

Appendix A

REQUIRED TERMS AND CONDITIONS FOR CONTRACTS WITH ERIE COUNTY MEDICAL CENTER CORPORATION

Amended June 2, 2021

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 "Terms and Conditions"). 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 these Terms and Conditions unless ECMCC expressly agrees to such terms or conditions in writing. In the event of a conflict between the terms of any other agreement or Purchase Order entered into between the parties (including any and all attachments thereto and amendments thereof, collectively the "Underlying Agreement") and the terms of these Terms and Conditions, the terms of these Terms and Conditions 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 these Terms and Conditions and incorporate these terms and conditions into any final agreement with ECMCC prior to commencement of services or shipment of products.

2. **Personnel.** Contractor agrees to provide personnel who are acceptable to ECMCC and who have adequate education, training and experience in such subspecialties which are necessary to perform the services (the "Professionals"). ECMCC reserves the right to require the removal of any Professional whose practice or services are unacceptable to ECMCC, and Contractor shall promptly provide an acceptable substitute for such removed Professional. Contractor agrees to require each Professional to participate in and comply with ECMCC's rules, regulations, directives, policies and procedures, as amended from time to time.

3. **Credentialing.**

3.1 **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.

3.2 **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.

3.3 **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.

3.4 **Removal of Employee or Subcontractor.** During the term of these Terms and Conditions and any Underlying 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.

3.5 **Audit.** During the term of these Terms and Conditions and any Underlying Agreement, Contractor will be subject to audit(s) to ensure its compliance with the credentialing requirements contained

in these Terms and Conditions. Upon Contractor's failure to comply with any of these requirements, ECMCC may (i) terminate any Underlying Agreement or (ii) require Contractor to comply with more stringent credentialing requirements.

4. **Independent Contractor Status.** The parties acknowledge and agree that Contractor is an independent contractor of ECMCC, and that neither these Terms and Conditions nor any Underlying Agreement 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 these Terms and Conditions nor any Underlying 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 these Terms and Conditions or any Underlying Agreement.

5. **Contractor Representations and Warranties.** Contractor represents and warrants that at all times during the term of these Terms and Conditions or any Underlying Agreement:

5.1 All Professionals shall be employees or subcontractors of Contractor.

5.2 All Professionals are in full compliance with all pertinent Federal and State requirements, including but not limited to, immigration, licensing, certification, health and immunizations status, in order to perform the functions assigned to him or her in connection with Contractor's obligation under this these Terms and Conditions or any Underlying Agreement.

5.3 Contractor is not subject to any legal or contractual impediment which would preclude its performance of these Terms and Conditions or any Underlying Agreement unenforceable.

5.4 Contractor has all due legal authority and capacity and is entitled to enter into this these Terms and Conditions and any Underlying Agreement and is authorized to bind Contractor and Contractor's personnel to the terms and provisions of the Underlying Agreement.

5.5 Contractor acknowledges and agrees that ECMCC has relied upon the truthfulness and accuracy of the above representations and warranties in entering into any Underlying Agreement with Contractor, and shall continue to rely upon the completeness, truthfulness and accuracy of such representations and warranties throughout the term of any Underlying Agreement.

6. **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.

7. **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.

8. **Tax exemption.** Invoices and bills 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.

9. **Delivery of Products.** Products to be delivered by Contractor to ECMCC shall be delivered FOB destination, prepaid and invoiced.

10. **Term and Termination.** The term of any Underlying Agreement may be extended beyond the initial term upon the mutual agreement of the parties. Any Underlying Agreement shall be subject to termination (1) upon fifteen (15) days' prior written notice in event of breach by Contractor if such breach is not cured within fifteen (15) days following delivery of notice of breach by ECMCC, or (2) without cause at

the election of ECMCC upon thirty (30) days' prior written notice. Upon termination, ECMCC shall pay to Contractor compensation earned or a pro-rated version of any amounts owed up to the date of termination in accordance with the compensation fees listed in any Underlying Agreement, unless ECMCC disputes all or some of the amounts due to a claim of breach. In no circumstance shall ECMCC be charged any early termination penalties. Other than as set forth in any Underlying Agreement and except in the event of a breach of these Terms and Conditions or any provisions of any Underlying Agreement, upon the effective date of any termination by either party, the parties shall have no further obligations to each other.

