

## **Mass General Brigham Incorporated Online Terms & Conditions for Suppliers**

These terms and conditions (“Terms & Conditions”) govern the purchase and delivery of products or other deliverables (“Deliverables”) and/or services (“Services”), as set forth in a statement of work, quote, or order form (“SOW”), by and for Mass General Brigham Incorporated and all its affiliates (“Customer”), from you, the party providing the products, deliverables, and/or services (hereinafter, “Supplier” or “Business”). Customer and Supplier may be individually referred to as a Party and collectively, the Parties. These Terms & Conditions, which may be updated from time-to-time, are also available at:

<https://massgeneralbrigham.org/Vendors/Terms>.

**The Parties acknowledge and agree that these Terms & Conditions (and any SOW) are predicated on the following conditions:**

- **The costs and fees for the Services and/or Deliverables do not, and shall not, exceed \$250,000;**
- **Supplier and Supplier employees, agents, representatives, or contractors (“Supplier Personnel”) do not and shall not have access to Protected Health Information (PHI) or Personal Information (PI);**  
**and**
- **Supplier and Supplier Personnel do not, and shall not, access Customer facilities for longer than three weeks, nor access Customer’s IT network (either on-site or remotely).**

**In the event any one of these predicate conditions changes, the Parties shall, as soon as reasonably possible, execute a superseding agreement.**

Any SOW that is executed by Customer shall automatically be subject to these Terms & Conditions, incorporated therein by reference, and made a part thereof unless the Parties subsequently execute a separate written agreement that contains, at a minimum, terms at least as stringent as set forth herein. If there is a conflict or ambiguity between any term of these Terms & Conditions and any subject SOW, these Terms & Conditions will prevail unless the Parties affirmatively state in the SOW that they are accepting a specific deviation from these Terms & Conditions.

**1. Delivery of Services or Deliverables.** Supplier agrees to provide the Deliverables and/or Services as more fully described (and according to the timetable) set forth in written SOW(s). Each SOW shall contain the following: (a) a detailed description of the Deliverables and/or Services; (b) a timetable for performance of the Services or receipt of Deliverables, including key milestones and specific requirements, including for the involvement of specific personnel of Supplier, if any; (c) specific payments, which may be conditioned upon the prior written approval of Customer (or periodic approval, as applicable), and (d) such other terms as may be applicable to the Deliverables and/or Services. Such SOW shall be executed by each Party, whereupon these Terms & Conditions shall be deemed incorporated therein by reference. Supplier

hereby agrees that, in the event that Customer notifies Supplier of a new affiliate, at the election of such affiliate, Supplier shall promptly include such affiliate under the applicable SOW, consistent with the terms and rates therein. Supplier shall provide such Deliverables and/or Services consistent with applicable federal and state laws and regulations, and consistent with Customer's applicable policies, requirements and guidelines provided to Supplier by Customer.

**2. Fees.** For performance of the Services and delivery of Deliverables, Customer shall pay the Supplier the amounts set forth in the applicable SOW, conditioned upon Customer's acceptance of the Deliverables and/or Customer's confirmation of satisfaction with the Services. Customer shall have ten (10) business days ("Acceptance Period") to confirm satisfaction with the Services and/or Deliverables. If, during the Acceptance Period, Customer determines that any Service and/or Deliverable fails testing or review, Customer shall notify the Supplier. In such event, the Supplier, at its own expense, shall modify, repair, adjust or re-perform such Service and/or Deliverable to Customer's satisfaction within ten (10) calendar days after the date of the deficiency notice to the Supplier. If deficiencies continue to exist as determined by Customer in its reasonable discretion, Customer, at its sole option, and without prejudice to other legal rights may: (i) repeat the procedure described above; (ii) extend the time for Supplier's performance; or, (iii) reject such Service and/or Deliverable and treat such failure as a material breach and terminate the SOW without further liability, in which case the Supplier shall remit to Customer all fees paid, including all agreed upon costs ("Fees"). Fees set forth in an SOW shall be fixed and shall not include surcharges unless agreed upon in writing by the Parties in advance. To the extent an SOW is renewed, Fees may not increase at a rate greater than 3% annually or CPI, whichever is lower. "CPI" shall mean the consumer price index established by the United States Department of Labor for All Urban Consumers, US City Average, All Items (change in annual average, <https://www.bls.gov/cpi>). Following Customer's acceptance of any such Services or Deliverables, Supplier may submit its invoice according to the Standard Invoicing Procedure found at:

<https://massgeneralbrigham.org/Vendors/Invoices>.

