



PURCHASE ORDER TERMS AND CONDITIONS

1. OVERVIEW: The following terms and conditions ("Terms") shall apply to the purchase of furniture, fixtures, equipment and software ("Products") and related services ("Services") for The "New" Valley Hospital. These Terms provide Seller with the guidelines and legal stipulations of its purchase order ("Order") with Purchaser for the Products and/or Services that are described in the Order and any accompanying written statements of work ("SOWs"), response to RFP ("RFP Response") quotes or proposals for the Products and/or Services provided by the Seller pursuant to the Order where such have been accepted in advance by Purchaser (collectively, "Written Proposals"). Orders include those submitted on a form purchase order by Purchaser and/or through the GHX System. The Order, the Terms, Written Proposals, and the RFP Documents (if applicable) shall be referred to collectively herein as the "Agreement." As used herein, the term "Purchaser" means The Valley Hospital. The term "Seller" means the vendor or supplier selling (or proposing to sell) the Products and/or Services (including without limitation, the entity designated in the "Vendor" box on the face of an Order or, for an Order submitted through the GHX system, the entity designated as "Supplier").

2. OFFER AND ACCEPTANCE:

In the absence of a Request for Proposals ("RFP"), Seller's full or partial performance of the Order will constitute Seller's agreement to be bound by and comply with all of the Agreement's terms, conditions, and requirements, including any other documents referred to in the Agreement.

Seller's submission of a RFP Response, if applicable, will, upon acceptance by Purchaser and issuance of an Order constitute a binding agreement between Seller and Purchaser. Seller acknowledges and agrees that it should not submit a response to the RFP if it does not agree to be bound by and comply with these Terms and the requirements and criteria set forth in the RFP. Should the Seller find discrepancies in, or omissions from, the RFP document, specifications, or these Terms, or be in doubt as to their meaning, it shall at once notify Purchaser, who may issue an addenda to the RFP. All such inquiries must be in writing. All addenda issued by Purchaser during the bidding process shall be incorporated into the final Agreement upon acceptance by Purchaser and issuance of an Order ("RFP Addenda"). The RFP, the RFP Response, and any RFP Addenda (if applicable) shall collectively be referred to as "RFP Documents." In the event of a conflict between the terms of the RFP Documents and/or these Terms, the documents will control in the following order: (1) Terms; (2) RFP, (3) RFP Addenda, and (4) RFP Response. In the event of a conflict between the terms of the Written Proposals and Terms, the documents will control in the following order: (1) Terms; and (2) Written Proposals.

Terms and conditions different from or in addition to those set forth in the Agreement, whether contained in any written confirmation, acknowledgment of the Agreement, or with delivery of any Products or Services under the Agreement, including but not limited to Seller purchase order, delivery or installation forms or otherwise, will not be binding on Purchaser and Purchaser hereby rejects them unless Purchaser has agreed in a writing referencing the Agreement that such additional or different negotiated terms shall control over the Agreement.

3. TIMING; DEFAULT: Time is of the essence for all delivery dates under the Agreement. Seller shall deliver all Products and perform all Services on the dates specified in the Order or (if no date is set out in the Order) the dates agreed by the parties, or promptly if no other date for performance/delivery has been specified. Purchaser reserves the right to refuse shipments delivered before the delivery date at Seller's expense. Except for delays or defaults due to a Force Majeure Event as defined in paragraph 47 herein, Seller is liable for all delays and defaults hereunder. If it is reasonably anticipated that Seller may fail to deliver the Products by the delivery date set forth in the Order, Seller shall promptly notify Purchaser of any anticipated delay and forthwith take all steps necessary to expedite performance so as to prevent such failure. In case of Seller's delayed delivery of the Products, except for delays attributable to a Force Majeure Event, the Seller shall pay to the Purchaser for every 2 weeks of delay a penalty amounting to 10.5% of the total value of the Products whose delivery has been delayed. Any fractional part of a week is to be considered a full week. The total amount of penalty shall not however, exceed 55% of the total value of the Products involved in the late delivery. Purchaser may by written notice of default to Seller (a) terminate all or any part of the Agreement if Seller fails to perform, or so fails to make progress as to endanger performance of the Agreement in accordance with its requirements, including meeting the delivery schedule; and (b) procure, on such terms as it will deem appropriate, goods or services similar to those so terminated. Seller will continue performance of the Agreement to the extent not terminated and will be liable to Purchaser for any excess costs for such similar goods or services that were obtained by Purchaser. As an alternate remedy, and in lieu of termination for default, Purchaser, at its sole discretion, may elect to extend the delivery schedule and/or waive other deficiencies in Seller's performance, in which case an equitable reduction in the Agreement's price will be negotiated. The rights and remedies of Purchaser provided in this section will not be exclusive and are in addition to any other rights and remedies provided by law, at equity or under the Agreement.