11. **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 as 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 may not exceed GSA Limits for Buffalo, New York. Receipts for any costs to be reimbursed must be submitted within thirty (30) days of the month incurred.

12. **Insurance.** Contractor shall obtain and maintain, at its expense, adequate (as determined by ECMCC) insurance in the amounts as set forth in Appendix B.

13. **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 by Contractor's performance under any Underlying Agreement, and to defend, indemnify and hold harmless ECMCC for claims of third parties asserted against ECMCC to the extent attributable to or caused by any 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.

14. **Governing Law and Venue.** These Terms and Conditions and any Underlying Agreement shall be governed by the laws of the State of New York. Each of the parties to these Terms and Conditions and any Underlying Agreement consents and submits to the exclusive jurisdiction and venue of the State and Federal courts located in the County of Erie, New York.

15. **Arbitration.** Any dispute, controversy, claim or difference arising out of or relating to any Underlying Agreement or these Terms and Conditions' application or interpretation, shall be resolved by arbitration pursuant to the commercial arbitration rules of the American Arbitration Association then prevailing. Any arbitration hearing shall be held in Buffalo, New York. The provisions of this paragraph are not intended by the parties to limit the right of the parties to seek injunctive relief in a court of competent jurisdiction as a result of any alleged breach of any Underlying Agreement or these Terms and Conditions.

16. **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.

17. **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 any Underlying Agreement up to any amounts owing to ECMCC which

are past due, with regard to the Contract, any other contract with ECMCC.

18. **Non-Assignment.** Pursuant to Section 109 of the General Municipal Law, Contractor may not assign, transfer, convey, sublet or otherwise dispose of any Underlying Agreement, or Contractor's right, title, or interest in any Underlying Agreement, or Contractor's power to execute any Underlying 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 any Underlying Agreement, or Contractor's right, title or interest herein, or his power to execute any Underlying Agreement, to any other person or corporation without ECMCC's prior written consent as required by law, ECMCC shall revoke and annul any Underlying Agreement, and ECMCC shall be relieved and discharged from any and all liability and obligations arising out of any Underlying Agreement to Contractor and to the person or corporation to which any Underlying 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 any Underlying 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.

19. **Physical Examinations, Background Checks, Screenings, Immunizations.**

19.1 While on ECMCC property, each Professional shall:

19.1.1 Abide by all applicable ECMCC rules, regulations, policies and procedures that are posted on ECMCC property or otherwise made known to Contractor;

19.1.2 Have the following immunizations: (i) PPD (Mantoux) skin test for tuberculosis performed within one year, and a chest x-ray if positive; (ii) Td (Tetanus-diphtheria) booster within ten years; and (iii) proof of immunity against measles (Rubella), German measles (Rubella), Chicken Pox (Varicella). Each Professional shall also have the influenza vaccine for the applicable flu season, or shall otherwise comply with Department of Health requirements with respect to influenza vaccination, including wearing a mask during flu season while on site at ECMCC; and

19.1.3 Comply with all ECMCC policies regarding COVID-19 prevention, including use of PPE as required by ECMCC and, if available and deemed necessary by ECMCC, obtaining a COVID-19 vaccination.

19.2 Where Contractor will be performing services within the clinical or patient areas of ECMCC, Contractor shall:

19.2.1 Ensure each Professional has taken a physical examination prior to performing services, which shall give evidence of good physical and mental health;

19.2.2 Provide ECMCC, upon request, with a physician's statement that the Professional is free of any health impairment which may pose a risk of illness or injury to ECMCC patients;

19.2.3 At its sole cost and expense, perform a criminal background check (a "Check") on all Professionals. Contractor shall disclose to ECMCC if any Check reveals findings of misdemeanor and/or felony convictions. In such event, ECMCC reserves the right to decline the assignment of any such Professional.

19.2.4 Ensure each Professional has undergone a drug and alcohol screen within thirty (30) days prior to the start date for each Professional. Contractor shall disclose to ECMCC any positive results from this test. In such event, ECMCC reserves the right to decline the assignment of any such Professional.

19.3 Contractor shall comply with all applicable requirements of the Joint Commission on Accreditation of Healthcare Organizations when providing services to ECMCC.

