



**UPMC** | University of Pittsburgh  
Medical Center

***Supply Chain Management***

*U.S. Steel Tower, 59th Floor, 600 Grant Street, Pittsburgh, PA 15219  
Main 412.647.8070*

**PURCHASE / SERVICE AGREEMENT**

\_\_\_\_\_ Service

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ATTACHMENT A - Affiliate List

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THIS AGREEMENT (the "Agreement"), entered into as of between with its principal office at -----  
----("Supplier"), and UPMC, with its principal office located at US Steel Tower, 59<sup>th</sup> Floor, 600 Grant  
Street, Pittsburgh, Pennsylvania 15219 ("UPMC").

WHEREAS, Supplier has offered to provide Products and Services to UPMC and to UPMC's present  
and future Affiliates; and

WHEREAS, Supplier and UPMC now wish to enter into a written agreement setting forth the terms  
and conditions for the purchase of the Products and Services.

NOW, THEREFORE, in consideration of the premises and mutual promises contained herein, and  
intending to be legally bound, UPMC and Supplier agree as follows:

## **1. Definitions.**

1.1 **Agreement.** The Agreement between UPMC and Supplier includes (i) this document; (ii)  
Affiliate List (Attachment A); (iii) Invoicing Terms and Pricing Schedule (Attachment B); and

- \_\_\_\_\_ (iv) Description of Services (Attachment C);
- \_\_\_\_\_ (v) Product Specifications and Features Descriptions (Attachment D);
- \_\_\_\_\_ (vi) the Facilities Location List (Attachment E);
- \_\_\_\_\_ (vii) the Required Management Information Reports (Attachment F);
- \_\_\_\_\_ (viii) Supplier's Published Disaster Recovery Plan (Attachment G).
- \_\_\_\_\_ (ix) the Statement of Maintenance Requirements (Attachment H);
- \_\_\_\_\_ (x) Warranty Statement (Attachment I);
- \_\_\_\_\_ (xi) Supplier's Record Retention Policy (Attachment J);
- \_\_\_\_\_ (xii) References (Attachment K);
- \_\_\_\_\_ (xiii) Fuel Surcharge (Attachment L);
- \_\_\_\_\_ (xiv) Guaranteed Savings (Attachment M);
- \_\_\_\_\_ (xv) Direct Deposit Authorization (Attachment N);
- \_\_\_\_\_ (xvi) Electronic Commerce Trading Partner Amendment (Attachment O);

1.2 **Affiliate.** Any company directly, or indirectly through one or more intermediate companies  
which now; or hereafter may control, be controlled by or be under common control with UPMC of a  
company which controls UPMC. "Control" of a company means the power to exercise 30 percent or more  
of the voting rights of such company. Current Affiliates are identified in the "Affiliate List," attached  
hereto and made a part hereof as Attachment A. UPMC may amend Attachment A at any time upon  
written notice to Supplier.

1.3 **Business Day.** Any day UPMC is open for business.

1.4 **Date of Acceptance.** As to each shipment of Products, the date of UPMC's notice to Supplier that  
UPMC (or a third party on behalf of UPMC) has inspected the Products and determined that the Products

have met the specifications of this Agreement.

1.5 **Disadvantaged Business Enterprise (“DBE”).** Is a business which has been certified, by an agency approved by UPMC, as a disadvantaged business in accordance with paragraph 15 of this Agreement.

1.6 **Facilities.** UPMC’s locations are identified on the Facilities Location List attached hereto and made a part hereof as Attachment E. UPMC may amend Attachment E at any time upon written notice to Supplier.

1.7 **Products.** The materials and goods described in the Product Specifications and Features Description attached hereto and made a part hereof as Attachment D.

1.8 **Purchase Order.** UPMC’s ordering document, whether in tangible or electronic format, that identifies the Product requirements, “ship to” location, and price of Product(s) ordered pursuant to this Agreement.