4. PRICE: Purchaser is a member of various group purchasing organizations (each a "GPO"). Seller agrees that its prices for Products sold to Purchaser under the Agreement will not exceed any applicable then-current GPO pricing. The Agreement must not be filled at a price higher than the price shown in the Order and must be consistent with any pricing tiers, amounts and other pricing terms and conditions set forth in the applicable GPO agreement. Fee increases are permitted only upon expiration of any initial or renewal term provided by Supplier upon written notification to Purchaser at least ninety (90) days in advance of the expiration of the then current term, and shall be limited to 3% or CPI-U or the amount permitted by the applicable GPO agreement, whichever is less. No extra charges of any kind will be allowed unless specifically agreed to in writing by Purchaser. For the avoidance of doubt, Purchaser shall not pay handling fees, transfer fees, or any other similar fees ("Shipping and Handling Fees") unless Seller receives prior written approval from Purchaser. No Shipping and Handling Fees shall be added to any invoice, and Purchaser shall have no obligation to pay Shipping and Handling Fees charges in any circumstances. If Seller reduces its price for the same or similar goods and/or services in comparable quantities during the term of the Agreement, Seller shall correspondingly so notice Purchaser and reduce the price of goods



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and/or services sold thereafter to Purchaser under the Agreement which shall not require written agreement from Purchaser. Unless expressly otherwise set out in the Order, all prices for Products are inclusive of all costs, including Shipping and Handling Fees. For shipments where freight is not included in the price of the Product: (a) all RFP Responses (or Written Proposals, as applicable) must contain estimated Shipping and Handling Fees on the invoice which cannot exceed the estimate set forth in the RFP Response (or quotation, as application); and (b) if shipping is to take place from separate locations, the Seller shall bear all costs to consolidate the shipment and Purchaser will only be obliged to pay Shipping and Handling Fees from the consolidated location.

5. INVOICES, PAYMENT, AND TAXES: Unless otherwise set forth in the Order or Written Proposal accepted by Purchaser, the following shall apply: (a) For Products that require installation by the Seller, Purchaser will be invoiced as follows: eighty (80%) of the purchase price upon installation and the remaining twenty percent (20%) of the purchase price upon Purchaser's Acceptance of the Products (as set forth in Section 7 of these Terms). (b) For Products that do not require installation by the Seller, and unless otherwise set forth in the Order, Purchaser will be invoiced upon delivery of the Products. (c) Invoices for Services shall be rendered on completion of Services. (d) All invoices shall contain the purchase order number, description of Products or Services, quantities, unit prices, date(s) rendered and total purchase price. Payment shall be due within forty-five (45) days of receipt of an invoice.

All claims for money due or to become due from Purchaser shall be subject to deduction by Purchaser for any setoff or counterclaim arising out of this or any other of Purchaser's or its Affiliates' orders with Seller or any of Seller's Affiliates. As used in the Agreement, the term "Affiliate" shall mean, as to each party to the Agreement, any natural person, partnership, corporation, association, or other legal entity directly or indirectly controlling, controlled by, or under common control with, said Party. Seller recognizes that Purchaser will be treated as a tax-exempt entity and it shall exclude taxes that are excludable under Purchaser's tax-exempt status. Purchaser will provide Seller with its tax exemption certificate upon request.

6. PACKAGING: Seller shall ensure that all Products are properly: (i) packed and secured in such manner as to enable them to reach their destination in good and undamaged condition; (ii) labelled in accordance with all laws, regulations and requirements of all applicable regulatory authorities; and (iii) new and unused and conform to any samples agreed by the parties. A notice of shipment shall be sent to Purchaser at the time the Products are shipped which shall state the purchase order number, description of Products or Services, quantities, unit prices, date(s) rendered and total purchase price, and the carrier and route by which the shipment is being made. All orders must be shipped complete unless otherwise agreed to in writing by Purchaser. Seller shall be responsible for any discrepancies between Products and Services provided and Products and Services ordered. Unless packing slips accompany each delivery, Purchaser's count of Products received shall be conclusive.

