

These Master Terms and Conditions ("Agreement") are entered into by and between University of Wisconsin Hospitals and Clinics Authority ("UW Health"), a public body corporate and politic created under Wis. Stat. Ch. 233, whose main office is located at 600 Highland Ave, Madison, WI 53792, and [SUPPLIER NAME]. ("Vendor"), whose main office is located at [SUPPLIER ADDRESS]. Vendor and UW Health may sometimes be collectively referred to in this Agreement as the "Parties," or each individually, as a "Party." This Agreement is made and entered into as of the date last executed below ("Effective Date").

1. GOODS AND/OR SERVICES PROVIDED. UW Health will authorize the purchase of goods and/or services from Vendor by the execution of one or more Purchase Orders ("PO") describing the goods to be purchased, and/or Statements of Work ("SOW") describing the services to be provided. Such PO and/or SOW will be governed by the terms of this Agreement. UW Health has not guaranteed any purchasing volume in connection with this Agreement. An Affiliate [as defined in section 10(f)] may execute a PO or SOW pursuant to this Agreement and such Affiliate and Vendor will each have all of the same rights, obligations, and duties with respect to goods and services provided to an Affiliate as they do with respect to goods provided to UW Health. By acceptance of such PO or SOW, Vendor acknowledges and agrees that neither UW Health nor the Affiliate shall have any liability or responsibility for each other's or any other party's responsibilities, obligations, actions, or omissions.

2. DELIVERY; PAYMENT. Each PO or SOW will set forth the sole and exclusive compensation owing by UW Health for the corresponding goods or services. Prices for goods will be F.O.B. Destination, as designated by UW Health, and will include all packing, shipping and insurance charges. Time, quantity, and delivery to the delivery location are of the essence under this Agreement. If UW Health determines, in its sole discretion, that goods delivered under this Agreement are non-conforming, UW Health may reject non-conforming goods for a full refund, or require prompt correction or replacement of such goods. Vendor will be liable for all excess costs when alternate procurement is necessary due to Vendor's failure to adhere to the delivery schedule or to promptly replace rejected goods. Payment term options include: (1) credit card with payment upon invoice approval; (2) net forty-five (45) days via ACH; (3) Net sixty (60) days via paper check. Payment will occur after receipt of correctly submitted invoices for all undisputed amounts. All invoices will include the PO number, and any other detail and backup documentation as UW Health may reasonably request. UW Health may withhold amounts disputed in good faith without incurring interest charges, late fees or penalties, pending resolution of such dispute. UW Health will have the right to set-off any amounts owed by it or any Affiliate to Vendor against any charges or damages owing by Vendor to it or any Affiliate. Any travel by Vendor in connection with this Agreement will be subject to the UW Health Travel Policy 1.32, provided to Vendor upon request. UW Health is exempt from payment of all federal tax and Wisconsin state and local sales and use taxes on its purchases. UW Health will provide its tax-exempt certificate to Vendor upon request.

3. VENDOR PERSONNEL; SUBCONTRACTORS. (a) Vendor states and affirms to UW Health that it is an independent contractor and therefore, neither it nor its personnel are employees of UW Health. Vendor will remain fully responsible for its employees, agents, and subcontractors, including the negligent acts, errors or omissions in the delivery of goods or services under this Agreement and for ensuring they adhere to all the terms and conditions of this Agreement.

(b) Vendor will comply with all policies, procedures, and onboarding requirements employed by UW Health at the site where Vendor's personnel are engaged in the provision of services, delivery of goods, or other activities. This may include, but is not limited to, a caregiver background check, health screening and immunizations, drug screening and/or applicable training/orientation requirements, and registration with the UW Health Vendor Liaison Office. All personnel provided by Vendor to perform services under this Agreement must be acceptable to UW Health. At any time UW Health is not satisfied with the services provided by any of Vendor's personnel, Vendor will promptly provide appropriate substitute personnel. Vendor will not have any subcontractors perform services under any SOW without the prior written permission of UW Health. Vendor acknowledges that the Joint Commission Human Resources standards H.R.01.01.01 and H.R.01.06.01 require demonstration of licensure and other qualifications and competency of personnel providing services in a hospital. For all personnel providing services in one of UW Health's clinical locations, Vendor will verify the education, experience, competence, licensure, certification or registration of such personnel are appropriate and consistent with applicable legal and regulatory requirements and UW Health policies. UW Health personnel are not permitted to accept gifts from Vendors.

4. CONFIDENTIALITY. (a) Each Party agrees that the materials, information, and know-how, in any format, which the other Party or its Affiliates ("Disclosing Party") provides to such Party or its affiliates ("Receiving Party") or to which Receiving Party gains access in the course of performing its responsibilities hereunder (collectively, "Confidential Information"), are, as between the Parties, the property of the Disclosing Party.

