

TERMS AND CONDITIONS TO AMEND SERVICE AGREEMENT

The following terms and conditions ("Terms") are attached to or referenced and made a part of the applicable purchase order ("Purchase Order") issued by The Johns Hopkins Health System Corporation or its affiliate referenced therein ("Customer") and apply to Services, as hereinafter defined, provided by the vendor identified on the attached service agreement and/or Purchase Order ("Vendor").

These Terms amend the attached service agreement which is being entered into simultaneously with these Terms (such service agreement, as amended herein, referred to as the "**Agreement**").

1. Warranties.

a. Vendor 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.

b. Vendor will provide all Services necessary to maintain the equipment and all software licensed or sublicensed from Vendor 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 "**Vendor Software**," when used in these Terms, refers specifically to the software licensed or sublicensed from Vendor.

c. Vendor warrants that neither it nor any of those workers which it shall provide to Customer 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). Vendor 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 for excluded employees and entities upon hiring or contracting with a temporary worker and on an annual basis thereafter. Vendor agrees that it will notify Customer immediately in the event it or any of the workers it has provided to Customer become sanctioned or excluded from any federally funded health care programs. Such notification shall include the grounds for sanction or exclusion and the duration thereof.

2. Fees.

a. Any references to security interests, late payment fees, interest, or penalties in the Agreement shall be deemed deleted and of no effect.

b. The annual service fee set forth in the Agreement is fixed for the term of the Agreement. Notwithstanding any provision of the Agreement, there shall be no increases in the annual service fee during the term of the Agreement, including, without limitation, any increases based upon a set percentage or the Consumer Price Index, Employment Cost Index, or any other index. Notwithstanding any provision of the Agreement, any increase in the annual fee after the first year shall not apply to Customer, and Customer shall pay the same annual price for each year of the term.

3. Term, Renewal Terms and Termination.

a. 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, and such writing shall specify the terms and conditions that will apply during the renewal or extension term.

b. Customer 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 Customer. Vendor shall refund to Customer any prepaid Service fees, prorated based upon the period of time the Equipment was used by Customer.

c. Customer shall have the right to terminate the Agreement upon written notice to Vendor in the event that the Vendor breaches the Agreement, and Vendor has failed to cure such breach within thirty (30) days after Customer has provided Vendor written notice of the breach.

4. Indemnification, Limitation of Liability.

a. Except with respect to Vendor's obligation to defend, indemnify and hold Customer harmless against claims or causes of action that the Services, the Equipment or the Vendor 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.

b. Notwithstanding any provision of the Agreement, any limitation of Vendor's liability (including, without limitation, any disclaimer of liability, cap on liability or exclusion of remedies or damages available to Customer) shall not apply to any claim or cause of action for indemnification or contribution that Customer may have against Vendor, or any other liability or damages arising out of or related to Vendor'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 under the Additional Terms and Conditions set forth in Section 16).

5. Taxes. Customer is a tax-exempt corporation under Sections 501(c)(3) of the Internal Revenue Code of the United States, as amended, and under applicable state or District of Columbia laws. Vendor shall take all action required to cause the provision of Services hereunder or the purchase of any products hereunder to be treated as a tax-exempt transaction, and in no event shall Customer be responsible for any sales, use, property, gross receipts, or similar taxes levied against any party to this Agreement.

6. Notices. All notices and other communications pertaining to this Agreement shall be in writing and shall be deemed duly to have been given if personally delivered to the other party or if sent by the United States Postal Service certified mail, return receipt requested, postage prepaid, or by Federal Express, United Parcel Service, or other nationally recognized overnight carrier. All notices or communications between Customer and Vendor pertaining to this Agreement shall be addressed as follows:

If to the Customer:

The Johns Hopkins Health
System Corporation
Attention: Asst. Director,
Procurement, Capital
3910 Keswick Road, Ste. N4100
Baltimore, MD 21211

With a copy to:

The Johns Hopkins Health
System Corporation
Attention: General Counsel
733 N. Broadway Street, #102
Baltimore, MD 21205

If to Vendor: To the address set forth on the Agreement.

Either party may change its notification address by giving written notice to that effect to the other party in the manner provided herein.

7. Construction and Jurisdiction. The Agreement shall be governed by the laws of the State of Maryland (excepting any conflict of laws or provisions which would serve to defeat application of Maryland substantive law). Each of Vendor and Customer hereby irrevocably and unconditionally: (a) consents to submit to the exclusive jurisdiction of the courts of Howard County, Maryland for any proceeding arising in connection with the Agreement and each such party agrees not to commence any such proceeding except in such courts, and (b) waives any objection to the laying of venue of any such proceeding in the courts of Howard County, Maryland. If for any reason venue is not accepted in Howard County, the parties irrevocably consent as provided in this Section to the exclusive jurisdiction of the courts of Baltimore County, Maryland. EACH PARTY, KNOWINGLY AND AFTER CONSULTATION WITH COUNSEL, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, WAIVES ALL RIGHT TO TRIAL BY JURY OF ANY CLAIM ARISING WITH RESPECT TO THE AGREEMENT OR ANY MATTER RELATED IN ANY WAY THERETO.

