

## **BAYLOR COLLEGE OF MEDICINE STANDARD TERMS AND CONDITIONS**

### **1. ORDER ACCEPTANCE· ENTIRE AGREEMENT-ALTERATION**

Except as provided for in the CONFLICTING TERMS clause, these Purchaser Order terms and conditions (“Terms and Conditions”) and the Purchase Order (with any and all appendices, Quotes and/or exhibits attached by BCM thereto or otherwise provided by BCM in connection with, collectively, the “Purchase Order” or the “Agreement”) by and between Baylor College of Medicine, including its subsidiaries, agents, directors, officers, trustees, employees, trainees, students and volunteers (“BCM” or “Buyer”) and Seller (as defined in the Purchase Order) (BCM and Seller, collectively, the “Parties”), constitute the entire Agreement between BCM and Seller relating to the Goods and Services, and supersede and replace any and all prior discussions and agreement between the Parties. Seller shall be deemed to have accepted the terms and conditions upon acknowledgement, commencement of performance, or acceptance of payment, in whole or in part. Any modification, alteration, or condition of acceptance indicated by written acknowledgement or course of conduct change(s) which conflicts with or adds or deletes terms and conditions of this Agreement, whether of material affect or not, are hereby rejected and are not a part of the Agreement unless a written purchase order amendment accepting the change is executed by BCM. BCM does not agree to automatic renewals. All transactions terminate in accordance with the limitations of the specific period stated in the Purchase Order.

### **2. PACKING-SHIPPING-EXTRAS-DELIVERY – RISK OF LOSS-ACCEPTANCE - INSPECTION**

*Packing:* Unless otherwise specified herein, no charges for special handling will be honored, including but not limited to boxing, crating, bundling, dunnage, drayage or storage, all shipments are to be prepaid and allowed, FOB Destination. Seller will clearly mark any hazardous materials or other materials requiring special precautions or immediate refrigeration. To the extent that specifications for shipment are not identified in this order, preservation, packaging, packing and routing shall be in accordance with best commercial practice which will permit securing lowest rates for safe, economical transportation and timely delivery. Seller's invoice shall separately identify shipping charges and have attached thereto the original or a copy of the receipted freight bill indicating that payment for shipment had been made. Invoices and bills of lading shall be sent to BCM within twenty four (24) hours after the date of shipment.

*Shipping:* Seller shall route shipments in accordance with BCM's instructions and plainly mark BCM's purchase order number on all invoices, packages, bills of lading and shipping orders.

Goods will be delivered, F.O.B. Destination (shipment, handling, insurance pre-paid by Seller) no later than the delivery date indicated on the Purchase Order. Seller will provide Baylor with immediate notice of any out-of-stock inventory identified on a Purchase Order. No substitutions are allowed without the prior written consent of Baylor. All Products must be shipped in their original packaging and Seller will make all commercially reasonable efforts to consolidate multiple orders in a single shipment. Cost of special delivery and/or air shipments must be authorized in advance by Baylor, prepaid by Seller and identified as a separate line item on Seller's invoice.

*Extras:* A packing list shall accompany each shipment showing: (1) BCM's purchase order number, (2) Shipper's name and address,(3) A general description of the articles contained therein including the quantity thereof, and (4) Location to which the articles are to be shipped. In the event any individual shipment occurs in more than one container, each container shall be marked "1 of n, 2 of n, ...n of n", where n is the total number of containers in any such individual shipment. Seller shall either reimburse BCM or accept a debit against his account for all expenses incurred by BCM as a result of improper packing, marking, and shipment or routing by Seller. Unless otherwise specified herein, Seller will not insure or declare value on any shipment other than Parcel Post. All premium freight costs incurred by BCM or Seller beyond that specified by BCM shall be borne by Seller. Seller hereby agrees to on time delivery based upon the timeline set forth in the Purchase Order.

