



PURCHASE ORDER TERMS AND CONDITIONS

THIS PURCHASE ORDER (P.O.)/AGREEMENT, effective as of the date noted on the face of the P.O., is by and between Cumberland County Hospital System, Inc. d/b/a Cape Fear Valley Health System (“CFVHS”) and Vendor/ Seller/Contractor (“Vendor”). This P.O. and any exhibits, schedules, attachments, or supplements hereto, which are incorporated herein by reference, are collectively referred to as the “Agreement.”

1. **ACCEPTANCE OF P.O./AGREEMENT.** All orders of Products must be initiated by written purchase orders submitted by CFVHS to Vendor, and all Product orders placed with Vendor by CFVHS will be governed solely and exclusively by this P.O./Agreement. For purposes of this Agreement, “Product(s)” shall mean goods and/or services purchased from Vendor, whether directly or indirectly, by or for CFVHS, as may be further described in any documents attached hereto. **Acceptance of this P.O./Agreement is limited to the terms and conditions contained herein, and any attachments or supplements hereto, and no terms or conditions set forth at any time by Vendor shall form any part of this Agreement.** These terms and conditions may not be modified unless specifically agreed to in writing by CFVHS. In the event of any conflict or inconsistency between this P.O. and any attachment, this P.O. shall prevail. Vendor’s commencement of delivery of any of the goods or performance of any of the services contemplated hereunder constitutes Vendor’s acceptance of this P.O./Agreement.

2. **TERM.** The term of this Agreement, if any, shall be for the timeframe noted on the face of the P.O.

3. **TERMINATION.** CFVHS may terminate this Agreement, without cause and without penalty, upon 30 days’ written notice. In the event of early termination, Vendor shall refund CFVHS a pro-rated portion of the fees paid for goods not received and/or services not rendered.

4. **PAYMENT.** For satisfactory goods and/or services delivered by Vendor, CFVHS agrees to pay Vendor within 30 days after the date upon which CFVHS receives an accurate and compliant invoice from Vendor. A compliant invoice must reference the applicable P.O. number.

5. **DELIVERY; TITLE; RISK OF LOSS.** All Products are shipped F.O.B. Destination. Title and all risk of loss or damage shall pass to CFVHS at such time that the Products are delivered to CFVHS’s designated location and are inspected and accepted by CFVHS. If CFVHS does not specify a carrier, Vendor will deliver the Products to a carrier chosen by Vendor. Any claims for shortages or damages suffered in transit shall be submitted by CFVHS directly to Vendor, and Vendor shall be responsible for making claims to the carrier. CFVHS agrees to give Vendor notice of such a claim within ten business days after receipt of the Product(s).

6. **INSPECTION; ACCEPTANCE OF PRODUCTS; REJECTION; CURE.** All Products delivered to or performed for CFVHS are subject to CFVHS’s rights to inspect and accept or reject the Products for non-conformance. CFVHS may, at its option, retain all or some such Products, and any rejected Products may be returned, at Vendor’s expense, within a reasonable time after notice thereof to Vendor. To the extent Vendor’s delivery of Products is not accepted by CFVHS,

Vendor shall have a reasonable time to cure CFVHS's rejection of the Products, not to exceed 30 days. Payment for nonconforming Products shall not constitute acceptance or limit or impair CFVHS's rights to pursue any legal or equitable remedy, nor shall payment of nonconforming Products relieve Vendor of its responsibility for any defects.

7. WARRANTY. Vendor expressly warrants that all Products covered by this Agreement conform to any plans, specifications, samples, drawings, or other descriptions furnished by CFVHS or by Vendor; meet the requirements detailed in any scope of work; are free and clear of liens, claims, and encumbrances; are merchantable and free from defect of title or workmanship; and do not infringe on any patent or copyright. Vendor also warrants that all Products sold or furnished under this Agreement have been produced, sold, delivered, and furnished in compliance with all applicable laws and regulations, which laws and regulations are incorporated herein by reference. Vendor shall execute and deliver any such documents as may be required to effect or to evidence compliance. The representations and warranties contained in this Section 7 shall survive, and shall not be waived by reason of, inspection, acceptance, and/or payment for the Products; and are not exclusive of any other warranties, express or implied. This Section shall survive any termination or expiration of this Agreement and will continue to bind and inure to the benefit of the parties and their successors and assigns.

