

BEAUMONT HEALTH STANDARD TERMS AND CONDITIONS

These Standard Terms and Conditions (“Standard Terms”) shall be incorporated into each Purchase Order between Beaumont Health, a Michigan non-profit corporation with its corporate offices at 26901 Beaumont Blvd., Southfield, MI 48033 (“Beaumont”), and the vendor/ supplier identified in the purchase order (“Vendor”), and shall be effective upon the effective date of the Purchase Order (“Effective Date”). To the extent a conflict exists between the Purchase Order and these Standard Terms, these Standard Terms shall control. For the purposes of interpretation herein, the Purchase Order with these incorporated Standard Terms shall be referred to collectively herein as the “Agreement”. Vendor and Beaumont are each a “Party” and are together the “Parties”.

1. Hospitals; Orders.

- 1.2 Beaumont is the single member and parent corporation of William Beaumont Hospital, Oakwood Healthcare, Inc., and Botsford General Hospital (each a “Hospital” and collectively the “Hospitals”). The Parties hereto acknowledge and agree that (i) the Hospitals are express, intended beneficiaries of this Agreement, (ii) each of the Hospitals shall be and constitute an intended third party beneficiary of the representations, warranties, covenants and agreements of Vendor contained herein, and (iii) each of the Hospitals shall be entitled to enforce the terms and provisions of this Agreement to the same extent as Beaumont. Vendor acknowledges that Beaumont and each Hospital are separate legal entities. Beaumont agrees to remain responsible for the actions of the Hospitals, however none of the liabilities of any Hospital shall be treated as a joint liability of any other Hospital. Nothing contained herein shall be considered a guarantee of purchase by any Hospital or that this Agreement is to be an exclusive arrangement.
- 1.3 TERMS AND CONDITIONS IN AN ATTEMPTED ACKNOWLEDGMENT OF A PURCHASE ORDER OR IN ANY OTHER DOCUMENT (INCLUDING INVOICES OR ACCEPTANCES OF A PURCHASE ORDER) INCONSISTENT WITH OR IN ADDITION TO THESE TERMS AND CONDITIONS ARE NOT BINDING UPON BEAUMONT UNLESS SPECIFICALLY ACCEPTED BY BUYER IN WRITING, AND BEAUMONT HEREBY OBJECTS THERETO. No course of performance or dealing by the parties shall be construed to waive, modify or otherwise adversely affect Beaumont’s rights.
- 1.4 Providing a purchase order number does not constitute an offer or contract for sale, but only a statement of present intent to issue a Purchase Order. Issuance of a Purchase Order does not constitute an obligation or evidence of an obligation of Beaumont to continue to purchase Products (or any other goods) from Vendor after expiration of a Purchase Order, although Vendor may have an obligation of continued supply as provided in a Purchase Order. Vendor acknowledges Beaumont has no such obligation unless contained in a binding written agreement signed by Beaumont.
- 1.5 Issuance of a Purchase Order for specific Products is not a commitment to issue a purchase order for other products.

1.6 The version of these Terms and Conditions in effect and published by Beaumont as of the date of a Purchase Order or any renewal shall be the applicable Terms and Conditions to such Purchase Order.

1.7 From time to time, Beaumont may issue forecasts of its anticipated requirements of Products. The Parties acknowledge that any forecast is an estimate only and is subject to change at any time.

2 **Term, Renewal and Termination.**

2.1 Initial Term and Renewals. The “Term” of this Agreement shall begin on the Effective Date and continue until such period as set forth in the Purchase Order.

2.2 Termination. This Agreement may be terminated as follows:

- (a) Beaumont may terminate this Agreement without cause and without penalty upon sixty (60) days advance written notice.
- (b) Either Party may terminate this Agreement for cause upon thirty (30) days written notice to the other Party because the other failed or refused to perform any of its duties and responsibilities under this Agreement, unless the failure can be completely corrected and is corrected within thirty (30) days after such notice is given (if so corrected the notice will then be null and void).
- (c) Either Party may terminate this Agreement for cause immediately upon written notice by one Party to the other in the event of the insolvency of, or an assignment for the benefit of creditors by, the other Party.
- (d) Either Party may terminate this Agreement for cause immediately upon written notice to the other Party if the other Party, its directors, officers, or owners are terminated or debarred from the Medicare or Medicaid payment programs, or are charged with any crime involving a governmental payment program.

2.3 Continuing Obligations after Termination. The Parties acknowledge that this Agreement imposes some duties upon them which may continue after termination of the Agreement. The Parties shall each, after termination (regardless of manner), fulfill those continuing duties which apply to them. If this Agreement is terminated prior to the end of the initial or any renewal term, Vendor shall be compensated only for services and/or products provided through the effective date of termination. In the event any fees hereunder are prepaid, then such fees shall be prorated through the date of termination and returned to Beaumont within thirty (30) days of termination. Further, if either of the Parties breaches this Agreement, the other party's termination of the Agreement for that reason shall not limit its rights to obtain damages or enforcement of those obligations which continue after termination.

3 Compensation and Payment. The price for Products shall be as set forth in the Purchase Order. Beaumont shall pay all non-disputed invoiced amounts within forty-five (45) days of receipt of invoice. All Vendor invoices must include reference to a valid Beaumont Purchase Order number. If Beaumont

disputes the accuracy of any invoice, or any partial invoice, it shall pay the non-disputed amount and, within thirty (30) days of the receipt of the invoice, deliver a written notice and detailed explanation of such dispute to Vendor. Expenses such as travel, labor, and parts costs (if agreed to be paid by Beaumont) must be invoiced with full descriptions thereof and/or receipts provided. Vendor's travel time shall not be compensable, and any travel expenses must comply with the Beaumont Health Consultant Travel Policy, as it may be modified from time to time.

4 **Compliance with Law and Policies.** Each Party is responsible for compliance with all applicable laws, rules, regulations, or ordinances which may relate to its respective activities and responsibilities under this Agreement.

