

**NewYork-Presbyterian Hospital (“Hospital”)
Purchase Order Terms and Conditions**

1. Goods and services (“Products”) supplied under this Purchase Order (“PO”) shall be shipped FOB destination, with freight and insurance charges pre-paid and absorbed unless otherwise set forth on the first page of this PO. If Products are lost or damaged in shipping or delivery, Seller will file claims for damages with the carrier and promptly replace damaged Products, regardless of the status of such claims.
2. Hospital will be invoiced upon Hospital acceptance of Products and invoices will be paid 90 days EOM unless otherwise set forth on the first page of this PO. Price increases are not allowed unless agreed to in advance in writing and prior to shipment.
3. No Products shall be deemed to have been accepted by Hospital until they shall have been inspected and, where appropriate, tested to the reasonable satisfaction of Hospital. Substitution is not permitted without written approval of the Hospital Procurement & Strategic Sourcing Department. Backorder notification is required within 1 business day after receipt of this PO.
4. All Products delivered under this PO must be logged in by Hospital receiving, whose count shall be final and conclusive on any shipment not accompanied by a packing slip. If a shipment includes a packing slip, Hospital reserves the right to object to Seller’s count within 30 days of delivery. For any Product delivered without log in by Hospital receiving, Hospital reserves the right to refuse payment of the invoice for such Product unless Seller is able to provide written documentation signed by a Hospital employee acknowledging receipt of the Product.
5. Hospital may reject any Product that is defective or not in accordance with Hospital’s specifications. Rejected Products will be held for Seller’s instructions and at its risk and expense. If instructions are not received within 15 days after notice of rejection, rejected Products will be returned to Seller at its risk and expense including all packaging, transportation and other related costs. No Products returned as defective shall be replaced without Hospital’s written permission.
6. Two (2) copies of each service and operations manual must be included in the shipment.
7. This PO is subject to cancellation if not delivered in the time specified herein. The waiver of Hospital’s right to cancel, by acceptance of any items after the stated delivery date, shall not constitute a waiver of such right with respect to subsequent delivery defaults.
8. Hospital is a member of Vizient, Inc. (“Vizient”) and entitled to participate in Vizient’s purchasing programs. If any Product supplied under this PO is covered by an agreement between Seller and Vizient, Seller agrees to report all sales and pay all administrative fees to Vizient in accordance with the terms of such agreement.
9. Seller shall promptly notify Hospital via email to recalls@nyp.org if a product recall or defect notice is issued related to any of the Products supplied hereunder.
10. This PO and any claim, controversy or dispute arising under or related to this PO, the relationship of the parties and/or the interpretation and enforcement of their respective rights and obligations, shall be governed by and construed in accordance with the laws of the State of New York, without regard to principles of conflicts of law. The parties agree to the exclusive jurisdiction of the courts located in the State of New York and the exclusive venue of New York County.
11. Seller represents and warrants all Products supplied hereunder to (i) be of quality, quantity, size, description and dimensions specified on this PO; (ii) perform in accordance with their published documentation and any Hospital specifications for a period of 1 year (or longer period as specified in the documentation); (iii) be new and free from defects in material, design and workmanship; (iv) be accurately labeled, contained, packaged and marked, and conform to any statement made on the labeling, containers and packaging; (v) have received all required third party approvals, consents, permits, authorizations etc., including without limitation, all requisite approvals from the U.S. Food and Drug Administration; (vi) meet any applicable OSHA standards and requirements; and (vii) have in place physical and electronic security in compliance with the requirements of the Health Insurance Portability and Accountability Act of 1996. Seller further warrants that any services performed hereunder shall be performed in a professional, timely and workmanlike manner by appropriately trained and skilled personnel. The foregoing warranties shall survive delivery hereunder, and shall not be deemed waived either by reason of acceptance of said Products, or payment therefor by Hospital, either in whole or in part.
12. Seller hereby assigns to Hospital, to the extent assignable, all express and implied manufacturer’s warranties, representations, indemnities, remedies and service obligations (collectively, “Manufacturer Warranties”) for Products sold or distributed by Seller hereunder but not manufactured by Seller. Seller shall provide Hospital with a copy of all Manufacturer Warranties and shall take steps necessary to properly effect the assignment of same. If any such Manufacturer Warranty is not assignable, Seller shall enforce such Manufacturer Warranty on Hospital’s behalf.
