



Legacy Health Purchase Terms & Conditions

- 1. AGREEMENT.** These Purchase Terms and Conditions together with a Legacy Purchase Order are the entire agreement ("Agreement") with respect to the products ("Products") and Services ("Services") purchased and software ("Software") licensed by the vendor identified on the attached Purchase Order ("Vendor") to the Legacy entity identified on the attached Purchase Order ("Legacy"). No change in the provisions, terms, or conditions of this Agreement can be made without Legacy's prior written consent and Legacy objects to and rejects Vendor's provisions, terms and conditions in any Vendor sales quotation, order acknowledgement, "click through" terms, or other Vendor document. Notwithstanding the foregoing, the Purchase Order may reference a Vendor quotation or proposal to identify the Products, Services, and Software to be provided and the specifications, quantities, term, statement of work, project plan and price therefore (collectively the "Quotation Terms"), but all other terms and conditions are expressly rejected and stricken. To the extent that there is any inconsistency or conflict between the terms of this Agreement and the Quotation Terms, this Agreement shall control. Legacy may change these Purchase Terms and Conditions from time to time, but any such changes will not affect Products, Services or Software previously provided by Vendor and Accepted by Legacy. Included with the purchase and license price are three (3) days of no-charge in-house training and two (2) copies of the user manuals and specifications.
- 2. FORMATION OF CONTRACT.** This order is for the purchase of the Products and/or Services (including but not limited to installation and warranty Services) described in the Purchase Order and is Legacy's offer to Vendor. Vendor accepts this offer and a contract is created according to the terms and conditions of this Agreement upon the earlier of the following. a) any form of acknowledgment hereof by Vendor sent to Legacy; b) commencement of shipment of the Products, Software and/or supplying of Services; or c) acceptance of any payment from Legacy. Purchase or license of the Products, Services or Software identified in the Purchase Order does not commit or obligate Legacy to purchase or license any future Products, Services or Software.
- 3. SHIPMENT.** All Software media and Products will be shipped F.O.B. Destination to the Legacy facility identified on the Purchase Order. Vendor will notify Legacy's Supply Chain Management Department immediately if Vendor is unable to perform by the specified dates. If delivery of Products or Software or completion of Services is not performed by the specified dates, Vendor will be in breach of this Agreement. Time is of the essence. All shipments must be delivered between the hours of 7.30 AM and 2.00 PM Monday through Friday. A packing list bearing Legacy's order number and Vendor's invoice number must be enclosed with each shipment. All transportation charges must be prepaid unless otherwise stated on the face of the Purchase Order. If transportation is to be billed as a separate item, the receipted freight bill must accompany Vendor's invoice. COD shipments will not be accepted. The specific quantity ordered must be delivered in full and not be changed without Legacy's authorized consent. Any unauthorized quantity is subject to Legacy's rejection and return at Vendor's expense and risk. The Products and any Software media shall be packed and shipped by Vendor in accordance with Legacy's instructions and good commercial practice to ensure that no damage shall result from weather or transportation.
- 4. INVOICES.** The Purchase Order number must appear on all invoices, packing slips and correspondence. Vendor is required to submit a separate invoice for each shipment against the Purchase Order, or for each payment required under the Purchase Order, all invoices are to be emailed to accountspayableinvoiceonly@lhs.org preferably. If you cannot email the invoice then it should be addressed to the attention of Legacy Health System, Accounts Payable, PO BOX 2904, PORTLAND, OR 97208-2904. Payment of all undisputed Vendor invoices is due no earlier than 60 days after it is received by Legacy unless prompt payment terms and discounts or other negotiated payment terms are applicable. All invoices must be itemized, as applicable, by hours worked, narrative, hourly rate, price, employee providing Services, and Product or Software provided. Travel expenses are paid pursuant to Legacy's policy. Under no circumstances will Legacy reimburse the travel time of Vendor's Staff (defined below). Vendor shall keep accurate accounting records in support of all billings to Legacy which Legacy, or its audit representatives, may, at a reasonable time upon advance notice, inspect such records. There will be no additional charges to Legacy, except as provided in the Purchase Order, without Legacy's written consent.
- 5. TAXES AND EXPENSES.** Legacy will be responsible for payment of those taxes which Legacy (as a purchaser) is required by statute to pay or which Vendor (as a seller) is required by statute to collect from Legacy and remit to an appropriate taxing authority. Otherwise, unless specified to the contrary on the face of the applicable purchase

