

**WEST PENN ALLEGHENY HEALTH SYSTEM  
GENERAL TERMS AND CONDITIONS**

This Agreement is made and entered into effective \_\_\_\_\_, \_\_\_\_\_ between \_\_\_\_\_ (Seller) with principal offices located at \_\_\_\_\_ and the West Penn Allegheny Health System, Inc. d/b/a Allegheny General Hospital, (Allegheny Campus and Suburban Campus), The Western Pennsylvania Hospital, and The Western Pennsylvania Hospital – Forbes Regional Campus; Allegheny Medical Practice Network, Allegheny Singer Research Institute, Allegheny Specialty Practice Network, Alle-Kiski Medical Center, Canonsburg General Hospital, Canonsburg General Hospital Ambulance Service, West Penn Specialty Practice Network and West Penn Corporate Medical Services, Inc. (each a West Penn Allegheny Health System Entity; collectively the West Penn Allegheny Health System entities each referred to hereinafter, individually, jointly, severally and collectively as “Buyer”). The terms and conditions contained herein shall apply to all purchase orders issued by Buyer to Seller, for the furnishing of commodities, equipment and/or services for the West Penn Allegheny Health System entities.

**1.0 DEFINITIONS** - When capitalized herein, the following words or phrases shall have the meanings specified: **Acceptance:** Shall have the meaning specified in Article 2.0, Acceptance. **Buyer:** Shall mean any of the West Penn Allegheny Health System entities as identified in the Purchase Order. **Buyer's Site:** Shall mean the shipping address unless Buyer designates another location in the Purchase Agreement or, in the case of Services, Buyer's facilities or property whether leased or owned. **Commodities and Equipment:** Shall mean commodities and equipment, components, parts and materials to be supplied by Seller pursuant to the Purchase Agreement. **Delivery:** Shall have the meaning specified in Article 3.0, Delivery and Title. **Price:** Shall mean the price or prices stated in the Purchase Agreement. **Purchase Agreement:** Shall mean Buyer's Purchase Order(s), these General Terms and Conditions, and any supplementary terms and conditions, specifications, drawings, change order(s) and such other documentation as shall be specified in the Purchase Order. **Seller:** Shall mean the successful bidder. **Services:** Shall mean the work performed by Seller and any other services necessary to fulfill Seller's obligations under the Purchase Agreement. **Subcontractor:** Shall mean vendors, suppliers and subcontractors of any tier and any other persons or entities contracting directly or indirectly with Seller for the performance of the Work under the Purchase Agreement. **Work:** Shall mean Commodities and Equipment, Services and Work Product, including all activities inferable as necessary for the performance of the Purchase Agreement. **Work Product:** Shall mean studies, reports, evaluations, designs, drawings, procedures, specifications, plans and all other documentation and deliverables which are produced or acquired by Seller for or at the direction of Buyer. **“Never Events”:** For purposes of this Agreement shall mean serious reportable events associated with a product or device, including but not limited to the malfunction of a product or device, the contamination of drugs or a device, etc., resulting in a patient death or serious disability.

**2.0 ACCEPTANCE** - Seller's acknowledgment, commencement of performance or any other conduct by Seller which indicates that the Purchase Agreement is in effect shall constitute Acceptance by Seller of the Purchase Agreement. Additional or different terms, provided by Seller at any time, including but not limited to Seller's proposal(s) or Seller's Terms and Conditions, shall not apply without the prior written consent of Buyer.

**3.0 DELIVERY AND TITLE** - Unless otherwise specified by Buyer in the Purchase Order, Delivery of all Work shall be made at Seller's expense F.O.B. Buyer's Site during Buyer's normal receiving hours. Buyer reserves the right to designate the mode of transportation and carrier. C.O.D. shipments shall be returned to Seller at Seller's expense. Risk of loss or damage shall pass to Buyer F.O.B. Buyer's Site. Transfer of title to Buyer shall occur upon Buyer's acceptance of Work which conforms to the Purchase Agreement. Seller shall promptly correct all nonconforming Work at its sole expense. Acceptance or payment by Buyer shall not waive any of Buyer's rights and remedies or relieve Seller from any of Seller's duties or obligations.

**4.0 RETURN OF PRODUCTS; RESTOCKING FEE** – Notwithstanding anything to the contrary herein, Buyer shall have the right to return Commodities (excluding products with expired shelf life) and Equipment to Seller for full refund. In no event shall Seller have the right to charge a restocking fee in connection with any returns of Commodities and Equipment under the Purchase Agreement. Seller's return goods policy, if any, is attached.

## **5.0 PAYMENT**

**5.1 Undisputed Invoices.** Buyer shall pay undisputed invoices Net sixty (60) days after receipt of the invoice or, if later, upon acceptance of the Work. Buyer may pay the undisputed invoice to receive the prompt payment discount. If any portion of the Work does not conform to the requirements of the Purchase Agreement as determined by Buyer, the Price or a portion thereof may be withheld by Buyer until the nonconformity is corrected. If Buyer returns any invoice for correction of errors, payment shall be due Net sixty (60) days from receipt of the corrected invoice or, if later, upon acceptance of the Work. All invoices shall be submitted in duplicate in accordance with the Invoice Instructions on the Purchase Order.

