



STANDARD PURCHASE TERMS AND CONDITIONS

As used herein, the term "Seller" shall mean any bidder, offeror, vendor, service provider or other person or entity responding to this procurement opportunity. Upon award of a contract hereunder, the term "Seller" shall apply to the contract awardee (or contractor). "Buyer" shall mean the Community First Health Plans, a non-profit corporation created by the Bexar County Hospital District d/b/a University Health System. Any references to "this contract" or "this agreement" shall mean any contract or agreement anticipated to ultimately be awarded hereunder regardless of whether a formal contractual document is executed or the award is made through notification of the successful bidder, offeror, vendor, service provider or other person or entity responding to this procurement opportunity without a contractual document labeled as such. In the event no formal contractual document is executed, the contract or agreement shall consist of the RFP/IFB (including the specifications/description of work and General Conditions) Seller's response (as accepted and to the extent it does not conflict with the terms contained herein) and these Standard Purchase Terms and Conditions.

Seller and Buyer agree as follows:

1. **SELLER TO PACKAGE GOODS:** If applicable, Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows:
 - a. Seller's name and address;
 - b. Consignee's name, address and purchase order or purchase release number and the supply agreement number if applicable;
 - c. Container number and total number of containers, e.g. box 1 of 4 boxes; and
 - d. The number of the container bearing the packing slip. Seller shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform to requirements of common carrier and any applicable specifications. Buyer's count shall be final and conclusive on shipments not accompanied by packing lists.
2. **SHIPMENT UNDER RESERVATION PROHIBITED:** Seller is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of goods.
3. **DELIVERY TERMS AND TRANSPORTATION CHARGES F.O.B.:** If goods are to be delivered pursuant to the contract, destination freight must be pre-paid unless delivery terms are specified otherwise in the procurement solicitation. Buyer agrees to reimburse Seller for transportation costs in the amount specified in either Seller's bid, or actual costs, whichever is lower, if the quoted delivery terms do not include transportation costs, provided Buyer shall have the right to designate what method of transportation shall be used to ship the goods. If Seller shall fail to make delivery in accordance with the established delivery schedule, the Buyer shall have the right to cancel the purchase in whole or in part and to purchase elsewhere and hold Seller responsible. Buyer reserves the right to invoice Seller for any increased costs incurred by the Buyer on any item purchased elsewhere, when Seller cannot supply according to the terms of the contract.
4. **TITLE AND RISK OF LOSS:** The title and risk of loss of the goods shall not pass to Buyer until Buyer actually receives, takes possession and accepts the goods at the point or points of delivery.
5. **MINIMUM ORDER:** Unless pre-approved by Buyer, minimum order requirements and assessed handling fees by companies are unacceptable terms to the Buyer and will not be honored.
6. **NO REPLACEMENT OR DEFECTIVE TENDER:** Every tender or delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform and the time for performance has expired, then this shall constitute a breach. Seller shall, however, have the right to substitute a conforming tender if the time for performance has not yet expired and the Seller may reasonably notify Buyer of its intention to cure to Buyer's satisfaction.

