

**BEAUMONT HEALTH  
STANDARD TERMS AND CONDITIONS**

These Standard Terms and Conditions (“Standard Terms”) shall be incorporated into the agreement for products and/or services to which they are appended (the “Main Agreement”), as if otherwise restated therein, between Beaumont Health, a Michigan non-profit corporation with its corporate offices at 2000 Town Center, Ste. 1200, Southfield, MI 48075 (“Beaumont”), and \_\_\_\_\_ (Vendor”), and shall be effective upon the effective date of the Main Agreement (“Effective Date”). To the extent a conflict exists between the Main Agreement and these Standards Terms, the Standard terms shall control. For the purposes of interpretation herein, the Main Agreement with these incorporated Standard Terms shall be referred to collectively herein as the “Agreement”. Vendor and Beaumont are each a “Party” and are together the “Parties”.

**1. Buyers.** Beaumont is the single member and parent corporation of William Beaumont Hospital, Oakwood Healthcare, Inc., and Botsford General Hospital (each a “Buyer” to and collectively the “Buyers”). Vendor acknowledges and agrees that Beaumont is executing this Agreement on its behalf and on behalf of the Buyers, and their respective facilities, hospitals, subsidiaries and affiliates. The Parties hereto acknowledge and agree that (i) this Agreement is entered into by Beaumont for the express, intended benefit of the Buyers, (ii) each of the Buyers shall be and constitute an intended third party beneficiary of the representations, warranties, covenants and agreements of Vendor contained herein, and (iii) each of the Buyers shall be entitled to enforce the terms and provisions of this Agreement to the same extent as Beaumont. Vendor acknowledges that Beaumont and each Buyer are separate legal entities. Except to the extent expressly stated in this Agreement, none of the liabilities of a Buyer shall be treated as a joint liability of Beaumont or any other Buyer. Nothing contained herein shall be considered a guarantee of purchase by any Buyer. The terms and conditions set forth in this Agreement apply only to the extent that a Buyer elects to make a purchase of Vendor’s products or services under the Agreement.

**2. Renewal Terms and Termination.**

**2.1 Renewal Terms.** The term of this Agreement may be extended for up to two (2) additional one (1) year terms upon written agreement of the Parties.

**2.2 Termination.** This Agreement may be terminated as follows:

- (a) Beaumont and Vendor agree to terminate the Agreement.
- (b) Either Party may terminate this Agreement without cause upon sixty (60) days advance written notice.
- (c) Either Party may terminate this Agreement for cause upon thirty (30) days written notice to the other Party, because the other failed or refused to perform any of its duties and responsibilities under this Agreement, unless the failure can be completely corrected and is corrected within thirty (30) days after such notice is given (if so corrected the notice will then be null and void).
- (d) Immediately upon written notice by one Party to the other in the event of the insolvency of, or an assignment for the benefit of creditors by, the other Party.

- (e) By either Party upon written notice to the other Party if the other Party or its principals are terminated or debarred from the Medicare or Medicaid payment programs, or are charged with any felony.

**3. Compensation and Payment.** Prices for products and/or services shall not be increased during the term of the Agreement. Beaumont shall pay all non-disputed invoiced amounts within forty-five (45) days of receipt of invoice. If Beaumont disputes the accuracy of any invoice, or any partial invoice, it shall pay the non-disputed amount and, within thirty (30) days of the receipt of the invoice, deliver a written notice and detailed explanation of such dispute to Vendor. Vendor's travel time shall not be compensable and expenses such as travel, labor, and parts costs must be invoiced with full descriptions thereof and/or receipts provided, and all such expenses must comply with the Beaumont Health Consultant Travel Policy. In the event that this Agreement is terminated prior to the end of the initial or any renewal term, Vendor shall be compensated only for services provided through the effective date of termination. In the event any fees hereunder are prepaid, then such fees shall be prorated through the date of termination and returned to Beaumont within thirty (30) days of termination.

**4. Compliance with Law and Beaumont Policy.** Each Party is responsible for compliance with all applicable laws, rules, regulations, or ordinances which may relate to its respective activities and responsibilities under this Agreement.

**4.1 Beaumont Policy and Conflict of Interest.** Vendor agrees to provide full and prompt written disclosure to Beaumont of any situations which may involve a conflict of interest between Vendor and any employee, physician, department, member of the medical staff, representative, or agent of Beaumont, and consistent with the Beaumont Health Code of Conduct, shall disclose any gifts to Beaumont representatives of greater than minimal value which are intended to influence such representatives to purchase Vendor's products and/or services.

