

**PRODUCT PURCHASE AGREEMENT
BETWEEN
MICHIGAN LIFE SCIENCE PURCHASING CONSORTIUM
AND**

This PRODUCT PURCHASE AGREEMENT is made between Michigan Life Science Purchasing Consortium (“MLSPC”) and _____ (“Supplier”).

MLSPC Member Institutions: member institutions consist of the University of Michigan, Michigan State University, Western Michigan University, Van Andel Institute, and Wayne State University

The following terms and conditions shall be observed. Any Supplier terms and conditions included with Supplier’s invoice or any other document provided by Supplier shall be of no effect.

- 1.0 Description of Product(s). Supplier hereby agrees to provide **XX** “Products” defined in Exhibit A and to comply with all “Specifications”, which may be included in the Products description at Exhibit A. The MLSPC shall use reasonable efforts to direct applicable requests of such Products to Supplier under this Agreement. Unless otherwise expressly stated herein, this Agreement does not confer on Supplier the right to be the exclusive provider of the Products to the MLSPC or its member institutions.
- 2.0 Term. The initial term of this Agreement will begin on **XX** and end on **XX**. At the end of the initial term, this Agreement will be evaluated. If the parties agree that it is mutually beneficial relationship, the Agreement may be extended in writing for up to **XX** additional years. Time is of the essence in this Agreement.
- 3.0 Performance Standard. Supplier agrees to perform any necessary support services for the Products described in this Agreement to the satisfaction of the MLSPC and with the standard of care and skill of an expert regularly rendering services of the type required by this Agreement and in conformance with all applicable federal, state, local and University law, regulation, ordinance and license. Delete: (state and federal law.)
- 4.0 Delivery, Risk of Loss. Delivery shall be FOB destination to the MLSPC member institutions and risk of loss will not pass to a MLSPC member institution until the Products have been actually received and accepted by the MLSPC member institution at the destination specified by the MLSPC member institution. Supplier assumes full responsibility for packing, crating, marking, transporting and liability for loss or damage in transit, notwithstanding any agreement by a MLSPC member institution to pay freight, express, or other transportation charges. Supplier will remove all packing materials, and rubbish from MLSPC member institution premises. As applicable, Supplier will confirm before shipment, that all doorways, hallways, elevators, room sizes, service access spaces, and utilities are present before making any delivery of product. This confirmation should be made immediately upon receipt of order and any discrepancies or impediments to delivery and installation will be called immediately to the attention of the designated MLSPC member institution personnel.] [Electrical plug size shall be compatible with the existing outlet at the installation site. If a different outlet is required, this information shall be given to the MLSPC member institution before any product/equipment is shipped.] [Supplier is responsible for any and all uncrating,

installation, set-up and calibration.] [Unless otherwise expressly set forth in this Agreement, Supplier, at no additional cost to the MLSPC member institution, is responsible for any necessary operator training.] [Included with any shipment must be one (1) operator and one (1) maintenance manual, plus one (1) additional manual for each additional instrument. All manufacturer model and serial numbers for equipment must be provided to the MLSPC member institution. Consumable items that are part of the provided product/equipment must be identified.

5.0 Acceptance and Inspection of Products. The MLSPC member institutions shall have a reasonable time (**but not less than thirty [30] days**) after receipt to inspect and test the Products provided under this Agreement and reject any or all items that are, [in the MLSPC member institution's sole judgment,] nonconforming or defective. Products rejected or supplies in excess of quantities ordered may be returned to Supplier at Supplier's expense. Any acceptance by a MLSPC member institution shall not be deemed a waiver or settlement of any defect or nonconformity in the Products or any support services.

6.0 Warranties and Representations of Supplier. Supplier acknowledges that the MLSCP member institution is relying on these representations and warranties as essential elements to this Agreement, representing as they do, material inducements, without which the MLSCP member institutions would not have entered into this Agreement.

6.1 General Product Warranty. Supplier represents that all Products and any support services provided under this Agreement (a) are new and unused (unless otherwise specified or agreed to in writing by the requesting MLSPC member institution) and free from defects in material and workmanship; (b) are of the quality, size, dimension and specifications ordered; (c) meets the highest performance and manufacturing specifications as described in documents or writings made available by the Supplier to the public, the MLSPC or any MLSPC member institution; (d) comply with all applicable laws, codes and regulations (including any published by any national or statewide association or groups); (e) are not restricted in any way by patents, copyrights, trade secrets, security interest, lien, or any other encumbrances or rights of third parties and (f) and shall have been properly stored, labeled, handled and shipped by Supplier.

6.2 General Services Warranty. Supplier warrants that any support services provided shall conform to the level of quality performed by experts regularly rendering this type of service. Supplier warrants for not less than 90 days after accepted completion of a requested Service that its Services are fully satisfactory to the MLSPC member institution and will repair, replace or redo at no additional cost to the MLSPC member institution any unsatisfactory Services.

6.3 Qualifications. Supplier warrants that it, as well as its employees, agents and subcontractors engaged to provide the Products and any services in support of the Products under this Agreement (collectively "Supplier Personnel"), has and will maintain all the skills, experience, and qualifications necessary to provide the Services contemplated by this Agreement, including any required training, registration, certification or licensure.

6.4 Conflict of Interest. Supplier warrants that to the best of Supplier's knowledge, there exists no actual or potential conflict between Supplier and the MLSPC or any MLSPC member institution, and in the event of change in either Supplier's private interests or the Products provided under this Agreement, Supplier will inform the MLSPC regarding possible conflict of interest which may arise as a result of the change. Supplier also affirms that, to the best of Supplier's knowledge, there exists no actual or potential conflict between a MLSPC member institution employee and Supplier.

6.5 Nondiscrimination. Supplier warrants that Supplier is an equal opportunity employer and that, during the performance of this Agreement, it will comply with Federal Executive Order 11246, as amended, The Rehabilitation Act of 1973, as amended, and the respective regulations thereunder, and the Michigan Civil Rights Act of 1976.

6.6 Good Standing. Supplier warrants that Supplier is legally organized entity in good standing under the laws of the state of its organization and, where required, in good standing under the laws of the State of Michigan.