7. INSPECTION: All Products are subject to inspection and testing by Purchaser after delivery. Payment for Products and/or Services delivered or performed shall not constitute an acceptance of such Products and/or Services. If Purchaser finds that any of the Products and/or Services purchased under an applicable Order do not conform

to the Order, Purchaser may (in addition to its other rights and remedies) require Seller to replace the non-conforming Products and/or Services with conforming Products and/or Services, at Seller's sole cost. If the Products are to be incorporated into computer hardware or parts of Seller's facility that are not yet operational, Purchaser's inspection and testing of the Products may be made under operating conditions after the Product has been installed and is capable of being tested in a live, non-testing, clinical environment ("Live Clinical Environment"). If upon inspection or testing such Products or any portion thereof are found to be non-conforming, unsatisfactory, defective or of inferior quality or fail to meet any operating or other specifications or any other requirement of the Agreement ("Deficient"), then without prejudice to any other rights or remedies, Purchaser may return the Products or any part thereof to Seller, and all amounts paid by Purchaser to Seller on account of the purchase price of such returned Products, together with any costs incurred by Purchaser in connection with the return of such Products, shall be repaid to Purchaser by Seller. If Purchaser fails to notify Seller that the Products are Deficient within sixty (60) days of delivery of the Products or Purchaser's first use of the Products in a Live Clinical Environment, as applicable, the Products shall be deemed accepted by Purchaser ("Acceptance"). Neither the inspection nor failure to make inspection nor Acceptance of Products or Services shall release Seller from any of the warranties or other provisions of the Agreement nor impair Purchaser's right to reject Deficient Products. Purchaser reserves the right, even after it has paid for and accepted the Products, to make a claim against Seller for Deficient Products, irrespective of Purchaser's failure to notify Seller of a Deficient Products or revocation of Acceptance thereof, or to specify with particularity any Deficient Product after revocation of Acceptance thereof.

8. WARRANTIES: Seller represents and warrants that (a) all Products are free of any claim of any nature by any third person and that Seller will convey clear title to Purchaser; (b) all Services will be performed on a professional basis, consistent with best practices in the industry; in a workmanlike and expeditious manner; free from all defects; are fit for the particular purposes for which they are acquired; and are provided in strict accordance with the specifications or other requirements provided, approved, or adopted by Purchaser including but not limited to any documentation provided by Seller, Seller's published documentation, and any of Purchaser's business requirements that are expressly set out in the Order (collectively, "Specifications"); (c) all Products sold will be of merchantable quality, free from all defects in design, workmanship and materials, and fit for the particular purposes for which they are purchased and the Products and Services are provided in strict accordance with the applicable Specifications; (d) the prices for the Products or Services sold to Purchaser under the Agreement are not less favorable than those currently extended to any other customer for the same or similar goods and/or services in comparable quantities; (e) software shall be free of material defects and shall not include any disablers, time-bombs, including encrypted software keys, Trojan horses or any other virus or other instructions of any kind designed to terminate or disrupt the operation of the software; and (f) where any service levels have been agreed to for any software or the performance of Services (including without limitation any uptime or availability commitments), the software shall conform to these service levels and/or Seller shall perform the Services so that these service levels are achieved; in each case,



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Seller shall provide the Purchaser with reasonable evidence to demonstrate this on request. In the event Seller purchases or procures any third-party products or services for Purchaser in connection with Seller's provision of Products and/or Services under the Agreement, in addition to the foregoing warranties, Seller shall pass-through or assign to Purchaser the rights Seller obtains from the manufacturers and/or vendors of such third-party products or services (including warranty and indemnification rights), all to the extent that such rights are assignable. Seller shall replace or correct, at Purchaser's option and at Seller's cost, defects of any Products not conforming to these warranties. If Seller fails to correct defects in or replace nonconforming Products within five (5) days from the date the Purchaser notifies Seller of the defect or defects, Purchaser may either: (i) make such corrections or replace such Products and charge Seller for all costs incurred by Purchaser; or (ii) revoke its Acceptance of the Products in which event Seller shall be obligated to refund the purchase price and make all necessary arrangements, at Seller's cost, for the return of the Products to Seller. All warranties of Seller herein or that are implied by law shall survive any inspection, delivery, Acceptance, or payment by Purchaser. Any attempt by Seller to limit, disclaim, or restrict these warranties or any remedies of Purchaser will be null, void, and ineffective without Purchaser's written consent. Seller warrants each Product in accordance with the terms set forth herein from the date Purchaser issues the Order until the later of: (a) twelve (12) months after Purchaser's first use of the Products in a Live Clinical Environment; or (b) the time set forth in the manufacturer's warranty.