a. Warranty of Goods and Materials. Vendor further expressly warrants that the goods furnished hereunder are merchantable and fit for the purpose for which they are purchased and are of the best quality, free from defects in design, material, workmanship, and title, and shall conform in all respects to the specifications and terms of this Agreement and provide the best quality if no quality is specified. Vendor shall use its best efforts and know-how in its performance under this Purchase Order/Agreement. Vendor warrants that, under normal use and service, the goods and materials supplied hereunder will substantially conform to the specifications set forth in Product documentation for 12 months unless the warranty expiration date as printed on the applicable labeling or other packaging is longer, in which case the printed expiration date will prevail. Vendor shall not deliver Products that are within 12 months of their expiration date. If, within one year from the date of acceptance by CFVHS, these items, or any part thereof, are or become defective, Vendor shall correct any nonconformities at its sole expense. The corrective work shall be performed in the most expeditious manner consistent with CFVHS's requirements and in a manner concurred in by CFVHS. IF VENDOR IS UNABLE TO REPAIR OR REPLACE THE PRODUCT IN A COMMERCIALY REASONABLE TIME FRAME, VENDOR SHALL REFUND CFVHS THE PRICE PAID FOR THE PRODUCT.

b. Warranty of Services. Vendor further expressly warrants, acknowledges, and confirms that, prior to submitting a proposal for any services contemplated under this Agreement, Vendor has examined all of the specifications, investigated the scope of the project and difficulties which may be encountered in performing the services, and assumes full and complete responsibility for, all risk in connection with, said services. All work shall be accomplished in a professional and workmanlike manner by qualified, careful, and efficient personnel using good, pertinent, scientific, and technical procedures, practices and standards. In the event any portion of the work fails to comply with the appropriate standard(s), and Vendor is so notified in writing within 90 days after completion of this Agreement or discovery of the non-conformance, whichever is later, Vendor will correct the work at

its own expense or, at CFVHS's option, will refund the amount of the compensation paid for such portion.

8. QUALITY. Vendor is responsible for all loss, liability, cost, and expense arising out of defects present in the Products which result from a breach in Vendor's warranty set forth in Section 7 above. This Section 8 shall survive any termination or expiration of this Agreement and will continue to bind, and inure to the benefit of, the parties and their successors and assigns.

9. INDEMNITY. Vendor shall protect, defend, indemnify, and hold CFVHS and its officers, directors, trustees, employees, agents, affiliates, and representatives harmless from and against any and all liabilities, claims, demands, damages, suits, losses, fines, causes of action, costs, expenses, judgments, or other financial demands (including, but not limited to, attorneys' fees, courts costs, expert fees, and expenses) arising directly or indirectly out of or related to: (i) the acts or omissions of Vendor or Vendor's employees, agents, independent contractors, or subcontractors pursuant to this Agreement; (ii) any defect in the goods provided under this Agreement; (iii) the breach by Vendor or its employees, agents, independent contractors, or subcontractors of the terms of this Agreement; and (iv) infringement by Vendor of a copyright, patent, trademark, trade secret, or other intellectual property right of any third party, as further defined below. Vendor's indemnity obligations shall survive any termination or expiration of this Agreement and will continue to bind, and inure to the benefit of, the parties and their successors and assigns.