7. **INVOICES AND PAYMENTS:**
Seller shall submit separate invoices, in duplicate, on each purchase order or purchase release after each delivery, or if this contract is one for services, by the 10th day of each month (unless otherwise specified). Each invoice shall indicate the purchase order number and the supply or service agreement number, if applicable. Invoices shall be itemized and transportation charge, if any, shall be listed separately. A copy of the bill of lading and the freight waybill when applicable should be attached to the invoice. Mail to Accounts Payable Department, Community First Health Plans, 12238 Silicon Drive, Suite 100, San Antonio, Texas 78249-3454.
8. **GRATUITIES:** The Buyer may, by written notice to Seller, cancel this contract without liability to Seller if it is determined by Buyer that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Seller or any agent with a view toward securing this contract or securing favorable treatment with respect to the awarding or amending, or the making or any determinations with respect to the performing of the contract. In the event this contract is cancelled by Buyer pursuant to this provision and without limiting any other rights or remedies available to Buyer, Seller shall forfeit the cost incurred by Seller in providing such gratuities.
9. **WARRANTY-PRICE:** The price shall be contained in Seller's bid which Seller warrants to be no higher than Seller's current prices on orders by others for products of the kind and specification covered by this contract for similar quantities under similar or like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the Seller's current prices on orders by others, or in the alternative, Buyer may cancel without liability to Seller for breach.
10. **WARRANTY-PRODUCT:** Seller shall not limit or exclude any implied warranties or warranties mandated by law or regulation and any attempt to do so shall be of no effect and shall render this contract voidable at the option of the Buyer. Seller warrants that the goods furnished will conform to the specifications, drawings and descriptions listed in the bid invitation, and to the sample(s) furnished by Seller if any. In the event of a conflict between the specifications, drawing, and descriptions, the specifications shall govern.
11. **SAFETY WARRANTY:** To the extent applicable, all goods and/or services provided under this Agreement shall meet or exceed the Safety Standards established and promulgated under the Federal Occupational Safety and Health Administration (Public Law 91-596) and its regulations in effect or proposed as of the date of this Agreement. Additionally, all goods provided under this Agreement shall meet or exceed applicable standards established and promulgated by the Food and Drug Administration. In the event Seller fails to make the appropriate repair or correction within a reasonable time, repair or correction made by Buyer will be at Seller's expense.
12. **RIGHT OF INSPECTION:** Buyer shall have the right to inspect the goods (if any) at delivery before accepting them. Buyer shall have the right to review and inspect the progress of any work or services for which award is anticipated to be made hereunder, at all times.
13. **CANCELLATION:** The Buyer reserves the ultimate right for contract cancellation upon immediate notice should products or services be found to be inferior to specifications or if patient care/ human life is threatened.
14. **TERMINATION:**
 - a. **FOR CONVENIENCE:** This contract may be terminated by Buyer upon sixty (60) days written notice to Seller. Further, the performance of work or delivery of goods under this order may be terminated in whole or in part by the Buyer in accordance with this provision. Termination of work hereunder shall be effected by the delivery to Seller of a "Notice of Termination" thirty days prior to cancellation. In no event shall such termination by Buyer under this Section give rise to any liability on the part of Buyer. Buyer's sole obligation hereunder is to pay Seller for products and/or services ordered and received prior to the date of termination.

- b. **FOR DEFAULT:** This contract may be terminated by Buyer for breach of any material terms or conditions of this contract by the Seller, which breach is not corrected by Seller within ten (10) calendar days after written notice thereof is given to Seller.
 - c. **NON-EXCLUSIVE:** Such rights of termination are in addition to and not in lieu of rights of Buyer set forth in clause.
- 15. **FORCE MAJEURE:** Neither Party shall be required to perform any term, condition, or covenant of this Agreement so long as such performance is delayed or prevented by acts of God, material or labor restriction by any governmental authority, civil riot, floods, hurricanes, or other natural disasters, or any other cause not reasonably within the control of Buyer or Seller, and which by the exercise of due diligence Buyer or the Seller is unable, wholly or in part, to prevent or overcome. If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this contract, then such party shall give notice and full particulars of such Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.
- 16. **ASSIGNMENT-DELEGATION:** Seller shall not assign, in whole or in part, its interest and/or obligations in this contract without the written permission of the Buyer. Any attempted assignment or delegation by Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.
- 17. **WAIVER:** No claims or right arising out of a breach of this contract can be discharged unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.
- 18. **MODIFICATIONS:** This contract can be modified only by a subsequent writing signed by both of the parties through their duly authorized agents.
- 19. **GOVERNING LAW AND VENUE:** This Agreement shall be governed by the laws of the State of Texas. Any dispute or action arising out of or relating to this Agreement shall be brought and maintained only in a state court located in Bexar County, Texas. Seller waives any right to bring action in Federal Court based on diversity of citizenship. The prevailing party in any such action shall be entitled to recover from the non-prevailing party the prevailing party's reasonable attorney's fees, unless prohibited by law.
- 20. **ADVERTISING:** In order to protect Buyer's logo, reputation, and established good-will, Seller shall not use the name, business or trade name, trademarks, or service marks of the Buyer without the prior express written consent of Buyer.
- 21. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer or employee of the Buyer shall make recommendations regarding any contract from which the employee stands to gain financial benefit. Any conflict of interest must be declared according to the Community First Health Plan policy. Any violation of this section, with the knowledge, expressed or implied, of the person or corporation contracting with the Community First Health Plan may render the contract void and non-enforceable at the option of the Buyer.
- 22. **RECORDS RETENTION:** Seller agrees to comply with the following requirements governing the maintenance of documentation to verify the cost of services rendered under this contract:
 - a. Until the expiration of four (4) years after the furnishing of such services pursuant to such contract, Seller shall make available, upon written request, to the Buyer, or any of their duly authorized representatives, the contract, and books, documents, and records of Seller that are necessary to certify the nature and extent of such costs, and
 - b. If Seller carries out any of the duties of the contract through a subcontract, with a value or cost of \$10,000 or more over a 12-month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such