4.1 **Vendor Registration.** Registration is required of all vendors when such vendors are engaged in business or clinical activities with Beaumont, or when visiting the facility(ies) and campus(es) of Beaumont and/or any Hospital. Vendor agrees to comply with Beaumont's vendor registration requirements and to require all of its representatives and employees representing Vendor or associated service providers to abide by Beaumont's clinical and business policies and guidelines to ensure safe and secure environment. Registration shall be completed through Beaumont's third-party management system, Vendormate.

4.2 **Conflict of Interest.** Vendor agrees to provide full and prompt written disclosure to Beaumont of any situations which may involve a conflict of interest between Vendor and any employee, physician, department, member of the medical staff, representative, or agent of Beaumont, and shall disclose any gifts to Beaumont representatives of greater than minimal value which are intended to influence such representatives to purchase Vendor's products and/or services. Beaumont has the right to require Vendor to pay fines, penalties, and damages that may arise out of, or may be imposed because of, Vendor's breach or failure to comply with provisions of this Agreement or applicable law.

4.3 **Exclusion from Governmental Programs.** Vendor warrants that neither it nor any of its directors, officers, or owners, and to the best of its knowledge, its employees and agents providing services hereunder, have been: (i) convicted of a criminal offense related to healthcare, debarred, suspended, or declared ineligible, (ii) excluded from participating with Medicare, Medicaid or any other plan or program that provides health benefits, whether directly through insurance or otherwise, which is funded directly, in whole or in part, by the United States Government or any state health care program, or (iii) or been the subject of any civil or criminal proceeding in which any governmental entity alleged fraud or similar wrongdoing by Vendor. This shall be an ongoing representation and warranty during the term of this Agreement, and Vendor shall immediately notify Beaumont of any change in the status of these representations. Beaumont may terminate this Agreement immediately upon the occurrence or notification of any of the above.

4.4 **Government Access to Books and Records.** If the Agreement has a value or cost of \$10,000 or more over a twelve-month period, the Parties agree to make this Agreement, as well as any books, documents, or records that are necessary to certify the nature and extent of the Agreement costs available upon request of the Secretary of the U.S. Department of Health and Human Services, the Comptroller General of the United States, or their duly authorized representatives, for up to four (4) years following the furnishing of goods or services under this Agreement, pursuant to Section 1861(v) (1) (I) of the Social Security Act. Further, in the event that Vendor utilizes any subcontractor in the performance of this Agreement, the subcontract for which has a value or cost of \$10,000 or more over a twelve-month period (the "Subcontract"), such Subcontract shall contain a clause to the effect that, for

a period of four (4) years after the furnishing of good or services thereunder, the subcontractor shall make available, upon written request by the Secretary, the Comptroller General, or any of their duly authorized representatives, the Subcontract and any books, documents, and records that are necessary to verify the nature and extent of the Subcontract costs. Vendor agrees to indemnify Beaumont in the event that any amount of reimbursement is denied or disallowed because of the failure of Vendor to comply with this obligation. Such indemnity shall include the amount of reimbursement denied, plus any interest, penalties and legal costs. If the law or regulations are effectively amended to increase or decrease the annual amount necessary to require this clause, the amount set forth herein shall be amended accordingly.

4.5 Security and Privacy Rules. As applicable, Vendor agrees to comply with all applicable current and future regulations of the Health Insurance Portability and Accountability Act of 1996 as codified at 42 USC§1320(d) (“HIPAA”) as it may be amended from time to time, including revisions per the Health Information Technology for Economic and Clinical Health (“HITECH”) Act, as specified in the Business Associate Addendum which shall be attached hereto and incorporated by reference into this Agreement. Vendor is not a Business Associate, as that term is defined by the Health Insurance Portability and Accountability Act of 1996 as codified at 42 USC§1320(d) (“HIPAA”) HIPAA, however, in the event that Vendor shall come into contact with PHI pursuant to its obligations hereunder it shall (i) promptly notify Beaumont of the situation, (ii) comply with all applicable current and future regulations of HIPAA, as it may be amended from time to time, including revisions per the Health Information Technology for Economic and Clinical Health (“HITECH”) Act, and as necessary (iii) enter into a mutually acceptable Business Associate Addendum.

4.6 Non-Discrimination. **Vendor and any subcontractors providing services hereunder 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.**

4.7 Discounts. The Parties represent and warrant that it is the intention of each to ensure that the actions, duties, and obligations under, pursuant to, and in connection with this Agreement, are, shall be, and shall remain in compliance with all applicable laws and regulations, including without limitation, and that any discounts provided under this Agreement (“Discounts”) are intended to comply with 42 U.S.C. § 1320a-7b(b) (the “Anti-Kickback Statute”). To the extent required to satisfy 42 C.F.R. § 1001.952(h) (the “Anti-Kickback Statute Discount Safe Harbor”) or other applicable laws and regulations, Beaumont will fully and accurately reflect in cost reports or other submissions to federal health care programs any Discounts provided under this Agreement and, upon request by the Secretary of the U.S. Department of Health and Human Services or a state agency, will make available information provided to them by Vendor concerning the discounts. Accordingly, Vendor shall disclose, in writing, with such frequency and in such forms, as reasonably requested from time to time by Beaumont, the aggregate and specific dollar value of any Discount. Vendor shall take all actions required to satisfy those elements of the Anti-Kickback Statute Discount Safe Harbor applicable to a seller. Vendor shall refrain from doing anything that would impede Beaumont’s ability to meet its legal obligations, including those under applicable safe harbor regulations.

4.8 Warranty Against Physician Ownership. Vendor warrants and represents that it is publicly traded and/or that none of its owners, or the immediate family members of its owner(s), are physicians. Further, neither Vendor nor any of its owners, or the immediate family members of its

owner(s), shall during the term of this Agreement make any referrals to Beaumont, or any affiliates thereof, for designated health services as defined by 42 USC 1395nn.