**5.2 Disputed Invoices.** In the event any portion of any invoice is in dispute, Buyer shall pay the undisputed amount and disputes shall be discussed and resolved using best efforts to amicably and promptly resolve the disputes within thirty (30) days. Upon determination of the correct billing amount, the proper adjustment shall be applied to the next invoice or paid/refunded within thirty (30) days. If the parties are unable to resolve the dispute, either party may seek the remedies available to it pursuant to this Agreement at law or equity.

**6.0 WARRANTIES** - Seller represents, warrants and guarantees that the Work shall be: (i) constructed from new materials, free from defects in materials, workmanship and design and of proper size and quality; (ii) provided in accordance with the requirements of the Purchase Agreement including but not limited to specifications and performance standards; (iii) provided in accordance with standards of care consistent with generally accepted industry practices and procedures in Seller's particular area of expertise; (iv) provided in a skillful, workmanlike and professional manner; and (v) merchantable and suitable for the purposes intended by Buyer. If within a period of one (1) year after the date of Buyer's acceptance of the Work, the Work shall fail to conform to this warranty, Buyer, at its option, shall have the following remedies: (i) Require Seller to promptly repair, replace or reperform the Work at Seller's expense; (ii) Have the Work promptly repaired, replaced or reperformed by Buyer or a third party at Seller's expense; (iii) Accept the Work as provided and adjust the Price by the amount of the cost of correcting the nonconformity or, at Buyer's option, the amount by which the value of the Work is diminished from the value of conforming Work; (iv) Reject the Work and receive a refund of the Price; or (v) if the Work fails to conform to this warranty and as a direct or indirect result a "Never Event" occurs, require Seller to pay Buyer for the costs and expenses of the applicable medical procedure or procedures that cannot be billed to the patient and/or the payor. The costs of removing, transporting and reinstalling the Work in order to make the Work conform with the above warranties shall be borne by Seller. The warranty period shall be extended by the amount of time during which the Work is nonconforming. The above stated warranty period shall be appropriately shorter for those items (routine commodities and consumable supplies) which by normal industry practices have a shorter warranty period. The above remedies shall be available in addition to all other remedies available at law or in equity and all remedies shall be cumulative and non-exclusive.

**7.0 DOCUMENTATION AND TRAINING** – Seller, when requested but no later than shipment, shall submit to Buyer, at no cost, one complete set of installation, operation and technical service instructions and manuals (preferably in CD format) for each item of Equipment furnished. All instructions/manuals shall be specific and certified by the manufacturer as applicable to the Equipment furnished. A parts identification list shall be provided and shall include sectional and/or outline prints or illustrations marked to identify each numbered part and to locate it in relation to the Equipment as a whole. All records, test reports, quality documents, etc. which are produced by Seller for, on behalf of, or at the direction of Buyer, shall be furnished to Buyer upon Buyer's request. All correspondence, certificates, records, and similar documentation shall include the purchase order number and specification number/date if applicable.

Seller shall provide, at no cost, service training for one clinical engineering employee. Buyer will be responsible for the cost of providing transportation, housing and all meals relative to attendance at such training. Said training shall be scheduled within ninety (90) days of the receipt of the Equipment.

## **8.0 INDEMNIFICATION**

- (i) Seller shall defend, indemnify and hold harmless Buyer from and against and shall pay all losses, damages, liabilities, claims and actions, and all related expenses (including reasonable attorneys' fees and expenses and the actual costs of litigation, including, but not limited to expert witness or consultant fees and costs) by reason of injury (physical, mental or emotional) or death to any person, damage to any property or Buyer's business, or any other occurrence arising or resulting from performance of the Work or defects in the Work, to the extent caused by the negligence or intentional acts or omissions of Seller or its employees, agents, contractors, or representatives.

- (ii) Buyer shall defend, indemnify and hold harmless Seller from and against and shall pay all losses, damages, liabilities, claims and actions, and all related expenses (including reasonable attorneys' fees and expenses and the actual costs of litigation, including, but not limited to expert witness or consultant fees and costs) by reason of injury (physical, mental or emotional) or death to any person, damage to any property or Seller's business, or any other occurrence arising or resulting, to the extent caused by the negligence or intentional acts or omissions of Buyer or its employees, agents, contractors, or representatives.

**9.0 INTELLECTUAL PROPERTY INDEMNIFICATION** - Seller shall defend, indemnify, settle and hold harmless Buyer from and against and shall pay all losses, damages, liabilities, claims and actions, and all related expenses (including reasonable attorney and expert fees and expenses and the actual costs of litigation) based on an allegation that any Work, Equipment, Product, Software or parts thereof infringe or misappropriate a United States patent, copyright, service mark or intellectual property of another. In the event that any such claim of infringement is made or threatened, or injunctive relief is granted to the third-party claimant, Seller shall, at its sole option, either: (a) obtain the right for Buyer to continue using the Work, Equipment, Parts, Product, Software; (b) substitute other Work, Equipment, Parts, Product, Software of like capability; or (c) modify the Work, Equipment, Parts, Product, Software to render it non-infringing while retaining like capability. Seller shall obtain from all Subcontractors similar indemnity protection for Buyer.