20. **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") (collectively, the "Applicable Laws"). To the extent any Protected Health Information (as defined by HIPAA) is exchanged between the parties, Contractor agrees to comply with all applicable HIPAA provisions and the requirements of any regulations promulgated there under, and simultaneous with any agreement to also enter into ECMCC's standard business associate agreement. In the event any Applicable Laws or any interpretation thereof, at any time during the term of any Underlying Agreement, is modified, implemented or determined to prohibit, materially restrict or in any way materially change the material provisions under any Underlying Agreement or these Terms and Conditions, then the parties shall negotiate in good faith to amend any Underlying Agreement and/or these Terms and Conditions to conform to the changed requirements, and if they cannot promptly agree, any Underlying Agreement shall be terminated.

21. **Non-Collusive Bidding Certification.** In accordance with Section 139-d of the State Finance Law, if any Underlying Agreement 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.

22. **Procurement Lobbying.** To the extent any Underlying Agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing any Underlying 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, ECMCC may terminate any Underlying Agreement by providing written notification to the Contractor in accordance with the terms of any Underlying Agreement.

23. **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 ("M/WBE 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 M/WBE 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 M/WBEs or SDVOBs had Contractor achieved the M/WBE or SDVOB goals; and (ii) all sums actually paid to M/WBEs or SDVOBs for work performed or materials supplied under any Underlying 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. If applicable, Contractor shall submit a Monthly Payment Report with each of Contractor's monthly invoices as evidence of Contractor's ongoing compliance with the M/WBE Utilization Plan. Applicable invoices that are not submitted with a Monthly Payment Report will not be accepted by ECMCC or processed for payment.

24. **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 any Underlying Agreement and located within New York State, as well as the salaries of any such employees.

25. **Equal Employment Opportunities.**

25.1 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.

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

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

- (i) 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 any Underlying Agreement;
- (ii) Contractor shall state in all solicitations or advertisements for employees that, in the performance of any Underlying 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;
- (iii) 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.

26. **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 any Underlying Agreement 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 any Underlying Agreement 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 any Underlying Agreement.

27. **Wage and Hour Requirements.** If any Underlying 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.

28. **Records.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under any Underlying Agreement (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 any Underlying Agreement, 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.

29. **SOC2 Report.** If Contractor hosts, accesses, or receives any data from ECMCC, Contractor shall arrange for and provide to ECMCC a copy of Contractor's current Service Organization Control (SOC) 2 Type II report or a report prepared in accordance with any similar or successor standard ("SOC2 Type II Report") covering Contractor's security procedures. No more than once every twelve (12) months at ECMCC's reasonable advance written request, Contractor will provide ECMCC with a copy of the most recent SOC2 Type II Report.

30. **Confidentiality.** The parties acknowledge and agree that the existence of any Underlying Agreement and these Terms and Conditions are strictly confidential. The parties agree that the terms of any Underlying 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 any Underlying 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 any Underlying Agreement or these Terms and Conditions.

The parties further agree that all information which Contractor presently has or which may come into Contractor's possession during the term of any Underlying Agreement relative to the business activities of ECMCC which is of a secret or confidential nature is and shall remain the property of ECMCC. Contractor shall not, during the rendering of services or thereafter, disclose to others or use for the benefit of others or itself any such information so long as such information is treated as secret or confidential by ECMCC.

The parties recognize that ECMCC operates a shared purchasing program with Kaleida Health pursuant to New York Public Authorities Law Section 3631, and accordingly ECMCC and Kaleida Health may disclose and share confidential information, including financial information, relating to Contractor and these Terms and Conditions or any Underlying Agreement or agreement between Kaleida and Contractor, amongst each other.

31. **No Waiver of Rights.** No failure or delay (in whole or in part) on the part of either party hereto to exercise any right or remedy hereunder shall impair its ability to later exercise any such right or remedy, operate as a waiver thereof, or affect any other rights or remedies that may be available under the law or in equity, except to the extent it causes actual prejudice to the other party. No waiver by either party of any covenant, condition, term or provision of any Underlying Agreement shall be deemed to have been made by that party unless such waiver is in writing and signed by an authorized representative of the party.

32. **No Third Party Rights.** Nothing in these Terms and Conditions or any Underlying Agreement shall be construed or deemed to create any right in any person or entity not a party to any Underlying Agreement, except any permitted successors and assigns, and these Terms and Conditions and any Underlying Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party, including without limitation any Resident or any employee, representative or agent of Contractor or ECMCC.