6.7 Non-infringement. Supplier warrants that the Supplier's Products and/or the MLSPC/MLSPC member institution's use of the Products, processes, techniques and methodologies provided by Supplier or developed by Supplier shall not infringe upon the copyright, patent or other proprietary rights of others.

6.8 Standard Merchandise. Supplier warrants that the Product(s) are of a type and model made available by Supplier generally within the United States and elsewhere and that modifications, if any, of the Product are reversible and of only incidental cost to the Supplier.

6.9 Not Excluded. Supplier warrants that neither Supplier, nor, to the best of Supplier's knowledge, Supplier Personnel, is excluded from participating in the Medicare or Medicaid program nor currently debarred or suspended or listed on the General Services Administration's ("GSA") List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Executive Orders 12549 and 12689, "*Department and Suspension*". Supplier shall immediately notify the MLSPC if it becomes debarred or suspended during the term of this Agreement.

Supplier further represents that no adverse action by the federal government that will or may result in exclusions from a federal health care program has occurred or is pending or threatened against Supplier or its affiliates, or to the best of its knowledge, against any Supplier Personnel. Supplier agrees that it shall not perform any act that shall cause Supplier to be excluded from a federal health care program or debarred, suspended or listed in the GSA's List of Parties Excluded from Federal Procurement or Nonprocurement Programs during the term of this Agreement.

7.0 Financial Arrangement. The detailed financial/pricing arrangement is in Exhibit B. Additional financial terms are listed below.

7.1 Taxes. The fees, expenses and costs payable under this Agreement include all applicable taxes and shall not be changed as the result of the Supplier's failure to include any applicable tax, or as a result of any change in the Supplier's tax liabilities.

7.2 Tax Exempt Status. Supplier acknowledges that the MLSPC member institutions are tax-exempt institutions, granted such status by authorized taxing units of State of Michigan, and are exempt from Federal Excise Tax and Michigan General Sales Tax.

7.3 Payment Terms. Payment terms under this agreement are 2%10 NET 30. The MLSPC member institutions may withhold payment in whole or in part for Products or services found by the MLSPC member institution to be defective, untimely, unsatisfactory, or otherwise not conforming to the Products description, or not in accordance with the requirements of this Agreement and all applicable federal, state, and local laws, ordinances, rules and regulations.

8.0 Termination.

8.1 Termination for Breach. Either party may terminate this Agreement upon breach by the other party of any material provision of this Agreement, provided the breach continues for thirty (30) calendar days ("Cure Period") after receipt by the breaching party of written notice of the breach from the non-breaching party. Cure of the breach within the Cure Period shall continue the Agreement in full force and effect, provided however three (3) breaches of a material provision are an independent material breach not subject to cure.

8.2 Immediate Termination. The MLSPC shall have the right to terminate this Agreement immediately upon notice to Supplier should any of the following situations occur:

- 8.2.1 Supplier or Supplier Personnel do anything to harm the business reputation of the MLSPC or any of its' member institutions;
- 8.2.2 Supplier or any Supplier Personnel is excluded from a federal health care program;
- 8.2.3 If any warranty or representation of the supplier in this agreement is or becomes false or untrue; or
- 8.2.4 Should a person's health or safety be in imminent and serious danger due to the actions or inaction of Supplier or Supplier personnel.
- 8.2.5 There may be imminent and serious harm to the environment or the MLSPC member institution property from the Supplier's acts or inactions or those of Supplier Personnel; or
- 8.2.6 The MLSPC reasonably determines Supplier has violated a law in providing Products and/or services.

8.3 Effect of Termination. Upon notice of termination for any reason, Supplier shall immediately stop all work including shipment of the Products and cause its suppliers and/or subcontractors to cease all activity related to this Agreement.

8.4 Without Cause Termination. [Non-custom products] The MLSPC may terminate this Agreement in whole or in part for its sole convenience upon thirty (30) days prior notice. In no event shall Supplier be paid for costs incurred or support services performed after receipt of notice of termination, or for costs incurred by suppliers or subcontractors which reasonably could have been avoided.

[Custom products] The MLSPC may terminate this Agreement in whole or in part for its sole convenience upon sixty (60) days prior notice. The parties acknowledge that the Product(s) are of a customized manufacture made to special specifications of the requesting MLSPC member institution and are not suitable for use by others. Upon receipt of notice of termination, Supplier will cease manufacture of any additional customized Product and will provide the requesting MLSPC member institution within 10 business days of receipt of notice with an itemization of all expenses associated with uncompleted Product and the quantity of Product represented should Supplier complete the manufacture. The MLSPC member institution shall then have the following options to be selected by the MLSPC member institution in its sole discretion (a) request the Supplier to complete production of uncompleted Product and purchase the product or (b) pay the Supplier the reasonable expenses associated with uncompleted Product plus 10%. In no case shall the MLSPC member institution be obligated to pay for more uncompleted product that, if the product had been completed, would represent more than 60 days of the MLSPC member institution purchases, based upon the average

purchases over the prior 3 months.

8.5 Change in Law. If, subsequent to the execution of this Agreement, it is determined by either party's legal counsel that this Agreement or any of its provisions may violate or does violate any law, rule, or regulation, the parties agree to renegotiate the provision(s) so that it (they), as well as this entire Agreement, complies with the law, rule, or regulation. In the event the parties are unable to come to an agreement within thirty (30) calendar days, either party may, without further notice, immediately terminate this Agreement.

9.0 Compliance with All Laws. Supplier certifies that all Products and services furnished under this Agreement shall fully comply with all applicable federal, state, local or MLSPC member institution laws, rules and regulations.

10.0 Insurance.

1.0 Insurance Coverage and Levels. Unless more specific insurance provisions are specified, Supplier shall, at Supplier's expense, obtain and maintain the following coverage:

- Commercial General Liability Insurance, including contractual products and completed operations insurance (\$1 million per occurrence/\$3 million annual aggregate).

Exceptions:

- 1) Medical diagnostic equipment
- 2) Patient invasive products/equipment
- 3) Products with a purchase price of \$100,000 or more

Above exceptions shall require the levels of (\$2 million per occurrence/\$5 million annual aggregate). Required minimum limits can be met with a combination of primary and excess/umbrella liability insurance policies.

