

## MYONEX PURCHASE ORDER TERMS (US)

These Myonex Purchase Order Terms, together with the applicable Purchase Order, constitute an agreement (“**Agreement**”) between Myonex, LLC (“**MYONEX**”) and the supplier entity named in the relevant Purchase Order issued by MYONEX (“**SUPPLIER**”). For the purposes of this Agreement, MYONEX and SUPPLIER may each be referred to as “Party” or, collectively, as the “Parties.”

### 1. Definitions and Interpretation.

Unless this Agreement expressly provides to the contrary, the following terms have the respective meanings set forth below, and the following rules of interpretation shall apply to this Agreement:

(a) “**Agent**” means any agents, representatives, subcontractors or other third parties that are (i) not employees of a Party and (ii) who are engaged by such Party to perform some or all of its obligations under this Agreement.

(b) “**Affiliate**” means, with respect to a Party, any person or entity which controls, is controlled by or is under common control with such Party. As used in this Section, “control” means (i) in the case of corporate entities, direct or indirect ownership of at least fifty percent (50%) of the stock or shares having the right to vote for the election of directors, and (ii) in the case of non-corporate entities, the direct or indirect power to manage, direct or cause the direction of the management and policies of the non-corporate entity or the power to elect at least fifty percent (50%) of the members of the governing body of such non-corporate entity.

(c) “**Applicable Law**” means all statutes, ordinances, rules, regulations, ordinances, laws, guidelines, guidance, requirements and court orders of any federal, state, municipal, or other governmental entity or division, as amended from time to time, and as applicable to a Party, including without limitation, the United States Federal Food, Drug and Cosmetic Act, 21 U.S.C. §321 et seq., and its foreign counterparts as applicable.

(d) “**Force Majeure Event**” means any event beyond a Party's reasonable control, including acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions.

(e) “**Intellectual Property Rights**” includes without limitation, any rights to inventions, copyrights, patents, trademarks, business names and domain names, goodwill, design rights, trade secrets, rights to use and protect Confidential Information and all other intellectual property rights whether registered or unregistered, which subsist now or in the future in any part of the world.

(f) "**Losses**" means any and all losses, costs, damages, liabilities or expenses (including reasonable attorneys' fees and other costs of defense on an indemnity basis).

(g) "**MYONEX Materials**" means all documents, materials, information, and items which are owned by MYONEX (or licensed from a third party) which are provided to the SUPPLIER in connection with the performance of the Services.

(h) "**Order**" or "**Purchase Order**" means a written purchase order issued by MYONEX describing Products and/or Services to be delivered by SUPPLIER to MYONEX.

(i) "**Product**" means the pharmaceutical products, clinical supplies, non-drug supplies items, equipment, or other products identified in the applicable Order to be supplied by SUPPLIER to MYONEX.

(j) "**Services**" means any clinical supply services to be provided by SUPPLIER to MYONEX, as identified in an applicable Order. Services may include, but are not limited to, supply of Product, logistics, warehousing, distribution, repackaging, preparation of patient kits for clinical trials, and Product labeling.

(k) "**SUPPLIER Materials**" all documents, materials, information and items which are owned by the SUPPLIER (or licensed from a third party) which are provided to MYONEX in connection with the performance of the Services.

(l) "**Quality Agreement**" means an agreement between the Parties governing technical and quality obligations.

(m) "**Term**" means the term of any Order entered into under this Agreement.

**2. Independent Contractor Relationship.** In accordance with the mutual intentions of MYONEX and SUPPLIER, this Agreement establishes between them an independent contractor relationship, and all of the terms and conditions of this Agreement shall be interpreted in light of that relationship. SUPPLIER shall have the right to control and determine the methods and means of performing all Services pursuant to this Agreement. SUPPLIER shall not be deemed an employee, agent, partner, or joint venture of Myonex for any reason. SUPPLIER shall have no authority to bind or act on behalf of MYONEX and shall not be entitled to participate in any benefit plan or program of MYONEX. SUPPLIER shall be solely responsible for payment of all compensation, benefits and/or fees of any other kind to its employees or Agents involved in performing the Services and/or supplying the Products under this Agreement.

**3. Quotations and Purchase Orders; Warranties.**

(d) Products and Services. Nothing contained in this Agreement shall obligate MYONEX to procure, or SUPPLIER to provide, any Products or Services until such time as MYONEX issues a Purchase Order in accordance with this Agreement.

