



STANDARD CONTRACT RIDER

The following Standard Terms and Conditions ("Terms") are incorporated by reference into the purchase order issued by The Cooper Health System, a New Jersey non-profit corporation, sometimes doing business as Cooper University Hospital ("Cooper"), to the vendor named on Cooper's purchase order (hereinafter referred to as "Vendor").

By accepting Cooper's purchase order and/or by supplying the goods and services purchased thereunder without objection, Vendor expressly agrees to be bound by these Terms. Vendor expressly acknowledges that these Terms supersede the terms of any agreement, quotation, proposal, order, invoice, order confirmation, purchase order, shipping form or any other documents which Cooper's purchase order accompanies, or to which it is attached, or any prior or subsequent documents transmitted by Vendor, (collectively the "Documents"). Vendor expressly acknowledges that no agreement, or understanding, oral or written, which is in conflict with or otherwise purports to modify these Terms, whether such be contained in any Documents or otherwise, shall be binding on Cooper, unless such is in a writing signed by a senior corporate officer of Cooper. Vendor expressly acknowledges that in the event of any conflict between these Terms and the Documents, these Terms shall control.

1. **Conflict.** Any terms in the Agreement which purport to modify or are in conflict with the terms of this Rider are hereby deleted, and replaced with the terms in this Rider.
2. **Name of Contracting Party.** The name of the party entering into the contract is "The Cooper Health System, a New Jersey non-profit corporation" or "The Cooper Health System, a New Jersey non-profit corporation d/b/a Cooper University Hospital."
3. **Term; No Automatic Renewals.** The term of the Agreement shall be for the term stated in the Agreement itself. However, if no term is stated in the Agreement, the Agreement shall expire one (1) year from the date of the Agreement or purchase order, whichever is later. Any reference to any automatic renewals in the Agreement is deleted, and the parties expressly acknowledge that the Agreement is for one term only, and does not automatically renew itself for successive terms. Notwithstanding anything contained in the Agreement to the contrary, either party may terminate the Agreement upon thirty (30) days written notice to the other. In the event the Agreement requires Cooper to pay Vendor any fees in advance, and either party terminates the Agreement prior to the expiration of the Agreement, Vendor shall issue to Cooper a refund of all advance payments made, prorated against the duration of the balance of the remaining term of the Agreement.
4. **Price Term.** The price term is FOB Cooper's Destination.
5. **Delivery Address.** The proper delivery address is the address stated on the purchase order.
6. **Time for Payment.** All payments shall be due sixty (60) days from receipt of invoice.
7. **Assignment.** Neither party may assign its rights under the Agreement or delegate its duties under the Agreement without the prior written consent of the other party, such consent to not be unreasonably withheld, except in the case of merger, consolidation, assignment to a wholly-owned subsidiary or parent company, and then only provided that it shall be subject to the requirement that the succeeding owner accept and agree to perform the continuing covenants of the Agreement, and provided that, in the event of such an assignment, the assignor or delegator shall continue to be responsible for compliance with and performance of the terms of the Agreement.
8. **Non-Solicitation.** Each party agrees that, during the term of the Agreement and for a period of one year after termination, it will not solicit the employment of any employee or contractor of the other party without such other party's prior written consent thereto (other than through general solicitations not targeted at such persons).
9. **Insurance.** (A) **Generally:** Vendor shall maintain commercial general liability ("CGL") insurance in the amount of \$1 Million per occurrence/ \$3 Million aggregate and business automobile liability insurance in the amount of \$1 Million for a combined single limit. (B) **Professional Services Agreements:** If the Agreement is for professional services, in addition to (A) above, Vendor shall also maintain professional liability insurance covering itself, its employees, agents, professional employees and representatives in the amounts of \$1 Million per occurrence/ \$3 Million aggregate annually, with appropriate tail or extended reporting coverage for a period of (3) years following completion of the services provided under this Agreement if the policy is a claims made policy. (C) **Service Agreements:** If Vendor's employees shall be performing any services whatsoever on or at any Cooper site, in addition to (A) above, and (B) as applicable, Vendor's CGL insurance policy shall name Cooper as an additional insured on a primary and non-contributory basis for both ongoing and completed operations for (3) years following completion of the services provided under the Agreement. In addition, Vendor shall maintain Workers' Compensation coverage of its employees, if any, and said coverage shall be in compliance with the Workers' Compensation Act of the State of New Jersey. (D) **Construction Services:** In addition to (A) above, (B), as applicable, and (C) above, if the Agreement is for construction services Vendor shall maintain excess liability insurance in the amount of \$5 Million, naming Cooper as an additional insured on a primary and non-contributory basis for both ongoing and completed operations for (3) years following completion of the services provided under the Agreement. (E) **Service Agreements where Vendor has access to or is providing any services which involve or could impact Protected Health Information (PHI):** In addition to (A) above, (B) as applicable, and (C) above, Vendor shall maintain cyber liability insurance in the amounts of \$3 Million Per Claim/Aggregate, naming Cooper as an additional insured.
10. **Limitations on Liability.** Notwithstanding anything contained in the Agreement to the contrary, no limitations on liability on the part of Vendor shall apply to any claims for compensatory damages to real or tangible personal property or to third party claims for death or bodily injury asserted against Vendor directly or by way of contribution to the extent such property damage, death or bodily injury was proximately caused by the negligence or willful misconduct of Vendor or its employees or agents. Notwithstanding anything contained in the Agreement to the contrary, nothing in the Agreement shall limit Vendor's liability to Cooper or any third parties as a result of Vendor's own negligence or willful misconduct.
11. **Governing Law; Venue.** All suits, claims, cases, controversies, actions, disputes, complaints and/or orders to show cause related to; arising from; in connection with; or to construe or enforce the terms of the Agreement (hereinafter "Suits") shall be governed by the laws of the State of New Jersey, without regard to its conflicts of law principles. The parties expressly consent to all Suits being