10. INTELLECTUAL PROPERTY INFRINGEMENT. Vendor agrees to indemnify and hold harmless CFVHS against all liability to third parties (other than liability solely the fault of CFVHS) arising directly or indirectly from or in connection with any actual or claimed (whether rightful or otherwise) infringement on or misappropriation of any United States patent issued as of the date hereof, copyright, United States trademark, or trade secret, and will pay all final judgements awarded or settlements entered into in relation to such claims, including all costs and attorneys' fees. Vendor agrees that it will defend any suit or proceeding brought against CFVHS insofar as such suit or proceeding is based on such a claim, if Vendor is notified promptly in writing of any such suit or proceeding and is given full control of the defense and reasonable information and assistance by CFVHS. Vendor shall pay all damages and costs finally awarded in any such suit or proceeding against CFVHS, but shall not be responsible for any settlement made by CFVHS without the prior written consent of Vendor. If the Product is held in such suit or proceeding to infringe a United States patent, or if the Product has become or in the opinion of Vendor is likely to become the subject of a claim of infringement of a United States patent, Vendor, at its election and at its own expense, shall: (i) procure for CFVHS the right to continue using the Product; (ii) modify the Product so that it becomes non-infringing while giving equivalent performance; or (iii) replace the Product with a non-infringing product which gives equivalent performance; or (iv) if (i), (ii), and (iii) are not reasonably feasible, remove such unused Product and accept its return, paying CFVHS a refund equal to the purchase price to include all shipping charges. This Section shall survive any termination or expiration of this Agreement and will continue to bind, and inure to the benefit of, the parties and their successors and assigns.

The preceding paragraph shall not apply to any goods, or any part thereof, manufactured to CFVHS's own detailed design for unique items of special physical characteristics. CFVHS's rating, or duty or performance specifications, do not constitute "detailed design." Nor shall the foregoing indemnity obligation extend to any claims of infringement arising out or related to: a modification of the Product by anyone other than Vendor or its duly authorized agents; the incorporation into a Product of any information provided or requested by CFVHS; a combination of the Product with any third-party product where the infringement or misappropriation would not exist without such

combination; or the use of a version of the Product other than the then-current version if infringement would have been avoided by using the then-current version.

11. LIABILITY. No director, officer, or employee of CFVHS shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement. Furthermore, CFVHS will not be liable to Vendor or to any third party claiming under Vendor for any lost profits or revenue, lost savings, or any other incidental, indirect, punitive, special, or consequential damages under any part of this Agreement. This Section shall survive any termination or expiration of this Agreement and will continue to bind, and inure to the benefit of, the parties and their successors and assigns.

12. CONFIDENTIALITY. Vendor may have access to and obtain information regarding the trade secrets, financial, statistical and unique operational data of CFVHS during the term of this Agreement that could be valuable to other parties or injurious to the providing party if released (“Confidential Information”). Vendor agrees not to in any way use (except as it is necessary to perform consulting services under this Agreement) or disclose, or allow any other person to use or disclose, Confidential Information of or concerning CFVHS without the prior written consent of CFVHS, either during or after the term of this Agreement. Confidential Information shall include, but is not limited to, financial data, methods of operation, policies and procedures and arrangements with managed care companies and other third party payers. Vendor shall not disclose, or allow others to disclose, the terms of this Agreement, except, as it is necessary to perform consulting services under this Agreement or to obtain accounting, legal or tax advice from Vendor’s professional advisors. Upon termination of this Agreement by either party, Vendor shall promptly deliver to other all deliverables, including all Confidential Information, which is in Vendor’s possession or control.

13. INSURANCE. Vendor, at its own cost and expense, shall obtain and maintain appropriate insurance coverage according to the following minimum requirements:

- a. **Commercial General Liability Insurance.** Commercial General Liability Coverage written on an occurrence basis in an amount not less than \$1,000,000 per occurrence and \$3,000,000 annual aggregate. In the event Vendor maintains a “claims made” policy instead of an “occurrence” policy, it shall purchase, prior to the expiration of such insurance, “tail” coverage to continue and extend coverage complying with this Agreement after the end of the term of the claims-made policy. Continuous coverage and/or tail must be in effect for a period of five years following contract termination.
- b. **Professional Liability Insurance.** To the extent Vendor is providing clinical and patient care services, or other healthcare delivery services, Vendor shall provide medical malpractice coverage for itself, its physicians, and its non-physician health care personnel in amounts of at least \$1,000,000 per incident and \$3,000,000 annual aggregate. In the event Vendor maintains a “claims made” policy instead of an “occurrence” policy, it shall purchase, prior to the expiration of such insurance, “tail” coverage to continue and extend coverage complying with this Agreement after the end of the term of the claims-made policy. Continuous coverage and/or tail must be in effect for a period of five years following contract termination.
- c. **Workers’ Compensation.** To the extent Vendor’s employees will be physically present on CFVHS property in order to comply with the terms of this Agreement, Vendor shall provide and maintain workers’ compensation insurance in compliance with statutory limits under North Carolina law.