**4.2 Exclusion from Governmental Programs.** Vendor warrants that neither it nor any of its directors, officers, or owners, and to the best of its knowledge, its employees and agents, have been: (i) convicted of a criminal offense related to healthcare, debarred, suspended, declared ineligible, (ii) excluded from participating with Medicare, Medicaid or any other plan or program that provides health benefits, whether directly through insurance or otherwise, which is funded directly, in whole or in part, by the United States Government or any state health care program, or (iii) or been the subject of any civil or criminal proceeding in which any governmental entity alleged fraud or similar wrongdoing by the Vendor. This shall be an ongoing representation and warranty during the term of this Agreement, and Vendor shall immediately notify Beaumont of any change in the status of these representations. Beaumont may terminate this Agreement immediately upon the occurrence or notification of any of the above.

**4.3 Government Access to Books and Records.** If the Agreement has a value or cost of \$10,000 or more over a twelve-month period, the Parties agree to make this Agreement, as well as any books, documents, or records that are necessary to certify the nature and extent of the Agreement costs available upon request of the Secretary of the U.S. Department of Health and Human Services, the Comptroller General of the United States, or their duly authorized representatives, for up to four (4) years following the furnishing of goods or services under this Agreement, pursuant to Section 1861(v) (1) (I) of the Social Security Act. Further, in the event that Vendor utilizes any subcontractor in the performance of this Agreement, the subcontract for which has a value or cost of \$10,000 or more over a twelve-month period (the "Subcontract"), such Subcontract shall contain a clause to the effect that, for a period of four (4) years after the furnishing of good or services thereunder, the subcontractor shall

make available, upon written request by the Secretary, the Comptroller General, or any of their duly authorized representatives, the Subcontract and any books, documents, and records that are necessary to verify the nature and extent of the Subcontract costs. Vendor agrees to indemnify Beaumont in the event that any amount of reimbursement is denied or disallowed because of the failure of the Vendor to comply with this obligation. Such indemnity shall include the amount of reimbursement denied, plus any interest, penalties and legal costs.

**4.4** Security and Privacy Rules. If applicable, Vendor agrees to comply with all applicable current and future regulations of the Health Insurance Portability and Accountability Act of 1996 as codified at 42 USC§1320(d) (“HIPAA”) as it may be amended from time to time, including revisions per the Health Information Technology for Economic and Clinical Health (“HITECH”) Act, as specified in the Business Associate Addendum which is attached hereto and incorporated by reference into this Agreement. Vendor shall make its internal practices, books and records relating to the use and disclosure of PHI available to the Secretary of Health and Human Services to the extent required for determining compliance with HIPAA. Vendor shall require any subcontractors that receive, maintain, or transmit PHI pursuant to the Agreement to agree to the same obligations that apply to Vendor hereunder, and shall enter into a written agreement with all such subcontractors requiring the subcontractors to comply with all of the obligations of Vendor under this Agreement, HIPAA, HITECH, and all applicable privacy and security rules.

**4.5** Non-Discrimination. Vendor, and its subcontractors, shall abide by the requirements of 41 CFR 60-1.4(a), which prohibits discrimination against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. **Vendor and its subcontractors shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans. Vendor, and its subcontractors shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.**

**4.6** No Intent to Induce Referrals. The Parties agree to comply with all applicable laws, rules and regulations, including, but not limited to, those laws prohibiting payment for referrals. The Parties agree that the Agreement has been entered into so that Beaumont and the Buyers may obtain necessary services/products in order to better fulfill the charitable mission of serving the health and medical needs of its/their patients and the community served by Beaumont and the Buyers. Accordingly, the Parties agree that it is not a purpose of this Agreement to generate referrals for services or products for which payment may be made in whole or in part under any federal or state healthcare program.

**4.7** Pending Litigation Warranty. Vendor represents, covenants and warrants that there is no action, suit, claim, investigation or proceeding pending, or to the best of Vendor’s knowledge, threatened against, by or affecting Vendor that, if adversely decided, might adversely affect (a) Vendor’s ability to enter into this Agreement; (b) Vendor’s performance of its obligations herein; and/or (c) Beaumont and/or any Buyer’s use of Vendor’s products or services hereunder.

**4.8** Changes in Law. If any law is enacted or becomes effective, any regulation is promulgated or becomes effective, any court or administrative agency decision is rendered, any administrative agency interpretation is issued, or similar action is taken that, in the opinion of legal counsel to Beaumont, is likely to cause any of the Agreement’s provisions to be in violation of law or

compromise Beaumont's tax-exempt status, then the Parties will use their best efforts, proceed with dispatch and without unnecessary delay, to reform this Agreement or negotiate a new agreement(s) so as to achieve, as nearly as possible, the original goals the Parties reflected in this Agreement. If such reformation is not possible after a period of not less than six (6) months, the Parties agree that this Agreement may be terminated without penalty.