exclusively venued in, and consent to the personal jurisdiction of, the applicable state or federal court in Camden County, New Jersey.

12. **Limitations on Actions/Jury Trial.** Notwithstanding anything contained in the Agreement to the contrary, the statute of limitations under applicable law shall solely govern the time for the commencement of all Suits. Any language in the Agreement waiving or in any way limiting Cooper's right to a jury trial is hereby deleted.
13. **Disclaimers.** Any provisions of the Agreement which seek to waive, disclaim or limit the liability of Vendor are deleted in their entirety.
14. **Indemnification.** Any provisions of the Agreement which require Cooper to indemnify Vendor or any other third parties in any way are deleted in their entirety.
15. **Additional Insured.** Any provisions of the Agreement which require Cooper to name Vendor as an additional insured, and/or an additional named insured are deleted in their entirety.
16. **Notice.** Copies of all notices to Cooper shall also be sent to: The Cooper Health System, Office of General Counsel, 1 Federal Street, Suite S-400, Camden, NJ 08103, via certified and regular mail, return receipt requested, or overnight courier.
17. **Arbitration.** Any provisions of the Agreement which refer to, require, or contain the words "arbitration" and/or "mediation" are deleted in their entirety.
18. **Late Charges.** Any provisions of the Agreement which require Cooper to pay Vendor any late charges are deleted in their entirety.
19. **No Cross Default.** Any language in the Agreement which provides that Vendor may suspend performance of any of its other agreements with Cooper as a result of Cooper's breach of this Agreement are deleted in their entirety.
20. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but together shall constitute one and the same instrument.
21. **Waiver.** No failure on the part of any party hereto to exercise, and no delay in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy hereunder preclude any further or other exercise thereof or the exercise of any other right, power or remedy.
22. **Returns/Cancellations.** Notwithstanding anything contained in the Agreement to the contrary, Cooper may cancel the order for any goods, equipment, products or materials prior to shipment or after shipment, without any liability to Vendor for such cancellation other than the actual direct cost incurred by Vendor in beginning to process and/or ship such Order, which is evidenced by documentation satisfactory to Cooper. In no event, however, shall such cancellation cost charged by Vendor exceed 15% of the purchase price of the cancelled goods, equipment, products or materials.
23. **Delay.** In the event of any delay in shipment in excess of 30 days for which Vendor is responsible, Cooper shall have the right to cancel the Agreement or any order without any liability to Vendor whatsoever. In the event of any delay in shipment for which Cooper's is responsible, the time for delivery shall be extended without additional cost or penalty to Cooper, provided that if such delay should exceed 30 days, Vendor shall provide Cooper with the option to either cancel the Agreement or order, or accept delivery to an alternate location, with risk of loss and title to such goods to pass to Cooper upon delivery to the location specified by Cooper.
24. **Attorneys Fees and Collection Costs.** Any provisions of the Agreement which require Cooper to pay Vendor any attorney fees and/or collection costs are deleted in their entirety.
25. **Severability.** If any provision of this Rider shall be found to be invalid or unenforceable for any reason, the remaining provisions

