

**MMS Purchase Order Terms & Conditions for Goods and/or Services**  
**MMS P.O. # XXXXX-0-CORP**

1. **Work.** You will perform the services (“Services”) and/or provide the goods (“Goods”) (independently and/or together the “Work”), as applicable, in accordance with the terms and conditions specified herein and as set forth in any proposal, invoice, or statement of work which is incorporated herein by reference (collectively, the “Agreement”). In the event of any conflict between the terms of this P.O. and the statement of work, proposal, and/or invoice, the terms of this P.O. will prevail. In addition, you will perform the Services and/or provide the Goods in accordance with our specifications, and all applicable laws and regulations, diligently, to the best of your ability. In addition, you will, at your expense, cooperate with and provide MMS with such information and data as may be reasonably required in order for MMS to comply with all applicable laws and regulations, including any required filings.
2. **Conflict of Interest.** MMS conducts all business transactions in an ethical manner and avoids the appearance of impropriety.
  - a. **Conflict on Your Part.** You will perform the Services and/or provide the Goods in accordance with your best professional judgment and shall avoid any actual or apparent undue influence in connection with the Work. You will not engage in any activity or hold any office that is likely to cause a conflict, or the appearance of a conflict, with your performance of the Services or provision of the Goods without the written approval of MMS. In addition, you will report to MMS any material financial or beneficial interest that is likely to cause a conflict, or the appearance of a conflict, with your performance of the Work. In the event that MMS determines, in its sole discretion, that such interest is likely to cause, or appear to cause a conflict, MMS may terminate this Agreement, provided that MMS will advise you of its decision and, unless MMS determines that the need to terminate is urgent, you will have a period of 30 days to remedy such conflict to the satisfaction of MMS prior to the effective date of termination. You represent and warrant that no such conflict exists, or that any such conflict has been disclosed to MMS, as of the effective date of this Agreement.
  - b. **Inducing a Conflict in MMS Employees.** You agree that you will not attempt to gain preferential treatment through the offer of gratuities to MMS employees. Any rebates, reward point program, or loyalty program rewards must be made out to the MMS and will not be to the exclusive benefit of individual employees.
3. **Offer and Acceptance.** This P.O. constitutes an offer to you expressly limited to the terms herein. You accept these terms and conditions upon the earliest of (1) beginning to perform the Services, (2) delivery of the Goods, or (3) ten days after receipt of this P.O. if you have not objected, in writing, to these terms within that time). **Your acceptance is limited to the provisions of this Agreement. No additional or different provisions proposed by you will apply.** This Agreement supersedes all prior offers and communications and contains the parties’ entire understanding of the subject matter of this Agreement.
4. **Services.** With regard to any Services:
  - a. **Rights in Deliverables.** Anything produced as a result of Services performed under this Agreement (“Deliverables”) will be deemed to be works made for hire and will belong exclusively to MMS. All Deliverables will be deemed Goods under this Agreement, such that all provisions applicable to Goods shall apply to Deliverables. If by operation of law the Deliverables are not works made for hire, then you hereby assign to MMS all right, title and interest (including ownership of copyright) in and to the Deliverables. MMS will have the right to obtain and hold in its own name copyrights, registrations and similar protection that may be available in Deliverables. You agree to give MMS or its designees all assistance required to perfect such rights. You represent that any preexisting materials in the Deliverables are owned or licensable by you. You will identify to MMS any such preexisting materials and their owners prior to incorporating any such preexisting materials in the Deliverables. You hereby grant MMS an irrevocable, nonexclusive, worldwide, royalty-free license to: 1) make, use, sell, execute, reproduce, display, perform and distribute (internally and externally) copies of, and prepare derivative works based upon, such preexisting materials; and 2) authorize others to do any or all of the foregoing.
  - b. **Computer Security.** You and your employees, subcontractors, and agents (“Personnel”) will *not* introduce into, nor use on, MMS’s data processing and computing equipment any software products or materials which are acquired outside of MMS’s procurement channels, including, but not limited to, software developed outside MMS by you, third party vendor software, software from public and private bulletin boards, and any public freeware or other software, without the prior consent of MMS. You will agree to a separate Non Disclosure Agreement that MMS requires for access to electronic data, and will take all necessary steps to insure that your Personnel abide by the terms of that Non Disclosure Agreement, which will be given to you and to your Personnel before they will have access to any MMS computer or network. For development and installation of Deliverable(s) and other software or code, you represent and warrant that none of the Deliverable(s), other software or code, or any update

or revision to them will include any mechanism that would enable you to disable the Deliverable(s), software or code to make them inaccessible to MMS once the Deliverable(s), other software or code have been installed.