- d. **Automobile Liability Insurance.** Automobile Liability Coverage covering all owned, hired, and non-owned vehicles used in connection with this Agreement, with minimum combined single limits of \$1,000,000 for bodily injury and property damage per accident.

Upon request by CFVHS, Vendor shall furnish CFVHS satisfactory evidence of such insurance coverage and shall notify CFVHS thirty (30) days prior to any material change in or termination of insurance coverage.

14. DEFAULT. CFVHS may, by written notice, terminate this Purchase Order/Agreement in whole or in part, for failure of Vendor to perform, including failure to deliver as and when specified. If so terminated, Vendor shall be liable for all damages, including, without limitation, 1) cover damages, i.e., the excess cost of re-procuring similar goods or services, 2) shipping charges for any items CFVHS may at its option return to Vendor, including items already delivered but for which Vendor no longer has any use because of default, 3) amounts paid by CFVHS for any items it has received but returns to Vendor, and 4) any other damages permitted by applicable law. Duke shall have the right to pursue any remedies provided by applicable laws.

15. COMPLIANCE WITH LAWS. Vendor agrees that its performance under this Agreement shall comply with all laws, regulations, ordinances, directives, executive orders, or other requirements of any government or agency thereof which may govern its performance under this Agreement. Other applicable laws and regulations with which Vendor must comply include, but are not limited to:

- a. **HIPAA Compliance.** When applicable, Vendor shall comply in all material respects with the federal and state laws regarding the confidentiality of patient information, including, but not limited to, the standards for privacy of individually identifiable health information of the Health Insurance Portability and Accountability Act of 1996, as modified by the Health Information Technology for Economic and Clinical Health Act, and codified at 45 C.F.R. parts 160 and 164, and the rules and regulations promulgated thereunder, including all current and future amendments (collectively, "HIPAA"). Vendor agrees that it may be considered a "business associate" of CFVHS under HIPAA and, if required by CFVHS, agrees to execute CFVHS's Business Associate Agreement. Vendor further agrees to indemnify and hold harmless CFVHS and its affiliates, officers, representatives, and directors from any costs, claims, liability, or damages, including attorneys' fees and court costs that are caused by or arise out of disclosure of any patient information by Vendor or Vendor's employees, agents, or representatives. The obligations of Vendor and its employees, agents, and representatives under this subsection shall survive any termination or expiration of this Agreement and will continue to bind Vendor and its successors and assigns.
- b. **No Referrals.** The parties acknowledge and agree that the mutual promises and other consideration set forth in this Agreement represent a fair market value exchange, negotiated in an arm's length transaction, and not determined in a manner which takes into account the volume or values or referrals or other business generated between the parties. Nothing in this Agreement, whether written or oral, contemplates or requires the referral of any patient by either party to any particular hospital or provider.

