

HARRIS COUNTY HOSPITAL DISTRICT D/B/A HARRIS HEALTH PURCHASE ORDER – TERMS AND CONDITIONS

These Terms and Conditions (“Terms and Conditions”) and the Purchase Order referencing same (“Purchase Order”), along with the proposal or quotation described on the Purchase Order, if any (the “Proposal”), are together referred to herein as the “Agreement.” This Agreement is between the Harris County Hospital District d/b/a Harris Health (“Harris Health”) and the entity whose name is listed as the “Supplier” on the Purchase Order (“Supplier”). **SUPPLIER’S DELIVERY OF ANY GOODS OR PRODUCTS, OR THE COMMENCEMENT OF ANY SERVICES, SET FORTH IN THE PURCHASE ORDER SHALL CONSTITUTE ACCEPTANCE OF ALL TERMS HEREIN.** In the event of a conflict between the documents in this Agreement, including any document that Seller delivers to Harris Health after the date the Purchase Order was issued (the “Effective Date”), the order of precedence from highest to lowest shall be: a) the Purchase Order, b) these Terms and Conditions, and c) the Quotation or Proposal, if any. In no event will these Terms and Conditions be superseded by terms from any other agreement, invoice or other document sent by Seller (“Auxiliary Documents”), whether before or after the Effective Date, and Seller acknowledges that Harris Health will not be bound by, or deemed to accept, any Auxiliary Document, unless an authorized representative of Harris Health executes the Auxiliary Document and the Auxiliary Document (i) makes express reference to the Purchase Order and (ii) states the document will control. Absent Harris Health’s execution of a document satisfying the above criteria, the liabilities and obligations of Harris Health shall be determined solely by this Agreement and notice is hereby given that Harris Health objects to any conflicting or additional terms in Seller’s proposal, quotation, order form or other document.

General Terms and Conditions for All Purchases

1. **General:** Harris Health shall not be held responsible for any products or services provided without a valid Purchase Order number.
2. **Shipping:** All shipments shall be FOB Destination to the location set forth on the Purchase Order unless otherwise negotiated and noted on the Purchase Order. Supplier shall bear the risk of loss until accepted by Harris Health and may select the most advantageous transportation method unless otherwise directed.
3. **Packing & Cartage:** Harris Health shall not pay packing or cartage charges unless specified on the Purchase Order. Products must be shipped per Harris Health’s instructions and good commercial practice to prevent damage. Any charges for packing or cartage included within Supplier’s quotation are hereby deleted.
4. **Delivery Date:** Harris Health reserves the right to cancel any portion of the Purchase Order not delivered in accordance with the time specified, as applicable.
5. **Specifications & Performance:**
 - 5.1 All products and services must meet the specifications, descriptions, and requirements on the Purchase Order.
 - 5.2 Products must be new, unused, and of current manufacture unless otherwise noted on the Purchase Order.
6. **Inspection & Acceptance:** Harris Health may inspect goods or products after delivery and may reject or return, at Supplier’s expense, any that fail to meet specifications or requirements.
7. **Prices:** Prices stated on the Purchase Order govern all goods, products, and services.
8. **Assignment:** Supplier may not assign the Purchase Order without Harris Health’s written consent.
9. **Safety & Compliance:** If applicable, Supplier shall provide safety data sheets, hazard notices, and recall information to the Product Safety Coordinator, Harris County Hospital District, P.O. Box 66769, Houston, TX 77266.
10. **Invoicing & Payment:** Invoices must be itemized and reference a valid Purchase Order number and be sent to electronicinvoices@harrishealth.org promptly after service completion or Harris Health’s acceptance of the delivered products or services. Harris Health agrees to pay the Supplier within thirty (30) days after receipt of an invoice. Notwithstanding the foregoing, the due date for payment, interest on overdue payments and the procedure for disputing invoices are per TEX. GOVT CODE 2251.021(b).
11. **Warranty:** In addition to any warranty included within the Proposal or those warranties implied by fact or law, Supplier expressly warrants all products to be free from defects in design, workmanship and materials; to conform strictly to applicable specifications and

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drawings, if any; to be fit and sufficient for the purpose intended, and to be merchantable. Such warranties, together with all other service warranties of Supplier, shall run to Harris Health, its successors, assigns and customers. All warranties shall survive inspection, testing, acceptance and payment by Harris Health. In the event of breach of warranty, Harris Health may, at its option, either return for credit or require prompt correction or replacement of the defective or nonconforming product.

