

TERMS AND CONDITIONS FOR THE EVALUATION OF EQUIPMENT

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 (“Hopkins”) and apply to the evaluation of any equipment and/or instrumentation and related software and services (collectively, the “Equipment”) of the vendor identified on the Purchase Order (the “Vendor”), unless Hopkins and Vendor sign a separate agreement related to this Equipment evaluation expressly superseding these Terms. The Purchase Order and these Terms are collectively referred to as the “Agreement”. Upon delivery of Equipment for evaluation, Vendor agrees to be legally bound by these Terms, and these Terms shall supersede all prior or contemporaneous agreements between the parties related to this Equipment evaluation, unless such agreement is signed by both parties, including those terms and conditions which may accompany a proposal, price quotation, order acknowledgement, or delivery of any Equipment.

- 1. Equipment:** Vendor shall provide Equipment for evaluation at no charge to Hopkins during the Evaluation Period, as hereinafter defined. Vendor shall provide a quotation detailing the value of the Equipment and the Equipment value shall be incorporated herein by reference.
- 2. Disposables:** Vendor shall provide disposables at no cost to Hopkins.
- 3. Evaluation Period.** The evaluation period shall not to exceed ninety (90) days (the “Evaluation Period”). Vendor will, at its sole cost and expense, promptly remove any Equipment Hopkins elects not to purchase at the conclusion of the Evaluation Period, without any further obligation to Hopkins.
- 4. Purpose.** The Equipment is provided to Hopkins, at no cost, for evaluation purposes only, to enable Hopkins to determine whether it meets its clinical and patient care needs. Equipment is delivered without commitment, risk, or obligation on the part of Hopkins. At the conclusion of the Evaluation Period, the Equipment will either be purchased (under a separate purchase agreement if required by Hopkins) or returned to Vendor, at Vendor’s expense.
- 5. Vendor Responsibilities.** Vendor agrees to: (i) deliver the Equipment described on the Purchase Order at no cost or expense to Hopkins; (ii) install the Equipment or provide installation instructions to Hopkins; (iii) provide training or instructions regarding the Equipment’s operation to Hopkins personnel; (iv) provide a toll-free hotline number for technical assistance; (v) insure that any patient information that may be stored on the Equipment during the Evaluation Period will be expunged once the Evaluation Period terminates and the Equipment is returned to Vendor; (vi) provide all maintenance, repair, or replacement services at no cost or expense to Hopkins; and (vii) provide, at no charge to Hopkins, the number of disposable products needed for Hopkins to be able to evaluate the Equipment.
- 6. Vendor Warranties and Indemnities.** Vendor represents and warrants, as follows: (i) the Equipment, including any component or sub-assembly thereof, or any software embedded therein, shall be delivered free of any rightful claim by any third party of infringement or misappropriation of any United States patent, copyright, trade secret or other intellectual property right; (ii) Vendor is not an “excluded provider” as defined in Sections 1128 and 1128A of the Social Security Act (42 U.S.C. 1320a-7a); and (iii) all patient information will be expunged from any Equipment (including software associated with its operation) upon return to Vendor. Vendor agrees to indemnify, defend and hold Hopkins, its trustees, directors, officers, contractors, employees and agents harmless from and against any and all liability, losses, damages, costs and expenses (including reasonable attorney fees and court costs) arising out of or resulting from: (i) any breach of the foregoing warranties; (ii) claims by third persons asserted against Hopkins that the Equipment has caused damage to property or bodily injury (including death); (iii) the acts or omissions of Vendor, its agents or employees, in connection with this Agreement; (iv) any defects in the Equipment. Vendor warrants that neither it nor any of those workers which it shall provide to Hopkins 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 Hopkins immediately in the event it or any of the workers it has provided to Hopkins 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. The provisions of this Section 6 shall survive termination of this Agreement.
- 7. Compliance with Laws.** Vendor shall comply with all applicable Federal, State, and local laws, rules, regulations, and ordinances, and represents that it has obtained all licenses and permits required by law to perform its obligations hereunder. Vendor hereby represents and warrants that all Equipment have received FDA clearance and/or approval, and that copies of the clearance/approval documentation issued to Vendor by the FDA will be provided to Hopkins upon Hopkins’ request.
- 8. Title.** Title to Equipment and risk of loss shall at all times remain with Vendor during term of this Agreement.