- c. **No Exclusions.** Both parties covenant that they have not and that no individual employed or engaged by either party has at any time had their participation in any Medicare, Medicaid or other federal health care program restricted, suspended, or revoked, nor ever have been excluded from any Medicare, Medicaid, or other federal health care program, nor has any action ever been commenced, or is now pending, to restrict, suspend, revoke, or exclude either party from participation in any Medicare, Medicaid, or other federal health care program. Each party, during the term of this Agreement, shall notify the other party of any such exclusions or adverse actions within 30 days of learning of any such exclusions/ adverse actions.
- d. **Deficit Reduction Act Requirement.** As specified in 42 U.S.C. § 1396a(a)(68), Vendor adopts, as it relates to the provision of services to CFVHS as set forth herein, and acknowledges having received CFVHS's written policies regarding compliance with the federal False Claims Act, 31 U.S.C. § 3729-3733, administrative remedies for false claims and statements, 31 U.S.C. Chapter 38, state laws pertaining to civil or criminal penalties for false claims and statements, and whistleblower protections under such federal and state false claims laws, as well as detailed information regarding CFVHS's policies and procedures for detecting and preventing fraud, waste, and abuse.
- e. **Access to Records.** In the event that Section 952 of Public Law 96-499 is applicable to this Agreement, Vendor agrees to make available its books and records with respect to services provided under this Agreement to the extent required by law.
- f. **Safe Harbor.** If applicable, Vendor agrees that it will fully and accurately satisfy its responsibilities, as seller of products or services covered by this Agreement, under the Safe Harbor Regulations relating to program "fraud and abuse" promulgated under the Social Security Act and Medicare and Medicaid Patient & Program Protection Acts.

16. CORPORATE COMPLIANCE. CFVHS is committed to the operation of its corporate compliance program to ensure compliance with all applicable state and federal laws, rules, regulations and standards. To this end, Vendor shall comply with all policies, procedures and requirements implemented and provided to Vendor as a result of CFVHS's corporate compliance program. Vendor is required to have all of its employees and/or contracted personnel who provide services to CFVHS participate in any compliance education and training developed by CFVHS as part of its corporate compliance program. In addition, Vendor agrees to familiarize its employees and/or other contracted personnel who provide services to CFVHS with any policies, procedures or other requirements implemented and provided to Vendor as a result of Vendor's corporate compliance program. The failure of Vendor to conduct its activities in accordance with the Compliance Program shall constitute a material breach of this Agreement and CFVHS shall have the absolute right to terminate this Purchase Order/Agreement immediately.

17. VENDOR PROGRAM. CFVHS's Vendor Program is designed to streamline the collection and management of key information regarding the regulatory and compliance status as well as business operations of CFVHS's vendors and suppliers. If CFVHS requires Vendor to and Vendor's representatives to register with the Vendor Program, Vendor must do so as a condition precedent of doing business with CFVHS. The Vendor Program enables CFVHS to electronically provide information CFVHS needs to ensure accurate information for CFVHS's business, screen Vendor and Vendor's representatives against state and federal sanctions lists and manage access to CFVHS's facilities and patient care areas based on immunization, training, and compliance status, as well as

communicate CFVHS's business policies. If Vendor is required to register with the Vendor Program, Vendor is responsible for all costs associated with registration. Failure of Vendor or Vendor's representatives to register, or maintain registration, with the Vendor Program, if required, constitutes and event of default under Section 14 hereunder.

18. USE OF LOGO/MARKS. Vendor shall not use the name, logo, or design of CFVHS, or any trademark of service mark utilized by CFVHS, nor use any photograph or video of CFVHS, its property, or its facilities without the express written consent of CFVHS. Vendor shall submit any proposed use of the above media material to CFVHS for approval prior to any publication or public use of the material. CFVHS, in its sole discretion, may grant or withhold consent to use the above media material and shall provide a response granting or withholding consent to Vendor within thirty (30) days of receiving the proposed media material from the Vendor.

19. FDA RECALL. Vendor represents and warrants that all Products have been approved by the United States Food and Drug Administration ("FDA"). Vendor agrees to notify CFVHS in writing promptly of any withdrawal of any Product's FDA approval or any Product's noncompliance with FDA standards. In the event of a recall of any Product that the approval and/or clearance of a Product are withdrawn by the FDA, the recall constitutes a breach by Vendor and CFVHS shall have the right to immediately terminate the entire Purchase Order/ Agreement or any part of the Purchase Order/Agreement pertaining to the affected Products without penalty. If Vendor is unable to repair the affected product to meet FDA standards or replace affected Product with a comparable product within a commercially reasonable period of time, Vendor shall reimburse CFVHS the Fair Market Value of the affected Products at the time of the recall. CFVHS shall have the right to return any affected Products to Vendor at Vendor's sole cost and expense.