(e) Quotations and Purchase Orders. From time to time, MYONEX May request that SUPPLIER prepare a written quotation (which may be in the form of an email) for the supply of Products (a “**Quotation**”), which Quotation shall specify, as applicable: the name, strength, quantity, estimated lead time(s), expiry, lot details, unit price, total price, insurance charges, shipping charges, storage charges, and/or any other ancillary charges, with respect to the Product(s) requested. MYONEX may accept such Quotation by issuing a Purchase Order referencing such Quotation, which shall become binding upon the Parties upon issuance by MYONEX. In the absence of a Quotation issued by SUPPLIER, a Purchase Order shall be deemed to be accepted by SUPPLIER delivering the Products and/or Services to MYONEX or its designee(s) specified therein. Any terms contained in a SUPPLIER’s Quotation which are inconsistent or additional to the terms of this Agreement shall be null and void unless expressly acknowledged and accepted in the Purchase Order issued by MYONEX.

(f) SUPPLIER’s Representations and Warranties. SUPPLIER represents, warrants and covenants that:

(i) SUPPLIER will comply fully with all specifications, instructions, and deadlines agreed to in the Order;

(ii) SUPPLIER possesses all licenses and certifications required to perform the Services and/or supply the Products, and shall continue to possess all licenses and certifications during the Term and the term of any Order;

(iii) All SUPPLIER’s Agents or employees involved in performing the Services and/or supplying the Products will possess adequate skills, training, and qualifications;

(iv) SUPPLIER will comply with all Applicable Laws, industry standards, manufacturer’s instructions, and MYONEX operating procedures applicable to performance of the Services and/or supply of the Products, including without limitation, current Good Manufacturing Practices, current Good Distribution Practices, all anti-kickback and anti-bribery legislation, and all “Sunshine Laws”;

(v) SUPPLIER and all SUPPLIER’s Agents or employees involved in performing the Services and/or supplying the Products will exercise reasonable care in accordance with best practices in the pharmaceutical industry;

(vi) SUPPLIER will pass good and marketable title to all Products, free and clear of any liens, security interests, and/or encumbrances;

(vii) All Products supplied pursuant to this Agreement shall (a) comply with the specifications (including timeframes) set forth in the applicable Order; (b) be free from damage, defects, and non-conformities; (c) be appropriately packaged and labeled; (d) be merchantable; (e) not violate or infringe any third party patent(s) or other intellectual property rights(s); and (f) be fit for MYONEX’s intended purposes, including without limitation its customers’ clinical trials;

(viii)(a) Neither SUPPLIER nor its Affiliates, nor any of their Agents or employees involved with the performance of Services, have ever been or are currently (i) under investigation for debarment or debarred under the Generic Drug Enforcement Act of 1992, 21 U.S.C. § 335(a), as amended, any similar state law or regulation, or any comparable act or directive of the United Kingdom or European Union; or (ii) under investigation or excluded, debarred, suspended or otherwise ineligible to participate in a federal health care program, (e.g., Medicare or Medicaid) pursuant to 42 U.S.C. § 1320a-7, et seq., or other government procurement program, or any similar state law or regulation, or any comparable act or directive of the United Kingdom or European Union; (b) SUPPLIER will not use in any capacity the services of any person or entity in performing Services; and (c) SUPPLIER will notify MYONEX immediately as provided in Notice section in the event that any investigation or proceeding for debarment, exclusion, suspension or other ineligibility to participate is initiated against SUPPLIER, its Affiliates, or any SUPPLIER's Agents or employees involved with the performance of Services, by the FDA, OIG, or by a competent court, board or similar authority in the United States, United Kingdom or European Union during the Term, as such term is defined in Section 7, which, if convicted, might result in mandatory or discretionary exclusion by governmental authorities. SUPPLIER represents and warrants that it has and will maintain procedures in place to assure that its employees and Agents meet all of the requirements of this Section, and that its agreements with its Agents shall contain a provision that is consistent with and at least as restrictive as this representation and warranty; and

(g) Cooperation. SUPPLIER will fully cooperate with MYONEX as requested and as necessary to document the compliance of the Services provided by SUPPLIER with Applicable Laws, including without limitation any anti-kickback and Sunshine legislation, so as to assure that MYONEX and/or MYONEX's customers can provide regulatory authorities having jurisdiction over the Services, and other necessary third parties, with any information required or reasonably requested by such regulatory authorities or other necessary third parties with respect to the Services. By way of example only, if the Services required SUPPLIER to provide equipment to MYONEX's customer's clinical sites for the term of the applicable Order, and SUPPLIER was unable to collect such equipment at the end of such term, MYONEX's customer might have the obligation to report the value of such equipment as monies paid under The Physician Payments Sunshine Act (PPSA), also known as section 6002 of the Affordable Care Act (ACA) of 2010. In such event, SUPPLIER would be required to provide all information regarding the inability to collect the equipment promptly to assure that MYONEX's customer could in a timely manner comply with its obligations.

(h) Quality Agreement. Prior to SUPPLIER providing any Products or Services that are required to be performed in accordance with cGMP and/or cGDP, and upon the request of MYONEX, the Parties shall negotiate in good faith and enter into a quality agreement (as amended from time to time, the "**Quality Agreement**").