**10.0 LIENS** - Seller hereby waives all rights to lien, shall not file, and shall take all actions necessary to prevent any Subcontractors from filing any liens against Buyer or its property, including Buyer's Site. Seller shall obtain a lien waiver from all Subcontractors. In addition, Seller shall defend, indemnify and hold harmless Buyer and any of its property, including Buyer's Site, from all demands, liabilities and liens which may arise in favor of Seller or any Subcontractors, and from all damages, costs and expenses (including reasonable attorneys' fees and expenses and the actual costs of litigation) resulting from such demands, liabilities or liens. If requested by Buyer, Seller shall execute Buyer's Stipulation Against Liens Agreement and shall file it in the appropriate governmental offices.

**11.0 CHANGES** - Buyer may at any time by a written Change Order make changes within the general scope of the Purchase Agreement. If any change results in a material increase or decrease in the cost of the Work or otherwise materially affects the Purchase Agreement, the Change Order shall include an equitable adjustment in the Price, the schedule and/or any other affected provision. Any objection by Seller to the proposed equitable adjustment must be asserted within ten (10) days after receipt of the Change Order.

**12.0 DELAY, SUSPENSION OR INTERRUPTION OF WORK** - Buyer may direct Seller, in writing, to suspend or interrupt all or any part of the Work for such period of time as Buyer may determine to be appropriate. Seller shall mitigate the costs of such suspension or interruption. Buyer agrees to reimburse Seller for all direct expenses necessarily incurred and approved by Buyer as a result of such suspension or interruption, subject to Buyer's right to audit Seller's books and records. Seller shall notify Buyer immediately of any delay in milestone, Delivery or shipment dates, hereinafter referred to as "Schedule." If Seller fails to meet any part of the Schedule, Buyer, without limiting its other rights or remedies, may either direct that the Work be expedited or terminate all or part of the Purchase Agreement for cause in accordance with Article 13.0, Termination. In such event, Seller shall be liable to Buyer for all costs, losses and resulting expenses. In no event shall Buyer be liable for costs, losses and resulting expenses in connection with delays unless such delays are solely attributable to Buyer and cause the overall Schedule to be exceeded.

**13.0 TERMINATION** - Buyer may terminate, without financial penalty, all or part of the Purchase Agreement if Seller abandons the Work, becomes bankrupt or insolvent, is unable to obtain a bond (if required), if all or part of the Work is the subject of an FDA or manufacturer recall, assigns the Purchase Agreement or subcontracts the Work or any of its parts without Buyer's consent or otherwise fails to comply with the Purchase Agreement; provided, however, that prior to such termination Buyer must have notified Seller in writing of its intent to terminate the Purchase Agreement and the reasons therefor, and Seller must have failed to cure any noncompliance within ten (10) days after receipt of notice or such other time specified by Buyer in the termination notice. If Buyer terminates for cause, Buyer may complete or contract with a third party to complete all or part of the Work, and Seller shall be liable to Buyer for all costs and expenses to complete all or such part of the Work and any other costs and expenses resulting from Seller's noncompliance. Buyer may also terminate upon thirty (30) days written notice all or part of the Purchase Agreement without cause. Upon receipt of notice, Seller shall bring the Work to a prompt conclusion. Buyer shall pay Seller a proportionate amount of the Price due to Seller for Work completed up to the effective date of termination plus direct actual costs necessarily incurred and approved by Buyer as a result of the termination, subject to Buyer's right to audit Seller's books and records. In all cases Buyer may require Seller

to transfer title and deliver to Buyer any contracts, rights and Work, produced or acquired by Seller for the performance of the Purchase Agreement. This Agreement will also be terminated immediately: (a) if the Seller performs any action that is deemed to be damaging or counter productive to the goals of this Agreement, or the goals, reputation, policies or mission of Buyer; (b) if Buyer believes, in its sole discretion, that termination is necessary for the health (including emotional health) and/or safety of Buyer's patients, visitors or employees; (c) if Seller shall have its license revoked or suspended by a State or Federal licensing agency or board, or be placed on probation by any government licensing body, then the Seller shall immediately notify Buyer, and this Agreement shall terminate as of the date such revocation or probation becomes effective; (d) if Seller and/or its employees, agents, or contractors shall have committed any fraud, embezzlement, misappropriation or other act of dishonesty against Buyer, as reasonably determined by Buyer.

**14.0 DISPUTES** - The Parties agree that either Party shall provide written notice to the other Party of any dispute arising under this Agreement and that the Parties shall make a good faith effort to resolve any dispute in an amicable fashion. During the pendency of any dispute, Seller shall proceed with the Work and maintain progress in accordance with Buyer's direction, and in such event Buyer shall continue to make payments to Seller of all undisputed sums due and payable under the terms of the Purchase Agreement.

**15.0 CONFLICTS, ERRORS AND OMISSIONS** - In the event Seller or Buyer becomes aware of any conflict, error or omission in the documents comprising the Purchase Agreement, such party shall bring the discrepancy to the attention of the other party. Such discrepancy shall be resolved by mutual agreement of the parties. The risk and expense of Seller proceeding with the Work without such resolution shall rest with Seller.

**16.0 INSPECTIONS AND TESTS** - Buyer may, at any time, inspect the progress of the Work provided under the Purchase Agreement including Work performed at Seller's or Subcontractor's facilities. If the Purchase Agreement, laws, ordinances, rules, regulations or orders of any public authority require any portion of the Work to be inspected, tested or approved, Seller shall give Buyer reasonable notice to permit Buyer to observe such inspection, testing or approval. Seller shall provide reasonable access to its facilities and periodic status reports during the course of the Work.

