

UNIVERSITY OF MISSISSIPPI MEDICAL CENTER STANDARD TERMS AND CONDITIONS ADDENDUM

This Addendum ("Addendum") constitutes an amendment or supplement and is hereby incorporated into the _____, by and between the University of Mississippi Medical Center ("UMMC"), a Mississippi governmental entity, and the following party:

Name			
Address	City	State	Zip
Tax ID#			

(the above party is hereinafter referred to as "Vendor").

Notwithstanding anything contained in Vendor's terms and conditions, in any agreement by and between Vendor and UMMC, or in any quotation, voucher, or purchase order which this Addendum accompanies or to which it is attached (hereinafter collectively referred to as the "Agreement"), in the event of any conflict between the terms of the Agreement and this Addendum, the terms of this Addendum shall control. By executing this Addendum, and/or by accepting UMMC's purchase order and/or by supplying the goods and services which are the subject matter of the Agreement without objection, Vendor expressly agrees to be bound by the terms of this Addendum; expressly acknowledges that the terms of this Addendum supersede the terms of any Agreement which this Addendum accompanies or to which it is attached; and expressly acknowledges that no agreement, or understanding, oral or written, which purports to modify the terms of this Addendum, whether such be contained in any of Vendor's prior or subsequent receipts, invoices, quotations, order confirmations, purchase orders, click-through agreement, terms and conditions on a website, shipping forms or any other documents, shall be binding on UMMC.

1. **Term; No Automatic Renewals.** The term of the Agreement shall be for the term stated in the Agreement itself. However, if no term is stated in the Agreement, the Agreement shall expire one (1) year from the date of the Agreement or purchase order, whichever is later. Any reference to any automatic renewals in the Agreement is hereby deleted in its entirety, and the parties expressly acknowledge that the Agreement is for one term only, and does not automatically renew itself for successive terms. All renewals must be in writing and agreed to by both parties. UMMC may terminate the Agreement upon not less than thirty (30) days written notice to the Vendor. Any reference to early termination charges, fees, or penalties, is hereby deleted in its entirety, and the parties expressly acknowledge that no early termination charges, fees, or penalties will apply.
2. **Shipping.** The shipping term is FOB UMMC's Destination. The proper delivery address is the address stated on the purchase order. UMMC reserves the right to utilize a third party logistics company of UMMC's choice and UMMC's logistics shipping account therewith. Should UMMC elect to assert this right, it will provide thirty (30) days' prior written notice to Vendor. Thereafter, shipping will be FOB shipping point, with freight paid by Vendor to UMMC's preferred third party logistics company.
3. **Payment/Invoicing.** Payment shall not occur until all services, deliverables, and/or goods to be provided under the Agreement have been fully provided to UMMC's satisfaction. Continuation of any UMMC contract is based upon the availability of funds. Should there be no funds available, the contract will be cancelled with no further obligation on the part of UMMC. Any property covered by a lease shall be returned to the lessor. No invoice shall be considered past due or late until the 45th day after receipt and no late payment fees or penalties shall apply in excess of those prescribed by law. All invoices shall be sent via email to: AP-invoices@umc.edu. Any questions regarding invoices should be directed to AP-statements@umc.edu. All payments shall be made in United States currency.
4. **Assignment; No Third-Party Beneficiaries.** Neither party may assign its rights under the Agreement or delegate its duties under the Agreement, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law or another manner, without the prior written consent of the other party, such consent to not be unreasonably withheld. Any purported assignment of rights in violation of this Section is void. The Agreement does not and is not intended to confer any rights or remedies upon any persons other than the parties hereto.
5. **Non-Solicitation.** Each party agrees that it may hire employees or contractors of the other party without such other party's prior written consent thereto through general solicitations not targeted at such persons.
6. **Insurance.** Vendor shall maintain commercial general liability insurance in a commercially reasonable amount sufficient and necessary to cover the scope of services of the Agreement. If the Agreement requires Vendor to provide professional services, Vendor shall also maintain professional liability insurance covering itself, its employees, agents, professional employees and representatives in the minimum amounts of \$1 Million per occurrence/ \$3 Million aggregate annually. Upon request, Vendor shall provide proof of insurance to UMMC. UMMC is self-insured under the Mississippi Tort Claims Act. Any provisions of the Agreement which require UMMC to obtain or maintain insurance are hereby deleted in their entirety. Any provisions of the Agreement which require UMMC to name Vendor as an additional insured are hereby deleted in their entirety.
7. **Governing Law; Venue.** The Agreement and this Addendum are governed and controlled by all applicable laws, ordinances, rules and regulations of the State of Mississippi. All suits, claims, cases, controversies, actions, disputes, complaints and/or orders to show cause related to; arising from; in connection with; or to construe or enforce the terms thereof shall be governed by the laws of the State of Mississippi, without regard to its conflicts of law principles. Any provision contained in the Agreement which purports to set venue outside of the State of Mississippi is hereby deleted in its entirety.
8. **Returns/Cancellations.** UMMC may cancel the order for any goods, equipment, products or materials prior to shipment or return after shipment, without any liability to Vendor for such cancellation or return other than the actual direct cost incurred by Vendor in beginning to process, ship, and/or restock such order, which is evidenced by documentation satisfactory to UMMC. In no event, however, shall such cancellation or return cost charged by Vendor exceed 15% of the purchase price of the cancelled or returned goods, equipment, products or materials. In UMMC's sole discretion, Vendor shall issue a refund for the returned order via check or account credit. Any unused credit after 90 days must be refunded via check to UMMC Accounts Payable, 2500 N. State Street, Jackson, MS 39216.
9. **Attorneys Fees, Collection Costs, and Damages.** Any provisions of the Agreement which require the prevailing party, and/or require UMMC to pay Vendor any attorney fees and/or collection costs are hereby deleted in their entirety. Any provisions of the Agreement which require payment of liquidated damages by UMMC are hereby deleted in their entirety.
10. **Use of Trademarks:** Vendor shall not use any UMMC trademark, service mark, logo, symbol, design, device, name or other mark without