services pursuant to such subcontract, the related organization shall make available, upon written request, to the Buyer, or any of their duly authorized representatives, the subcontract, and books, documents, and records of such organization that are necessary to verify the nature and extent of such costs.

23. **EMPLOYMENT OF PERSONNEL:** Seller agrees to employ, at its own expense, all personnel required in performing the services under this contract. Personnel employed by Seller shall not be employees of, nor have any contractual relationship with Buyer. All personnel engaged in the work shall be fully qualified and shall be authorized or licensed to perform such work as required. This contract does not create an employment relationship, partnership, or joint venture between the Seller, its subcontractors or employees and the Buyer. Neither the Seller nor its subcontractors or employees shall be deemed employees of the Buyer for any purpose whatsoever, and neither shall be eligible to participate in any benefit program provided by the Buyer.

24. **SUBCONTRACTS:**

- a. The Seller may utilize the services of specialty subcontractors on those parts of the work which, under normal contracting practices, are performed by specialty subcontractors.
- b. The Seller shall not award any work to any subcontractor without prior written approval of Buyer, which approval will not be given until the Seller submits to Buyer a written statement concerning the proposed award to the subcontractor. The statement will be required prior to award and shall include:
 - (1) A description of the supplies or services to be called for by the subcontract; and
 - (2) Identification of the proposed subcontractor.
- c. The Seller shall be as fully responsible to Buyer for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by the subcontractor, as Seller is similarly responsible for the acts and omissions of persons directly employed by Seller.
- d. The Seller shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Seller by the terms of this contract insofar as applicable to the work of subcontractors and to give the Seller the same power as regards terminating any subcontract that Buyer may exercise over the Seller under any provision of this contract.
- e. Nothing contained in this contract shall create any contractual relation between any subcontractor and Buyer.
- f. Neither consent by the Buyer to any subcontract nor any provisions thereof nor approval of the Seller's procurement system shall be construed to be a determination of the acceptability of any subcontract price or of any amount paid under any subcontract or to relieve the Seller of any responsibility for performing under this contract, unless such approval or consent specifically provides otherwise.
- g. The Seller agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost-basis.
- h. By submission of a bid or proposal (as the case may be) the Seller agrees that he/she/it will indemnify, defend and hold Buyer harmless from all claims growing out of any demands of subcontractors, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this contract. The Seller shall, at Buyer's request, furnish satisfactory evidence that all obligations of the nature hereinabove designated be paid, discharged or waived. If the Seller fails to do so, then Buyer may, after having served written notice, withhold from the Seller's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Seller shall be resumed, in accordance with the terms of this contract. In no event shall the provisions of this sentence be construed to impose any obligations upon Buyer to benefit either the Seller or his Surety.
- i. All substitution of subcontractors will require written approval from Buyer.