4.9 Statutory and Regulatory Compliance. The Parties to this Agreement each certify and warrant that the performance of this Agreement is intended to comply with, and that this Agreement does not violate: (i) the federal anti-kickback statute (42 U.S.C. 1320a-7(b)) and related “safe harbor” regulations; and (ii) the federal “Stark Law” (42 U.S.C. 1395nn) and related regulations, as each may be amended from time to time. Further, the Parties agree that this Agreement must at all times comply with any applicable anti-kickback “safe harbor” regulations and/or the exception regulations of Stark Law. Accordingly, the Parties agree that it is not a purpose of this Agreement to generate referrals for services or supplies for which payment may be made in whole or in part under any federal healthcare program. The amounts to be paid pursuant to this Agreement have been set without reference to the volume or value of any referrals or other business that may occur between the Parties and represent the fair market value of the services to be furnished by Vendor negotiated through good-faith and arm’s length bargaining. Nothing in this Agreement shall be construed to require a Party to refer patients or other business to any of the Parties or to any other person or entity. If at any time this Agreement fails to so comply with the provisions, exceptions and/or safe harbors of the fraud and abuse laws, either Party may terminate this Agreement immediately provided, however, that the Parties shall have five (5) days from the date either Party discovers that it has unintentionally violated this provision to conform the Agreement with applicable exceptions and/or safe harbors.

Each Party to this Agreement certifies by the signature(s) below that such Party shall not violate the Anti-Kickback Statute and Stark Law with respect to the performance of the Agreement.]

4.11 Audits. Beaumont may audit all books, records and operations of Vendor, related to its Vendor’s performance of its obligations hereunder. Vendor agrees to, and shall require any subcontractor performing under this Agreement, to reasonably cooperate with any such audit, including provision of all relevant books, records, electronically stored information and other information. Vendor shall make such records available during normal working hours and upon reasonable advance notice for inspection, audit and evaluation by representatives of Beaumont or its designated agents. Vendor shall furnish copies of any records requested by Beaumont to which Beaumont is permitted access hereunder. If, in the course of the inspections, the representatives of Beaumont should note any errors in billing or accounting, any deficiencies in the performance of the services of Vendor, or any other mutually agreed upon performance deficiencies, the alleged deficiencies must be reported promptly to Vendor, in writing. Vendor agrees to promptly remedy and correct any reported deficiencies within thirty (30) days of notification by Beaumont.

4.12 Cooperation with Beaumont and Regulatory Organizations. Vendor shall reasonably cooperate with and assist Beaumont, its accrediting organizations, and any state or federal agency charged with the duty of identifying, investigating, sanctioning or prosecuting suspected fraud and abuse, or any other oversight of the Services in its/their review of any matter relating to Vendor’s Services under this Agreement. Vendor agrees to provide originals of all records and information reasonably requested by such authorities and shall allow access to its premises, books and records to review such records. All copies of such records shall be provided by Vendor free of charge.

4.13 Pending Litigation Warranty. Vendor represents, covenants and warrants that there is no action, suit, claim, investigation or proceeding pending, or to the best of Vendor’s knowledge, threatened against, by or affecting Vendor that, if adversely decided, might adversely affect (a) Vendor’s ability to

enter into this Agreement; (b) Vendor's performance of its obligations herein; and/or (c) Beaumont's use of Vendor's products or services hereunder.

4.14 Taxes. Beaumont and the Hospitals are tax-exempt entities under Sections 501(a) and 501(c)(3) of the Internal Revenue Code of the United States, as amended and under Michigan state law. A copy of the tax exemption certificate for Beaumont will be provided to Vendor upon reasonable request. Vendor shall take all action required to cause Beaumont's purchases hereunder to be treated as tax-exempt transactions, and in no event shall Beaumont be responsible for any sales, use, property, gross receipts, or similar taxes levied against any part.

4.15 Changes in Law. If any law is enacted or becomes effective, any regulation is promulgated or becomes effective, any court or administrative agency decision is rendered, any administrative agency interpretation is issued, or similar action is taken that, in the opinion of legal counsel to Beaumont, is likely to cause any of the Agreement's provisions to be in violation of law or compromise Beaumont's or a Hospital's tax-exempt status, then the Parties will use their best efforts, proceed with dispatch and without unnecessary delay, to reform this Agreement or negotiate a new agreement(s) so as to achieve, as nearly as possible, the original goals the Parties reflected in this Agreement. If such reformation is not possible and/or if the Parties cannot reach a new Agreement after a period of not less than six (6) months, the Parties agree that this Agreement may be terminated without penalty.

5 Independent Contractors. In performance of the services and obligations to be rendered pursuant to the Agreement, it is mutually understood and agreed that each person providing services on behalf of Vendor, will be, and is at all times is acting and performing as, an independent contractor, and nothing in this Agreement will create or imply an agency, joint venture, or partnership between/among the Parties. Neither Vendor, nor any person providing services on behalf of Vendor, is authorized to make any contract, agreement, warranty or representation, or otherwise obligate Beaumont in any manner whatsoever.

6 Confidentiality. The Parties agree to maintain and keep confidential, and shall cause their respective affiliates (including the Hospitals), officers, directors, trustees, employees, agents, consultants and representatives to keep confidential, this Agreement, any and all information, including, but not limited to, pricing, data, formulas, trade secrets, techniques, inventions (whether or not patentable), and Protected Health Information ("PHI"), derived from its relationship with the other (collectively "Confidential Information") in connection with this Agreement. With the exception of PHI, which must remain confidential at all times, the receiving Party shall have no obligation concerning any portion of the Confidential Information which: (a) was known to the receiving Party, under no obligation of confidentiality, before receipt from the disclosing Party; (b) is lawfully obtained by the receiving Party from other than the disclosing Party under no obligation of confidentiality; (c) is or becomes publicly available other than as a result of an act or failure to act by the receiving Party; or (d) is required to be disclosed by the receiving Party by applicable law or legal process; provided, however, that a receiving Party must give the disclosing Party reasonable advance notice of any legally required disclosure so that the disclosing Party has an opportunity to challenge any request or order to disclose Confidential Information.