*Delivery:* If the Purchase Order does not specify a delivery date (the “Delivery Date”) or timeline, Seller shall provide Goods as if time is of the essence. Changes, modifications or any delay resulting from BCM that prevents Seller from achieving the Delivery Date shall not constitute a breach of this Purchase Order by Seller. If Seller anticipates a delay in the delivery of the Goods, Seller shall immediately notify BCM. Failure to meet agreed upon delivery date shall be considered breach of this Agreement. In the event that Seller fails to deliver the Goods by the delivery date, or Seller fails to deliver conforming Goods, BCM may purchase substitute Goods elsewhere and charge Seller for any additional expense incurred relating to the purchase of such substitute Goods. Seller shall deliver all Goods in accordance with the term of the Purchase Order. If delivery of the Goods is not complete by the Delivery Date, BCM may, without liability, and in addition to its other rights and remedies, terminate this Purchase Order, by notice effective when received by Seller, as to Goods not yet delivered or rendered. Acceptance of any part of the Purchase Order shall not bind BCM to Accept (as defined hereafter) any future shipments nor deprive it of the right to return Goods already Accepted (as defined hereafter). Shipments which are defective or which are in excess of those authorized by BCM, may be returned to Seller at Seller's expense for all handling and transportation costs related to such shipment.

*Risk of Loss:* Seller assumes all risk of loss of or damage to all Goods ordered and all work in progress, materials, and other items related to the Purchase Order until the same are final

Accepted by BCM. Seller assumes all risk of loss of or damage relating to any Goods, work in progress, materials, and other items rejected by BCM until the same are received by Seller or Accepted by BCM.

*Acceptance:* As a condition precedent to payment for the Goods by BCM to Seller. BCM shall Accept those Goods (in whole or in part thereof) on the Delivery Date or as otherwise set forth in the Purchase Order. For purposes of these Terms and Conditions, "Acceptance" means the point at which BCM accepts or is deemed to accept the Goods in accordance with the terms set forth in the Purchase Order. Acceptance shall include the terms "Accept" and "Accepted". The Goods shall be deemed to have been Accepted (i) in the absence of written notification of non- Acceptance by BCM to Seller within a reasonable period of time, or (ii) upon timely delivery of Goods identified herein to the shipping address specified on the face of the Purchase Order and the examination and confirmation that the Goods conform to their applicable specifications. Prior to Acceptance, title to the Goods remains with the Seller; all risks of damage, injury, or loss thereto, or partial or complete destruction thereof, will be borne and assumed by Seller. For clarity, BCM hereby retains its right to reject any non-conforming Goods and shall not be obligated to Accept any non-conforming Goods.

*Inspection:* Payment for the Goods provided under the Purchase Order shall not constitute Acceptance thereof. BCM may inspect and test such Goods and reject any and all items that are, in BCM's sole judgment, non-conforming. Goods rejected or supplies in excess of quantities ordered may be returned to Seller at its expense. Failure by BCM to inspect and/or test the Goods shall not be deemed Acceptance by BCM.

### 3. CHANGES

BCM shall have the right at: any time, by formal purchase order amendment, to unilaterally make changes within the general scope of this order in any one or more of the following: (a) drawings, designs, specifications; (b) method of shipment or packaging; (c) place of delivery; (d) quantities of articles ordered; (e) the delivery schedule; and nothing in this clause shall excuse the Seller from proceeding without delay in the diligent pursuit of performance of this order as changed. Notice is herewith given and Seller agrees that BCM's employees have no authority to direct any change, except by formal purchase order amendment signed by an authorized agent of BCM. BCM is not required to honor any claim for adjustment, predicated upon the contention that a change was directed by any other means. If the price, terms, shipping date or any other expressed condition of the Purchase Order cannot be achieved or met by Seller, BCM must be notified and must have the opportunity to accept in writing any variation prior to shipment or delivery.

