

BJC HEALTHCARE STANDARD TERMS AND CONDITIONS

The following Standard Terms and Conditions govern purchase orders ("P.O.s") issued by BJC Health System d/b/a BJC HealthCare ("BJC"), or a BJC Health System member organization ("HSO"), to a third party ("Supplier"), which are not subject to either a duly executed contract by both parties or a GPO contract in which BJC or HSO participates related to the P.O. transaction ("Governing Contract"). If such a Governing Contract exists, the terms and conditions therein shall instead govern the P.O. In the event of a conflict between the provisions set forth below and those contained in any Supplier Proposal, Quotation, Bid, Website, email, or other media/document(s), the terms set forth below govern the P.O. Together, these Standard Terms and Conditions and the P.O. are referred to as "this Agreement".

1. **SERVICES.** Services provided under this Agreement will be provided in accordance with all applicable federal, state or local statutes, regulations, or ordinances, as well as all applicable standards of The Joint Commission, any other applicable accrediting or certifying organization, and any applicable policies and procedures of BJC or HSO. Supplier will, at all times during its performance of services under this Agreement, establish and enforce safe working procedures in compliance with all applicable safety standards. Supplier will ensure that all employees providing services under this Agreement have received all necessary or appropriate training, and, upon request, will provide documentation evidencing the same.

2. **DELIVERY AND PAYMENT TERMS.**

2.1 Supplier will ship the products or equipment purchased under this Agreement to the facility location designated on each P.O. Delivery shall be F.O.B. destination and Prepaid unless otherwise directed in writing by BJC or HSO, or otherwise stated on the P.O. All freight, shipping and special delivery charges will be at no additional cost to BJC or HSO. Supplier will select the carriers and shall be responsible for all tracking information and coordination of claims associated with any shipment. Supplier shall at all times retain all risk of loss of the equipment and/or products it provides until delivery and acceptance at the designated facility. Products and equipment shall be delivered upon request, according to a delivery schedule as agreed to in writing by BJC or HSO and Supplier. If products or equipment are not timely delivered in accordance with the delivery schedule and Supplier fails to notify BJC or HSO in writing of a back-order date prior to the delivery schedule, BJC or HSO may cancel the order at no charge and shall not be responsible for payment in the event Supplier ships the products or equipment after BJC or HSO has cancelled the order. BJC or HSO will not be responsible for paying for products or equipment shipped to BJC or HSO by Supplier but not ordered by BJC or HSO via a P.O. (e.g., over-shipments and unapproved substitute products or equipment).

2.2 BJC requires that the exterior packaging of each shipment include a clearly marked address label with a correct P.O. number and ship-to contact name, along with a packing slip referencing the applicable P.O. Incoming shipments which do not meet these criteria may be rejected by BJC or HSO and returned to Supplier at no cost to BJC or HSO. Lines on Supplier's invoice must match up with lines on the P.O. to avoid delayed payment. Such delays will be handled as expeditiously as possible, but BJC and HSO will not be held responsible/penalized for any such corresponding delayed payments due to invoicing not matching the P.O.

2.3 Subject to compliance by Supplier with all of the terms and conditions herein, BJC or HSO shall pay Supplier the amount due under the applicable invoice as Direct Deposit, Net 60 from the latter of i) BJC's or HSO's receipt of a correct invoice; or ii) BJC and HSO having received all the products and/or equipment covered by the applicable invoice. Notwithstanding the foregoing, i) Supplier waives the right to collect on invoices that were not issued to a P.O. or have not been addressed to BJC or HSO as "unpaid" after six (6) months of the date originally issued; and ii) payment of invoices shall at all times be subject to BJC's or HSO's right pursuant to this Agreement to set off any monies owed under such invoice due to any one or more of the following conditions: a) in the event of breach by Supplier under the Agreement or otherwise,

resulting in damages to BJC and/or HSO; b) defect in any products and/or equipment purchased by BJC or HSO from Supplier at any time, whether pursuant to this Agreement or otherwise; and c) deduction for any rebates, warranty claims, returned goods, or other monetary amounts owed by Supplier to BJC or HSO under the Agreement or otherwise. The foregoing right of set-off shall not be abrogated by any provision in the Agreement, whether or not there shall be a transfer or assignment of the right to receive any obligation owed by BJC or HSO. Supplier shall be responsible for all expenses associated with the provision of services, except as BJC or HSO may otherwise agree in writing. Each HSO shall be solely responsible for its performance hereunder and neither BJC nor any other HSO shall have any responsibility therefore.

2.4 Invoice Disputes. In the event BJC or HSO disputes the amounts specified on any invoice received from Supplier, Supplier agrees that it shall promptly enter into good faith negotiations to resolve any discrepancy or misunderstanding associated with such amounts. Further, Supplier agrees to provide all supporting documentation for any such disputed amount within ten (10) days of BJC's or HSO's written request. Supplier shall not terminate this Agreement, or the affected P.O. during such good faith negotiations.