6.1 Each Party agrees to: (i) maintain the Confidential Information in trust and confidence; (ii) use at least the same degree of care in maintaining the secrecy of the Confidential Information as the receiving Party uses in maintaining the secrecy of its own proprietary, secret, or confidential information, but in no event with less than a reasonable degree of care; (iii) use Confidential Information only to

complete its duties and obligations under this Agreement; (iv) refrain from using or disclosing such Confidential Information unless it does so with prior written consent from the disclosing Party, except that a Party may disclose Confidential Information to its representatives and professional advisors, and (v) return or destroy all documents, copies, notes or other materials containing any Confidential Information, upon termination or expiration of the Agreement or upon the written request of the disclosing Party, subject to the Business Associate Addendum, if applicable.

6.2 The Parties agree that any breach of the confidentiality obligations of this Agreement may result in irreparable damage to the disclosing Party for which it may have no adequate remedy at law. Therefore, it is agreed that the disclosing Party may be entitled to equitable relief, including an injunction enjoining any such breach by any court of competent jurisdiction, and the receiving Party agrees to pay reasonable attorneys' fees and other costs incurred by the disclosing Party in successfully securing such injunction. Such injunction shall be without prejudice to any other right or remedy to which the disclosing Party may be entitled, including, but not limited to, any damages resulting from a Party's breach of the confidentiality obligations under this Agreement.

6.3 Competitively Sensitive Information. Notwithstanding anything to the contrary in this Agreement, the Parties hereby agree that they shall not exchange, disclose, or share any Competitively Sensitive information with each other, including but not limited to, managed care contracts, reimbursements or wage, salary, or benefits information ("Competitively Sensitive Information"). In the event the disclosing Party inadvertently discloses Competitively Sensitive Information to the receiving Party, the receiving Party shall: (i) promptly notify the disclosing Party in writing; (ii) not use or disclose the Competitively Sensitive Information in any manner inconsistent with this Agreement; and (iii) promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Competitively Sensitive Information, or destroy all such copies and certify in writing to the disclosing Party that such Competitively Sensitive Information has been destroyed.

7 **Warranty.** Vendor represents and warrants that: (i) it shall perform all obligations under the Agreement in a professional, timely manner, consistent with industry standards, and shall fully comply with Beaumont's stated requirements; (ii) any goods, products, items, equipment, and/or materials it supplies under this Agreement shall be free from defects in workmanship and material at the time of delivery and conform to the manufacturer's published specifications and Vendor's representations, warranties and covenants regarding the functions and uses for which the products have been marketed to, and relied upon by Beaumont; (iii) its goods, products, items, equipment, and/or materials shall be merchantable and fit for their particular, intended purpose; (iv) its goods, products, items, equipment, materials, and/or services shall comply with all applicable federal, state and local laws rules and regulations, and (v) none of Vendor's goods, products, items, equipment, materials, and/or services shall violate any intellectual property or other right of any third party. Vendor shall reimburse Beaumont for all costs and expenses associated with any breach of this warranty, including, by example, any corrective action, withdrawal, or recall requested by Vendor or by any governmental entity. If Vendor is a re-seller of products provided hereunder ("Third-Party Products"), Vendor shall pass through to Beaumont, to the extent permissible pursuant to Vendor's agreements with the manufacturer of the Third-Party Products, any warranties granted by the manufacturer and applicable to the Third-Party Products.

8 **Indemnification.** Vendor will indemnify, defend and hold harmless Beaumont, its subsidiaries, agents, directors, officers, trustees, medical staff, employees, and volunteers (collectively referred to as "Indemnitees") from and against any and all claims, fines, costs, suits, damages, losses, and expenses, including, but not limited to, reasonable attorneys' fees, which may be alleged, claimed, or recovered against Indemnitees that may arise in connection with (i) a breach by Vendor of any provision of this

Agreement, including, but not limited to, any impermissible use or disclosure of PHI, (ii) any violation of or noncompliance with any federal or state law, rule, regulation, statute or ordinance by Vendor or by Vendor's subcontractors, agents, directors, officers, trustees, employees, and volunteers, (iii) any harm, illness, or injury to any person caused in whole or in part by Indemnitees' use of any of Vendor's products, equipment, supplies, items, or materials and/or services, and/or (iv) any negligent act or omission, or willful misconduct, by Vendor including, without limitation, Vendor's subcontractors, agents, directors, officers, trustees, employees, and volunteers. This indemnification shall be in addition to the warranty obligations of Vendor. Regardless of anything in this Agreement regarding limitations on liability, nothing herein shall be construed to limit any claim for indemnification for third party damages, claims, or other losses.

9 **Intellectual Property Indemnification.** Vendor hereby agrees to indemnify, defend, and hold harmless the Indemnitees from and against any and all claims, fines, costs, suits, damages, losses, and expenses, including, but not limited to, reasonable attorneys' fees, which may be alleged, claimed, or recovered against Indemnitees that may arise out of or in connection with any claim that any Indemnitees' use of any products, equipment, supplies, items, or materials and/or services provided hereunder infringes on any patent, copyright, trade secret or other proprietary or contractual right of any third party (an "Infringing Product"). Beaumont agrees that if an Infringing Product, or the use or operation thereof, becomes, or in the opinion of either Party's legal counsel is likely to become, the subject of such a claim, Vendor may at its expense either procure the right for Hospitals and Beaumont to continue using the Infringing Product, or replace or modify the Infringing Product so that it becomes non-infringing (provided such replacement or modification maintains the same material functionality and does not adversely affect Hospitals' or Beaumont's use thereof as contemplated hereunder).

