

These terms and conditions (“**T&Cs**”) apply to any offer by Spectrum Health System or one of its Affiliates (individually and collectively, “**Spectrum**”) to acquire products and/or services specified on the face of any purchase order attached to these T&Cs from the supplier described on such purchase order (“**Supplier**”) unless otherwise mutually agreed in a signed, written document between the parties. Spectrum’s purchase order, along with any written quotation, proposal, invoice, contract or agreement from Supplier, shall be collectively referred to herein as “**Proposal**”. The Proposal describes Supplier’s provision of certain products (collectively, “**Product(s)**”) and/or certain services, all such services, including the labor, equipment and material to perform same, collectively referred to herein as “**Services**.” Notwithstanding anything in the Proposal to the contrary, the Proposal is subject to the terms and conditions in these T&Cs, which supersede and control over all inconsistent terms or language in the Proposal. All other terms, conditions, covenants, obligations and agreements in the Proposal shall remain in full force and affect and without any change due to these T&Cs.

(a) Supplier acknowledges and agrees that Spectrum Health System or its applicable Affiliate is the proper contracting party to the Proposal and these T&Cs (collectively, the “**Contract**”).

(b) Supplier shall be deemed to have accepted this Contract upon the earlier of: (i) thirty (30) days following receipt of this Contract from Spectrum, unless Supplier rejects this Contract in writing within such 30-day period; or (ii) delivery of any Product or performance of any Service.

(c) Any purchase order issued for Products or Services, if any, and/or any other written documentation between Spectrum and Supplier involving Products or Services shall be deemed to relate to and be governed by this Contract, even without specific reference to this Contract. Spectrum objects to and shall not be bound by any additional, different or inconsistent terms or conditions contained in any other communication or document between Spectrum and Supplier, and such communication(s)/document(s) and/or prior courses of dealing and trade usage, shall be of no force or effect whatsoever, unless specifically agreed to in a separate written document signed by authorized representatives of both parties. This Contract may be modified only upon a writing executed by both parties.

(d) Supplier is responsible for all transportation costs (including, without limitation, packaging, loading, unloading and insurance costs), duties, taxes, charges, premiums and fees related to any Product. Title and risk of loss shall transfer from Supplier to Spectrum upon delivery to the designated Spectrum facility site. Spectrum shall have the right to inspect the Product after its delivery. At Spectrum’s option, a defective Product may be returned to Supplier at Supplier’s expense (including packaging and shipping) and Supplier shall promptly provide a replacement Product or credit (or reimbursement if Spectrum has paid Supplier for such defective Product) to Spectrum, as Spectrum elects. Only upon 24 hours prior written notice and at reasonable business hours may Supplier enter upon Spectrum’s premises for the purpose of inspecting any Product or providing Services, and such entry and presence must be in accordance with Spectrum’s relevant policies and procedures.

(e) Supplier warrants to Spectrum that: (i) any Products or Services provided pursuant to this Contract, including any replacements, corrections or repairs furnished by Supplier (a) do not violate any patent, trademark or copyright, (b) shall be manufactured, sold, distributed, delivered and/or performed, as

applicable, in compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, industry standards or other standards, labeling, transporting, licensing, approval or certification requirements in the United States, and Supplier shall obtain and maintain all necessary permits, registrations, and licenses to accomplish same, and (c) shall be performed and delivered in accordance with the highest prevailing industry standards for the type of product or service provided; (ii) any Product provided under this Contract, including any replacements, corrections or repairs furnished by Supplier (a) shall strictly conform to specifications published, furnished, or specified by Supplier and shall be safe for use in conformance with such specifications, (b) shall be safe and free from defects, (c) shall be free and clear of any liens, or any other encumbrances, (d) shall be adequately contained, packaged, marked and labeled, (e) will include all applicable service and maintenance manuals; and (f) will be new and not used, remanufactured, or reconditioned unless agreed otherwise by Spectrum in writing and (iii) all Services shall be provided only by qualified, licensed and well-trained Supplier personnel. Supplier agrees to notify Spectrum immediately upon discovery of any known or suspected deficiency in the Product or Services which may adversely affect the optimal operation and/or use of Spectrum’s facility(ies).

(f) Supplier shall obtain and maintain insurance, at its own costs and expense, during the term of this Contract in coverage amounts no less than \$1,000,000 per occurrence and \$3,000,000 annual aggregate, naming Spectrum as an additional insured, and covering, at a minimum, (i) general liability, (ii) product liability and product recall (to the extent Product is being purchased under the Contract), (iii) professional liability (to the extent professional services are being performed under the Contract), (iv) workers’ compensation with statutory limits and (v) any other coverage reasonably necessary to protect Supplier and its agents and employees from any claims arising from its obligations under this Contract. Supplier agrees to submit certificates of insurance, evidencing its insurance coverage, upon Spectrum’s request.