1.9 **UPMC’s Proprietary Information.** Any and all information and data, whether oral, written or on computer disk or electronic media, and whether received by Supplier before or after the date hereof, of or concerning UPMC (including its Affiliates), including without limitation:

- (i) any data or information that is a trade secret or competitively sensitive and not generally known to the public, including product information, historical and projected financial information, operating data and organizational and cost structures, employee information, customer information and customer lists, contracts, marketing strategies, business plans and internal performance results relating to past, present or future business activities of UPMC or its Affiliates and the customers, clients and suppliers of any of the foregoing;
- (ii) any scientific or technical information, design, process, procedure, formula, or improvement that is commercially valuable and secret in the sense that its confidentiality affords or may afford UPMC or its Affiliates a competitive advantage over their respective competitors;
- (iii) all UPMC’s confidential or proprietary concepts, documentation, reports, data (including magnetic tapes), data formats, specifications, computer software, source code, object code, user manuals, financial models, screen displays and formats, software performance results, flow charts, databases, inventions, know-how, show-how and trade secrets, whether or not patentable or copyrightable;
- (iv) all memoranda, analyses, compilations, studies, notes, records, drawings, manuals or other documents or materials, whether prepared by Supplier or by others, which contain or otherwise reflect any of the foregoing information; and
- (v) confidential information provided to UPMC by third parties.

1.10 **Services.** The services to be performed by Supplier as described in the Description of Services/Specifications attached hereto and made a part hereof as Attachment C.

## 2. **Term of Agreement.**

- 2.1 The term of the Agreement will begin on **(Initial Term)**
- 2.2 At the end of the Initial Term, UPMC, at its option, and subject to the provisions of paragraph 4.1, may renew the Agreement for up to two (2) additional one-year term(s) by providing Supplier thirty (30) days written notice prior to the end of the Initial Term

or any Renewal Term of UPMC's intent to renew ("Renewal Term(s)"); or at its option, UPMC may renew the Agreement for additional monthly terms, up to a maximum of six months, on the same terms and conditions as in the Initial Term by giving Supplier thirty (30) days' written notice prior to the end of the Initial Term of the number of additional months for which the Agreement will be extended. The additional monthly terms shall be deemed to be an Extension of the Initial Term.

3. **Termination.**

3.1 **Termination for Convenience.** UPMC shall have the right to terminate this Agreement during the Initial Term or any Renewal Term for any reason upon thirty (30) days' prior written notice to Supplier.

3.1.1 Upon termination of this Agreement, Supplier agrees to cooperate with UPMC to effect a smooth transition to a replacement Supplier.

3.2 **Termination upon Default.**

3.2.1 Either party may terminate this Agreement based upon a material breach of the other's obligations under the terms of this Agreement. The terminating party shall so notify the other party and termination shall become effective thirty (30) calendar days after receipt of such written notice unless the breaching party has within such time cured the breach or, for matters that cannot be fully cured within such time, commenced and continued to diligently pursue appropriate corrective action. If UPMC in its sole discretion determines that Supplier's breach cannot be cured, UPMC may terminate this Agreement immediately upon written notice to Supplier.

3.2.2 The occurrence of any of the following shall be deemed to be a material breach of Supplier's obligations under this Agreement:

(i) The Supplier shall default in the performance of any of the covenants or agreements contained in this Agreement.

(ii) Any representation, warranty or certification made or furnished by the Supplier to the UPMC in connection with this Agreement shall be determined by UPMC to be or have been false, incorrect or incomplete.

(iii) Supplier's failure to perform any of its obligations hereunder when required or at the time required.

3.2.3 UPMC may, in its sole discretion, upon written notice to Supplier terminate this Agreement immediately if Supplier is declared insolvent or adjudged bankrupt by any court of competent jurisdiction or makes an assignment for the benefit of creditors or if a petition in bankruptcy, for reorganization or an arrangement with creditors under any federal or state law (collectively "Bankruptcy"), is filed by or against Supplier.

3.2.4 UPMC may, in its sole discretion, upon written notice to Supplier terminate this Agreement immediately and receive a full refund for the products or services which have failed established mutually acceptable performance standards such standards as set forth in Attachment C or Attachment D.