**17.0 JOB COST ACCOUNTS AND INFORMATION, AUDITS** - Seller shall maintain detailed separate cost data for each Purchase Order in accordance with generally accepted accounting principles. Seller's records pertaining to the cost of the Work (other than fixed Prices agreed to prior to performance of the Work) and Seller's applicable tax records shall be open at all reasonable times for inspection or audit by Buyer or its representative(s). Buyer or its representative(s) shall at reasonable times have access to the premises, materials, instructions, working papers, plans, drawings, specifications, memoranda and other information of Seller pertaining to the Work. All Seller's purchase orders or contracts with Subcontractors shall provide that Buyer or its representative(s) shall have the right to audit Subcontractors' charges to Seller. Buyer's rights under this Article shall terminate five (5) years after expiration of the warranty period.

**18.0 INSURANCE** - Seller shall properly maintain the following coverage: Statutory Workers' Compensation Insurance in full compliance with the Workers' Compensation and Occupational Disease Acts of each and every state in which work is to be performed with a combined single limit of not less than \$1,000,000 (said minimum to be adjusted upward by an amount of no less than three percent (3%) per each renewal year); Employer's Liability Insurance with a limit of not less than \$500,000; Comprehensive General Liability Insurance including Premises-Operation Independent Contractor's Protective, Products and Completed Operation with a combined single limit of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate; Blanket Contractual Liability coverages of not less than \$5,000,000 to provide for the indemnification obligations under this Purchase Agreement; Excess Umbrella Liability Insurance with a single limit of not less than \$5,000,000; and Automobile Liability Insurance covering all owned, hired and non-owned vehicles with a combined single limit of not less than \$1,000,000 per occurrence. The Property Damage Liability Insurance shall include the Broad Form Comprehensive General Liability coverage. Policies of insurance hereunder shall be issued by reputable and solvent issuers licensed in the Commonwealth of Pennsylvania. If requested by Buyer, Seller shall provide Buyer with a Certificate of Insurance specifically evidencing the coverages required above, naming the Buyer as an additional insured, except under the Workers' Compensation Policy, and stating the policy numbers and the inception and expiration dates of all policies. The Certificate of Insurance shall be updated for the duration of the Work and shall provide for thirty (30) days' prior written notice to Buyer in the event of cancellation or any material alteration of any policy.

**19.0 TAXES** - Buyer shall provide to Seller upon Seller's request a tax exemption certificate for all taxes which become due under Pennsylvania sales and use tax laws, except for taxes that Seller is required to pay under such laws. Upon Buyer's request, Seller shall provide evidence satisfactory to Buyer of the payment of any taxes which

Seller is required to pay. Seller shall assume and pay all other taxes. Seller shall provide to Buyer such additional information as Buyer may request to facilitate the determination of taxes for which Buyer is responsible.

**20.0 CONFIDENTIAL/PROPRIETARY INFORMATION** – Seller shall keep confidential and not disclose or reveal to any unauthorized person any Confidential Information relating to Buyer, or any subsidiaries or affiliates of Buyer. Seller hereby confirms that such Confidential Information constitutes the exclusive property of such entities and hereby agrees to use Confidential Information solely to fulfill Seller’s obligations pursuant to the Purchase Agreement and for no other purpose. Seller agrees not to use Confidential Information for Seller’s own benefit, financial or otherwise. “Confidential Information” includes all information contained in any form of or relating to Buyer and the subsidiaries and affiliates of Buyer, including without limitation (a) all medical records of patients, (b) all financial records and compilations including, but not limited to all budgets, forecasts, financial statements, and summaries and aggregations of any of the foregoing, (c) all corporate records, (d) all marketing, strategic, financial, purchasing, and other plans, strategies, and initiatives, (e) all lists and other compilations of patient names, addresses, and other patient demographic information, (f) all supplier, payer, and employee lists and information, (g) the terms of all relationships with suppliers, payers, managed care companies, and any other contracting parties, (h) the Work, Work Product, and the Purchase Agreement, and (i) any other information deemed to be important to the operations, performance, financial, competitive, or strategic position of Buyer and its subsidiaries and affiliates. Notwithstanding the foregoing, Confidential Information does not include information in the public domain not resulting from the breach by Seller or Subcontractors, information that can be documented to be in Seller’s possession prior to disclosure by Buyer, or information received by Seller from a third party lawfully in possession of the information and without restriction on use or disclosure. Seller may disclose such portions of Confidential Information to its own employees and to Subcontractors and to Subcontractor employees only to the extent necessary to perform the Work and only upon obtaining the commitment of such employees and Subcontractors to abide by the obligations imposed on Seller hereunder. Notwithstanding any other provision of this Purchase Agreement to the contrary, Buyer shall have the right to disclose pricing and other terms of this Purchase Agreement to Buyer’s attorneys, accountants, group purchasing organization and other third parties retained by Buyer. This article shall survive any expiration or termination of the Purchase Agreement.

**21.0 OWNERSHIP RIGHTS** - Buyer shall have exclusive use of and own all title, rights and interests in and to all Work. All Work shall be considered "work made for hire."

