligation to purchase any products or services from Seller. MSK shall pay for any products delivered or services performed prior to the date that termination becomes effective (on a pro rata basis if MSK has paid any fees in advance covering a fixed period of Services). Unless MSK has requested and received a refund in respect of any undelivered product(s) or terminated services, it shall be entitled to the delivery of all product(s) and completion of all services for which it has paid prior to the effective date of the termination. In addition to any other remedy provided at law or equity, MSK shall have the right to terminate or cancel the Order, and any obligation to purchase, sell or provide a product or service, in the event Seller: (a) fails to comply with any condition of the Order or any related Order, and such failure is not remedied within thirty (30) days after written notice thereof has been given to Seller; (b) becomes insolvent, makes an assignment for the benefit of creditors, suffers or permits the appointment of a receiver, trustee in bankruptcy or similar officer for all or parts of its business or assets; or (c) avails itself of or becomes subject to any bankruptcy proceeding under the laws or any jurisdiction relating to insolvency or the protection of rights of creditors.

BUILDING PERMITS AND LICENSES: Seller shall at its own cost and expense obtain and pay for all surveys, permits, certificates, and licenses necessary for performance of the Order.

INDEMNIFICATION AND INSURANCE: Seller agrees to indemnify and hold harmless MSK against all inter-party and/or third party demands, claims, lawsuits, assessments, judgments, settlements, fines or expenses including costs and reasonable attorneys' fees arising out of or related to: (a) any breach or alleged breach of any of the Terms or conditions of the Order or any representations or warranties of Seller made in the Terms or otherwise, (b) the acts or omissions of Seller, its employees, subcontractors, or agents in performance of the Order, (c) a claim that the goods or services provided by Seller are dangerously defective, (d) a claim that Seller's products or services, or any part thereof, infringes a patent, copyright, trademark, trade secret, drug exclusivity period, or other intellectual or proprietary right of a third party, or (e) a claim originating in Seller's failure to comply with applicable regulatory provisions. During the performance of any work under the Order, Seller shall provide and maintain, at its sole cost and expense, minimum insurance coverage as follows: (a) Workers' compensation insurance with statutory limits of liability, (b) Commercial General Liability Insurance, including products-completed operations liability insurance, written on a "ISO" commercial general liability form or its equivalent, with combined single limits for bodily injury and property damage, including sexual abuse, of not less than \$1,000,000 each occurrence and \$2,000,000 in the general aggregate and \$2,000,000 in the products-completed operations aggregate in a policy year, (c)

automobile liability (covering owned and non-owned vehicles) coverage with limits of not less than \$1,000,000 per accident, and (d) Umbrella Liability Insurance in excess of the employer's liability, commercial general liability and business auto liability insurance in an amount not less than \$10,000,000. Seller shall name MSK as an additional insured under the coverage required by subsection (b) and (d). To the extent permitted by applicable law, such coverage shall: (a) be primary and non-contributory to any other insurance carried by MSK; (b) contain standard cross-liability provisions as to separation of insureds; (c) provide for a waiver of all rights of subrogation which Seller's insurance carrier might exercise against MSK; and (d) not require contribution before any excess or umbrella liability coverage will apply.

EQUAL EMPLOYMENT / AFFIRMATIVE ACTION: Seller warrants that it does not and will not in violation of applicable law: (a) discriminate in hiring on the basis of gender, religion, race, creed, color, national origin, ancestry, military status, veteran's status, sexual orientation, marital status, age, genetic information, disability, or status as a victim of domestic violence or (b) utilize child labor, prison labor or indentured or forced labor in the operation of its business.

CONFIDENTIALITY: All specifications, documents, artwork, data or drawings delivered to Seller by MSK, and any other non-public information MSK discloses to Seller, remains MSK's property. The information is provided to Seller solely for the purpose of Seller's performance of the Order and on the express condition that neither the Order nor the information contained therein or provided in connection therewith shall be disclosed to others or used for any purpose other than in connection with the Order, without MSK's prior express written consent. Upon request, Seller shall return all such information to MSK or destroy it. Seller's obligations under this paragraph shall survive the cancellation, termination or other completion of the Order.

LIMITATION OF LIABILITY: In no event will MSK be liable to seller or any third party, in contract, tort or otherwise, for any loss of profits or business, or any special, incidental, indirect, exemplary, punitive or consequential damages, arising from or as a result of the Order or any agreement between the parties relating to the products, services or deliverables supplier provides, even if MSK has been advised of the possibility of such damages.