### 4. CANCELLATION

Time is of the essence for this Purchase Order. BCM may for any reason and at any time, at its option cancel, terminate or suspend this order in whole or in part in the event of a breach of any material condition of the Seller's performance hereunder that is not cured within ten calendar days after receipt of such notice or longer period as may be authorized in writing by BCM. To the extent the Purchase Order covers stock Goods, BCM's only obligation is to pay for Accepted products prior to such cancellation. To the extent the Purchase Order covers Goods manufactured or fabricated to BCM's specifications, Seller shall immediately cease all performance hereunder upon receipt of notice of cancellation, and, if Seller is not in default, BCM shall reimburse Seller for actual, direct cost to Seller of such Goods which have, at the time of such cancellation, been wholly or partially manufactured. Upon payment, title to all such Goods shall pass to BCM. Unless BCM shall have otherwise instructed Seller, Seller agrees that it will not manufacture Goods in reserve in an amount greater than the number of manufactured Goods that it has shipped to BCM at any one time. In addition, BCM may at any time cancel or suspend this order, or any part thereof, by serving written notice upon Seller, specifying the extent and effective date of such cancellation, termination, or suspension. To the extent this order is not cancelled, terminated or suspended under the provisions of this clause, the Seller shall continue performance. BCM's acceptance of performance, other than that specifically called for herein, with or without objection or reservation, shall not waive the right to claim damage for such breach nor constitute a waiver of the requirement for timely performance of any obligation remaining to be performed by Seller. Failure of BCM to enforce any right under this clause shall not be deemed a waiver of any subsequent right hereunder. BCM's rights and remedies reserved under this clause shall not be exclusive, and are in addition to any other rights or remedies provided for by law or under this order. Without affecting or otherwise limiting BCM's right to cancel, terminate, suspend or reject as set forth above, BCM may at any time terminate all or any part of this order with no fees or penalties.

### 5. PRICE

Prices or fees for conforming goods, items or services specified in the Purchase Order ("collectively, the "Goods") shall include any applicable transportation charges, insurance costs, shipping and handling fees and taxes; provided, however, Seller shall not include sales tax on the Goods pursuant to the terms set forth in Section 5 (Taxes), herein. BCM will not accept shipment at any increase in price above that indicated on this order. Any price decrease announced by Seller for any product indicated on this order shall automatically apply to this order, provided any such decrease is announced before delivery occurs. Any references to security interests, late payment fees, interest, or penalties on the Quote shall be deemed deleted and of no effect. The annual service fee set forth on the Quote is fixed for the term set forth on the Quote. Notwithstanding any provision of the Quote, there shall be no increases in the annual service fee during the term, including, without limitation, any increases based upon a set percentage or the Consumer Price Index, Employment Cost Index, or any other index. Notwithstanding any other provision, any increase in the annual fee after the first year shall not apply to BCM, and BCM shall pay the same annual price for each year of the term of the Quote. Seller will provide BCM the most favored customer pricing for the Products as Seller quotes to other customers purchasing comparable quantities. Seller will notify BCM of any

reduction in the price of any Products and provide BCM with a price reduction that is comparable to the largest price reduction given to its other customers purchasing comparable quantities. Seller will issue BCM either a full refund or credit for any Products returned to Seller pursuant to this Agreement.

#### **6. TAXES**

BCM is a Texas nonprofit organization, a copy of the tax exemption certificate can be provided upon request. Seller shall take all action required to cause BCM's purchase of the Goods to be treated as tax-exempt transactions, and in no event shall BCM be responsible for any sales, use, property, gross receipts, or similar taxes levied against any party to this Purchase Order.

#### **7. WARRANTY**

Unless otherwise agreed to in writing, in addition to Seller's standard warranty relating to the Goods, Seller warrants that the Goods to be delivered pursuant to the Purchase Order (i) are of merchantable quality and free from defects in material and workmanship, and sufficient for the purpose intended, (ii) shall conform to all express warranties, specifications, promise, sample or other descriptions furnished to and approved by the Parties, (iii) comply with all applicable international, federal, state and local laws, rules and regulations (including, without limitation, those concerning safety, health and environmental standards), (iv) shall be new and not refurbished or reconditioned, unless expressly agreed in writing by BCM, and (v) are not restricted in any way by any patents, copyrights, mask work, trademark, trade secrets, or intellectual property, proprietary or contractual rights of any third party. In addition, Seller warrants that BCM shall have good and marketable title to all Goods (including components thereof) purchased pursuant to transactions contemplated under the Purchase Order, free of all liens and encumbrances and other restrictions, and that no licenses are required for BCM to use such Goods. The terms of this Section (Warranty) shall not be waived by reason of Acceptance of the Goods or payment by BCM. In the event any Goods are accompanied by or embedded with software, Seller warrants that the software: (i) is free from defects in material and workmanship and will substantially conform to its written product descriptions and any technical specifications and (ii) does not contain any virus, worm, timer or clock that would erase data or programming or otherwise cause the software to become inoperable. Seller further agrees to provide BCM, at no additional charge, any and all routine changes, updates, and maintenance services intended to provide general improvement to the performance of the Goods or as may be required for compliance with applicable government regulations. Seller warrants that the sale, resale or use of the materials furnished hereunder will not infringe any patents, and Seller agrees to defend, protect and save harmless BCM, its successors, assigns, customers and users of its materials from all damages and expenses (including, without limitation, all legal -fees and all expenses) resulting from any and all claims based on any such actual or alleged infringement.

