

HOSPITAL FOR SPECIAL SURGERY
PURCHASE ORDER STANDARD TERMS & CONDITIONS

The parties mutually agree that these Terms and Conditions (“**Terms**”) modify and are incorporated into and deemed a part of the attached purchase order (the “Purchase Order”) by and between the “**Seller**” specified on the Purchase Order and New York Society for the Relief of the Ruptured and Crippled, maintaining the Hospital for Special Surgery d/b/a Hospital for Special Surgery (“**Hospital for Special Surgery**”), The Hospital for Special Surgery Fund, Inc. (“**HSS Foundation**”), or any entity controlled by or under common control with Hospital for Special Surgery or HSS Foundation (collectively referred to as either “**Buyer**” or “**HSS**”).

1. **Entire Agreement.** These Terms, together with the Purchase Order, are referred to herein as the “**Agreement**”. The Agreement contains the entire agreement between the parties, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Seller’s general terms and conditions of purchase. Should there be a conflict between this Agreement and any other agreement pertaining specifically to the goods and services covered by this Agreement, the order of precedence shall be as follows: (i) any master services agreement, purchase agreement, or other final written agreement signed by both Buyer and Seller and (ii) this Agreement. Fulfillment of Buyer’s Purchase Order constitutes acceptance of these Terms.
2. **Change Orders.** Buyer may from time to time by written notice to Seller make changes in specifications, design, delivery schedules (postponements only), testing, packing or designation. If any such change causes an increase or decrease in the cost and/or time required for performance, an equitable adjustment shall be made and the Purchase Order modified accordingly. Price increases or extensions of time for delivery shall not be binding unless mutually agreed to by Buyer and Seller.
3. **Invoicing and Payment.** To receive payment, Seller must submit an invoice to HSS for the Products delivered or Services performed as set forth in the Purchase Order. HSS may withhold payment until the deliverable services or goods specified in the applicable Purchase Order and the reports (if any) specified in the applicable Purchase Order have been submitted in a form satisfactory to HSS. Payment will be due within ninety (90) days of HSS’s receipt of Seller’s invoice. Notwithstanding the foregoing, in the event Seller requests a change to its bank account information for payments, HSS may delay payment for any invoice during such request up to ninety (90) days to allow HSS to validate the bank account information prior to the disbursement of payment. In such event, Seller shall not suspend its Services nor put HSS on credit hold.
4. **Delivery of Products.** Unless otherwise specified in the Purchase Order, all goods, materials, supplies, equipment or services covered by this Agreement (“**Products**”) shall be delivered F.O.B. Destination, with the destination being the location indicated in the Purchase Order (the “**Delivery Point**”). Seller shall deliver the Products in the quantities and on the date(s) specified in the Purchase Order or as otherwise agreed in writing by the parties (the “**Delivery Date**”). Title and risk of loss passes to Buyer upon delivery of the Products at the Delivery Point. In the event Seller is unable to deliver any part or all of the Order, Seller shall immediately notify HSS. Such notice will not limit the remedies available to HSS or the liability of Seller for non-performance. If Products are not shipped in accordance with the Purchase Order, Seller shall grant to Buyer the right to setoff for any excess cost incurred by Buyer as a result of the delay in shipment. Shipments must be labeled appropriately for handling of fragile, electrical, chemicals, temperature sensitive, perishable, biological, radioactive or otherwise hazardous equipment or materials as required by applicable laws. Seller shall pay all related freight costs.
5. **Provision of Services.** If the Purchase Order contains an order for Seller’s services (“**Services**”), Seller shall provide the Services to Buyer as described in the Purchase Order and in accordance with this Agreement.
6. **Inspection of Products.** Buyer has the right to inspect the Products. Buyer, at its sole option, may inspect all or a sample of the Products, and may reject all or any portion of the Products if it determines the Products are nonconforming or defective. Payment for material or for services on this order rendered prior to inspection shall not constitute acceptance. If Buyer rejects any portion of the Products, Buyer has the right, effective upon written notice to Seller, to: (a) rescind this Agreement in its entirety; (b) accept the Products at a reasonably reduced price; or (c) reject the Products and require replacement of the rejected Products. If Buyer requires replacement of the Products, Seller shall, at its expense, promptly replace the nonconforming or defective Products and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Products. If Seller fails to timely deliver replacement Products, Buyer may replace them with goods from a third party and charge Seller the cost thereof and terminate this Agreement for cause pursuant to Section 18. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller’s obligations under the Agreement, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.
7. **Compliance with Law.** Seller agrees to, and will require its directors, officers, employees, agents, sub-contractors and consultants to, comply with all laws, statutes, regulations, rulings, or enactments of any governmental authority applicable to its business or the services it performs under the Agreement. Without limiting the foregoing sentence, Seller will obtain from third parties, including state and local governments, and will maintain throughout the term of the Agreement, all licenses and permissions necessary for the performance of its services under the Agreement. Seller shall comply with all export and import laws of all countries involved