order, all costs, fees, charges, expenses, taxes, and penalties arising out of the applicable purchase order (including but not limited to, all shipping, transportation, freight, handling, storage, carriage, rigging, packing and unpacking, installation of Products and insurance costs, all federal, state and local taxes), shall be paid by Vendor, and Vendor shall be solely liable therefore and defend, indemnify and hold Legacy harmless therefrom. If Legacy chooses to make any such payment, Vendor shall reimburse Legacy in full upon demand by Legacy, or Legacy may at its option elect to deduct such payments from the total purchase price.

7. **CHARGES.** It is agreed that any cash discount period will date from the receipt of the Products or from the date of the receipt of the invoice, whichever is later. It is further agreed that no penalties, interest, late fees, collections fees (including but not limited to attorney's fees) and other charges for late payment will be imposed upon or collected from Legacy by Vendor for any invoice or other fee not paid in a timely manner.
8. **BEST PRICE.** Vendor warrants to Legacy that the price charged is at least as low as the price now given, under similar volumes, by Vendor to any other customer for the Products, Software and Services. In the event Vendor breaches this warranty, the prices of the Products shall be reduced accordingly retroactive to the date of such breach.
9. **ACCEPTANCE/REJECTION.** All Products, Software and Services are subject to Legacy's inspection, notwithstanding prior full or partial payment. All Products, Software and Services furnished shall be exactly as specified in the Purchase Order, free from all defects in quality, design and workmanship, and shall be subject to a reasonable period of inspection and test by Legacy. At the end of such inspection and testing, Legacy may either accept ("Acceptance") or reject the Products, Software, and Services. Notwithstanding final acceptance and payment, Vendor shall be liable for latent defects, fraud, such gross mistakes as amount to fraud, and the Vendor's warranty obligations. If, prior to Legacy's final acceptance of any Products, Software and Services, any of the Products, Software and Services contracted for herein are found to be incomplete, defective or not as specified in the Purchase Order, Legacy may reject them and/or require Vendor to correct or replace them without charge. If Vendor is unable or refuses to correct or replace such items within a reasonable time, Legacy may cancel the Purchase Order in whole or in part, in addition to all other remedies provided by the Uniform Commercial Code. Any and all Products rejected by Legacy will be held or stored for Vendor's instruction and at Vendor's sole risk and expense and, if Vendor so directs or Legacy so desires, will be returned to Vendor at Vendor's sole risk and expense. Vendor shall bear all risks as to rejected Products and shall reimburse Legacy for all transportation costs, other related costs incurred, or Legacy's payments to Vendor for Products, Software and Services under the Purchase Order.
10. **WARRANTY.** Vendor expressly warrants the following for one year from Acceptance: a) that the Products shall be merchantable and fit for their particular purpose; b) that the Products and Software shall be free from all defects in material, workmanship and design; c) that the Products or Software delivered or Services performed will be in accordance with all of Legacy's specifications, drawings and other description; d) that all documents and information provided to Legacy regarding the Products and Software are accurate; e) that the Products and Software conform to and will perform in accordance with published specifications; f) that all of the Products and Software are the manufacturer's latest models in production and only contain standard, new parts and components and do not contain used or recycled parts or components; g) that all Products supplied, hereunder that are electrical, patient-related and/or for purposes of medical diagnostics, shall fully comply with Legacy's appliance/equipment standards as documented in Legacy policy LHS.800.10 Electrical Clinical Equipment Acquisitions. These requirement standards include, but are not limited to, testing and approval by Underwriter's Laboratory; h) that all Products will be safe for use; h) that all disposable Products will be unadulterated, properly labeled and stored until delivery, and fresh through the date on the package; i) that all Services will be performed in a professional manner consistent with specifications and industry standards; j) that Vendor's Staff (defined below) possess the requisite licenses, expertise, and equipment necessary to perform the Services; k) that the Software does not contain any virus or other malicious code that may disable the Software or Legacy's computers or computer network and will interface with Legacy's information system, network, and any equipment with which the Software is required to interface; and l) that Vendor has good and clear title to all Products and Software sold or furnished under the Purchase Order or has the right to sell or license them to Legacy without Legacy being subject to any claim, litigation, or additional costs, fees or royalties.