**22.0 ASSIGNMENT** - Seller shall not assign the Purchase Agreement, in whole or in part, nor contract with any Subcontractor for the performance of the same or any of its parts, without first obtaining Buyer's written consent. Buyer's consent shall not be construed as discharging or releasing Seller in any way from the performance of the Work or the fulfillment of any obligation under the Purchase Agreement.

**23.0 PRIORITY OF DOCUMENTS** - In the event of conflict among the various documents of the Purchase Agreement, the conflict shall be resolved according to the priority given to the documents in the Purchase Order(s). If no priority is indicated in the Purchase Order(s), the conflict shall be resolved according to Article 15.0, Conflicts, Errors and Omissions.

**24.0 SURVIVAL** - The obligations and rights of the parties pursuant to the Assignment, Liens, Warranties, Confidential/Proprietary Information, Intellectual Property Indemnification, Indemnification, Ownership Rights and Job Cost Accounts and Information, Audits Articles shall survive the expiration or early termination of the Purchase Agreement.

**25.0 COMPLIANCE** -The parties recognize that the Purchase Agreement at all times shall be subject to applicable state, local, and federal law including but not limited to the Social Security Act, (including sections 1171 through 1179), the rules, regulations and policies of the Department of Health and Human Services, the False Claims Act established under sections 3729 through 3733 of Title 31, United States Code, administrative remedies for false claims and statements established under Chapter 38 of Title 31, for false claims and statements established under Chapter 38 of Title 31, United States Code, any State laws pertaining to civil or criminal penalties for false claims and statements, and whistleblower protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs (as defined in section 1128B(f)), all public health and safety provisions of Pennsylvania law and regulations, including but not limited to safety (including the Occupational Safety and Health Act of 1970), environment, labor standards and workers' compensation. Seller and its Subcontractors shall also comply with the Joint Commission on Accreditation of Healthcare Organization (JCAHO) standards and Buyer's policies, rules and procedures, including, but not limited to Buyer's Code of Ethics, all as are from time to time adopted, authorized, or approved. Seller shall upon request

provide quality data and information related to services provided and participate in the Hospital's Performance Improvement on an annual basis or when requested to do so.

The parties further recognize that the Purchase Agreement shall be subject to amendments in such laws and regulations and to new legislation as new federal or state laws or regulations are implemented. Any provisions of law that invalidate, or that are otherwise inconsistent with, the terms of the Purchase Agreement or that would cause any of the parties to be in violation of law, shall be deemed to have superseded the terms of the Purchase Agreement. The parties shall exercise their best efforts, and in good faith, to accommodate the terms and intent of the Purchase Agreement to the greatest extent possible consistent with the requirements of the law, and to revise the Purchase Agreement, or the party's business procedures, in order to comply with such law. Both Parties shall not, and no director, officer, employee, shareholder, agent, representative or other person associated with or acting for or on behalf of the Party shall directly or indirectly make any contribution, gift, bribe, kickback or other payment (including any political contribution to governmental officials for improper purposes or payments to obtain or retain business) to any person, regardless of form whether in money, property or services (i) to obtain favorable treatment in securing the Purchase Agreement, (ii) to obtain special concessions or for special concessions already obtained for or in respect of the Party or any affiliate of the Party in securing the Purchase Agreement, or (iii) in any other manner or for any other purpose which violates applicable law.

**26.0 NONWAIVER** - No failure by a Party to take action by reason of any default by another Party, whether in a single instance or repeatedly, shall constitute a waiver of any such default or of the performance required of the defaulting Party. No express waiver by a Party of any provision of the Purchase Agreement or a default by another party in any one instance shall be construed as a waiver of the same provision or a default in any subsequent instance.

**27.0 ENTIRE AGREEMENT** - The Purchase Agreement including documents attached thereto or referenced therein constitute the entire agreement between the Parties pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions thereof. Except as expressly set forth in the Purchase Agreement, all prior agreements, representations, negotiations, and understandings of the Parties hereto, oral or written, express or implied, are hereby superseded and merged in the Purchase Agreement.

**28.0 CAPTIONS** - The captions used in the Purchase Agreement are for the convenience of reference only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

**29.0 SEVERABILITY** - If any provision of the Purchase Agreement as applied to any Party or to any circumstances shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of the Purchase Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of the Purchase Agreement as a whole.

**30.0 BINDING EFFECT** - The Purchase Agreement shall bind and inure to the benefit of the respective Parties hereto and their respective heirs, executors, administrators, successors and assigns.

**31.0 CHANGE IN CONTROL** - Nothing in the Purchase Agreement shall preclude Buyer from consummating a Change in Control. Upon a Change in Control, the term "Buyer" as used in this Agreement shall thereafter include any surviving organization that is a successor in interest to Buyer and the Purchase Agreement shall continue in full force and effect.

**32.0 EQUAL EMPLOYMENT, NON-DISCRIMINATION AND EXECUTIVE ORDER 13201 COMPLIANCE** - The Seller agrees not to discriminate against any of its employees or applicants because of race, color, age, religion, sex, national origin, veteran or military status, or qualified disability. Further the Seller will take affirmative action to employ and advance in employment individuals without regard to race, color, age, religion, sex, national origin, veteran or military status, or qualified disability and to comply with the rules, regulations, and relevant orders of the Secretary of Labor, and any other applicable laws. Further, the Seller agrees to comply with the provisions of 29CFR part 470. In the event of the Seller's noncompliance with this clause, this Agreement may be canceled, terminated, or suspended, in whole or in part, as deemed appropriate by Buyer.