13. Seller shall indemnify, defend and hold harmless Hospital, its officers, directors, members, employees, medical staff, agents, subsidiaries and affiliates from and against any and all losses, costs, damages, liabilities and expenses (including reasonable attorneys’ fees) incurred as a result of any third party claim arising out of or related to (i) Seller’s breach of its representations, warranties or other obligations under this PO, (ii) the negligent acts, omissions or intentional acts of Seller, its employees, agents, consultants, or subcontractors, or (iii) a claim that use or possession of the Products infringes any patent, copyright, trade mark, trade secret or other intellectual property rights.
14. Should any Product or any component part thereof supplied hereunder become the subject of a patent, copyright, trade mark, trade secret or other intellectual property right infringement suit or proceeding, Seller will (at Seller’s option and at its sole cost and expense): (i) obtain a license that would permit Hospital to continue to use the Product, (ii) modify the Product to render it non-infringing, (iii) provide a non-infringing product that possesses the full functionality of the original Product supplied hereunder, or (iv) refund the purchase price or rental/license fee.
15. Seller will maintain not less than the following insurance coverage, on an occurrence basis, from an insurance company with a rating of A XII or better from A.M. Best: (i) Commercial General Liability (including Products and Completed Operations): \$1 million per occurrence / \$3 million annual aggregate; (ii) Automobile Liability: \$1 million combined single limit; (iii) Umbrella Liability: \$5 million; and (iv) Worker’s Compensation / Employer’s Liability: Statutory limits / \$1 million.
16. Seller’s personnel onsite at any Hospital premises shall comply with all applicable Hospital policies and directives of which Seller is duly informed or to which it has access through Hospital’s web site (www.nyp.org/vendors), including without limitation, those regarding vendor credentialing, property access, security, identification, infection control, safety and patient privacy. If Seller’s personnel may come in contact with patients or have access to patient care areas, Hospital reserves the right to require health and drug screening. Seller and its personnel shall also comply with Hospital’s policies and procedures related to fraud and abuse, including the policies required by the Federal Deficit Reduction Act of 2005. Seller’s personnel shall perform any services in such

- a manner so as to minimize to the fullest extent reasonably practicable any disturbance to or disruption of Hospital's operations. Hospital reserves the right to remove any Seller personnel from Hospital's premises who causes any disruption or disturbance or fails to comply with Hospital policies.
17. The parties shall not use the names of the other party or any adaptation, abbreviation or likeness thereof, or any trademark, trade name, trade style or registered design that is the property of or currently in use by the other party, on any web site or in any printed materials, publicity, advertising, or for trade or other commercial purposes (including without limitation in Seller's client/customer lists) without the other party's prior written consent as to form, content and context.
 18. Seller shall not make any public statements (including issuing a press release, responding to media inquiries, making public presentations or publishing articles or other written materials) regarding Hospital, Seller's relationship with Hospital, this PO, or services performed or products provided to Hospital, without the prior written consent of Hospital.
 19. Seller shall treat as confidential any non-public information, including, without limitation, any data, reports, test results, and other documentation and information regarding Hospital's business operations, facilities, finances, marketing, employees, or use of the Products, and confidential information of third parties identified as such by Hospital, any of which are provided to Seller by Hospital or accessed or observed by Seller in connection with the performance of Seller's responsibilities hereunder ("Confidential Information"). Seller shall keep Confidential Information safe and secure and shall not disclose the same to any third party or use any Confidential Information other than as required to perform Seller's responsibilities hereunder, without Hospital's prior written consent. Upon termination or completion of this transaction, Seller will return to Hospital or destroy all Confidential Information in Seller's possession without retaining copies thereof except as required by law.
 20. Seller shall retain and preserve records relating to this PO for the period set forth in any applicable federal or state law or for 7 years after termination, whichever is longer, and shall, upon notice and subject to applicable laws and this PO regarding confidentiality, make available to Hospital and applicable governmental officials with jurisdiction the records for review and copying.