All warranty periods begin upon Acceptance by Legacy. All warranties made by Vendor in this section and all warranties prescribed by law shall run to Legacy, Legacy's employees, agents, assigns, patients, and to users of the Products for a period of one (1) year after Acceptance, or such longer period as may be prescribed by law or by additional agreement. If Legacy shall give the Vendor notice of any defect or non-conformity of any Products herein and such defect has arisen during the warranty period, then the Vendor shall, at no cost to Legacy and with all reasonable speed, furnish a replacement, repair the Products or refund the purchase price at the sole option of Legacy. Legacy shall not be deemed to have waived any warranty by reason of Acceptance or receipt of or payment

for the Products. If required to do so by applicable law, Vendor shall provide Legacy with a Material Safety Data Sheet for the Products being sold or furnished by Vendor to Legacy.

11. **TRAINING.** Within thirty (30) days of the delivery and installation, Vendor agrees to provide End-User training in the safe and appropriate use of the Products and Software to Legacy at no additional charge. Such training will take place at Legacy and shall be scheduled by mutual agreement of Legacy and Vendor. As used in this Section, "End Users" include employees, contractors and agents of Legacy who will use the Equipment on a day-to-day basis. At least one (1) Legacy employee or contractor per site (a "Trainer") shall be trained by Vendor in trouble shooting and maintenance of the Products and Software. During the term of this Agreement, Vendor shall also notify Legacy of any Vendor- sponsored update training, user groups, focus groups, or standards-of-practice training related to the Products and Software ("System Update Training"). Vendor will pay for the seminar and reasonable travel costs of one (1) Legacy employees or staff per site to attend the System Update Training. The System Update Training shall be considered part of the purchase price of the Products and Software. In the event multiple System Update Training sessions are held, Legacy will be able to attend the session geographically closest to Legacy's place of business. Attendance at any System Update Training by Legacy's employees or staff neither obligates Legacy to nor implies that Legacy will purchase any future products or services from Vendor.
12. **CHANGES.** Legacy at any time may make changes or amendments to the Purchase Order, the quantities ordered or to any specifications or drawings related to the Products, Software and Services ordered or may change or amend any other term or condition of the Purchase Order in which event an equitable adjustment will be made to any price, time of performance and/or other provision of this Agreement required to be changed thereby. Any claim for adjustment must be made in writing within fifteen (15) days from the date of receipt by Vendor of notice of such change. This Agreement may not be modified except in a writing manually signed by both parties that specifically references this Agreement. No terms contained in any purchase order, order acknowledgement, packaging insert, invoice, or payment method will be binding on either party. No "click-through," "shrink-wrap," "browse-wrap", vendor registration, or other terms that have not been specifically negotiated by the parties, whether before, on, or after the date of this agreement, will be effective to add to or modify the terms of this agreement or binding on the individual clicking through such terms, regardless of any party's "acceptance" of those terms by electronic means.