- Worker's Compensation at statutory limits in accordance with the appropriate State of jurisdiction including Employer's liability (with minimum \$500,000).
- Automobile liability for owned, non-owned and hired vehicles minimum limit (\$1 million each accident).
- Supplier agrees to have the Regents of the University of Michigan added as additional insured with respect to Commercial General Liability Insurance for purposes of contract performance and incidents arising out of Agreement.
- Supplier agrees to provide the University with thirty (30) days prior written notice of any reduction in limits or cancellation of any of the above insurance.
- If any of the required insurance is on a "claims made" basis and is cancelled during the term of this agreement, Supplier agrees to purchase **tail coverage** or **prior acts coverage** so that such insurance is in effect from the date the Agreement is executed to three (3) years after its termination.
- Supplier shall provide the University with a certificate of the above insurance coverages and amounts. Compliance with the foregoing requirements as to carrying insurance and furnishing evidence of it will not relieve the Supplier of its liabilities and obligations under this Agreement.

11.0 Indemnity. Each party shall defend, indemnify and hold harmless the other party, its board members, officers, employees, agents and students from and against any costs, losses, damages, liabilities, expenses, demands and judgments, including court costs and attorney fees, which may arise out of the other party's acts or omissions under this Agreement for which the indemnifying party would be liable in law or equity.

The indemnifying party shall keep the other reasonably apprised of the continuing status of the claim, including any proceedings resulting from it, and shall permit the other party, at its expense, to participate in the defense or settlement of the claim. When a claim is resolved by the indemnifying party's payment of money, it shall have final authority regarding defense and settlement. When a claim resolution requires equitable relief against the non-indemnifying party or the indemnifying party has not or will not pay the money required for resolution, the parties shall cooperate regarding defense and settlement.

- 12.0 Audit. The Supplier is responsible for keeping accurate and reasonable records related to its performance and obligations under this Agreement. In particular, records will be kept documenting any price, cost or budget computations required under the Agreement. The Supplier agrees that the MLSPC or its duly authorized representative has the right to audit any directly pertinent books, documents, papers and records related to transactions and/or performance of the terms and conditions of the Agreement. The Supplier shall make available to the MLSPC or its agents all such records and documents for audit on the Supplier's premises during regular and reasonable working hours within 10 business days of a written request for availability. Supplier agrees to either (1) allow MLSPC to make and retain copies of those documents useful for documenting the audit activity and results or (2) sequester the original or copies of those documents the MLSPC identifies for later access by the MLSPC. The Supplier further agrees to disclose within ninety (90) days of receipt any independent auditors' reports, which bear directly on the performance or administration of this Agreement.

The right to audit shall include periodic examinations of records throughout the term of the Agreement and for a period of three (3) years after its termination. The right to audit shall also apply to agents and subcontractors hired by the Supplier for the purpose of fulfilling the Agreement. In the event that audits discover substantive findings related to fraud, misrepresentation or non-performance, the MLSPC may recoup the costs of the audit work from the Supplier.

- 13.0 Confidentiality. Supplier shall keep confidential and not disclose to third parties any information developed or created under this Agreement or provided by the MLSPC, MLSPC member institutions, or by private individuals, organizations or public agencies pursuant to this Agreement, including protected financial information under Gramm-Leach-Bliley Act, unless Supplier has received the prior written consent of the MLSPC to make the disclosure or unless required by law or legal process. Only Supplier Personnel with a need to know may have access to or use MLSPC information.

This obligation of confidentiality does not extend to information that is or shall become through no fault of Supplier available to the general public. This provision shall survive expiration and termination of this Agreement.

- 14.0 "Most Favored Customer". If Supplier has negotiated terms or conditions for the sale of the Products or services to another customer of Supplier which the MLSPC deems more favorable than those contained herein, the MLSPC may request and shall be afforded the opportunity to purchase those Products or services on the same terms and conditions as Supplier has negotiated to provide a third party under reasonably similar circumstances.

- 15.0 Assurance. If at any time the MLSPC in good faith determines that it is insecure with respect to Supplier's ability or intent to fully perform, then Supplier agrees to provide the MLSPC with written assurance fully satisfactory to MLSPC, in MLSPC's sole discretion, of Supplier's ability

and intent to fully perform. Such assurance shall be provided within the time and in the manner specified by MLSPC. Supplier immediately shall notify MLSPC of any circumstance that may cause Supplier to fail to fully perform. Upon MLSPC's good faith determination that Supplier cannot or will not perform, then MLSPC may deem this Agreement to be breached by Supplier and may reprocure from other sources.

16.0 Supplemental Terms and Conditions Supplier is further bound by any "Supplemental Terms and Conditions" for each member institution for providing products or services to that institution, which are included in EXHIBIT C.

17.0 Miscellaneous

17.1 Use of the MLSPC Name and Marks. MLSPC acknowledges Supplier's right to make public statements regarding the existence of the contract, its terms and conditions and an accurate description of the product or services being supplied without the consent of the MLSPC. However, other than as permitted by the previous sentence, Supplier may never make any public statement (for example a press release or any form of advertisement) describing MLSPC's relationship with Supplier or MLSPC's endorsement of Supplier or Supplier's product without the prior written consent of the MLSPC. MLSPC may withhold its consent in its absolute discretion. Supplier acknowledges that MLSPC will require ten business days to consider any request for consent. Likewise, Supplier may not use any MLSPC or MLSPC member institution Trademark without prior consent obtained from the MLSPC or appropriate MLSPC member institution.

17.2 Use of Premises or the MLSPC Member Institution Property. Supplier shall neither use nor allow Supplier Personnel to use any part of a MLSPC member institutions premises or property for any purpose other than the delivery, installation, testing, training and maintaining of the Products as may be required under this Agreement. Without limiting the generality of the statement above, Supplier shall not use the MLSPC or a MLSPC member institution in any manner that might jeopardize the Medicare provider status of a MLSPC member institution or the tax exemptions or casualty insurance of a MLSPC member institution.

17.3 Independent Contractor Status of Parties. It is expressly understood that Supplier is an independent contractor and not the agent, partner, or employee of the MLSPC or MLSPC member institution. Supplier and Supplier's workers are not employees of the MLSPC or any MLSPC member institution and are not entitled to tax withholding, Workers' Compensation, unemployment compensation, or any employee benefits, statutory or otherwise. Supplier shall not have any authority to enter into any contract or agreement to bind the MLSPC or it's member institutions and shall not represent to anyone that Supplier has such authority.

