MICHIGAN STATE UNIVERSITY

Standard Terms and Conditions
Goods

1. Applicability. These Standard Terms and Conditions ("Terms and Conditions") apply to the Board of Trustees of Michigan State University's, a Michigan constitutional body corporate (the "University" or "MSU") purchase of goods ("Goods") specified on the face of the purchase order (the "Order") from the party to whom the purchase order is addressed (the "Supplier") (these Terms and Conditions, the Order, and any exhibits or attachments agreed to in writing by University are collectively referred to as the "Agreement"). These Terms and Conditions apply to any repaired or replacement Goods provided by Supplier hereunder. If there is a conflict between documents, the order of precedence is: (a) first, these Terms and Conditions; (b) second, the Order; and (c) third, any exhibits or attachments to the Order agreed to in writing by University. "Supplier" includes Supplier's employees, officers, directors, agents, and sub-contractors. "University" includes University's employees, officers, directors, trustees, students, agents, and contractors. University and Supplier are sometimes referred to herein individually as a ("party") and collectively as the ("parties").

2. Delivery Date. Supplier shall deliver the Goods in the quantities and on the date(s) specified in the Order or as otherwise agreed to in writing by the parties (the "Delivery Date"). Timely delivery of the Goods is of the essence. If Supplier fails to deliver the Goods in full on the Delivery Date, University may terminate the Order immediately by providing written notice to Supplier and Supplier shall indemnify University against any losses, claims, damages, and reasonable costs and expenses directly attributable to Supplier's failure to deliver the Goods on the Delivery Date.

3. Quantity. If Supplier delivers more or less than the quantity of Goods ordered, University may reject all or any excess Goods. Any such rejected Goods shall be returned to Supplier at Supplier's risk and expense. If University does not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the Price (defined below) for the Goods shall be adjusted on a pro-rata basis.

4. Delivery Location. All Goods shall be delivered to the address specified in the Order (the "Delivery Location") during University's normal business hours or as otherwise instructed by University.

5. Shipping Terms. Unless otherwise specified in the Order, Delivery shall be made F.O.B. Delivery Location in accordance with the terms on the face of the Order. Supplier shall give written notice of shipment to University when the Goods are delivered to a carrier for transportation. Supplier shall provide University all shipping documents, including the commercial invoice, packing list, and any other documents necessary to release the Goods to University after Supplier delivers the Goods to the transportation carrier. The Order number must appear on all shipping documents, shipping labels, invoices, correspondence and any other documents pertaining to the Order.

6. Title and Risk of Loss. Title passes to University upon delivery of the Goods to the Delivery Location. Supplier bears all risk of loss or damage to the Goods until delivery of the Goods to the Delivery Location.

7. Packaging. All goods shall be packed for shipment according to University's instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Supplier must provide University prior written notice if it requires University to return any packaging material. Any return of such packaging material shall be made at Supplier's expense.

8. Amendment and Modification. No change to an Order is binding upon University unless it is in writing, specifically states that it amends the Order and is signed by an authorized representative of University.

9. Inspection and Rejection of Nonconforming Goods. The University has the right to inspect the Goods on or after the Delivery Date. University, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If University rejects any portion of the Goods, University has the right, effective upon written notice to Supplier, to: (a) rescind the Order in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If University
requires replacement of the Goods, Supplier shall, at its expense, promptly replace the nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. If Supplier fails to timely deliver replacement Goods, University may replace them with goods from a third party and charge Supplier the cost thereof and terminate the Order for cause. Any inspection or other action by University under this Section shall not reduce or otherwise affect

Supplier's obligations under the Order, and University shall have the right to conduct further inspections after Supplier has carried out its remedial actions.

10. Price. The price of the Goods is the price stated in the Order (the "Price"). Unless otherwise specified in the Order, the Price includes all packaging, transportation costs to the Delivery Location, insurance, customs duties and fees and applicable taxes. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of University.

11. Tax Exempt Status. The University is a tax-exempt institution, granted such status by authorized taxing units of the State of Michigan, and is exempt from Federal Excise Tax and Michigan General Sales Tax (see Michigan Public Act 167 of 1933, section 4 as amended).