shall continue to be valid and enforceable. If a court finds that any provision of the Rider is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

26. **Waiver of Subrogation.** Any language requiring Cooper to waive any cause of action it may have against Vendor or any other party on account of any loss/damage insured by an insurance policy is deleted in its entirety.
27. **Use of Trademarks:** Vendor shall not use any Cooper trademark, service mark, logo, symbol, design, device, name or other mark without the express written consent of Cooper which has been executed by a duly authorized Cooper officer and which specifically details the permitted uses of such by Vendor.
28. **Product Warranty.** Vendor warrants that with respect to any product purchased by Cooper hereunder, for a period of one year from the date of acceptance, or for the applicable warranty period as may be provided in any product Documentation (as defined herein), whichever is longer, that such product will be free from defects in materials and workmanship, and will perform substantially in accordance with the applicable Documentation or as represented by Vendor. "Documentation" means the Vendor user manuals, on-line help functions, technical specifications and user instructions regarding the operation, installation and use of the product as made available by Vendor to Cooper.
29. **Education About False Claims Recovery Act.** Vendor acknowledges receipt of the document "Education About False Claims Recovery Act" available at <http://www.cooperhealth.org/about-us/education-about-false-claims-act> the terms of which are incorporated herein by reference, and agrees to (i) abide by same in its business with Cooper, and (ii) provide same to its employees performing services under the Agreement.

SPECIAL TERMS APPLICABLE TO MEDICAID REPORTING:

30. **Discounts; Rebates.** If Vendor is providing Cooper any discounts or rebates which are required to be reported to Medicaid, Medicare or any other federal or state health care program, all discounts and/or rebates must be earned based on purchases of that same good or service bought within a single Cooper fiscal year (January 1 to December 31). Vendor shall fully and accurately report such discount on all invoices, coupons or statements submitted to Cooper. Where the value of the discount is unknown at the time of sale, Vendor will fully and accurately report the existence of a discount program on all invoices, coupons or statements submitted to Cooper. When the value of the discount becomes known, Vendor will provide Cooper with documentation of the calculation of the discount identifying the specific goods or services purchased to which the discount will be applied. Vendor will refrain from doing anything which would impede Cooper from meeting its discount reporting obligations, and will indemnify, defend and hold Cooper harmless from any claim asserted against Cooper by Medicaid, Medicare or any other federal or state health care program, or any state or the federal government related to, connected to, or arising from Vendor's failure to abide by the terms of this paragraph.
31. **Representations of Vendor.** Vendor represents and warrants that Vendor, its officers, directors and employees (a) are not currently excluded, debarred, or otherwise ineligible to participate in any federal health care programs or any state healthcare programs; (b) have not been convicted of a criminal offense related to the provision of healthcare items or services where such conviction would result in being excluded, debarred, or otherwise declared ineligible to participate in the Federal Healthcare Programs or any state healthcare programs; (c) are not, nor have ever been included on the Office of Foreign Assets Control, Specially Designated Nationals and Blocked Persons list; (d) are not, to the best of its knowledge, under investigation or otherwise aware of any circumstances which may result in Vendor being excluded from participation in the Federal Healthcare Programs or any state healthcare programs; (e) Vendor

represents and warrants that it has implemented safeguards to ensure that the privacy and confidentiality of patients' personal health information is protected; and (f) Vendor has implemented a compliance program that is consistent with the Compliance Program Guidance for Durable Medical Equipment, Prosthetics, Orthotics and Supply Industry and issued by the Office of Inspector General ("OIG") on July 6, 1999 (64 FR 36368-36389), and other applicable compliance guidance as may be issued by the OIG. These shall be ongoing representations and warranties during the term of this Agreement and Vendor shall immediately notify Cooper of any change in the status of the representations and warranty set forth in this section. Any breach of this section shall give Cooper the right to terminate this Agreement immediately for cause.