(g) Each party agrees to indemnify, hold harmless and defend the other and its affiliates, officers, trustees, agents and employees from and against any claim, liability or loss (including attorneys’ fees) arising from breach of this Contract by the indemnifying party or the acts or omissions of the indemnifying party or its employees or agents; provided that neither party shall assume any liability for any act or omission of the other party or its employees or agents. All references within the Proposal to any limitations of liability,

remedies and/or damages available to Spectrum are hereby deleted in their entirety without replacement. Supplier will indemnify, hold harmless and defend Spectrum and its affiliates, officers, trustees, agents and employees from and against any third party claims, damages, liabilities, judgments (including related attorneys' fees) arising from any Products furnished under this Contract ("**Third Party Product Liability**"). If any Product is the subject of any corrective action, withdrawal or recall by Supplier or a government entity, including the issuance of a safety notice (collectively, an "**Issue Response**"), Supplier shall notify Spectrum in writing within 24 hours and shall be responsible for all matters and costs associated with the Issue Response.

(h) Intellectual Property.

a. Warranty. Supplier represents and warrants to Spectrum that Supplier owns the Products, including all software contained therein, and including all associated intellectual property rights, or otherwise has the right to grant Spectrum the rights and licenses provided in this Contract, and that neither the Products nor the documentation infringe any third party's intellectual property rights.

b. Infringement Remedies. Supplier shall defend, indemnify, and hold harmless Spectrum, its Affiliates and their officers, directors, agents, employees, and other authorized users from and against any liability, claim, action, loss, damage, or expense (including court costs and attorney's fees) arising out of, or relating to, use of the Products in compliance with the terms of this Contract. Spectrum agrees to notify Supplier at such time as it is apprised of any third-party claim and agrees to cooperate in a reasonable manner with Supplier with respect to the defense and disposition of such claim. In addition, in the event any Products, are held or are likely to be held to constitute an infringement, and provided that Spectrum incurs no liability or expense thereby, Supplier shall, at its expense, first use reasonable and prompt efforts obtain for Spectrum the right to continue using the Products or replace or modify the Products with functionally equivalent, compatible materials so the Products become non-infringing. In the event that neither of the foregoing remedies is reasonably available, Supplier may refund the fee paid by Spectrum for the Products.

(i) It is mutually understood and agreed that Supplier shall at all times be acting and performing as an independent contractor. Nothing in this Contract is intended to create an employer/employee relationship or a joint venture relationship between the parties.

(j) Spectrum has in place a Code of Excellence ("**Code**"), the goal of which is to ensure that all applicable federal, state, and local laws and regulations are followed and all government and non-government payer requirements are satisfied. The Code includes a commitment to uphold a high standard of ethical and legal business practices and to prevent misconduct. Through the implementation of this Contract, each party acknowledges the commitment to legal and payer contract compliance and agrees to conduct all transactions which occur pursuant to this Contract in accordance with all applicable federal, state and local laws and regulations and all government and non-government payer requirements. Any material violations of applicable law or payer requirements will be considered a breach of this Contract. In

addition, pursuant to the federal Deficit Reduction Act of 2005, Spectrum is required to provide contractors with information about the federal and state laws regarding false claims, Medicare Parts C and D compliance, penalties and whistleblower rights and protections under such laws. Spectrum has also implemented a policy to detect, address and prevent issues of fraud, waste and abuse. This policy, the Code, and information regarding the Centers for Medicare and Medicaid Services' Medicare Learning Network ("**MLN**") or other applicable payer requirements shall be accessed by Supplier on Spectrum's online supplier portal at <http://www.spectrumhealth.org/for-suppliers>, or Spectrum will provide a hard copy or additional access to such materials upon written request from Supplier. It is Spectrum's expectation that Supplier will educate all Supplier employees and contractors who work on matters related to this Contract on such policy, the Code, and all applicable payer requirements (including, but not limited to, MLN training if required as described in the supplier portal) within ninety (90) days of the effective date of this Contract and annually thereafter. By signing this Contract, Supplier represents and warrants that neither it nor any of its employees or contractors directly involved with this Contract are, or have been, excluded from participation in any federally and/or state funded health care programs, including but not limited to Medicare, Medicaid, and TRICARE. Supplier agrees to promptly notify Spectrum of any proposed or actual exclusion, of it or any of its employees or contractors directly involved in this Contract, from any federally and/or state funded health care program.

(k) Supplier will not use the names, trademarks, service marks or logos of Spectrum or any of its affiliates in any written materials, including without limitation, press releases, advertisements and other promotional materials, without Spectrum's prior written consent.