- 3.2.5 UPMC may, in its sole discretion, upon written notice to Supplier, terminate this Agreement immediately without penalty, if Supplier is sold or merged into another company.

### 3.3 Termination on Governmental Order

- 3.3.1 This Agreement will terminate immediately upon delivery of written notice to the other party upon issuance of an order to terminate this Agreement or the effect of which is to require termination of this Agreement by any federal, state or municipal court, agency or regulatory authority.

## 4. Pricing and Payment Terms.

- 4.1 UPMC agrees to pay Supplier for the Products and/or Services in accordance with the Pricing Schedule attached hereto and made a part hereof as Attachment B. Unless otherwise agreed to in Attachment B, the Pricing Schedule shall be firm and fixed during the Initial Term or Extension of the Initial Term. If UPMC exercises its option to renew this Agreement, UPMC and Supplier agree to negotiate in good faith for any mutually agreeable pricing changes to be effective for any Renewal Term. If Attachment B allows for any price changes during the term of the contract UPMC and Supplier agree to negotiate in good faith for any mutually agreeable pricing changes. Any request for price increase must be submitted to UPMC Supply Chain Management at least ninety (90) days prior to the automatic extension (price increases will only become effective if agreed to, in writing, by UPMC). All approved price changes must be reflected on the UPMC price file and forwarded to Supply Chain Management. Price changes will not go into effect for ninety (90) days after receipt of an UPMC approved price file.
- 4.2 The pricing set forth in Attachment B is exclusive of applicable state sales and use taxes. Such taxes, if any, applicable to the Products and/or Services invoiced to UPMC will be paid by UPMC to Supplier, who will be responsible for remittance of such taxes to the proper governmental authority. At the request of UPMC, Supplier shall provide documentation to UPMC evidencing such remittance and Supplier's authority to collect such taxes.
- 4.3 Except as may be specified on Attachment B, UPMC shall not be liable for any freight charges, delivery charges, fuel surcharges, service charges, minimum or small order charges, re-stocking or other additional costs or expenses during any term of this Agreement.
- 4.4 If during any term of this Agreement, Supplier generally makes available to its customers any new products and/or services of the same or similar nature as the Products and/or Services, Supplier agrees to make such new products and/or services available to UPMC under this Agreement at a price to be mutually agreed upon, but such price shall reflect at least the same discount percentage as the pricing in Attachment B reflects. If during any term of this Agreement, Supplier replaces an existing Product and/or Service with a new or improved Product and/or Service, subject to UPMC approval, Supplier agrees to make the new or improved Product and/or Service available to UPMC under this Agreement immediately at the same price and discount percentage as had been agreed to for the Product and/or Service being replaced.
- 4.5 **E-Commerce Business Process Requirements, Practices and Definitions**

