

Exhibit A

The Medical University of South Carolina (MUSC) is a state agency, created by the State of South Carolina. Accordingly, it is limited in scope of authority and subject to procurement laws. MUSC is exempt from federal income tax under Section 115 of the Internal Revenue Code. Purchases by MUSC are exempt from excise taxes imposed under Chapters 31 and 32 of Subchapter B Chapter 33 of the Internal Revenue Code.

UNIVERSITY TERMS AND CONDITIONS

BY ACCEPTANCE OF THIS ORDER, CONTRACTOR AGREES WITH MUSC AS FOLLOWS:

1. Purchase Orders

- a. Contractor shall not perform any work prior to the receipt of a purchase order from MUSC. MUSC shall order any supplies or services to be furnished under the contract following the issuance of a purchase order. Purchase orders may be used to elect any options available under the contract, **e.g.**, quantity, item, delivery date, payment method, but are subject to all terms and conditions of the contract.
- b. The purchase order may be accepted only upon the terms and conditions set forth herein which have been incorporated into the contract unless otherwise agreed to by the parties. If this purchase order is based upon a written Invitation for Bid or Request for Proposal, terms contained in those documents shall, if in conflict, supersede those contained herein. When so accepted, the purchase order contains the complete and final agreement between MUSC and Contractor respective to the goods and services specified. Any additional or different terms proposed by the Contractor are hereby rejected unless accepted in writing by the MUSC Procurement Office. The purchase order constitutes a contract on the part of MUSC to pay the Contractor for the goods or services described.
- c. Purchase orders may be electronic. No particular form is required. Purchase order requirement may be waived if approved in writing by the MUSC Procurement Office.
- d. An order placed pursuant to the purchasing card provision qualifies as a purchase order.
- e. The Contractor, by acceptance of the order will be deemed to represent that Contractor shall comply and shall cause its subcontractors and affiliates to comply in all respects, with all applicable laws, rules regulations and orders of any governmental authority.
- f. Contractor warrants that the prices stated in the contract and/or invoice are as low as any net prices now given by Contractor to any other customer for like goods or services and Contractor agrees that if at any time during the life of the contract, Contractor quotes or sells the product/goods or service at lower net prices, under similar conditions, such lower net prices shall, from that time, be substituted for the prices provided in the contract.
- g. The purchase order is not assignable or transferable by the Contractor without (1) proper notice as specified in Section 10 "Notice" below, and (2) the prior written consent of the MUSC Procurement Officer responsible for the purchase order. Any assignment or transfer in violation of any portion of this Section 1(g) shall be null and void and of no force and effect. MUSC shall not make any payment or have any other obligation to any person or party other than the Contractor, unless this Section 1(g) has been complied with, in full.
- h. The failure of MUSC to enforce at any time any of the provisions stated herein or in the contract itself shall in no way be construed as a waiver of such provision, nor in any way affect MUSC's rights thereafter to enforce each and every provision of the contract or order.
- i. Contractor shall submit invoice to: Acctspayable@musc.edu. All invoicing concerns should be addressed to: MUSC, Accounts Payable 1 South Park Circle, Building 1, JB402, Charleston SC 29407, (843)792-4343.

- j. All other concerns or questions can be addressed to the MUSC Procurement Officer responsible for the purchase order.

2. Performance/Delivery/Completion

- a. All shipments are to be made FOB destination, freight prepaid, to receiving point at MUSC unless otherwise indicated on the purchase order. If other than FOB destination, all transportation, insurance, crating and/or packing charges are to be entered as separate items on Contractor's invoice.
- b. Any materials shipped in excess of the quantity specified in the order may, at MUSC Procurement Officer's option, be returned to the Contractor at Contractor's expense. MUSC will not be obligated to pay for services or labor provided in excess of that specified in the purchase order.
- c. Complete shipments are preferred; however, partial shipments may be acceptable and payable. Final payment will not be made until the purchase order is filled in its entirety or until unfilled items are canceled.
- d. Subject to conditions beyond the control of the Contractor, delivery or completion must actually be effected within the time stated on the purchase order. When completion is not timely, the MUSC Procurement Officer, may, if stipulated, obtain the goods or services elsewhere and charge the Contractor with any loss incurred as a result thereof or, at his option, to cancel the purchase order. It is understood that time is of the essence under this agreement. Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the purchase order, Contractor shall so inform the MUSC Procurement Officer responsible for the purchase order.

