**Appendix A**

**REQUIRED TERMS AND CONDITIONS FOR ALL CONTRACTS WITH**

**ERIE COUNTY MEDICAL CENTER CORPORATION**

1. **AGREEMENT**. By contracting with Erie County Medical Center Corporation (“ECMCC”) for purchase of services or products, or by commencement of any services or shipment of any products or otherwise contracting with ECMCC, the contractor, licensor, licensee, lessor, lessee, or any other party to an agreement with ECMCC (the “Contractor”), hereby consents to these terms and conditions (collectively, the “Agreement”). ECMCC is not bound by, and expressly objects to, any terms or conditions (including, but not limited to, any contained in Contractor’s quote or sales order acknowledgement) that conflict with those contained within this Agreement unless ECMCC expressly agrees to such terms or conditions in writing. In the event of a conflict between the terms of any other agreement entered into between the parties (including any and all attachments thereto and amendments thereof) and the terms of this Agreement, the terms of this Agreement shall control.

Any respondents to an ECMCC-issued request for proposals or bidders to an ECMCC-issued invitation to bid further agree to comply with the terms and conditions of this Agreement and incorporate these terms and conditions into any final agreement with ECMCC prior to commencement of services or shipment of products.

1. **NON-ASSIGNMENT**. Pursuant to Section 109 of the General Municipal Law, Contractor may not assign, transfer, convey, sublet or otherwise dispose of this Agreement, or Contractor’s right, title, or interest in this Agreement, or Contractor’s power to execute this Agreement, to any other person or corporation without ECMCC’s prior written consent. In the event that Contractor assigns, transfers, conveys, sublets or otherwise disposes of this Agreement, or Contractor’s right, title or interest herein, or his power to execute this Agreement, to any other person or corporation without ECMCC’s prior written consent as required by law, ECMCC shall revoke and annul this Agreement, and ECMCC shall be relieved and discharged from any and all liability and obligations arising out of this Agreement to Contractor and to the person or corporation to which this Agreement shall have been assigned, transferred, conveyed, sublet or otherwise disposed of, and Contractor, and his assignees, transferees or sublessees shall forfeit and lose all moneys, theretofore earned under this Agreement, except so much as may be required to pay Contractor’s employees. The provisions of this section shall not hinder, prevent, or affect an assignment by Contractor for the benefit of his creditors made pursuant to New York State law.
2. **NON-DISCRIMINATION REQUIREMENTS**. In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, national origin, age, disability, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if the Contract is for the construction, alteration, and/or repair of any public building and/or public work and/or for the manufacture, sale, and/or distribution of materials, equipment, and/or supplies, and to the extent that the Contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; and/or (b) discriminate against or intimidate any employee hired for the performance of work under the Contract.
3. **WAGE AND HOUR REQUIREMENTS**.  If this Agreement is a “public work contract” covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor’s employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the New York State Department of Labor (the “DOL”).  Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the DOL in accordance with the Labor Law.  Additionally, if this is a public work contract covered by Article 8 of the Labor Law, Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by ECMCC of any ECMCC-approved sums due and owing for work performed.
4. **WORKERS' COMPENSATION BENEFITS.** This Agreement shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
5. **Independent Contractor Status.** The parties acknowledge and agree that Contractor is an independent contractor of ECMCC, and that this Agreement does not create an employment relationship between ECMCC and Contractor or between ECMCC and any person performing Services or by or on behalf of Contractor. None of the provisions of this Agreement shall be construed or be deemed to create a relationship of agency, partnership, joint venture, ownership, control or employment between the parties other than that of independent parties contracting solely for the purpose of effectuating this Agreement.
6. **DELIVERY OF PRODUCTS**. Products to be delivered by Contractor to ECMCC shall be made FOB destination, prepaid and invoiced.
7. **CREDENTIALING**.

8.1 General. Contractor must comply with ECMCC’s vendor credentialing requirements in order for its employees and subcontractors to be granted access to its facilities. All costs associated with Contractor’s compliance with the vendor credentialing requirements will be borne solely by Contractor.

8.2 Employee or Subcontractor not Normally at ECMCC. For any employee and subcontractor of Contractor not normally conducting business at ECMCC’s facilities, in the event the employee or subcontractor is on its campus, ECMCC may permit such employee or subcontractor not to be credentialed in accordance with this Section so long as he or she is escorted by an employee of ECMCC in patient care areas at all times.

8.3 Badge Requirements. At ECMCC’s facilities, each of Contractor’s employees or subcontractors will be given a badge which he or she must wear on full display at all times when at the facilities and be returned upon departure from the facilities.