- 4.5.1 **Business to Business Connectivity.** Supplier is expected to comply with UPMC (“UPMC”) B2B initiatives including but not limited to the following transactions:
- a. Electronic Data Interchange (“EDI”) utilizing ANSI X12 standards or other UPMC/GHX approved standard (i.e., XML, cXML, etc.). Transactions will be enabled by the UPMC integrated partnership with Global Healthcare Exchange (“GHX”). Two connectivity options exist: (1) direct integration through GHX (preferred) and (2) indirect integration through GHX MetaTrade (does not require integration). GHX handles transactions and translation between the UPMC and Supplier’s systems. Transaction types include:
    - i. 850 – Outbound Purchase Order
    - ii. 855 – Inbound Purchase Order Acknowledgement
    - iii. 856 – Inbound Advanced Ship Notice
    - iv. 810 – Inbound Invoice
    - v. 820 – Automated Clearing House (ACH) Payment
  - b. Supplier shall print requestor name and ship to location on all labels, packing lists, and other shipping documents (not including the Bill of Lading) for all direct (desktop or facility) deliveries.
- 4.5.2 **Catalog and Content Management.** Supplier must be capable of integrating with the UPMC eMarketplace (UPMC’s B2B solution). The methods for integration are:
- a. True punchout connectivity using cXML, XML, Ariba, SAP, Oracle, etc. Supplier provides (1) URL and login credentials and (2) real-time dialog between UPMC eMarketplace and Supplier platform via punchout request, response, order message, etc. This is the UPMC preferred model.
  - b. Non-punchout online catalog, website, eCommerce or B2B site that may require a login. Supplier provides URL and login credentials. This model is an acceptable alternative to (a.) above. In the event testing with the vendor proves that connectivity is unattainable, the vendor agrees to work toward method (a) with agreed upon timelines for completion or will comply with (c.) below.
  - c. Hosted catalog within the UPMC B2B solution. Supplier populates a formatted template (Excel, Works, Lotus, Access, or other spreadsheet or database software) provided by UPMC, with required item information. This method is the minimum expectation for engaging in business transactions with UPMC.
  - d. In all cases above, the Supplier must be able to:
    - i. Provide UPMC specific pricing,
    - ii. Only display items specific to UPMC such that content is filtered as defined by UPMC,
    - iii. Assign United Nations Standard Product and Service Codes (UNSPSC) to all items included in the UPMC Catalog,
    - iv. Maintain, update, and ensure compliance of the Supplier website or catalog to UPMC specific item pricing,
    - v. Agree to work in good faith with UPMC throughout the process of changing catalog content. Agrees to support UPMC in periodic audit exercises to ensure accurate catalog content.
    - vi. Communicate all scheduled or unscheduled website maintenance or downtime that exceeds duration of 8 hours or falls inside normal business hours defined as 6:00 AM EST to 8 PM EST.
    - vii. Provide a single URL and login for all UPMC transactions and users
      1. log-in that is transparent to end users

2. site is capable of supporting more than one party simultaneously
- e. UPMC reserves the right to impose a compensating fee of 4.25% of the total payments rendered quarterly to a supplier failing to meet UPMC's minimum eCommerce requirements as defined in 4.5.1 (a) and 4.5.2 (c) above.

**4.6 Payment Terms** - All invoices shall be paid net forty-five (45) days

5. **Products and/or Services**

- 5.1 If applicable, Supplier shall perform the Services in accordance with the Terms and Conditions of this Agreement and as set forth in detail in Attachment C, the Description of Services.
- 5.2 If applicable, Supplier shall deliver to UPMC the Products in accordance with the Terms and Conditions of this Agreement and as set forth in detail in Attachment D, the Description of Products.
- 5.3 **New Product Introduction** - The pricing and other terms and conditions applicable to the sale of any products not covered by Attachment (B) shall be subject to the mutual agreement of the parties. No technologies or products are authorized for use or payment outside of the Pricing Schedule attached hereto and made a part hereof as Attachment (B). No payment will be made for unauthorized, unapproved, or non-contract products. Any supplier requests for reimbursement of off-contract products must be approved in writing by the appropriate Value Analysis Team and/or UPMC Supply Chain Management as least 30 days prior to any scheduled procedures using such devices

6. **Non-exclusivity/ No Minimum**

- 6.1 Unless expressly stated as a term of this agreement, UPMC and Supplier acknowledge that this Agreement is non-exclusive. The respective parties may offer their Products and Services to, or purchase similar products and services from, other parties. Should the agreement be exclusive, the measurement of exclusivity shall be governed by the terms of 6.3 below.
- 6.2 Unless expressly stated as a term of this agreement, UPMC and Supplier acknowledge that this Agreement carries no obligation for minimum purchase, either in terms of unit volume or dollars. UPMC has no obligation to purchase a minimum amount of Product or use a minimum level of Services. Should the agreement carry an obligation, the measurement of minimum utilization shall be governed by the terms of 6.3 below.
- 6.3 **Utilization Compliance** - UPMC and Supplier agree that any compliance or commitment to purchase a defined level of products or services shall be documented in detail on a separate schedule, which will be attached hereto upon execution, for each individual Supplier BU (Business Unit) entering into a specific agreement with UPMC. UPMC and Supplier understand and agree that, for the purpose of measuring compliance to market share or purchase volumes (units or dollars), the following exceptions will apply:
- I. In the event contracted Supplier products or services are backordered or generally unavailable, any products or services purchased by UPMC from

alternative sources will be excluded from any market share calculation and any specific volume commitment schedules (units or dollars) will be reduced by the aggregated volume of UPMC purchases from the alternative source(s).