c. **Warranty for Services.** You represent and warrant that:

- i. The Services will be performed by appropriately qualified and trained Personnel with due care and diligence and to such high standard or quality as is reasonable for MMS to expect in the circumstances. In the case of professional Services, you will perform such Services in accordance with professional standards for the applicable field of expertise;
- ii. The Deliverables are your original works. You further warrant that no part of the Deliverables is protected by rights of any third party, except to the extent that you are duly licensed by the third party to include such part in the Deliverables;
- iii. All Deliverables and Materials furnished by you will be free from defects in material, workmanship and design, will conform to applicable specifications, drawings, samples and descriptions, will be suitable for the intended purpose, and will be free from all liens and encumbrances;
- iv. Deliverables and Materials produced under this Agreement will not contain any code, programming instruction, or set of instructions, that is intentionally constructed with the ability to damage, interfere with, or otherwise adversely affect computer programming code, data files, or hardware without the prior written consent and intent of the computer user. You will establish and enforce commercially reasonable procedures, which may be reviewed by MMS, to prevent any such code, programming instruction, or set of instructions from being incorporated by any of your Personnel into deliverables or materials and will promptly notify MMS of any knowledge or suspicion that such code, programming instruction, or set of instructions has been incorporated into Deliverables, other software, or code.

These warranties will survive any inspection, delivery, payment and termination of this P.O. and will inure to the benefit of MMS, its successors and assigns.

d. **Physical Alteration / Operation of Electrical or Mechanical Device:** Neither you or your Personnel will, under any circumstances whatsoever, operate any electrical or mechanical device controlling any part of the equipment of any MMS facility, except with the explicit permission of an authorized MMS representative. If the performance of the work requires attachment to or modification of any part of a MMS facility or equipment therein, such attachment or modification, and all repair and incidental work necessary to restore said facility to a safe, neat and proper condition, in keeping with its original function and appearance, will be performed by you at no additional cost to MMS.

e. **Insurance.** You agree to carry at all times, and with companies acceptable to MMS, insurance of the kinds and amounts as follows: (1) Worker's Compensation -- coverage compliant with statutory requirements in each State in which you are required to provide Worker's Compensation coverage; and (2) Comprehensive General Liability, including Contractual Liability, Independent Contractor's Liability, Products and Completed Operations Liability (as applicable), and Personal Injury/Property Damage -- coverage in a combined single limit of not less than \$2,000,000. If this Agreement requires you to perform work on MMS facilities, then you further agree to furnish MMS with Certificates of Insurance *prior to the commencement of Work* that show the specific coverage and state that the policies may not be changed or terminated without at least ten (10) days' prior written notice to MMS. You will promptly notify MMS of any change in such insurance coverage.

f. **Pre-Approved Expenses.** Your pre-approved expenses will be reimbursed within thirty (30) days of MMS's receipt of your invoice and such reasonable itemization and/or verification of the expense as MMS may request. If you will be reimbursed by MMS for your travel expenses, we ask that you make the most economical choices reasonable and receive pre-approval from your business contact at MMS.

5. **Goods.** With regards to Goods:

- a. **Rights to and in Goods.** All Goods produced pursuant to this Agreement will belong exclusively to MMS. You hereby assign to MMS all right, title and interest in and to the Goods.
- b. **Shipping, Packing and Marking.** You will comply with MMS's shipping instructions and will properly pack, mark and ship to protect items against hazards of shipment, storage, and exposure. All packages containing hazardous or dangerous items will comply with all applicable regulations. Upon MMS's request, you will promptly provide hazardous material data sheets and any other information. You will label each container clearly to indicate the name of the recipient, the address specified in this P.O., applicable P.O. number(s), storage and handling instructions and MMS's stock number (if specified). A packing list must be visible at delivery. Notwithstanding any shipping, F.O.B., or other terms or rights of MMS, MMS may return all items damaged during shipment to you for full credit, unless MMS directly caused such damage.
- c. **Delivery. TIME IS OF THE ESSENCE.** Delivery will be F.O.B. with destination, freight and insurance prepaid. You will notify MMS immediately when you know of any potential delay in delivery. You will comply

with MMS's delivery terms in this P.O., including, but not limited to, the quantities, time(s) and place specified in this Agreement. MMS may cancel or reject nonconforming deliveries, in whole or in part, with no liability to MMS. Unless the delay is due to an Excusable Cause under Section 16, you will pay, in addition to standard freight charges, any premium freight charges for delayed items.