**33.0 INDEPENDENT CONTRACTOR** - The sole relationship of Buyer to Seller with respect to this Agreement shall be that of independent contractor. Nothing contained in the Purchase Agreement is to be construed to constitute Seller and Buyer as partners or joint venturers of each other, or to constitute the employees, agents, or representatives of either party as the employees, agents or representatives of the other party, it being intended that the relationship between Seller and Buyer shall at all times be that of independent contractors. Neither party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of, or in the name of, or to bind the other party to any contract agreement, or undertaking of any third party.

**34.0 MODIFICATION OF AGREEMENT** – The Purchase Agreement may be modified or amended from time to time by mutual written agreement of the parties and any such modification or amendments shall be attached to and become part of the Purchase Agreement.

**35.0 NOTICE** - All notices, demands, requests, and other communications required or permitted hereunder (collectively "notices") shall be in writing and may be personally served or sent by US mail or overnight delivery. If sent by US Mail, receipt may be deemed upon the expiration of the third full business day after posting. If by overnight service, then delivery shall be deemed effective with the actual time of delivery as recorded by the delivery service's agent. Facsimile transmissions shall be sufficient only if receipt by a responsible servant or agent of the intended recipient shall be confirmed by a telephone voice communication. Each Party shall be required to notify the other from time to time of their proper address for the purposes of notice. Any notice to Buyer required herein shall be in writing addressed as follows:

West Penn Allegheny Health System  
Vice President, Corporate Contracting  
East Commons Professional Building  
Four Allegheny Center, Ninth Floor  
Pittsburgh, PA 15212

**36.0-INJUNCTIVE RELIEF** - Both Parties acknowledge that violation by one Party of the provisions of Section 25.0, (Compliance) or Section 20.0 (Confidential/Proprietary Information) would cause irreparable harm to the other Party not adequately compensable by monetary damages. In addition to other relief, it is agreed that injunctive relief shall be available to prevent any actual or threatened violation of such provisions.

**37.0 ACCESS TO BOOKS AND RECORDS** - Seller agrees to maintain all records pertinent to the Purchase Agreement and agrees to fully cooperate with any review/audits conducted by personnel from Buyer or its auditors (internal or external), the Commonwealth of Pennsylvania Department of Health, the Comptroller General, or any other authorized federal, state or local agency. This may include facilities review, review of service records, and all records that pertain to the costs and expenses of this Agreement to the full extent required by the Health Care Financing Administration implementing Section 952 of the Omnibus Reconciliation Act of 1980, codified at 42 U.S.C. Section 1395(x)(v)(1)(I), and any other applicable law, statute or regulation. For the purpose of implementing Section 1861 (V) (1) of Social Security Act, as amended, and any written regulations thereto, Seller agrees to comply with the following statutory requirements governing the maintenance of documentation to verify the cost of services rendered under this agreement: Until the expiration of four (4) years after furnishing of such services pursuant to such Agreement, Seller shall make available, upon written request to the Secretary of U.S. Department of Health and Human Services, or upon request to the Comptroller General of the United States, or any of their duly authorized representatives, the Purchase Agreement, and books, documents, and records of Seller that are necessary to certify the nature and extent of such costs. If either Buyer or Seller is requested to disclose any books, documents, or records relevant for the purpose of an audit or investigation, the requesting party shall notify the other of the nature and scope of such request and shall make available, upon written request all such books, documents, or records.

**38.0 FORCE MAJEURE** - Each party shall be excused from performance under the Purchase Agreement and shall have no liability to the other party to the extent it is prevented from performing any of its obligations, in whole or in part, as a result of delays caused by an act of God, war, civil disturbance, court order, labor dispute, or other cause beyond its reasonable control, including failures or fluctuations in electrical power, heat, light, or telecommunications, and such nonperformance shall not be a default under this Agreement. Buyer and Seller shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance. In the event of such delay, the date of Delivery or performance of Work shall be extended for a period not to exceed the time lost by reason of the delay. Buyer has the right to terminate the Purchase Agreement if such delay materially interferes with its business. Except for Buyer's right to terminate, such time extension shall be the sole and exclusive remedy of Buyer and Seller. Buyer shall have no obligation to make any payments to Seller during or as a result of the period of delay. Neither party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by the claiming party's failure to remedy the condition and to resume the performance of such covenants and obligations as soon as reasonably practical. Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be entirely within the sole discretion of the party experiencing such disturbance. The party whose performance is prevented by Force Majeure must provide

notice to the other party. Initial notice may be given orally, however, written notification with reasonably full particulars of the event or occurrence is required as soon as reasonably possible.

**39.0 GOVERNING LAW, JURISDICTION AND VENUE** - This Agreement is made and entered into in the Commonwealth of Pennsylvania and shall be governed by, construed and enforced in accordance with the internal laws of the Commonwealth of Pennsylvania without reference to principles of conflicts or choice of law. All parties agree that Allegheny County, Pennsylvania shall be the sole and exclusive venue for any litigation or other proceeding between the Parties that may be brought or arise out of or in connection with or by reason of this Agreement.

**40.0 PUBLICITY/ADVERTISING** – Seller is prohibited from using the Buyer’s name in any promotional or advertising material without Buyer’s written consent. This provision shall survive any expiration or termination of this Purchase Agreement.