in the sale of the Products under this Agreement or any resale of the Products by Seller. Seller assumes all responsibility for shipments of Products requiring any government import clearance. Buyer may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Products.

8. Compliance with HSS Policies. Seller agrees to, and will require employees, agents, sub-contractors and consultants (each, a “**Seller Agent**”) to, comply with all generally applicable rules, policies and procedures of HSS, and will comply with all posted signs and warnings, when on the premises of HSS to perform Services or deliver Products under the Agreement (collectively, “**HSS Policies and Procedures**”). HSS Policies and Procedures include security procedures concerning systems and data and remote access thereto, building security and vendor credentialing procedures, including the restriction of access by Buyer to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures. HSS Policies and Procedures require Seller and Seller’s Agents who will be on HSS owned or licensed premises in New York, New Jersey or Connecticut to be fully vaccinated against COVID-19.
9. On-site Services. If Seller performs any Services on-site at an HSS facility, Seller agrees to furnish only competent and skilled Seller Agents who have been adequately trained in applicable safety procedures and provided with all necessary safety equipment to perform the Services. Upon HSS’s request, Seller will immediately remove from all facilities and replace any Seller Agents who are unsatisfactory to HSS for any reason. Seller warrants that all Seller Agents assigned to the HSS facility shall have a prior satisfactory work record in a responsible capacity, be legally authorized to work in the United States, and will be paid all legally required wages and applicable overtime.
10. Seller’s Obligations Regarding Services. Seller shall:
 - (a) before the date on which the Services are to start, obtain, and at all times during the term of this Agreement, maintain, all necessary licenses and consents and comply with all relevant laws applicable to the provision of the Services;
 - (b) maintain complete and accurate records relating to the provision of the Services under this Agreement, including records of the time spent and materials used by Seller in providing the Services in such form as Buyer shall approve. During the term of this Agreement and for a period seven (7) years thereafter, upon Buyer’s written request, Seller shall allow Buyer to inspect and make copies of such records and to interview any and all Seller Agents that were involved with or engaged in the provision of the services contemplated by the Agreement;
11. Warranties.
 - (a) Products. Seller warrants to Buyer that all Products will: (i) be free from any defects in workmanship, material and design; (ii) conform to applicable specifications requested by Buyer; (iii) be fit for their intended purpose and operate as intended; (iv) be merchantable; (v) be free and clear of all liens, security interests or other encumbrances; and (vi) not infringe or misappropriate any third party’s patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Products by Buyer. Seller shall notify Buyer of any Product recalls by emailing supplychainrecallmanagement@hss.edu if a product recall or defect notice is issued related to any Products supplied hereunder, and such notice shall be provided within three (3) days of the product recall or defect notice issuance.
 - (b) Services. Seller warrants to Buyer that it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement.