#### **4. Shipping, Delivery, Acceptance, Title and Risk of Loss.**

(a) Shipping; Delivery. SUPPLIER will ensure that delivery of Products is made to MYONEX or MYONEX's designee, (i) to the destination designated by MYONEX in the applicable Order, and (ii) in accordance with the specifications, timelines, and instructions agreed

to in the applicable Order or as otherwise agreed to by the Parties in writing. SUPPLIER will bear all costs of packaging, transportation, and freight insurance in delivering the Products unless otherwise specified in the applicable Order. A bill of lading and, if applicable, drug pedigree will be furnished to MYONEX with respect to each shipment, together with any other documents (e.g. decommissioning reports, etc.) as may be requested in the MYONEX Purchase Order. All shipments will be delivered in accordance with the Incoterms (2020) specified in the applicable Order.

(b) Inspection. MYONEX shall inspect all Products delivered or distributed by SUPPLIER and notify SUPPLIER in writing of any damage, defects, or nonconformity with specifications (other than Latent Defects) within sixty (60) calendar days of receipt. MYONEX shall notify SUPPLIER of any damage, defects, or nonconformity in the Products that could not have been discovered by a reasonably thorough inspection at the time of MYONEX's receipt of delivery (the "Latent Defects") within sixty (60) calendar days from their discovery. Payment for the Products shall not be deemed to constitute any acceptance by MYONEX and MYONEX's acceptance of all or any part of a delivery of non-conforming Products shall not constitute a waiver of any nonconformity as to the remainder or any subsequent delivery.

(c) Title and Risk of Loss. Title and risk of loss for Products will pass to MYONEX upon delivery to MYONEX or MYONEX's designee at the destination specified in the applicable Work Order or Purchase Order.

(d) Duty to Notify. If SUPPLIER has reason to believe that it will be unable to supply Product and/or perform Services in accordance with the terms of the applicable Order, SUPPLIER will promptly notify MYONEX. Without limiting the foregoing, SUPPLIER shall promptly notify MYONEX if it becomes aware: (i) of any defect or condition which renders or may render the Products ineffective or dangerous; or (ii) that the Products are not in compliance with the warranties set forth in this Agreement.

(e) Time is of the Essence. SUPPLIER expressly acknowledges and agrees that time shall be of the essence for all delivery dates and deadlines specified in the applicable Order.

(f) Products Recall. SUPPLIER shall notify MYONEX upon becoming aware of any product recall relating to the Products and MYONEX shall reasonably cooperate with SUPPLIER and its Affiliates in carrying out such recall. SUPPLIER shall at all times have written product recall procedures in place to enable recall of the Products within 24 hours and shall provide a copy of its product recall procedures to MYONEX upon request. For the avoidance of doubt, all reasonable internal costs and external expenses, including but not limited to the value of the recalled Products and expenses of notification, return and destruction relating to such recall shall borne solely by SUPPLIER or one of its Affiliates.

(g) Hazardous Materials and Controlled Substances. SUPPLIER shall notify MYONEX in writing upon acceptance of an Order that contains Products subject to laws or regulations relating to hazardous, toxic or controlled substances. SUPPLIER shall appropriately label containers of all Products that are known to constitute a health, poison, fire, environmental, safety or explosion hazard, or are subject to regulation as a controlled substance, and shall provide

MYONEX any and all material required for MYONEX to comply with all Applicable Laws, including, without limitation, material safety data sheets and export documentation. Instructions for shipping, handling, and storage of the Products shall be provided with each shipment.

(h) Export Controls. SUPPLIER acknowledges that any Products may be subject to export controls under the Applicable Laws. SUPPLIER will not transfer any of the foregoing, directly or indirectly, to any destination contrary to either the requirements of the laws of the shipping territory or the terms of any applicable export license. SUPPLIER will not participate in any transaction which may involve any commodity or technical data, or the direct product thereof, exported or to be exported from the United States, if a person denied export privileges from the United States may obtain any benefit from or have any interest in, directly or indirectly, such transaction. SUPPLIER further represents and warrants that (1) neither it nor any of its affiliated companies, shareholders, officers, or directors have been previously, or are currently, placed on one of the following restricted parties lists: the U.S. List of Specially Designated Nationals and Blocked Persons, maintained by the U.S. Treasury Department Office of Foreign Assets Control; the Debarred List and non-proliferation sanctions lists maintained by the U.S. State Department; the EU Consolidated List of Designated Parties; and the Sanctions Embargoes List of Switzerland (collectively, "Restricted Parties"); (2) it is not currently owned 50% or more, individually or in the aggregate, by one or more Restricted Parties, and (3) it shall identify and comply with applicable trade sanctions and export control laws, including but not limited to United States, United Kingdom, European Union and Swiss trade sanctions laws. SUPPLIER shall immediately notify MYONEX in writing if at any time SUPPLIER, or any of its affiliated companies, shareholders or directors (i) are placed on one of the Restricted Parties lists referenced above or (ii) become or becomes owned 50% or more, individually or in the aggregate, by one or more Restricted Parties; and in such event MYONEX shall have the right to terminate this Agreement (including any Orders thereunder) immediately without any further obligation or liability to SUPPLIER.