- II. UPMC and Supplier understand and agree that any products or services purchased by UPMC from alternative sources to support a research initiative, IDE (Investigational Device Evaluation), or clinical trial, will be excluded from any market share calculation and any specific volume commitment schedules (units or dollars) will be reduced by the aggregated volume of UPMC purchases from the alternative source(s).
- III. UPMC and Supplier understand and agree that any product or service purchased by UPMC from alternative sources with a FDA approval or indication for use that the contracted Supplier product or service has not received will be excluded from any market share calculation and any specific volume commitment schedules (units or dollars) will be reduced by the aggregated volume of UPMC purchases from the alternative source(s).
- IV. UPMC and Supplier understand and agree that any product or service purchased by UPMC from alternative sources for which Supplier is unable to meet a specific material performance, fitness for use, or engineering specification will be excluded from any market share calculation and any specific volume commitment schedules (units or dollars) will be reduced by the aggregated volume of UPMC purchases from the alternative source(s). UPMC and Supplier understand and agree that any product or service purchased by UPMC from alternative sources to replace contracted Supplier n products or services that UPMC is enjoined from using, whether through allegations made by corporations, companies, private parties, or Federal and state regulatory bodies will be excluded from any market share calculation and any specific volume commitment schedules (units or dollars) will be reduced by the aggregated volume of UPMC purchases from the alternative source(s). Supplier understands and agrees that for products and services for which there is no available alternative source, any UPMC commitments will be reduced to proportionally reflect the period of enjoinderment

7. **Time of Performance.**

- 7.1 Supplier shall immediately notify UPMC if Supplier anticipates difficulty in complying with the required products or services delivery schedule and UPMC may (i) require delivery of products by the fastest available means, all at Supplier's expense; (ii) reject the products; (iii) refuse service; or (iv) terminate the Agreement immediately and without penalty. In addition, UPMC shall have all rights and remedies provided by law.

8. **Product Delivery Terms.**

- 8.1 Supplier, at its sole expense, shall ship all Products FOB UPMC's Facilities, as specified in the Facilities Locations List or to such other place as UPMC may direct. Supplier shall bear the risk of loss of the shipment. Upon request by UPMC, Supplier shall initiate and expedite all claims for loss or damage during shipment. Provided that Supplier has complied with the terms of this Agreement, including, without limitation, verification of the validity of the order and address of the shipping location before shipment, Supplier's liability for lost or damaged Products shall be limited to replacement of the Products.

8.2 In addition to any other remedies available to UPMC, at UPMC's option, damaged Products will be repaired or replaced on a rush basis and at no extra cost to UPMC.

8.3 No invoices will be paid on damaged merchandise until the claims are settled, and the payment discount period, if any, shall be extended accordingly.

9. **UPMC's Right to Reject.**

9.1 If any of the Products are found at any time to be defective in material or workmanship, or otherwise not in conformity with the requirements of this Agreement, including any applicable drawings and specifications, then in addition to such other rights, remedies and choices as UPMC may have under this Agreement and otherwise in equity or at law, at its option and sole discretion, UPMC may:

- (i) Reject and return such goods at Supplier's expense.
- (ii) Require Supplier to inspect the goods and remove and replace nonconforming goods with goods that conform to the specifications of this Agreement.
- (iii) Upon notice to Supplier, take such actions as may be required to cure all defects and/or bring the Products into conformity with all the requirements of this Agreement, in which event all costs and expenses thereby incurred by UPMC shall be for Supplier's account.

10. **UPMC's Rights Upon Supplier's Default.**

10.1 Upon Supplier's default in the performance of its obligations hereunder and failure to cure within the time which may be allowed by UPMC, UPMC may, at its option:

10.1.1 Terminate this Agreement in whole or in part as provided in paragraph 3.2.1; and

10.1.2 Procure upon such terms as it shall deem appropriate, products or services similar to those which Supplier has failed to provide; or

10.1.3 In lieu of declaring a default or terminating this Agreement, and consistent with any cure period granted, extend the delivery schedule and/or waive other deficiencies in Supplier's performance, in which case an equitable reduction in price shall be negotiated.