**5. Independent Contractors.** In performance of the services to be rendered pursuant to the Agreement, it is mutually understood and agreed that each person providing services on behalf of Vendor, will be, and is at all times is acting and performing as, an independent contractor and nothing in this Agreement will create or imply an agency, joint venture, or partnership between/among the Parties. While Vendor shall be accountable to Beaumont so that its work and functions are at all times performed in accordance with the standards set forth in the Agreement, Beaumont shall neither have nor exercise any control or direction over Vendor with respect to the actual performance of such duties. Neither Vendor, nor any person providing services on behalf of Vendor, is authorized to make any contract, agreement, warranty or representation, or otherwise obligate Beaumont in any manner whatsoever.

**6. Confidentiality.** The Parties agree to maintain and keep confidential, and shall cause their respective officers, directors, trustees, employees, agents, consultants and representatives to keep confidential, this Agreement, any and all information, including, but not limited to, pricing, data, formulas, trade secrets, techniques, inventions (whether or not patentable), and Protected Health Information ("PHI"), derived from its relationship with the other (collectively "Confidential Information") in connection with this Agreement.

**6.1** Each Party agrees to: (i) maintain the Confidential Information in trust and confidence; (ii) use at least the same degree of care in maintaining the secrecy of the Confidential Information as the receiving Party uses in maintaining the secrecy of its own proprietary, secret, or confidential information, but in no event with less than a reasonable degree of care; (iii) use Confidential Information only to complete its duties and obligations under this Agreement; (iv) refrain from using or disclosing such Confidential Information unless it does so with prior written consent from the disclosing Party, except that a Party may disclose Confidential Information to its representatives and professional advisors, and (v) return or destroy all documents, copies, notes or other materials containing any Confidential Information, upon termination or expiration of the Agreement or upon the written request of the disclosing Party, subject to the Business Associate Addendum, if applicable.

**6.2** With the exception of PHI, which must remain confidential at all times, the receiving Party shall have no obligation concerning any portion of the Confidential Information which: (a) was known to the receiving Party, under no obligation of confidentiality, before receipt from the disclosing Party; (b) is lawfully obtained by the receiving Party from other than the disclosing Party under no obligation of confidentiality; (c) is or becomes publicly available other than as a result of an act or failure to act by the receiving Party; or (d) is required to be disclosed by the receiving Party by applicable law or legal process; provided, however, that a receiving Party must give the disclosing Party reasonable advance notice of any legally required disclosure so that the disclosing Party has an opportunity to challenge any request or order to disclose Confidential Information.

**6.3** The Parties agree that any breach of the confidentiality obligations of this Agreement may result in irreparable damage to the disclosing Party for which it may have no adequate remedy at law. Therefore, it is agreed that the disclosing Party may be entitled to equitable relief, including an injunction enjoining any such breach by any court of competent jurisdiction, and the receiving Party agrees to pay reasonable attorneys' fees and other costs incurred by the disclosing Party in successfully securing such injunction. Such injunction shall be without prejudice to any other right or remedy to

which the disclosing Party may be entitled, including, but not limited to, any damages resulting from a Party's breach of the confidentiality obligations under this Agreement. Any failure or delay in exercising any right, power or privilege hereunder (unless waived in writing) shall not operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

**7. Warranty.** Vendor represents and warrants that: (i) it shall perform all obligations under the Agreement in a professional, timely manner, consistent with industry standards, and shall fully comply with Beaumont's stated requirements; (ii) any goods, products, items, equipment, and/or materials it supplies under this Agreement shall be free from defects in workmanship and material at the time of delivery and conform to the manufacturer's published specifications and Vendor's representations, warranties and covenants regarding the functions and uses for which the products have been marketed to, and relied upon by Beaumont; (iii) its goods, products, items, equipment, and/or materials shall be merchantable and fit for their particular, intended purpose; (iv) its goods, products, items, equipment, materials, and/or services shall comply with all applicable federal, state and local laws rules and regulations, and (v) Vendor owns or has been granted the necessary intellectual property or other rights to grant Beaumont and the Buyers the right to use and receive all goods, products, items, equipment, materials, and/or services Vendor provides to Beaumont and/or Buyers under the Agreement, and (vi) none of Vendor's goods, products, items, equipment, materials, and/or services shall violate any intellectual property or other right of any third party. Vendor shall reimburse Beaumont for all costs and expenses associated with any breach of this warranty, including, by example, any corrective action, withdrawal, or recall requested by Vendor or by any governmental entity.