3. ACCEPTANCE OF EQUIPMENT, HARDWARE, AND SOFTWARE. Upon completion of installation, assembly, interconnection, calibration, and startup of any hardware and/or equipment, together with any software covered in this Agreement (collectively referred to as the "System"), Supplier will test the System to ensure that all functions are fully operational and meet the specified performance standards, with all test results to be documented in writing. Successful completion of testing will constitute a firm prerequisite for acceptance and payment by BJC or HSO. BJC or HSO will have the option of assigning up to three (3) individuals at any one time to observe any or all of Supplier's testing and to discuss the progress and results of this testing with representatives of BJC or HSO. Should any part of the System fail to pass Supplier's testing, it will immediately be repaired or replaced. When BJC or HSO reasonably concludes that the System is operating according to any applicable specifications and documentation for the System, is producing results (mutually selected by Supplier and BJC or HSO as representative of the System's quality) of a quality that meets or exceeds Supplier's published performance specifications for the System, and is completely ready for its intended applications, then BJC or HSO will begin a Final Evaluation Period. For purposes of this Agreement, "Final Evaluation Period" is defined as the period during which BJC or HSO will use the System in a live environment and evaluate the System to determine whether it complies with Supplier's warranties and the requirements of this Agreement. BJC or HSO will notify Supplier in writing of any nonconformities discovered during the Final Evaluation Period, and the Final Evaluation Period will be suspended until the nonconformity is resolved to the reasonable satisfaction of BJC or HSO or in accordance with Supplier's warranty and the requirements of this Agreement. Following resolution of such nonconformities, the Final Evaluation Period will resume. Notwithstanding the above, the Final Evaluation Period will not expire until BJC or HSO has been able to test the System for twenty (20) consecutive days without nonconformities. Upon the conclusion of the Final Evaluation Period, Supplier will invoice BJC or HSO for the remaining balance of the purchase price noted in Section 2 above.

4. RETURN POLICY.

4.1 Supplier shall allow BJC or HSO to return any product or equipment found unacceptable in quality, quantity, or shipping errors to the Supplier for the full purchase amount within 12 months after purchasing. BJC or HSO is entitled to a full refund for the amounts paid on the returned product or equipment, which shall be returned at the Supplier's expense.

4.2 Supplier will supply BJC or HSO with stock in FIFO order. Supplier will ensure that last lot number/manufacturing date is always the most recent. BJC reserves the right to reject shipments shipped out of FIFO sequence at Supplier's expense.

5. **SHELF-LIFE REQUIREMENT.** Supplier agrees that all products received by BJC or HSO will have at least 85% remaining shelf life. In the event that the remaining shelf life of a product is less than 85% at the time of delivery, BJC or HSO shall have the right, at its sole option, to either return the product in exchange for product with required shelf life or for a full credit.

6. **WARRANTIES.**

6.1 If this Agreement covers products purchased by BJC or HSO from Supplier, Supplier represents and warrants that all items delivered under this Agreement will be free from defects in design, workmanship, material and manufacture and will be free of all liens, claims and encumbrances of title. Supplier further warrants that all items purchased under the Agreement for resale will be of merchantable quality and that, if Supplier is not the manufacturer, the items will fully comply with all of the manufacturer's representations and warranties, all manufacturer's warranties will be assigned by Supplier to BJC or HSO, Supplier will fully enforce the same, and Supplier hereby appoints BJC or HSO as Supplier's agent to enforce such warranties at Supplier's expense if Supplier fails to do so. The warranties provided in this paragraph will survive the delivery, inspection, acceptance and payment by BJC or HSO. All warranties will run to BJC or HSO, its successors, assigns, patients and any third party injured in person or property by reason of any breach thereof. Supplier will indemnify, defend, and hold BJC and HSO harmless from and against all claims, losses, damages, costs, expenses, or liabilities arising from any breach of any warranty.

6.2 If any of the warranties specified above or otherwise applicable are breached by Supplier, BJC or HSO may, at its election, (1) require Supplier to correct, at Supplier's sole expense, any defect or nonconformance by repair or replacement at HSO's location, or (2) return any defective or nonconforming goods to Supplier at Supplier's expense and recover from Supplier the price thereof. The foregoing remedies are in addition to all other remedies at law, in equity or as contained in this Agreement and shall not be deemed to be exclusive. Supplier agrees not to supply any goods or material previously rejected by BJC, HSO, or any of Supplier's other customers. If any goods are found by BJC or HSO within a reasonable time after delivery to be defective or otherwise not in conformity with the requirements of this section, BJC or HSO may, in addition to any other rights or remedies which it may have under warranty or otherwise, reject or return such goods at Supplier's expense, which goods shall not be replaced by Supplier without a written authorization from BJC or HSO. Payment for goods or services will not constitute acceptance thereof by BJC or HSO.