Supplier acknowledges that if invoices are not submitted in accordance with this section, Customer cannot guarantee the timely payment of fees. In no event shall Customer be placed on credit hold or have any orders (including standing orders) held for any reason, including past due invoices.

**3. Termination.** Customer may terminate a SOW by written notice. To the extent applicable, the termination provisions set forth in a SOW signed by both Parties shall control.

**4. Relationship of the Parties.** Under no circumstances shall either Party be deemed an agent, joint venturer, partner, or employee of the other for any purpose. In addition, under no circumstances shall any Supplier Personnel be deemed an agent, joint venturer, partner, or employee of Customer for any purpose. As between Supplier and Customer, Supplier is responsible for all applicable employer obligations regarding Supplier Personnel, including without limitation, wages, federal and state withholding, FICA, unemployment benefits, workers' compensation, and for any employee benefits in effect for which Supplier Personnel are eligible, including without limitation, vacation pay, sick leave, retirement benefits, disability insurance, and employee records.

5. **Warranties of Supplier.** Supplier warrants that Deliverables and/or performance of the Services does not and shall not violate any applicable law, rule, regulation, or any contracts with third Parties. Supplier warrants that any Deliverables provided under these Terms & Conditions shall not contain any defects, shall be suitable for their intended purpose, and shall function properly and in accordance with any descriptions or specifications produced by or agreed to by Supplier. Supplier further warrants that the Services will be of a good, workmanlike, and professional quality conforming to generally accepted industry standards.

6. **Notices.** Notices required to be given to a Party or regarding a material contractual issue hereunder shall be given in writing, both by first class mail and electronic mail, at the address of such Party set forth herein, or such other address as the Party may substitute by written notice to the other in accordance with this Section with a copy, which shall not constitute notice, to:

Mass General Brigham Incorporated  
Office of the General Counsel  
399 Revolution Drive  
Somerville, MA 02145  
[phsogcontracts@mgb.org](mailto:phsogcontracts@mgb.org)

7. **Confidentiality.** Each Party agrees not to directly or indirectly, disclose, sell, barter, trade, transmit, exchange or transfer any Confidential Information of the other Party to a third party (person or entity). Confidential Information shall not include any information that (i) is or becomes publicly available through no wrongful act of the other Party; (ii) was known by the other Party prior to the date of disclosure, as can be evidenced by written records; (iii) is received by the other Party on a nonconfidential basis from a source other than the Party, provided such source has a right to make such disclosure to the other Party; (iv) is independently developed by the other Party without use of the Confidential Information, as can be evidenced by written record. Supplier will not use Customer's Confidential Information for any purpose other than to carry out Supplier's responsibilities under these Terms & Conditions. If Supplier is permitted by Customer to disclose Customer's Confidential Information to subcontractor or other agent of the Supplier, such disclosure shall be solely for the purpose of fulfilling Supplier's obligations hereunder and then only on a need-to-know basis. For clarity, Supplier shall not use such Confidential Information for its own business purposes without the express written permission of Customer. In the event that Customer grants such permission, this section shall govern Supplier's access, use, and retention of such Confidential Information for the duration of Supplier's access, use, and retention. Supplier shall use reasonable efforts (no less than the efforts used to protect its own confidential and/or proprietary information of a similar nature) not to disclose such Confidential Information to any other person or entity except as expressly permitted hereunder. Supplier shall ensure that any copies of such information in Supplier's possession, upon termination of an applicable SOW, are destroyed or returned to Customer. Supplier shall inform such employees of the provisions of these Terms & Conditions and shall require them to act at all times in compliance with these Terms & Conditions. Supplier further agrees not to copy any of Customer's Confidential Information except as may be required for the performance of Supplier's obligations under these Terms & Conditions. Supplier agrees to provide Customer with prompt notice of any court or

other governmental orders requiring disclosure, in order to give Customer the opportunity to seek appropriate protective orders.