20. INDEPENDENT CONTRACTORS. The parties are independent contractors and shall have no authority to act as an agent of the other party, nor enter into any agreement on behalf of the other party.

21. FORCE MAJEURE. Neither Party will be deemed to be in breach of this Agreement if it is delayed in or prevented from performing any of its obligations under this Agreement as a direct result of any labor disputes, natural disasters, or acts of God. Upon removal of the cause affecting the delay or nonperformance, the affected Party shall resume performance of its obligations under this Agreement.

22. GOVERNING LAW. This Agreement shall be governed by the laws of the State of North Carolina without regard to the conflict of laws provisions thereof. The parties mutually agree that the courts of the State of North Carolina shall have exclusive jurisdiction of any claim arising under the terms of this Agreement. This Section shall survive any termination or expiration of this Agreement and will continue to bind the parties and their successors and assigns.

23. NOTICES. Any notices to be given by either party to the other under the terms of this Agreement shall be in writing and shall be deemed to have been sufficiently given if delivered by hand, with written acknowledgement of receipt; mailed by certified mail, return receipt requested; or sent by nationally recognized overnight courier, with delivery confirmation, to the other party as follows: notifications to Vendor shall be mailed to the address on Vendor's written quotation or as otherwise designated in writing by Vendor, and to CFVHS at the address listed below; or to such other address as either party from time to time designates in writing to the other party for the receipt of notice:

Cape Fear Valley Health System
Attn: Legal Services
1638 Owen Drive
Fayetteville, NC 28304

24. ASSIGNMENT. The parties shall not assign all or any part of their respective rights under this Agreement, delegate any performance, or subcontract with any third party without first obtaining the written consent of the other party. Any attempt by Vendor to assign or transfer any interest in this Agreement, without the written consent of CFVHS, shall be void and have no effect.

25. MODIFICATION; WAIVER. This Agreement may be modified only by a writing signed duly by the parties or their respective successors. No amendment or waiver of this Agreement or its terms and conditions is valid unless it is in writing, specifically refers to this Agreement, and is signed by authorized representatives of both parties, and no purported oral modification by CFVHS shall operate as a waiver of any of the terms hereof. No other action or failure to act (including inspection, failure to inspect, acceptance of late deliveries, or acceptance of or payment for any Products) will constitute a waiver of any rights. Failure of CFVHS to insist upon strict performance of any of the terms and conditions hereof, or failure to delay to exercise any rights or remedies provided herein or by law, or to properly notify Vendor in the event of breach in performance, or the acceptance of or payment for any goods and services hereunder, shall not release Vendor of any of the obligations under this Purchase Order/Agreement and shall not be deemed a waiver of any right of CFVHS to insist upon strict performance hereof.

26. BENEFIT. This Agreement shall be binding upon and inure to the benefit of the parties, their legal representatives, successors, and assigns, to include full compliance with the Assignment provision above.

27. SEVERABILITY; SUPERSEDING PROVISIONS. Should any term, duty, obligation or provision of this Agreement be found invalid or unenforceable, it shall not affect the validity of the other terms, duties, obligations, and provisions which shall remain valid and enforceable and in full force and effect. The parties recognize that this Agreement at all times is to be subject to applicable state, local and federal law. Any provisions of law that invalidate or otherwise are inconsistent with this Agreement or that would cause one or both of the parties to be in violation of the law shall be deemed to have superseded this Agreement, provided, however, that the parties shall exercise their best efforts to accommodate this Agreement to the greatest extent possible consistent with the requirements of law.

28. ENTIRE AGREEMENT: This Agreement contains the entire agreement between the parties and supersedes all prior written or oral agreements. The parties intend this Agreement to be a final expression of their agreement and as a complete and exclusive statement of its terms. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this Agreement. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement shall not be relevant or admissible to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity to make objection. No representations, understandings, or agreements have been made or relied upon in making this Agreement other than those specifically set forth herein.