**8. Indemnification.** Vendor agrees to indemnify, defend and hold harmless Beaumont, its subsidiaries, agents, directors, officers, trustees, medical staff, employees, and volunteers (collectively referred to as "Indemnitees") from and against any and all claims, fines, costs, suits, damages, losses, and expenses, including, but not limited to, reasonable attorneys' fees, which may be alleged, claimed, or recovered against Indemnitees that may arise in connection with (i) a breach by Vendor of any provision of this Agreement, including, but not limited to, any impermissible use or disclosure of PHI, (ii) any violation of or noncompliance with any federal or state law, rule, regulation, statute or ordinance by Vendor or by Vendor's subcontractors, agents, directors, officers, trustees, employees, and volunteers, (iii) any harm, illness, or injury to any person caused in whole or in part by Indemnitees use of any of Vendor's products, equipment, supplies, items, or materials and/or services, and/or (iv) any act, omission or neglect by Vendor including, without limitation, Vendor's subcontractors, agents, directors, officers, trustees, employees, and volunteers that may arise (a) as a result of the products, equipment, supplies, items, materials, and/or services provided, (b) in connection with the use or maintenance of any property, facility, or equipment by or under the direction or control of Vendor, (c) as a result of the performance of any activities by or under the direction or control of Vendor, or (d) as a result of the negligent acts or omissions or willful misconduct of Vendor or any of its subcontractors, agents, directors, officers, trustees, employees, and volunteers. This indemnification shall be in addition to the warranty obligations of Vendor. Regardless of anything in this Agreement regarding warranty claims to the contrary, any limitation of liability for any warranty claims must not be construed to limit any claim for indemnification for third party damages, claims, or other losses.

**9. Cooperation.** A Party shall promptly notify the other of any knowledge regarding any occurrence that may result in a claim against either of them with respect to the services or products provided pursuant to the Agreement. In the event a claim is asserted or lawsuit filed, each Party shall give notice to the other Party of said claim or lawsuit and, to the extent a conflict of interest is not

created thereby, the Parties agree to cooperate with regard to any investigation and defense of any claim or lawsuit. No settlement of such claim or lawsuit shall be made without the other Party's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Further, Vendor agrees to fully cooperate with Beaumont in any review or investigation made of Beaumont, or of a Buyer, by a state or federal entity which may involve the products and/or services covered by the Agreement.

**10. Costs.** If a Party files a lawsuit or other claim regarding the interpretation, enforceability, or breach of this Agreement, or any other claim related to the services or products to be provided under this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees, court costs, and all reasonable expenses incurred by such Party with respect to such dispute, breach, or default, even if not taxable as court costs, in addition to any other relief to which such Party may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, the fees and expenses of expert witnesses and other consultants, and all other charges billed by the attorney to the prevailing Party.

**11. Insurance.** Vendor shall purchase and maintain the types of insurance, and with the minimum limits, set forth below. Compliance with these requirements shall not relieve Vendor from liability for amounts in excess of the required limits.

**11.1 Mandatory Coverage:**

- (a) Worker's Compensation insurance with statutory limits, as required by the State of Michigan. Vendor shall be responsible for all Worker's Compensation payments for Vendor's employees, and Beaumont and each Buyer shall be entitled to reimbursement from Vendor should any Vendor employee file a Worker's Compensation claim against Beaumont or any Buyer. Such policies must be endorsed to provide Alternate Employer Coverage to Beaumont and Buyer(s).
- (b) Employer's Liability insurance with limits of not less than \$1,000,000 to any one person.
- (c) Commercial General Liability insurance, written on an occurrence form with limits not less than:
  - \$1,000,000 Each occurrence (BI & PD Combined Single Limit),
  - \$2,000,000 General Annual Aggregate (per project/per location),
  - \$1,000,000 Personal Injury and Advertising Liability,
  - \$2,000,000 Products & Completed Operations Aggregate,
  - \$1,000,000 Contractual liability to cover all liabilities assumed under this Agreement.
- (d) Automobile Liability insurance covering all owned, non-owned, and hired automobiles used in connection with the work with combined single limits for Bodily Injury and Property Damage of not less than \$1,000,000.
- (e) Umbrella Liability insurance in excess of all the above required coverages with a minimum limit of not less than \$10,000,000 each occurrence and annual aggregate.

- (f) Crime Coverage including a Client Coverage extension in an amount of not less than \$100,000.

**11.2** Situational Coverage Requirements: To the extent exposure exists under the scope of this Agreement, the following are required:

- (a) Network Security and Privacy Liability insurance with breach response services in an amount of not less than \$2,000,000 per event and \$4,000,000 annual aggregate, with a breach response sublimit of not less than \$1,000,000.
- (b) Errors and Omissions (Professional Liability) insurance in an amount not less than \$2,000,000 per claim, \$6,000,000 annual aggregate.
- (c) Environmental Liability insurance (i.e. asbestos, pesticide, lead abatement, etc.) with a limit of not less than \$2,000,000 per claim and \$2,000,000 annual aggregate.

Beaumont shall solely determine whether situational coverage is required under the Agreement.