25. **HOLD HARMLESS AND INDEMNITY:** To the extent not prohibited by the laws of the State of Texas, Seller agrees to indemnify and hold harmless the Buyer, its officers, agents and/or employees from and against any and all liability and costs (including attorney's fees) incurred in connection with any claims or demands for damages of any nature whatsoever, including but not limited to bodily injury, death, personal injury or property damage arising from or caused by the intentional or negligent acts or failure to act of Seller, its officers, agents and/or employees, successors or assigns. Seller indemnifies, saves, and holds harmless Buyer against all claims, demands, actions, or causes of action of whatsoever nature or character, as permitted by law, arising out of or by reason of the execution or performance of the work provided for herein and further agrees to defend, at its sole cost and expense, any action or proceeding commenced for the purpose of asserting any claim of whatsoever character arising hereunder.
26. **INSURANCE:** Buyer reserves the right to require insurance coverage to protect Seller and Buyer in amounts deemed appropriate by Buyer for the type of goods or services procured. By way of example, coverage typically is required as follows:
- | | |
|--|---|
| Worker's Compensation | Statutory Amount |
| Employer's Liability | \$500,000/\$500,000/\$500,000.00 |
| Automobile (any auto) | \$500,000 combined single limit |
| Broad Form Commercial General Liability | \$1,000,000 each claim/\$2,000,000 aggregate |
| Including coverage for (but not limited to): | |
| Independent Contractors | |
| Contractual Liability | |
| Personal Injury | |
| Products/Completed Operations | |
| Advertising Injury | |
| Professional Liability | \$600,000 each occurrence/\$1,200,000 aggregate |
27. **CONTRACTING AUTHORITY PROTECTION:** Any and all of the employees of Seller while engaged in the performance of any work required by Buyer under this contract shall be considered employees of Seller only and not of Buyer, and any and all claims that may arise from the Workers Compensation Act on behalf of said employees while so engaged, and any and all claims made by any third party as a consequence of any act or omission on the part of Seller's employees while so engaged in any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of Seller.
28. **EFFECT OF EXTENSIONS OF TIME:** Granting of or acceptance of extensions of time to complete the work or furnish the labor or materials will not operate as a release to the Seller from the covenants and conditions of this contract.
29. **CHANGES AND MODIFICATIONS:**
- If, during the performance of any work or services under this contract, the Seller finds it impracticable to comply strictly with the specifications, the Seller will notify the Buyer immediately in writing.
 - Any proposals by Seller that vary or add to this contract shall be construed as additional terms or modifications and shall not become part of this contract unless accepted in writing by the Buyer.
 - All changes in the work or services contemplated in the solicitation and award hereunder, shall be made only with the prior approval of the Buyer and only by appropriate written change order. The Buyer may, at any time, by a written change order, and without notice to the Surety (if any); make changes within the general scope of this contract. If the change affects the Seller's costs, then the Buyer shall also make an equitable adjustment in the Seller's compensation, after compliance by the Seller with the price request procedure provided below.
 - Where the Buyer foresees issuing a change order affecting Seller's costs, a price request will be issued to the Seller. Unless otherwise specified therein, the Seller shall fully respond to the price request within 10 days of issuance.