the express written consent of UMMC which has been executed by a duly authorized UMMC officer and which specifically details the permitted uses of such by Vendor.

11. **Expenses.** All expenses in excess of \$500 must be pre-approved in writing by UMMC, and reimbursement requests must be accompanied by receipts or documentation satisfactory to UMMC evidencing such expense. If any expenses in excess of \$500 are not pre-approved by UMMC, or if any of the documentation of any such expenses is not satisfactory to UMMC, UMMC shall not be responsible to reimburse Vendor for the same. Vendor must abide by the University of Mississippi Medical Center's current Travel and Expense Policy, a copy of which may be found at www.umc.edu/Contracts/Resources-Forms.html.
12. **Audit Requests.** Vendor must give reasonable prior notice to UMMC's Office of Integrity and Compliance in order to obtain approval to review UMMC records at Vendor's expense, such authorization shall not be unreasonably withheld.
13. **Education About False Claims Recovery Act.** Vendor acknowledges receipt of UMMC's "Education About False Claims Recovery Act", which may be found at www.umc.edu/Contracts/Resources-Forms.html; agrees to abide by same in its business with UMMC; and agrees to provide same to its employees performing services under the Agreement.
14. **Discounts; Rebates.** If Vendor is providing UMMC any discounts or rebates which are required to be reported to Medicaid, Medicare or any other federal or state health care program, Vendor shall fully and accurately report such discount on all invoices, coupons or statements submitted to UMMC. Vendor will refrain from doing anything which would impede UMMC from meeting its discount reporting obligations, and will indemnify and hold UMMC harmless from any claim asserted against UMMC by Medicaid, Medicare or any other federal or state health care program, or any state or the federal government related to, connected to, or arising from Vendor's failure to abide by the terms of this paragraph.
15. **Record Retention.** If a party carries out any of the duties of the Agreement through a subcontract, with a value or cost of Ten Thousand Dollars (\$10,000.00) or more over a twelve (12) month period, with a related organization, such subcontract will contain a clause to the effect that, until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization will make available, upon written request of the Secretary of HHS, or upon request of the Comptroller General of the United States, or any of their duly authorized representatives, the subcontract, and books, documents, and records of such organization that are necessary to verify the nature and extent of such costs.
16. **Representations of Vendor.** Vendor represents and warrants that Vendor, its officers, directors and employees (a) are not currently excluded, debarred, or otherwise ineligible to participate in any federal health care programs or any state healthcare programs; (b) have not been convicted of a criminal offense related to the provision of healthcare items or services and have not been excluded, debarred, or otherwise declared ineligible to participate in the Federal Healthcare Programs or any state healthcare programs, (c) are not, nor have ever been included on the Office of Foreign Assets Control, Specially Designated Nationals and Blocked Persons list; and (d) are not, to the best of its knowledge, under investigation or otherwise aware of any circumstances which may result in Vendor being excluded from participation in the Federal Healthcare Programs or any state healthcare programs. These shall be ongoing representations and warranties during the term of the Agreement and Vendor shall immediately notify UMMC of any change in the status of the representations and warranty set forth in this section. Any breach of this section shall give UMMC the right to terminate the Agreement immediately for cause.
17. **Compliance with Applicable Laws.** The parties believe the Agreement avoids any element of inappropriate reimbursement for services as currently provided under federal or state law. Nothing in the Agreement shall be construed as a promise or obligation on the part of either party to refer patients or business to the other party. The parties agree to comply with all applicable local, state, and federal laws, rules, and regulations.