## **8. Ownership.**

8.1 Preexisting Works of Supplier. Supplier reserves and retains ownership of products or services that Supplier created prior to the Effective Date, as well as any commercially available modifications or updates to such services or products that are developed during the Term (“Modifications”), but only to the extent such Modifications were developed independently by Supplier and without the use of Customer Data (“Preexisting Works”).

8.2 Customer Data. As between Customer and Supplier, Customer retains all right, title and interest in and to the Customer Data, whereas “Customer Data” means any data, information, or material that is (a) provided, submitted and/or otherwise inputted into the Service or Deliverable by Customer and/or Authorized Users; (b) generated by Customer and/or Authorized Users in the course of utilizing the Service or Deliverable; (c) pertains to Customer and/or Authorized Users and is stored by the Service or Deliverable; and/or (d) all derivatives and transformations of the foregoing categories (a)-(c). “Authorized User” means any of the following that are authorized by a Customer to access the Service: (a) employees, agents, physicians (including referring physicians), clinicians, technicians, nurses, volunteers, students and staff and other personnel and agents on staff or otherwise affiliated with Customer (collectively, “Customer Personnel”) and (b) third party agents, consultants, system integrators, auditors and other third parties performing services to or for Customer. Without limiting the generality of the foregoing, Customer Data includes PI and PHI (each as defined herein), and de-identified Customer Data. Subject to these Terms & Conditions, Customer grants to Supplier a non-exclusive, revokable license to use, copy, store, transmit, and display Customer Data during the term of the SOW solely for the purpose of providing the Services to Customer in accordance with these Terms & Conditions and for no other purpose whatsoever.

8.3 Work Product. All tangible materials, prototypes, documents, reports, and other things delivered to Customer under these Terms & Conditions shall be the exclusive property of Customer. All copyrights, patents, trade secrets, or other intellectual property rights associated with any ideas, concepts, techniques, inventions, processes, or works of authorship developed, created or produced in performance of the Services by Supplier, alone or in combination with Customer and/or its employees, under these Terms & Conditions (collectively, the “Work Product”) shall be the property of Customer, except as otherwise provided in these Terms & Conditions. Supplier hereby irrevocably transfers and assigns to Customer any and all of its right, title, and interest in and to Work Product. Work Product shall be the sole property of Customer. To the extent a Deliverable incorporates materials licensed from a third-party, Supplier grants to Customer, or shall procure such grant to Customer from the relevant third-party, the necessary rights and licenses (or sublicenses as the case may be) to enable Customer to exercise fully the benefits from the Work Product (each a “Third Party License”).

8.4 **Residual Rights.** Notwithstanding anything to the contrary herein, Supplier and Supplier Personnel shall be free to use and employ its and their general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of performing its obligations under these Terms & Conditions, so long as it or they acquire and apply such information without disclosure or use of any Customer Confidential Information and without any unauthorized use or disclosure of Work Product.

9. **Use of Name.** Supplier shall not use the logos or corporate names, or any variations, short-forms, or acronyms of such names, of Mass General Brigham Incorporated or any of its affiliates (e.g., hospitals, health plan, etc.) without the prior written consent of Customer. Such consent must be provided by authorized personnel from Customer's Marketing or Communications departments. This prohibition applies regardless of the purpose or method of use, including but not limited to customer lists or in any other commercial or advertising media that would reasonably imply endorsement by Customer of Supplier or its Services.