30. **PARTIAL INVALIDITY:** If any term, provision, covenant, or condition of this contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.
31. **TITLES AND HEADINGS FOR CONVENIENCE ONLY:** As used throughout this contract, titles and headings of sections are for convenience only, and shall not be used to aid in interpretation of the provisions contained herein.
32. **COVENANT AGAINST CONTINGENT FEES:** The Seller warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach or violation of this warranty, Buyer shall have the right to annul this contract without liability or at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
33. **NON-COLLUSION:** The Seller represents and warrants that: (i) its bid/proposal is genuine and not sham or collusive or made in the interest or in behalf of any person not therein named; (ii) that Seller has not, directly or indirectly, induced or solicited any other person to submit a sham bid/proposal, or refrained any other person, firm, or corporation from submitting a bid/proposal; and (iii) that the Seller has not in any manner sought by collusion to secure itself an advantage over any other bidder/proposer. If at any time it shall be found that the person, firm, or corporation to whom a contract has been awarded has, in presenting any bid/proposal, colluded with any other party or parties, then the contract so awarded shall be voidable by Buyer; and the Seller shall be liable to Buyer for all loss or damage which Buyer may suffer thereby.
34. **TIME OF THE ESSENCE:** The time of Seller's performance of all of the covenants, conditions and agreements of this contract is of the essence to this contract.
35. **REJECTION OF BIDS or PROPOSALS:** Buyer reserves the right to reject any and all bids or proposals (as applicable).
38. **PREPARATION COSTS:** All costs related to responding to this contract, including (if applicable) the cost of any oral presentations required, shall be the sole responsibility of and shall be borne by Seller.
39. **ACCEPTANCE OF FINAL PAYMENT:** The acceptance by the Seller of final payment shall be and shall operate as a release of Buyer on all claims and all liability to the Seller for all things done or furnished in connection with this work and for every act and neglect of Buyer and others relating to or arising out of this work. No payment, however, final or otherwise, shall operate to release the Seller or the Seller's Surety or Sureties from any obligation under this contract or Performance and Payment Bond (if any).
40. **CLAIMS OF NON-PAYMENT/LIMITATIONS:** Unless otherwise agreed in writing or as provided in section 7, above, Seller must invoice Buyer for all accrued claims of monies owed, once a month for the supplies or work performed in the previous month. In the event of non-payment, prior to seeking any judicial recourse, Seller must provide written notice to Buyer within ninety days of the date any invoice is not paid by Buyer. Written notice to Buyer must include documentation which substantiates Seller's claim that payment is justified, including, without limitation, reference to specific applicable contract provisions. **SELLER MUST BRING SUIT WITHIN TWO YEARS OF THE TRIGGERING EVENT FOR ANY CLAIMS RELATED TO THIS CONTRACT, INCLUDING BUT NOT LIMITED TO ANY AMOUNTS CLAIMED TO BE DUE FROM BUYER, OR BE FOREVER BARRED.**
41. **RIGHT TO AUDIT:** At any time during the term of this Agreement and for a period of four (4) years thereafter Buyer or a duly authorized audit representative of Buyer, at its expense and at reasonable times, reserves the right to audit Seller's records and books relevant to all services provided under this Agreement. In the event such an audit by Buyer reveals any errors/overpayments by Buyer, Seller shall

refund Buyer the full amount of such overpayments within thirty (30) days of such audit findings, or Buyer, at its option, reserves the right to deduct such overpayments from any amounts Buyer is required to pay Seller under this Agreement or any Purchase Order.

42. **COMPLIANCE WITH LAWS AND REGULATIONS:** Seller shall comply, and upon request, Seller shall submit evidence of such compliance, with all State and federal certifications, regulations, or licensure requirements pertaining to the services provided hereunder. Seller agrees to give immediate notice to Buyer in the case of suspension or revocation, or initiation of any proceeding that could result in suspension or revocation, of licensure or of any circumstance that would cause Seller to be noncompliant with any such statutes, rules, regulations, standards, or directives.
43. **CONFIDENTIAL INFORMATION:** Seller acknowledges that in connection with the services to be performed under this contract by Seller, Seller or Seller's employees may be acquiring and making use of certain proprietary or confidential information of the Buyer which includes, but is not limited to, management reports, financial statements, internal memoranda, reports, patient lists, and other materials or records of a proprietary nature ("Confidential Information"). Seller shall not use any such information for its own benefit or make such information available to any person, firm, corporation, or other organization, whether or not directly or indirectly affiliated with Seller, unless required by law. Therefore, in order to protect the Confidential Information, Seller shall not after the date hereof use the Confidential Information except in connection with the performance of services pursuant to this contract, or divulge the Confidential Information to any third party, unless the Buyer consents in writing to such use or divulgence or disclosure is required by law.
44. **CONFIDENTIAL PATIENT INFORMATION:** If Seller will have access to patients and patient records, Seller shall adequately instruct all personnel that may provide services pursuant to this contract, regarding the confidentiality and privacy of patients and patients' medical records. All such instructions shall be in accordance with the formal policies and rules of the Buyer and with all federal and state laws and regulations regarding patient and medical record confidentiality. Seller shall not store or maintain any Protected Health Information (PHI) on systems outside the United States or permit access to PHI by offshore personnel. In addition, no work performed by Seller, its affiliates or subcontractors shall use or involve Client Data off-shore that would qualify as PHI. Seller assumes full responsibility for any breach of confidence by its personnel with regard to the provision of services under this contract.
45. **PUBLICITY:** Seller agrees that it shall not publicize this Agreement or disclose, confirm or deny any details thereof to third parties or use any photographs or video recordings of Buyer's employees or patients or use Buyer's name in connection with any sales promotion or publicity event without the prior express written approval of Buyer.
46. **AUTHORITY:** Only the President/CEO or a person designated by the President/CEO in writing or otherwise authorized in Buyer's purchasing policy has authority to bind the Buyer to any contractual commitments, order changes in the scope of work or otherwise incur any costs on behalf of the Buyer. Seller shall not claim, AND WAIVES ANY DEFENSE OR CLAIM THEY MAY HAVE, OF APPARENT AUTHORITY, in accepting direction from any unauthorized person claiming to represent the Buyer.
47. **PRIORITY:** The provisions of these Terms and Conditions constitute material terms of the offer and award of a contract hereunder. By submission of a bid or proposal, Seller agrees that these Terms and Conditions shall take priority in the event of a conflict of terms, over any terms contained in a contract document (if any) provided by Seller and executed by Buyer regardless of whether the contract document contains any clause to the effect that the contract document constitutes the whole agreement between the parties and supersedes any prior agreements. No language contained in a contract document provided by Seller and executed by Buyer shall be construed as to waive or modify the terms contained herein unless such contract document contains a clause specifically agreed to by Buyer as evidenced by Buyer's authorized representative's initials placed immediately after the clause that is intended to override this provision.