10.2 In the event UPMC exercises its rights under paragraph 10.1.2 hereunder, Supplier shall reimburse UPMC for any additional costs incurred by UPMC.

10.3 In addition to any other right UPMC may have under this Agreement or in law, since disclosure may result in immediate and irreparable injury for which monetary damages may not be adequate, in the event Supplier discloses or if, in UPMC's sole opinion, Supplier is likely to disclose UPMC's Confidential Information or information contained in UPMC's Database File in breach of Supplier's obligations under Sections 11.6 and 11.7 of this Agreement, UPMC shall be entitled to equitable relief, including injunctive relief and specific performance.

11. **Covenants of Supplier.**

- 11.1 **Compliance.** Supplier shall comply with all applicable operating standards and other policies established by UPMC, including, without limitation, UPMC's policies with respect to ownership by minority, women and disadvantaged businesses (see section 15), compliance plans, personnel policies prohibiting discrimination, standards of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) and bylaws, rules and regulations of UPMC. Also, all federal, state, local and any other codes, laws, regulations, standards or ordinances ("Laws") applicable to this Agreement; including but not limited to, licensure, other regulation of hospitals and healthcare services, federal Medicare and Medicaid programs; discrimination in employment against any individual on the basis of race, color, religion, age, sex, sexual orientation, disability, national origin or status; equal opportunity or affirmative action; occupational safety and health; wage and hour or fair labor standards; toxic or hazardous substances and hazardous materials communications; and clean air and water. If Supplier performs any work contrary to or not in accordance with any Laws, Supplier shall be fully responsible for any violation of Laws, and shall indemnify the UPMC against all fines, penalties and other costs attributable thereto. Supplier shall also be responsible for ensuring similar compliance by its vendors and/or permitted subcontractors. Supplier will reasonably cooperate with UPMC Facilities receiving services hereunder as may be required in connection with accreditation surveys, licensure surveys or other accrediting or regulatory processes affecting such facilities.
- 11.2 **HIPAA Compliance.** If applicable, Supplier shall take such actions as are necessary for Supplier or UPMC to comply with existing or future federal, state or local statutes or regulations promulgated by regulatory agencies or accrediting organizations with regard to the services contemplated by this agreement ("Regulations"), including without limitation, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). Supplier shall perform such work at its own expense. Such actions will be completed within the times specified for compliance within the statute or regulation. UPMC shall have the right at all times to review and inspect the steps taken and procedures implemented by Supplier to assure the compliance with such Regulations
- 11.3 **Medicare Certification.** Supplier certifies to UPMC that it has not been convicted of, or sanctioned or excluded for violations of, any Federal or State laws governing the Medicare and Medicaid programs. Supplier agrees to notify UPMC within seventy-two (72) hours by certified mail if Supplier is excluded from participation in any Medicare or Medicaid programs, or otherwise sanctioned by any Federal or State regulatory body having authority over such programs and will include the grounds for sanction or exclusion and the duration thereof.
- 11.4 **Independent Contractor.** Supplier understands it shall serve as an independent contractor, and under no circumstances shall it be, or be deemed to be, a partner, agent, servant, distributor, or employee of UPMC in its performance hereunder. Unless otherwise approved by UPMC, all employees used by the Supplier shall be Supplier's employees, servants, or agents, and the entire management, direction, and control of all such employees shall be exclusively vested with the Supplier. Supplier understands that it has no authority to act for, bind or obligate UPMC. Supplier shall not make any representations, written or oral concerning UPMC.
- 11.5 **No Subcontracting.** Supplier shall not subcontract nor delegate performance of all or any part of its obligations hereunder without the prior written consent of UPMC. UPMC's consent to subcontracting by Supplier shall not relieve Supplier of any of Supplier's duties or obligations hereunder. Supplier shall be liable for all acts or omissions of its subcontractor(s) and anyone employed directly or indirectly by such subcontractor(s). Supplier shall require any subcontractor to maintain adequate and appropriate insurance coverage.
- 11.6 **Manufacturer's Warranties.** Supplier shall obtain all manufacturer's warranties in writing and deliver them to the UPMC on or prior to the Date of Acceptance of Products. If a