13. **CANCELLATION/TERMINATION.** Prior to Vendor's complete performance under the Purchase Order, Legacy may terminate the Purchase Order, in whole or in part, at any time, for Legacy's convenience, by notice to Vendor in writing. Upon receipt of such termination notice Vendor shall, as and to the extent directed by Legacy, immediately stop work under the Purchase Order and terminate work under any subcontracts outstanding. If the Purchase Order is so terminated, Vendor shall be paid in accordance with the terms of the order for Products delivered to and accepted by Legacy and for Services performed and accepted by Legacy. Vendor shall immediately refund to Legacy any monies already paid by Legacy under the Purchase Order for Services not yet rendered or Products not yet delivered to and Accepted by Legacy. Vendor's remedies and damages for Legacy's termination shall be limited to such payments. LEGACY SHALL NOT BE LIABLE TO VENDOR OR ANY THIRD PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL DAMAGES, LOST PROFITS, OPPORTUNITY COST, OR ATTORNEY'S FEES ARISING OUT OF OR RELATED TO LEGACY'S PERFORMANCE OR BREACH OF THIS AGREEMENT.
14. **INDEMNITY.** Vendor shall indemnify, hold harmless and defend Legacy, all of Legacy's parent and affiliated entities ("Legacy Entities"), and Legacy's and Legacy's Entities' employees, trustees, directors, officers, agents, assigns, patients, insurers and users of the purchased or furnished Products, Software and Services from and against all actions, suits, liability, claims, fines, damages, losses and expenses (including attorney's fees through trial and upon appeal) related to or arising out of: a) the injury, sickness or death of any person, or the injury or destruction of any property, arising out of the purchase, furnishing and/or use of the Products or Software purchased or furnished hereunder and/or arising out of Vendor's (or its subcontractor's) Services or performance hereunder, caused in whole or in part, directly or indirectly by any act, omission or fault of Vendor, any of its subcontractors, any of its employees, or anyone else for whose acts Vendor may be responsible (collectively "Vendor's Staff"); b) the failure of Vendor to timely deliver the Products purchased or furnished hereunder; c) the failure of Vendor to fully comply with any of the terms and conditions of this Agreement; d) any claim, ruling or finding by the United States of America or any state or local government or any agency or instrumentality thereof that the Products are not as herein warranted; e) any alleged or actual infringement of any patent, trade name, trademark, copyright or trade secret by reason of the sale or use of any Products purchased or furnished hereunder; and f) violation of any law or breach of this Agreement by Vendor or Vendor's Staff. This Section shall survive the termination or expiration of this Agreement for any reason.
15. **INDEPENDENT CONTRACTOR.** Vendor and Vendor's Staff are independent contractors and not employees of Legacy. Vendor's Staff are not eligible for and may not participate in any Legacy benefit and retirement plan or leave

program. Vendor's Staff are not covered by Legacy's workers' compensation insurance. Any work product produced by Vendor or Vendor's Staff in performing the Services, whether delivered to Legacy or not, during the term of this Agreement will be owned by Legacy, is "work made for hire," and Vendor assigns such ownership rights to Legacy as if created by Legacy. This Agreement does not create a relationship between Legacy and Vendor or Vendor's Staff of employer- employee, principal-agent, joint venture, partnership or of any other kind except that of independent contractors.