The warranties set forth in this Section 11 are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer’s discovery of the noncompliance of the Products or Services with the foregoing warranties. If Buyer gives Seller notice of noncompliance pursuant to this Section, Seller shall, at its own cost and expense, promptly (i) replace or repair the defective or nonconforming Products and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to Seller and the delivery of repaired or replacement Products to Buyer, and, if applicable, (ii) repair or re-perform the applicable Services.

12. Tax Exempt Entity. Hospital for Special Surgery and HSS Foundation are tax-exempt entities. No New York sales and use tax or federal excise tax shall be included on any invoice covered by a Purchase Order, where the purchaser is Hospital for Special Surgery or HSS Foundation. Buyer will provide its tax exempt number and/or a copy of its exemption certificate to Seller upon request.

13. Confidentiality.

- (a) Seller acknowledges that during the course of the Agreement, Seller may learn confidential, trade secret, or proprietary information concerning HSS or its affiliates (“**Confidential Information**”). Confidential Information may be in written, electronic, oral or visual form, and it includes information that is marked or identified at the time of disclosure as confidential or that is of such a nature that would be considered by a reasonable person to be confidential. Confidential Information shall also include any data, reports, test results, and other documentation and information regarding Buyer’s business operations, facilities, finances, marketing, employees, or use of the Products. Seller will maintain such Confidential Information in strict

confidence, and Seller will not use or disclose any such Confidential Information without HSS's prior written consent, except (a) as necessary to perform its obligations under the Agreement, (b) to Seller's attorneys and auditors/accountants (but only to the extent necessary for them to provide their professional services to Seller and only if they are doing so under a contractual or professional obligation of confidentiality), or (c) as required by law (provided that Seller will promptly notify HSS of any such requirement, and will provide HSS a reasonable opportunity to attempt to oppose or limit such disclosure and/or to ensure that any Confidential Information so disclosed will be treated and protected as confidential, and Seller will cooperate with HSS therein). Seller will use commercially reasonable efforts (but in any event not less than the same degree of care as it uses with respect to its own confidential information) to preserve the confidentiality of such Confidential Information. Upon expiration or other termination of the Agreement, Seller will return to HSS all Confidential Information that Seller then possesses in any tangible form; provided, however, that Seller may retain an archival copy of any document or other tangible material that contains Confidential Information as required by applicable legal requirements, or as necessary for its archival business recordkeeping purposes related to the Agreement, and any such retained Confidential Information will remain subject to Seller's obligations under this Section.

(b) Neither party shall disclose the other party's Confidential Information to any third party, except as otherwise expressly permitted herein, or use any Confidential Information for any purpose outside the scope of this Agreement or in any manner that would constitute a violation of any applicable laws or regulations. The parties agree to hold Confidential Information in confidence and to take all precautions to protect such Confidential Information as each party employs with respect to its own Confidential Information. Neither party shall make Confidential Information available to any of its employees and /or agents except those that have agreed to be bound by confidentiality obligations similar to those set forth herein. Notwithstanding the foregoing, HSS may disclose purchase information and pricing data to third-party consultants, business advisors, and purchasing groups of which HSS is or may become a member.

14. HIPAA. Seller acknowledges that HSS is required to comply with the Standards for Privacy of Individually Identifiable Health Information under the Health Insurance Portability and Accountability Act of 1996 contained in 45 CFR Parts 160 and 164, as well as other requirements pertaining to the security of health information (collectively, as amended from time to time, "HIPAA"). If the Seller has access to information covered under HIPAA, such as protected health information, Seller agrees to enter into a Business Associate Agreement with HSS, and Seller shall assure compliance with any and all provisions of HIPAA applicable to it.

15. Publicity/Use of Name. Except as required by law or with Buyer's express prior written approval, Seller will not use, expressly or by implication, any of Buyer's names, trademarks, service marks, logos, or trade names (or any variant thereof), or the name or likeness of any of Buyer's officers, employees, or medical staff members, in any news/press/publicity release, policy recommendation, advertising or promotional material, or other commercial communication of Seller.