17.4 Assignment. Supplier may not subcontract, assign or transfer this Agreement or any interest or claim under this Agreement without prior written approval of the MLSPC. Notwithstanding any consent by the MLSPC to any assignment, Supplier shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirements, in writing, by the MLSPC. The Supplier shall retain the right to pledge payment(s) due and payable under this agreement to third parties.

17.5 Notices. Any notice to either party must be in writing, signed by the party giving it, and served to the addresses indicated on the Signature page (or to such other addressee as may be later designated by written notice) by personal delivery, recognized overnight courier

service, or by the United States mail, first-class, certified or registered, postage prepaid, return receipt requested. All such notices shall be effective when received, but in no even later than three (3) days after mailing.

17.6 Entire Agreement, Amendment. This Agreement and its Exhibits constitute the entire understanding between the parties with respect to the subject matter and may not be amended except by an agreement signed by Supplier and an authorized representative from each of the MLSPC member institutions. Any handwritten changes on the face of this document shall be ignored and have no legal effect unless initialed by both parties.

17.7 Severability. The terms of this Agreement are severable. If any term or provision is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of the provisions shall continue to be valid and enforceable.

17.8 Governing Law, Construction and Venue. This Agreement shall be governed by and construed under the laws of the State of Michigan without regard for principles of choice of law. Any claims, demands, or actions asserted against the MLSPC or any of its member institutions shall be brought in the Michigan Court of Claims.

17.9 Headings. The paragraph headings in this Agreement are inserted for convenience only and shall not be construed to limit or modify the scope of any provision of this Agreement.

17.10 Waiver. No delay or omission by either party to exercise any right or remedy under this Agreement shall be construed to be either acquiescence or the waiver of the ability to exercise any right or remedy in the future.

17.11 Survivability. Provisions surviving termination or expiration of this agreement are those who on their face, affect rights and obligations after termination or expiration and also includes provisions concerning indemnification, confidentiality, warranty and choice of law and venue.

17.12 Execution. This Agreement may be executed in duplicate, each of which when executed and delivered shall be an original. The parties acknowledge and agree that this Agreement has been mutually discussed, negotiated, and drafted by the parties.

17.13 No Third Party Rights. Nothing in this Agreement shall be construed as creating or giving rise to any rights in third parties or persons other than the named parties to this Agreement.

17.14 Force Majeure. Neither Supplier nor the MLSPC, or MLSPC member institutions, shall be liable for failure to perform its respective obligations under the Agreement when failure is caused by fire, explosion, water, act of God, civil disorder or disturbances, strikes, vandalism, war, riot, sabotage, weather and energy related closings, or like causes beyond the reasonable control of the party ("Force Majeure Event"). In the event that either party ceases to perform its obligations under this Agreement due to the occurrence of a Force Majeure Event, the party shall: (a) as soon as practicable notify the other party in writing of the Force Majeure Event and its expected duration; (b) take all reasonable steps to recommence performance of its obligations under this Agreement as soon as possible, including, as applicable, abiding by the disaster plan in place for the MLSPC. In the event that any Force Majeure Event delays a party's performance for more than thirty (30) calendar days following notice by the delaying party pursuant to this Agreement, the other party may terminate this Agreement immediately upon written notice.

17.15 Dispute Resolution. Supplier and the MLSPC will attempt to settle any claim or controversy arising from this Agreement through consultation and negotiation in good faith and a spirit of mutual cooperation. The dispute will be escalated to appropriate higher-level managers of the parties, if necessary. Unless either party has issued a notice of termination, Supplier agrees to continue shipment of product while resolving any outstanding invoices or payment issues.

17.16 Freedom of Information Act. Nothing in this Agreement shall in any way limit the ability of the MLSPC member institutions to comply with any laws or legal process concerning disclosures by public bodies. The parties acknowledge that any responses, materials, correspondence or documents provided to the MLSPC are subject to the State of Michigan Freedom of Information Act (“Act”) and may be released to third parties in compliance with that Act or any other law will not constitute a breach or threatened breach of this Agreement.

17.17 Supplier Damage to MLSPC Property. Without regard to any other section of the Agreement, Supplier shall be responsible for the costs to return to “as was” condition from any damage caused to the building, grounds, or other equipment and furnishings caused in whole or part by Supplier Personnel while performing activities arising under this agreement. Supplier shall immediately report in writing the occurrence of any damage to Building/Project Manager.

18.0 Federal Grants & Contracts Terms & Conditions. Federal funds are being used to pay for all or part of this purchase. Any Supplier receiving these funds as full or partial payment for Products or services must be able to comply with the following federal terms and conditions. These terms and conditions are dictated by the funding agency. The University must comply by insuring that the Supplier understands and can abide by the funding agency requirements. The University cannot deviate from or alter the terms and conditions required by the funding agency. By signing this Agreement, Supplier verifies compliance with the following applicable federal terms:

Grants:

- Office of Management and Budget (OMB) Circular A-110: Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations;
- Appendix A5: Rights to Inventions made under a Contract or Agreement
- Appendix A7: Contract Provisions, Byrd Anti-Lobbying Amendment (31 U.S.C.1352)
- Appendix A8: Contract Provisions, Debarment and Suspension (E.O.s 12549 and 12689)
- Appendix A: Equal Employment Opportunity

Access to records (Right to Audit) A-110.48 (d)

Contracts:

The following Federal Acquisition Regulations (FAR) apply:

- Restrictions on Subcontractor Sales to the Government
- Anti-Kickback Procedures
- Certification and Disclosure Regarding Payments to Influence Certain Federal transactions
- Limitation on Payments to Influence Certain Federal Transactions
- Audit and Records-Negotiation
- Subcontractor Cost or Pricing Data (purchase orders over \$550,000. When cost data required and certified cost and pricing data obtained)

- Subcontractor Cost or Pricing Data-Modifications (purchase orders over \$550,000. When cost data required and certified cost and pricing data obtained)
- Utilization of Small Business Concerns
- Small Business Subcontracting Plan (purchase orders over \$500,000.)
- Equal Opportunity
- Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era
- Affirmative Action for Workers with Disabilities
- Employment Reports on Disabled Veterans and Veterans of the Vietnam Era
- Clean Air and Water (when applicable)
- Restrictions on Certain Foreign Purchases
- Authorization and Consent
- Notice and Assistance Regarding Patent and Copyright Infringement
- Patent Indemnity

Website address for FAR: <http://www.arnet.gov/far/>

Website address for OMB: <http://www.whitehouse.gov/omb/circulars/a110/a110.html>]

By signing Supplier certifies that it is in compliance with the above requirements. The Supplier is responsible to notify the University if the Supplier is no longer in compliance with the above requirements. Notification shall be delivered as stated in Section 17.5 of this Agreement within 10 calendar days.