(b) Receiving Party will hold Confidential Information in strict confidence using the same degree of care as it uses to avoid unauthorized use, disclosure, or dissemination of its own confidential information of a similar nature. The confidentiality obligations set forth in this Section will not apply to information and materials: (i) that are or subsequently become publicly available without Receiving Party's breach of any duties it owes to Disclosing Party; or (ii) was known to Receiving Party without restriction prior to Disclosing Party's disclosure; or (iii) became known to Receiving Party without restriction from a source other than Disclosing Party, other than by the breach of an obligation of confidentiality owed to Disclosing Party; or (iv) is independently developed by Receiving Party. In addition, the Receiving Party may disclose Confidential Information as required to comply with law, and with lawful requests or binding orders of regulators or other governmental entities that have jurisdiction over it. The Parties acknowledge that they may have obligations under applicable confidentiality laws, including, without limitation, Wis. Stat. §§ 146.37-146.38. The Parties further acknowledge that UW Health is subject to the Wisconsin Public Records Law set forth at Wis. Stat. §§ 19.31–19.39 ("Public Records Law"), and agree that compliance with such Public Records Law shall not be considered a violation of this Agreement.

(c) Vendor or its individual employees or agents may be permitted to have access to some individually identifiable information of UW Health patients, meaning any information that identifies a patient, including demographic, financial, or medical, that is created by a health care provider or health plan that relates to the past present or future condition, treatment, or payment of the individual ("Protected Health Information" or "PHI"). UW Health is required, as a health care provider under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) regulations, to identify business partners who may have access to PHI, and execute a Business Associate Agreement ("BAA") with those business partners. The BAA is intended to protect and maintain UW Health's patients' rights and maintain confidential and secure any PHI. Nothing in this Agreement shall be construed to permit Vendor to have access to, retain or use any PHI of UW Health unless a UW Health-approved BAA is in effect between Vendor and UW Health or UW Health has determined in writing that no BAA is required, in which case access, retention and use shall be limited to the scope of such BAA or written determination.

(d) Upon the request of UW Health at any point during the term of this Agreement, but in any event upon termination of this Agreement, Vendor will surrender to UW Health within five business days (or such other time frame which the Parties agree to in writing) at no charge, all Confidential Information (and PHI, if applicable). Notwithstanding the foregoing, each Party may retain Confidential Information of the other Party to the extent necessary to comply with applicable laws and regulations or Receiving Party's retention policy, provided that the confidentiality of such information will be maintained until such Confidential Information is destroyed.

5. INTELLECTUAL PROPERTY. Each Party's proprietary information and materials existing prior to the execution of this Agreement that are the property of that Party ("Pre-Existing Materials") will remain exclusively owned by that Party. To the extent that a Party uses its own Pre-Existing Materials in performing services under this Agreement, such Pre-Existing Materials will not become the property of the other Party. All materials or other property generated or developed by or on behalf of Vendor pursuant to this Agreement ("Deliverables") will be considered works made for hire and will, upon creation, be the property of UW Health. Written copies of copyright clearances or other evidence of intellectual property rights may be required by UW Health. To the extent that any Pre-Existing Materials are embedded in, or otherwise required to use the Deliverables, or to realize the full benefit of services provided under this Agreement, Vendor hereby grants UW Health a perpetual, nonexclusive, royalty-free license to use such Pre-Existing Materials and any derivative works thereof.

6. WARRANTIES. Vendor hereby represents and warrants that it has full right and authority to perform its obligations and grant the rights and licenses granted under this Agreement. Vendor warrants that it will exert best efforts in performing all services hereunder and that the personnel it assigns or provides to UW Health have the qualifications and competence consistent with their assigned responsibilities. Services will be performed in a professional and workmanlike manner. Vendor warrants to UW Health that all goods and/or Deliverables provided 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 UW Health; (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 UW Health. 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 UW Health's discovery of the noncompliance with the foregoing warranties.

7. INDEMNIFICATION. Vendor agrees to defend, indemnify, and hold harmless UW Health (and its Affiliates, as applicable) and its and their respective directors, officers, employees, agents, and representatives (collectively, "Indemnified Parties") from and against all claims, causes of action, demands and litigation (including governmental agencies) against any Indemnified Party ("Claim"), and all judgments, settlements, losses, damages, liabilities, fines, penalties and other expenses (including, without limitation, reasonable attorneys' fees and court costs) in connection therewith, to the extent arising from or related to: (a) Vendor's breach of this Agreement; (b) Vendor's negligence or willful misconduct; (c) personal injury, death, or property damage caused by goods or services purchased hereunder; (d) claims by employees, agents, subcontractors or other personnel of Vendor, including for compensation or benefits; (e) Vendor's alleged violation of applicable laws, rules or regulations; and/or (f) Vendor's alleged infringement or misappropriation of any third party intellectual property or other rights by any means, through any goods furnished by Vendor under this Agreement. If either Party receives notice or becomes aware of any Claim which might form the basis for indemnification under this section, such Party will provide prompt written notice of such Claim to the other Party. UW Health will have the right to participate in its defense in any such suits or proceedings, through counsel of its own choosing. Vendor may not settle or compromise a Claim which it has assumed under this section without UW Health's prior written consent.