32. **Compliance with Applicable Healthcare Laws.** The parties believe this Agreement avoids any element of inappropriate reimbursement for services as currently provided under federal or state law. Nothing in this Agreement shall be construed as a promise or obligation on the part of either party to refer patients or business to the other party.

33. **Change in Law.** (i) Notwithstanding any other provisions of this Agreement, if during the term hereof any Change of Law (defined below) results in an Adverse Consequence (defined below), the parties agree to make reasonable revisions to this Agreement to avoid such Adverse Consequences while seeking to maintain the parties as close as possible to their original positions despite such revisions. Upon notice by one party to another of such Change of Law, the parties agree that they shall attempt to resolve the matter within thirty (30) of such notice. If the parties cannot agree upon renegotiated terms hereunder within such 30-day period, then this Agreement will terminate immediately upon written notice by one party to the other of an inability to agree. (ii) As used herein, "Change of Law" shall mean: (A) any new legislation enacted by the federal government or the government of New Jersey; (B) any new third party payor or governmental agency law, rule, regulation or guideline; or (C) any judicial order or decree. (iii) As used herein, "Adverse Consequence" shall mean a Change of Law that prohibits, restricts, limits or otherwise affects either party's rights or obligations hereunder in a material manner or otherwise makes it desirable to restructure the relationship established hereunder because of material legal consequences, including loss of tax exempt status, expected to result from such Change of Law.

SPECIAL TERMS APPLICABLE TO SOFTWARE:

34. **Software License.** Notwithstanding anything contained in the Agreement to the contrary, Vendor grants to Cooper a perpetual, royalty-free, irrevocable license to use for Cooper's internal business only any software which may be installed in the equipment and/or other software provided by Vendor and any associated documentation provided by Vendor to Cooper. Cooper may permit its employees, agents and independent contractors to use the software and any associated Documentation (as defined below).

35. **Software Warranty.** Notwithstanding anything contained in the Agreement to the contrary, Vendor warrants that (i) the licensed software will perform substantially in accordance with the applicable Documentation (as defined herein) or as represented by Vendor, (ii) it has not inserted any Disabling Code (as defined herein) into the licensed software and (iii) it will use reasonable commercial efforts consistent with industry standards to scan for and remove any software viruses before installation of the equipment purchased hereunder. Vendor warrants that it has the right to license or sublicense the Software to Cooper for the purposes and subject to the terms and conditions set forth herein. As used in this warranty statement, (i) "Disabling Code" means computer code that is designed to delete, interfere with, or disable the normal operation of the purchased product; provided, however, that code included in the licensed software that prevents use outside of the license scope purchased for the software will not be deemed to be Disabling Code and (ii) "Documentation" means the Vendor user manuals, on-line help functions, technical specifications and user instructions regarding the operation, installation and use of the software as made available by Vendor to Cooper.

36. **Infringement.** (A) Vendor represents that it has full right to sell or license to Cooper the software, the products or the use thereof, and that all such software or products are delivered free of any liens, encumbrances or rightful claim for any infringement of any United States copyright, patent, trade secret or trademark. Vendor further warrants that the licensed software or product will not infringe any patent, copyright, trade secret or trademark. Vendor agrees to indemnify, defend and hold Cooper harmless from any and all third party claims of infringement relating to Cooper's use of the products sold hereunder, including but not limited to paying all defense costs and attorney's fees, and any judgments. (B) If the use of any element of the licensed software is enjoined as a result of any claim arising out of a breach of this warranty, Vendor will, at its option and expense, either secure for Cooper the right to continue to use the allegedly infringing product, or to replace or modify the product so that it is no longer infringing, provided the product continues to materially perform the same function(s) as originally desired by Cooper and otherwise conforms to the warranty hereunder. In the event Vendor fails to do either of the foregoing, Vendor shall refund to Cooper the full purchase price of all products purchased hereunder. (C) In the event Cooper shall improperly use or modify any software, and such improper use/modification serves as the basis of any infringement claim, notwithstanding anything in this Rider to the contrary, any provisions of this Rider which prohibit Cooper from indemnifying Vendor shall not apply to such infringement claim.