Seller will perform all services (the "Services") with promptness and diligence and executed in a professional manner, in accordance with the practices and professional standards used in well-managed operations performing services similar to the Services. Seller will provide all Services necessary to maintain the equipment and all software licensed or sublicensed from Seller for use with the equipment that are covered under the Agreement (the foregoing equipment and software are referred to collectively as the "Equipment") in good and safe operating condition in accordance with the original manufacture specifications (the "OEM Specifications"). The term "Seller Software," when used in these Terms, refers specifically to the software licensed or sublicensed from Seller. Seller further warrants to BCM, as follows: (i) any technical support or services will be performed in accordance with industry practices, in a professional manner by properly trained and suitably skilled personnel, (ii) Seller is a corporation duly organized and in good standing under the laws of the jurisdiction of its incorporation, with full corporate power and authority to conduct its business in the manner contemplated by this Agreement and (iii) that neither Seller nor any of those workers which it shall provide to BCM pursuant to the Agreement are sanctioned or excluded from any federally funded health care programs as provided in Sections 1128 and 1128A of the Social Security Act (42 U.S.C. 1320a-7a). Seller further warrants that it checks the excluded provider list found at <http://oig.hhs.gov> and the Systems for Awards Management (SAM) listing [www.SAM.gov](http://www.SAM.gov) for excluded employees and entities upon hiring or contracting with a temporary worker and on an annual basis thereafter. Seller agrees that it will notify BCM immediately in the event it or any of the workers it has provided to BCM become sanctioned or excluded from any federally funded health care programs. Such notification shall include the grounds for sanction or exclusion and the duration.

#### **8. COMPLIANCE WITH LAW**

Seller covenants that, in performance hereof, it will comply with all applicable laws, rules, regulations or orders of the United States Government, or of any state or political subdivision thereof, including, without negatively implying exclusion of others, the applicable provisions of: 1) The fair Labor Standards Act of 1938 (29 U.S.C. 201-209), as amended; 2) Equal Employment Opportunity (E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375); 3) Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c); 4) Davis-Bacon Act, as amended (40 U.S.C. 276a to a- 7); 5) Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333); 6) Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements (37 CFR part 401); 7) Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended; 8) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352); 9) Debarment and Suspension (E.O.s 12549 and 12689), 10) The affirmative action clauses set forth in 41 CFR §60-1.4 (addressing race, sex, color, religion, and national origin), 11) 41 CFR §60-250.4 and 41 CFR §60-250.5 (addressing veteran status), and 12) 41 CFR §60-741.4 and 41 CFR §60-741.5 (addressing disabilities). BCM, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access until the expiration of four years after final payment hereunder, to any books, documents, papers, and records of the Seller which are directly pertinent to

transactions related to the Purchase Order, for the purpose of making audits, examination, excerpts and transcriptions. Seller shall comply with all other applicable federal, state, and local laws, rules, regulations and ordinances, and represents that it shall have obtained all licenses and permits required by law to engage in the activities necessary to perform its obligations under this Agreement. Seller hereby represents and warrants that all Goods provided to BCM hereunder have appropriate documentation in conjunction with FDA regulations, and copies of the approval or clearance documentation issued to Seller by the FDA will be provided to Seller, upon request. If recall or modification of any of the Goods is required by the FDA or voluntarily recommended or required by the Seller, Seller shall, at its sole cost and expense, immediately notify BCM in writing of such recall or modification; remove, package, and ship to Seller's plant the affected Goods; and at no additional charge to BCM replace such Goods(s) with Seller Products which have been evaluated and accepted by BCM as clinically comparable. Seller agrees that the terms and conditions of sale controlling the rights, obligations, liabilities and performance as between the parties shall be in accordance with the laws of the State of Texas.