16. **CONFIDENTIALITY.** "Confidential Information" includes all Legacy nonpublic information protected by law, contract, Legacy policy, as a trade secret or other intellectual property or which is otherwise of value or proprietary to Legacy and which is shared with or obtained by Vendor or Vendor's Staff while performing the Services. Vendor agrees that neither it nor Vendor's Staff: a) will copy or remove any Confidential Information from Legacy premises; b) will use any Confidential Information for its benefit or the benefit of any third party except to provide the Services; or c) will disclose or reveal any Confidential Information to any third party without Legacy's prior written consent. Vendor will maintain the confidentiality of all Confidential Information and safeguard it against loss or unauthorized disclosure. The parties' rights for breach of confidentiality shall survive termination of this Agreement for any reason whatsoever and in the event of such breach, the non-breaching party will be entitled to equitable relief (including, without limitation, injunctive relief) in addition to all other remedies provided under this Agreement or available at law. If Vendor's Staff will have direct access to personally identifiable patient health information, Vendor will enter into and abide by Legacy's Business Associate Agreement under the Health Insurance Portability and Accountability Act of 1996.
17. **MEDICARE DISCLOSURE/ACCESS.** If required by law, the Comptroller General, Department of Health and Human Services ("DHHS") and their duly authorized representatives shall have access to this Agreement and records for all times covered by this Agreement necessary to verify the nature, extent and costs of service provided by Vendor and included in Legacy's cost report, both during and for four (4) years after this Agreement terminates. This access shall be provided in accordance with the provisions of Public Law 96-499, Omnibus Reconciliation Act of 1980, as amended. The Comptroller General and his/her duly authorized representative shall have similar access to Agreements subject to 42 USC 1395 between Vendor and any organization related to Vendor and to books, documents and records of Vendor and such organizations solely as they relate to the performance under this Agreement.
18. **DISCOUNTS.** Any discounts, rebates, and incentives ("Discounts") provided in the Agreement were negotiated in a commercial transaction at arms' length. The parties understand and agree that Legacy may not and will not refer an individual or purchase, lease, order or arrange for or recommend the purchase, lease or order of any good, facility, service or item from Vendor in exchange for vendor providing the Products and Software and/or any Discounts on the Products and Software. Legacy will report all Discounts based on information provided from Vendor and Vendor represents and warrants that all pricing and Discount information it provides is true and correct to the best of its knowledge at the time it is provided.
19. **INSURANCE.** Vendor will maintain at its own expense the following insurance: (i) commercial general liability (including personal injury, contractual liability, products and completed operations, cross liability/separation of insureds) with a minimum limit of \$1,000,000 per occurrence; (ii) automobile liability covering owned, non-owned, hired and other vehicles, with a combined single limit of \$1,000,000 for bodily injury and property damage liability per occurrence; (iii) umbrella/excess with minimum limits of \$5,000,000 per occurrence in excess of the commercial general liability coverage, automobile liability and employers' liability policies' limits; (iv) professional liability with minimum limits of \$5,000,000 per claim; (v) workers' compensation and employers' liability with statutory limits as required by the workers' compensation laws in the state in which the work is being performed hereunder; (vi) network security and privacy liability with minimum limits of \$5,000,000 per incident if the work involves access to Legacy computer systems or confidential/private information; (vii) contractors' pollution liability with minimum limits of \$5,000,000 per claim and \$5,000,000 aggregate if work being performed includes any installation, construction or alterations at any Legacy facility or if work involves hazardous materials, lead or asbestos abatement; (viii) third party product recall liability with minimum limits of \$1,000,000 per event if Vendor is supplying, handling, or processing food products; and (ix) employment practices liability in the amount of \$1,000,000 if Vendor is a temporary staffing Legacy or is providing workers for Legacy. If Vendor is a temporary staffing Legacy or there is an employee exchange agreement or if Vendor is providing workers for Legacy, the workers' compensation and employers' liability coverage must include an alternative employer endorsement naming Legacy. Each of the above Vendor policies must be on an occurrence basis and (except for coverages (iv) through (ix) above) must provide Legacy with additional insured status. A copy of the additional insured endorsements (to the extent additional insured status is required) must be provided with a certificate of insurance as well as an endorsement stating the policies are primary as to any other insurance available to Legacy. All Vendor policies must contain a waiver of subrogation in favor of Legacy. All insurance must be issued by an insurance carrier with an A.M. Best's rating of at least A- VII. All insurance carriers must provide a minimum thirty (30) calendar written notice if the coverages afforded above

are canceled or not renewed. Vendor will be responsible for payment of any and all deductibles or self-insured retentions under its insurance policies. Notwithstanding the foregoing, Vendor will not self-insure or maintain deductibles on any of the insurance required by this Agreement over the amount of \$100,000 without prior written consent of Legacy.