 21. Neither party may assign this PO or any rights, duties or responsibilities hereunder, without the prior written consent of the other party. The foregoing notwithstanding, each party may at any time assign its rights together with its obligations hereunder to an entity controlled by, in control of, or under common control with the assigning party, provided that (i) the assigning party provides the non-assigning party with 30 days prior written notice of said assignment, and (ii) such assignment shall not limit or eliminate the obligations of the assigning party.
 22. Seller shall not engage subcontractors to provide any services on-site without Hospital's prior written consent. Notwithstanding the foregoing, all subcontractors shall be bound by and comply with the provisions herein, including any confidentiality, insurance and indemnification obligations running in favor of Hospital.
 23. This PO is not intended to create nor shall be deemed or construed to have created any relationship between the parties other than that of independent contractors. Neither party shall have any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the other party.
 24. Terms including governing law, confidentiality, compliance with Hospital policies, indemnities, infringement, record retention, warranty, independent contractors and such other terms that reasonably include performance after expiration or termination shall survive such expiration or termination of this PO.
 25. Hospital is a federally tax-exempt, not-for-profit corporation that is exempt from the payment of NYS and NYC sales and use taxes. Hospital shall provide Seller with an exempt organization certification and Seller shall honor such exemption as permitted by law. Seller shall not pass on to Hospital any taxes imposed on Seller (such as the Medical Device Excise Tax) with respect to the purchase, use, lease, or rental of Products under this PO, except as required by law.
 26. This PO, including these terms and conditions and any Hospital specifications, constitute the complete agreement of the parties with respect to the subject matter hereof and supersedes and cancels all prior agreements and understandings between the parties except for purchase agreements and other agreements that are mutually agreed to in writing by the parties. Seller may issue an invoice, quotation, proposal or other document in relation to this PO, but the use of such forms is solely for the purpose of describing the Products being purchased and the prices to be paid therefor, and do not alter the terms of this PO. Hospital is not bound by, and specifically objects to, any terms, conditions, or provisions that are different from or in addition to those set forth herein unless Hospital specifically agrees to such terms, conditions, or provisions in writing.
 27. No modification, amendment or termination of the terms, conditions or provisions of this PO shall be valid unless specifically agreed to in writing by both parties.
 28. Any notice required or permitted to be given pursuant to this PO shall be in writing, delivered by overnight courier or certified mail (return receipt requested). All such notices shall be addressed (i) to Seller at its address set forth on this PO and (ii) to Hospital at NewYork-Presbyterian Hospital, 525 East 68th Street, Box 152, New York, NY 10065, Attn: Vice President, Procurement & Strategic Sourcing, or to such other address as may be specified from time to time by notice in writing to the other party. Notice shall be deemed to have been given when received.
 29. Seller warrants it is not currently listed by a federal or state agency as excluded, debarred, or otherwise ineligible for participation in any federal or state health care program. Seller agrees that it will not employ, contract with, or otherwise use the services of any individual whom Seller knows or should have known, after reasonable inquiry, (i) has been convicted of a criminal offense related to health care (unless the individual has been reinstated to participation in Medicare and all other federal and state health care programs after being excluded because of the conviction), or (ii) is currently listed by a federal or state agency as excluded, debarred, or otherwise ineligible for participation in any federal or state health care program, and further agrees that it will immediately notify Hospital in the event that it, or any person in its employ, has been excluded, debarred, or has otherwise become ineligible for participation in any federal or state health care program. Seller agrees to continue to make reasonable inquiry regarding the status of its employees and independent contractors on a regular basis by reviewing lists of excluded or restricted parties maintained by the U.S. General Services Administration, U.S. Department of Health and Human Services' Office of the Inspector General, and New York State Office of the Medicaid Inspector General.
 30. If the services provided under this PO have a cost or value of \$10,000 or more over a 12-month period, both parties shall preserve and provide access to their respective contracts, books, documents and records to the Comptroller General of the United States, and his or her duly authorized representative during the term of this PO and for a period of not less than four (4) years after the furnishing of services under this PO shall cease, or such longer period as may be provided by regulation from time to time to implement the provisions of the Social Security Act relating to the determination of reasonable costs as a provider or a subcontractor of services under the Medicare program.