**11.3** General Requirements:

- (a) All coverages maintained (except Worker's Compensation coverage) will name Beaumont and each Buyer, its/their subsidiaries, related and affiliated companies, and its/their respective officers, trustees, directors, employees, representatives, and agents as Additional Insureds.
- (b) All coverage shall provide separation of insureds and coverage for cross suits among the insured parties.
- (c) All coverage will provide a waiver of subrogation in favor of Beaumont and Buyers its/their subsidiaries, related and affiliated companies and its/their respective officers, trustees, directors, employees, representatives, and agents.
- (d) All coverage provided is primary and is not in excess of, or contributing with, any insurance maintained by Beaumont and each Buyer, its/their subsidiaries, related and affiliated companies, and its/their respective officers, trustees, directors, employees, representatives, and agents.
- (e) Vendor's subcontractors performing under the Agreement must maintain the coverages described above.
- (f) If any policy of insurance required herein is written on a claims made basis, each policy shall have a retroactive date that is not later than the Effective Date of this Agreement. Vendor will extend claims made coverage from the termination of this Agreement, through a minimum period of the statute of limitations for bringing any claim in the State of Michigan, plus two (2) years.
- (g) Concurrent with the Effective Date of this Agreement, Vendor shall deliver to Beaumont insurance certificates and/or endorsements evidencing that the required insurance is in force with insurance companies rated at least A- VII or higher by A.M. Best.

- (h) All certificates of insurance required hereunder shall state that there shall be no cancellation of the policy or policies evidenced except upon thirty (30) days prior written notice to Beaumont. Vendor shall furnish Beaumont with updated or replacement certificates of insurance that clearly evidence continuation of coverages in the same manner, limits and protections as required by Beaumont prior to expiration. The receipt of any insurance certificates or endorsements hereunder does not constitute agreement by Beaumont that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all insurance obligations hereunder. The failure of Beaumont to obtain certificates of any insurance from Vendor shall not be deemed a waiver by Beaumont of any obligation of Vendor hereunder.
- (i) The insurance required hereunder shall be kept in force by Vendor continuously during the life of this Agreement and for a period of not less than a period of the statute of limitations for bringing any claim in the State of Michigan, plus two (2) years for primary and excess products and completed operations.

**12. Intellectual Property.** Any work products, materials, or software developed or created by Vendor relating to this Agreement which are protectable under the laws of copyright, including written or electronic documents, illustrations, drawings, notes, models and computer software, are to be considered “works for hire” for Beaumont and are the sole property of Beaumont. If the work products, materials, or software do not fall under the definition of work for hire under the copyright Act, Vendor agrees to execute, upon request, all forms and documents relating to the assignment of sole ownership of all copyright interest to Beaumont and obtaining and enforcing copyright protection for such works for the United States of America and other countries, even after the term of this Agreement has ended.

**13. Audits.** Beaumont may audit all books, records and operations of Vendor, related to its provision of the services hereunder. Vendor agrees to, and shall require any subcontractor performing under this Agreement, to cooperate with any such audit, including provision of all relevant books, records, electronically stored information and other information. Vendor shall make such records available during normal working hours and upon reasonable advance notice for inspection, audit and evaluation by representatives of Beaumont or its designated agents. Vendor shall furnish copies of any records requested by Beaumont to which Beaumont is permitted access hereunder. If, in the course of the inspections, the representatives of Beaumont should note any errors in billing or accounting, any deficiencies in the performance of the services of the Vendor, or any other mutually agreed upon performance deficiencies, the alleged deficiencies must be reported promptly to Vendor, in writing. Vendor agrees to promptly remedy and correct any reported deficiencies within thirty (30) days of notification by Beaumont.

**14. Trademarks/Service Marks/Publicity.** Neither Party may use the other Party’s trademarks, service marks or designs registered to the other Party, nor identify the other Party in any publicity, promotional, or advertising material concerning the existence or terms of this Agreement without the prior written consent of the other Party.

**15. Force Majeure.** A Party shall not be liable for failure to perform any duty or obligation under this Agreement, where such failure has been occasioned by any acts of God, civil or military authority, acts of terror, war, fires, explosions, earthquakes, floods, failure of transportation, strikes or other work interruptions by a Party’s employees, or any other causes beyond the reasonable control of a Party; provided, however, in the event the provision of services is substantially interrupted, Beaumont



shall have the right to terminate this Agreement upon five (5) days prior written notice to Vendor. Upon cessation of the force majeure, this Agreement shall continue in effect unless terminated pursuant to the terms of this Agreement.

**16. Notices.** Any notice or other communication required or which may be given under this Agreement must be in writing, be sent to a Party's address(es) as designated in the Agreement, and must be: (i) delivered in person to the recipient; (ii) mailed by certified, return receipt requested, first class mail, postage prepaid; (iii) delivered by facsimile transmission to the recipients designated in this Agreement; or (iv) be delivered by prepaid delivery service such that proof of delivery will be obtained. Notices or other communications sent to Beaumont shall be copied both to the Beaumont Health Office of Legal Affairs, Administration Building, 3711 West 13 Mile Road, Royal Oak, MI 48073 and to the applicable Contract Portfolio Director at the Consolidated Services Center, 27027 Mound Road, Warren, MI 48093. A notice shall be deemed to have been given on the date it is received by the Party to whom it is directed. A Party may change its notice address(es) by delivering notice of the change to the other Party as provided herein.