20. **COMPLIANCE.** Vendor, Vendor's Staff, and any Software or Products provided to Legacy will comply with all federal, state, and local laws applicable to them. Without limiting the foregoing, Vendor warrants: a) that the Products are properly labeled and in compliance with the Federal Trade Commission Act; b) that the Products are not adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act; c) that, if required, the Products are in compliance with the Federal Insecticide, Fungicide and Rodenticide Act, as amended by the Federal Environmental Pesticide Control Act of 1972; d) that the Products are not hazardous substances or, if they are hazardous substances, are not misbranded or banned within the meaning of the Federal Hazardous Substances Act; e) that all Products and Software furnished hereunder will be produced and sold in compliance with applicable requirements of the Fair Labor Standards Act; f) that the Products are in compliance with the requirements of the Occupational Safety and Health Act of 1970 as amended; g) that reasonable and representative tests, made according to the procedures prescribed in the Flammable Fabrics Act or any applicable codes of the National Fire Prevention Association (NFPA) show that any fabrics used or contained in the Products conform to such of the above-mentioned flammability standards. Vendor and Vendor's Staff will comply with Legacy's patient care and vendor access policies while at Legacy and Vendor possesses the requisite licenses, expertise, and equipment necessary to perform the Services. Neither Vendor nor Vendor's Staff performing Services for Legacy are excluded from participation in Medicare or Medicaid programs. In the event that Vendor or any of Vendor's Staff who provide Services under this Agreement is or becomes excluded from Medicare or Medicaid, Vendor shall immediately notify Legacy. Vendor consents and represents that it has received informed consent from its employees and agents to review the criminal and OIG exclusion background of the Vendor and Vendor's Staff. Vendor will conduct a criminal background check on Vendor's employees assigned to Legacy prior to the start of any services performed at a Legacy facility.
21. **EQUAL EMPLOYMENT OPPORTUNITY.** This contractor and all covered subcontractors shall abide by the requirements of 41 CFR §§ 60-1.4(a), 29 CFR Part 741, Appendix A to Subpart A, 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.
22. **MISCELLANEOUS.** Vendor shall not, without first obtaining the written consent of Legacy, in any manner, advertise or publish the fact that Vendor has contracted to furnish Legacy the Products and/or Services herein contracted for. Vendor shall not use, reproduce or disclose to anyone other than Legacy any material, tooling, dies, drawings, designs and other property or data furnished by Legacy and Vendor shall not use the same to produce or manufacture more Products than are required hereunder. Title thereto shall remain in Legacy at all times. Vendor shall bear the risk of loss or damage to such property furnished by Legacy unless such loss or damage is solely, directly and proximately caused by Legacy's negligence. All such Legacy furnished property, together with spoiled and surplus materials, shall be returned to Legacy at termination, cancellation or completion of the Purchase Order unless Legacy shall otherwise direct. Clerical, mathematical, and typographical errors committed in the execution of this purchase order document are subject to correction by Legacy. Notices must be in writing and delivered either by hand, by facsimile with confirmation of receipt, or certified mail, return receipt requested, effective to Legacy upon receipt by Legacy's Chief Legal Officer. Failure of either party to exercise any of its rights under this Agreement is not a waiver of any rights for subsequent breach. This Agreement may not be assigned, in whole or in part, by Vendor without the written consent of Legacy; any such assignment is void. This Agreement will be governed by the laws of the State of Oregon and all disputes arising under this Agreement will be resolved in the federal or state courts within Multnomah County, Oregon. If any part of this Agreement is unenforceable, the remainder will remain in full force and effect. This Agreement, any part of this Agreement or any document required to be signed under this Agreement may be signed in counterparts and/or by facsimile.