- d. **Inspection and Acceptance.** You will maintain an inspection system adequate to ensure that all work performed and items delivered conform to standards specified in this Agreement. MMS may inspect or test the work and items at all reasonable times and places. MMS may return nonconforming work and items to you for credit, refund or replacement at MMS's option or require you to correct the defects, with you bearing all costs and risk of loss. MMS will, no later than thirty (30) days from delivery or from completion by you of any installation, whichever last occurs, accept, reject or require correction of defects. Payment will not constitute acceptance. Neither payment nor acceptance will relieve you of liability to conform to the requirements of this Agreement. You will reimburse MMS for the costs of inspection of any nonconforming work or items. For custom items (such as printed materials and promotional items), MMS will not accept any underages for custom produced items and MMS reserves the right not to pay for overages.
- e. **Pricing.** Prices specified in this P.O. will not increase for any deliveries unless otherwise agreed in writing by both parties. Any price reduction that you make with respect to the items covered by this P.O. will apply to this P.O. Prices include all charges such as packaging and packing, duties imposed before passage of title, and all taxes except sales, use and similar taxes that you are required by law to collect from MMS and for which you properly invoice MMS.
- f. **Special Tooling.** All special dies, molds, patterns, jigs, fixtures, and any other such property ("Special Tools") that MMS furnishes to you or for which MMS pays, for use in the performance of this P.O., will be, and will remain, MMS's property which you will keep free of lien or encumbrance. After the termination or completion of such Work and upon the request of MMS, you will furnish a list of such tooling and will make such tooling available for disposition by MMS. You will not destroy such Special Tools without first notifying MMS.
- g. **No Substitutions.** You must deliver the products specified, without deviation. You are hereby prohibited from providing any substitutions without MMS's express written permission.
- h. **Warranty for Goods.** You warrant all Goods to be of new material, merchantable, suitable for the purpose for which intended, free from defects in design, material, and workmanship and unreasonable hazards and to conform to applicable requirements. You warrant that you have the right to convey the Goods, and that the Goods are free of all liens and encumbrances, and that MMS's use or ownership of the Goods does not, and will not, infringe upon the intellectual property rights of any third party, and that the MMS may use the Goods for any lawful purpose, and may authorize others to do the same. These warranties will survive any inspection, delivery, payment, and termination of this Agreement and inure to the benefit of MMS, its successors and assigns.
6. **Invoicing and Payment.** You will send all invoices to the address specified on the front page of this P.O. MMS will pay properly itemized invoices (including any pre-approved expenses) net thirty (30) days, unless otherwise agreed in writing, after the later to occur of (1) MMS's receipt of a properly itemized, correct invoice and, if applicable, a correct packing list and (2) MMS's acceptance of the Services and/or Goods. All taxes will be shown separately on your invoice. MMS may make payment via Electronic Funds Transfer. Amounts that you owe to MMS due to rejections of items or work or discrepancies on paid invoices will be refunded by you within thirty (30) days. MMS may at any time set off any amount owing from you to MMS against any amount payable by MMS under this P.O.
7. **Payment.** You will invoice us for all amounts payable and payment will be due within thirty (30) days of receipt of your itemized invoice. Payments will be subject to completion of the invoiced Work to our reasonable satisfaction. We will reimburse pre-approved expenses within thirty (30) days of receipt of your invoice and reasonable itemization or verification of the expense.
8. **Term.** The Work will be completed to MMS's satisfaction within the time set forth on this P.O. and/or in accordance with the milestones set forth in the statement of work.
9. **Termination.** We may terminate all or any portion of this Agreement for any reason, with or without cause, upon written notice to you, with no obligations or liability to you of any kind, other than as provided below. Upon receipt of such notice, you will immediately stop all activities associated with this P.O. You will forward to MMS all Goods and Work in process in your possession. In the event of such termination, MMS will pay you only (1) a reasonable fee for the Work you actually performed and (2) pre-approved expenses and any non-cancelable debt you actually incurred. This payment will constitute MMS's entire liability to you. In no event will this payment exceed the amount due for complete performance under this P.O. Any amounts due to MMS in accordance with the INDEMNIFICATION and EFFECT OF DELAY paragraphs below may be set-off by MMS against any amounts due to you. If MMS made advance payments that are in excess of the amount due for acceptable Work actually performed, you will return the excess amount to MMS within thirty (30) days following the termination date, at the

address below. You will immediately return any MMS property in your possession at the termination or expiration of this P.O..