This Agreement becomes binding when signed by both parties.

SUPPLIER:

By: _____

Printed Name: _____

Title: _____

Date of Signature: _____

FOR THE REGENTS OF THE UNIVERSTIY OF MICHIGAN:

By: _____

Printed Name: _____

Title: _____

Date of Signature: _____

FOR THE BOARD OF TRUSTEES OF MICHIGAN STATE UNIVERSITY:

By: _____

Printed Name: _____

Title: _____

Date of Signature: _____

FOR VAN ANDEL INSTITUTE:

By: _____

Printed Name: Richard M. Disbrow, C.P.M.

Title: Purchasing Manager

Date of Signature: _____

FOR THE WESTERN MICHIGAN: UNIVERSITY

By: _____

Printed Name: _____

Title: _____

Date of Signature: _____

FOR WAYNE STATE UNIVERSITY:

By: _____

Printed Name: _____

Title: _____

Date of Signature: _____

Supplier Address (for notices):

MLSPC Address (for notices):

Federal Tax ID: _____

EXHIBIT A

PRODUCT INFORMATION

1.0 Products to be provided.

The products included in this Agreement are those listed in Schedule XX. Products may be added to, deleted from, or substituted for those listed with mutual agreement between the Supplier and the MLSPC. The MLSPC shall have the right to restrict Products offered and reject substituted items. Items not cataloged by Supplier may be provided to the MLSPC as specified under the terms and conditions of this Agreement as approved by the MLSPC.

2.0 Changes, Alterations and Modifications to Products or Support Services. The MLSPC may at any time by a written order change the drawings, designs, specifications, materials, packaging, and the time and place of delivery and or completion of the Products and any support services to be provided under Agreement. Promptly upon receipt of the details of any change, Supplier shall either advise the MLSPC that the change will not affect its costs, or furnish: (1) a breakdown of estimated cost and changes to the Financial Arrangement of Exhibit B resulting from the requested change, and (2) a statement of any necessary changes in the time of delivery. Supplier's failure to advise the MLSPC within ten (10) days of the effect of any change in cost or delivery time shall constitute Supplier's consent to conform to the change without change to the Financial Arrangement, or without change in other terms and conditions of this Agreement. If the change causes a material increase or decrease in costs, then an equitable adjustment of the Financial Arrangement to be paid to Supplier shall promptly be negotiated by the MLSPC and Supplier and incorporated as an amendment to this Agreement.

2.0 Forms of order.

A. The MLSPC shall place orders with Supplier by the agreed upon means of communications: Supplier's Internet site, Telephone, Fax, and Sales Representative(s), or MLSPC Member Institution online ordering site. Upon receipt of an order, the Supplier will provide an "Order Acknowledgement"(fax or email) to the person placing the order. Any associated shipping fees and/or backordered items will be listed on the Order Acknowledgement.

B. Internet Ordering. Upon receipt of an Internet order, the Supplier will provide an email "Order Acknowledgement" to the person placing the order. Any associated shipping fees will be listed on the Order Acknowledgement.

2.0 Delivery Method.

A. Supplier will deliver Products to the MLSPC through a reputable commercial carrier to be determined by the Supplier or through the Supplier's delivery personnel.

2.0 Reporting.

After the execution of this Agreement, Supplier will consult with the MLSPC, and each of its member institutions as requested, for the purpose of designing mutually agreeable financial and operating reports which can be generated periodically by Supplier's accounting system

and operating systems and which are satisfactory to the MLSPC. These reports can be either printed documents or Excel spreadsheets. The Supplier will provide these reports at no cost to the MLSPC. Examples of these written reports include but are not limited to:

A. Reports provided as requested:

- Sales by Product and or Classifications
- Cost Savings Report.
- Diversity Program Spending and Program Activities

B. The Supplier is required to provide an Annual Agreement Report. This report is to include, but is not limited to the following information: the following sales history information in the Annual Contract Report. The Supplier is also required to provide this information to the MLSPC upon request.

1.0 Sales by delivery code.

2.0 Fill rates.

3.0 Number of orders placed per year and the average dollar value of an order.

4.0 Summary of recycled products and percentage of content.

5.0 Summary of cost savings

6.0 Summary of diversity program spend

7.0 Summary of Achievements

8.0 Projected next year's goals

C. Supplier is required to provide ad hoc reports upon request. Typically these reports are specific in nature and requested for a specific MLSPC need.

2.0 Requirement

EXHIBIT B

FINANCIAL ARRANGEMENT

The MLSPC will pay Supplier for the Products as follows:

1.0 Pricing on Product(s).

- A. Core Item Pricing.** Supplier agrees to sell the Products listed in [Schedule XX](#) at the pricing in [Exhibit XX](#), which will be held firm for **one** year. The MLSPC and Supplier agree that the pricing can be reviewed, at the MLSPC's written request, for improved discounts.
- B. Non-Core Pricing.** Non-core product prices include those products offered at the pricing structure contained in [Exhibit XX](#). The discount structure is held firm for the duration on this Agreement. Price increases for these products will be equal to or less than manufacturer's price increase submitted to Supplier.
- C. Internet Pricing and Products.** The products and pricing offered in the Supplier's Internet catalog will be those items approved by the MLSPC at the MLSPC's contract pricing. Internet pricing changes and product updates will coincide with Agreement pricing changes and product updates.
- D. Promotion purchases.** Supplier agrees to sell to the MLSPC as a PROMOTION PURCHASE any item offered to the general public at a price less than any net price available in this Agreement at that price charged during the promotion period.
- E. Manufacturer and distributor price reductions.** Supplier agrees to immediately pass-on to the MLSPC any price reductions given to the Supplier from either Manufacturers or Distributors.
- F. Price Negotiations.** Price negotiations will begin at least 90 days before a price increase is requested to take effect. The MLSPC prior to the pricing increase being put into effect must agree to such pricing increases.