8. INSURANCE. Vendor will obtain and maintain during the term of this Agreement, at its expense, the following liability coverage: (a) Workers' compensation insurance, as required by Wisconsin statute, for all employees engaged in the work under this Agreement in Wisconsin. Workers' compensation for all other employees engaged in work under this Agreement elsewhere as required by applicable law; (b) General liability and property damage insurance against any claim(s) which might occur in carrying out this Agreement. Minimum coverage must be \$1,000,000 per occurrence and \$3,000,000 aggregate; (c) when vehicles are used to fulfill this Agreement, minimum coverage for bodily injury and property damage shall be \$1,000,000 per occurrence. UW Health must be named as an additional insured; (d) if the services involve providing health care or other professional services, professional liability insurance (or self-insurance approved by the Wisconsin Patient Compensation Fund) with a minimum coverage of \$1,000,000 per occurrence and \$3,000,000 aggregate per qualified health care provider and other professional providing services. The required insurance coverage and policy limits set forth in the certificate of insurance will not be construed as a limitation or waiver of any potential liability or satisfaction of any indemnification/hold harmless obligation of Vendor.

Vendor will provide an insurance certificate indicating coverage, counter-signed by an insurer licensed to do business in Wisconsin and with at least an A- rating, covering the services provided and goods purchased or installed during the period of this Agreement. If the coverage is provided by a claims-made policy, Vendor shall purchase coverage for claims that are made up to three years after termination after this Agreement. Any applicable workers' compensation will include a waiver of subrogation against UW Health, and Vendor's Commercial General Liability policy will name UW Health as an additional insured. Vendor will be solely responsible for any deductible or self-insured retention. The insurance certificate is required to be presented to UW Health prior to providing services or goods under this Agreement.

9. TERM AND TERMINATION. This Agreement will commence on the Effective Date and continue for a term of three years ("Initial Term"). UW Health may choose to renew this Agreement for subsequent 1-year terms (each a "Renewal Term," and along with the Initial Term, the "Term") by providing Vendor written notice of renewal not less than 30 days prior to the expiration of the then-current term. Either Party may terminate this Agreement by providing written notice of termination to the other Party, which will take effect 60 days following the date of such notice. Either party may terminate this Agreement due to the other Party's material breach of its responsibilities hereunder, provided that the Party receiving such notice will have 30 days following receipt of such notice in which to cure the failure to perform, and, if such cure is effected, the Agreement will continue.