10. **Title and Risk of Loss.** Supplier shall be responsible for title and risk of loss or damage to any Deliverables under these Terms & Conditions and applicable SOW regardless of cause, until the Deliverables are delivered, inspected (without being rejected) by Customer, and where applicable, assembled and/or installed by Supplier. Thereafter title and risk of loss or damage shall transfer to Customer, unless the loss or damage is caused by Supplier's negligence, fault, or failure to comply with these Terms & Conditions.

11. **No Security Interest.** The Parties agree that Customer and its affiliates grant no security interest of whatever kind or nature to Supplier, notwithstanding any provision to the contrary in any other transaction document (including without limitation any statement of work, quote, credit application, or purchase order).

12. **Compliance and Export Control.** Each Party represents and warrants that it has complied and will continue to comply with all applicable federal, state, and local Laws. Each party represents and warrants that neither it nor its employees or agents (i) appear on the U.S. government's list of debarred, suspended, or excluded parties, (ii) is a Specially Designated National, (iii) is an organization affiliated with terrorism, or (iv) is a restricted or sanctioned party under any program administered by the U.S. Department of Treasury Office of Foreign Assets Control, the U.S. Office of the Directorate of Defense Trade Controls, or the U.S. Bureau of Industry and Security. Each Party and its Affiliates shall comply in all material respects with all applicable Laws and governmental regulations, including without limitation all applicable export control, economic sanctions, anti-boycott, and import/customs Laws and regulations, including but not limited to the U.S. Export Administration Act and Export Administration Regulations, International Traffic in Arms Regulations, United States Foreign Corrupt Practices Act of 1977 (as amended), Laws and regulations implemented by the Office of Foreign Assets Control at the U.S. Department of Treasury, and export and/or import Laws and regulations of other countries. Supplier further warrants and represents that products, equipment, or services provided to Customer shall not include products, equipment, or services prohibited by Section 889 of the Fiscal Year 2019 National Defense Authorization Act ("NDAA"). Each Party shall promptly notify the

other Party in the event it receives written notice from any governmental authority alleging a failure to comply with any Laws and governmental regulations with respect to the Products or Services.

### **13. Healthcare Regulatory Requirements.**

13.1 Delivery Under Emergency Conditions. To the extent applicable, in the event of a regional or national emergency, including but not limited to a government-declared natural disaster, or any circumstance that could or has led to an industry-wide shortage of essential resources, medications, or medical supplies (“Emergency Condition”), Supplier agrees to use best efforts to give priority to orders placed by Customer for essential products and services during the duration of the Emergency Condition. Supplier will also use best efforts to set aside adequate products and services for the exclusive purchase by Customer for the duration of the Emergency Condition. Customer and Supplier agree, where applicable, to establish a specific plan that includes timelines and relevant logistical information to support delivery under Emergency Conditions.

13.2 Access to Books and Records. If applicable, the Supplier agrees to provide Customer with access to books, documents, or any other records as may be reasonably appropriate to verify the Supplier’ work to Customer’s reasonable satisfaction. With respect to any Deliverables and/or Services provided hereunder, the value or cost of which is \$10,000 or more over a twelve (12)-month period, Supplier shall within four (4) years after furnishing such Deliverable and/or Service make available, upon written request of the Secretary of Health and Human Services or the Comptroller General, or any of their duly authorized representatives, these Terms & Conditions, the SOW, and any books, documents or records of Supplier necessary to verify the nature and extent of the costs of such Services. If Supplier provides any such Deliverables and/or Services through a subcontract, such subcontract shall also contain a clause allowing this access as specified above. This provision is intended to implement the requirements of 42 CFR, § 420, subpart D.

13.3 Discount and Price Reporting Obligations. To the extent a SOW include any discount or reduction in price: (1) Supplier shall fully and accurately report such discount or reduction in price to Customer on its invoice; provided, however, that where the value of the discount or reduction in price is not known at the time of sale, Supplier shall report the existence of a discount program on its invoice and, when the value of the discount becomes known, provide Customer with documentation of the calculation of the discount, including a description of the Deliverables or Services to which the discount is applied; and (2) Customer will fully and accurately report the discount on the appropriate cost reports. This provision is intended to implement the requirements of 42 CFR § 1001.952(h), as amended from time to time.

