

PRODUCT AND SERVICE AGREEMENT

THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION

This Product and Service Agreement (the "Agreement") is entered into as of the date of last signature below, by and between **Christian County Public Schools**, with its principal business address located at **200 Glass Avenue, Hopkinsville, Ky. 42240** (hereinafter referred to as "Vendor") and **Cumberland Hall Hospital** with its principal business address located at **270 Walton Way, Hopkinsville, Ky. 42240** (hereinafter referred to as "Facility").

Vendor has agreed to render the Services (as defined below) and/or provide Products (as defined below) as more particularly described in **Exhibit A** which is attached and incorporated into this Agreement, and Facility has agreed to compensate Vendor for Services rendered and/or such Products provided.

In the event of a conflict or material difference in terms between Vendor's invoice, proposal and/or exhibits and the terms of this Agreement, the terms of this Agreement shall control.

NOW, THEREFORE, in consideration of mutual covenants, conditions and promises set forth herein, the parties hereto agree as follows:

1. **Scope of Services; Provision of Products.** If applicable to this Agreement, Vendor shall provide to Facility the services described in **Exhibit A** (the "Services") on an as needed basis or upon the schedule identified in **Exhibit A**. If applicable to this Agreement, the Vendor shall provide to Facility the products described in **Exhibit A** (the "Products").
2. **Payments.** Facility agrees to pay Vendor according to the terms described in **Exhibit B** which is attached and incorporated into this Agreement by reference, subject to the submission of adequate documentation as specified by Facility, or upon a separate quote, contingent upon Facility's written approval of such quote. Payment shall be made within forty-five (45) days of the receipt of Vendor's undisputed invoice.
3. **Term and Termination; Suspension.**
 - a) **Term.** The term of this Agreement shall commence on the date of the last signature and shall continue in full force and effect for one (1) year (the "Term"), unless the Agreement is sooner terminated in accordance with the provisions herein.
 - b) **Termination Without Cause.** At any time during the Term of this Agreement, Facility may terminate this Agreement for any reason or no reason upon at least thirty (30) days prior written notice to Vendor. In the event that Facility terminates for convenience, its sole obligation to Vendor will be to pay for Services completed or Products delivered by Vendor prior to the effective date of termination.
 - c) **Termination for Cause.** This Agreement may be terminated in whole or in part by either party if the other party breaches or otherwise fails to fulfill any obligation in this Agreement and such failure or breach continues and/or is uncured for thirty (30) days after written notice to the breaching party from the non-breaching party.
4. **Insurance.** Vendor shall comply with the requirements of the Insurance Addendum attached and incorporated into this Agreement as **Exhibit C**.
5. **Compliance with Facility Rules; Subcontractors.**
 - a) Vendor agrees to instruct its employees and/or subcontractors ("Vendor Personnel") that they must comply with all applicable policies, procedures, rules, regulations or guidelines which may be instituted from time to time by Facility, or any applicable regulatory, licensing, or accrediting entity. To that end, Vendor agrees that all Vendor Personnel will participate in any orientation or training deemed necessary by

Facility for the Services being provided. Notwithstanding anything to the contrary within this Agreement, Facility reserves the absolute right to deny access to its premises to any individuals that pose a risk to the safety of Facility's patients, employees, other vendors or visitors, or that otherwise cause a disruption to Facility's business operations.

- b) Vendor shall not use any subcontractors to perform any Services under this Agreement that have not previously been approved by Facility. Vendor shall require that all subcontractors maintain the same levels of insurance as required by Vendor in this Agreement, or be listed as "Additional Insured" of Vendor. Vendor shall be responsible for all claims, liabilities and damages caused by subcontractor, as well as for all acts or omissions of such subcontractors.

- 6. **Independent Contractors.** In the performance of their respective duties and obligations under this Agreement, it is mutually understood and agreed that the parties are at all times acting as independent contractors, and that neither shall have nor exercise any control or direction over the methods by which the other shall perform their obligations under this Agreement. No agency or employment relationship, partnership, joint venture or other business organization is created hereby. It is expressly agreed by the parties hereto that neither shall have authority to bind the other, and that no work, act, or omission in the performance of their respective obligations under this Agreement shall be construed to make or render either the servant, agent, employee or partner of the other.