16. General Indemnification. To the fullest extent permitted by law, Seller shall, at its own expense, indemnify and hold harmless Buyer and/or any of Buyer's related entities' officers, managers, directors, officers, related entities, employees, agents, subsidiaries and divisions (and each of their heirs, successors and assigns) (collectively, "Indemnitees") from and against any and all claims, losses, costs and damages including but not limited to judgments, attorneys' fees, court costs, appellate costs, or government fines (collectively, "Losses") arising out of, in connection with or as a consequence of (i) injury to or sickness, illness or death of any person, including but not limited to any employees of Seller or any employee of any subcontractor of Seller or on account of damage to property, including loss of use thereof, (ii) the performance, nonperformance or breach of Seller's obligations under this Agreement, (iii) the negligence or willful misconduct of Seller or its principals, employees, subcontractors or agents in connection with the Agreement, or (iv) any violation of applicable law by Seller or its principals, employees, subcontractors or agents, regardless of whether or not such claim damage, loss or expense under (i)-(iv) is caused in part by a party indemnified hereunder. Such obligation of Seller exists whether same be labeled as full indemnification, partial indemnification or contractual contribution. Such obligation should further not be construed to negate, abridge or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described above.

Seller waives all rights against Buyer, and/or officers, managers, directors, officers, related entities, employees, agents, subsidiaries and divisions (and each of their heirs, successors and assigns) for recovery of damages that shall be covered by his Commercial General Liability, umbrella liability, business auto liability or workers compensation and employers liability maintained per insurance requirements stated in this agreement.

17. Intellectual Property Indemnification. Seller shall, at its expense, defend, indemnify and hold harmless Buyer and any Indemnitee against any and all Losses arising out of, in connection with or as a consequence of any claim that Buyer's or Indemnitee's use or possession of the Products or use of the Services infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Seller enter into any settlement without Buyer's or Indemnitee's prior written consent.

18. Termination. In addition to any remedies that may be provided under these Terms, Buyer may terminate this Agreement for convenience with immediate effect upon written notice to the Seller, either before or after the acceptance of the Products or Seller's

delivery of the Services, if Seller has not performed or complied with any of these Terms, in whole or in part. For recurring deliveries of Products or recurring Services, Buyer may terminate this Agreement for any reason with ten (10) days' notice to Seller, with no further financial obligation to Buyer, except for undisputed payments due on Products already received. HSS shall pay for any products delivered or services performed prior to the date that termination becomes effective. If Seller becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, then Buyer may terminate this Agreement upon written notice to Seller. If Buyer terminates the Agreement for any reason, Seller's sole and exclusive remedy is payment for the Products received and accepted and Services accepted by Buyer prior to the termination

19. Effect of Termination. Upon termination of this Agreement, Seller will be entitled to payment on any accrued charges for Services provided prior to the effective date of termination or Products shipped prior to the effective date of termination. HSS will be entitled to a pro-rata refund of any Goods or Services already prepaid but not yet fulfilled.

20. Limitation of Liability. In no event will Buyer be liable to Seller or any third party, in contract, tort or otherwise, for any loss of profits or business, or any special, incidental, indirect, exemplary, punitive or consequential damages, arising from or as a result of the Order or any agreement between the parties relating to the products, services or deliverables Seller provides, even if Buyer has been advised of the possibility of such damages. Notwithstanding anything to the contrary in the Agreement, there shall be no limitation of Seller's liability under the terms of the Agreement. In claims against any Indemnitee by a Seller Agent that may be liable for Losses, the indemnification obligation under this agreement shall not be limited by a limitation or amount or type of damages, compensation, or benefits payable by or for Seller or a Seller Agent under Workers' or Workmen's Compensation Acts or other employee benefit acts.