3.0 Invoicing.

- A. Supplier shall invoice each MLSPC member institution directly. The format and frequency of invoices to the institutions will be established by each member institution

**EXHIBIT C
SUPPLEMENTAL TERMS AND CONDITIONS**

UNIVERSITY OF MICHIGAN

1.0 Products and Pricing

- A. Products with selling price up to \$25,000. The products included in this Agreement having a net calculated selling price over \$5,000 must receive written approval from the Strategic Supplier Program Contract Administrator prior to the Supplier accepting the order. The process may not require further competitive bidding, but may require authorization from OSEH, Sponsored Programs, or Asset Tagging/Capital based on the unit costs and/or the order amount. An outlined process is contained in Schedule XX.
- B. Equipment with Serial Numbers. Suppliers must provide a printed copy of the packing list to the University Property Control/Asset Tagging Department.
- C. Radioactive materials. All orders for radioactive materials must comply with the requirements listed in Schedule XX.

2.0 Biomedical Research Store.

Supplier shall provide products and services to the University of Michigan's Biomedical Research Store under this agreement. In addition to the terms and conditions outlined elsewhere in this Agreement the following terms and conditions apply when providing products and services to the Biomedical Research Store:

- A. All products provided to the Biomedical Research Store must include all shipping and handling charges, including such costs as dry ice and hazardous charges, etc. Product deliveries will be made to multiple locations as specified at time of order.
- B. Supplier may be asked by the University to provide a freezer and other related equipment free of charge to the Biomedical Research Store to support the resale of Suppliers products. Any such agreement will be made on a case-by-case basis between the University and the Supplier.
- C. Supplier shall provide to the Biomedical Research Store information and services such as documentation on new products or deleted products, sales reports, customer satisfaction surveys, freezer defrosting, etc.
- D. Supplier will, within a timely manner, inform the Biomedical Research Store of new products as they become available from Supplier.
- E. Supplier shall provide the Biomedical Research Store confirmation of item price, delivery and availability within 4 hours of order placement.
- F. Supplier is responsible for providing refund to the Biomedical Research Store for all products that have reached their expiration dates before being sold by the Biomedical Research Store.

G. Supplier is responsible for all shipping, destruction, handling, and any other costs or fees associated with mis-shipments, over-shipments, or faulty products.

6.0 **M-marketsite Hosted Supplier.** Supplier will participate in and receive orders from the University's online ordering system, M-marketsite. Supplier will provide and maintain catalog information to be hosted on the site as defined in Schedule XX.

Or

M-marketsite Punch-out Supplier. Supplier will participate in and receive orders from the University's online ordering system, M-marketsite. Supplier will provide and maintain a University specific online catalog to be accessed through a punch-out from M-marketsite as defined in Schedule XX.

Or

Supplier hosted Internet ordering site. Supplier will develop and maintain an Internet ordering site for the University. This site will contain only those items approved by the University under this agreement and must be listed at the contract price. The Supplier will update the items and pricing on this site only as approved by the University.

4.0 Discount/Rebate Information. Supplier agrees to (i) fully and accurately report discounts and rebates to the Buyer on the invoice, coupon or statement submitted to Buyer; (ii) provide, upon the Buyer's request, the documentation or assistance necessary to allow Buyer to meet its reporting obligations to the government; and (iii) refrain from doing anything that would impede Buyer from meeting its reporting obligations.

5.0 Invoicing.

B. Supplier shall deliver to the University a monthly summary invoice and a valid electronic line item detailed invoice as detailed in [Schedule XX](#) to this Agreement. The invoice total of the printed monthly summary invoice must equal that of the electronic line item detailed invoice. In the event that the Supplier's submitted invoice and electronic billing does not equal or one of them has incorrect information, the Supplier has the option to immediately correct the errors or instruct the University to short pay the invoice. The Supplier can resubmit the items short paid once the corrections have been made.

C. The University's preferred method of procurement is by use of a ShortCode under this Agreement to be billed on the monthly electronic summary invoice. If Supplier accepts any other means of payment for an order from the University then all such orders are to be under the terms and conditions of this Agreement. Supplier shall submit to the University a check for 2% of those purchases not billed on the electronic summary invoice once per month along with the submission of the summary invoice.

D. Special Invoicing Requirements. Supplier will provide direct invoicing to specified University Departments when requested. Discount structures will be credited to Strategic Supplier Program and not the individual department.

E. Payment will be made within ten (10) days after the University's receipt of a valid electronic billing file and summary invoice from Supplier as specified in Schedule XX. A 2% prompt payment discount will be applied to all invoices. For the purpose of computing the discount

earned, payment is considered made on the date that appears on the payment check. The University may withhold payment in whole or in part for Products or services found by the University to be defective, untimely, unsatisfactory, or otherwise not conforming to the Products description, or not in accordance with all applicable federal, state, and local laws, ordinances, rules and regulations. The University may also withhold payment in whole or in part if the invoice pricing submitted for payment is higher than the contract price or an invalid shortcode is provided.

- F. Supplier is required to re-certify compliance with the terms and conditions of this agreement on a regular basis with the following language on the monthly invoices: "NAME OF SUPPLIER hereby certifies that it is compliance with the Service Level Agreement dated DATE OF AGREEMENT." If capable, the Supplier is also to include this language on the University's packing slips.
- G. Tax Exempt Status. Supplier acknowledges that the University is a tax-exempt institution, granted such status by authorized taxing units of State of Michigan, and is exempt from Federal Excise Tax and Michigan General Sales Tax (see Michigan Public Act 167 of 1933. Section 4 as amended).

6.0 Supplier must comply with the University of Michigan Ordinances (reference website <http://www.umich.edu/~regents/ordinance.html>) and any applicable standards of the Joint Commission on Accreditation of Healthcare Organizations.