6.3 Supplier's exclusion of any warranty in the event of a repair or modification made by someone other than service personnel authorized by Supplier is limited to only that defect, if any, caused by such unauthorized repair or modification.

7. **INDEMNIFICATION.**

7.1 Supplier shall indemnify, defend, and hold harmless BJC, BJC's affiliates, HSO, and their current and former directors, officers, employees, agents, successors, and assigns from and against any liabilities, claims, suits, actions, demands, judgments, damages, penalties, fines, costs, losses, or expenses of any kind or nature (including, without limitation, attorneys' fees and court costs), arising out of, in connection with, or resulting from: (i) any breach of this Agreement by Supplier or if applicable, any breach of a Business Associate Agreement or Information Security Requirements agreement (or similarly mutually agreed upon security requirements) executed between the parties; (ii) any act or omission of Supplier (or its employees or agents); (iii) any failure of Supplier (or its employees or agents) to comply with federal, state, or local laws or regulations; (iv) any claim or lawsuit alleging employment law violations, including but not limited to, alleged violations of laws prohibiting employment discrimination, harassment, or retaliation and any common law claims, including but not limited to, wrongful termination in violation of public policy, negligent hiring,

supervision and retention, intentional or negligent infliction of emotional distress, or similar claims arising out of BJC and BJC's affiliates' use of Supplier's employees or agents; (v) any claim or lawsuit alleging wage and hour law violations, including but not limited to, alleged violations of law requiring the payment of wages for all hours worked, minimum wage and overtime or claims for payment by Supplier's employees or agents alleging breach of contract or quasi-contract; (vi) any claim or lawsuit in connection with the failure to obtain legally required workers' compensation coverage or failure to properly administer workers' compensation claims involving Supplier's employees or agents and/or bodily injury, illness, or death to Supplier or any employee or agent of Supplier; (vii) any claim or lawsuit alleging that BJC is the employer or joint employer of Supplier or of Supplier's employees or agents; (viii) any claim or lawsuit alleging failure of BJC to provide or pay for benefits, premiums or contributions, make tax withholdings, and meet other similar obligations, to or on behalf of Supplier (and any of its employees or agents), including specifically for any liability related to alleged misclassification of Supplier (or its employees or agents) as independent contractors; or (ix) the violation of any third party's trade secrets, proprietary information, trademark, copyright, or patent rights in connection with the licensing of any software except to the extent caused by any unauthorized modifications of the software, if any. In the event the Internal Revenue Service or Department of Labor, or any other federal or state agency or private party, should question or challenge the independent contractor status of Supplier or any employee or agent thereof, the parties agree that BJC or HSO shall have the right to participate in any discussions or negotiations occurring with such governmental body or other party.

7.2 Any indemnification by BJC or HSO to Supplier under this Agreement will extend only to negligence or willful misconduct of BJC or HSO and their employees.

8 **INSURANCE.** Supplier shall comply with BJC's minimum necessary insurance requirements as set forth below. In general, Supplier shall insure against all losses and damages which are the result of the fault or negligence of the Supplier, or any person for which Supplier is legally responsible, when performing its duties and obligations under this Agreement, including without limitation, workers' compensation, general liability, property damage, and automobile liability. Such insurance shall be on an occurrence basis, or if on a claims-made basis and such claims-made insurance is canceled or terminated for any reason, an extended reporting endorsement shall be purchased applicable to all claims arising from services provided under this Agreement. Insurance protecting BJC and HSOs from claims under any of the coverages set forth below will be evidenced by issuance of a certificate of insurance issued to BJC or HSO upon request and will not be canceled without thirty (30) days prior written notice to BJC or HSO. If commercial insurance is utilized under this Agreement, such insurance will be provided by insurance carriers reasonably acceptable to BJC or HSO and with an AM Best Rating of A-minus or better unless waived in writing by BJC or HSO. Supplier shall include BJC/HSO party to the Agreement as a primary but non-contributory additional insured on the certificate of insurance with a waiver of subrogation under all coverages.

8.1 Workers' Compensation insurance to cover its employees, in the amount prescribed by law.

8.2 Employers' Liability in the minimum amounts of One Million Dollars (\$1,000,000) each accident, One Million Dollars (\$1,000,000) disease policy limit, and One Million Dollars (\$1,000,000) disease each employee.