48. **NO THIRD PARTY BENEFICIARIES:** Except as may be required to carry out the purposes and intent of the Health Insurance Portability and Accountability Act, nothing in this contract, express or implied, is intended or shall be construed to confer upon any person, firm or corporation other than the parties hereto and their respective successors or assigns, any remedy or claim under or by reason of this contract or any term, covenant or condition hereof, as third party beneficiaries or otherwise, and all of the terms, covenants and conditions hereof shall be for the sole and exclusive benefit of the parties hereto and their successors and assigns.
49. **AUTHORITY OF SELLER:** If Seller is a corporation or a partnership (general or limited), each person submitting this bid/proposal on behalf of Seller represents and warrants as to Seller, that: Seller is an existing corporation or partnership (general or limited), qualified to do business in Texas; the corporation or partnership (general or limited) has full right and authority to enter into this contract; and each person signing on behalf of the corporation or partnership (general or limited) is authorized to do so.
50. **HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA):** During the term of this agreement, Seller may receive from the Buyer, or may receive or create on behalf of the Buyer, certain confidential health or medical information ("Protected Health Information" or "PHI" as further defined below). This PHI is subject to protection under and it is the intent of the parties to be in full compliance with state and federal law, including the Health Insurance Portability and Accountability Act, the Health Information Technology for Economic and Clinical Health Act, Texas Health and Safety Code Chapter 181, and implementing regulations issued pursuant thereto (collectively "HIPAA" herein). To the extent that HIPAA applies and Seller is considered a "Business Associate," Seller shall comply with the terms of provisions (including subsections) applicable to Business Associates and Recipients.
- a. **Catch-all definition:** The following terms used herein shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.
- b. **Specific definitions:**
- (1) **Business Associate.** "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean Seller if it receives from the Buyer, or may receive or create on behalf of the Buyer, Protected Health Information (PHI) and a recognized exception to HIPAA does not apply. If Seller believes a HIPAA recognized exception applies, Seller shall present evidence to Buyer, sufficient to establish the exception for Buyer to determine if an exception applies to Seller.
- (2) **Covered Entity.** "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean Buyer or University Health System or its affiliates.
- (3) **HIPAA Rules.** "HIPAA Rules" shall collectively refer to the regulations related to HIPAA and/or the HITECH Act, including, but not limited to, the Privacy Rule, Security Rule, and Omnibus Rule.
- c. **Obligations and Activities of Seller**
- (1) **Legal Obligations.** Seller is required by law to comply, and hereby agrees to comply, with the applicable requirements of: (i) the HIPAA Rules; (ii) the applicable provisions of the HITECH Act; (iii) Chapter 181 of the Health and Safety Code; and (iv) §§ 521.052(a) and 521.053 of the Business and Commerce Code. Seller hereby agrees to maintain the security and privacy of all PHI, including ePHI, in a manner consistent

with such laws and regulations and any other applicable state or federal laws and regulations and further agrees that any regulations and/or guidance issued by HHS that relate to the obligations of Seller shall be deemed incorporated into and made a part of this Agreement.