7.0 Confidentiality of Health Information.

[OPTION 1]

The parties agree that Supplier's provision of the Services under this Agreement does not qualify Supplier as a "Business Associate" of the University as defined in regulations promulgated under the Health Insurance Portability and Accountability Act of 1996, (which act and regulations as amended, restated and superceded from time to time, are collectively referred to as "HIPAA"). Supplier will take all necessary steps to ensure Supplier Personnel do not seek or obtain access to protected health information created, maintain or received by the University. In the event the scope of Supplier's Services changes or HIPAA changes (including governmental guidance offered on HIPAA) such that the University concludes the Agreement must be amended or further documents executed to ensure the University's compliance with HIPAA, the parties agree to promptly take all actions necessary to ensure University compliance with HIPAA.

[OPTION 2]

HIPAA Obligations and Activities of Supplier. Insofar as Supplier or Supplier Personnel (1) has access to or has been provided with "protected health information or "PHI", (as defined by regulations promulgated under the Health Insurance Portability and Accountability Act of 1996, which act and regulations as amended, restated and superceded from time to time, are collectively referred to as "HIPAA"), created or received by the University through its health care providers, health plans and contractors and (2) Supplier acts in the capacity as a "Business Associate" as defined by HIPAA and as implemented in the University's HIPAA policies and procedures, Supplier shall sign a separate Business Associate Agreement with the University ("BA Agreement") that provides all the protections required by HIPAA. The terms and conditions and obligations

of Supplier under that BA Agreement are incorporated into this Agreement where Supplier acts in the capacity as the University's "Business Associate."

In the event the scope of Supplier's Services changes or HIPAA changes (including governmental guidance offered on HIPAA) such that the University concludes the Agreement must be amended or further documents executed to ensure the University's compliance with HIPAA, the parties agree to promptly take all actions necessary to ensure University compliance with HIPAA.

[OPTION 3]

The parties acknowledge that Supplier has previously executed a Business Associate Agreement with the University dated _____ ("BA Agreement"). The terms and conditions and obligations of Supplier under that BA Agreement are incorporated into this Agreement where Supplier acts in the capacity as the University's "Business Associate" as defined in regulations promulgated under the Health Insurance Portability and Accountability Act of 1996, (which act and regulations as amended, restated and superceded from time to time, are collectively referred to as "HIPAA").

**EXHIBIT C CONTINUED
SUPPLEMENTAL TERMS AND CONDITIONS**

MICHIGAN STATE UNIVERSITY

**EXHIBIT C CONTINUED
SUPPLEMENTAL TERMS AND CONDITIONS**

VAN ANDEL INSTITUTE

1. Buyer's Information: Van Anadel Research Institute, a Michigan charitable trust, and Van Anadel Education Institute, a Michigan charitable trust, both with an address of 333 Bostwick Avenue, N.E., Grand Rapids, Michigan 49503, whichever is designated on the Purchase Order ("Order") of which these terms and conditions are a part of and are attached to is referred to herein as "Buyer." Buyer is exempt from certain federal and state taxation. Accordingly, proof of such tax exempt status for Van Anadel Research Institute (52-2000823) and Van Anadel Educational Institute (52-2000824) is available to Seller upon request.

2. Application of Terms. Unless otherwise stated by Buyer in a writing submitted simultaneously with this Order, the terms and conditions stated herein shall apply to all purchase orders, including invoices, relative to goods, services and/or a combination thereof provided to Buyer by the party providing such goods and/or services ("Seller"). The terms of this Order shall supersede any prior course of performance, course of dealing and usage of trade between the parties hereto.

3. Acknowledgement. Seller shall either: (i) ship all goods within twenty-four (24) hours after receipt of this Order, or (ii) within forty-eight (48) hours of receipt of this Order provide written confirmation to Buyer stating Seller's acceptance of this Order and the delivery date that the goods and/or services will be provided to Buyer (an "Acknowledgement"). Unless the terms of this Order state otherwise, such Acknowledgement shall be sent to Buyer by facsimile or e-mail to the attention of Buyer's Purchasing Department at the fax number or e-mail stated on the Purchase Order.

4 Invoices. Seller will send an Invoice for order to the Buyer's Account Payables Department within 30 days of the delivery of any goods and/or service. Each Invoice shall contain the following: (i) the Order number; (ii) Buyer's Purchase order number; (iii) Buyer's account number (iv) line part number(s); (v) description of the goods and/or services, including sizes, quantities, unit prices (including applicable discounts) and the total price for the Order; (vi) the applicable shipping information; and (vii) any other information requested by Buyer. Buyer's payment for any Invoice does not constitute acceptance of any goods and/or services delivered in connection with such invoice.

5 Packing Slips. Seller shall also provide a copy of all bills of lading or express receipts, or pack slip, (a "Packing Slip") with each Shipment. The Packing Slip shall be attached to the outside of each package. Seller must reference or include a copy of the Purchase Order or other supporting documentation, with each package. Buyer shall have the right to return any goods and/or services which are improperly identified or improperly documented.