8.3 Commercial General Liability and Products Liability in the minimum amount of One Million Dollars (\$1,000,000) per occurrence, Three Million Dollars (\$3,000,000) aggregate on an occurrence basis. Supplier's Commercial General Liability insurance shall name BJC and all HSO's listed in Exhibit 1 as additional insureds on an additional insured endorsement Form CG2026/Edition 04/13 and Form CG2037/Edition 04/13 or their equivalent. Form CG2001/Edition 04/13 primary and non-contributory and Form CG2404/Edition 05/09 waiver of subrogation shall be included under the Commercial General Liability coverage.

8.4 Errors and Omissions/Professional Liability (*if applicable*) in the minimum amount of One Million Dollars (\$1,000,000) per occurrence, Three Million Dollars (\$3,000,000) aggregate. Such coverage shall include contractual liability coverage.

8.5 If Supplier will use vehicles in the performance of Services, automobile liability insurance in the minimum amount of One Million Dollars (\$1,000,000) each accident.

8.6 Umbrella Liability, in the amount of Five Million Dollars (\$5,000,000) over commercial general liability, automobile liability, and employer's liability policies. The Umbrella coverage shall follow and sit excess of the terms and conditions of the commercial general liability, automobile liability, and employer's liability policies. Supplier's Umbrella Liability insurance shall name BJC and all HSO's listed in Exhibit 1 as additional insureds.

8.7 Network Liability/Cyber Liability (*if applicable*) in the minimum amount of Five Million Dollars (\$5,000,000) per occurrence, Twenty Million Dollars (\$20,000,000) aggregate.

9 **DISPUTES; REMEDIES.** Subject to Section 2.4 herein, any dispute arising out of or relating to this Agreement, including the alleged breach, termination, validity, interpretation, and performance thereof ("Dispute"), shall be resolved as follows: i) upon written notice of any Dispute, the parties shall attempt to resolve it promptly by negotiation between their respective executives who have authority to settle the Dispute, which should be completed within thirty (30) days if reasonably possible (the "Negotiation"); ii) the foregoing notwithstanding, either party may seek an injunction or other equitable relief in lieu of, or in addition to, initiating the Dispute resolution process. In addition, if either party believes in good faith that invoking the Dispute resolution process is unlikely to resolve the Dispute and will only delay such party from obtaining adequate relief, such party may pursue civil litigation, including seeking injunctive relief, as otherwise provided for in this Agreement.

10 **TERMINATION.** Rights to terminate this Agreement are as follows:

10.1 By BJC or HSO, without cause upon ninety (90) days written notice;

10.2 By either party, in the event of a material breach by the other party, if the non-breaching party first shall give written notice to the other party identifying the breach and stating that the Agreement shall terminate unless the breach is cured within ten (10) days of the notice;

10.3 By either party, immediately in the event the other party becomes bankrupt, seeks protection from its creditors, or invokes protection under any federal or state insolvency legislation, with such termination to be without prejudice to other recourse against that party;

10.4 By either party, immediately upon product failures, unsatisfactory Supplier performance, failure of Supplier personnel to comply with BJC or HSO policies and procedures and/or FDA Product recalls;

10.5 By either party, immediately upon material breach of Section 13 herein.

11 **CONFIDENTIALITY.** Each party acknowledges and agrees that it may have access to certain confidential information of the other party ("Confidential Information"), including, without limitation, strategic information; business and operational planning documents; technical specifications and hardware/network configurations; software; the pricing under this Agreement; and all other materials or information that are known or reasonably should be known to be confidential. Each party agrees that: (i) it will hold the Confidential Information of the

other party in confidence with at least the same level of care as it uses for its own Confidential Information of the same nature, but not less than a reasonable level of care; (ii) it will not use all or any portion of the Confidential Information for its own account or the account of any third party, except as expressly permitted by this Agreement; and (iii) unless required by law, it will not disclose any Confidential Information to any third party, except such party's attorneys, accountants, and other advisors as reasonably necessary. Information will not be deemed Confidential Information if the receiving party can demonstrate that such information: (i) was known to the receiving party prior to receipt from the disclosing party from a source other than one having an obligation of confidentiality to the disclosing party, as evidenced by its written records; (ii) became known to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) was independently developed by the receiving party without reference to or use of the Confidential Information of the disclosing party, as evidenced by its written records; or (iv) such information becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party. These obligations shall survive the expiration or earlier termination of this Agreement.

In the event of termination of this Agreement or completion of applicable services hereunder and within ten (10) business days following the receipt of a written request from the disclosing party, the receiving party will destroy or deliver to the disclosing party in an industry standard format all materials containing or embodying the Confidential Information received from the disclosing party, except for materials containing Confidential Information that have been incorporated into analyses, compilations, comparisons, studies, or other documents prepared by the receiving party or its representatives, together with a certificate executed by the receiving party certifying that all such materials in the receiving party's possession have been delivered to the disclosing party or destroyed. That portion of the Confidential Information which has been incorporated into analyses, compilations, comparisons, studies, or other documents prepared by the receiving party or its representatives shall be held by the receiving party and kept confidential as provided above or shall be destroyed. Notwithstanding anything in the foregoing to the contrary, the receiving party shall be entitled to retain archival copies of Confidential Information if necessary for compliance with laws or its own internal record keeping policies. Also, in the event receiving party is unable, despite all commercially reasonable efforts, to delete such Confidential Information from its internal servers or databases, it may also retain such Confidential Information until such time as it is able to delete it. Any such retained Confidential Information will remain subject to the confidentiality obligations contained herein.