21. Insurance.

(a) Seller will at all times during the term of this Agreement maintain insurance adequate to insure its business and, as applicable, as required by law, including the following:

(i) Commercial General Liability ("CGL") insurance with limits not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate that includes coverage for (a) Contractual Liability, (b) Products & Completed Operations, and (c) Personal and Advertising Injury Liability;

(ii) Umbrella liability insurance with limits not less than Five Million Dollars (\$5,000,000);

(iii) If the Purchase Order covers the provision of Services, Professional Liability/Errors and Omissions ("E&O") insurance with limits not less than Three Million Dollars (\$3,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate;

(iv) Workers' Compensation coverage as required to comply with applicable state law, and Employer's Liability insurance with limits not less than One Million Dollars (\$1,000,000) per incident;

(v) if any automobile owned, leased or rented by Seller or any Seller employees, contractors or agents will be used in the course of performing any of the Services under this Agreement, Seller will maintain Business Automobile Liability Insurance (ISO Form CA0001) with not less than One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage; and

(vi) if Seller will create, receive, maintain, transmit or store any protected health information, patient records, other personally identifiable information or Hospital's Confidential Information, Cyber/Network Security & Privacy Liability insurance which includes coverage for (1) loss or disclosure of electronic data, (2) media and content rights infringement and liability, (3) network security failure, (4) software copyright infringement liability, (5) privacy injury arising from or relating to unauthorized collection disclosure, use, access, destruction, or modification of Protected Health Information, as defined by HIPAA ("PHI") and/or failure to implement, maintain, or comply with policies and procedures relating to Seller's obligations with regard to PHI, (6) system attacks, (7) denial or loss of service attacks, (8) spread of malicious software code, (9) unauthorized access and use of computer systems, (10) crisis management and HSS notification expenses, (11) privacy regulatory defense and penalties, and (12) liability arising from the loss or disclosure of confidential data with limits no less than (x) Five Million Dollars (\$5,000,000) for each occurrence and Five Million Dollars (\$5,000,000) in the aggregate if Seller has access to five hundred (500) or more records containing protected health information ("PHI Records"); and (y) One Million Dollars (\$1,000,000) for each occurrence and One Million Dollars (\$1,000,000) in the aggregate if Seller has access to fewer than five hundred (500) PHI Records.

(b) The insurance coverage specified above must be provided on an occurrence basis (or if on a claims-made basis, Seller shall be responsible to purchase an extended reporting endorsement covering the Seller for at least six (6) years) under valid and enforceable policies issued by insurers eligible to do business in the State of New York, which insurers must have an AM Best rating at least equal to A-/VIII. All insurance policies must list HSS and its affiliates as additional insureds (with the exception of Workers' Compensation), include a waiver of subrogation in favor of HSS and its affiliates, and provide notice to HSS at least thirty (30) days in advance of any reduction in coverage, suspension or cancellation. The insurance

coverage limits specified above may be satisfied by applicable excess or umbrella liability insurance. Insurance will apply on a primary and non-contributory basis regardless of any other insurance available to Seller or any insurance maintained by HSS, except where that is impermissible by law. Seller shall, prior to commencement of the Agreement and at any time thereafter upon request, provide HSS with certificates for all insurance required above. In addition, Seller shall maintain such insurance as required by landlords and sublandlords for premises at which Seller is performing services hereunder, will name such persons and entities as additional insureds on such insurance as required by such landlords and sublandlords and will execute and deliver such documentation and provide such certifications as required by such landlords and sublandlords in order to perform services on-site at the premises. Seller shall require each of its subcontractors that may enter upon the premises of HSS or its affiliates to maintain the insurance required by and comply with the terms of this Section.

22. No Improper Inducement. Seller represents and warrants that it has not offered or agreed to give, and will not offer or agree to give, and will cause its directors, officers, employees, contractors and agents not to offer or agree to give, any unlawful or improper gratuity, commercial bribe, or kickback to HSS or any of its officers or other employees, or any person acting on HSS's behalf, related to the Agreement or any of the products or services to be provided to HSS by Seller hereunder.