## **5. Payment/Compensation.**

(a) Compensation. As consideration for SUPPLIER's performance of the Services, MYONEX shall pay SUPPLIER the amount set forth in the applicable Order (the "**Service Fee**"). All prices for Products and Services set forth in the applicable Order shall not be subject to change without express written agreement of the Parties. No other form of compensation shall be paid by MYONEX to SUPPLIER except as otherwise approved in writing by MYONEX.

(b) Invoice. Each request for payment shall be accompanied by an invoice from SUPPLIER reasonably documenting the actual costs incurred and/or fees earned pursuant to the applicable Work Order. Any fees and/or costs incurred by SUPPLIER which exceed those set forth on the applicable Work Order shall be at the sole risk and expense of SUPPLIER unless authorized by MYONEX in writing prior to being earned or incurred. Unless otherwise set forth in the Work Order, all Invoices shall be sent in accordance with the instructions set forth in the applicable Order.

(c) Payment Terms. Unless otherwise set forth in the applicable Order, SUPPLIER shall bill MYONEX monthly. MYONEX shall pay SUPPLIER within sixty (60) calendar days of receiving a valid invoice issued by SUPPLIER reflecting, as applicable:

completion of the contracted Services, delivery of Products, completion of applicable milestone(s), and/or other performance required by the applicable Work Order. MYONEX shall have no obligation to pay invoices that are submitted more than six (6) months after the date that the Services were performed, Products delivered, and/or costs incurred. SUPPLIER will be responsible to pay for actual freight costs, freight insurance, non-recoverable value-added tax (“VAT”), and import and export duties, as applicable, incurred in connection with SUPPLIER’s delivery of Products.

## **6. Remedies and Limitation of Liabilities.**

(a) Non-Exclusive Remedy Relating to Products. In the event of SUPPLIER’s breach of this Agreement or any warranty affecting the condition or delivery (including any failure to meet agreed upon delivery timelines) of Products, SUPPLIER shall, at MYONEX’s sole discretion, (i) replace any damaged, defective, or non-confirming Products as soon as reasonably practicable, at SUPPLIER’s sole cost and expense (including shipping costs for returning non-confirming Products and expedited shipping costs for replacement Products) within thirty (30) calendar days from the date of MYONEX’s request; or (ii) refund the compensation paid by MYONEX for such damaged, defective, or non-confirming Products.

(b) Cumulative Remedies. The remedies set forth in Sections 6(a) and 6(b) shall be cumulative and without prejudice to MYONEX’s right to exercise any other remedies available at law or equity, consistent with the terms of this Agreement.

(c) Waiver of Consequential Damages. **Except for indemnification obligations as set forth in Section 16 or in the case of a Party’s gross negligence or willful misconduct, and except to the extent expressly provided for elsewhere in this Agreement, neither Party shall be liable to the other for any special, indirect, consequential, or incidental damages, including, but not limited to, lost profits, even if a Party is advised of the possibility of such damages or claims.**

## **7. Termination.**

(d) Termination for Cause. MYONEX may terminate any Order immediately and without liability to SUPPLIER for cause, including but not limited to:

(i) SUPPLIER’s material breach of any provision of this Agreement, provided that MYONEX has given SUPPLIER notice of such breach in accordance with Section 19 and afforded SUPPLIER at least thirty (30) calendar days to cure, unless cure is impossible or commercially impracticable;

(ii) A change in law or regulation or interpretation of change in law or regulation that would render the Services illegal or unlawful;

(iii) SUPPLIER’s commencement of a voluntary or involuntary case under bankruptcy, insolvency, reorganization or similar law, or the appointment of a receiver, liquidator, assignee, trustee, or custodian of SUPPLIER’s business or assets, or SUPPLIER making any assignment for the benefit of creditors; or

(iv) any breach of the representations and warranties in Section 3 regarding exclusion, debarment, suspension or other ineligibility of SUPPLIER, its Affiliates, Agents or employees to participate in health care programs, other government procurement program, or drug development.