9. PATENTS, TRADEMARKS, AND COPYRIGHTS: Seller represents and warrants to Purchaser that the manufacture, sale or use of the Products and any Services covered by the Agreement, whether manufactured in accordance with Purchaser's Specifications or otherwise, do not and will not infringe upon any patent, trademark or copyright and Seller shall indemnify Purchaser, as set forth in Paragraph 10 in connection with any Infringement Claims.

10. INDEMNIFICATION: Seller shall indemnify, defend, and hold harmless Purchaser and its parent, Affiliates, and subsidiaries, and their respective officers, trustees, employees, and agents, from and against any and all losses, costs, damages (including but not limited to direct, indirect, special, exemplary, incidental and/or consequential damages), liabilities and expenses (including reasonable attorneys' fees) incurred as a result of any claim arising out of or relating to: (a) Seller's breach of any representations, warranties, and/or other obligations under the Agreement; (b) the acts or omissions of Seller, its employees, agents, subcontractors or consultants; and/or (c) any claim that use or possession of the Products and/or Services infringes any patent, copyright, trademark, trade secret or other intellectual property rights ("Infringement Claims"). In addition, for Infringement Claims, Seller will, at its own expense and at Purchaser's option, either procure for Purchaser the right to continue using the allegedly infringing item, replace it with a non-infringing equivalent, or remove it and refund the purchase price.

11. LIMITATION OF LIABILITY: PURCHASER'S AGGREGATE LIABILITY ARISING FROM OR RELATING TO THE AGREEMENT IS LIMITED TO THE AMOUNT PAID BY PURCHASER FOR THE PRODUCTS AND/OR SERVICES. IN NO EVENT SHALL PURCHASER AND ITS PARENT, AFFILIATES, AND SUBSIDIARIES

AND THEIR RESPECTIVE TRUSTEES, OFFICERS, AGENTS, AND EMPLOYEES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES, INCLUDING LOSS OF PROFIT OR GOODWILL, FOR ANY MATTER ARISING OUT OF OR RELATING TO THE AGREEMENT, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE, EVEN IF PURCHASER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12. COMPLIANCE WITH LAWS: Seller represents and warrants that it shall comply with any and all applicable local, state and federal laws, statutes, rules and regulations in its provision of Products and/or Services under the Agreement.

13. CONFIDENTIAL INFORMATION: Notwithstanding any document marking to the contrary, any knowledge or information that the Seller has disclosed or may later disclose to Purchaser, and which in any way relates to the Products or Services covered by the Agreement will not, unless otherwise specifically agreed to in writing by Purchaser, be deemed to be confidential or proprietary information, and will be acquired by Purchaser, free from any restrictions. In the course of providing Products and/or Services under the Agreement, Seller may acquire or gain access to certain of Purchaser's confidential or proprietary information ("Confidential Information"). Such Confidential Information shall include all information related to Purchaser's business, finances, operations and/or any materials that a reasonable person would recognize from the surrounding facts and circumstances to be proprietary or confidential. Seller shall: (a) hold Purchaser's Confidential Information in trust and confidence; and (b) not disclose any Confidential Information to any third party without the written authorization of Purchaser. Where Purchaser's Confidential Information is furnished to Seller's permitted subcontractors or suppliers in connection with the performance of an Order, Seller shall insert the substance of this provision in its orders and shall ensure compliance with such provision by its permitted subcontractors and/or suppliers. Upon completion of the Agreement, Seller shall return any and all documents and/or other materials that contain Purchaser's Confidential Information. Seller shall notify Purchaser promptly and prior to disclosure if it believes it is compelled by law to disclose Purchaser's Confidential Information, in order to allow Purchaser to seek a protective order or other remedy.

14. INSURANCE: Seller shall maintain, at its sole cost and expense the following minimum coverages which may be increased at Purchaser's reasonable discretion: (a) Workers' Compensation insurance as required under applicable law; (b) commercial general liability insurance with limits of not less than \$2,000,000 per occurrence/\$5,000,000 in the annual aggregate; (c) electronic data liability coverage and cyber insurance coverage with limits of not less than \$1,000,000 per occurrence/\$5,000,000 in the annual aggregate (if Seller will create, receive, maintain, transmit, or store any protected health information, patient records, other personally identifiable information and/or Confidential Information); (d) products liability and errors and omissions liability coverage with limits of not less than \$1,000,000 per occurrence/\$5,000,000 in the annual aggregate; and (e) crime coverage, including employee dishonesty, with limits of not less than \$1,000,000 per occurrence. Seller shall include Purchaser as an additional insured on its commercial general liability insurance.