12. Most Favored Customer. Supplier represents and warrants that the price for the Goods is the lowest price charged by Supplier to any of its external buyers for similar volumes of similar Goods. If Supplier charges any other buyer a lower price, Supplier must apply that price to all Goods under the Order. If Supplier fails to meet the lower price, University, at its option, may terminate the Order without liability.

13. Payment Terms. Supplier shall issue an invoice to University on or any time after the completion of delivery and only in accordance with these Terms and Conditions. Supplier's invoices must conform to the requirements set forth by the University at https://procurement.msu.edu/for-suppliers/policiesrequirements/invoicing-payments. Invoices are due and payable by the University, in accordance with the University's standard payment procedures, which are net 30 days after receipt, provided the University determines that the invoice was properly rendered. The University may withhold from payment any and all payments and amounts the University disputes in good faith, pending resolution of such dispute, provided that the University: (a) timely renders all payments and amounts that are not in dispute; (b) notifies Supplier of the dispute prior to the due date for payment, specifying in such notice the amount in dispute; and the reason for the dispute set out in sufficient detail to facilitate investigation by Supplier and resolution by the parties; (c) works with Supplier in good faith to resolve the dispute promptly; and (d) promptly pays any amount determined to be payable by resolution of the dispute. Supplier shall not withhold or delay delivery of the Goods or fail to perform any other services or obligations hereunder by reason of the University's good faith withholding of any payment or amount in accordance.

14. Setoff. Without prejudice to any other right or remedy it may have, University reserves the right to set off at any time any amount owing to it by Supplier against any amount payable by University to Supplier.

15. Audit and Retention of Books and Records. University shall have access to and the right to examine and copy any directly pertinent books, documents, papers, and records of Supplier involving transactions related to this Agreement until the expiration of three (3) years after final payment hereunder. Supplier further agrees to promptly furnish, when requested by University, such books, documents, and records of Supplier as are necessary to verify the accuracy of the amounts invoiced to University against any past or current goods and services provided by Supplier. If any audit discloses an overpayment by University or a discrepancy in the amount invoiced by Supplier against the goods and services actually provided by Supplier, Supplier will promptly reimburse University within thirty (30) days of University's notification to Supplier of any such overpayment, rectify such discrepancy, or both, and further pay University a fee equal to 25% of the amount of any overpayment.

16. Warranties. Supplier warrants to University that all Goods will: (a) be free from any defects in workmanship, material and design; (b) conform to applicable specifications, drawings, designs, samples and other requirements specified by University; (c) be fit for their intended purpose and operate as intended; (d) be merchantable; (e) be free and clear of all liens, security interests or other encumbrances; and (f) not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by University. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of University's discovery of the noncompliance of the Goods with the foregoing warranties. If University gives Supplier notice of noncompliance with this Section, Supplier shall, at its own cost and expense, promptly replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to Supplier and the delivery of repaired or replacement Goods to University.

17. Indemnification. Supplier shall defend, indemnify and hold harmless University and University's respective Board of Trustees, officers, employees, and agents (collectively, "Indemnitees") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "Losses") arising out of or occurring in connection with the products purchased from Supplier or Supplier's negligence, willful misconduct or breach of these Terms and Conditions. Further Supplier shall, at its expense, defend, indemnify and hold harmless University and any Indemnitee against any and all Losses arising out of or in connection with any claim that University's or Indemnitee's use or possession of the Goods infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Supplier enter into any settlement without University's or Indemnitee's prior written consent.

18. Insurance. While performing services under this Agreement, Supplier shall purchase and maintain the following insurance:

    a. Workers Compensation insurance, Coverage A, with limits statutorily required by any applicable Federal or state law and Employers Liability insurance, Coverage B, with minimum limit of $500,000 per accident;
    b. Commercial General Liability insurance with a minimum limit of $1,000,000 each occurrence/$2,000,000 general aggregate. Coverage shall include bodily injury and property damage liability, personal and advertising injury liability, products/completed operations, and liability assumed under an insured contract;
    c. Automobile Liability insurance covering liability arising out of any owned, hired, and nonowned vehicles with minimum limit of $1,000,000 each accident and Personal Injury Protection as required by statute;
    d. Professional Liability insurance for claims arising from negligent acts, errors or omissions by anyone providing professional services including but not limited to doctors, lawyers, architects, engineers, designers, appraisers and consultants. Minimum limit is $1,000,000 per claim and $3,000,000 annual aggregate; and
    e. For services that may impact the security of the University's electronic data, or Suppliers that store, process, handle or transmit University data in electronic format, Cyber Liability Insurance coverage with limits no less than $1 million.