23. Conflicts of Interest.

(a) Definitions. For purposes of this Section, the following terms have the meanings set forth in this Section 24:

(i) "Covered Person" shall mean, with respect to an entity, the entity's employees responsible for this Agreement, officers, directors, and/or, if the entity is a healthcare provider, the entity's medical staff members.

(ii) "Immediate Family Member" means spouse or domestic partner, child, sibling, parent, or any equivalents by marriage (i.e., in-laws), as well as any dependent or other individual residing in the same household.

(iii) "Financial Relationship" or "financial relationship" shall include, but not be limited to, the following transactions or relationships: (a) consulting fees, honoraria, gifts or other emoluments, or "in kind" compensation; (b) equity interests, including stock options, of any amount in a publicly or non-publicly-traded company (or entitlement to the same); (c) royalty income (or other income) or the right to receive future royalties (or other income); (d) any non-royalty payments or entitlements to payments; or (e) service as an officer, director, or in any other role, whether or not remuneration is received for such service.

(b) Except for those relationships (if any) as Seller has disclosed to HSS in writing, as of execution of this Agreement and as of execution of each SOW, (i) Seller does not have a financial relationship with any of HSS's Covered Persons (a "Disclosable Relationship"); (ii) none of Seller's Covered Persons has a financial relationship with HSS or any of HSS's Covered Persons; and (iii) none of Seller's Covered Persons is an Immediate Family Member of any of HSS's Covered Persons.

(c) Seller represents, warrants and covenants that, notwithstanding any existing or future Disclosable Relationship, Seller does not, and will not at any time, as part of any financial relationship with any Covered Person, pay royalties or any other compensation that is based on the value or volume of referrals to any Covered Person on any products or services purchased by (i) HSS; (ii) any health care entity at which such healthcare professional is employed or regularly performs medical services; (iii) any healthcare entity in which Covered Person has a financial interest; or (iv) any healthcare entity in which Covered Person has direct or indirect control over the direction of purchasing decisions of such entity.

(d) Notwithstanding any other provision of this Agreement or any other Agreement between HSS and Seller, HSS may terminate this Agreement effective immediately upon written notice to Seller in the event of a breach of the representations and warranties set forth in this Section 24 and shall promptly receive a refund of any prepaid fees related to this Agreement.

24. No Exclusion. Seller warrants that it is not currently listed by a Federal or State agency as excluded, debarred, or otherwise ineligible for participation in any Federal or State health care program. Seller agrees that it will not employ, contract with, or otherwise use the services of any individual whom Seller knows or should have known, after reasonable inquiry, (a) has been convicted of a criminal offense related to health care (unless the individual has been reinstated to participation in Medicare and all other Federal and State health care programs after being excluded because of the conviction), or (b) is currently listed by a Federal or State agency as excluded, debarred, or otherwise ineligible for participation in any Federal or State health care program, and further agrees that it will immediately notify HSS in the event that it, or any person in its employ, has been excluded, debarred, or has otherwise become ineligible for participation in any Federal or State health care program. Seller agrees to continue to make reasonable inquiry regarding the status of its employees and independent contractors on a regular basis by reviewing exclusion lists of the U.S. General Services Administration, the U.S. Dept. of Health and Human Services Office of Inspector General, and the New York State Office of the Medicaid Inspector General. Notwithstanding any other provision of the Agreement, HSS may terminate the Agreement immediately upon written notice to Seller in the event Seller is or becomes excluded from Medicare, Medicaid, or any other government healthcare program; such termination will be without penalty to HSS, and Seller will promptly refund HSS any pre-paid fees.