- 9. Insurance.** Vendor shall carry and at all times maintain in full force and effect, at its sole expense, policies of commercial general liability and product liability insurance in the minimum amount of Five Million Dollars (\$5,000,000) for each claim for each policy year. Commercial general liability insurance policies, shall include, but not be limited to, coverage for the indemnity provisions contained in this Agreement. Vendor shall maintain in full force and effect, during the Term of this Agreement, at its own expense, cyber liability insurance in the minimum amount of One Million Dollars (\$1,000,000) per occurrence and in the aggregate covering network security and privacy risks, including but not limited to, unauthorized access, failure of security, breach of privacy perils, wrongful disclosure, collection, or other negligence in the handling of Hopkins data and confidential information, and including coverage for related notification costs and regulatory defense and penalties.
- 10. License to Software.** Vendor hereby grants to Hopkins a non-exclusive, non-transferable, royalty-free, right and license to use any software and its accompanying documentation delivered with or embedded in the Equipment during the Evaluation Period.
- 11. Confidential Information.** Confidential information means any data or information disclosed by one party to the other party that is not generally known to the public and is identified as confidential or by its nature or under the circumstances surrounding its disclosure should be reasonably considered confidential (“Confidential Information”). Each party agrees to hold the Confidential Information of the other party in strict confidence and to protect it from disclosure with the same degree of care that it uses to protect its own information of like importance. Each party shall limit the disclosure of Confidential Information to employees who have a reasonable need to know and who are under a duty of confidentiality no less restrictive than the obligations set forth herein. The parties acknowledge that the terms of this Agreement are to be considered as Confidential Information and Vendor may not disclose the participation of Hopkins in this Agreement without the written permission of Hopkins, which consent may be withheld at the sole discretion of Hopkins. The provisions of this Section 12 shall survive termination of this Agreement. Vendor acknowledges and agrees that it is subject to and shall comply with the Maryland Personal Information Protection Act under Section 14-3501, et seq., of the Commercial Law Article of the Annotated Code of Maryland. Vendor shall comply with the requirements of the Health Information Technology for Economic and Clinical Health (HITECH) Act and its implementing regulations as and when applicable to Vendor as a Business Associate. Vendor further covenants not to disclose or otherwise make known to any party nor to issue or release for publication any articles or advertising or publicity matter relating to this Agreement in which the name of Hopkins or any of its affiliates is mentioned or used, directly or indirectly, unless prior written consent is granted by Hopkins.
- 12. Governing Law and Forum.** This Agreement shall be governed in all respects by the laws of the State of Maryland without regard to the conflicts of law principles. All disputes arising under this Agreement shall be brought exclusively in the state and federal courts located in Howard County, Maryland, and Vendor hereby submits to the personal jurisdiction of the above stated courts. The provisions of this Section 13 shall survive termination of this Agreement. EACH PARTY, 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.
- 13. Notice.** All notices and other communications required hereunder must be in writing and sent to the parties at the addresses on the Purchase Order, with a copy to The Johns Hopkins Health System Corporation at: 733 N. Broadway, Suite 102, ATTENTION: General Counsel, Baltimore, Maryland 21205. **Recall Notice:** In the event of any recall notice issued by the Vendor or the FDA, Vendor shall send such notice to The Johns Hopkins Health System Corporation, Attention: Risk Management Department, Facsimile Number 410-955-0636. The provisions of this Section 13 shall survive termination of this Agreement.
- 14. Vendormate Registration.** All Vendor representatives are required to register with Vendormate in order to begin or continue doing business with Hopkins. 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 Vendormate customer support at (888) 476-0377 with any questions.

15. Conflict. THESE TERMS SHALL SUPERSEDE ANY AND ALL TERMS AND CONDITIONS SET FORTH IN VENDOR'S INVOICE OR POLICY OR ANY OTHER AGREEMENT, INCLUDING VENDOR'S PRICE QUOTATION OR PROPOSAL, AND IN THE EVENT OF ANY CONFLICT BETWEEN ANY SUCH TERMS AND CONDITIONS, THE AGREEMENT SHALL APPLY.

16. Access to Books and Records. Pursuant to 42 U.S.C. 1395x(1)(D) and 42 C.F.R. § 420.302, if the value or cost of Equipment or services rendered to Hopkins 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 Hopkins agree that until the expiration of four (4) years after the furnishing of such Equipment or services, Vendor and Hopkins 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, such books, documents and records as may be necessary to certify the nature and extent of the costs of such Equipment or services.

17. Affirmative Action. The Vendor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.