3. Inspection/Warranties

- a. Any goods purchased hereunder shall be subject to inspection by MUSC to the extent practicable at all times and places including the period of manufacture. Notwithstanding any prior inspection or payments hereunder, items shall also be subject to final inspection prior to acceptance within a reasonable time after delivery. No inspection or test made prior to the final inspection shall relieve the Contractor from responsibility for defects or other failure to meet the requirements of the purchase order.
- b. Contractor warrants that all items delivered hereunder shall be free from defects in workmanship, material and manufacture; shall comply with the requirements of this agreement, including any drawings or specifications incorporated in design. Contractor further warrants that all items purchased hereunder shall be merchantable quality and shall be fit and suitable for the purposes intended. The foregoing warrants are conditions to this agreement and are in addition to all other warranties, expressed or implied and shall survive any delivery, inspection, acceptance or payment by MUSC. If any warranties specified herein or otherwise applicable are breached by the Contractor, the MUSC Procurement Office, may at its election, (1) require the Contractor to correct at Contractor's sole expense any defect or non-conformance by repair or replacement, or (2) return any defective or non-conforming goods to Contractor at the Contractor's expense and recover from the Contractor the price thereof. The foregoing remedies are in addition to all other remedies of law or as contained in this agreement and shall not be deemed to be exclusive. The foregoing representation and warranties shall survive acceptance of the goods or services.
- c. The Contractor guarantees that the design of the equipment being purchased conforms to National Fire Protection Association (NFPA), Underwriters Laboratories (UL), American National Standards Institute (ANSI), Occupational Safety and Health Administration (OSHA) and any other existing safety standards in effect at time of shipment.

4. Background Check

- a. MUSC is subject to the Drug Free Workplace Act and, as a South Carolina public university, is charged with maintaining a safe patient and learning community. Contractor shall comply and shall

cause its subcontractors and affiliates to comply with all applicable provisions of The Drug-Free Workplace Act, SC Code Ann. §44-107-30.

- b. If Contractor's employee(s) must enter onto any property owned or operated by MUSC, any MUSC Health facility and the facility of any MUSC Health affiliate in order to fulfill the terms of the contract, Contractor acknowledges that it will conduct a criminal background check and drug screen on said employee(s) prior to the employee(s) arriving on said property. Contractor agrees that it will not assign nor send an employee that Contractor has reason to believe poses a threat of risk to either property or persons to perform work under the contract. Contractor agrees to impose this same criminal background check and drug screen requirements on any subcontractors used by Contractor to fulfill its responsibilities under this agreement. MUSC reserves the right to verify compliance by Contractor upon request.
- c. Contractor agrees that the drug screen utilized will consist of a ten-panel drug test screening from an independent accredited laboratory which includes THC (marijuana), Cocaine, Phencyclidine (PCP), Synthetic Opiates with extended opiates, Amphetamines, Barbiturates, Benzodiazepines, Methadone, Propoxyphene and Methamphetamines. The results must be within a 30-day period.

5. Bankruptcy

- a. In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Procurement Officer responsible for the purchase order. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all MUSC contracts **against** which final payment has not been made. This obligation remains in effect until final payment.
- b. This contract is voidable and subject to immediate termination by MUSC upon the contractor's insolvency, including the filing of proceedings in bankruptcy or may be cancelled due to MUSC's unavailability of funds in succeeding fiscal periods pursuant to SC Code Ann. §11-35-2030.

6. Discount for Prompt Payment

- a. Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award and will be taken if payment is made within the discount period indicated in the offer by the offeror.
- b. As an alternative to offering a discount for prompt payment in conjunction with the offer, offerors awarded contracts may include discounts for prompt payment on individual invoices.