12. Infringements: SUPPLIER SHALL PROTECT AND INDEMNIFY HARRIS HEALTH, ITS BOARD OF TRUSTEES, EMPLOYEES, AGENTS, AND REPRESENTATIVES (COLLECTIVELY "HARRIS HEALTH") FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, JUDGMENTS, EXPENSES, AND LOSSES ARISING FROM INFRINGEMENT FROM ANY UNITED STATES LETTERS PATENT, AND SUPPLIER SHALL DEFEND, AT ITS OWN EXPENSE, ALL SUITS OR PROCEEDINGS INSTITUTED AGAINST HARRIS HEALTH AND SHALL PAY ANY AWARDS ADDRESSED AGAINST HARRIS HEALTH IN SUCH PROCEEDING INSOFAR AS THE SAME ARE BASED UPON ANY CLAIM THAT MATERIAL, AS SUCH, PURCHASED HEREUNDER CONSTITUTES AN INFRINGEMENT OF ANY UNITED STATES LETTERS PATENT.

13. Fair Labor Standards Act: Supplier hereby represents and warrants that all goods or products covered by the Purchase Order will be produced in compliance with the applicable requirements of Section 6,7 and 12 of the Fair Labor Standards Act, as amended, and of all proper regulation and orders of the United States Department of Labor issued under Section 14 thereof.

14. Insurance & Liability: During the term of the Agreement, Supplier at its sole expense shall provide primary commercial insurance of such type and with such terms and limits as may be reasonably associated with the Agreement. Coverage shall be issued by companies licensed to do business in Texas by the Texas Department of Insurance. Companies shall have an A.M. Best rating of at least A-VII. If any part of the Agreement is sublet, insurance shall be provided by or on behalf of any subcontractor, and shall be sufficient to cover their portion of the Agreement. Supplier shall furnish evidence of all insurance to Harris Health in the form of

unaltered insurance certificates. Policies of insurance shall name Harris Health as an additional insured and waive all rights of subrogation against Harris Health, its officers, employees and agents. If any applicable insurance policies are cancelled, materially changed, or non-renewed, Supplier shall give written notice to Harris Health at least thirty (30) days prior to such effective date. Supplier shall provide evidence of suitable replacement policies within thirty (30) days after such effective date. Failure to keep in force the required insurance coverage may result in termination of the Agreement in Harris Health's sole discretion. Upon request, certified copies of original insurance policies shall be furnished to Harris Health. Harris Health reserves the right to require additional insurance if necessary.

15. No Federal or State Exclusion: Supplier represents and warrants that neither Supplier nor any of its owners, officers, directors, employees, or principals is listed on any state or federal exclusion list. This includes, but is not limited to, persons who are on the List of Excluded Individuals or Entities of the Inspector General, List of Parties excluded from Federal Programs by the General Services Administration or the Medicaid Sanction List.

16. Force Majeure: Harris Health and Supplier waive enforcement of penalties for the other Party's non-performance due to Force Majeure, where the term "Force Majeure" shall mean a strike, lockout, embargo, unpreventable fire, unavoidable casualty, national emergency, local disaster declaration or act of God.

17. Governing Law: This Agreement is governed by Texas law, without regard to its conflict of law principles, with venue in Harris County, Texas.

18. Dispute Resolution:

18.1 Supplier agrees that no dispute may be submitted to binding arbitration. A dispute between the Parties may be submitted to non-binding mediation upon mutual agreement. The mediation shall be conducted by an impartial mediator who has completed a minimum of 40 classroom hours of training in alternative dispute resolution techniques in a course conducted by a recognized dispute resolution organization offering alternative dispute resolution services to the public and who has knowledge of the subject

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matter at issue in the mediation. The parties shall share the mediator's fees and costs equally.

18.2 Harris Health does not agree to waive its right to a jury trial.

19. **No Waivers:** No waiver by any Party of anyone or more of its rights or remedies under this Agreement shall be deemed to be a waiver of any prior or subsequent right or remedy under this Agreement or at law.