Notwithstanding the foregoing, BJC shares all purchasing terms, pricing and rebate data to its' consultants, auditors and group purchasing organization, Vizient.

- 12 **HIPAA, PRIVACY AND SECURITY.** In the event Supplier or any of its employees, agents, or subcontractors, as a part of the services being rendered hereunder, will have more than incidental access to or use of any protected health information ("PHI"), as that term is defined by the Health Insurance Portability and Accountability Act of 1996, as well as the implementing privacy and security regulations thereunder, all as amended from time to time (collectively, "HIPAA"), then Supplier and such employees, agents, or subcontractors shall access, collect, retain, store, use, and disclose such PHI only as permitted under applicable state and federal data privacy laws, including, but not limited to, HIPAA (including all of its rules, regulations, guidance, and interpretations related thereto) and the Health Information Technology for Economic and Clinical Health Act ("HITECH") (including any applicable rules, regulations, guidance, or interpretations) and be bound by the Business Associate Agreement ("BAA") attached hereto as Exhibit 1 if one is otherwise not currently in effect. Further, any such access, use, or storage of PHI by Supplier or any of its employees, agents, or subcontractors, shall occur only within the United States.
- 13 **SUCCESSORS AND ASSIGNS.** This Agreement is binding upon and will inure to the benefit of the parties and their respective successor(s) or permitted assign(s). Supplier may not assign this Agreement or any of its

obligations or interest hereunder without the prior written consent of BJC or HSO. BJC and HSO reserve the right to assign this Agreement to other entities that are affiliates of BJC.

- 14 GOVERNING LAW.** The laws of the State of Missouri shall apply with respect to all matters relating to this Agreement, all Exhibits attached hereto, and to the parties' duties and responsibilities hereunder. Any suit or proceeding with respect to such matters shall be brought in the courts of St. Louis County. Notwithstanding the foregoing, if the BJC affiliated party to this Agreement is an HSO located in Illinois, i) the laws of the State of Illinois shall apply with respect to all matters relating to this Agreement, all Exhibits attached hereto, and to the parties' duties and responsibilities hereunder; and ii) any suit or proceeding with respect to such matters shall be brought in the courts of the county in which such HSO is located. No period of time allowed by statute for claim or suit shall be shortened by any other provision of the Agreement.
- 15 CHANGE OF LAW.** In the event that any law or regulation enacted, promulgated or amended after the date of this Agreement or any interpretation of law or regulation by a court or regulatory authority of competent jurisdiction after the date of this Agreement (collectively "Change of Laws") materially affects or materially impacts upon the reasonable expectations of either party under this Agreement, renders any provision of this Agreement illegal or unenforceable, or materially affects the ability of any party to perform its obligations under this Agreement, then (1) the provision determined to be illegal or unenforceable shall be deemed omitted, and the remaining portion of this Agreement shall remain in full force and effect, and (2) either party may request renegotiation of the applicable terms of the Agreement by written notice to the other party. In the latter event, the parties shall in good faith attempt to negotiate an amendment that preserves the original reasonable expectation of the parties to the extent possible in a manner consistent with the Change of Laws. If no such amendment is agreed upon in the reasonable opinion of either party within thirty (30) days of receipt of such notice, then either party may terminate the Order upon an additional thirty (30) days' written notice.
- 16 FORCE MAJEURE.** Neither party will be liable for any failure or delay in its performance under this Agreement to the extent directly caused by any of the following: shortages of or impossibility to obtain energy, raw materials, or supplies through no fault of its own; war, terrorism, or riot; or a natural disaster, such as a hurricane (each a "Force Majeure Event") for the duration of the Force Majeure Event, provided that the non-performing party provides immediate written notice to the other party that describes in reasonable detail: (i) the Force Majeure Event; (ii) how the Force Majeure makes such party's performance impossible; and (iii) the non-performing party's plan for mitigating the adverse effects of the Force Majeure Event on its performance hereunder. BJC or HSO shall not be obligated to pay any fees or other amounts for periods during which Supplier's performance is adversely affected by such a Force Majeure Event. BJC or HSO may also, in its sole discretion, elect to terminate this Agreement and not be obligated to pay any amount otherwise due hereunder for future products or services if a Force Majeure Event affects Supplier's performance hereunder in any material respect. Supplier shall also refund any amounts that were paid in advance for services that were not provided due to the Force Majeure Event and for any services that will not be performed in the future if this Agreement is terminated due to a Force Majeure Event.
- 17 INTELLECTUAL PROPERTY.**