7. False Claims

According to the SC Code Ann. §16-13-240, "a person who by false pretense or representation obtains the signature of a person to a written Instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty" of a crime.

8. Certificate of Insurance

- a. A Certificate of Insurance **MUST** be on file in the MUSC Procurement Office for any Contractor visiting on-site at MUSC and those that are so located, and those providing on-site equipment maintenance, evaluation, or other for the protection of MUSC
- b. A [the] Contractor shall maintain throughout the performance of its obligations under an Agreement a policy or policies of Workers' Compensation Insurance with such limits as may be required by law, and a policy or policies of general liability insurance with limits sufficient to cover any loss or potential loss resulting from this contract insuring against liability for injury to and death of persons and damage to and destruction of property arising out of or based upon any act or omission of the Contractor or any of its subcontractors or their respective officers, directors, employees or agents and a policy or policies of Automobile Liability Insurance with such limits as may be required

by law insuring against liability for injury to and death of persons and damage to and destruction of property arising out of or based upon any act or omission of the Contractor or any of its subcontractors or their respective officers, directors, employees or agents while operating their vehicle(s) on MUSC property.

9. State Ethics

- a. By accepting this Purchase Order, Contractor has not, and will not, induce a person to violate the SC Ethics Act, more specifically, SC Code Ann. § 8-13-700, use of official position for financial gain; Section 8-13-705, gifts to influence action of public employee, member or official; Section §8-13-720, offering money for advice or assistance of public employee, member, or official; Sections §8-13-755 and §8-13-760, restrictions on employment by former public employee, member or official; Section §8-13- 775, prohibiting public employee, member or official with economic interests from acting on contracts; Section §8-13-790, recovery of kickbacks; Section §8-13150, statements to be filed by consultants; and Section §8-13-1342, restrictions on contributions by contractor to candidate who participated in awarding of contract.
- b. The state may rescind any contract and recover all amounts expended as a result of any action taken in violation of the State Ethics Act. If Contractor participates, directly or indirectly, in the evaluation or award of public contracts, including without limitation, change orders or task orders regarding a public contract, contractor shall, if required by law to file such a statement, provide the statement required by Section Code Ann. §8-13- 1150 to the Procurement Officer at the same time the law requires the statement to be filed.

10. Notice

All notices hereunder shall be in writing, delivered personally, by certified or registered mail, return receipt requested, or by overnight courier, and shall be deemed to have been duly given when delivered personally or three days after deposited in the United States mail, postage prepaid, or three days after deposited with the overnight courier, addressed as the following:

MUSC Procurement: Medical University of South Carolina
University Procurement
1 South Park Circle
Unit: Building #1, Suite: 501
Charleston, SC 29407

With copy to: Medical University of South Carolina
Office of the General Counsel
c/o MUSC Health
22 WestEdge Street, Suite 300
Charleston, SC 29403
Attn: General Counsel, WG 345

11. Open Trade Representation

By accepting this purchase order, offeror represents that offeror is not currently engaged in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Ann. §11-35 -5300.

*This clause applies to any resultant contract for a stated or estimated value of \$10,000.00 or more.

12. Smoking Policy

As South Carolina's academic health center and home to the only National Cancer Institute-designated cancer institute in the state, it is a part of our mission to prevent cancer and to lead by example in providing the healthiest environment possible for everyone on our campus. MUSC is a totally tobacco-free campus. Smoking is not permitted in any areas on campus. This includes the use of chewing tobacco and e-cigarettes.

13. Indemnification-Third Party Claims

- a. Notwithstanding any limitation in this agreement, and to the fullest extent permitted by law, Contractor shall defend and hold harmless MUSC for and against any and all suits or claims of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property arising out of or in connection with the goods or services acquired hereunder or caused in whole or in part by any act or omission of contractor, its subcontractors, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by MUSC, and whether or not such claims are made by a third party or MUSC; however, if MUSC's negligent act or omission is subsequently determined to be the sole proximate cause of a suit or claim, MUSC shall not be entitled to indemnification hereunder. SC Code Ann § 11-35-2050.
- b. Contractor shall be given timely written notice of any suit or claim. Contractors' obligations hereunder are in no way limited by any protection afforded under workers compensation acts, disability benefits acts, or other employee benefit acts. This clause shall not negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist. The obligations of this paragraph shall survive termination, cancelation, or expiration of the parties' agreement. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance. As used in this section, MUSC means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents, and employees.