8.4 Removal of Employee or Subcontractor. During the term of this Agreement, ECMCC may immediately remove any of Contractor’s employees or subcontractors from ECMCC’s facilities, if ECMCC believes, in its sole discretion, that such employee or subcontractor may (i) pose a risk to the health, safety or medical condition of any employee, patient or patron of ECMCC or (ii) interfere with the business or operations of ECMCC.

8.5 Audit. During the term of this Agreement, Contractor will be subject to audit(s) to ensure its compliance with the credentialing requirements contained in this Agreement.  Upon Contractor’s failure to comply with any of these requirements, ECMCC may (i) terminate this Agreement or (ii) require Contractor to comply with more stringent credentialing requirements.

1. **SET-OFF RIGHTS**. ECMCC shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the option to withhold for the purposes of set-off any moneys due to the Contractor under the Contract up to any amounts owing to ECMCC which are past due, with regard to the Contract, any other contract with ECMCC.
2. **GOVERNING LAW AND VENUE.** This Agreement shall be governed by the laws of the State of New York. Each of the parties to this Agreement consents and submits to the exclusive jurisdiction and venue of the state and federal courts located in the County of Erie, New York.
3. **ARBITRATION**. Disputes under $100,000 involving this Agreement, including the breach or alleged breach thereof, must be submitted to a single arbitrator to be chosen by ECMCC.
4. **INDEMNIFICATION**. Contractor shall be responsible, without limitation, for any liabilities, losses, claims, damages, suits, and expenses whatsoever, including costs of enforcement and reasonable attorney’s fees, caused to ECMCC, and to indemnify and hold harmless ECMCC for claims of third parties asserted against ECMCC, to the extent attributable to or caused by the negligent or wrongful act, failure to act, product liability, breach of contract or warranty by Contractor or any of its employees or subcontractors, or an allegation that services or products provided by Contractor, whether individually or in combination with any other work, infringe upon, violate, or misappropriate any third party’s patent, trademark, copyright, proprietary, and/or any other intellectual property rights. Contractor shall bear its own costs and expenses, including but not limited to losses, claims, and damages, related to IT systems, electronic records, and cyber security. Contractor may not make a claim against ECMCC for any costs or damages, including but not limited to lost profits, consulting fees, or equipment costs, resulting from a cyber security incident.
5. **INSURANCE.** Contractor shall obtain and maintain, at its expense, adequate (as determined by ECMCC) insurance in the amounts as set forth in Appendix B.
6. **COMPLIANCE**. While on ECMCC property, Contractor shall abide by all applicable ECMCC rules, regulations, policies and procedures that are posted on ECMCC property or otherwise made known to Contractor. Contractor shall comply with all applicable requirements of the Joint Commission on Accreditation of Healthcare Organizations when providing services to ECMCC. Where Contractor will be performing services within the Clinical or Patient Areas of ECMCC, Contractor shall provide the following to ECMCC: (i) proof of current immunizations; (ii) verification of credentials (if applicable); (iii) a copy of the current job description; and (iv) a copy of its annual employment evaluation (if applicable).
7. **COMPLIANCE WITH HEALTH LAWS**. Contractor must comply with all applicable laws, rules or regulations, including, but not limited to, 42 U.S.C. 1395nn, and the regulations promulgated thereunder (the "Stark Law"), 42 U.S.C 1320a-7b, and regulations promulgated thereunder (the "Anti-kickback Law”), and the Health Insurance Portability and Accountability Act and its regulations ("HIPAA"). If Protected Health Information, as defined by HIPAA, is exchanged between the parties, and Contractor is not a Covered Entity as defined by HIPAA, Contractor agrees simultaneous with any agreement to also enter into ECMCC’s standard business associate agreement.
8. **CONFIDENTIALITY**.The parties acknowledge and agree that the existence of this Agreement, and its terms and conditions are strictly confidential. The parties agree that the terms of this Agreement and any negotiations may not be disclosed, in whole or in part, to any third party, except to each party’s attorneys and professional advisors who have a need to know, provided that such attorneys and advisors also agree to be bound by this confidentiality and non-disclosure provision. Notwithstanding the foregoing, the terms, conditions, and negotiations may be disclosed (i) pursuant to a judicial subpoena or proper regulatory request for information from a governmental entity with authority over the affairs of any of the parties to the agreement, (ii) when requested pursuant to Freedom of Information Law requests, provided such terms are not protected from disclosure by the New York Public Officers Law, and (iii) to the extent reasonably required by any party to perform, compel performance, or enforce any provision of the agreement.
9. **TRAVEL EXPENSE REIMBURSEMENT**. Contractor expenses must be approved by ECMCC in advance and will be reimbursed at actual costs. Reimbursement for actual costs for meals and incidental expenses may not exceed the per diem amounts for Buffalo, New York at set by the current GSA schedule (“GSA Limits”). Air travel expenses may include only coach air fare; no charges for seat upgrades or seat preferences will be reimbursed. Hotel rates not to exceed GSA Limits for Buffalo, New York will be reimbursed. Receipts for any costs to be reimbursed must be submitted within 30 days of the month incurred.
10. **TERMINATION**. The Agreement shall be subject to termination at the election of ECMCC upon 30 days prior written notice. Upon such termination, ECMCC shall pay to Contractor all compensation earned up to the date of termination in accordance with the compensation fees listed in the Agreement. Other than as set forth in the Agreement and except in the event of a breach of this Appendix A or any provisions of the Agreement, upon the effective date of any termination by either party, the parties shall have no further obligations to each other.
11. **EQUAL EMPLOYMENT OPPORTUNITIES.**