10 **Cooperation.** A Party shall promptly notify the other of any knowledge regarding any occurrence that may result in a claim against either of them with respect to the services or products provided pursuant to the Agreement. In the event a claim is asserted or lawsuit filed, each Party shall give notice to the other Party of said claim or lawsuit and, to the extent a conflict of interest is not created thereby, the Parties agree to cooperate with regard to any investigation and defense of any claim or lawsuit. No settlement of such claim or lawsuit shall be made without the other Party's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Further, Vendor agrees to reasonably cooperate with Beaumont in any review or investigation made of Beaumont, or of a Hospital, by a state or federal entity which may involve the products and/or services covered by the Agreement.

11 **Costs.** If a Party files a lawsuit or other claim regarding the interpretation, enforceability, or breach of this Agreement, or any other claim related to the services or products to be provided under this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees, court costs, and all reasonable expenses incurred by such Party with respect to such dispute, breach, or default, even if not taxable as court costs, in addition to any other relief to which such Party may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, the fees and expenses of expert witnesses and other consultants, and all other charges billed by the attorney to the prevailing Party.

12 **Insurance.** Vendor shall maintain, during the Term of this Agreement, insurance coverage as necessary to comply with industry standards, but which at a minimum shall include commercial general liability ("CGL") of \$1,000,000 per claim and workers' compensation as required by statute, to cover any claims which may arise as a result of the obligations of a Party hereunder. Beaumont and its subsidiaries and affiliates shall be named as additional insured on the Vendor's CGL coverage

13 **Intellectual Property.**

13.1 Trademarks/Service Marks/Publicity. Neither Party may use the other Party's (or with respect to Vendor, any Hospital's), trademarks, service marks or designs registered to the other Party (or as applicable, any Hospital), nor identify the other Party (or as applicable, any Hospital) in any publicity, promotional, or advertising material concerning the existence or terms of this Agreement without the prior written consent of the other Party.

13.2 Works For Hire. Any work products, materials, or software developed or created by Vendor relating to this Agreement and which are to be provided to Beaumont as part of the Services ("Deliverables"), which are protectable under the laws of copyright, including written or electronic documents, illustrations, drawings, notes, models and computer software, are to be considered "works for hire" for Beaumont and are the sole property of Beaumont. If the work products, materials, or software do not fall under the definition of work for hire under the Copyright Act, Vendor agrees to execute, upon request, all forms and documents relating to the assignment of sole ownership of all copyright interest to Beaumont and obtaining and enforcing copyright protection for such works for the United States of America and other countries, even after the term of this Agreement has ended. Notwithstanding the foregoing, all Intellectual Property made, developed, conceived, first reduced to practice, fixed in any tangible medium of expression, or created independently by Vendor, without any contribution from Beaumont of any kind, either prior to this Agreement or during the Term of this Agreement, will be the sole and exclusive property, including the entire right, title and interest of Vendor.

14 **Force Majeure.** Beaumont shall not be liable for failure to perform any duty or obligation under this Agreement, where such failure has been occasioned by any acts of God, civil or military authority, acts of terror, war, fires, pandemic, epidemic, explosions, earthquakes, floods, failure of transportation, strikes or other work interruptions by Beaumont's employees, or any other causes beyond the reasonable control of Beaumont.

15 **Notices.** Any notice or other communication required or which may be given under this Agreement must be in writing, be sent to a Party's address(es) as designated in the Agreement, and be: (i) delivered in person to the recipient; (ii) mailed by certified, return receipt requested, first class mail, postage prepaid; (iii) delivered by facsimile transmission to the recipients designated in this Agreement; or (iv) delivered by prepaid delivery service such that proof of delivery will be obtained. Notices required hereunder or other legal communications sent to Beaumont shall be copied to the Beaumont Health Office of General Counsel, Beaumont Service Center, Suite 6D, 26901 Beaumont Blvd., Southfield, MI 48033. A notice shall be deemed to have been given on the date it is received by the Party to whom it is directed. A Party may change its notice address(es) by delivering notice of the change to the other Party as provided herein.

16 **Assignment and Subcontracting.** Vendor may not assign or transfer this Agreement or any of its obligations hereunder to a third party without the written consent of Beaumont. Any attempted assignment without such consent shall be void. This Agreement shall binding upon, and inures to the benefit of, the Parties and all permitted successors and assigns. No portion of Vendor's performance of this Agreement may be delegated, subcontracted, or "outsourced" to an individual or business entity not subject to the laws of the United States. Notwithstanding anything to the contrary, Vendor is and will remain responsible for its subcontractors' compliance with this Agreement.

17 **Governing Law.** The laws of the State of Michigan govern this Agreement, and venue shall be in the state courts located in Oakland County, Michigan or, if applicable, the federal courts located in the Eastern District of Michigan.

18 **Waiver.** The failure of a Party to strictly enforce any provision of this Agreement will not be construed as a waiver thereof or as excusing the defaulting Party from future performance. Any waiver of any of the covenants, conditions, or provisions of this Agreement must be in writing and signed by a duly authorized representative of the Party against whom enforcement of such waiver is sought. One or more waivers of any covenants, conditions, or provisions of this Agreement shall not be construed as a waiver of a subsequent breach or of any other covenant, condition or provision.

19 **Invalidity or Unenforceability.** If any term, covenant, condition, or provision hereof is illegal, or the application thereof to any person or in any circumstance shall, to any extent, be invalid or unenforceable, as finally adjudicated by a court of competent jurisdiction, the remainder of this Agreement, or the application of such term, covenant, condition, or provision to persons or in circumstances other than those with respect to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition, and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

20 **Survival.** Any provision of this Agreement that, by its language, contemplates performance or observation subsequent to any termination or expiration of this Agreement shall survive such termination or expiration and shall continue in full force and effect.