17.1 Definitions. As used herein: (i) the term "Invention" means any ideas, concepts, information, materials, processes, data, programs, know-how, improvements, discoveries, developments, designs, artwork, formulae, other copyrightable works, and techniques and all Intellectual Property Rights therein; (ii) the term "Intellectual Property Rights" means all trade secrets, copyrights, trademarks, mask work rights, patents and other intellectual property rights recognized by the laws of any country; (iii) the term "Background Technology" means all Inventions developed by Supplier other than Work Product, and all Inventions acquired or licensed by Supplier, that Supplier incorporates into, or is required to be used by BJC or HSO in utilizing, the deliverables under any Exhibits, Supplements, Attachments, Schedules, and

Statements of Work (“SOWs”), or other purchasing document to this Agreement (“Deliverables”); (iv) the term “Work Product” means the Inventions expressly identified in any Exhibits, Supplements, Attachments, Schedules, and Statements of Work (“SOWs”), or other purchasing document to this Agreement as being developed for and intended to be transferred to BJC or HSO, including any such patentable or copyrightable ideas and the writings, drawings, designs, and other documentation, including source code, if applicable, relating thereto.

17.2 Ownership of Work Product. Supplier agrees that any and all Work Product shall be the sole and exclusive property of BJC. If Supplier has any rights to the Work Product that are not owned by BJC or HSO upon creation or embodiment, Supplier irrevocably assigns to BJC or HSO all right, title, and interest worldwide in and to such Work Product. Except as set forth below, Supplier retains no rights to use the Work Product and agrees not to challenge the validity of BJC’s or HSO’s ownership in the Work Product. If Supplier has any rights to the Work Product that cannot be assigned to BJC or HSO, Supplier unconditionally and irrevocably waives the enforcement of such rights, and all claims and causes of action of any kind against BJC or HSO with respect to such rights, and agrees, at BJC’s or HSO’s request and expense, to consent to and join in any action to enforce such rights. If Supplier has any right to the Work Product that cannot be assigned to BJC or HSO or waived by Supplier, Supplier unconditionally and irrevocably grants to BJC or HSO during the term of such rights, an exclusive, irrevocable, perpetual, worldwide, royalty-free, and fully paid license, with rights to sublicense through multiple levels of sub-licensees, to reproduce, distribute, make, use, sell, import, offer for sale, and exercise any and all such rights.

17.3 Ownership of Background Technology. BJC or HSO agrees that any and all Background Technology shall be the sole and exclusive property of Supplier. Supplier hereby grants to BJC or HSO a non-exclusive, perpetual, royalty-free, fully paid, and world-wide right, with rights to sublicense through multiple levels of sub-licensees, to the Background Technology incorporated or used in Deliverables solely for the purpose of using the Deliverables that include, incorporate, or otherwise utilize the Background Technology. Supplier warrants that it will not use Background Technology during the course of performing work pursuant to any Exhibits, Supplements, Attachments, Schedules, and Statements of Work (“SOWs”), or other purchasing document to this Agreement or incorporate it into Deliverables provided pursuant thereto that it is not authorized to license to BJC or HSO as provided herein.

17.4 Residuals. Notwithstanding anything in this Agreement to the contrary, Supplier shall not be precluded from using or disclosing information, concepts, skills, and understandings (a “Recollection”) which Supplier employees learned during the course of the performance of a Supplement and which they later recall without the assistance of notes, memoranda, or other documentation and without having consciously tried to memorize the substance of the Recollection.

18 TAXES. BJC is a nonprofit corporation organized and operated for charitable purposes and is not required to pay any sales or use taxes arising out of the obligations set for in this Agreement. BJC will provide proof of tax-exempt certification upon request. Supplier shall pay all taxes associated with the transactions covered by this Agreement, including without limitation, sales, excise, income taxes, value added taxes, and the like, regardless of whether any such tax is normally levied against Supplier or BJC or HSO. Notwithstanding the foregoing, any HSO that is not a tax-exempt organization shall pay applicable sales taxes.

19 PUBLICITY. Neither party shall use the name(s), trademark(s), or trade name(s) (whether registered or not) of the other party in publicity releases, advertising, or in any other manner, including customer lists, without the prior written authorization of the other party. Publicity related to BJC and/or its affiliates requires prior written approval from an officer of BJC.