**17. Assignment.** Neither Party may assign or transfer this Agreement or any of its obligations hereunder to a third party without the written consent of the other Party. Any attempted assignment without such consent shall be void. This Agreement shall binding upon, and inures to the benefit of, the Parties and all permitted successors and assigns.

**18. Governing Law.** The laws of the State of Michigan govern this Agreement and venue shall be in the state courts located in Oakland County, Michigan or, if applicable, the federal courts located in the Eastern District of Michigan.

**19. Waiver.** The failure of a Party to strictly enforce any provision of this Agreement will not be construed as a waiver thereof or as excusing the defaulting Party from future performance. Any waiver of any of the covenants, conditions, or provisions of this Agreement must be in writing and signed by a duly authorized representative of the Party against whom enforcement of such waiver is sought. One or more waivers of any covenants, conditions, or provisions of this Agreement shall not be construed as a waiver of a subsequent breach or of any other covenant, condition or provision.

**20. Invalidity or Unenforceability.** If any term, covenant, condition, or provision hereof is illegal, or the application thereof to any person or in any circumstance shall, to any extent, be invalid or unenforceable, as finally adjudicated by a court of competent jurisdiction, the remainder of this Agreement, or the application of such term, covenant, condition, or provision to persons or in circumstances other than those with respect to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition, and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**21. Survival.** Any provision of this Agreement that, by its language, contemplates performance or observation subsequent to any termination or expiration of this Agreement shall survive such termination or expiration and shall continue in full force and effect.

**22. Authority and Validity.** Vendor represents and warrants that: (i) the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action on the part of Vendor; (ii) this Agreement constitutes the legal, valid, binding obligations of Vendor and is enforceable against Vendor in accordance with its respective terms; and (iii) Vendor has the full power to perform its obligations under this Agreement.

**23. Entire Agreement, Counterparts, and Amendment.** This Agreement and any exhibits and schedules properly incorporated from time to time are the complete Agreement and shall supersede any and all prior and contemporaneous understandings and Agreements either oral or in writing. This Agreement shall supersede and control all other quotations, purchase orders, statements of work, and/or representations (whether written or oral) between the Parties. Any Vendor documentation (including, as applicable, Vendor terms and conditions) that conflicts with, or attempts to modify, this Agreement in any way shall be rejected and of no effect unless the superseding of this Agreement is specifically agreed to in writing between the Parties. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures to the Agreement transmitted by facsimile transmission, by electronic mail in “portable document format” (“.pdf”), will have the same effect as physical delivery of the paper document bearing the original signature. If so executed, this Agreement shall be valid and binding. Any amendment or modification to this Agreement must be in writing and signed by the Parties. Each Party acknowledges that this Agreement has been the subject of active and complete negotiations, and that this Agreement should not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisers participated in the preparation of this Agreement.

**24. Use of Beaumont Property and/or Facilities.** Any property of Beaumont or any Buyer furnished to Vendor shall be used only for the performance of services under this Agreement, and during said performance shall be deemed under the control of Vendor. Vendor shall be responsible for any loss or damage to property of Beaumont which results from willful misconduct, illegal acts or omissions, or negligence on the part of Vendor, its officers, agents, employees, and subcontractors, or which results from the failure on the part of Vendor to maintain, use, and administer that property according to sound management practices to ensure that the property will be returned to Beaumont or a Buyer in like condition to that in which it was furnished to Vendor. Upon the happening of loss, or destruction of, or damage to, any Beaumont or Buyer property, Vendor shall notify Beaumont thereof and shall take all reasonable steps to protect the property from further damage. Vendor shall surrender to Beaumont or a Buyer all property belonging to Beaumont or a Buyer upon termination or expiration of this Agreement.

**25. No Solicitation of Employees.** Vendor and Beaumont recognize and agree that their employees possess special, unique and extraordinary technical talents which are in great demand in the present economy and further recognize and acknowledge that each Party has incurred substantial expense in recruiting and training such employees and would incur even greater expense if required to replace any such employee. Therefore, both Parties agree not to recruit, either directly or indirectly, the other Party’s employees associated with the delivery of services/products covered by this Agreement during the term of this Agreement and for one (1) year after termination, without the other Party’s prior written consent; provided, however, that a Party shall not be considered to have breached its obligations under this provision as a result of engaging in discussions with, and subsequently employing or engaging, one or more employee(s) of the other Party, if such employee(s) approach such Party concerning employment or any other engagement in response to a standard job posting or a general classified advertisement such Party placed in a newspaper or other publication of general circulation or a professional publication.