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Seller shall ensure that its permitted subcontractors comply with the above insurance requirements and each permitted subcontractor shall provide Purchaser with evidence of the above coverages and endorsements prior to delivering any Products hereunder. Each insurance policy shall not be cancelable or materially modified during the term of the Agreement without Purchaser receiving at least thirty days' prior written notice. For any claims related to the Agreement, Seller's insurance coverage shall be primary insurance for Purchaser. Any insurance or self-insurance maintained by Purchaser shall be excess of Seller's insurance and shall not contribute with it. Upon execution of the Agreement and upon request, Seller shall provide Purchaser a certificate of insurance evidencing such coverage.

15. TERM AND TERMINATION: Any term associated with the Agreement shall be the timeframe reflected in the Agreement. Purchaser may terminate all or any part of the Agreement for convenience at any time by written notice to Seller. Upon such termination, Purchaser's liability will be limited to charges that were incurred prior to termination. The Agreement shall terminate automatically if Seller becomes insolvent or the subject of a proceeding relating to bankruptcy or the relief of debtors.

16. BUSINESS ASSOCIATE AGREEMENT: To the extent applicable, each party agrees that it will comply in all material respects with all federal and state mandated laws and regulations applicable to privacy, security and electronic transactions, including without limitation, regulations promulgated under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as it may be amended from time to time. If Purchaser and Seller have entered into a Business Associate Agreement, then, the Business Associate Agreement is incorporated herein by reference and, in the event of a conflict between the terms of the Business Associate Agreement and the Agreement concerning Protected Health Information, the Business Associate Agreement shall control.

17. TRANSPORTATION: Seller will deliver all Products sold to Purchaser hereunder to the destination set forth in the Order, or, if no destination is set out in the Order, then the Products shall be delivered to the Purchaser's premises specified by the Purchaser. Unless otherwise agreed in writing by the parties, the Services shall be performed at (and all deliverables created in the provision of the Services shall be delivered to) the site designated by the Purchaser. Products supplied under the Agreement shall be shipped FOB Destination, with Shipping and Handling Fees, and insurance charges pre-paid by Seller no later than the delivery date indicated in the Agreement. If Products are lost or damaged in shipping or delivery, Seller will file claims for damages with the carrier and promptly replace damaged goods, regardless of the status of such claims. Title and risk of loss shall not pass to Purchaser until the Products are delivered to the location designated in the Order and are signed for by Purchaser's authorized representative. If Purchaser rightfully rejects the goods or revokes its Acceptance, risk of loss and title shall be deemed to have remained with Seller. The responsibility for return shipping costs and insurance will be assumed by Seller.

18. ASSIGNMENT: Seller shall not have the right to assign the Agreement or any of its rights or obligations hereunder without the prior written consent of Purchaser. Any attempted or purported assignment in violation of this provision shall be null and void and of

no effect. The Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, heirs and legal representatives.

19. REMEDIES: Each of the rights and remedies reserved to Purchaser in the Agreement shall be cumulative and additional to any other remedies provided in law or equity. No delay or failure by Purchaser in the exercise of any right or remedy shall affect any such right or remedy and no action taken or omitted by Purchaser shall be deemed to be a waiver of any such right or remedy.

20. USE OF NAME: Seller (including its permitted subcontractors, employees or agents) will not use Purchaser's name, logo, likeness, trademarks, image or other intellectual property without Purchaser's prior written consent.

21. GOVERNING LAW: The Agreement will be interpreted under and governed by the laws of the State of New Jersey without regard to its conflict of law principles.

22. SURVIVAL: Any covenant or provision herein which requires or might require performance after the termination or expiration of the Agreement shall survive the termination or expiration of the Agreement.

23. WAIVER: The failure of Purchaser to insist upon strict adherence to any term, covenant or condition of the Agreement on any occasion shall not be considered a waiver or relinquishment of any right of Purchaser to insist upon strict performance of that term, covenant, or condition, or any other term, covenant or condition, of the Agreement at any time thereafter.