Insurance policies shall be issued by companies licensed or approved to do business within the State of Michigan. Insurers shall possess a minimum A.M. Best rating of A. The insurance policies, except Workers' Compensation and Professional Liability shall be endorsed to name Michigan State University, its Board of Trustees, agents, officers, employees, and volunteers as "Additional Insureds." In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend for three years past completion and acceptance of Supplier's Services and must be evidenced by annual certificates of insurance. All policies of insurance must be on a primary basis, non-contributory with any other insurance and/or self-insurance carried by MSU. Prior to commencing services Supplier shall furnish the University with certificates of insurance. Supplier shall provide a minimum 30 days written notice to MSU via certified mail of cancellation or non-renewal of policies required under this Agreement and a renewal certificate at least 15 days prior to expiration.

19. Cancellation of the Order. Upon written notice to Supplier, University may cancel an Order, in whole or in part and for any reason, at any time prior to shipment of the Goods, unless the Goods have been specifically designed and manufactured for the University. Upon cancellation prior to shipment, University will have no liability to Supplier. In addition to any remedies that may be provided under these Terms and Conditions, University may cancel the Order with immediate effect upon written notice to the Supplier, either before or after the acceptance of the Goods, if Supplier has not performed or complied with any of the Terms and Conditions. If the Supplier becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, then the University may terminate the Order upon written notice to Supplier. If University terminates the Order for any reason, Supplier's sole and exclusive remedy is payment for the Goods received and accepted by University prior to the termination.

20. Limitation of Liability. THE UNIVERSITY WILL NOT BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS AND LOST BUSINESS OPPORTUNITIES. OTHER THAN ITS PAYMENT OBLIGATIONS, IN NO EVENT WILL THE UNIVERSITY'S AGGREGATE LIABILITY TO SUPPLIER UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE TOTAL AMOUNT OF PAYMENTS PAID BY THE UNIVERSITY TO SUPPLIER DURING THE TWELVE (12) MONTHS PRECEDING THE APPLICABLE CLAIM.

21. Force Majeure. Neither Supplier nor the University shall be liable for failure to perform its respective obligations under the Order when failure is caused by fire, explosion, flood, act of God, civil disorder or disturbances, strikes, vandalism, war, riot, sabotage, weather and energy related closings, or like causes beyond the reasonable control of the party ("Force Majeure Event"). In the event that either party ceases to perform its obligations under the Order due to the occurrence of a Force Majeure Event, the party shall: (a) as soon as practicable notify the other party in writing of the Force Majeure Event and its expected duration; (b) take all reasonable steps to recommence performance of its obligations under the Order as soon as possible, including, as applicable, abiding by the disaster plan in place for the University. In the event that any Force Majeure Event delays a party's performance for more than thirty (30) calendar days following notice by the delaying party, the other party may terminate the Order immediately upon written notice.

22. Compliance with Laws. Supplier shall comply with all applicable laws, regulations and ordinances and the University's policies and rules, found at https://procurement.msu.edu/for-suppliers/policiesrequirements. Supplier has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Order. Supplier shall comply with all export and import laws of all countries involved in the sale of Goods under the Order. Supplier assumes all responsibility for shipments of Goods requiring any government import clearance. University may terminate the Order if any government authority imposes antidumping duties, countervailing duties or any retaliatory duties on the Goods.

23. Criminal Background Checks. Supplier may be required to perform criminal background checks of its personnel pursuant to the MSU Contractor Criminal Background Check Requirements Policy ("CBC Policy"), available at https://u.policies.msu.edu/doctract/documentportal/08DB621359BE067AFE8D367766B92156. If Supplier is subject to the CBC Policy, Supplier must sign and deliver the Contractor Certification for Criminal Background Checks to University prior to the provision of any services or delivery of any goods. University reserves the right to audit compliance with the CBC Policy requirements and may require further documentation of compliance from Supplier. Non-compliance with the Policy is considered a material breach of these Terms and Conditions, which may result in a termination for cause.