**26. Discounts.** Vendor represents and warrants to Beaumont that all of the Vendor’s actions, duties, and obligations under, pursuant to, and in connection with this Agreement, are, shall be, and shall remain in compliance with all applicable laws and regulations, including without limitation, all applicable “safe harbor” regulations relating to discounts, price reductions, rebates, and incentives paid and/or granted, that are required to be reported by the Parties (collectively, the “Discount”). Vendor

shall disclose, in writing, with such frequency and in such forms, as requested from time to time by Beaumont, the aggregate and specific dollar value of the Discount. Vendor shall cooperate and comply with Beaumont in communicating the need to disclose the Discount under any governmental program which provides reimbursement to Beaumont or a Buyer for Vendor's services/products covered by this Agreement. Vendor shall refrain from doing anything that would impede Beaumont's or a Buyer's ability to meet its legal obligations, including those under applicable safe harbor regulations. Vendor acknowledges and agrees that it shall meet its own applicable legal reporting requirements and other obligations, including those under applicable safe harbor regulations.

## **27. Products; Shipping, Acceptance, and Notices.**

**27.1 Shipping.** Vendor shall ship all products FOB Destination, with Vendor being responsible for all freight and insurance charges. Vendor will bear the risk of loss or damage to the products in transit to Beaumont's Consolidated Service Center ("CSC") or to such location indicated by Beaumont and/or a Buyer on any applicable purchase order issued by Beaumont and/or a Buyer. Beaumont or any Buyer may cancel an order for any products at any time before Vendor's shipment of the products, at no cost to Beaumont or the Buyer. Beaumont and/or any Buyer may make changes in the scope or quantity of the products covered by any order, provided such products have not been shipped. Vendor shall provide Beaumont and Buyers all documentation and materials necessary for operation of the applicable products. Upon request, Vendor will provide to all personnel identified by Beaumont and each Buyer in-service training for products at no additional charge.

**27.2 Inspection and Acceptance.** All products will be received by Beaumont and/or Buyers subject to its/their right of inspection and rejection. Beaumont and/or Buyers shall be allowed a reasonable period of time, which shall in no case be less than fifteen (15) days from receipt, to inspect and test the products and to notify Vendor of its/their rejection of any product(s) based on any of the following: (i) any nonconformance with the terms and conditions of any order or with this Agreement, (ii) shipping damage, and/or (iii) failure of the product(s) to comply with law or to meet the quality or safety rules or procedures of Beaumont or the applicable Buyer. Upon rejection of the product(s) by Beaumont and/or any Buyer, Vendor shall pay all costs of shipping and Beaumont or Buyers shall receive, at their discretion, a full credit of purchase price, including, but not limited to the cost of the product and all shipping costs, or the replacement of the product(s) with no additional cost of shipping.

**27.3 Notices and Recalls.** In the event products are required to be modified to comply with any regulatory or safety standards imposed or implemented for such product, Vendor shall, for products previously purchased by Beaumont and/or Buyers hereunder, at no cost to Beaumont or Buyers and at Beaumont or Buyers' election, provide hardware modifications necessary for the products to meet all such regulatory requirements or exchange the products for new products that comply with the new requirements. Vendor shall immediately provide Beaumont and each Buyer with a copy of all communications from Vendor and/or the FDA advising of a recall, request for a recall, market withdrawal, safety alert, or a non-routine issue of product availability (e.g. significant backorders of products). Vendor shall reimburse Beaumont and Buyers for any costs actually incurred by Beaumont and/or Buyers in complying with any recall instructions and processes provided by Vendor. In addition, Vendor shall, at no additional cost to Buyers, replace any such products which are the subject of a recall with Vendor products which have been approved by Buyers as being clinically equivalent to the recalled products.

**27.4 Software.** To the extent that the product is software, or otherwise requires Vendor licensed software in order to be operable ("Software"), Vendor hereby grants to Beaumont and/or the Buyers a nonexclusive license and the right during the Term to use the Software. Vendor warrants and

represents that it has obtained the rights from those third parties necessary to vest in or grant to Beaumont and Buyers the various license rights necessary under this Agreement. Vendor represents and warrants that Software: (a) shall not contain (and neither Buyers nor Beaumont will receive from any transmission by Vendor via modem or any other medium) any time bomb, virus, worm, trap door, back door, timer, clock, counter or other limiting routine, dongle key, hidden file, instruction, design, key, node lock, time out or other function, whether implemented by electronic, mechanical or other means, that restricts or may restrict use or access to any products, or that would erase data or programming or otherwise cause the products, or Beaumont's or any Buyer's software, systems or products to become inoperable or incapable of being used in the full manner for which it was designed and created (collectively "Illicit Code"); (b) shall not replicate, transmit or activate itself without control of a person operating computing products on which it resides; and (c) shall not alter, damage, or erase any data or computer programs without control of a person operating the computing products/equipment on which it resides. If any Software contains Illicit Code, Vendor shall inform Beaumont and any applicable Buyer of the full extent and nature of the Illicit Code and provide Beaumont and Buyers with instructions for overriding such Illicit Code in emergencies. Notwithstanding anything elsewhere in this Agreement to the contrary and to the extent any Software contains Illicit Code, Vendor shall be in default of this Agreement and no cure period shall apply.