21 **Authority and Validity.** Vendor represents and warrants that: (i) the execution, delivery and performance of the Purchase Order has been duly authorized by all necessary corporate action on the part of Vendor; (ii) this Agreement constitutes the legal, valid, binding obligations of Vendor and is enforceable against Vendor in accordance with its respective terms; and (iii) Vendor has the full power to perform its obligations under this Agreement.

22 **No Exclusivity.** This Agreement is nonexclusive. The Parties hereby acknowledge and agree that nothing in this Agreement shall prohibit Vendor from continuing to provide products and/or services similar to those provided hereunder to other entities, or prohibit Beaumont, the Hospitals, or their affiliates, from obtaining products and/or services similar to those hereunder from third-party providers.

23 **Entire Agreement, Counterparts, and Amendment.** This Agreement and any exhibits, addenda, and schedules properly incorporated from time to time are the complete agreement and shall supersede any and all prior and contemporaneous understandings and agreements either oral or in writing between Vendor and Beaumont and/or any Hospital regarding the subject matter hereof. This Agreement shall supersede and control all other quotations, purchase orders, statements of work, and/or representations (whether written or oral) between the Parties, or between Vendor and any Hospital. Any documentation (including, as applicable, Vendor terms and conditions) that conflicts with, or attempts to modify, this Agreement in any way shall be rejected and of no effect unless specifically agreed to in writing between the Parties. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures to the Agreement transmitted by facsimile transmission, or by electronic mail in “portable document format” (“.pdf”), will have the same effect as physical delivery of the paper document bearing the original signature. Any amendment or modification to this Agreement must be in writing and signed by the Parties. Each Party acknowledges that this Agreement has been the subject of active and complete negotiations, and that this Agreement should not be construed in favor of or against any Party by reason

of the extent to which any Party or its professional advisers participated in the preparation of this Agreement.

24 **Vendor's Staff Responsibilities.**

24.1 **Staff Qualifications.** Vendor warrants and represents that Vendor and its employees and subcontractors performing under the Agreement: (i) is/are and shall remain fully qualified to perform the services under this Agreement, and, if a license for such services is required, Vendor shall ensure its employees and subcontractors, as applicable, hold and will continue to hold such appropriate license(s) and will remain in good standing, without limitation or restriction, and with the appropriate credentialing or licensing authorities and (ii) will perform the services in a competent and professional fashion, consistent with accepted standards of practice, all applicable governmental laws, rules and regulations, and the applicable legal standard of care. Vendor shall be solely liable to third parties for the acts or omissions of its employees, agents, and subcontractors.

24.2 **Staff Benefits.** Vendor shall be solely responsible for any and all financial obligations, including any other obligation required by law or contract, for its employees, agents, and subcontractors. Accordingly, Vendor shall indemnify, defend, and hold Beaumont, its subsidiaries and affiliates harmless for any liability, fines, penalties or expenses arising from Vendor failing to remit or withhold taxes in a full and timely manner.

24.3 **Access to Beaumont Facilities.** While on Beaumont's and/or a Hospital's premises, Vendor and its officers, agents, employees, and subcontractors shall conform in all respects with physical, fire, health and safety, and/or other security regulations communicated to Vendor. As necessary, Vendor shall, or shall cause its staff and/or subcontractors requiring access to Beaumont's computer systems to execute the Beaumont Health Confidentiality & Computer Systems Usage Agreement. Such individuals performing services on site may also, as Beaumont determines to be necessary, be required to participate in Beaumont compliance and HIPAA training, and to cooperate with Beaumont representatives in other requirements necessary to permit such individuals to act as members of Beaumont's "workforce".

25 **Use of Beaumont Property and/or Facilities.** Any property of Beaumont or any Hospital furnished to Vendor shall be used only for the performance of Vendor's obligations under this Agreement, and during said performance shall be deemed under the control of Vendor. Vendor shall be responsible for any loss or damage to property of Beaumont or any Hospital which results from willful misconduct, illegal acts or omissions, or negligence on the part of Vendor, its officers, agents, employees, and subcontractors, or which results from the failure on the part of Vendor to maintain, use, and administer that property according to sound management practices to ensure that the property will be returned to Beaumont or a Hospital in like condition to that in which it was furnished to Vendor. Upon the happening of loss, or destruction of, or damage to, any Beaumont or Hospital property, Vendor shall notify Beaumont thereof and shall take all reasonable steps to protect the property from further damage. Vendor shall surrender to Beaumont or a Hospital all property belonging to Beaumont or a Hospital upon termination or expiration of this Agreement.

26 **Transition Assistance Services.** Upon receipt or issuance of a notice of termination under this Agreement, and upon Beaumont's reasonable request, Vendor shall provide for no longer than ninety (90) days from the date of effective termination, transition assistance services to Beaumont or its designee to allow the services to continue without material interruption or adverse effect to Beaumont

(the “Transition Assistance Services”). If Beaumont appoints a third party to assume the services, Vendor will provide reasonable assistance to that third party, provided that Vendor is not obligated to provide trade secrets or other proprietary information to any third party.

27 **Informal Dispute Resolution.** If any dispute relating to this Agreement arises between Beaumont and Vendor, a Party may send written notice to the other Party within thirty (30) days of discovering the dispute, outlining the nature and extent of the problem. Said statement will contain all written documentation and supporting documents germane to the dispute. Representatives of the Parties will then arrange to meet to discuss the dispute. If the meeting does not occur within thirty (30) days of the receipt of the initial notice, or if the meeting between the Parties does not sufficiently resolve the dispute, a Party may request a meeting between the executive officers of Beaumont and Vendor. These officers shall have thirty (30) days after the receipt of this second notice and request to resolve the dispute, after which time, or if no resolution of the dispute is reached within sixty (60) days of receipt of the initial notice, a Party may pursue its remedies at law. The Parties may extend these time periods by mutual written assent in furtherance of obtaining a mutually acceptable resolution, and in order to permit the Parties’ officers to meet to obtain such resolution. If a resolution of the dispute is obtained through any means described herein, the Parties shall reduce such resolution to writing and/or amend the Agreement to include the resolution. Regardless, before a Party may commence any litigation against the other Party, a separate thirty (30) days written notice of the dispute and intent to file a lawsuit shall be provided to the other Party.