It is expressly understood that Vendor Personnel providing Services and/or Products under this Agreement are solely employed or contracted by Vendor and that Vendor retains the ultimate responsibility for all hiring and firing decisions as well as ensuring compliance with the Fair Labor Standards Act and any and all other applicable laws or regulations involving employee pay or benefits and, as a result, Vendor agrees to indemnify, defend and hold harmless Facility, its affiliates, officers, agents and employees from and against any employment related claims raised by Vendor Personnel including, but not limited to, discrimination, wrongful discharge, ERISA or wage claims.

- 7. **Indemnification.** Vendor shall indemnify, protect, defend and hold harmless Facility, its affiliates, its management company, holding company, employees or agents ("Indemnitees") against any and all claims, actions, penalties, assessments, losses, suits, judgments, awards, and all reasonable expenses associated therewith, including, but not limited to, attorney's fees and costs (hereinafter "Claims") arising out of or otherwise dealing with any claims or allegations threatened, made or instituted by any third-party against Indemnitees to the extent said Claims are alleged to and/or were caused by (i) an act, omission and/or the negligence of Vendor, the Vendor Personnel, its other personnel, subcontractors, or agents; (ii) a defect in any Product provided under this Agreement; (iii) a breach of the Agreement or any applicable addenda hereto; (iv) a violation of any Law by Vendor, the Vendor Personnel, its other personnel, subcontractors, or agents; or (v) a claim or allegation that the Services, Products or any components thereof infringe upon or violate the copyright, trademark or other intellectual property right of any third party (hereinafter said Claims are referred to as the "Indemnifiable Claims"). Vendor (upon notice from an Indemnitee) shall defend the Indemnifiable Claim at Vendor's expense by legal counsel reasonably satisfactory to Indemnitee and Indemnitee shall have the right (but not the obligation) to participate with Vendor in such defense. For the avoidance of doubt, Indemnitee need not have first paid any such Indemnifiable Claim before Vendor is obligated to provide indemnification hereunder.

Indemnitees agree to: (i) notify Vendor as soon as they become aware of any Indemnifiable Claim, (ii) cooperate with and authorize Vendor to carry out an investigation and defend any such Indemnifiable Claim (subject to the terms of this Paragraph 7), and (iii) not compromise or settle any Indemnifiable Claims without the prior written consent of Vendor, which consent shall not be unreasonably delayed or withheld.

This Paragraph 7 shall survive the termination of this Agreement for any reason.

- 8. **Fraud and Abuse.** Notwithstanding any unanticipated effect of any provision of this Agreement, neither party will knowingly or intentionally conduct himself/herself/itself in a manner as to violate the prohibition against fraud and abuse in connection with the Medicare and Medicaid programs (42 USC § 1320a-7b). The federal anti-kickback statute, 42 U.S.C. § 1320a-7b(b), prohibits certain activities in connection with referring or

arranging for business paid for by federal health care programs. It is the intent of the parties to establish a business relationship that complies with the federal anti-kickback statute. To the extent Vendor provides Facility with price concessions on purchases under this Agreement, such concessions shall be as permitted under the statutory exceptions and "safe harbor" regulations for discounts as set forth at 42 U.S.C. § 1320a-7b(b)(3)(A) and 42 C.F.R. § 1001.952(h). To the extent applicable, the Parties intend to comply with the requirements of the statutory exceptions and "safe harbor" regulations for payments to group purchasing organizations as set forth at 42 U.S.C. § 1320a-7b(b)(3)(C) and 42 C.F.R. § 1001.952(j). The pricing set forth in the Agreement shall be reflective of all price reductions or price concessions that are being provided at the time of purchase.

