



## VENDOR'S STANDARD TERMS AND CONDITIONS

- 1. Payment Terms.** Invoices are typically rendered monthly and payment in full is due within 30 days of the date of invoice. Vendor may charge an additional fee of 1.5% per month (18% per annum) or the maximum rate allowed by law, whichever is less, to late payments. On five days' notice to Customer, Vendor may suspend performance of Services for non-payment until a reasonable time after the non-payment is cured. There is no right of off set, and Customer will take no deductions, unless authorized to do so by Vendor through issuance of a credit memorandum. Customer will give Vendor written notice of any incorrect charges within 90 days of the Vendor invoice to which the claim relates. After 90 days, the originally invoiced amount will be deemed to be correct.
- 2. Taxes and Fees.** Fees are exclusive of taxes and incremental third party costs incurred based on Customer direction. All sales, use, excise or similar taxes and incremental third party costs relating to the Services are Customer's sole responsibility. Vendor may increase Fees 3.5% once every 12 months. The increase is applied on a cumulative basis beginning on either the Agreement Effective Date or date of last increase, whichever is later. Not raising fees is not a waiver of Vendor's right to do so.
- 3. Confidentiality.** In connection with this Agreement, each party may disclose to the other certain confidential and proprietary information that is marked as confidential or that logically would be considered to be confidential (collectively, the "Confidential Information"). For the avoidance of doubt, Vendor Confidential Information includes without limitation any and all technical information, techniques, know-how, processes, software programs, software source documents, insurance and pricing information that Vendor or its subcontractor provides to Customer. Each recipient agrees that the Confidential Information provided to it, regardless of form, will be received and maintained by it in confidence for five years after this Agreement ends.

The obligation of confidentiality will not apply with respect to any Confidential Information that: (a) is in the public domain at the time of discloser's communication to recipient; (b) was or becomes generally available to the public other than as a result of a disclosure by recipient in breach of this Agreement; (c) was in recipient's possession, free of any obligation of confidentiality, at the time of discloser's communication to recipient; (d) is communicated to recipient by a third party, which the recipient reasonably believed was free to make such disclosure without breach of any legal obligation to discloser; or (e) recipient is compelled to disclose by deposition, subpoena or other court or governmental action, as evidenced by advice of legal counsel, provided that recipient gives the discloser advance written notice of the Confidential Information to be disclosed as far in advance of its disclosure as is reasonably possible, practicable and legally permissible, and recipient cooperates with discloser, if discloser seeks to obtain a protective order concerning such Confidential Information.

- 4. Termination and Effect of Termination.** At any time while this Agreement is in effect, either party may terminate the Agreement for cause, including insolvency and material breach, provided the non-defaulting party gives the other party written notice detailing the nature of its material breach of the Agreement. If the material breach remains uncured 30 days after notice to the breaching party, or if the breach is of a nature that cannot reasonably be cured in such 30-day period and the breaching party has failed to diligently commence and pursue actions necessary to cure the breach, then the non-defaulting party may terminate this Agreement at any time by providing written notice of the date of termination to the other party.

The terms of this Agreement that, by their nature must survive the termination of this Agreement to protect the party in whose favor they run, survive the termination of this Agreement.



5. **Compliance.** Each party will comply with applicable laws, rules and regulations in connection with this Agreement. Vendor has not been debarred, suspended or declared ineligible to market or sell items or services for which reimbursement may be made by Federal health care programs and is not included on the General Service Administration or HHS/OIG Exclusion List. To the extent required by law, Vendor will make available to the Secretary of the U.S. Department of Health and Human Services, the Comptroller General or any of their duly authorized representatives this Agreement and Vendor's books, documents and records that are necessary to verify the nature and extent of the cost of Services performed pursuant to this Agreement for a period of up to four years after such Services are furnished.
6. **Insurance.** While this Agreement is in effect, each party will maintain workers' compensation insurance in amounts required by law and will maintain commercial general liability insurance in an amount of not less than \$1,000,000 per occurrence. Vendor will provide Customer with Vendor's Evidence of Insurance on Customer's request.
7. **Disclaimer of Warranties and Liability Limitation.** Vendor is not a manufacturer of Equipment and disclaims all warranties. Customer's sole remedy for breach of a manufacturer's warranty is against the manufacturer.