ON-SITE SERVICES. If Seller performs any services at one of MSK's sites, Seller agrees to employ only competent and skilled personnel who have been adequately trained in applicable safety procedures and provided with all necessary safety equipment to perform the services. Upon MSK's request, Seller will immediately remove from all facilities and replace any personnel who are unsatisfactory to MSK for any reason. Seller warrants that all personnel assigned to the MSK facility shall have a prior satisfactory work record in a responsible capacity, be legally authorized to work in the United States, and will be paid all legally required wages and applicable overtime. Seller, its employees, agents, consultants and subcontractors of all tiers, shall comply with MSK's Code of Conduct, as displayed on MSK's public website and as may be modified by MSK from time to time, in its performance of the Services and shall not take any

action which interferes with the ability of others to comply with the Code of Conduct. Seller shall promptly notify MSK of any breach of the Code of Conduct of which it becomes aware. In the event of a conflict between the Code of Conduct and the Order, the Code of Conduct shall govern. Seller and its representatives shall also adhere to MSK's Policy for Interaction with Industry in all dealings with MSK and its employees. MSK's policy is available at: www.msccc.org/interactionwithindustry.

If required by MSK, Seller agrees to register with MSK's supplier management system prior to providing products and/or services pursuant to this Order. Seller will be responsible for fees associated with the annual credentialing process.

REMEDIES: MSK's remedies shall be cumulative. Waiver of any breach by MSK shall not constitute a waiver of any other breach of the same or any other provision. Acceptance of any items or payments shall not waive any breach.

GOVERNING LAW/SUBMISSION TO JURISDICTION: This Order, and all claims arising out of, relating to or in connection with this Order, are governed by and construed in accordance with the laws of the State of New York, without regard to any conflicts of law principles. Any legal suit, action or proceeding arising out of, relating to or in connection with this Order, or the relationship between the parties hereto, are subject to the exclusive jurisdiction of and venue in the federal and state courts within New York, and each party hereby irrevocably submits to the exclusive jurisdiction and venue of these courts for any such legal suit, action or proceeding and the parties hereby waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Order or the subject matter hereof may not be enforced in or by such court.

USE OF NAME: Seller shall not use the name of Memorial Sloan Kettering Cancer Center, Memorial Hospital for Cancer and Allied Diseases or Sloan-Kettering Institute for Cancer Research, or a variant of any of the foregoing in any advertising or publicity matter, or any other communication with a third party, without MSK's prior written consent.

BOOKS AND RECORDS:

1. Seller shall keep books and records in accordance with United States generally accepted accounting principles, consistently applied.

2. In accordance with Section 952 of the Omnibus Reconciliation Act of 1980 and the regulations promulgated thereunder, Seller shall allow the authorized representatives of MSK, the Comptroller General, the Department of Health and Human Services, or any other monitoring body as required by State or Federal Law, access to such books, records and other documents of Seller during normal business hours that are necessary to verify the nature and the extent of the cost to MSK of such services furnished by the Seller under this Order. This access obligation shall continue in effect for four (4) years after services

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are completed/terminated under this Order. If Seller carries out any responsibilities under this Order through the use of a subcontractor, including any organization related by ownership or control to MSK, when the subcontract is worth or costs ten thousand dollars (\$10,000) or more over a twelve (12) month period, Seller shall cause the subcontractor to provide written acknowledgment that it is governed by this Order regarding the duties imposed in this paragraph and each such subcontractor's books, documents, and records necessary to verify the nature and extent of the cost to the MSK or Seller of services provided by each subcontractor under its subcontract. This provision relating to the retention and production of documents is included because of possible application of Section 1861 (v)(1)(I) of the Social Security Act to this Order. If Section 1861 (v)(1)(I) should be found to be inapplicable, then this paragraph shall be inoperative and without force and effect.

3. In the event any request for Seller's or related subcontractor's books, documents, or records is made under the applicable Medicare statutes and regulations, Seller or any subcontractor related to or under contract with Seller shall promptly give notice of such a request to MSK and provide MSK with a copy of such request, and thereafter consult and cooperate with MSK concerning the proper response to such request. Seller or any subcontractor related to or under contract with Seller also shall provide MSK with a copy of each book, document, and record made available to one or more of the persons and agencies above or shall identify each book, document, and record to the other party and shall, upon written request, grant MSK access thereto for review and copying during reasonable business hours.