20. **Severability:** If any term or condition of these Term and Conditions, is determined to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or condition. The Terms and Conditions shall be construed as if such invalid, illegal, or unenforceable term or condition had never been included, and all remaining terms and conditions shall remain in full force and effect to the maximum extent permitted by law.

21. **Limit of Appropriation:** Supplier understands, such understanding and agreement being of the absolute essence to this Agreement, that Harris Health must make payments using funds currently on hand. Supplier understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that as of the Effective Date, Harris Health has available the total maximum sum set forth on the Purchase Order (the "Limit of Appropriation"), which is a sum specifically allocated to fully discharge any and all liabilities which may be incurred by Harris Health under this Agreement, including any and all costs for any and all things or purposes, arising under or out of this Agreement, irrespective of their nature, and notwithstanding any word, statement, or thing contained in or inferred from other provisions of this Agreement, which might in any light by any person be interpreted to the contrary. Supplier further understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the total maximum compensation Supplier may be entitled to, and the total maximum sum that Harris Health is liable to pay Supplier under or in relation to this Agreement, shall not under any conditions, circumstances, or interpretations exceed the Limit of Appropriation.

22. **Recalls:** Supplier agrees to notify Harris Health after becoming aware of any patient safety issue involving the products. If any product or any of its components are subject to recall as that term is defined under 21 C.F.R. Part 7, or a voluntary recall by Supplier, or is subject to an FDA-initiated court action for removing or correcting violative, distributed products or components (any of the foregoing being referred to as a "Recall"), Supplier shall notify Harris Health within the timeframe mandated by the FDA after becoming aware of any Recall or after Supplier provides notice of the Recall to the FDA.

In addition to the standard notification provided, notices to Harris Health shall be sent by e-mail to: SCMRecallsand.ProductComplaints@harrishealth.org.

Supplier agrees that it will comply with any process mandated by the FDA, if applicable, to address such Recall with Harris Health. Harris Health shall have the right to return to Supplier any products where the products or any components therein are subject to a Recall, regardless of whether actual return of the products or components to Supplier is required, recommended, or suggested by the Recall, in which case Supplier shall pay all freight costs incurred for the return of each affected product and shall reimburse Harris Health for its original costs, including freight, in acquiring each affected product. To the extent such Recall precludes Supplier from supplying any products under this Agreement, any Harris Health compliance requirements or purchase requirements under this Agreement between Harris Health and Supplier related to such products shall not be effective for as long as Supplier is unable to supply such products. If any product pricing is dependent upon Harris Health meeting compliance or purchase requirements for designated products, Harris Health's pricing will not change for failure to meet the compliance or purchase requirements during the time period when Supplier is unable to provide said designated products.

Terms and Conditions for Equipment Purchases

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In addition to the above General Terms and Conditions for All Purchases, the following additional terms and conditions shall apply if the Purchase Order includes equipment to be delivered to Harris Health:

23. Delivery and Installation:

- 23.1 Unless otherwise noted on the Purchase Order, Harris Health shall not pay to Supplier any portion of the purchase price for the equipment until the equipment has been delivered, installed, and tested according to Section 23.3, if applicable, and according to the specifications and requirements of Harris Health.
- 23.2 For equipment requiring installation, Supplier shall deliver the equipment to the destination set forth on the Purchase Order, and then uncrate, assemble, install, and calibrate the equipment at

no extra cost unless otherwise stated. Services shall meet all delivery schedules, milestones, and performance standards on the Purchase Order.

- 23.3 Final acceptance will occur after satisfactory testing in the presence of Harris Health's representatives.

- 24. **Warranty Period:** Any warranty period for the equipment shall not commence until the equipment is installed, tested and accepted by Harris Health, which shall be reflected in writing acknowledged by Harris Health.

Terms and Conditions for the Provision of Services

In addition to the above General Terms and Conditions for All Purchases, the following additional terms and conditions shall apply if the Purchase Order includes services to be performed by Supplier:

- 25. **Standard of Performance:** Supplier shall perform services in a competent manner, consistent with the professional skill and care ordinarily provided by competent individuals practicing in the same or similar locality under the same or similar circumstances. Supplier shall perform services as expeditiously as is prudent considering the ordinary skill and care necessary to perform the services.