SPECIAL TERMS APPLICABLE TO AGREEMENTS WITH APPLICATION SYSTEM TECHNICAL EVALUATION:

37. Vendor warrants and represents that its responses, as well as the other information contained in the Application System Technical Evaluation, which is attached hereto as Exhibit A are true and accurate. Vendor further acknowledges that Cooper has materially relied upon Vendor's representations in Exhibit A in entering into this agreement, and that should any of the responses or information in Exhibit A be false or inaccurate, and such inaccuracy results in damages to Cooper as a result of Cooper's reliance thereon, notwithstanding anything contained in this agreement to the contrary, no limitations on liability shall apply to Vendor's liability for such damages.

SPECIAL TERMS APPLICABLE TO AGREEMENTS FOR CONSTRUCTION/LABOR/TRADES:

38. **Union Labor.** If the Agreement is for construction services or involves labor to be performed by a tradesman; and (a) such construction or labor is to be performed within the city limits of Camden, NJ or Voorhees, NJ, and (b) union labor is available to perform such construction services or labor, then Vendor shall utilize trade union labor in the provision of such services.

39. **Indemnification.** If the Agreement is for services; construction services; or labor, and Vendor's employees shall be performing any services whatsoever on or at any Cooper site, Vendor shall indemnify, defend and hold Cooper harmless from any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including attorney's fees, resulting from or arising out of the negligence or willful misconduct of Vendor or its employees or agents.

40. **Builders Risk Insurance.** It shall be the responsibility of Vendor to determine if builders risk insurance for any new work including labor, materials or equipment is needed to protect Vendor's interests in the new work to be provided under the Agreement.

SPECIAL TERMS REGARDING HIPAA COMPLIANCE:

41. **HIPAA.** Vendor agrees to fully comply with the Health Insurance Portability and Accountability Act of 1996 and its associated regulations and, more specifically, in 45 C.F.R. §§ 160 and 164, *Standards for Privacy of Individually Identifiable Health Information, Final Rule* (the "Final Privacy Rule"), and in 45 C.F.R. §§ 160, 162 and 164, *Health Insurance Reform: Security Standards, Final Rule*

(the "Final Security Rule") collectively referred to as ("HIPAA"), as they may be applicable to Vendor. Vendor agrees to execute, upon Cooper's request, a Business Associate Agreement in form satisfactory to Cooper.

42. **Patient Confidentiality.** In the event Vendor is provided with access to patient medical records, Vendor agrees that all patient medical records shall be maintained in accordance with Cooper's policies and procedures and shall be treated as confidential so as to comply with all state and federal laws and regulations regarding the confidentiality of medical records, including, but not limited to HIPAA. All medical records and materials relating to patients shall be and remain the property of Cooper during the term of the Agreement and upon the termination of the Agreement.

SPECIAL TERMS APPLICABLE TO AGREEMENTS FOR SERVICES:

43. **Expenses.** If the Agreement provides for Cooper to reimburse Vendor for expenses, in no event shall the sum of all such expenses exceed 20% of the entire amount paid to Vendor under the Agreement. All expenses in excess of \$500 must be pre-approved in writing by Cooper, and reimbursement requests must be accompanied by receipts or documentation satisfactory to Cooper evidencing such expense. If any expenses in excess of \$500 are not pre-approved by Cooper, or if any of the documentation of any such expenses is not satisfactory to Cooper, Cooper shall not be responsible to reimburse Vendor for the same.