(b) Termination without Cause. MYONEX may terminate any Order (i) without cause upon fifteen (15) calendar days' written notice to SUPPLIER or (ii) immediately if notified by a customer of MYONEX which is the sponsor of the clinical trial that is the subject of the Order, or any regulatory authority having authority over such clinical trial, of termination of the clinical trial for any reason, including to protect the health or safety of clinical trial subjects. In the event that MYONEX terminates an Order without cause, or termination of the clinical trial, SUPPLIER shall immediately cease performance and take all commercially reasonable measures to minimize the costs associated with such termination, including without limitation the cancellation of contracts to purchase, and/or the return or re-sale of, Products under an Order. Upon terminating an Order without cause, MYONEX shall be liable to SUPPLIER for the following:

(i) The fees specified in a Order for any Services performed prior to termination;

(ii) The purchase price specified in an Order for any Products shipped to MYONEX or MYONEX's designee prior to termination; and

(iii) Any reasonable, out-of-pocket costs that SUPPLIER incurs in winding up the Services, subject to the obligation of SUPPLIER to mitigate the same.

For the avoidance of doubt, MYONEX shall not be liable for the purchase price of any Products under a cancelled Order which have not yet been shipped to MYONEX prior to termination.

(c) Survival. Any provision of this Agreement intended by the context to survive termination shall survive the termination of any Order under this Agreement shall survive.

## **8. No Conflict of Interest; Compliance Obligations.**

(a) SUPPLIER warrants and represents that SUPPLIER is authorized to enter into this Agreement, and that SUPPLIER is not a party to any other agreement or under any obligation to any third party that would prevent SUPPLIER from entering into this Agreement or from performing SUPPLIER's obligations under this Agreement, or require SUPPLIER to obtain any further consents or permissions. SUPPLIER warrants and represents that there is no conflict of interest in the SUPPLIER's other contracts for services or procurement, if any, with the Services and Products to be provided pursuant to this Agreement, and that the SUPPLIER will ensure that no such conflict arises during the Term.

(b) Anti-Corruption Laws. SUPPLIER acknowledges that it is aware of Applicable Laws regarding anti-corruption, including the U.S. Foreign Corrupt Practices Act, the UK Bribery Act 2010 and other applicable anti-corruption laws ("Anti-Corruption Laws"). SUPPLIER shall comply with all applicable Anti-Corruption Laws in the performance of its obligations under this



Agreement. SUPPLIER further covenants and agrees that if it learns any information giving it a good faith belief that any of its employees, agents, or subcontractors has violated any Anti-Corruption Laws, it will promptly notify MYONEX in writing. In the event that SUPPLIER has violated any Anti-Corruption Laws (or in the event that MYONEX has a good faith belief, based on demonstrable evidence that SUPPLIER has violated any Anti-Corruption Laws, MYONEX shall have the right to terminate any Order entered under this Agreement immediately without any further obligation or liability to SUPPLIER.

(c) Modern Slavery and Human Trafficking. MYONEX is opposed to all forms of modern slavery, human trafficking, child labor, and forced labor, and is committed to preventing it within its workplace and within its supply chains. SUPPLIER represents and warrants that (1) at all times it shall comply with all applicable laws, statutes, and regulations relating to modern slavery, human trafficking, child labor, and forced labor in any geography in which it does business, (2) without limiting the foregoing, it shall at no time utilize forced, bonded, involuntary, slave, indentured, or child labor, and (3) it has and will maintain in place its own policies and procedures to ensure compliance with the foregoing, and will require the same of all of its subcontractors and suppliers in its supply chain. SUPPLIER further covenants and agrees that if it learns any information giving it a good faith belief that any of the foregoing representations and warranties are untrue (including with respect to any of its subcontractors or suppliers), it will promptly notify MYONEX in writing. In the event that SUPPLIER has breached any of the foregoing representations and warranties (or in the event that MYONEX has a good faith belief, based on demonstrable evidence that SUPPLIER has breached any of the foregoing representations and warranties, MYONEX shall have the right to terminate any Order entered under this Agreement immediately without any further obligation or liability to SUPPLIER.

#### **9. SUPPLIER Subcontractors.**

(a) SUPPLIER shall not outsource, subcontract or delegate any of its obligations hereunder to any Agent without MYONEX's prior written consent. SUPPLIER shall maintain complete control of and responsibility for all actions of SUPPLIER's Agents.

(b) SUPPLIER hereby acknowledges and agrees that SUPPLIER shall cause each of SUPPLIER's Agents or employees who participate in rendering the Services provided under this Agreement to comply with the terms of this Agreement. SUPPLIER hereby acknowledges and agrees that SUPPLIER shall be responsible for the failure of any of SUPPLIER's Agents and employees to comply with the terms of this Agreement. Further, with respect to employees, SUPPLIER shall have in place comprehensive training, policies and/or programs to assure that to the extent that such employees are involved in any manner in providing Services, its employees fully comply with SUPPLIER's obligations under this Agreement.