27.1 Products Purchases. Vendor shall sell and make available to Beaumont the products and/or equipment (collectively “Products”) set forth in the Purchase Order. There shall be no minimum purchase requirements applicable to Beaumont.

27.2 Shipping. Vendor shall ship all products FOB Destination, with Vendor being responsible for all freight and insurance charges. Vendor will bear the risk of loss or damage to the products in transit to Beaumont’s Consolidated Service Center (“CSC”), located at 41965 Ecorse Road Van Buren Township, MI 48111, or to such location indicated by Beaumont on any applicable purchase order. Beaumont may cancel an order for any products at any time before Vendor’s shipment of the products, at no cost to Beaumont. Beaumont may make changes in the scope or quantity of the products covered by any order, provided such products have not been shipped. Vendor shall provide Beaumont all documentation and materials necessary for operation of the applicable products. Upon request, Vendor will provide to all personnel identified by Beaumont in-service training for products at no additional charge.

27.3 Inspection and Acceptance. All products will be received by Beaumont subject to its/their right of inspection and rejection. Beaumont shall be allowed a reasonable period of time, which shall in no case be less than fifteen (15) days from receipt, to inspect and test the products and to notify Vendor of its/their rejection of any product(s) based on any of the following: (i) any nonconformance with the terms and conditions of any order or with this Agreement, (ii) shipping damage, and/or (iii) failure of the product(s) to comply with law or to meet the quality or safety rules or procedures of Beaumont. Upon rejection of the product(s) by Beaumont, Vendor shall pay all costs of shipping and Beaumont shall receive, at their discretion, a full credit of purchase price, including, but not limited to the cost of the product and all shipping costs, or the replacement of the product(s) with no additional cost of shipping.

27.4 Notices and Recalls. Vendor shall immediately provide Beaumont, and each Hospital, with a copy of all communications from Vendor and/or the FDA advising of a recall, request for a recall, market withdrawal, safety alert, or a non-routine issue of product availability (e.g., significant backorders

of products). Vendor shall reimburse Beaumont for any costs actually incurred in complying with any recall instructions and processes provided by Vendor. In addition, Vendor shall, at no additional cost to Beaumont, replace any such products which are the subject of a recall with Vendor products which have been approved by Beaumont as being clinically equivalent to the recalled products.

27.5 **Product Modifications.** In the event Products are required to be modified to comply with any regulatory or safety standards imposed or implemented for such Product, Vendor shall, for Products previously purchased by Beaumont hereunder, at no cost to Beaumont, provide hardware modifications necessary for the Products to meet all such regulatory requirements or shall exchange the Products for new Products that comply with the new requirements. and which have been approved by Beaumont as being clinically equivalent to the recalled Products.

27.6 **Delivery Failure.** Vendor's failure to deliver products on time may cause Beaumont and/or Hospitals significant hardship. If Vendor does not meet the delivery timeframe mutually agreed upon by the Parties in a Purchase Order ("Delivery Failure"), Beaumont may cancel the order without penalty or further liability to Vendor, and shall have the right to purchase the Product, or a similar competitive Product, from a third party, or send out tests to an alternate testing facility (e.g., centralized lab, reference lab), and Vendor shall reimburse Beaumont, as applicable, the difference between the cost of such product under this Agreement and the actual delivered cost of the products or similar competitive products, purchased from a third party or the actual cost of sent out tests ("Cost of Cover").

27.7 **Supply Guarantee.** Vendor shall produce, deliver and sell to Beaumont the Products in such quantities as Beaumont may require from time to time and undertake reasonable efforts to ensure delivery of such Products as and when required by Beaumont. Vendor shall notify Beaumont immediately upon becoming aware of any event or occurrence that may reasonably be expected to impact Vendor's ability to fulfill Beaumont's orders for Products (each such event or occurrence is referred to herein as an "Emergency Condition"). In the event of an Emergency Condition, Vendor shall undertake commercially reasonable efforts to sequester such quantities of Products as are necessary to meet Beaumont's anticipated inventory needs as determined by Vendor in its reasonable discretion based upon Beaumont's historical product activity data and shall give priority to orders for Products placed by Beaumont for so long as the Emergency Condition persists. Notwithstanding any other provision of this Agreement to the contrary, in the event Vendor is unable to fulfill an order for Products as and when required by Beaumont (such inability hereinafter referred to as a "Shortage"), Vendor shall be liable to Beaumont in the amount of the difference between the price of the Products and the amount actually paid by Beaumont for the same or a suitable replacement. Such liability shall be in addition to, and not in lieu of, any other liability Vendor may have to Beaumont at law or in equity.

28 **Software.** To the extent that the product or services provided hereunder includes software ("Software"), Vendor hereby grants to Beaumont and the Hospitals a nonexclusive license and the right during the Term to use the Software. Vendor warrants and represents that it has obtained the rights from those third parties necessary to vest in or grant to Beaumont and Hospitals the various license rights necessary under this Agreement.