**9. TERMS OF PAYMENT**

The Seller's right to payment is contingent upon BCM's approval and acceptance of articles delivered or services rendered in accordance with the terms and specifications of this Purchase Order. Payment of the stipulated order price is no evidence of BCM's final acceptance of the order. Payment shall be subject to subsequent adjustment for shortages and allowance for articles rejected. Unless otherwise stated on the face of the order, all NET INVOICES will be paid on or about the forty fifth (45th) day following BCM's receipt of a Proper Invoice. Unless otherwise stated on the face of this order, discounted invoices may be honored in accordance with discount terms offered. The date for calculation of any cash discount offered by the Seller shall commence as of the date of receipt of a proper invoice or the articles ordered, whichever is later. BCM shall be entitled at all times to set-off any amounts owing, for any reason, at any time, from Seller to BCM against any amount payable at any time by BCM in connection with this order. All invoices must reference BCM's issued purchase order number ("Proper Invoice") and must be sent directly to BCM Accounts Payable and Disbursements at One Baylor Plaza MS: BCM201 Houston, TX 77030 or emailed to: [apinvoices@bcm.edu](mailto:apinvoices@bcm.edu).

**10. EXCUSABLE DELAYS & DEFAULTS**

Neither party shall be liable for delay in delivery or default in furnishing articles or services hereunder and BCM shall not be liable for failure to accept, if such failures are due to causes beyond the reasonable control and without the fault or negligence of the party otherwise responsible. Such causes may include, but are not restricted to, acts of God, or of the public enemy, acts of the government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather. No cause shall constitute a basis for excusable delay unless notice in writing is provided within ten (10) calendar days after the cause of the delay became or should have become known to the party responsible.

**11. INDEMNIFICATION**

Seller will indemnify, defend and hold harmless Baylor College of Medicine and its respective affiliates, subsidiaries, employees, directors, agents and assigns from and against all losses, costs, claims, penalties, fines, demands, liabilities, legal actions, judgments or causes of action of any nature for any relief elements of recovery or damages recognized by law (including, without limitation, reasonable attorneys' fees, defense costs, and equitable relief), which may be asserted, arising out of, resulting from, attributable to, or alleging any misrepresentation, injury to or death of any individual; breach of Confidentiality; breach of Data Security; claims related to Products liability, or any loss of, or damage to real or tangible property, cause by the negligence or willful misconduct of Seller or any of its agents, subcontractors or employees in connection with its performance of services hereunder. Except with respect to Seller's obligation to defend, indemnify and hold BCM harmless against claims or causes of action that the Services, the Equipment or the BCM Software infringe a patent, trade secret or any other intellectual property right, neither party shall have a contractual duty to indemnify the other party. The foregoing shall not limit any claims or causes of action for indemnification or contribution that either party may have against the other under law or in equity. Notwithstanding any provision of the Agreement, any limitation of Seller's liability (including, without limitation, any disclaimer of liability, cap on liability or exclusion of remedies or damages available to BCM) shall not apply to any claim or cause of action for indemnification or contribution that BCM may have against Seller, or any other liability or damages arising out of or related to Seller's acts or omissions that result in either: (i) damage of property; (ii) death or personal injury; and (iii) any breach of the Business Associate Agreement (assuming a Business Associate Agreement is required).

**12. INSURANCE**

Seller shall maintain adequate insurance which meets the limits required by Baylor College of Medicine, in any and all forms necessary to protect both Seller and BCM from and against all liabilities, losses, damages, claims, settlements, expenses, and legal fees arising out of or resulting from performance or provisions of this Purchase Order. Seller can request the Baylor College of Medicine Vendor insurance requirements by written notice.

**13. INDEPENDENT CONTRACTOR**

Seller in the performance of its duties hereunder, shall be an independent contractor only, and not an agent, employee, partner, or joint venturer of, or with BCM, and nothing herein shall be deemed to create or imply any relationship other than that of independent contractor. Seller shall have no authority to incur any obligations or expenses on behalf of BCM or to act in

any manner on behalf of BCM or in its name. Seller's employees and contractors shall not be entitled to receive any compensation or employee benefits from BCM.

**14. GOVERNING LAW**

The Purchase Order shall be governed and construed in accordance with the laws of the State of Texas without regard to its rules of conflict of laws. The Parties agree that any dispute arising under this Purchase Order shall be resolved in the courts of Harris County or in the Federal District Court for the Southern District of Texas located in Houston, Harris County, Texas and the Parties hereby submit themselves to the personal jurisdiction of said courts.