9. Vendor's Representations and Warranties.

- a) Vendor represents and warrants that all Vendor Personnel providing Services under this Agreement: (1) have been educated and trained, consistent with applicable regulatory requirements and Facility policy; (2) are appropriately licensed, certified or registered, pursuant to applicable local, state, or federal law, to provide the Services contemplated in this Agreement; and (3) have appropriate knowledge, experience and competence as are appropriate for such Vendor Personnel's assigned responsibilities as required by Facility.
- b) If Vendor is providing Products under this Agreement, then Vendor warrants that any Products provided by Vendor under this Agreement will meet and/or conform to all specifications and/or documentation related to such Products, shall be in good and marketable condition free from any liens or security interests, shall be free from any defects, shall comply with all applicable Laws governing the same (including, if applicable, any FDA labeling specifications), and shall not infringe upon the intellectual property rights of any third party.
- c) If Vendor is providing Services under this Agreement, then Vendor warrants that the Services provided under the Agreement will be performed in a professional and workmanlike manner consistent with applicable industry standards and at all times in full accordance with applicable Law.
- d) If Vendor Personnel will be on site at Facility's premises, then Vendor additionally represents that: (1) each person performing Services under this Agreement has been oriented to Facility policies and procedures; (2) it has verified the health status of each such Vendor Personnel as required by his or her duties in providing the Services under this Agreement and as required by all applicable local, state and/or federal laws and regulations (collectively, "Law"); (3) it has performed criminal background checks and/or pre-employment verification of convictions for abuse or neglect (when required by Law) on each such Vendor Personnel; and (4) it has evaluated and reviewed each such person's references, when applicable. Vendor shall provide Facility with evidence of compliance with this paragraph upon request.
- e) Vendor also represents and warrants to Facility that neither Vendor nor any Vendor Personnel is a "Sanctioned Provider" meaning that neither Vendor nor any Vendor Personnel (i) are currently excluded, debarred, or otherwise ineligible to participate in the Federal health care programs, including but not limited to Medicare, Medicaid or TRICARE, as defined in 42 USC § 1320a-7b(f) (the "Federal health care programs"); (ii) are convicted of a criminal offense related to the provision of health care items or services and has not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal health care programs; or (iii) are under investigation or otherwise aware of any circumstances which may result in Vendor or any Vendor Personnel being excluded from participation in the Federal health care programs. This shall be an ongoing representation and warranty during the term and Vendor shall immediately notify Facility of any change in the status of the representation and warranty set forth in this paragraph. Any breach in this representation shall be cause for Facility to terminate this Agreement immediately without any fee, cost, or penalty.

10. **Access to Records.** As and to the extent required by law, upon the written request of the Secretary of Health and Human Services, the Comptroller General or any of their duly authorized representatives, Vendor shall make available those contracts, books, documents and records necessary to verify the nature and extent of the costs of providing Services and/or Products under this Agreement. Such right of inspection shall be available for up to four (4) years after the rendering of such Services or Products. If Vendor is requested to disclose books, documents or records pursuant to this paragraph for any purpose, Vendor shall notify Facility of the nature and

scope of such request, and Vendor shall make available, upon written request of Facility, all such books, documents or records. If Vendor carries out any of the duties of this Agreement through a subcontract with a value of \$10,000.00 or more over a twelve (12) month period with a related individual or organization, Vendor agrees to include this requirement in any such subcontract. This paragraph is included pursuant to and is governed by the requirements to 42 USC § 1395x(v)(1) and the regulations thereto. No attorney-client, accountant-client, or other legal privilege will be deemed to have been waived by Facility or Vendor by virtue of this Agreement. This Paragraph 10 will survive the termination of this Agreement for any reason.