- (2) Permitted Use and Disclosures. Seller agrees not to use or disclose PHI other than as permitted or required by this Agreement or as required by law.
- (3) Safeguards. Seller agrees to use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent the use or disclosure of PHI other than as provided for by this Agreement or as required by law. Seller agrees to implement a comprehensive written privacy and security program that includes administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of ePHI that it creates, receives, maintains or transmits on behalf of Buyer in compliance with the HIPAA Security Rule. If requested, Seller agrees to provide Buyer with a copy of Seller's privacy and security program prior to the execution of this Agreement. Seller further agrees to provide Buyer with information concerning such safeguards as Buyer may from time to time request.
- (4) Mitigation of Unauthorized Uses or Disclosures. Seller agrees to mitigate, to the extent practicable, any harmful effect that is known to Seller of a use or disclosure of PHI by Seller or by any subcontractor or agent of Seller (or any downstream contractor of any such subcontractor or agent) in violation of the requirements of this Agreement.
- (5) Duty to Report Unauthorized Uses or Disclosures and Security Incidents. Seller shall report to the Buyer within five (5) business days of such discovery any use or disclosure of PHI not provided for by this Agreement and/or any security incident of which Seller becomes aware whether such unauthorized use or disclosure was made by, or such security incident involves, Seller, its workforce or any subcontractor or agent of Seller (or any downstream contractor of any such subcontractor or agent), including, but not limited to, any breach of unsecured protected health information as required at 45 CFR 164.410. Such report shall include the patient name, contact information, nature/cause of the unauthorized use or disclosure or security incident, PHI so used or disclosed or subject to the security incident, and the date or period of time during which the unauthorized use or disclosure or security incident occurred as well as any other available information Buyer is required to include in its notification to the individual(s), the HHS Office for Civil Rights (OCR), and potentially the media. Seller shall further be responsible for any and all costs related to notification of any security or privacy breach reported by Seller to Buyer to impacted individuals or next of kin (if the individual is deceased), the HHS Office for Civil Rights (OCR), and/or the media.. Buyer shall be permitted to investigate any such report and to examine Seller's premises, records and practices and interview/examine personnel, including personnel of any subcontractor or agent of Seller, regarding such unauthorized use or disclosure or security incident. Seller shall take prompt corrective action to cure any deficiencies and shall perform any action pertaining to such unauthorized use or disclosure or security incident required by applicable federal or state laws or regulations.
- (6) Agents and subcontractors. Seller shall require each subcontractor and agent of Seller that creates, receives, maintains, or transmits PHI to sign a written agreement that binds such subcontractors and agents to the same restrictions and conditions that apply to Seller pursuant to this Agreement.
- (7) Designated Record Set. To the extent it is determined Seller maintains a Designated Record Set, Seller agrees to follow 45 CFR §164.524 (Access of Individuals to PHI), 164.526 (Amendment of PHI) and 164.528 (Accounting of Disclosures of PHI) of the HIPAA Privacy Rules. Seller will notify Buyer's Privacy Officer within ten (10) business days if it receives a request from an individual for access, amendment or accounting to such individual's PHI maintained in the designated record set and Buyer shall be responsible for responding to such requests from the individual.
- (8) Right to Audit. Seller agrees to make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI available, to Buyer and/or to the Secretary in a time and manner either agreed to by both parties, or in

a time and manner designated by the Secretary, for purposes of the Secretary determining compliance with the HIPAA Rules and the HITECH Act and its implementing regulations.