44. **Confidentiality.** All Confidential Information is and will be the exclusive property of Cooper or its affiliates, as the case may be. Vendor agrees not to use Confidential Information for any purposes other than the performance of the Services under the Agreement. Vendor agrees not to disclose Confidential Information to third parties except as necessary for the performance of the Agreement provided that Vendor will have executed or shall execute appropriate written agreements with such third parties sufficient to enable Vendor to comply with all the provisions of the Agreement. Vendor agrees to use the same level of care in safeguarding Confidential Information that is used with Vendor's own confidential information of a similar nature, but in no event less than reasonable care. Upon the termination of the Agreement for any reason, or at any time upon request by Cooper, all originals, copies and reprints of Confidential Information in Vendor's possession, custody, or control shall be promptly surrendered and/or delivered to Cooper or, at Cooper's option, destroyed, and Vendor shall thereafter make no further use, either directly or indirectly, of any such Confidential Information. The confidentiality provisions of the Agreement shall remain in full force and effect following termination of the Agreement. As used herein, Confidential Information means any non-public information of a party or its Affiliate (hereinafter defined), including, without limitation, the terms of any negotiations or agreements between the parties in connection with the aforementioned business opportunity, trade secrets, technical information, business information, sales information, marketing information, customer-buying patterns, algorithms, customer and potential customer lists and identities, product sales plans, inventions, developments, discoveries, software, know-how, methods, techniques, formulae, data, processes and other trade secrets and proprietary ideas, whether or not protectable under patent, trademark, copyright or other areas of the law, and any other information marked or disclosed as being Confidential Information, which is shared between the parties in writing or orally. For purposes of this Agreement, "Affiliate" shall mean any person, corporation, firm, partnership or other entity, whether de jure or de facto, which directly or indirectly owns, controls, is owned by or is under common ownership or control with a party to this Agreement, to the extent that such ownership or control constitutes at least fifty percent (50%) of the equity having the power to vote on or direct the affairs of the entity.

45. **No Joint Venture.** It is the intention of the parties that in carrying out its obligations under the Agreement, that Vendor and its employees shall at all times be acting as and deemed to be independent contractors. Nothing contained in the Agreement shall be construed to create a partnership, joint venture, agency or employment

relationship between Vendor and Cooper. Cooper shall have no responsibility for any of Vendor's debts, liabilities or other obligations or for the intentional, reckless, negligent or unlawful acts or omissions of Vendor or Vendor's employees or agents. In addition, Vendor may not bind Cooper in any way whatsoever with respect to third parties.

46. **Independent Contractor.** It is understood by the parties that Vendor is an independent contractor and not an employee or agent of Cooper. Vendor retains sole and absolute discretion, control and judgment in the manner and means of carrying out its assignments. Vendor shall comply with Cooper's Human Resource Department's applicable policies and procedures including pre-employment screening. Vendor understands and agrees that neither it nor its employees performing services hereunder shall be entitled to any of the rights, fringe benefits and privileges established for Cooper's employees, if any, including, but not limited to, the following: retirement benefits, medical insurance coverage, life insurance coverage, health insurance, disability insurance coverage, severance pay benefits, PTO, overtime pay, etc. Vendor understands and agrees that Cooper will not pay or withhold from the compensation paid to Vendor pursuant to the Agreement any sums customarily paid or withheld for or on behalf of employees for income tax, unemployment insurance, social security, or payment pursuant to any law or governmental requirement, and all such payments as may be required by law are the sole responsibility of Vendor. Vendor agrees to indemnify and hold Cooper harmless from and against any such payments or liabilities for which Vendor may become liable with respect to such matters.

Company understands and agrees that neither it nor its employees performing services hereunder shall be entitled to any of the rights, benefits and privileges established for Cooper employees including medical insurance coverage or workers compensation services. In the event Company's workers require emergency care while on site, they may be treated in Cooper's emergency room the fee for which will be billed through the appropriate health insurance or the Company's worker's compensation insurance as appropriate.

47. **Entire Agreement.** This Rider; any other documents or writings which it accompanies, or to which it is attached (as amended by this Rider); and any other documents which may be incorporated therein by reference, constitute the entire agreement of the parties with respect to the subject matter herein. Any other agreements or understandings, whether written or oral, are hereby superseded. The terms of this Rider; any other documents or writings which it accompanies or to which it is attached (as amended by this Rider), shall solely govern the rights and obligations of the parties with respect to the subject matter herein. Any modification to the agreement shall only be effective if it is in writing and signed by a duly authorized representative of Vendor, and a senior corporate officer of Cooper.