#### **10. Responsibility for Taxes.**

(a) In conformity with SUPPLIER's independent contractor status and without limiting any of the foregoing, SUPPLIER shall have responsibility and liability for the payment of all taxes or contributions for unemployment insurance or pensions or annuities or social security payments which are measured by the wages, salaries or other remuneration paid to SUPPLIER or

SUPPLIER's Agents, if any, and to reimburse and indemnify MYONEX for any such taxes or contributions or penalties which MYONEX may be compelled to pay with regard to the Services or SUPPLIER's employees and/or Agents. SUPPLIER also agrees to take all action and comply with all applicable administrative regulations necessary for the payment by SUPPLIER of such taxes and contributions.

(b) SUPPLIER agrees to prepare and provide to MYONEX documentation, information and certifications as required by the U.S. Internal Revenue Code or the tax laws and/or regulations of other jurisdictions, as reasonably requested by MYONEX to determine income tax withholdings, if any. For the purpose of this section, documentation, information and certifications may include, for example, IRS Form W-9, or such other forms as may be reasonably requested. SUPPLIER understands that MYONEX will rely on, and use such documentation, information and certifications solely for MYONEX's tax reporting obligations, if any.

(c) In addition, exclusive of any taxes imposed upon SUPPLIER's net income, SUPPLIER shall pay for any and all taxes, duties, or excises imposed upon any Products sold or payments made to SUPPLIER under this Agreement by any governmental authority, including without limitation any sales, use, service, or similar taxes, and VAT.

#### **11. Responsibility for Insurance.**

(a) SUPPLIER shall, during the Term, at its own cost and expense, obtain and maintain in full force and effect: (i) Worker's Compensation Insurance in accordance with the statutory requirements of the state(s) in which the Services are to be performed, including employer's liability coverage in an amount sufficient to meet statutory requirements or one-hundred thousand dollars (\$100,000.00), whichever is greater; and (ii) Commercial General Liability ("CGL") Insurance with contractual liability and property coverage, with a minimum five-million dollar (\$5,000,000) limit per occurrence. MYONEX shall be named as an additional insured on SUPPLIER's CGL policy. Insurance will be provided by carrier(s) having an AM Best's rating of A-VII or better. In the event SUPPLIER's insurance is a "claims made" policy, SUPPLIER shall, following termination, maintain such coverages to cover SUPPLIER's activities during the Term, whether by procuring "tail" insurance or otherwise. Upon request, SUPPLIER shall furnish to MYONEX a certificate of insurance evidencing the foregoing coverages, followed by each subsequent renewal covering the Term. SUPPLIER's obligation to carry such insurance is separate and apart from its obligation to indemnify MYONEX and is not to be construed as a limitation of liability.

(b) In addition to the coverages required by Section 11(a), SUPPLIER shall obtain freight insurance for the full replacement cost of all Products supplied, transported, or warehoused pursuant to this Agreement and/or any Order.

#### **12. Confidentiality.**

(a) During the course of performing any Order, the Parties may be given or observe certain trade secrets, technical know-how, pricing information, customer information, vendor/supplier information, supplier information, business strategies, and other confidential

information of the other Party or its Affiliates ("**Confidential Information**"). The Parties agree: (i) to hold all Confidential Information of the other Party in confidence, using the same degree of care that they would use in safeguarding their own Confidential Information, but in no event less than a reasonable degree of care; (ii) not to disclose Confidential Information of the other Party to others; and (iii) not to use Confidential Information of the other Party for any purpose other than to fulfill their obligations or exercise their rights under this Agreement. The Parties agree to limit dissemination of and access to Confidential Information to those individuals in their organizations and those advisors, Agents or contractors who have a need to know Confidential Information for the above-described purpose. Non-employees of a Party given access to the other Party's Confidential Information under this Section shall be bound in writing by confidentiality obligations substantially similar to those set forth in this Agreement.

(b) Notwithstanding the foregoing, Confidential Information shall not include information which: (i) is or hereafter becomes generally available to the public other than by reason of any breach of this Agreement; (ii) was already known by the receiving Party prior to the date of disclosure; (iii) is disclosed to receiving Party by a third party who has the right to disclose such information without any obligations of confidentiality; (iv) is developed by or on behalf of receiving Party independently, without reliance on Confidential Information received under this Agreement, as demonstrated by written records; or (v) is otherwise required to be disclosed by receiving Party in order to comply with applicable legal requirements of a public authority, law, rule of court or regulation, provided that (i) receiving Party promptly notifies the disclosing Party of the obligation to disclose in order to allow the disclosing Party (at its cost and expense) to seek a protective order or other similar order to protect its Confidential Information; (ii) receiving Party only discloses the minimum amount of Confidential Information that is necessary to comply with the required disclosure; and (iii) such information remains Confidential Information for all other purposes

(c) These restrictions upon disclosure and use of Confidential Information shall continue during the Term and shall extend beyond the Term for a period of ten (10) years, unless otherwise agreed by the Parties in writing.