11. **Confidentiality of Patient Information.** Vendor agrees to protect to the fullest extent required by Law the confidentiality of any patient information generated or received by Vendor or Vendor Personnel in connection with the performance of Services or provision of Products hereunder. Vendor specifically acknowledges that in receiving, storing, processing, or otherwise handling records of Facility patients, Vendor may be bound by federal laws governing addictive disease patients, including 42 C.F.R. Part 2. Vendor agrees, if necessary, to resist in judicial proceedings any efforts to obtain access to patient records except as permitted by Law. This Paragraph 11 will survive the termination of this Agreement for any reason.
12. **HIPAA Requirements.** To the extent applicable to this Agreement, Vendor agrees to comply with the Health Insurance Portability and Accountability Act of 1996, as codified at 42 USC § 1320d ("HIPAA") and any current and future regulations promulgated thereunder including without limitation the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 (the "Federal Privacy Regulations"), the federal security standards contained in 45 C.F.R. Part 142 (the "Federal Security Regulations"), and the federal standards for electronic transactions contained in 45 C.F.R. Parts 160 and 162, all collectively referred to herein as "HIPAA Requirements." Vendor agrees not to use or further disclose any Protected Health Information (as defined in 45 C.F.R. § 164.501) or Individually Identifiable Health Information (as defined in 42 USC § 1320d), other than as permitted by HIPAA Requirements and the terms of this Agreement. Vendor shall make its internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the Secretary of Health and Human Services to the extent required for determining compliance with the Federal Privacy Regulations. Vendor's obligation to maintain the confidentiality of HIPAA information shall survive termination of this Agreement. To the extent that Vendor has access to or receives any Protected Health Information or Individually Identifiable Health Information, Vendor agrees to comply with the terms of the Business Associate Addendum attached hereto as **Exhibit D**.
13. **Authorized Signatory.** Vendor acknowledges that only the Chief Executive Officer or Managing Director of Facility is authorized to execute this Agreement on behalf of the Facility or enter into any other transaction or binding the Facility, and that no other employee, agent, officer or any other person has the authority to bind the Facility.

Signatures below by representatives of each of the parties to this Agreement may be done via electronic signature. Pursuant to the *Electronic Signatures in Global and National Commerce Act (E-SIGN)*, S. 761 (106th Congress, 2000) a federal law, effective October 1, 2000, this document is deemed to have the same legal integrity as documents bearing an ink or "wet" signature. All parties to this Agreement acknowledge and represent that the affixed electronic signature carries the same legal weight and authority as the written signature. All parties to this Agreement acknowledge and represent that the electronic signatures have been executed by the individuals named below.

14. **Confidentiality of Facility Information.** In the performance of this Agreement, Facility may disclose its Confidential Information to the Vendor. "Confidential Information" shall refer to the Facility's proprietary or confidential information, trade secrets or know-how, or other sensitive and private information, including, without limitation, service plans, services, patients, markets, developments, processes, designs, drawings, methods, systems, sales and profit figures, pricing, pricing strategies, finances, employee information, and other business information disclosed by the Facility, directly or indirectly, whether in writing, orally or by drawings or inspection of documents or other tangible property. With regard to the Confidential Information, Vendor agrees to take the same steps that it takes to protect its own confidential information from unauthorized disclosure to third parties, but in no event shall it exercise less than a reasonable standard of care based on the nature of such information and, to the extent applicable, subject to any safeguards required by Law. Vendor agrees to only utilize the Confidential Information as necessary to perform its obligations under

this Agreement or to comply with applicable Law. Vendor may disclose the Confidential Information to its employees, agents, attorneys, accountants and other representatives with a need to know such information, provided such individuals are subject to confidentiality obligations no less restrictive than the confidentiality obligations herein. Notwithstanding the foregoing, excluding any personally identifiable information, Confidential Information shall not include information that (i) is or becomes known to the public through no act or omission of Vendor or its employees or representatives; (ii) is already rightfully in the Vendor's possession at the time of disclosure and not otherwise subject to non-disclosure or confidentiality obligations; (iii) is requested or required by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand, demand from a governmental agency of competent jurisdiction, or other similar process to be disclosed, provided that Vendor shall promptly notify Facility of any such request and provide Facility with the reasonable opportunity to contest such disclosure; or (iv) is received by Vendor from another person or entity who is not obligated to keep the same confidential. Within ten (10) business days of the expiration or termination of this Agreement, or upon the request of Facility generally, Vendor shall return all Confidential Information in its possession to Facility (including any copies, synopses, summaries and studies thereof), or destroy such information (including executing file erasure procedures), and provide a certification to Facility confirming the same has been performed. These requirements shall survive for four (4) years following expiration of the Term.