14. Choice of Law

Any dispute, claim or controversy relating to the agreement, and all the rights and obligations of the parties, in all respects shall be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof. The Contractor agrees to submit to the jurisdiction of the State of South Carolina and agrees that the laws of South Carolina will control this agreement (Please note that, as a state entity, MUSC is prohibited from submitting to the laws of another jurisdiction). SC Code Ann. §§ 11-35-4230 & 11-35-2050.

15. No Indemnity or Defense

Any term or condition is void to the extent it requires MUSC to indemnify, defend or pay attorney's fees to anyone for any reason. MUSC as is prohibited by the Attorney General from agreeing to indemnification and/or the payment of attorney's fees.

16. Equal Opportunity Employer

MUSC is an equal opportunity/affirmative action employer and does not knowingly conduct business with suppliers who practice discrimination. Performance under this contract certifies that Contractor is an Equal Opportunity Employer, and as applicable, in compliance with Title 41, Part 60 of the Code of Federal Regulations, including but not limited to Sections 60-1.4, 60-4.2, 60-4.3, 60-250.S(a), and 60-741.S(a), which are hereby incorporated by reference.

17. Illegal Immigration

Contractor certifies that it will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agrees to provide MUSC upon request any documentation required

to establish either: (a) the Title 8, Chapter 14 is inapplicable to you and your subcontractor(s); or (b) that you and your subcontractor(s) are in compliance with Title 8, Chapter 14. Contractor agrees to include in any contracts with subcontractor(s) language requiring your subcontractor(s) to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include language in their contracts requiring that the subcontractors comply with the applicable requirements of Title 8, Chapter 14.

18. Material and Workmanship

Unless otherwise specifically provided in the purchase order, all equipment, material, and articles incorporated in the Work are to be new and of the most suitable grade for the purpose intended.

19. Publicity

Contractor shall not publish any comments or quotes by state employees, or include the State wither in news releases or published list of customers, without the written approval of the Procurement Officer.

20. Contract Clauses and Administration

Pursuant to the South Carolina Consolidated Procurement Code, unless otherwise specifically provided or authorized by law, if a contract contains any of the following terms, the term shall be void, and the contract is otherwise enforceable as if it did not contain such term or condition:

- (1) Terms (a) subjecting the State of South Carolina or its agencies to the jurisdiction of the courts of other states; or (b) requiring the State of South Carolina or its agencies to bring or defend a legal claim in a venue outside this State. (Sections 11-35-2050 and -4230);
- (2) Terms limiting the time in which the State of South Carolina or its agencies may bring a legal claim under the contract to a period shorter than that provided in South Carolina law. (Sections 11-35-4230(2) and 15-3-140);
- (3) Terms imposing a payment obligation, including a rate of interest for late payments, inconsistent with the terms of Section 11-35-45;
- (4) Terms that require the State to defend, indemnify, or hold harmless another person. (Section 11-35-2050); and
- (5) Terms requiring that the contract be governed or interpreted by other than South Carolina law. (Section 11-35-2050).

Provisions of the South Carolina Consolidated Procurement Code have been compiled herein. MUSC and Contractor agree that the South Carolina Consolidated Procurement Code applies to all transactions between Contractor and MUSC, and that these terms and conditions govern with respect to all transactions between Contractor and MUSC. These terms and conditions and the ensuing purchase order shall not be modified except by written agreement of the MUSC Procurement Office and Contractor.

Contractor and its Affiliates

By: _____

Name: _____

Its: _____

Date: _____

MUSC
OFFICE OF THE
GENERAL COUNSEL
-APPROVED AS TO FORM-
Jonathan Harrison