## **28. Vendor's Staff Responsibilities.**

**28.1 Staff Qualifications.** Vendor warrants and represents that Vendor and its employees and subcontractors performing under the Agreement: (i) is/are and shall remain fully qualified to perform the services under this Agreement, and, if a license for such services is required, Vendor shall ensure its employees and subcontractors, as applicable, hold and will continue to hold such appropriate license(s) and will remain in good standing, without limitation or restriction, and with the appropriate credentialing or licensing authorities and (ii) will perform the services in a competent and professional fashion, consistent with accepted standards of practice, all applicable governmental laws, rules and regulations, and the applicable legal standard of care. Vendor shall be solely liable to third parties for the acts or omissions of its employees, agents, and subcontractors.

**28.2 Staff Benefits.** Vendor shall be solely responsible for any and all financial obligations, including any other obligation required by law or contract, for its employees, agents, and subcontractors. Accordingly, Vendor shall be responsible for all applicable employment, unemployment, state, federal, and local taxes or withholdings for its employees and agents. Vendor shall indemnify, defend, and hold Beaumont and/or a Buyer harmless for any liability, fines, penalties or expenses arising from Vendor failing to remit or withhold taxes in a full and timely manner.

**28.3 Access to Beaumont Facilities.** While on Beaumont's and/or a Buyer's premises, Vendor and its officers, agents, employees, and subcontractors shall conform in all respects with physical, fire, or other security regulations communicated to Vendor. As necessary, Vendor shall, or shall cause its staff and/or subcontractors requiring access to Beaumont's computer systems to execute the Beaumont Code of Conduct, Confidentiality & Computer Systems Usage Agreement. Such individuals performing Services on site may also, as Beaumont determines to be necessary, be required to participate in Beaumont compliance and HIPAA training, and to cooperate with Beaumont representatives in other requirements necessary to permit such individuals to act as members of Beaumont's "workforce".

**29. Confidential Peer Review Participation and Quality Improvement.** Vendor agrees to comply, and as necessary, to cause its employees and subcontractors to comply, with Beaumont's quality improvement and peer review policies, procedures, and initiatives. Upon request by Beaumont,

Vendor shall fully cooperate and participate, and ensure the full cooperation and participation of its employees and agents in meetings of those Beaumont committees assigned a review function. The records, data, and knowledge collected for or by individuals or committees assigned such a review function are confidential and shall be maintained as confidential at all times, shall not be public records, and shall not be available for court subpoena.

**30. Informal Dispute Resolution.** If any dispute relating to this Agreement arises between Beaumont and Vendor a Party may send written notice to the other Party within thirty (30) days of discovering the dispute, outlining the nature and extent of the problem. Said statement will contain all written documentation and supporting documents germane to the dispute. Representatives of the Parties will then arrange to meet to discuss the dispute. If the meeting does not occur within thirty (30) days of the receipt of the initial notice, or if the meeting between the Parties does not sufficiently resolve the dispute, a Party may request a meeting between the executive officers of Beaumont and Vendor. These officers shall have thirty (30) days after the receipt of this second notice and request to resolve the dispute, after which time, or if no resolution of the dispute is reached within sixty (60) days of receipt of the initial notice, a Party may pursue its remedies at law. The Parties may extend these time periods by mutual written assent in furtherance of obtaining a mutually acceptable resolution, and in order to permit the Parties' officers to meet to obtain such resolution. If a resolution of the dispute is obtained through any means described herein, the Parties shall reduce such resolution to writing and/or amend the Agreement to include the resolution. Regardless, before a Party may commence any litigation against the other Party, a separate thirty (30) days written notice of the dispute and intent to file a lawsuit shall be provided to the other Party.

**31. Joint Commission Requirements.** Because both the Joint Commission and the Medicare Conditions of Participation require that Beaumont's governing body be responsible for all services furnished at its hospital and facilities where services are provided to patients, whether or not provided through contracts or joint ventures, and because Vendor provides services pursuant to this Agreement that are subject to review by the Joint Commission, Vendor shall furnish services pursuant to this Agreement in such a way as to comply with all applicable Conditions of Participation and/or Joint Commission standards. Accordingly, the Parties to this Agreement have developed mutually agreeable standards, procedures, and metrics for monitoring of Vendor's services hereunder, which shall be attached hereto for reference and incorporated into the Agreement as if otherwise restated herein.