15. **Non Exclusive Agreement.** This Agreement is not exclusive, and either party may contract freely with any other individual or entity for the provision of other similar Services or Products.

16. **Arbitration.**

- a) **Requirement to Arbitrate.** All controversies or claims, past, present, or future, between the parties that otherwise would be resolved in court or before a forum other than arbitration, including, without limitation, disputes arising out of or relating to this Agreement or the breach, termination or validity hereof, shall be determined exclusively by a single arbitrator by final and binding arbitration, in accordance with the provisions of this Agreement. The arbitrator shall base the award on this Agreement and applicable Law and judicial precedent and apply the substantive and procedural Laws of the State in which Facility is located, except that these arbitration requirements shall be governed by and interpreted under the Federal Arbitration Act ("FAA") (9 U.S.C. § 1 et seq.). The decision of the arbitrator shall be binding upon the parties and enforceable in any court of competent jurisdiction. No demand for arbitration shall be made after the date when the institution of legal or equitable proceedings based on such claim, dispute, or other matter in question would be barred by an applicable statute of limitations or repose, and no arbitrator shall have the power to issue any award in an arbitration demanded after such date. Unless prohibited by applicable Law as determined by the arbitrator, the parties agree to equally split the fees and costs of arbitration, including the arbitrator's fees; provided, however, the arbitrator may award the costs and fees of the arbitration to the prevailing party in such manner as may be determined by the arbitrator. Each party will pay for its own costs and attorneys' fees, if any, except that the arbitrator may award reasonable fees to the prevailing party as provided by applicable Law or this Agreement.
- b) **Selection of Arbitrator and Location.** The arbitrator shall be mutually selected by the parties hereto. Unless the parties mutually agree otherwise, the arbitrator must be an attorney licensed to practice in the location where the arbitration proceeding will be conducted or a retired federal or state judicial officer from any jurisdiction. In the event the parties cannot mutually agree on an arbitrator, the arbitration shall be held under the auspices of the American Arbitration Association ("AAA"), under the then current AAA Commercial Arbitration Rules ("AAA Rules"); provided however, that if there is a conflict between the AAA Rules and this Agreement, this Agreement shall govern. If the AAA will not administer the arbitration or is unwilling to administer the arbitration consistent with this Agreement, either party may apply to a court of competent jurisdiction with authority over the location where the arbitration will be conducted to appoint a neutral arbitrator, who shall act under this Agreement with the same force and effect as if he or she had been specifically named herein. The location of the arbitration proceeding shall be in the County (or equivalent geographic jurisdiction) where the Facility is located, unless each party agrees otherwise in writing.
- c) **Authority of Arbitrator and Procedures.** The arbitrator, and not any federal, state, or local court or agency,

shall have exclusive authority to resolve any dispute relating to the validity, scope, applicability, enforceability, or waiver of this Agreement including, but not limited to, any claim that all or any part of this Agreement is void or voidable, except for the Class Action Waiver as defined and described below. Each party may file a dispositive motion and the arbitrator will set a briefing schedule for such motion(s) upon the request of either party. A party may make an offer of judgment in a manner consistent with, and within the time limitations, consequences and effects provided in Rule 68 of the Federal Rules of Civil Procedure. A party may apply to a court of competent jurisdiction for temporary or preliminary injunctive relief in connection with an arbitrable controversy, but only upon the ground that the award to which that party may be entitled may be rendered ineffectual without such provisional relief. The court to which the application is made is authorized to consider the merits of the arbitrable controversy to the extent that it deems necessary in making its ruling. All determinations of final relief, however, will be decided in arbitration. A court of competent jurisdiction shall have the authority to enter judgment upon the arbitrator's decision/award.