10. MISCELLANEOUS.

- a. **Compliance with Law.** Vendor will perform its obligations hereunder in compliance with all applicable laws, rules, and regulations, and in such a manner so as to not cause UW Health to be in violation of applicable laws, rules or regulations.
- b. **Publicity and Corporate Identity.** UW Health does not endorse any product or service. Any public announcement, news release or other disclosure of purchases under this Agreement or of the relationship between Vendor and UW Health must be approved in writing by UW Health Public Affairs. Neither party may use the names or logos used of the other party without that party's prior written consent.
- c. **Notices.** All notices, authorizations, consents, or other communications hereunder (except day-to-day communications) will be made in writing and will be emailed or sent by trackable courier service to the address set forth in the introductory paragraph of this Agreement (if to UW Health via email: dlegal@uwhealth.org, or via mail with "Attention: Legal Department").
- d. **Governing Law; Venue.** The construction, interpretation and enforcement of this Agreement will be governed by the substantive law of the United States of America and the State of Wisconsin, without regard to its conflict of law provisions. For matters subject to litigation hereunder, the Parties consent and submit exclusively to the jurisdiction and service of process of either the courts of Dane County in the state of Wisconsin or the United States District Court for the Western District of Wisconsin, and those courts competent to hear appeals from those courts.
- e. **Assignment.** Vendor may not sell, assign, or transfer any rights or interests created under this Agreement, or delegate any of its duties, without the prior written consent of UW Health. Any such assignment or delegation without the written consent of UW Health will be void.
- f. **Affiliates.** For purposes of this Agreement, "Affiliate" will include UW Health and all entities directly or indirectly controlled by, controlling, or under common ownership or control with, managed by, under an affiliation contract (such as a joint operating agreement, joint venture, or partnership) with UW Health or any other Affiliate. UW Health may enforce all rights of any Affiliate against Vendor under this Agreement.
- g. **Non-Discrimination and Affirmative Action.** In accordance with Wis. Stat. §16.765, the following language is required in all UW Health contracts: In connection with the performance of work under this Agreement, each party agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in Wis. Stat. §51.01(5), sexual orientation, or national origin. This will include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. Except with respect to sexual orientation, each party agrees to take affirmative action to ensure equal employment opportunities. The vendor agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause. **In addition, in accordance with 41 CFR 60, the following language is required in all UW Health contracts: this contractor and subcontractor shall abide by the requirements of 41 CFR 60–1.4(a), 60–300.5(a) and 60–741.5(a). 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. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.**
- h. **Vendor Records Retention; Audit Rights.** Vendor agrees to maintain such records as may be necessary to reflect the accuracy of Vendor's Services, charges and invoices under this Agreement. Vendor will maintain said records for a period of not less than seven (7) years following the last payment made by UW Health. UW Health will have, whether directly or through third party auditors, reasonable access to such records, and to the locations from which Vendor and its authorized subcontractors perform Services under this Agreement. As required by 42 C.F.R. Part 420, the following language is required in all UW Health Contracts: If this Agreement is for acquisition of services with a cost or value of \$10,000 or more within any 12-month period, including contracts for both goods and services in which the services component is worth \$10,000 or more within any 12 month period, Vendor shall in accord with 42 C.F.R., Part 420, and 42 U.S.C. 1395x(v)(1)(I), permit the comptroller general of the United States, the United States Department of Health and Human Services, and their duly authorized representatives, access to Vendor's books, documents and records until the expiration date of four (4) years after the services are furnished under the Agreement. Vendor shall include this provision in any of its subcontracts under this Agreement.

- i. **No Exclusion.** Vendor represents and warrants to UW Health that Vendor is (a) not excluded from participation in any federal health care program, as defined under 42 USC sec. 1320a-7b (f), or any form of state Medicaid program; (b) not excluded from contracting with any federal agency; and (c) has not been convicted of a criminal offense related to (i) the neglect or abuse of a patient or (ii) health care fraud. Vendor further warrants that it is not aware of any Vendor employee or other person providing services on behalf of Vendor under this Agreement that is so excluded or convicted. Vendor agrees to notify UW Health of any such criminal conviction or any such exclusion within seven (7) days of Vendor's discovery of the same. UW Health shall have the right to immediately terminate this Agreement upon notification that Vendor has been excluded or convicted or that any Vendor employee (or other person providing services on behalf of Vendor under this Agreement) has been so excluded or convicted.
- j. **Force Majeure.** Neither party will be liable for any failure of or delay in the performance of this Agreement due to causes beyond its reasonable control, including but not limited to acts of God, war, embargoes, government orders or any other force majeure event, however, after thirty (30) days of nonperformance due to a force majeure event, the other party may terminate this Agreement without penalty.
- k. **Amendment and Waiver.** No provision of this Agreement may be amended, modified or waived except in a written instrument signed by a duly authorized representative of each of Vendor and UW Health.
- l. **Construction.** The terms of this Agreement have been fully reviewed and negotiated by the Parties and express their mutual intent. Any presumption that the language is to be construed against any Party will not apply.
- m. **Severability.** Should any part, term or provision of this Agreement be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof will remain in full force and effect and will in no way be invalidated, impaired or affected thereby.
- n. **Survivability.** Any right or obligation of the Parties under this Agreement that, by its nature, should survive termination or expiration of this Agreement will survive termination of this Agreement for the time period therein and in the event no such time period is stated therein, then indefinitely.
- o. **Counterparts.** This Agreement may be executed in counterparts and/or by the exchange of original, facsimile or electronic signature pages, which taken together will constitute one single agreement between the Parties.
- p. **Entire Agreement.** This Agreement is intended by the Parties to be the final expression of their agreement, and it constitutes the full and entire understanding between the Parties with respect to the subject matter. Any conflicting or additional terms on any PO or SOW will be void and of no force or effect. The Parties agree that if they have an existing agreement that is intended to govern the same goods and/or services as this Agreement as of the Effective Date of this Agreement (the "Predecessor Agreement"): (i) the Predecessor Agreement is superseded by this Agreement as of the Effective Date; and (ii) they will place all future POs and/or SOWs under this Agreement, and not under the Predecessor Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed and delivered by their duly authorized agents, all as of the date this Agreement is last executed below.

**UNIVERSITY OF WISCONSIN
HOSPITALS AND CLINICS AUTHORITY**

[SUPPLIER NAME]

By:

By:

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____