28.1 Malicious Code. Vendor represents and warrants that Software: (a) shall not contain (and Beaumont will not receive from any transmission by Vendor via modem or any other medium) any time bomb, virus, worm, trap door, back door, timer, clock, counter or other limiting routine, dongle key, hidden file, instruction, design, key, node lock, time out or other function, whether implemented by electronic, mechanical or other means, that restricts or

may restrict use or access to any products, or that would erase data or programming or otherwise cause the products, or Beaumont's software, systems or products to become inoperable or incapable of being used in the full manner for which it was designed and created (collectively "Malicious Code"); (b) shall not replicate, transmit or activate itself without control of a person operating computing products on which it resides; and (c) shall not alter, damage, or erase any data or computer programs without control of a person operating the computing products/equipment on which it resides. If any Software contains Malicious Code, Vendor shall inform Beaumont of the full extent and nature of the Malicious Code and provide Beaumont with instructions for overriding such Malicious Code in emergencies. Notwithstanding anything elsewhere in this Agreement to the contrary and to the extent any Software contains Malicious Code, Vendor shall be in default of this Agreement and no cure period shall apply.

28.2 **Third Party Materials.** In the event there are any additional terms and conditions that may apply to Beaumont's or a Hospital's use of third party software materials ("Third Party Materials"), that is included in the Software, such additional terms and conditions, if applicable, shall be presented in writing in advance to Beaumont.

28.3 **Restrictions of Use.** Beaumont shall not, and shall cause the Hospitals to not, edit, alter, abridge or otherwise change in any manner the content of the Software, including, without limitation, all copyright and proprietary rights notices. Beaumont may not, and may not permit others to:

- a) Reverse engineer, decompile, decode, decrypt, disassemble, or in any way derive source code from, the Software or its related applications;
- b) Modify, translate, adapt, alter, or create derivative works from the Software;
- c) Access the Software in order to build a competitive product or Software or to benchmark with a product or Software not provided, or recommended, by Vendor;
- d) Use or access the Software in any manner that violates any third party rights or that could damage, disable, overburden, impair, or otherwise interfere with or disrupt the Software;
- e) Copy (other than one (1) permitted back-up copy), distribute, publicly display, transmit, sell, rent, lease or otherwise exploit the Software in a manner that is not expressly permitted herein; or
- f) Distribute, sublicense, rent, lease, loan or grant any third party access to or use of the Software (except, as provided herein, by Beaumont to its Hospitals, subsidiaries and affiliates).

29 **Data Hosting.**

29.1 **Data Security, Recovery, and Hosting.** Vendor will maintain and enforce safety and physical security procedures, including regularly scheduled back-up of Beaumont data that are at least equal to industry standards and that provide reasonably appropriate technical and organizational

safeguards against accidental or unlawful destruction, loss, alteration or unauthorized disclosures or access of Beaumont information. Beaumont shall have the right to require special back-up for their data and to keep back-up data and data files in its possession. Vendor shall take all reasonable measures to secure and defend the data against unauthorized access. Vendor shall report to Beaumont in a prompt and timely fashion any breaches of security or unauthorized access to Beaumont data and will comply with applicable laws, including but not limited to, state and federal laws on data breach notification. Vendor shall maintain throughout the Term of this Agreement, disaster recovery capabilities that permit recovery of Beaumont data from a disaster and continue to provide services to within a commercially reasonable time period. Vendor represents that the servers that maintain Beaumont's and/or Hospital's data are owned and managed by Vendor and will remain in the jurisdiction of the United States of America. In the event that Vendor arranges for subcontracting of the host services or transfer Beaumont data outside of the U.S.A., Vendor must provide Beaumont thirty (30) days prior written notice of same. Upon such written notice, Beaumont shall have the right to immediately terminate this Agreement without penalty, and the annual fee shall be prorated through the effective date of termination and returned to Beaumont.

29.2 Data Breach. In the event of an unauthorized use or disclosure by Vendor, its employees, agents or subcontractors of personally identifiable information ("PII") or PHI (collectively "Personal Information"), Vendor shall take the following action with respect to such unauthorized use or disclosure: (a) promptly communicate the nature of the unauthorized use or disclosure to those persons and/or entities whose Personal Information was or likely was involved in an unauthorized use or disclosure ("Affected Individuals") via written correspondence approved by Beaumont's legal counsel; (b) if the unauthorized use or disclosure of Personal Information could lead to identity theft or related financial risk to the individual subject(s) of such Personal Information, purchase identity theft monitoring services from a major credit reporting service for each Affected Individual offered such service by Beaumont, provided such Affected Individual agrees in writing to waive all claims against Beaumont for such disclosure for a period of time mutually agreed to by Beaumont and Vendor, but not less than three (3) years; (c) comply with any and all laws, regulations, governmental orders or other governmental requirements applicable to such unauthorized use or disclosure of Personal Information; and (d) take all action commercially reasonable to mitigate any damages of Beaumont relating to the unauthorized use or disclosure of Personal Information.

30 **PCI Standards Compliance.** In the event that as a result of the services provided under the Agreement, Vendor may be classified as a "Merchant", and Beaumont may be classified as a "Service Provider", as those terms are defined by the Payment Card Industry Security Standards Council ("PCI-SSC"), the Parties shall enter into a mutually acceptable PCI Services Addendum hereto, in order to ensure that both Parties comply with various standards published by the PCI-SSC, including, but not limited to, the then current PCI-SSC Data Security Standard Requirements for Security Assessment Procedures ("PCI-DSS").

31 **Joint Commission Requirements.** Because both the Joint Commission and the Medicare Conditions of Participation require that Beaumont's governing body be responsible for all services furnished at its Hospitals, and their respective facilities where services are provided to patients, whether or not provided through contracts or joint ventures, and because Vendor provides services pursuant to this Agreement that are subject to review by the Joint Commission, Vendor shall furnish services pursuant to this Agreement in such a way as to comply with all applicable Conditions of Participation and/or Joint Commission standards. Accordingly, the Parties to this Agreement shall develop mutually agreeable standards, procedures, and metrics for monitoring of Vendor's performance hereunder, which shall be attached hereto for reference and incorporated into the Agreement as if otherwise restated herein.

32 **Severability**. If any term of the Agreement is invalid or unenforceable under any statute, regulation, ordinance, or any other rule of law, such term shall be reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of the Agreement shall remain in full force and effect.