(l) For the purposes of this Contract, an "Affiliate" shall mean any entity which Spectrum owns or controls, which Spectrum is owned or controlled by, or with which Spectrum is under common ownership or control, including joint ventures of which a Spectrum Health entity owns 50% or more.

(m) Each party acknowledges that no representation, inducement or condition not set forth herein has been made or relied upon by either party, and that the Contract shall in no way be construed or interpreted to be an exclusive arrangement between Spectrum and Supplier.

(n) Supplier agrees to assist Spectrum in appropriately reflecting any discounts, rebates or other reductions in price required by 42 U.S.C. 1320a-7b(b). Supplier represents and warrants that it will comply with the requirements of 42 C.F.R. §1001.952(h), regarding "safe harbor" protection for discounts under the Anti-Kickback Statute. This may require, without limitation, timely providing to Spectrum all documentation establishing the exact nature and quantity of purchases made and incentive benefits or discounts received, if any, under this Contract.

(o) Supplier agrees not to disclose to third parties any information regarding Spectrum or its business, operations, plans, strategies or patients, including the existence and terms of this Contract, or use such information itself for any purpose other than performing under this Contract, without Spectrum's prior written approval. Supplier agrees to comply in all material respects with the health

information privacy provisions of the Health Insurance Portability and Accountability Act of 1996 and all regulations promulgated thereunder (“HIPAA”), as well as all policies, procedures and practices of Spectrum relating to HIPAA privacy, confidentiality and security of patients’ health information to the extent not in conflict with Supplier’s own written policies. Supplier further acknowledges and agrees that from time to time HIPAA may require modification to this Contract for compliance purposes. Each party shall cooperate with, and assist, the other party to ensure full compliance with HIPAA by both parties based upon this Contract. In the event Supplier functions as a “Business Associate,” as that term is defined by HIPAA, Supplier agrees to execute a HIPAA Business Associate Agreement or similar agreement upon request by Spectrum.

(p) The parties agree to treat this Contract as falling under Section 1861(v)(1)(I) of the Social Security Act and the regulations promulgated at 42 C.F.R.. Part 420, and to make available to the Comptroller General of the United States, the Department of Health and Human Services (“HHS”) and their duly authorized representatives, for a period of four (4) years after the latest furnishing of Products or Services pursuant to this Contract, access to the books, documents and records, and such other information as may be required by the Comptroller General or the Secretary of HHS to verify the nature and extent of the cost for Products or Services provided by Supplier. If Supplier carries out the duties of this Contract through a subcontract worth \$10,000 or more over a twelve (12) month period with a related organization, the subcontract will also contain an access clause to permit access by the Secretary, Comptroller General and their representatives to the related organization’s books and records.

(q) Spectrum is an equal employment opportunity employer and is a federal contractor. **Consequently, the parties agree that, to the extent applicable, they will comply with Executive Order 11246, the Vietnam Era Veterans Readjustment Assistance Act of 1974 and Section 503 of the Vocational Rehabilitation Act of 1973 and also agree that if applicable the contract clauses required by Executive Order 11246, 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) are incorporated herein by this reference.** 41 CFR 60-300.5(a) and 60-741.5(a) prohibit discrimination **against**

**qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.** The Supplier also agrees if applicable to comply with the provisions of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.

(r) Spectrum is a tax-exempt entity. Spectrum shall not be required to pay, or reimburse Supplier for, any taxes or other governmental charges imposed by any government or taxing authority on the Products or Services or their sale or provision to Spectrum.

(s) The terms and conditions of this Contract shall be governed, construed, interpreted and enforced in accordance with the domestic laws of the State of Michigan, excluding choice of law principles. No waiver by either party of any right or remedy under this Contract, or delay to exercise thereof, shall constitute a waiver of any other right or remedy. Any notice to Spectrum under this Contract shall be provided to Legal Department, 100 Michigan Street, NE, MC 05, Grand Rapids, Michigan 49503. This Contract constitutes the entire agreement between the parties with respect to its subject matter and supercedes any prior oral or written agreements concerning same. No statement, representation, warranty, covenant or agreement of any kind, including without limitation, any terms included in or located on a website, accessed through a URL, provided as an end user license agreement, or provided in a click-wrap, shrink-wrap or other similar format, not expressly set forth in this Contract shall affect, or be used to interpret, change or restrict, the express terms and provisions of this Contract. Supplier will not assign this Contract or delegate any duties without prior written consent of Spectrum.

(t) Contract terms and rights regarding representations and warranties, insurance, indemnification, and confidentiality will survive any termination or expiration of this Contract.