10. **Survival.** The following provisions of this P.O. shall survive termination or expiration of the Agreement: Sections 4a (Rights in Deliverables), 4b (Computer Security), 4c (Warranty for Services), 5a (Rights to and in Goods), 5d (Inspection and Acceptance), 5f (Special Tooling), 5h (Warranty for Goods), 9 (Termination), 12 (Independent Contractors), 13 (Responsibility for Personnel), 15 (Warranty), 17 (Force Majeure), 18 (Confidentiality), 19 (Indemnification), 20 (Publicity and Use of Name), 21 (limitation of Damages), 23 (Waiver), 24 (Severability), 25 (Applicable Law), 26 (Entire Agreement), 27 (Notices)
11. **Effect of Delay.** Time is of the essence with regard to completion of the Work. In the event that the Work is not completed within the parameters set forth in the P.O., MMS may, at its option, terminate this P.O. pursuant to the TERMINATION paragraph above; and after having given you notice, have the Work completed by a third party and require you to pay to MMS any amounts reasonably required by MMS to complete the Work.
12. **Independent Contractors.** You and MMS are independent contractors. As such, you will be free from MMS's supervisory direction and control. No relationship of partnership, agency, joint venture, employer/employee will exist between the parties and neither party will have the authority to obligate, represent, or bind the other without such other party's express written consent.
13. **Responsibility for Personnel.** You agree that you are the employer of any individuals whom you assign to perform Work, and as such, you, and not MMS, will bear sole responsibility for (a) payment of compensation to your personnel and will pay and report, the following: (i) federal and state income tax withholding; (ii) social security (FICA) taxes; (iii) unemployment insurance; (iv) any disability insurance contributions; and (v) worker's compensation insurance payments; and (b) any health or disability insurance, retirement benefits, other welfare or pension benefits, or any other benefits, if any, to which such personnel may be entitled. You hereby acknowledge that your employees are not entitled either to participate in any benefit plans maintained by MMS or to receive any fringe benefits from MMS. Any person whose conduct is determined by MMS to be detrimental to our operations, or in violation of any governmental requirements, will at the request of MMS, be promptly withdrawn and replaced by you.
14. **Background Checks.** MMS reserves the right to require background checks, at your expense, of any of individual you assign to perform work.
15. **Warranty.** You warrant all items and work to be of new material, merchantable, suitable for the purpose for which intended, free from defects in design, material, and workmanship and unreasonable hazards and to conform to applicable statutes, regulations, ordinances and specifications and P.O. requirements. You warrant that you have the right to convey the items, that the items are free of all liens and encumbrances, and that the items and work do not infringe on any third party's intellectual property interest. You warrant that the work will be performed by appropriately qualified and trained personnel with due care, diligence and to such high standard or quality as is reasonable for MMS to expect in the circumstances. In the case of professional work, you will perform the work in accordance with professional standards for the field of expertise. These warranties will survive any inspection, delivery, payment and termination of this P.O. and inure to the benefit of MMS, its successors and assigns.
16. **Sustainability.** You agree to make reasonable efforts to utilize environmental sustainability practices that seek to minimize fossil fuel consumption.
17. **Force Majeure.** Neither party will be liable to the other for any failure to perform any of its obligations under this P.O. during any period in which such failure to perform arises directly or indirectly out of an act of nature, acts of the public enemy, embargoes, insurrection, riot, or the intervention of any government authority (collectively, "Excusable Cause"), provided that the party so delayed immediately notifies the other party of such delay and uses its best efforts to minimize the adverse effect of such events. If such failure by you is reasonably likely to exceed a cumulative period of thirty (30) days, MMS may terminate this P.O. pursuant to TERMINATION.
18. **Confidentiality.** You will hold in confidence and not use (except on behalf of MMS) or disclose to any third party (except as may be required by law) any information which is confidential to MMS. You acknowledge that the materials and information provided to the you by MMS, and all materials created, and all information collected, by you, pursuant to this Agreement shall constitute confidential information of MMS ("Confidential Information"). You hereby acknowledge that you have been informed of the scope and nature of the Confidential Information, and agree that the Confidential Information will be protected to the full extent allowed by law.
  - a. Use of Confidential Information: You will use the Confidential Information only as permitted by MMS, and shall take all necessary and/or proper steps to prevent unauthorized use of the Confidential Information. You will not engage in unauthorized discussions and/or communications regarding the Confidential Information, will not make any unauthorized copies or transmittals of the Confidential Information, and will not make any unauthorized personal or business use of the Confidential Information.