**15. TERM; TERMINATION; RENEWAL**

The Agreement shall expire at the end of the term specified in the Agreement. Any reference to an automatic term renewal shall be deemed deleted and of no effect. At the end of the term, the Parties may agree in writing to renew or otherwise extend the Agreement, by written amendment which shall specify the terms and conditions that will apply during the renewal or extension term. Seller shall have the right to terminate the Agreement upon thirty (30) days' notice in the event that the Equipment is taken out of use by BCM. Seller shall refund to BCM any prepaid Service fees, prorated based upon the period of time the Equipment was used by BCM. BCM shall have the right to terminate the Agreement upon written notice to Seller in the event that the Seller breaches the Agreement, and Seller has failed to cure such breach within thirty (30) days after BCM has provided Seller written notice of the breach. BCM shall have the right to terminate the Agreement for convenience upon thirty days advance written notice.

**16. USE OF BCM NAME; ADVERTISING OR PUBLICATION**

Neither Seller nor any of its subcontractors or affiliates shall use, or cause or allow to be used, the name "Baylor College of Medicine" or "BCM" or "Baylor" (alone or as a part of another name, and in any language) or any logos, seals, insignia or other words, names, symbols, images or devices that identify Baylor College of Medicine or any unit, department, division or affiliate ("Baylor College of Medicine Names") in any advertising or promotional literature, electronic or otherwise, or in any publication whatsoever in connection with the Goods or the Purchase Order, without the prior written approval of, and in accordance with restrictions required by, an authorized representative of BCM's VP of Public Affairs Office. Seller shall not register any Baylor College of Medicine Name in any jurisdiction as a trademark, service mark, domain name, trade name, business or company name or otherwise.

**17. USE OF INFORMATION**

Seller agrees that all information heretofore or hereafter furnished or disclosed to BCM by the Seller, in connection with the placing or filling of this order, is furnished or disclosed as part of the consideration for this order, and such information is not, unless otherwise agreed to by BCM in writing, to be treated by BCM as the confidential or proprietary information of the Seller, and the Seller shall assert no claims (other than for patent, trademark, or copyright infringement) by reason of any use or disclosure of such information by BCM, its assigns or its customers. No employee of BCM has the authority to make an agreement providing for the confidential treatment of, or limiting the use or disclosure of, information so furnished or disclosed, unless such agreement is made in writing and signed by an authorized officer of BCM. Seller hereby agrees that all technical information contained in documents, drawings, publications, specifications, schedules and the like received from BCM for the performance of this order is received in confidence and is the proprietary property of BCM, and that such information will not be transmitted, reproduced, used or disclosed to any person or organization by Seller (except as may be necessary for the performance of work required to be done under this order with BCM) without the express prior written approval of an authorized agent of BCM.

**18. INVALIDITY-REMEDIES-WAIVER**

*Invalidity:* If any provision of this Agreement is found void, invalid or unenforceable, it shall not affect the validity of the balance of this Agreement which shall remain valid and enforceable according to its terms.

*Remedies:* The rights and remedies herein reserved to BCM shall be cumulative and in addition to any other or further rights and remedies provided in law or equity, including but not limited to rights and remedies set forth in the Uniform Commercial Code.

*Waiver:* BCM's failure to enforce any provision of this contract shall not be construed to be a waiver of such provision, nor in any way to affect the validity of the agreement or any part thereof, or BCM's right thereafter to enforce each and every such provision, which shall remain in full force and effect.

**19. PATENTS, COPYRIGHTS, and OTHER INTELLECTUAL PROPERTY**

Seller agrees to indemnify, defend and to save BCM, its officers, agents, employees, and vendees (mediate and immediate) harmless from any and all loss, expense, including attorneys' fees, court costs and other costs of defense, damage, liability, claims or demands either at law or in equity for actual or alleged infringement of any patent invention, design, trademark, copyright, or infringement or misappropriation of other intellectual property right arising from the purchase, use, sale, or offer of sale of materials or articles required by this purchase order, except where such infringement or alleged infringement arises by reason of designs for such materials or articles originally furnished to Seller by BCM. If Seller is providing services to BCM, Seller hereby assigns and agrees to assign to BCM any right, title, and interest it may have in any invention, discovery, improvement, copyright or other intellectual

property (hereinafter the “Intellectual Property”) which Seller, alone or with others, develops as a result of performing Services for BCM under this Agreement. Such Services and the Intellectual Property created as a result will be considered as a “work for hire. Seller will be responsible for obtaining the assignment of such Intellectual Property from everyone and all of its employees, and any person who performs services for Seller under this Agreement. If according to applicable law, the inventors must sign any document for the registration of the Intellectual Property, Seller will seek for it and ensure the registration of the Intellectual Property and the assignment in favor of BCM.