19.1 Contractor and its subcontractors shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

19.2  Prior to the award of a contract, the Contractor shall submit an equal employment opportunity (“EEO”) policy statement to ECMCC.

19.3 As a part of the Contractor's EEO policy statement, the Contractor, as a precondition to entering into a valid and binding Agreement, shall agree to the following in the performance of the Agreement:

1. Contractor will not discriminate against any employee or applicant for employment, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on the Agreement.
2. Contractor shall state in all solicitations or advertisements for employees that, in the performance of the Agreement, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status;
3. At the request of ECMCC, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
4. **MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND SERVICE-DISABLED VETERAN-OWNED BUSINESSES**. Contractor agrees to comply with New York State Executive Law Articles 15-A and 17 and 5 NYCRR Parts 142-144 and 9 NYCRR 252 (“MWBE and SDVOB Laws”), if applicable. Also when applicable, Contractor must provide and comply with M/WBE and SDVOB Utilization Plans which have been approved by ECMCC’s Office of M/WBE Compliance. In the event that Contractor willfully and intentionally fails to comply with the M/WBE and SDVOB Laws and/or the MWBE and SDVOB Utilization Plans, Contractor shall be obligated to pay liquidated damages, calculated as an amount equaling the difference between: (i) all sums identified for payment to MWBEs or SDVOBs had Contractor achieved the MWBE or SDVOB goals; and (ii) all sums actually paid to MWBEs or SDVOBs for work performed or materials supplied under this Agreement. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development’s Division of Minority and Women's Business Development pertaining hereto.
5. **WORKFORCE REPORTING**. Per New York Executive Law and Executive Order Number 162, Contractor and any of its subcontractors shall submit a quarterly Workforce Employment Utilization Report in the format provided by ECMCC reflecting the entirety of Contractor and its subcontractors’ workforces performing work on this Agreement and located within New York State, as well as the salaries of any such employees.
6. **NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based on the submission of competitive bids, Contractor affirms, under penalty of perjury, and each person signing on behalf of Contractor, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered it to ECMCC a non-collusive bidding certification on Contractor’s behalf.
7. **PROCUREMENT LOBBYING**. To the extent this agreement is a “procurement contract” as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the Contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.
8. **RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an exami­na­tion, as well as ECMCC and its representatives and entities involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. ECMCC shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "FOIL Laws") provided that: (i) the Contractor shall timely inform an appropriate ECMCC official, in writing, that said Records should not be disclosed; and (ii) said Records shall be sufficiently identified; and (iii) designation of said Records as exempt under the FOIL Laws is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, ECMCC’s right to discovery in any pending or future litigation.
9. **SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor’s actual receipt of process or upon ECMCC’s receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify ECMCC, in writing, of each and every change of address to which service of process can be made. Service by ECMCC to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond. A copy of all notices to ECMCC shall be provided to: Office of General Counsel, Erie County Medical Center Corporation, 462 Grider Street, Buffalo, New York 14215.
10. **TAXES**. Bills and proposals to ECMCC shall not include charges for any Federal, State or local excise, sales, transportation or other tax, unless Federal or State law specifically levies such tax on purchases made by ECMCC. ECMCC’s purchase order serves as required evidence of its exempt status. Any applicable taxes from which ECMCC is not exempt shall be listed separately as cost elements and added into the total net price.
11. **BILLING**. In order to receive compensation for services rendered, Contractor agrees to provide complete and accurate billing invoices to ECMCC on a monthly basis. Invoices submitted must contain sufficient information and documentation to support the charges submitted. Documentation may include time sheets, expense vouchers and any other supportive documentation requested by ECMCC.
12. **PAYMENT.** Invoices submitted should be submitted no later than thirty (30) days following the end of the billing period. ECMCC will make payment within sixty (60) days of receipt of invoice, unless ECMCC reasonably disputes some or all of the invoice.