- (9) Prohibition of Sale of PHI. Seller shall not directly or indirectly receive remuneration in exchange for any PHI of an individual except as permitted by the HITECH Act and its implementing regulation.
- (10) Health and Safety Code Requirements. Seller shall not: (i) sell PHI in such a way as to violate Section 181.153 of the Health and Safety Code; (ii) use PHI in such a manner as to violate Section 181.152 of the Health and Safety Code; or (iii) attempt to re-identify any information in violation of Section 181.151 of the Health and Safety Code, regardless of whether such action is on behalf of or permitted by Buyer.
- (11) Encryption. To the extent feasible, Seller must use commercially reasonable efforts to secure PHI through technology standards that render such PHI unusable, unreadable, and indecipherable to individuals or entities unauthorized to acquire or otherwise have access to such PHI in accordance with guidance promulgated by DHHS or issued by the National Institute for Standards and Technology ("*NIST*") concerning the protection of identifiable data such as PHI.

d. **Permitted Uses and Disclosures by Seller.**

- (1) General Use and Disclosure Provisions. As specified in this Agreement, Seller may create, receive, maintain, or transmit PHI as necessary to perform its obligations to Buyer under this RFP and/or Agreement. Seller may not use or disclose PHI in a manner that would violate the HIPAA Rules. Without limiting the foregoing, when creating, requesting, using, transmitting or otherwise disclosing PHI, Seller shall comply with the Privacy Rule's "minimum necessary" requirements.
- (2) Specific Use and Disclosure Provisions. Seller may use PHI, if necessary, for the proper management and administration of the Seller or to carry out the legal responsibilities of the Seller but only if and to the extent authorized by the Privacy Rule, and provided that disclosures are required by law, or Seller obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Seller of any instances of which it is aware in which the confidentiality of the information has been breached.

e. **Terms and Termination.** Seller shall, upon termination of this agreement for any reason, return to the Buyer, or at Buyer's direction, destroy all PHI received from, or created or received by Seller on behalf of the Buyer that Seller still maintains in any form and retain no copies of such information. If such return or destruction is not feasible, Seller shall extend the protections of this agreement and HIPAA to the information and shall limit further uses and disclosures, to those purposes that make the return or destruction of the information infeasible.

f. **Regulatory References.** A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

g. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

h. **Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

- i. **Indemnity.** Seller shall fully indemnify and hold harmless the Buyer and the appointed officials, employees, officers, directors, volunteers and representatives of the Buyer, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes-of-action, liability and suits of any kind and nature made upon the Buyer directly or indirectly arising out of, resulting from or related to Seller's activities or obligations under this provision (including subsections), including any acts or omissions of Seller, any agent, officer, director, representative, employee, consultant or subcontractor of Seller, and their respective officers, agents, employees, directors and representatives, all without however, waiving any governmental immunity available to the Buyer under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this indemnity are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- j. **Injunctive Relief.** Recipient agrees that violation of any of the provisions contained in this Article would result in irreparable harm to the Health System.
- k. **Survival of Terms.** The obligations of Seller relative to, and the provisions contained in this provision (including subsections) shall survive termination and be ongoing.

53. **ACCESS TO BUYER'S INFORMATION ASSETS:** Any access by Seller to Buyer's information assets shall require Seller to comply with Buyer's security processes and requirements prior to access. Seller agrees to comply with and to supply any executed documents and information reasonably required by Buyer to help insure security and preservation of the integrity of Buyer's information assets. Buyer agrees to keep social security numbers confidential and secure.

54. All disputes, controversies or differences arising out of this Agreement or any claimed breach shall be attempted to come to resolution where both parties shall meet and confer in good faith to discuss and resolve any disputes in a reasonable amount of time. Any issues that are unable to come to resolution within 90 days after notification of said dispute shall be settled in a court of law in San Antonio or Bexar County, Texas. The decision of the Court shall be final and binding. Unless otherwise directed by CFHP in writing (Vendor Name), shall continue to perform the Services pursuant to this Agreement during review by the Court and CFHP will continue to pay undisputed fees.

Vendor Signature

Date

Buyer

Date