**20. ASSIGNMENT**

Neither this order nor any duty or right under it shall be delegated or assigned by Seller without the prior written notice to and written consent of BCM, except that claims for monies due or to become due under this order may be assigned to a bank, trust company, or other financing institution, including any federal lending agency, by Seller without such consent. BCM shall be furnished with two signed copies of any such assignment. Payment to an assignee of any such claim shall be subject to set-off or recoupment for any present or future claims which BCM may have against Seller. BCM reserves the right to make settlements or adjustments in price, or both, with Seller under the terms of this order notwithstanding any assignment of claims for monies due or to become due hereunder and without notice to assignee.

**21. ATTORNEYS' FEES**

In the event of any litigation between the parties hereto to enforce any provision hereof or any right of any party hereunder, the prevailing party in such litigation shall be entitled to recover from the other party the reasonable attorneys' fees and costs of suit reasonably incurred by that party.

**22. CONFLICTING TERMS**

In the event of any conflict between the terms of this Agreement and any other contract in effect between BCM and Seller, the terms of any such contract shall govern unless specifically amended in writing in the body of this order, provided that any such existing contract is for a term of not less than twelve (12) months and is not bid or proposal specific.

**23. NOTICES**

All legal notices and other communications must be in writing and will be considered given upon (1) delivery by hand or (ii) one day after delivery by receipted overnight delivery courier, or (iii) three days after mailed by certified or registered mail, return receipt requested, with postage prepaid to Baylor College of Medicine, One Baylor Plaza, MS: 105, Houston, Texas 77030. Attention: Office of General Counsel.

**24. INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (ITAR)**

Seller agrees to notify BCM if any products and related materials to be provided to BCM by Seller pursuant to the Purchase Order are controlled for export pursuant to the export control laws and regulations for the United States and any applicable foreign country. Seller further agrees to provide the export classification of the controlled item(s), including the applicable Export Control Classification Number (“ECCN”) or U.S. Munitions List (“USML”) Category. Seller agrees that if it fails to notify BCM that it is providing export-controlled items, data, or services, it shall reimburse BCM for any fines, legal costs and other fees imposed for any violation of export controls.

**25. GROUP PURCHASING ORGANIZATION**

In the event BCM and a group purchasing organization (“GPO”) of which BCM is a member, enters into a master agreement or pricing agreement governing the purchase and sale of any or all the Equipment and/or Services hereunder (the “Master Agreement”), Seller agrees that BCM shall have the option, in BCM’s sole discretion and upon prior notice to Seller and on a prospective basis only, to (i) continue this Agreement, but to adjust the pricing hereof to reflect the pricing set forth in the GPO Master Agreement, without any penalty, or (ii) terminate this Agreement, without any penalty, and enter into the GPO Master Agreement.

**26. SELLER SOFTWARE**

If the Equipment has the Seller’s Software, then Seller will use its best efforts to test any software provided by Seller to detect and remove any viruses or other malware that could have an adverse impact on the Seller’s Software or the Equipment. If Seller introduces a virus or other malware into the Seller’s Software, the Seller will, at its sole cost and expense, remediate the effects of the virus or malware, including restoring any lost data, such that the Equipment and Seller Software operates in accordance with the OEM specifications. If the Equipment is connected to BCM’s network, then throughout the term of this Agreement, the Seller shall always comply with the BCM’s then current Remote Access Policies.