- d) Discovery: Arbitration Hearing. Each party may depose three (3) individual fact witnesses and any expert witness designated by the other party. Each party may also propound requests for production of documents to the other party and each party may also subpoena witnesses and documents for discovery or the arbitration hearing, including testimony and documents relevant to the case from third parties, in accordance with any applicable state or federal Law. Additional discovery may be conducted by mutual stipulation, and the arbitrator will have exclusive authority to entertain requests for additional discovery, based on the arbitrator's discretion.
- e) Class Action Waiver. The parties waive any right for any dispute arising from or related to this Agreement to be brought, heard, decided, or arbitrated as a class or collective action and multiple arbitrations may not be consolidated or coordinated before a single arbitrator (the "Class Action Waiver"). Notwithstanding anything to the contrary in this Agreement and/or the AAA Rules (if applicable), any claim that all or any part of this Class Action Waiver is unenforceable, inapplicable, unconscionable, or void or voidable, shall be determined only by a court of competent jurisdiction and not by an arbitrator. This Class Action Waiver shall be severable from this Agreement if there is a final judicial determination that the Class Action Waiver is invalid, unenforceable, unconscionable, void or voidable. In such case, the class and/or collective action shall be litigated in a civil court of competent jurisdiction—not in arbitration—but the part of the Class Action Waiver that is enforceable shall be enforced in arbitration.

This Paragraph 16 does not apply to any claim(s) or disputes that an applicable federal statute expressly states cannot be arbitrated or subject to a pre-dispute arbitration agreement. This Paragraph 16 shall survive the termination of this Agreement for any reason.

- 17. Sanction Monitoring. Vendor agrees to register with Facility's program for the monitoring of federal and state exclusion list sanctions. Facility's sanction monitoring program may be conducted by Facility individually or Facility's third party vendor, requiring registration of information and payment of an annual registration fee by Vendor. Vendor shall remain registered with Facility's sanction monitoring program until expiration or earlier termination of this Agreement.
- 18. Facility Code of Conduct. Vendor acknowledges that Facility conducts its operations and business in full compliance with applicable Law, in accordance with high ethical standards, and in accordance with UHS of Delaware, Inc.'s Corporate Compliance Program and Code of Conduct located at <https://uhs.com/about-universal-health-services/compliance-program/contractors-vendors-suppliers/>. Vendor acknowledges and agrees that (a) it shall perform all obligations under this Agreement in full compliance with all applicable Laws, (b) it has reviewed the Code of Conduct and agrees to perform its obligations under this Agreement in accordance with the principles and spirit of the Corporate Compliance Program and Code of Conduct, and (c) it shall notify Facility of any matters that may come to Vendor's attention that may place Facility or Vendor at risk for non-compliance with the same by contacting UHS of Delaware, Inc.'s Compliance Hotline at 800-852-3449.
- 19. ESG; Anti-Corruption; Anti-Human Trafficking.