24. MODIFICATION: PURCHASER EXPRESSLY RESERVES THE RIGHT TO UNILATERALLY MODIFY THESE TERMS AT ANYTIME IN ITS SOLE DISCRETION AND WITHOUT NOTICE TO SELLER FOR FUTURE PURCHASES OF PRODUCTS AND SERVICES. ANY SUCH UNILATERAL MODIFICATIONS WILL BE MADE IN GOOD FAITH AND APPLY PROSPECTIVELY. SELLER EXPRESSLY AGREES TO BE BOUND BY SUCH UNILATERAL MODIFICATIONS THAT PURCHASER MAKES PURSUANT TO THIS PROVISION.

25. ONSITE PERSONNEL AND VENDOR CREDENTIALING: Seller's personnel onsite at any of Purchaser's premises shall comply with all of Purchaser's applicable policies. If Seller's personnel may be onsite in patient care areas, Seller shall first perform a health screening; drug screening; and criminal background check for such personnel, in accordance with Purchaser's requirements. Seller acknowledges and agrees that, as a condition precedent to its provision of onsite services to Purchaser, it may be required to register with and pay an annual registration and monitoring fee to Vendormate, Inc., a division of Global Healthcare Exchange, LLC, a vendor credentialing service which screens and monitors vendors for compliance with Purchaser's policies and procedures. To the extent Seller's personnel will be entering a surgical suite, Seller's personnel may be required to wear REPSCRUBS® that can be purchased through Purchaser's SCRUBPORT®.

26. THIRD PARTY BENEFICIARY: The parties agree that they do not intend to create any enforceable rights in any third parties under



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the Agreement and that there are no third-party beneficiaries to the Agreement.

27. NOTICES: Notices required or permitted to be given under the Agreement shall be in writing and shall be sent by certified mail, return receipt requested, by hand delivery or by a nationally recognized overnight delivery service. All notices to Purchaser shall be sent to the Valley Health System, Inc., 15 Essex Road, Suite 410, Paramus, New Jersey 07450, Attention: Purchasing Department and to Seller at its address as set forth in the Order, or at such other address as either party may designate in writing to the other party.

28. SEVERABILITY: If any of the provisions of the Agreement are or become invalid to any extent, the other provisions of the Agreement shall not be affected and shall remain in full force and effect.

29. PARAGRAPH TITLES: The paragraph titles are solely for convenience of reference and shall not affect the meaning or construction of any provision of the Agreement.

30. ENTIRE AGREEMENT: The Agreement (and any documents incorporated by reference in the Agreement) is intended by the parties as a final, complete, and exclusive statement of the terms of their agreement, and supersedes any and all prior agreements, understandings or arrangements, whether oral or written. No course of prior dealings between the parties and no usage of the trade will be relevant to determine the meaning of the Agreement. Purchaser will not be bound to and specifically objects to, any terms, and/or conditions that are different from or in addition to those set forth in the Agreement unless Purchaser specifically agrees to such terms, conditions, or provisions in a writing referencing the Agreement.

31. ACCESS TO BOOKS AND RECORDS: In the event that Section 952 of P.L. 96-499 (42 U.S.C. Section 1395x(v)(1)(I)) is applicable to the Agreement, Seller agrees as follows: (a) until the expiration of four years after the furnishing of such Services pursuant to the Agreement, the Seller shall make available, upon written request by the Secretary of the federal Department of Health and Human Services ("Secretary") or upon request by the Comptroller General of the United States ("Comptroller"), or any of the duly authorized representatives, the Agreement, and books, documents and records of the Seller that are necessary to certify the nature and extent of the cost of Services pursuant to the Agreement; and (b) if the Seller carries out any of the duties of the Agreement through a subcontract, with a value or cost of \$10,000 or more over a twelve month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four years after the furnishing of such Services pursuant to such subcontract the related organization shall make available, upon written request of the Secretary, or upon request of the Comptroller, or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of the cost of Services provided pursuant to such subcontract.

32. SUBCONTRACTORS: Seller shall not subcontract with any other person or entity for or delegate to any other person or entity, any of its responsibilities under the Agreement without the prior written consent of Purchaser, which may be withheld in Purchaser's sole and

reasonable determination. Notwithstanding the foregoing, to the extent Purchaser permits Seller to subcontract, Seller will remain fully responsible for such subcontractor's conduct and performance and Seller shall ensure that subcontractor agrees in writing to adhere to the obligations imposed by the Agreement on Seller. All of Purchaser's rights and remedies under the Agreement, including but not limited to indemnification, shall be fully enforceable against Seller, even if the act or omission relates to a subcontractor.