(d) Upon the written request of the disclosing Party, the receiving Party will deliver to the disclosing Party all of the disclosing Party's Confidential Information that the receiving Party has in its possession or control, or at the disclosing Party's request, destroy such Confidential Information and provide certification of destruction, except that the receiving Party may retain a copy of such Confidential Information for archival purposes. Any electronic back-up tapes or other electronic back-up files that may have been created by the receiving Party by automatic or routine archiving or back-up procedures shall not be subject to this Section but shall remain subject to all other obligations of this Section.

**13. No Publicity.** SUPPLIER may not use the MYONEX name, logo or image in any public medium, publicity or advertising (including but not limited to press releases, web sites, tweets, promotional mailings, newsletters or interviews) nor otherwise publicize or disclose any information related to the existence of this Agreement or its terms and conditions, without MYONEX's prior written consent.

**14. Non-Solicitation.**

(a) Customer Non-Solicitation. SUPPLIER agrees that during the Term and for twenty-four (24) months thereafter, SUPPLIER shall not directly or indirectly through any other person or business entity, solicit, call upon, contact, compete for, sell or market to, divert, or take away, or attempt to divert or take away, any person or entity who was a customer of MYONEX during the Term of the Agreement, or who was actively solicited by MYONEX to be a customer during the Term of the Agreement.

(b) Employee Non-Solicitation. SUPPLIER agrees that during the Term and for twenty-four (24) months thereafter, SUPPLIER shall not directly or indirectly through any other person or business entity, (i) offer employment to or seek to engage the services of any MYONEX employee, or (ii) call upon, contact and/or solicit any MYONEX employee in any manner that would reasonably be expected to result in such employee terminating his or her relationship with MYONEX.

(c) Tolling. In the event SUPPLIER violates any of the restrictions contained in Sections 14(a) or 14(b), the restrictive period contained in those Sections shall not run during the period in which the SUPPLIER is in breach of the provision(s).

**15. Assignment.** This Agreement may not be assigned by the Parties, by operation of law or otherwise, without the prior written consent of the other Party, which shall not be unreasonably withheld. Any permitted assignee will assume the rights and obligations of the assignor under this Agreement.

**16. Indemnification.**

(a) Indemnification by SUPPLIER. SUPPLIER hereby agrees to indemnify, defend and hold harmless MYONEX, its Affiliates, and their respective officers, directors, employees and agents from and against any and all Losses that arise out of, or in connection with, SUPPLIER's or its Agents' (i) negligent or intentional act or omission; (ii) breach of any representation, warranty, covenant, or other provision of this Agreement; (iii) violation or infringement of any third party patent(s) or intellectual property right(s); or (iv) violation of any Applicable Law.

(b) Indemnification by MYONEX. MYONEX hereby agrees to indemnify, defend and hold harmless SUPPLIER, its Affiliates, and their respective officers, directors, employees and agents from and against any and all Losses that arise out of, or in connection with, MYONEX's or its Agents' (i) negligent or intentional act or omission; (ii) breach of any representation, warranty, covenant, or other provision of this Agreement; or (iii) violation of any Applicable Law.

(c) Notification of Claims. The Party wishing to seek indemnification under this Agreement (the "**Indemnified Party**") shall notify the Party against whom indemnification is sought (the "**Indemnifying Party**") in writing of the asserted claim. Failure to provide such notice, which substantially prejudices the Indemnifying Party's ability to defend such claim or action, may

invalidate the obligation of indemnification to the extent the Indemnifying Party is prejudiced by the delay of notice. The Indemnified Party must authorize and permit the Indemnifying Party to exercise sole control of the defense and disposition of any claim or action, including all decisions related to litigation, appeal or settlement, provided, however, that the Indemnifying Party shall not settle any claims or action that would be deemed to confess wrongdoing or require action or inaction on the part of the Indemnified Party without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the Indemnified Party shall nevertheless be entitled to retain separate counsel at its own cost to participate in such matter; however, the Indemnifying Party shall have sole case management authority. Each Party shall cooperate with the other Party in every reasonable way to facilitate the defense of any such claim.

**17. Severability.** In the event any portion of this Agreement shall be held illegal, void or ineffective, the remaining portions of this Agreement shall remain in full force and effect, and the illegal, void or ineffective portion shall be equitably reformed in accordance with the intent of the original provision to the extent necessary to make it fully valid and enforceable. If any of the terms or provisions of this Agreement are in conflict with any applicable statute or rule of law, then such term(s) or provision(s) shall be deemed inoperative to the extent that they may conflict therewith and shall be deemed to be modified to conform with such statute or rule of law.