18. **Change in Law.** (i) If during the term hereof any Change of Law (defined below) results in an Adverse Consequence (defined below), the parties agree to make reasonable revisions to the Agreement to avoid such Adverse Consequences while seeking to maintain the parties as close as possible to their original positions despite such revisions. Upon notice by one party to another of such Change of Law, the parties agree that they shall attempt to resolve the matter within thirty (30) days of such notice. If the parties cannot agree upon renegotiated terms hereunder within such 30-day period, then the Agreement will terminate immediately upon written notice by one party to the other of an inability to agree. (ii) As used herein, "Change of Law" shall mean: (A) any new legislation enacted by the federal government or the government of Mississippi; (B) any new third party payor or governmental agency law, rule, regulation or guideline; or (C) any judicial order or decree. (iii) As used herein, "Adverse Consequence" shall mean a Change of Law that prohibits, restricts, limits or otherwise affects either party's rights or obligations hereunder in a material manner or otherwise makes it desirable to restructure the relationship established hereunder because of material legal consequences, including loss of tax exempt status, expected to result from such Change of Law.
19. **Patient Records and Confidentiality.** Vendor agrees to execute, upon UMMC's request, a Business Associate Agreement ("BAA") in form satisfactory to UMMC. All medical records and materials relating to patients shall be and remain the property of UMMC. UMMC may utilize its own business records and the information contained therein for whatever purposes it so chooses. The parties acknowledge that Mississippi state law as to public records and transparency governs the Agreement.
20. **Independent Contractor.** It is understood by the parties that Vendor, including its employees, is an independent contractor and is not an employee or agent of UMMC. Vendor understands and agrees that neither it nor its employees performing services hereunder shall be entitled to any of the rights, fringe benefits and privileges established for UMMC's employees. Vendor retains sole and absolute discretion, control and judgment in the manner and means of carrying out its assignments. Vendor and its employees shall at all times be acting as and deemed to be independent contractors. Nothing contained in the Agreement shall be construed to create a partnership, joint venture, agency or employment relationship between Vendor and UMMC. UMMC shall have no responsibility for any of Vendor's debts, liabilities or other obligations or for the intentional, reckless, negligent or unlawful acts or omissions of Vendor or Vendor's employees or agents. In addition, Vendor may not bind UMMC in any way whatsoever with respect to third parties. If the Agreement requires Vendor to provide on-site services to UMMC, Vendor shall comply with UMMC's applicable policies and procedures for facility access for any persons performing services on-site at UMMC.
21. **Tax-Exempt Status.** Pursuant to Mississippi law, UMMC is exempt from state sales and use taxes. UMMC will not pay excise, personal property, income, value added, or other similar taxes.
22. **Equal Opportunity Employer.** During the performance of any contract with UMMC, Vendor agrees to be bound by provisions of Civil Rights Act of 1964 (as amended), the Rehabilitation Act of 1973 (as amended), Executive Order 11246, and the Veterans Readjustment Act of 1972 (as amended).
23. **Employment Protection Act.** Vendor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code of 1972 (as amended).
24. **Force Majeure.** In the event of a Force Majeure Event, the non-performing party is excused from whatever performance is prevented by the Force Majeure Event to the extent prevented and satisfying whatever conditions precedent that cannot be satisfied. When the non-performing party is able to resume performance of its obligations under this Addendum or satisfy the conditions precedent to the performing party's obligations, it shall immediately give the performing party written notice to that effect and shall resume performance under this Addendum no later than five (5) working days after the notice is delivered. "Force Majeure Event" means any act or event, whether foreseen or unforeseen, that meets all three of the following tests: (a) The act or event prevents a party in whole or in part from performing its obligations

under this Addendum; or satisfying any conditions to the performing party's obligations under this Addendum; (b) The act or event is beyond the reasonable control of and not the fault of the non-performing party; and (c) The non-performing party has been unable to avoid or overcome the act or event by the exercise of due diligence. A Force Majeure Event excludes economic hardship, changes in market conditions, or insufficiency of funds.