24. Smoke and Tobacco Free Organization. Effective as of August 15, 2016, MSU is a smoke and tobacco-free organization. Groups and/or individuals visiting MSU property are subject to MSU's tobacco-free policy and ordinance. No person shall (a) smoke, or (b) otherwise use any product derived from or containing tobacco, on any property governed by the Board of Trustees of Michigan State University. Additional information can be found at https://trustees.msu.edu/governance/policies/bot-406.

25. Non-Discrimination Under Michigan Law. Pursuant to Section 209 of the Michigan Elliot-Larsen Civil Rights Act and Section 209 of the Michigan Persons with Disabilities Civil Rights Act, in providing services, the Supplier and its contractor(s) agree not to discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of age, color, familial status, height, marital status, national origin, race, religion, sex, sexual orientation, gender identity or expression, weight, disability or genetic information that is unrelated to the individual's ability to perform the duties of a particular job or position.

26. Exclusion And Debarment. Supplier certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded or otherwise ineligible for state or Federal program participation. In the event that Supplier becomes debarred, suspended or ineligible from state or Federal program participation, Supplier shall notify MSU in writing within three (3) business days of such event. To the extent

that Supplier will provide services to any MSU medical entity, Supplier hereby represents and warrants that Supplier is not currently, and at no time has been sanctioned, debarred, suspended, or excluded by any state or federally funded healthcare program, including without limitation, Medicare and Medicaid. Supplier agrees to immediately notify MSU of any threatened, proposed, or actual sanctions, debarment action, suspension, or exclusion by or from any state or federally funded health care program during the term of this Agreement.

27. Federal Contract Compliance.

    a. University is an equal opportunity employer and a federal contractor or subcontractor. Consequently, the parties agree that, as applicable, they will abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) and that these laws are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to veteran status or disability. The parties also agree that, as applicable, they will abide by the requirements of 29 CFR Part 471, Appendix A to Subpart A, relating to the notice of employee rights under federal labor laws.

    b. Supplier acknowledges and represents, in accordance with the Final Rule implementing Executive Order 14117 issued by the U.S. Department of Justice, that if Supplier has access to Covered Data of the University (as defined under the Final Rule): (i) it is not located in China, Hong Kong, Macau, Russia, Iran, North Korea, Venezuela, or Cuba; and (ii) it will not provide access to any Covered Data to any person located in such countries unless University approves such access in writing. Non-compliance with this provision will be considered a material breach of this agreement.

28. Prohibited Equipment. In accordance with (i) Public Law 115-91 and FAR 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities, (ii) Public Law 115-232 and FAR 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, and (iii) FAR 52.204-30, Federal Acquisition Supply Chain Security Act (FASCSA) Orders Prohibition, Supplier is prohibited from delivering covered telecommunications equipment as defined in FAR 52.204-25, covered articles as defined in FAR 52.204-23, or covered articles as defined under FAR 52.204-30 and identified pursuant to an FASCSA order. Supplier hereby represents and warrants that it will abide by the prohibitions contained in this Section.
29. ITAR and EAR CCL Compliance. Supplier declares that all Goods purchased under the Order are neither subject to the International Traffic in Arms Regulations (ITAR) nor any of the Export Administration Regulations (EAR) Export Control Classification Numbers (ECCN's) in the 500 or 600 series as listed on the Commerce Control List (CCL). If any Goods are subject to ITAR or EAR ECCN's in the 500 or 600 series, Supplier shall notify University's Office of Export Control & Trade Sanctions (export@msu.edu) prior to shipment of the Goods. For the avoidance of doubt, unless Supplier has provided advance notice to University's Office of Export Control and Trade Sanctions, Supplier declares and warrants that (i) the Goods are not listed on the ITAR United States Munitions List (USML); and (ii) the Goods are not listed on the EAR CCL in ECCN's in the 500 or 600 series. Supplier declares that it fully understands that sourcing any Goods classified in any of the above categories could have material adverse implications and require extensive management for the University, and therefore Supplier agrees to defend, indemnify and hold harmless the University for any costs or liability related to Supplier's violation of this Section.