33. AUTHORITY TO CONTRACT: Seller represents and warrants that it has authority to undertake the obligations stated herein.

34. INDEPENDENT CONTRACTORS: The Agreement is not intended to create nor shall be deemed or construed to have created any relationship between the parties other than that of independent contractors. Neither party shall have any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the other party.

35. DISCRIMINATION: Each party agrees that, in performance of the Agreement, services will be provided without discrimination toward any patient, employee or other person regardless of their race, creed, color, nationality, national origin, ancestry, disability, marital status, sex, gender identity or expression, affectional or sexual orientation, domestic partnership or civil union status, handicap, age, pregnancy status or military status. Both parties shall comply with all federal and state statutes, and all rules and regulations promulgated thereunder concerning discrimination, including, but not limited to, the Civil Rights Act of 1964, 42 U.S.C.A. § 2000, et seq. and the New Jersey Law Against Discrimination, in connection with their respective obligations pursuant to the Agreement.

36. EXCLUSION CHECK: Seller represents and warrants that it has not and is not currently proposed to be, and to its reasonable knowledge, any individual or entity that it employs or contracts with ("Agent") has not been and is not currently proposed to be: (i) debarred, excluded, suspended, or otherwise determined to be ineligible to participate in federal or state health care and procurement programs (collectively "Debarment" or "Debarred", as applicable); (ii) the subject of criminal or civil sanctions, penalties or fines for an offense related to federal or state health care and procurement programs, health insurance or other health care (collectively "Sanction" or "Sanctioned"). Seller shall not knowingly hire any Agent who has been so Debarred or Sanctioned and shall make reasonable inquiry into the status of any Agent who provides services related to the Agreement at minimum by conducting reasonable background checks and reviewing the Health and Human Services-Office of Inspector General List of Excluded Individuals/Entities ("LEIE"), General Services Administration System for Award Management ("GSA-SAM") and any applicable State exclusion list.

In the event that any such Debarment or Sanction arises during the term of the Agreement or Seller becomes aware that the above representations are inaccurate, Seller will promptly notify Purchaser in writing of the details of such Debarment or Sanction, and promptly replace any Debarred or Sanctioned Agent which may be related to the Agreement. Purchaser may terminate the Agreement without penalty in the event that replacement of the Debarred or Sanctioned Agent would not cure the Debarment or Sanction or other ineligibility.



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37. EXCESS PRODUCTS: Seller shall not supply any goods in excess of the quantity ordered by Purchaser ("Excess Products"). If Seller sends Excess Products, Purchaser shall have no obligation with respect to the Excess Products, including without limitation any obligation to pay for such Excess Products. Purchaser may choose to return the Excess Products at Seller's risk and expense or hold the Excess Products at Seller's risk and expense. In addition to all other rights Purchaser has, it may charge Seller all expenses of unpacking, examining, re-packing, and re-shipping such Excess Products if it chooses to return the Excess Products (collectively "Excess Product Costs"). Purchaser specifically reserves the right to set-off such Excess Product Costs against any amounts owed by Purchaser to Seller.

38. DRAWINGS AND SPECIFICATIONS. Unless otherwise agreed to by the parties in writing, all drawings, blueprints, specifications, patterns and tools, whether supplied by Purchaser or prepared or constructed by Seller as required for the completion of the Order, or for repair, replacement or re-performance pursuant to the warranty provisions hereunder, shall be the property of Purchaser.

39. CONFLICT OF INTEREST. Seller represents and undertakes that none of Purchaser's employees, officers or directors are employees, officers or directors of Seller or serve on any boards or committees of or in any advisory capacity with Seller except as disclosed herein.

40. MATERIAL CHANGE. In the event that the performance by either party hereto of any term, covenant, condition or provision of the Agreement should be in conflict with any applicable federal and/or state statute, regulation or ordinance, or for any other reasons performance hereof shall be illegal, or be deemed to be in bad faith or unethical, the parties agree to immediately amend the Agreement to correct the problem. However, if the parties cannot agree on appropriate amendments, then either party may terminate the Agreement upon written notice to the other party.

41. ENVIRONMENTAL IMPACT. The parties agree to cooperate with each other in connection with the identification, adoption and implementation of environmentally friendly initiatives intended to improve environmental related conditions, including, but not limited to, fuel economy, hazardous waste handling, and air quality.

42. SUBSTITUTIONS. Seller may not substitute items for Products ordered without first obtaining Purchaser's prior written approval for the substitution. Purchaser will not be obligated to pay a higher price for substituted items than the price for the Product set forth in the Order.