8. Insurance. Vendor shall carry and at all times maintain in full force and effect, at its sole expense, policies of general liability and product liability insurance in the minimum amount of Five Million Dollars (\$5,000,000) for each claim for each policy year resulting, directly or indirectly, from the intentional or negligent acts of Vendor in connection with the performance of its obligations under this Agreement.

9. Publicity. Vendor agrees that no public or private announcements, media releases, press conferences, advertising or similar publicity in any form relating to the Customer's name, image, or logo (or any variation or combination of such name, image, or logo), as well as the name or image of any employee or patient of Customer shall be made without the prior written consent of Customer, which consent may be withheld in the Customer's sole discretion.

10. Approval of Subcontractors. Vendor shall not use any subcontractors without the prior written consent of Customer, which may be withheld in Customer's sole discretion.

11. Compliance with Laws. Vendor shall perform this Agreement in compliance with all 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.

12. Affirmative Action. It is the policy of Customer to provide equal job opportunities to all people. Customer prohibits discrimination and maintains a written Affirmative Action Plan designed to ensure equal employment opportunities based on race, color, religion, sex, national origin, and status as a qualified individual with a disability or a protected veteran. Customer incorporates by reference into these Terms all applicable requirements (as amended) mandated by the Office of Federal Contract Compliance Programs ("OFCCP") of the U.S. Department of Labor for federal government contractors pursuant to Executive Order 11246, the Rehabilitation Act of 1973, Section 503, and the Vietnam Era Veterans'

Readjustment Assistance Act ("VEVRAA"). In addition, retaliation is prohibited against a person who files a complaint of discrimination, participates in an OFCCP proceeding, or otherwise opposes any employment practice covered by OFCCP.

13. Vendor Credentialing Programs. All Vendor representatives are required to register in order to begin or continue doing business with Johns Hopkins Medicine. Go to <http://ssc.jhmi.edu/supplychain/vendors/jhhs/registration2.html> to register your company, create a representative profile and complete the registration process. Please contact customer support at (888) 476-0377 with any questions.

14. Remainder of Agreement in Effect. These Terms supersede the terms and provisions of the Vendor's service agreement. All other terms and provisions of the Vendor's service agreement shall remain unchanged, and the Vendor's service agreement, as specifically amended, restated, and/or supplemented by these Terms, shall be in full force and effect.

15. GPO Contract. In the event Vendor and a group purchasing organization ("GPO") of which Customer 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"), Vendor agrees that Customer shall have the option, in Customer's sole discretion and upon prior notice to Vendor 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 Master Agreement, without any penalty, or (ii) terminate this Agreement, without any penalty, and enter into the Master Agreement.

16. PHI and 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")), Customer and Vendor shall execute a Business Associate Agreement. Vendor agrees to comply with the Maryland Personal Information Protection Act under Section 14-3501 et seq. of the Commercial Law Article of the Maryland Annotated Code (and/or the equivalent act of the state or District of Columbia law which governs this Agreement pursuant to section 10).

17. Vendor Software. If the Equipment has Vendor Software, then Vendor will use its best efforts to test any software provided by Vendor to detect and remove any viruses or other malware that could have an adverse impact on the Vendor Software or the Equipment. If Vendor introduces a virus or other malware into the Vendor Software, the Vendor 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 Vendor Software operates in accordance with the OEM specifications.

18. Remote Access. If the Equipment is connected to the Customer's network, then throughout the term of this Agreement, the Vendor shall always comply with the Customer's then current Remote Access Policies, which Customer will make available upon Vendor's request.

19. On-Site Services. If Vendor personnel will provide Services on-site, then Vendor agrees that it shall perform a criminal background check on all such personnel prior to their providing on-site services. Vendor shall not assign any personnel who has been convicted or charged with a felony to perform Services at Customer's site unless Vendor has fully disclosed the conviction or felony charge to Customer and Customer consents to the assignment.

20. Equipment Loaner Program. If feasible, Equipment requiring Service will be shipped by Customer to Vendor's Service Center under Vendor's loaner program. Under this program, Customer will inform Vendor of defective Equipment in order to have a "Loaner" piece of equipment shipped to Customer within twenty-four (24) hours of such notification. Customer will have full use of the Loaner equipment until defective Equipment has been repaired or replaced and received by Customer. Vendor shall provide on a 24x7 basis a telephone number for Customer personnel to call for all purposes regarding support and maintenance. Vendor shall call back within one (1) hour of a reported problem.

21. Records. If the value or cost of Services rendered to Customer by Vendor or by an organization related to Vendor is Ten Thousand Dollars (\$10,000) or more over any twelve (12) month period during the term of this Agreement, Vendor and Customer

agree that until the expiration of four (4) years after the furnishing of such Services, Vendor and Customer shall, upon written request, make available to the Secretary of the Department of Health and Human Services of the United States (the "**Secretary**"), the Secretary's duly authorized representative, the Comptroller General, or the Comptroller General's duly authorized representative, this Agreement and such books, documents and records as may be necessary to certify the nature and extent of the costs of such Services. This provision shall also apply to any subcontractors Vendor hires to perform the Services hereunder.