- 25. **Notice.** Copies of all notices to UMMC shall also be sent to: University of Mississippi Medical Center, Office of the General Counsel, 2500 North State Street, Jackson, MS, 39216, via certified mail, return receipt requested, or overnight courier.
- 26. **Waiver.** No failure on the part of any party hereto to exercise, and no delay in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy hereunder preclude any further or other exercise thereof or the exercise of any other right, power or remedy. Any provisions of the Agreement which require UMMC to waive any cause of action it may have against Vendor or any other party on account of any loss/damage insured by an insurance policy are hereby deleted in their entirety.
- 27. **Execution.** The Agreement and this Addendum may be executed in counterparts, each of which shall be deemed an original, but together shall constitute one and the same instrument. By signing the Agreement and this Addendum, each signatory represents that he or she has the authority to bind his or her respective party to the Agreement and this Addendum.
- 28. **Governmental Entity.** Vendor recognizes and acknowledges that UMMC, as a political subdivision of the State of Mississippi, is entering the Agreement, including the provisions thereof, only to the extent authorized by Mississippi law, including the opinions of the Mississippi Attorney General. Any provision of the Agreement that is in any respect not authorized by or is inconsistent with Mississippi law, including the opinions of the Mississippi Attorney General, is invalid.
- 29. **Severability.** If any provision of the Agreement shall be deemed to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of the Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
- 30. **Entire Agreement.** The Agreement, this Addendum, and any other documents which may be incorporated therein by reference, constitute the entire agreement of the parties with respect to the subject matter herein. Any other agreements or understandings, whether written or oral, are hereby superseded, with the exception of an NDA or BAA, if any. The terms of the Agreement and this Addendum shall solely govern the rights and obligations of the parties with respect to the subject matter herein. Any modification to the Agreement or this Addendum shall only be effective if it is in writing and signed by a duly authorized representative of Vendor, and an authorized signatory of UMMC.
- 31. **Additional Information.** Additional information regarding doing business with UMMC, including documents referenced herein, may be found at www.umc.edu/Contracts/Resources-Forms.html.

SPECIAL TERMS APPLICABLE TO SOFTWARE:

- 32. **Software License.** Vendor grants to UMMC a perpetual, royalty-free, irrevocable license to use for UMMC's internal business only any software which may be installed in the equipment and/or other software provided by Vendor and any associated documentation provided by Vendor to UMMC. UMMC may permit its employees, agents and independent contractors to use the software and any associated Documentation (as defined below).
- 33. **Software Warranty.** Vendor warrants that (i) the licensed software will perform substantially in accordance with the applicable Documentation (as defined herein) or as represented by Vendor, (ii) it has not inserted any Disabling Code (as defined herein) into the licensed software and

(iii) it will use reasonable commercial efforts consistent with industry standards to scan for and remove any software viruses before installation of the equipment purchased hereunder. Vendor warrants that it has the right to license or sublicense the Software to UMMC for the purposes and subject to the terms and conditions set forth herein. As used in this warranty statement, (i) "Disabling Code" means computer code that is designed to delete, interfere with, or disable the normal operation of the purchased product; provided, however, that code included in the licensed software that prevents use outside of the license scope purchased for the software will not be deemed to be Disabling Code and (ii) "Documentation" means the Vendor user manuals, on-line help functions, technical specifications and user instructions regarding the operation, installation and use of the software as made available by Vendor to UMMC.

- 34. **Infringement.** (A) Vendor represents that it has full right to sell or license to UMMC the software, the products or the use thereof, and that all such software or products are delivered free of any liens, encumbrances or rightful claim for any infringement of any United States copyright, patent, trade secret or trademark. Vendor further warrants that the licensed software or product will not infringe any patent, copyright, trade secret or trademark. Vendor agrees to indemnify and hold UMMC harmless from any and all third party claims of infringement relating to UMMC's use of the products sold hereunder, including but not limited to paying all defense costs and attorney's fees, and any judgments. (B) If the use of any element of the licensed software is enjoined as a result of any claim arising out of a breach of this warranty, Vendor will, at its option and expense, either secure for UMMC the right to continue to use the allegedly infringing product, or to replace or modify the product so that it is no longer infringing, provided the product continues to materially perform the same function(s) as originally desired by UMMC and otherwise conforms to the warranty hereunder. In the event Vendor fails to do either of the foregoing, Vendor shall refund to UMMC the full purchase price of all products purchased hereunder.
- 35. **Data Extraction.** Within ninety (90) days of the termination of the Agreement, Vendor agrees to allow UMMC to migrate any stored UMMC data from Vendor's software. Upon expiration or earlier termination of the Agreement, Vendor agrees that UMMC may elect to have Vendor migrate the data to a UMMC computer at no cost to UMMC, or for Vendor to provide the data to UMMC in another form which is acceptable to UMMC at no cost to UMMC.
- 36. **Accessibility.** Vendor represents and warrants that the software complies with the accessibility guidelines of Section 508 of the Rehabilitation Act of 1973 and the Web Content Accessibility Guidelines (WCAG) Version 2.0 Level AA, and agrees to provide written documentation verifying accessibility, to promptly respond to and resolve accessibility complaints received from UMMC, and to indemnify and hold UMMC harmless in the event of claims arising from inaccessibility.

Accepted and agreed to on behalf of Vendor:

Date: _____

Name: _____

Title: _____

Accepted and agreed to on behalf of University of Mississippi Medical Center:

Date: _____

Name: _____

Title: _____