43. PRODUCT RECALLS. Seller shall promptly notify Purchaser of any Product recalls not more than twenty-four (24) hours after Seller first learns of the recall, and Seller shall use its best efforts to monitor the recall status of all Products. Notices must include instructions and information regarding the Product recalls and the actions to be taken by Purchaser, including the purchase history for the recalled Product, purchase order numbers, the quantity purchased and other information necessary to identify the products in question. All costs associated with actions taken in response to the recall and the replacement of the Products recalled shall be borne by Seller. Seller shall indemnify, defend and hold Purchaser harmless from and against all liabilities,

losses, damages and costs resulting from or in any way connected with a Product recall.

44. REPLACEMENT PRODUCTS. Subject to the terms of the Agreement, if Seller discontinues any Product or has a Product recalled it will provide a substitute of comparable functionality at a price not higher than that of the discontinued or recalled Product. If Seller is unable to provide a substitute for the discontinued or recalled product, in addition to any other remedies available, Purchaser shall have the right to terminate the Order on written notice to Seller.

45. NEW TECHNOLOGY. If, during the Term and prior to Purchaser's Acceptance of the Product, new technology (meaning more than an enhancement or improvement to an existing Product) for a Product becomes available from any source, including Seller, that: (i) offers significant technological advancements; (ii) would significantly improve technical or clinical outcomes; or (iii) would significantly streamline work processes, as compared to existing Products ("New Technology"), then Seller shall so notify the Purchaser and the commitment requirements set forth in these Terms, if any, shall not apply. Purchaser shall have the right to evaluate and contract with another supplier so that Purchaser has access to New Technology at all times. If Seller cannot offer New Technology at comparable prices to Purchaser's sole satisfaction, Purchaser may terminate the Order on written notice to Seller without penalty or off-set and acquire the New Technology from such other suppliers.

46. SECURITY. Seller must comply with this provision to the extent Seller would: (1) access, transmit or store Purchaser's PHI, PII, and/or financial information; (2) access Purchaser's network resources (e.g. log in access to Purchaser's electronic system); (3) provide devices that require a connection to Purchaser's network and/or devices that communicate via Wi-Fi, RFID, Bluetooth, NFC, cellular network, USB, or use other integration/connections to Purchaser's network; (4) physically access any of Purchaser's sensitive areas or equipment, such as: data center, network closets, workstations, printers, files, and other electronic information systems; and/or (5) provide a product or system that integrates with another Purchaser system containing PHI, PII, and/or financial information. In such cases, Seller shall maintain and implement a data security program and practices for its operations that complies with the standard practices in the industry. Seller must also comply with Purchaser's reasonable information security policies, such as issuance of user credentials and password requirements, to the extent applicable to such access, integration or devices. Seller shall promptly complete a security questionnaire provided by Purchaser prior to the provision of Products or Services pursuant to the Agreement and thereafter upon request by Purchaser. Failure to complete the security questionnaire in a timely manner and/or any material misstatements or misrepresentations therein by Seller shall constitute a material breach of the Agreement.

47. FORCE MAJEURE. Either party shall be excused from any delay or failure to perform under the Agreement if such delay or failure is due to: fire, casualties or accidents, acts of God, civil disorder, local, national or global epidemics or quarantine restrictions; unforeseeable governmental restrictions or controls; or other governmental acts or restrictions, or any other extraordinary causes beyond their reasonable control (each a "Force Majeure Event"). If a party asserts a Force Majeure Event, then it bears the burden of proving: (1) proximate



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cause, (2) that it took reasonable steps to minimize any delay or damages caused by foreseeable events, (3) that the event(s) that caused any delay or damages was not brought about by the party's own negligence or malfeasance, (4) that the party substantially fulfilled all non-excused obligations, and (5) that the party promptly notified the other party of the likelihood or actual Force Majeure Event which is claimed as grounds for a defense under this provision. The parties will cooperate with each other in good faith during a Force Majeure Event and upon cessation of the Force Majeure Event, the affected party will promptly notify the other party and all affected obligations and responsibilities under the Agreement will promptly resume.

IN WITNESS HEREOF, THE SELLER HAS CAUSED ITS DULY AUTHORIZED REPRESENTATIVE TO EXECUTE THESE PURCHASE ORDER TERMS AND CONDITIONS

Name of Vendor: _____

By: _____

Print Name: _____

Title: _____

Date: _____