- 26. **PHI:** To the extent Supplier assembles, collects, analyzes, uses, evaluates, stores, transmits, obtains, receives or otherwise comes into possession of, or has access to protected health information as defined in 45 C.F.R. § 160.103 ("PHI"), Supplier is a covered entity that is bound by, and must fully comply with TEX. HEALTH & SAFETY CODE ANN. 181.001 *et seq.* ("Texas Medical Records Privacy Act"), as amended, and the rules adopted to administer the Texas Medical Records Privacy Act at Title 1, Texas Administrative Code, Part 15. Supplier acknowledges that the Texas Medical Records Privacy Act defines the term covered entity to include business associates, as defined by 45 C.F.R Part 160 ("HIPAA Regulations"), and represents that its receipt, storage, or transmission of PHI is not for a function or activity regulated by the HIPAA Regulations. If, at any point during the performance of the services, Supplier determines the preceding

representation is no longer true, it will immediately inform Harris Health and suspend services until a Business Associate Agreement is executed between the parties.

- 27. **Quality Assurance and Performance Improvement (QAPI):** Supplier understands that Harris Health maintains an ongoing, system-wide quality assessment and performance improvement ("QAPI") program, which includes the monitoring and assessment of the quality, efficiency, and safety of Supplier's performance of services. To that end, Supplier shall furnish to Harris Health any and all information, records and other documents related to its provision of the services under this Agreement that Harris Health may request to help it evaluate the quality, efficiency, and safety of Supplier's performance. If Harris Health determines that contract expectations are not being met by Supplier, Harris Health will notify Supplier in writing, and the parties will work together to develop an action plan ("Action Plan") to meet Harris Health's expectations. Should Supplier fail to meet the expectations established in the Action Plan, Harris Health shall have the sole and exclusive right to immediately terminate this Agreement with written notice to Supplier.

- 28. **Miscellaneous:** Supplier shall secure at Supplier's expense and maintain at its expense any and all

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federal, state and/or local permits or licenses, if any, necessary to the performance and completion of services under this Agreement and pay in connection therewith all valid and applicable fees, assessments and taxes. Supplier shall remove promptly any person performing services under this Agreement upon the request of Harris Health for any reason that is not unlawful.

29. **Minority and Woman-Owned Business Enterprises (“MWBE”):** In the event that Supplier’s proposal or quotation includes an MWBE Utilization Goal, supplier shall comply with the reporting and compliance requirements of Part IV of Harris Health’s Policy No. 6.55 – Minority and Woman-Owned Business Enterprise Program, a copy of which can be found online at <https://www.harrishealth.org/about-us-hh/Supplier-diversity-program/Pages/resource-center.aspx>.

Anti-Boycott Provisions

If the total amount included on the Purchase Order is greater than \$100,000.00 and Supplier is not a sole proprietorship, Supplier agrees to the following anti-boycott provisions:

30. **Prohibition on Boycotting Israel:** In accordance with Section 2271.002 of the Texas Government Code, Supplier represents and warrants that it does not boycott Israel and will not boycott Israel during the term of the Agreement. The term “boycott Israel” is defined by Texas Government Code, Section 808.001(1) as refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The parties agree that the foregoing verification shall be rescinded and will not be enforced if a court of competent jurisdiction determines that Texas Government Code Section 2271.002 is illegal and unenforceable, or if the Texas legislature decides to abolish or repeal Section 2271.002.

31. **Prohibition on Boycotting Firearm Entities:** In accordance with Section 2274.002 of the Texas Government Code (relating to prohibition on contracts with companies that discriminate against firearm entities and firearm trade associations), Supplier represents and warrants that: (1) it does not, and shall not for the duration of the Agreement, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the Agreement. If the circumstances relevant to this provision change during the course of the Agreement, Contractor shall promptly notify Harris Health.
32. **Prohibition on Boycotting Energy Companies:** In accordance with Section 2276.002 of the Texas Government Code (relating to prohibition on contracts with companies that discriminate against energy companies), Supplier represents and warrants that: (1) it does not, and shall not for the duration of the Agreement, boycott an energy company. The term “boycott energy company” is defined by Texas Government Code, Section 809.001(1), as refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by clause (A).