30. Freedom of Information Act. Nothing in these Terms and Conditions shall in any way limit the ability of the University to comply with any laws or legal process concerning disclosures by public bodies. Supplier acknowledges that any responses, materials, correspondence or documents provided to the University may be subject to the State of Michigan Freedom of Information Act ("FOIA") and may be released to third parties in compliance with FOIA or any other law.
31. Use of the University Name, Logo and Marks. The University acknowledges that Supplier may make public statements regarding the existence of this Agreement, its terms and conditions and an accurate description of the products or services being supplied without the consent of the University. However, other than as permitted by the previous sentence, Supplier will not use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with the University, or the name of any representative of the University

without the prior written permission of the University in each instance. Supplier may not imply, directly or indirectly, that MSU endorses any products or services supplied to MSU.

32. Conflict of Interest. Supplier warrants that to the best of Supplier's knowledge, there exists no actual or potential conflict between Supplier and the University, and its provision of Goods under the Order, and in the event of change in either Supplier's private interests or provision of Goods under the Order, Supplier will inform the University regarding possible conflict of interest which may arise as a result of the change. Supplier also affirms that, to the best of Supplier's knowledge, there exists no actual or potential conflict between a University employee and Supplier.

33. Independent Contractor. The relationship between the parties is solely that of independent contractors, not partners, joint ventures, employees, agents or otherwise. Neither will have any authority to bind the other in any manner, and will not represent or imply that it has such authority.

34. No Third Party Rights. Nothing in these Terms and Conditions or the Order shall be construed as creating or giving rise to any rights in third parties or persons other than the named parties.

35. Assignment. Supplier may not assign its rights under the Order, nor any money due or to become due without the prior written consent of the University. Any assignment made without such consent shall be deemed void.

36. Amendment. These Terms and Conditions and the Order may not be amended except by signed agreement between the parties.

37. Notices. Any notice to either party must be in writing and will be delivered either personally, by electronic mail with confirmed delivery, by a recognized overnight courier service, or by the United States mail (first-class, certified or registered with postage prepaid, return receipt requested), to the other party at its address as set forth on the Order.

38. Severability. If any provision of these Terms and Conditions or the Order is invalid or unenforceable, the remainder of the provisions, or the application of such provisions to person other than those as to which it is held invalid or unenforceable, will not be affected and the remainder of the provisions will be valid and enforceable to the fullest extent permitted by law.

39. Assurance. If University determines in good faith that it is insecure with respect to Supplier's ability or intent to fully perform, Supplier will provide University with written assurance of Supplier's ability and intent to fully perform. Supplier will provide such assurance within the time and in the manner specified by the University. Supplier will immediately notify the University of any circumstances that may cause Supplier to fail to fully perform. Upon University's good faith determination that Supplier cannot or will not perform, the University may deem the Supplier to have breached and may terminate the Order.

40. Survivability. Provisions of these Terms and Conditions or the Order, which by their nature should apply beyond their terms, will remain in force after any termination or expiration of the Order.

41. Governing Law. Michigan law, without regard for choice of law considerations, will govern these Terms and Conditions and the Order. The Michigan Court of Claims or Federal District Court for the Western District of Michigan will hear any action arising out of the parties' agreement, and Supplier consents to jurisdiction in Michigan.

42. Entirety. These Terms and Conditions and the Order constitute the sole and entire agreement of the parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. NO TERMS ON SUPPLIER'S QUOTES, INVOICES, WEBSITE, BROWSE-WRAP, SHRINK- WRAP, CLICK-WRAP OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH

ANY OF THE GOODS OR SERVICES HEREUNDER WILL CONSTITUTE A PART OR AMENDMENT OF THESE TERMS AND CONDITIONS OR THE ORDER OR IS BINDING ON THE UNIVERSITY FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE UNIVERSITY, EVEN IF ACCESS TO OR USE OF SUCH GOODS REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

MICHIGAN STATE UNIVERSITY

Michigan State University	[Supplier]
Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____