20 ACCESS TO RECORDS. If this Agreement is subject to Section 1861 (v)(1)(I) of the Social Security Act as amended, Supplier agrees that until the expiration of four (4) years after the furnishing of any services hereunder, if any, Supplier shall, upon request, make available to the Secretary of Health and Human Services, the Comptroller General, and other duly authorized representatives, the Agreement and all books, documents, and records that are necessary to verify the nature and extent of the cost of those services, and that if Supplier carries out the duties of the Agreement through a subcontract for \$10,000 or more over a twelve (12) month period, such subcontract shall also contain an access clause to permit access by the Secretary, Comptroller General, and other duly authorized representatives to the related organization's subcontract and related books, documents, and records. Supplier agrees that within five (5) business days of any request (whether written or oral) from any regulatory agency or licensure body (or such body's designee) including, but not limited to, the Internal Revenue Service, the Centers for Medicare and Medicaid Services ("CMS"), or the Office of the Inspector General of the Department of Health and Human Services, relating to the cost, nature, or extent of the Services provided hereunder or the relationship between the parties, Supplier shall notify BJC of the same and shall, to the extent permissible under law, allow BJC to participate in any discussions between Supplier and such regulatory agency or licensure body.

21 WAIVER. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. The waiver of a breach or violation of any provision of the Agreement will not be a waiver of any subsequent breach of the same or any other provision.

22 SEVERABILITY. In the event any one or more of the terms or provisions contained in this Agreement or any application thereof shall be finally declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions of this Agreement or any application thereof shall not in any way be affected or impaired, except that, in such an event, this Agreement shall be deemed revised in order to provide the party adversely affected by such declaration with the benefit of its expectation.

23 NOTICES. Any notice related to this Agreement shall be in writing, shall be mailed by certified or registered mail, postage prepaid, with return receipt requested, and shall be addressed to:

Vice President, Supply Chain
BJC HealthCare

MS: 90 67 806
4249 Clayton Avenue
Saint Louis, MO 63110

with copies to: Senior Vice President and General Counsel
BJC HealthCare

MS: 90-75-570, Suite 1200
4901 Forest Park Avenue
St. Louis, MO 63108

To Supplier:
To address specified in the Purchase Order.

24 RELATIONSHIP OF THE PARTIES. The parties agree that Supplier is an independent contractor with respect to BJC or HSO and providing the deliverables outlined in this Agreement. Nothing in this Agreement is intended nor shall be construed to create an employer/employee relationship, a joint venture, a partnership, or agency between the parties. Supplier shall not be, or represent itself as being, an employee or agent of BJC or HSO and shall not be authorized to bind BJC or HSO to any liability with any third party.

Supplier represents and warrants that Supplier has the required skills, experience, and qualifications to provide the deliverables outlined in this Agreement, will perform all work in a professional manner, and will maintain all necessary licenses and permits, if any, to the extent required by the work or by law. Supplier shall determine the

manner and means by which Supplier provides the deliverables within its reasonable discretion, including defining the time and place to perform its work. To the extent it is necessary for Supplier to be onsite, access BJC or HSO information or systems, or be engaged with BJC or HSO's employees or agents, Supplier will coordinate scheduling those activities with the appropriate persons. Otherwise, Supplier shall furnish, at its own expense, the materials, equipment, and resources necessary to provide the deliverables.

Any persons employed or engaged by Supplier in connection with performing the obligations pursuant to this Agreement shall be Supplier's employees or agents and Supplier shall be fully responsible for them. As an independent contractor, Supplier acknowledges that Supplier (and any of its employees or agents) shall not be eligible to receive benefits or participate in any benefit plan offered by BJC or HSO to its employees. Supplier further agrees that BJC or HSO is not responsible to pay any premiums, make contributions, or withhold taxes on behalf of Supplier (and any of its employees or agents) under any worker's compensation, unemployment compensation, benefit, or tax withholding laws or any other similar statutory or regulatory obligations or internal policy or plan. All such benefits, payments, premiums, contributions, taxes, withholdings, and obligations are the sole responsibility of Supplier. Supplier will receive an IRS Form 1099-MISC from BJC or HSO and shall be solely responsible for all federal, state, and local taxes.