**EXHIBIT C CONTINUED
SUPPLEMENTAL TERMS AND CONDITIONS**

WESTERN MICHIGAN UNIVERSITY

**EXHIBIT C CONTINUED
SUPPLEMENTAL TERMS AND CONDITIONS**

WAYNE STATE UNIVERSITY

1. **ACCEPTANCE:** This order expressly limits acceptance to the terms and conditions stated herein. Any purported acceptance containing additional or different terms will not operate as an acceptance of this offer to purchase. Seller's shipment of goods or provision of services in response to this order shall constitute acceptance of the terms and conditions set out herein, notwithstanding any additional or different terms contained in any acknowledgement form submitted by Seller.
2. **TITLE AND RISK OF LOSS:** The title and risk of loss of the goods shall not pass to Buyer until Buyer receives and takes possession of the goods at the point or points of delivery.
3. **PLACE OF DELIVERY:** The place of delivery shall be that set forth in the block of the Purchase order entitled "Ship To". Any change thereto shall be effected by modification as provided for in Clause 5, Modification.
4. **PRICE:** This order shall not be filled at prices higher than specified herein Any change in price must be accepted and acknowledged, by a written Purchase Order Amendment, by Buyer.
5. **MODIFICATION:** Modification, rescission or amendment of this order or the contract of sale resulting from its acceptance shall be ineffective unless approved by written Purchase Order Amendment, by an authorized representative of the Wayne State University Purchasing Department.
6. **CHANGES:** Buyer reserves the right at any time to make changes in drawings, specifications, quantities, and delivery schedules as to any goods and/or work covered by this order. Such changes, to be binding on either Buyer or Seller, must be made by a written Purchase Order Amendment to this order. Any differences in price or time for performance resulting from such changes shall be equitably adjusted and shown on the Purchase Order Amendment.
7. **ASSIGNMENT:** Seller shall not, in any manner, delegate its duty of performance or assign its rights or obligations under this order without the prior written consent of the Buyer.
8. **PERFORMANCE:** Deliveries of goods or services ordered hereunder are to be made both in quantities and at the times specified by the Buyer. Buyer shall have the right (a) to cancel the order without liability this order if shipment is not made in accordance with such schedules for quantities or time periods; and (b) to refuse to accept delivery if shipments are made in advance of schedules herein or if quantities are in excess of this order.
9. **CANCELLATION:** Buyer reserves the right to cancel in whole or in part the contract resulting from the acceptance of this order if the Seller becomes insolvent; files a voluntary petition in bankruptcy, or an involuntary petition is filed to have Seller declared bankrupt and is not vacated within thirty (30) days from the date of filing; a Receiver or Trustee for Seller is appointed and such appointment is not vacated within thirty (30) days of the date thereof; Seller executes an assignment for benefit of creditors; or if Seller breaches any of the terms hereof including the warranties of Seller.
10. **INSPECTION:** Payment for the goods or services furnished hereunder shall not constitute acceptance thereof All goods are subject to Buyer's inspection, at the source if deemed necessary or required by government regulation. Inspection at the source may be made when deemed necessary by the Buyer If any of the goods are found at any time to be defective in material or workmanship, or otherwise not in conformity with the requirements of this order, Buyer, in addition to any other rights which it may have under warranties or otherwise, shall have the right to reject or re- turn such goods (plus inbound transportation

charges if bought F.O.B. shipping point) at Seller's expense, and such goods are not to be replaced without written authorization by Buyer.

11. **WARRANTIES:** Seller represents and warrants that the articles supplied under this order are free from defects and conform to specifications herein and are fit for the purpose for which such goods are ordinarily employed, except if stated in a Special Condition, in which case the material must then fit that particular purpose Seller further warrants and represents that all goods and materials delivered herein are free and clear of all liens, claims or encumbrances of any kind.
12. **INFRINGEMENTS:** Seller agrees to protect, hold, and save harmless Buyer against all claims for patent, trademark, copyright, or franchising infringement arising from the purchase, installation, or use of material ordered on this order, and to assume all expense and damage arising from such claims.
13. **GOVERNING LAW:** This order, or any agreement of sale, or service resulting from its acceptance shall be governed by and construed according to the laws of the State of Michigan.
14. **NON-DISCRIMINATION:** By acceptance of this order the Seller certifies that it will comply with all applicable provisions of Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (38 U.S.C. 4212) and Implementing regulations at 41 CFR Chapter 60, and pertinent State/Federal statutes and regulations providing for equal opportunity In employment regardless of race, sex, color, national origin, age, or physical handicap, except as to physical handicap where there exists a bona-fide occupational qualification.
15. **GOVERNMENT REGULATION:** In furnishing goods or services covered by this order, Seller agrees to comply with the provisions of all applicable federal, state and local laws, rules, regulations, ordinances and orders.
16. **FAIR LABOR STANDARDS ACT:** Seller agrees, In connection with the production of the articles specified herein to comply with all applicable requirements of Section 6, 7 and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the United States Department of Labor issued under Section 14 thereof.
17. **ADVERTISING:** Seller shall not, in any manner, advertise or publish the fact that Seller has contracted to furnish Buyer the goods/services herein ordered and for failure to observe this provision, Buyer shall have the right to terminate this order without any obligations to accept deliveries after the date of termination or make further payments except for completed articles delivered prior to termination. Buyer shall have the right to return any and all goods delivered for full refund in the event the Seller violates this clause.
18. **SELLER'S LIABILITY:** Seller assumes the entire responsibility and liability for losses, expenses, damages, demands and claims In connection with or arising out of any personal Injury or alleged personal Injury (including death) and/or damage or destruction or alleged damage or destruction to property sustained or alleged to have been sustained in connection with or to have arisen out of the performance of the work by Seller, Its agents, employees, subcontractors and consultants, save and except for liability as may result from, or In connection with or to have arisen out of the negligent performance of the work by or willful misconduct of Buyer. Seller shall indemnify and hold harmless Buyer, Its officers, agents, and employees from any and all liability for such losses, expenses, damages, demands, and claims and shall defend any suit or action brought against any or all of them based on an alleged personal Injury or damage and shall pay any damages, costs and expenses Including attorney fees in connection with or resulting from such suit or action.
19. **Sales Tax:**
Wayne State University is a tax exempt Institution
Tax Free Registry Number
38-6028429

20. PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS: Seller acknowledges that no officer or employee of the Buyer may have a financial interest, direct or indirect, in any contract with the Buyer, or shall be financially interested, directly or indirectly, in the sale to the Buyer of any land, materials, supplies, or service, except on behalf of the Buyer as an officer or employee.

INSTRUCTIONS

SHIPPING AND MARKINGS: All material shall be suitably packed, marked, and shipped in accordance with the requirements of common carriers in a manner to secure lowest transportation cost and no additional charge shall be made to the Buyer therefor unless otherwise stated on the face of the Purchase Order No charge shall be made by the Seller for drayage or storage, unless otherwise stated on the face of the Purchase Order Unless otherwise specified herein, Seller shall properly mark each package with Buyer's order number, and where multiple packages comprise a single shipment, each package shall also be consecutively numbered. Purchase order number, package number and receiving location shall be shown on packing slips, bills of lading and Invoices.

PACKING SLIPS: Enclose packing slip Itemizing contents with each shipment.

INVOICES: Must show our Purchase Order number, and cash and transportation terms. Invoices Improperly rendered may be returned for correction without loss of discount Cash Discount will be computed from date of Invoice.

BILLS OF LADING: Show our Purchase Order number, and number of containers. If shipping raw materials, also show number of containers in each lot If transportation Is FOB origin and transportation charges are for our account, ship at value that will produce lowest transportation cost.

(revised 11-2007)