EXCLUSION FROM GOVERNMENTAL PROGRAMS: Seller represents and warrants that it is not excluded from participating in the Medicare or Medicaid program and not ineligible to participate in any governmental program. Seller shall immediately notify MSK in the event Seller becomes debarred or suspended from any governmental program.

DEFICIT REDUCTION ACT: Seller shall comply (when applicable) with the requirements of the Deficit Reduction Act of 2005 ("DRA") which requires implementation of a compliance policy designed to prevent and detect fraud and abuse. Seller agrees to comply with MSK's Fraud and Abuse policy implemented in compliance with the DRA.

AFFORDABLE CARE ACT: Vendor specifically understands and agrees that, with respect to all Worksite Employees, Vendor is solely responsible for interpreting and complying with all current shared responsibility ("pay or play") requirements and information reporting requirements under the Affordable Care Act ("ACA"), including but not limited to Section 4980H of the Internal Revenue Code of 1986, as amended (the "Code"), including all published regulatory and sub-regulatory guidance, IRS forms and instructions. Vendor shall provide to all Worksite Employees who are "full-time employees" and their "dependents" the opportunity to enroll in "minimum essential coverage" (as such terms are defined under Sections 36B, 4980H, and 5000A of the Code and related regulatory guidance) under a Vendor-sponsored health insurance plan. Vendor shall include all full-time Worksite Employees in its information reports to the Internal Revenue Service under Sections 6055 and 6056 of the Code. Vendor shall be solely and

exclusively responsible for, and shall reimburse, indemnify, and hold harmless Client for, any taxes, penalties, or other liabilities assessed against Vendor or Client due to (i) Vendor's failure to provide access to coverage under a Vendor-sponsored health insurance plan to Worksite Employees (and their dependents); or (ii) Vendor's provision of health insurance coverage to Worksite Employees that is not "affordable" or does not provide "minimum value" within the meaning of Sections 36B(c)(2)(C) and 4980H of the Code and related regulatory guidance. In the event that Client is notified by any entity (including but not limited to the Internal Revenue Service, the U.S. Department of Health and Human Services, or any Health Insurance Marketplace Exchange) of Client's potential liability for any such taxes, penalties, or other liabilities relating to any Worksite Employee, Vendor shall fully cooperate, at Vendor's expense, with Client's efforts to object to or appeal any determination of liability or potential liability. Vendor's obligations under this section shall in no way be limited under the Indemnification section of the Order.

SEVERABILITY: If any provision of the Order is for any reason held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision of this Order; and the Order will be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Order.

WORKS CREATED: Seller and MSK each consider the works created and produced and any documentation or other products and results of the services to be rendered by Seller (the "Work") to be a work made for hire as that phrase is understood under the copyright laws of the United States. Seller acknowledges and agrees that the Work (and all rights therein) belongs to and will be the sole and exclusive property of MSK. Seller agrees that its assigns, agents, successors, and representatives will not have the right to make any claims in any way or with regard to any aspect of, the Work. Seller agrees that its exclusive rights are to be paid in full upon satisfactory performance of the Order. If the Work is not considered a work made for hire under applicable law, Seller hereby sells, assigns, and transfers to MSK, its successors and assigns, the entire right, title and interest in the copyright of the Work, and any related registrations and copyright applications, and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the Work, and, in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and to all corresponding rights throughout the world. Seller agrees to execute all papers and to perform such other proper acts as MSK may deem necessary to secure for it or its designee the rights herein assigned.

OFFSHORING. Seller represents and warrants to MSK that Seller shall not: (a) perform any of its obligations under the Agreement from locations, or using employees, contractors and/or agents, situated outside the United States; (b) directly or indirectly (including through the use of subcontractors) transmit any of MSK's information or data outside the United States; or (c) allow any of MSK's information or data to be accessed by Seller employees, contractors and/or agents from locations outside the United States.

REMOTE ACCESS: The parties agree and acknowledge that nothing in the Purchase Order or Terms constitutes an authorization for Seller to access, from a remote location ("Remote Access"), any MSK information system or resource (collectively, the "MSK Computing Infrastructure"), including any goods provided by Seller or obligation for MSK to provide the same. In the event Seller should require Remote Access to the MSK Computing Infrastructure, Seller and MSK must negotiate Remote Access terms as part of a separate agreement.