**41.0 GPO REPORTING** – If Seller has a contract with a Group Purchasing Organization of which WPAHS is currently a participating member (WPAHS GPO) for the supply of Commodities, Equipment, and/or Services under this Purchase Agreement, Seller shall provide to the WPAHS GPO a quarterly report of all Commodities, Equipment and/or Services purchased by Buyer and delivered to Buyer during each calendar quarter. In addition, Seller shall provide the WPAHS GPO with quarterly reports and pay to the WPAHS GPO the GPO Administrative Fee amounts for sales under this Purchase Agreement during each calendar quarter. Seller’s failure to provide accurate and timely reports as set forth herein shall be deemed a material breach of this Purchase Agreement.

**42.0 EFFECTIVE DATE OF PRICING AND PRICING REVIEW** - Beginning at the effective date of the Purchase Agreement and for each succeeding calendar month for the duration of the Purchase Agreement, Buyer shall review Seller’s pricing. Buyer expects that the Seller will make a good faith effort to be responsive to Seller’s respective marketplace price changes. Should Buyer find Seller’s pricing uncompetitive, Buyer will negotiate with Seller in good faith price adjustments for the succeeding calendar month. Should Buyer not agree with the outcome of the negotiations, then the Purchase Agreement may be terminated. If Buyer chooses to terminate the Purchase Agreement, Buyer will give Seller 45 days written notice of cancellation.

**43.0 PROVISIONS CONCERNING PROTECTED HEALTH INFORMATION** – The attached Addendum is incorporated herein by reference.

**44.0 FAILURE TO SUPPLY** – If Seller fails to make available ordered quantities and designated sizes of product, Buyer may cancel the order and/or purchase the product from another source. Seller shall reimburse Buyer for Buyer’s incremental costs in procuring the product from another source and for any costs or losses Buyer incurs due to Seller’s failure to deliver.

**45.0 VENDOR VISITATION** - Seller and Seller Representative(s) are granted access to WPAHS entity locations as a courtesy. Admittance of Seller Representative(s) to any of the locations of business of a WPAHS entity is a privilege, not a right. Seller and its Seller Representative(s) that conduct business with WPAHS entities must do so in accordance with all established policies and guidelines. It is the responsibility of the WPAHS entities and their staff to ensure that Seller and its Seller Representative(s) are knowledgeable as to and compliant with these guidelines. Prior to an initial visit to any WPAHS entity location, Seller and its Seller Representative(s) shall meet with a contracting representative in the WPAHS Corporate Contracting Department to obtain instructions and protocols for WPAHS entity visitation. Furthermore, Seller will register all Seller Representatives in the VendorStat application, provided by ProTech Compliance, Inc. and utilized by Buyer, and pay all associated fees to ProTech Compliance, Inc. required for such registration. To gain access to WPAHS entity locations each Seller Representative shall have a scheduled appointment and check-in at the WPAHS designated check-in locations. Seller will also register in the RegComp, Inc. application utilized by Buyer and pay all associated fees to RegComp, Inc. Seller Representative(s) will need to provide documentation, as requested by the WPAHS entity, before the Seller and its Seller Representative(s) can be granted access. Such documentation shall include, but is not limited to, the following:

(1) Provide a letter of competency from the Seller that states that the Seller Representative(s) has/have had the qualified training to supervise procedures utilizing the described company equipment/tools and/or the ability to train others in the use of their product, (2) Seller must provide a background check on all Seller Representative(s) that will be observing or performing procedures with patients, and (3) Seller Representative(s) must provide documentation of TB testing within the last 6 months, which complies with Joint Commission standards.

A Seller whose Seller Representative(s) will use or have access to Protected Health Information of WPAHS patients must complete a HIPAA Business Associate Agreement with WPAHS.

In the event that a representative or agent of Seller is present at any time Seller’s products are implanted, utilized, or in any way employed for clinical use by a health care provider, it is presumed that the sole reason for the

representative's or agent's presence is to provide guidance, instruction, consultation, and confirmation that the device is being utilized in the proper manner, is in proper working order and is being used in accordance with Seller's specifications, instructions and/or guidelines.

Buyer and Seller have caused this Agreement to be executed by their duly authorized representatives, to be effective as of the date herein above first mentioned.

Seller: \_\_\_\_\_

West Penn Allegheny Health System,  
On behalf of each Buyer:

By: \_\_\_\_\_

By: \_\_\_\_\_

Print: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**WEST PENN ALLEGHENY HEALTH SYSTEM**  
**Addendum to General Terms and Conditions**

**PROVISIONS CONCERNING PROTECTED HEALTH INFORMATION**

Business Associate shall:

- (a) not use or further disclose protected health information (as defined in 45 CFR 164.501) provided to it by the Covered Entity or created by the Business Associate on behalf of the Covered Entity (“Protected Health Information”) other than as permitted or required by this Agreement or as required by law.
- (b) use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- (c) mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure by the Business Associate of Protected Health Information provided in violation of the requirements of this Agreement.
- (d) report to the Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement.
  - 1. Business Associate agrees to notify the designated Privacy Official of the Covered Entity of any use or disclosure of PHI by Business Associate not permitted by this Agreement, any Security Incident involving electronic PHI, and any Breach of Unsecured Protected Health Information within five (5) business days.
  - 2. Business Associate shall provide the following information to Covered Entity within ten (10) business days of discovery of a breach except when despite all reasonable efforts by Business Associate to obtain the information required, circumstances beyond the control of the Business Associate necessitate additional time. Under such circumstances Business Associate shall provide to Covered Entity the following information as soon as possible and without unreasonable delay, but in no event later than twenty (20) calendar days from the date of discovery of a breach:
    - a. the date of the breach;
    - b. the date of the discovery of the breach;
    - c. a description of the types of unsecured PHI that were involved;
    - d. identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed; and
    - e. any other details necessary to complete an assessment of the risk of harm to the individual.
  - 3. Covered Entity will be responsible to provide notification to individuals whose unsecured PHI has been disclosed, as well as the Secretary and the media, as required by Sec. 13402 of the HITECH Act, 42 U.S.C.A. § 17932;
  - 4. Business associate agrees to pay actual costs for notification and of any associated mitigation incurred by Covered Entity, such as credit monitoring, if Covered Entity determines that the breach is significant enough to warrant such measures.
  - 5. Business associate agrees to establish procedures to investigate the breach, mitigate losses, and protect against any future breaches, and to provide a description of these procedures and the specific findings of the investigation to Covered Entity in the time and manner reasonably requested by Covered Entity.
  - 6. The parties agree that this section satisfies any notices necessary by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which no additional notice to Covered Entity shall be required. For purposes of this

Agreement, “Unsuccessful Security Incidents” include activity such as pings and other broadcast attacks on Business Associate’s firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as any security incident that results in the unauthorized access, use or disclosure of electronic PHI is reported, documented, and addressed by the Business Associate as required above.

(e) ensure that any agent, including a subcontractor, to whom Business Associate provides Protected Health Information agrees to the same restrictions and conditions that apply through this Agreement to the Business Associate with respect to such information.

(f) provide access, at the request of the Covered Entity, in the time and manner designated by the Covered Entity, to Protected Health Information in a “designated record set” (as defined in 45 CFR 164.501), to the Covered Entity or, as directed by the Covered Entity, to a person meeting the definition of “Individual” in 45 CFR.501 (“Individual”) in order to meet the requirements under 45 CFR 164.524.

(g) make any amendment(s) to Protected Health Information in a “designated record set” that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of the Covered Entity or an Individual, in the time and manner designated by the Covered Entity.

(h) make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy or Security Rule.

(i) document such disclosures of Protected Health Information and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

(j) provide to the Covered Entity or an Individual, in a time and manner designated by the Covered Entity, any information collected by the Business Associate concerning an Individual, to permit the Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

(k) Except as otherwise limited in this Agreement, use Protected Health Information only for the proper management and administration of Business Associate’s duties under this Agreement or to carry out the legal responsibilities of Business Associate.

(l) Except as otherwise limited in this Agreement, disclose Protected Health Information only for the proper management and administration of the duties of Business Associate under this Agreement, provided that such disclosures are required by law, or that Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(m) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 CFR 164.504(e)(2)(i)(B).

(n) If the nature of your business relationship with the Covered Entity is such that you create, receive, maintain or transmit Protected Health Information in an electronic format on behalf of the Covered Entity, Business Associate shall:

(i) Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic Protected Health Information that Business Associate creates, receives, maintains or transmits on the Covered Entity’s behalf. Safeguards shall

include, without limitation, implementing written policies and procedures in compliance with HIPAA and ARRA, conducting a security risk assessment, and training Business Associate employees who will have access to Protected Health Information with respect to the policies and procedures required by HIPAA and ARRA.

(ii) Ensure that any agent or subcontractor of the Business Associate to whom the Business Associate provides electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect it; and

(iii) Immediately report to the Covered Entity any breach in the security of electronic Protected Health Information created, received, maintained or transmitted by the Business Associate on the Covered Entity's behalf.

Covered Entity shall:

(a) provide Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with 45 CFR 164.520, as well as any changes to such notice.

(b) provide Business Associate with relevant portions of the Covered Entity's Protected Health Information privacy and security policies and standards upon request.

(c) provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.

(d) notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522.

(e) not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy or Security Rule if done by the Covered Entity.

Upon the Covered Entity's knowledge of a material breach of the foregoing provisions, Covered Entity shall provide thirty days for the Business Associate to cure the breach or end the violation. The Covered Entity will terminate this Agreement immediately if Business Associate does not cure the breach or end the violation within thirty days, or immediately terminate this Agreement if Business Associate has breached a material term of the foregoing provisions and cure is not possible. Except as provided below, upon termination of this Agreement, for any reason, Business Associate shall return all Protected Health Information to the Covered Entity. This provision shall also apply to Protected Health Information that is in the possession of subcontractors or agents of the Business Associate. Business Associate shall retain no copies of the Protected Health Information. In the event that the Business Associate reasonably determines that returning or destroying the Protected Health Information is infeasible, the Business Associate shall provide the Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

A reference in this Agreement to a section in the Privacy or Security Rule means the section as in effect or as amended, and for which compliance is required. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Covered Entity to comply with the requirements of the Privacy and Security Rules. The respective rights and obligations of Business Associate and Covered Entity concerning this provision shall survive the termination of this Agreement. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Covered Entity to comply with the Act.