**18. Non-Waiver of Rights.** No failure or delay on the part of either Party under this Agreement in either exercising or enforcing any rights will operate as a waiver of any other right under this Agreement or of any other breach or failure by the other Party, whether of a similar nature or otherwise. No waiver of any right under this Agreement will have effect unless given in a signed writing.

**19. Notice.** Any report or notice required or permitted to be given under this Agreement shall be effective when received. All notices shall be in writing and given personally or by prepaid certified mail, return receipt requested, or sent by a nationally-recognized overnight courier addressed to each Party's address set forth in the respective Order. In addition, a copy of any notices to MYONEX under this Agreement shall be sent via email to [legalnotices@myonex.com](mailto:legalnotices@myonex.com).

**20. Audits and Inspections.**

(a) SUPPLIER agrees to maintain accurate and complete records of all contracts, shipping records, drug pedigrees, papers, correspondence, accounts, invoices, data reimbursable out of pocket expenses and/or other information in SUPPLIER's possession relating to this Agreement and the Services (collectively, the "**Records**") during the Term and thereafter for a period of three (3) years following the expiration or termination of any Order, at SUPPLIER's sole cost.

(b) SUPPLIER agrees to permit MYONEX or any person or entity designated by MYONEX to examine and audit the Records, and to access and inspect the facilities that are involved in the provision of Services and compliance by SUPPLIER with the terms of this Agreement, with prior written notification and during normal business hours, during the Term and

for a period of five (5) years following the expiration or termination of any Order, at MYONEX's sole cost.

**21. Compliance with Law.** SUPPLIER shall comply with any and all Applicable Laws and regulations applicable to performance of the Services, including but not limited to health, safety and security rules and regulations.

**22. Intellectual Property.**

(a) MYONEX Intellectual Property. MYONEX and its licensors shall retain all Intellectual Property Rights in MYONEX Materials and no right or license is granted to SUPPLIER in respect of MYONEX Materials.

(b) SUPPLIER Intellectual Property. SUPPLIER and its licensors shall retain all Intellectual Property Rights in the SUPPLIER Materials and no right or license is granted to MYONEX in respect of the SUPPLIER Materials, except that MYONEX, its Affiliates and MYONEX's customers are granted a perpetual, fully paid worldwide right to use and modify any SUPPLIER Intellectual Property incorporated into any deliverable in order to utilize such deliverables for their intended purposes.

**23. Force Majeure.** If a Party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event ("**Affected Party**"), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than three months, the Party not affected by the Force Majeure Event may terminate the Agreement by giving one month's written notice to the Affected Party.

**24. Headings.** The headings contained in this Agreement are for convenience of reference only and shall not affect or alter the meaning or effect of any provision of this Agreement.

**25. Successors.** This Agreement and all the rights, obligations, duties, representations, warranties and covenants of each Party shall inure to the benefit of, and shall be binding upon, their respective successors (including by operation of law) and permitted assigns.

**26. Governing Law and Jurisdiction.** The terms and provisions of this Agreement shall be construed and interpreted pursuant to the laws of the State of New York, United States, without regard to the conflict of law rules or principles. The courts whose territorial jurisdiction includes New York, United States are the exclusive, agreed-upon forums for the resolution of all disputes arising from or related to this Agreement, and the Parties hereby consent to the jurisdiction and venue of the aforesaid courts for the purpose of resolving all such disputes.

**27. Counterparts.** This Agreement, any Work Order under this Agreement and any amendments may be executed in counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. Each party may execute this

Agreement, any Order and any amendments by facsimile, scanned electronic signature or certified electronic signature which shall be as effective as an original signature.

**28. Conflicts.** If there is any conflict, discrepancy, or inconsistency between the terms of this Agreement and any Order, the terms of this Agreement will control unless the Parties specifically reference in the Order that a particular provision of this Agreement is being superseded, in which case, for such Order only, such provision will be superseded. If there is any conflict, discrepancy, or inconsistency between the terms of this Agreement and the Quality Agreement, if any, the terms of the Quality Agreement will control with respect to technical and quality obligations only. The terms of this Agreement may not be modified or supplemented by any subsequent documents or communications between the Parties except for amendments jointly executed by the Parties.

**29. Entire Agreement.** This Agreement, including the attached Appendices and any executed Quality Agreement and/or Orders, each of which are incorporated, constitute the entire agreement between the Parties with respect to the specific subject matter of this Agreement. There are no other written or oral understandings, promises, agreements, statements, or representations between the Parties directly or indirectly related to this Agreement that are not set forth in this Agreement. This Agreement has not been executed in reliance upon any representations or promises except those contained in this Agreement. This Agreement may be modified only with a written instrument duly executed by each of the Parties.