- a) Vendor shall at all times comply with all environmental, social and governance (“ESG”) laws and regulations applicable to its performance under this Agreement, as well as all applicable laws and regulations regarding anti-corruption practices. In support of ESG principles, Vendor agrees that it has established, or will establish, policies and procedures addressing its ESG and sustainability practices, including, but not limited to, minimizing the environmental impact of its business practices. Similarly, in connection with its compliance with anti-corruption Laws, Vendor agrees that it has established, or will establish, policies and procedures related to anti-corruption practices. Upon Facility’s reasonable request, Vendor shall provide Facility with a copy of such policies and procedures and otherwise respond to Facility’s inquiries regarding its ESG and sustainability practices and requests for verification of compliance. To the extent applicable, Vendor further agrees to reasonably assist Facility in quantifying, tracking, aggregating and verifying data related to Facility’s use of Vendor’s Products and/or Services as it relates to ESG principles.
- b) Vendor agrees to comply with all applicable federal, international, state and local laws and regulations related to the prohibition of human trafficking and forced labor, including, but not limited to, the Trafficking Victims Protection Act of 2000 and any applicable International Labor Organization standards regarding the same. Vendor shall not (i) engage in or support any form of human trafficking, forced labor, or involuntary servitude; (ii) utilize misleading or fraudulent practices during its recruitment or employment processes; (iii) charge recruitment fees or related costs (as defined by the Federal Acquisition Regulation) to its employees or potential employees; (iv) destroy, conceal, confiscate, or otherwise deny access to an employee’s identification or immigration documents; (v) to the extent Vendor utilizes written employment agreements, fail to provide employees with a written employment agreement containing a detailed description of the terms and conditions of employment in a language the employee understands, or (vi) utilize any employment recruitment agencies or other subcontractors that engage in the foregoing. Vendor warrants and represents that, to the best of its knowledge, neither Vendor nor its agents or subcontractors are engaged in human trafficking or forced labor activity. Vendor agrees to notify Facility immediately if it is in any breach of this Section. In the event of any breach of this Section, Vendor agrees (A) that Facility may terminate this Agreement upon written notice to Vendor without penalty; and (B) to defend, indemnify, and hold the Indemnitees harmless from any Claims asserted against the Indemnitees by third parties, or suffered by the Indemnitees related thereto, that result from such breach.
20. **Product Recall.** If any Product is recalled, whether voluntarily or as required by a governmental agency, then Vendor shall (a) implement the recall in accordance with Laws and government directives, and notify Facility; (b) reimburse Facility for their reasonable costs of patient notification, returning or disposing of the recalled Product; and (c) at its option, either provide no-cost replacement Product or credit or reimburse Facility at the current contracted price for any recalled Product that is not replaced.
21. **Assignment.** Vendor may not assign or otherwise transfer this Agreement or any of its rights or obligations hereunder. Facility may assign or otherwise transfer this Agreement and/or any of its rights or obligations hereunder in its sole discretion at any time without notice to Vendor. If any person or entity unaffiliated with Vendor acquires control of Vendor, directly or indirectly, in a single transaction or series of related transactions, or acquires all or substantially all of the Vendor’s assets at any time, the parties may terminate this Agreement within thirty (30) days following the closing of the acquisition, by giving at least thirty (30) days’ prior written notice designating the termination date. In the event Facility agrees to waive the requirements of this Section 21 and allow Vendor to assign its obligations under this Agreement, Vendor shall delete or destroy all Facility data and Confidential Information that remains in its possession and provide Facility with a certification from an officer confirming the same.
22. **Ownership Interest.** Vendor further represents and warrants that no physician (as the term physician is defined at 42 U.S.C. § 1395x(r)) who is or may be a referral source to Facility nor any “immediate family member” of a physician owns or holds an “ownership or investment interest” in Vendor. For purposes of the preceding sentence, the term “immediately family member” shall have the meaning described in 42 C.F.R. § 411.351 and the term “ownership or investment interest” shall have the meaning described in 42 U.S.C. § 1395nn(a)(2).