25. NY State-Required Provision. The following language is required to be in this contract pursuant to 10 NYCRR § 400.4: (i) Each of the parties shall comply with those provisions of Chapter V of Title 10 of The New York Codes, Rules and Regulations which are binding on that party under the law of the State of New York; and (ii) “Notwithstanding any other provision in this contract, the facility remains responsible for ensuring that any service provided pursuant to this contract complies with all pertinent provisions of Federal, State and local statutes, rules and regulations.” For purposes of this contract, the term “facility” shall mean HSS and “this contract” means the Agreement.
26. Maintenance of Records. Seller agrees that it will maintain, and HSS, its duly authorized representatives, the U.S. Comptroller General (or its designee), and the U.S. Department of Health and Human Services (or its designee) will have access to and the right to examine upon request, any directly pertinent books, documents, papers, and records of Seller related to the Agreement and the services provided to HSS thereunder until the expiration of four (4) years after final payment under the Agreement, unless HSS authorizes their prior disposition. If Seller carries out any of its duties under the Agreement through a subcontract with a related organization, which subcontract has a value or cost of \$10,000 or more over a twelve-month period, then Seller shall include a clause in such subcontract to the effect that until the expiration of four (4) years after the furnishing of services pursuant to such subcontract, and to the extent required by Section 1861(v)(1)(I) of the Social Security Act, the related organization will make available, upon written request of the Secretary of Health and Human Services or the Comptroller General of the United States, or any other duly authorized representatives, the subcontract and all other agreements, books, documents and records of the related organization that are necessary to verify the nature and extent of the costs of services provided under the subcontract.
27. Independent Contractors. Seller is an independent contractor of Buyer hereunder. This Agreement does not create any employment, agency, franchise, joint venture, partnership, or other similar legal relationship between Seller and HSS or any of their respective officers, employees or contractors. Except as mutually agreed in writing, neither party has the authority to bind or act on behalf of the other party.
28. Notices. All notices required or permitted to be given under the Agreement must be in writing, addressed as set forth below, and will be deemed given (i) three (3) business days after being sent via certified mail, postage prepaid, or (ii) one (1) business day after being sent via a recognized national overnight courier (e.g., FedEx).

All notices to Buyer under or with respect to the Agreement must be sent to:

Hospital for Special Surgery
535 East 70th Street, New York, NY 10021
Attn.: Senior Director Supply Chain

With a required copy to:
Hospital for Special Surgery
535 East 70th Street, New York, NY 10021
Attn: Executive Vice President & Chief Legal Officer.

All notices by HSS to Seller under or with respect to the Agreement must be sent to Seller, at the address set forth in the Purchase Order, and if no address is specified, the principal place of business of record for Seller, to the attention of: President.

29. Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such party’s (the “**Impacted Party**”) failure or delay is caused by or results from the following force majeure events (“**Force Majeure Event(s)**”): (a) acts of God; (b) flood, fire, earthquake, epidemic, pandemic (excluding the COVID-19 pandemic) or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; and (g) other similar events beyond the control of the Impacted Party. The Impacted Party shall give notice within five (5) days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party’s failure or delay remains uncured for a period of thirty (30) days following written notice given by it under this Section 31, the other party may thereafter terminate this Agreement upon ten (10) days’ written notice.
30. Governing Law; Jurisdiction. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of New York. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the

federal courts of New York or the courts of the State of New York in each case located in the County of New York, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

31. Waiver. No waiver by Buyer of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Buyer. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
32. Amendment and Modification. These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each party.
33. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
34. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
35. Assignment. Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under this Agreement without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Seller of any of its obligations hereunder. Buyer may at any time assign or transfer any or all of its rights or obligations under this Agreement without Seller's prior written consent to any affiliate or to any person acquiring all or substantially all of Buyer's assets.
36. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Section 13 (Confidentiality), Section 15 (Publicity/Use of Name), Section 16 (General Indemnification), Section 17 (Intellectual Property Indemnification), Section 20 (Limitation of Liability), Section 21 (Insurance), Section 25 (NY State-Required Provision), Section 26 (Maintenance of Records), Section 28 (Notices), Section 30 (Governing Law; Jurisdiction); Section 33 (No Third-Party Beneficiaries), Section 36 (Survival).