**VENDOR MAKES ABSOLUTELY NO WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE QUALITY, CONDITION OR PERFORMANCE OF EQUIPMENT OR PATENT INFRINGEMENT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM A COURSE OF DEALING, LAW, USAGE OR TRADE PRACTICE. UNDER NO CIRCUMSTANCES SHALL VENDOR BE SUBJECT TO ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONTINGENT DAMAGES WHATSOEVER WITH RESPECT TO CLAIMS MADE UNDER THIS AGREEMENT OR BY ANY CONSUMER OR OTHER USER OF EQUIPMENT OR SUPPLIES. EQUIPMENT AND SUPPLIES, INCLUDING WITHOUT LIMITATION ANY PROGRAMMED SOFTWARE, ARE RENTED OR SOLD "AS IS." VENDOR'S LIABILITY, AT VENDOR'S OPTION, IS LIMITED TO REPERFORMANCE OF THE SERVICES OR A REFUND OF THE SERVICE FEE PAID BY CUSTOMER TO VENDOR. THIS DISCLAIMER OF LIABILITY FOR ALL DAMAGES WILL NOT BE AFFECTED IF ANY REMEDY PROVIDED HEREIN SHALL FAIL OF ITS ESSENTIAL PURPOSE.**

8. **Excusable Delays/Non-Performance.** Any delay or failure in performance other than non-payment will be excused to the extent caused by an extraordinary event or occurrence beyond the reasonable control of the non-performing party, including without limitation, fires, floods, windstorms, explosions, strikes, walk outs, riots, natural disasters, mechanical breakdowns, power outages, interruptions in telecommunications, material shortages, acts of terrorism, wars and changes in law, policy or inflationary pressure that render performance of Services by Vendor commercially impracticable. The affected party will give the other party prompt notice of the delay or failure and the reason thereof and will exert commercially reasonable efforts to remove the causes or circumstances of non-performance with reasonable dispatch.
9. **Assignment.** Neither party may assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other party, except that Vendor may assign this Agreement to an affiliate or to a successor in interest to which the business relates.
10. **Independent Contractor; Benefit.** The relationship between the parties is solely that of independent contractors. This Agreement is for the benefit of the parties. There are no intended third party beneficiaries to this Agreement.



11. **Governing Law; Jurisdiction.** This Agreement is governed by the laws of the State of Minnesota, notwithstanding its conflict of laws rule. Venue for any legal proceedings will be solely in Hennepin County, Minnesota.
12. **Waiver; Severability; Entire Agreement; Amendment.** Waiver by either party of any breach of this Agreement will not be deemed nor constitute a continuing waiver or waiver of any other breach of this Agreement. A finding by a court of competent jurisdiction that any provision of this Agreement is invalid or unenforceable under law will not affect the validity or enforceability of any other provision of this Agreement, unless a party's rights or obligations are materially and adversely affected by such ruling. This Agreement contains all agreements and understandings between the parties relating to its subject matter. Except as described in the Equipment and Fees Exhibit, any amendment to this Agreement must be in writing and will not be effective until it is executed and approved by an authorized representative of each party.
13. **Notices.** All required notices will be in writing and will be deemed to have been given as indicated:
  - 12.1 If delivered in person or by Federal Express or similar nationally recognized express mail or courier service, which provides evidence of delivery, on the date of delivery;
  - 12.2 If sent by certified or registered mail or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or
  - 12.3 If sent by electronic messaging system, on the date the electronic message is received,

unless the date of delivery (or attempted delivery) or receipt, as applicable, is not a business day or is after the close of business on a business day, in which case the communication will be deemed given and effective on the first following day that is a business day and provided that in each case the notice is properly addressed to the address provided in the appropriate signature block above or such other address as has been given by proper notice and directed to the attention of the Contracts Department in the case of Vendor and to the attention of the title of the person signing this Agreement in the case of Customer.
- 13 **Relationship with Vendor Staff.** If Customer were to hire a member of the Vendor team, Vendor would incur significant expense in hiring and training a replacement. Accordingly, while this Agreement is in effect and for one year after it ends, Customer will not, with respect to any Vendor employee or contractor providing Services on behalf of Vendor in connection with this Agreement, employ, solicit or entice, directly or indirectly, such person to become employed or retained by Customer or any affiliate of Customer or any competitor of Vendor, without the express written consent of Vendor. If Customer breaches this Section, Customer shall, on demand, pay Vendor a sum equal to one year's compensation or the annual fee that was payable by Vendor to that employee, worker or contractor plus the recruitment costs incurred by Vendor in replacing such person.
- 14 **Equal Opportunity Employer.** Vendor is an Equal Opportunity Employer and complies with Executive Order 11246 and hereby provides notice of its compliance with FAR 52-222-26, 41 C.F.R. 60-1.4, 41 C.F.R. 60-250.5 and 41 C.F.R. 60-741.5, which are hereby incorporated by reference.