23. **Data Ownership and Use.** Notwithstanding anything to the contrary herein, Facility (or its licensors, to the extent applicable) shall be and remain the sole and exclusive owner of all right, title and interest in and to any data or other information provided to Vendor, or accessed from Facility by Vendor, in connection with this Agreement in any manner, including, but not limited, any compilations, aggregations or derivations of such data or information prepared by Vendor. Vendor may only utilize and access such data or information solely for the purposes of providing the Services and/or Products under this Agreement. Vendor may not use such data or information for any other purposes whatsoever, including, but not limited to, data aggregation, benchmarking, aiding in Artificial Intelligence machine learning, or creating derivative information. Upon the expiration or earlier termination of this Agreement, Vendor shall promptly return all Facility data and information to Facility or, upon Facility's approval, permanently delete and/or destroy such data. Vendor shall provide Facility with written certification of such return or destruction upon Facility's request. This provision shall survive expiration or termination of this Agreement for any reason. For purposes of this Agreement, "Artificial Intelligence" means a branch of computer science that uses data processing systems that perform functions normally associated with human intelligence, such as reasoning, learning, and self-improvement, or the capability of a device to perform functions that are normally associated with human intelligence such as reasoning, learning and self-improvement. This definition considers machine learning to be a subset of artificial intelligence.
24. **Severability.** If any part of this Agreement shall be determined to be invalid, illegal or unenforceable by any valid Act of Congress or act of any legislature or by any regulation duly promulgated by the United States or a state acting in accordance with the law, or declared null and void by any court of competent jurisdiction, then such part shall be reformed, if possible, to conform to the law and, in any event, the remaining parts of this Agreement shall be fully effective and operative insofar as reasonably possible.
25. **Notice.** All notices, demands, requests, or other communications required to be given or sent by Facility or Vendor, will be in writing and will be sent by overnight delivery service, commercial courier, hand delivery, or certified mail, return receipt requested, addressed as set forth on the signature page of this Agreement.
26. **Governing Law.** This Agreement shall be construed in accordance with the laws of the state in which Facility is located. Without abrogating the arbitration requirements of this Agreement, any action for injunctive or equitable relief shall be brought exclusively in the state or federal court with jurisdiction over the County in which Facility is located.
27. **Modification and Waiver.** No modification of this Agreement shall be deemed effective unless in writing and signed by each of the parties hereto. Any waiver of a breach of any provision(s) of this Agreement shall not be deemed effective unless in writing and signed by the party against whom enforcement of the waiver is sought. Neither the waiver by any of the parties hereto a breach of or a default under any of the provisions of this Agreement, nor the failure of either of the parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder, will thereafter be construed as a waiver of any subsequent breach or default of a similar nature, or as a waiver of any of such provisions, rights or privileges hereunder.
28. **Force Majeure.** The obligations of either party to perform under this Agreement will be excused during each period of delay caused by acts of God or by shortages of power or materials or government orders which are beyond the reasonable control of the party obligated to perform ("Force Majeure Event"). In the event that either party ceases to perform its obligations under this Agreement due to the occurrence of a Force Majeure Event, such party shall: (1) immediately notify the other party in writing of such Force Majeure Event and its expected duration; (2) take all reasonable steps to recommence performance of its obligations under this Agreement as soon as possible. In the event that any Force Majeure Event delays a party's performance for more than thirty (30) days following notice by such party pursuant to this Agreement, the other party may terminate this agreement immediately upon written notice to such party.
29. **No Rights of Third Parties.** Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors, legal representatives, nor is anything in this Agreement intended to relieve or discharge the obligations or liability of any third persons to any party to this Agreement, nor shall any provisions give any third person any right of subrogation or action over or against any party to this Agreement.

30. **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the matters covered by this Agreement and no other agreement, statement or promise, whether oral or written, made by any party, or made to any employee, officer or Vendor of any party, shall be valid or binding on the other party hereto. Any and all terms and conditions contained in Vendor's sales quote, proposal or other documentation that conflict with, differ from or that are not expressly included in the provisions of this Agreement are rejected by the parties and shall be of no force or effect. Any provision of this Agreement which, based upon its nature, should be reasonably understood to survive expiration or termination of this Agreement shall survive the same.
31. **Conflicts.** This Agreement sets forth the terms and conditions that shall apply to the Services and/or Products provided to Facility by Vendor during the Term. Service and Product specifications, pricing, and other additional terms agreed upon by the parties during the Term shall be set forth in **Exhibit A, Exhibit B** and other attachments / proposals / quotes to this Agreement (collectively, "Service Exhibits"). The Service Exhibits are hereby incorporated into this Agreement by reference and deemed a part hereof. Additional terms in Service Exhibits beyond scope of work, specifications and price are not incorporated into this Agreement and are specifically rejected. In the event of a conflict between a Service Exhibit and this Agreement, this Agreement shall control unless the Parties expressly agree otherwise in writing.
32. **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed original, but all of which together shall constitute one and the same agreement. Scanned, photocopied and facsimile signatures shall be deemed original signatures.

The parties have executed this Agreement as of the date set forth in their respective signature block. This Agreement is finalized on the date of the last signature.

FACILITY

VENDOR

By: _____

By: _____

Its: CEO/CFO/Director _____

Its: _____

Date: _____

Date: _____

Address: _____

Address: _____