- 25 DEBARMENT/EXCLUSION FROM GOVERNMENT HEALTH CARE PROGRAMS.** Supplier represents that it, and each of its employees and subcontractors performing services for BJC or HSO, has not been: (i) listed by any federal or state agency as being excluded, debarred, suspended, or otherwise ineligible to participate in any federal and/or state health care programs, including without limitation, Medicare, Medicaid, or TRICARE; (ii) convicted of any crime relating to any such federal or state program; or (iii) subject to any sanctions by any such programs. Supplier agrees to promptly notify BJC or HSO in writing of any such imposed exclusions or sanctions, and BJC and HSO reserves the right to terminate this Agreement upon receipt of such notice or at any time thereafter.
- 26 NO DISCRIMINATION IN EMPLOYMENT.** Supplier agrees not to discriminate against any employee or applicant for employment because of race, color, ancestry, national origin, sex, religion, age, disability, sexual orientation, gender identity, genetic information, military or veteran status, or any other legally protected status. Supplier shall comply with all applicable federal, state, and local laws governing illegal discrimination or harassment in employment. If any service under this Agreement is in furtherance of a U.S. Government contract or subcontract or is otherwise subject to the provisions of the Equal Opportunity Clause as promulgated by Section 202 of Executive Order 11246, dated September 24, 1965, Supplier shall abide by the requirements of 41 C.F.R. § 60-1.4(a), 41 C.F.R. § 60-300.5(a), and 41 C.F.R. § 60-741.5(a), which are hereby incorporated by reference.
- 27 SUBCONTRACTING.** Supplier may not subcontract any of its duties under this Agreement without the prior written consent of BJC, which consent may be withheld in BJC's or HSO's sole and absolute discretion. In the event BJC or HSO consents to Supplier subcontracting its duties under this Agreement, Supplier at all times remains directly and fully liable for the performance of those duties that are subcontracted.
- 28 DISCOUNTS.** Regulations implementing the Federal health care program Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b), include a "safe harbor" for "discounts" (see 42 C.F.R. § 1001.952(h)). To the extent Supplier provides a price reduction to BJC or HSO pursuant to this Agreement, Supplier and BJC or HSO shall comply with the requirements set forth at 42 C.F.R. § 1001.952(h)(2) ("Discount Safe Harbor"). Supplier shall disclose to BJC or HSO the dollar value of discounts or reductions in price, as described in this Agreement, so that BJC or HSO can disclose such discounts or reductions in price, as required by the Discount Safe Harbor and any other applicable law. Supplier warrants that this Agreement meets the requirements of the Discount Safe Harbor and that Supplier will provide BJC or HSO with all information reasonably necessary for BJC or HSO to perform its reporting and other requirements pursuant to this safe harbor. Further, Supplier shall not take any action that

would impair or otherwise impede BJC's ability to comply with applicable provisions of the Discount Safe Harbor.

- 29 **INDUCEMENTS TO PURCHASE.** Supplier has not and shall not offer or provide to any director, officer, employee, consultant, or agent of BJC, any HSO, any distributor, or any physician or other health care provider associated with BJC or any HSO, any inducement(s) to purchase Supplier's products or services or to enter into this Agreement.
- 30 **COMPLIANCE WITH POLICIES AND PROCEDURES.** Supplier shall comply with all applicable federal, state and local laws, rules, and regulations, including employment, discrimination, and wage and hour laws, as well as all applicable standards of The Joint Commission or other applicable accrediting organizations. Supplier acknowledges that adherence of all persons present on BJC's or an HSO's premises to certain policies and procedures governing personal conduct are crucial to the safe and efficient operation and administration of BJC's and/or HSO's business. Accordingly, Supplier agrees to require and cause all its personnel to comply with: (i) all of BJC's and HSO's applicable written policies and procedures; (ii) BJC's and/or HSO's security requirements as communicated to Supplier or its personnel from time to time, including the directions of HSO's security staff; (iii) BJC's corporate compliance program and applicable policies; and (iv) BJC's Supplier Guide, which requires, among other things, Supplier and its representatives, when visiting a BJC affiliated facility, to utilize the then-current Supplier Management software tool, if any, utilized by BJC HealthCare. By executing this Agreement, Supplier acknowledges that copies of all the foregoing policies and other documents have been made available to Supplier and that it has had ample time to review and consult with legal counsel if it deems necessary.
- 31 **HAZARDOUS MATERIAL.** If Supplier will be distributing and/or bringing potentially hazardous chemicals or materials to BJC's or HSO's location(s), Supplier shall provide Material Safety Data Sheets to BJC or HSO at least five (5) days prior to bringing such chemicals or materials to BJC's or HSO's location(s).
- 32 **RECALL.** If any product is recalled (whether voluntarily or as required by a governmental entity), withdrawn, or subject to product corrective action (each a "Recalled Product"), Supplier shall reimburse BJC for the reasonable costs for patient notification and returning or disposing of the Recalled Product. Supplier may only deliver alternative or replacement product at no cost upon BJC's or HSO's written approval.
- 33 **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between Supplier and BJC or HSO with respect to the subject matter of the P.O. and supersedes any prior understandings or agreements with respect thereto, whether written or oral. For purposes of clarity, no conflicting or preprinted terms and conditions on any invoice, shrink wrap, click-through, or other similar document or agreement shall supersede the terms and conditions of this Agreement.
- 34 **SURVIVAL.** Notwithstanding any provisions herein to the contrary, the parties acknowledge and agree that all provisions which by their nature and intent are intended to survive the termination of this Agreement (e.g., indemnification) shall survive the termination or expiration of this Agreement.