- b. **Disclosure of Confidential Information:** You will not disclose, or permit any unauthorized person or entity to have access to, any Confidential Information, and shall take all reasonable action necessary and/or proper to prevent unauthorized disclosure of the Confidential Information. You will promptly report to MMS any known or suspected unauthorized access to or distribution of any Confidential Information.
  - c. **Return of Confidential Information:** Immediately upon expiration or termination of this Agreement, or earlier upon request by MMS, you will return all Confidential Information in your possession or under your control to MMS.
  - d. **Exclusion:** This paragraph 16 shall not restrict your use or disclosure of any information which you lawfully obtained without any obligation of confidentiality.
19. **Indemnification.** You agree to indemnify and hold harmless MMS, its directors, officers, employees, contractors, customers and successors and assigns of the foregoing (“Indemnitees”) from and against any and all claims, demands, damages, liabilities, costs (including without limitation reasonable attorneys’ fees) arising out of your performance, or failure to perform, under this Agreement, and from any allegation that Goods delivered, Services, or work performed, pursuant to this P.O., infringe any patent, copyright, trademark, trade secret, or other intellectual property right. MMS will give you prompt notice of any such claim, and you will have the opportunity to defend and settle such claim, providing, however, that any settlement shall not admit liability on behalf of MMS or otherwise be harmful to MMS. In addition to the foregoing indemnity, if MMS will be deprived (or if MMS reasonably believes it will be deprived) of the use of any Goods or Services (including the rights to create derivative works, copy, distribute, use, sell or license) because of an infringement claim, you will, at your sole expense and at MMS’s request, obtain for MMS such rights, or replace or modify the Goods or Services with non-infringing equivalents.
20. **Publicity and Use of Name.** Unless you have MMS’s prior written consent, you will not, nor will you permit any third-party to, in any manner disclose, advertise or publish the existence or terms of this P.O. or any transactions under this P.O., nor will you use MMS’s marks, logos, insignias or name. Note: Any authorized use of our marks, logos, insignias, or names must be in accordance with MMS’s publicly available standards, found at [www.massmed.org/logos](http://www.massmed.org/logos).
21. **Limitation of Damages.** MMS WILL NOT BE LIABLE TO YOU FOR ANY LOST REVENUE, LOST PROFITS OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES BASED ON BREACH OR DEFAULT UNDER THIS P.O., EVEN IF MMS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. In no event will MMS be liable to you, your successors, heirs or assigns for damages in excess of the amount due to you for complete performance under this P.O., less any amounts already paid to you by MMS under this P.O.
22. **Subcontracting and Assignment.** You may not subcontract, assign, or otherwise transfer, in whole or in part, any of your rights or responsibilities under this P.O. without prior written notice to us, upon receipt of which we will have ten (10) days to object.
23. **Waiver.** The failure of either party to enforce any term under this Agreement will not be construed to be a waiver of that right, or of damages caused thereby, or of any other rights under this Agreement.
24. **Severability.** In the event any provision of this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision. The parties agree to negotiate in good faith regarding, or will permit a court to replace, any provision held invalid, illegal or unenforceable with a valid provision that is as similar as possible in substance to the invalid, illegal, or unenforceable provision.
25. **Applicable Law.** This engagement will be governed and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to its conflict of laws rules. The Massachusetts courts will have exclusive jurisdiction over any proceeding relating to this engagement. All rights and remedies conferred by this Agreement, by any other instrument, or by law are cumulative and may be exercised singularly or concurrently. The parties expressly exclude the application of The Hague and Vienna Conventions on Contracts for the International Sale of Goods to this Agreement
26. **Entire Agreement.** This Agreement and all attachments hereto constitute the entire understanding of the parties concerning its subject matter, and any prior written or oral agreements between the parties pertaining to the same subject matter are expressly terminated and replaced by this Agreement. No modification to this Agreement. will be effective unless made in writing and signed by duly authorized representatives of both parties.
27. **Notices:** Any notices, instructions, or other documentation pertaining to this P.O. will be in writing and delivered by hand, by the U.S. Mail, postage prepaid, or by a nationally recognized courier service and addressed, unless otherwise specified, to us at *Massachusetts Medical Society, 860 Winter Street, Waltham, MA 02451-1411, ATTN: Office of the General Counsel, cc: Purchasing*, or to you at the address set forth on the front page of the P.O.