13.4 Fair Market Value. Neither Supplier nor Customer intend that any payments made be in return for the referral of ongoing business, if any, or in return for the purchasing, leasing, or ordering of any Deliverables and/or Services other than the specific Deliverables and/or Services described in the applicable SOW. All payments specified in the SOW are consistent with what

the Parties reasonably believe to be fair market value for the Deliverables and/or Services provided.

13.5 Infection Prevention Standards. Customer requires that Supplier employees who will coming onsite to any Customer facility meet specific infection control and vaccine requirements. Supplier is expected to ensure compliance. Details of the required standards, which may be updated from time to time, can be found at:

<https://massgeneralbrigham.org/Vendors/InfectionPrevention>

13.6 Exclusion from Federal Health Care Program(s). Neither Supplier nor any agent of Supplier that will be providing Services or Deliverables under these Terms & Conditions and applicable SOW has been excluded, suspended, or debarred or otherwise sanctioned from participation in any federal or state healthcare program, including the Medicare or Medicaid programs. To the extent applicable, Supplier agrees that it will comply with the billing requirements of Medicare, Medicaid, or any other public or private health care program. Supplier agrees that it will notify Customer immediately in the event that either Supplier becomes ineligible to participate in Medicare, Medicaid, or any other federal health care program during the term of the SOW or is under an investigation that could lead to such exclusion. If Supplier is excluded from participating in Medicare, Medicaid, or any other federal health care program, the SOW shall terminate automatically effective as of the date of such exclusion.

13.7 Federal Contract Non-Discrimination (*applicable if any of the goods or services provided under this contract will be used by Customer to support Customer's work under a federal contract*).

Unless exempt, the provisions of 41 CFR s. 61-300.10 (veterans' employment reports) and 29 CFR Part 471, Appendix A to Subpart A (posting notice of employee rights) are incorporated as terms and conditions of these Terms & Conditions and are binding on Supplier.

**Supplier shall also abide by the requirements of 41 CFR 60-300.5(a) (for veterans) and 41 CFR s. 60-741.5(a) (for individuals with disabilities). These regulations prohibit discrimination against qualified protected veterans and qualified individuals on the basis of disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.**

**14. Subcontractors**. Supplier shall cause all subcontractors to be contractually bound to comply with the obligations and requirements under this Terms & Conditions to the same extent that Supplier is bound under these Terms & Conditions. Notwithstanding the foregoing, Supplier shall remain primarily liable for the performance of all subcontracted obligations.

**15. Miscellaneous**. These Terms & Conditions, along with any and all applicable SOW(s), contain the entire understanding between the Parties and cannot be altered or amended except by a written instrument subsequently executed by the Parties hereto. Titles and headings of

sections of these Terms & Conditions are for convenience only and shall not affect the meaning, construction, or interpretation of these Terms & Conditions or of any term or provision hereof. No provision of these Terms & Conditions are intended to affect or be affected by any indemnification or insurance commitments provided for in any documents pertaining to related research activities (if any). Any waiver of any condition, obligation or benefit under these Terms & Conditions shall not be deemed a waiver of any subsequent breach or default of any term, condition or limitation. The terms, conditions and obligations of these Terms & Conditions are binding on the respective heirs, assigns, successors and personal representatives of the Parties hereto. In case any provision of these Terms & Conditions shall be held invalid, illegal or unenforceable in whole or in part, then (a) the intent of the Parties is that such provision shall be modified to the extent necessary to make it valid, legal and enforceable, and (b) in any event neither the validity of the remaining part of such provision nor the validity of any other provision of these Terms & Conditions shall in any way be affected thereby. Neither Party may assign these Terms & Conditions (or any applicable SOW) without the written consent of the other, except that Customer may assign its rights in and delegate its obligations under these Terms & Conditions to any affiliated entity without consent.