**27. CONFIDENTIALITY**

Confidential Information" refers to any (i) technical or design information related to the Products; (ii) business or financial information, including but not limited to product plans, costs or prices; and (iii) any information designated by a party as confidential or proprietary. The parties shall hold in confidence any information designated by a party as Confidential Information and will exercise the same degree of care to protect it from disclosure that it uses to protect its own Confidential Information of similar importance. Each party shall only use the other party's Confidential Information as necessary to perform its obligations hereunder and will return or destroy it at the request of the disclosing party or upon the termination or expiration of this Agreement. Confidential Information does not include information: (i) otherwise available from a third party, without any limitations on its use, distribution or disclosure; (ii) in the public domain; or (iii) known to the receiving party prior to its disclosure, as evidenced by written records. The parties hereby covenant that they shall not disclose Confidential Information to any third party without prior written authorization of the disclosing party. Seller further agrees not to disclose or use the name of BCM in any publication or any articles, advertising or publicity without the prior written consent of BCM.

#### **28. PROCUREMENTS UNDER GOVERNMENT CONTRACTS**

If the Goods or Services are to be used in the performance of a U.S. Government contract, under a Federal Award, or subcontract, all clauses of the U.S. Government Procurement Standards included in 2 CFR§200.317-200.326 that are mandatorily required by law to be included, are hereby incorporated into the Quotation and/or these Terms and Conditions.

If the Order involves funds from a Federal government contract – or funds from a subcontract at any tier relating to a Federal government contract – the following clauses from the Federal Acquisition Regulation (“FAR”) and the Defense Federal Acquisition Regulation Supplement (“DFARS”) are incorporated into the Order by reference where applicable and form a part of the terms and conditions of the Order. The full text of the FAR clauses may be found at <https://acquisition.gov/far/>. The full text of the DFARS clauses may be found at <http://farsite.hill.af.mil/vfdfara.htm>. Seller agrees to flow down all applicable FAR and DFARS clauses to lower- tier subcontractors. Where necessary to make the language of the FAR and DFARS clauses applicable to the Order, the term “contractor” shall mean “Seller,” the term “contract” or “subcontract” shall mean “the Order,” and the terms “government,” “contracting officer,” and equivalent terms and phrases shall mean “BCM.” If the Agreement or Order involves the use of funds from a Federal government grant or cooperative agreement—or funds from a subcontract at any tier relating to a Federal government grant or cooperative agreement—the following clauses from the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (“Uniform Guidance”), Appendix II are incorporated into and form a part of the terms and conditions of the Agreement or Order. The full text of the Uniform Guidance may be found at 2 C.F.R. Part 200. Seller/Vendor agrees to flow down all applicable clauses from the Uniform Guidance to lower-tier subcontractors.

#### **29. BUSINESS ASSOCIATE AGREEMENT**

If the Equipment processes or stores Protected Health Information (as defined in the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”)) or if the Seller will have access to Protected Health Information, Seller and BCM shall execute a Business Associate Agreement.

#### **30. SURVIVAL OF TERMS**

The provisions of the Purchase Order which by their explicit terms or their manifest intent are to survive, including without limitation those which relate to intellectual property, insurance, indemnification and use of BCM's Names, shall survive termination, cancellation or expiration of the Purchase Order.

#### **31. INVOICE/PURCHASE ORDER FRAUD PREVENTION**

Due to the increased risk of Purchase Order/Invoice fraud, Seller should treat any notification to change details of Buyer's Purchase Order or Invoice information with suspicion. Always verify a request to update records before implementing a change. Verify any requested changes by speaking to a known Buyer representative.

32. **Representation of Non-Exclusion**. Vendor, acknowledges that BCM is prohibited from contracting with a person or entity that has been excluded under any federal or state agency program, including, but not limited to the OIG List of Excluded Individuals/Entities (LEIE), System for Award Management (SAM); FDA Debarment List; U.S. Department of Treasury OFAC Sanction list; Specially Designated Nationals List (SDN), Texas Medicaid exclusion list, or any other list designated by the federal or state government to track excluded providers (“Lists”). Vendor represents and warrants that neither it, nor any of its affiliates, agents, subcontractors or employees performing services under this Agreement or any person working for or acting on behalf of Vendor has been or is debarred, penalized by, convicted, sanctioned, suspended, excluded, identified on any Lists, or otherwise ineligible to participate in any state or federal program or by any federal department or agency. Vendor agrees to immediately notify BCM if it learns of any investigation or proceeding that could result in violation of this provision. Upon receipt of notice, BCM retains the right to immediately terminate this Agreement.