manufacturer offers a warranty on selected goods which is longer than Supplier's warranty on such goods, such longer warranty shall be passed through to UPMC and Supplier will make reasonable efforts to assist UPMC in enforcing such longer warranty. The provisions of this warranty, including the warranty term(s), shall be set forth in detail in Attachment I, "Warranty Statement."

**11.7 Confidentiality.** Supplier will maintain UPMC's Proprietary Information and the terms of this Agreement in confidence. Without limiting the generality of the foregoing, Supplier agrees:

11.7.1 Not to disclose or permit any other person or entity access to UPMC's Proprietary Information or the terms of this Agreement, except that access shall be permitted to an employee, officer, director, agent, representative, external or internal auditors, independent contractors or regulatory authorities of Supplier requiring access to the same in connection with Supplier's performance under this Agreement;

11.7.2 Not to use, or permit any other person or entity to use, UPMC's Proprietary Information for any purpose other than the performance of this Agreement;

11.7.3 To ensure that its employees, officers, directors, agents, representatives, external or internal auditors and independent contractors are advised of the confidential nature of UPMC's Proprietary Information and the terms of this Agreement;

11.7.4 Not to alter or remove any identification, copyright or proprietary rights notice which indicates the ownership of any part of UPMC's Proprietary Information when such information was obtained by or through UPMC;

11.7.5 To notify UPMC promptly and in writing of the circumstances surrounding any possession, use or knowledge of UPMC's Proprietary Information or the terms of this Agreement by any entity other than those authorized by this Agreement.

11.7.6 To use reasonable care and implement reasonable controls, but in all events at least the same degree of care and controls that it uses to protect its own confidential and proprietary information of similar importance, to prevent the unauthorized use, disclosure or availability of UPMC's Proprietary Information or the terms of this Agreement.

11.7.7 Upon request or on termination of this Agreement, to return to UPMC all of UPMC's Proprietary Information.

11.7.8 Supplier's obligations under this Section 11.6 shall survive the termination of the Agreement.

#### **11.8 Database File.**

11.8.1 Supplier agrees that all information or records, whether maintained by Supplier in a database file or format, or otherwise in Supplier's possession, or under Supplier's control, concerning UPMC's customers, accounts and Product or Service orders ("Database File") is and shall remain the sole and exclusive property of UPMC. Supplier will not disclose the Database File or any such information to any person or entity nor use it for any purpose other than as required for the performance of Supplier's obligations under this Agreement. Upon termination of this Agreement for any reason, Supplier shall return the Database File and all such information to UPMC in a format designated by UPMC, at no cost to UPMC. In such case, the file transfers

shall occur no later than thirty (30) calendar days after written notification from UPMC.  
Supplier's nondisclosure obligation hereunder shall survive the termination of this Agreement.

- 11.8.2 Upon termination of this Agreement, Supplier agrees to cooperate with UPMC to effect a smooth transition to a replacement Supplier including, but not limited to, providing reports and volume information.
- 11.9 **Corporate Graphics.** Supplier will not display and/or use UPMC's corporate identity graphics and/or UPMC's name unless specific written approval has been obtained from UPMC.
- 11.10 **Payment of Expenses.** With respect to the Agreement, Supplier shall assume and discharge for its own account all costs, expenses and charges necessary or incidental to its obligations and shall indemnify and save UPMC harmless from and against all such costs, charges, claims, promises, guarantees, debts, obligations, expenses and liabilities of any nature and kind made, incurred, contracted, or created by Supplier in connection herewith, and not expressly and specifically assumed by UPMC hereunder.
- 11.10.1 **Travel Time** - Time spent in travel between the Supplier's shop or headquarters and the job site, time spent in travel from job to job, or any other travel time shall not be charged by Supplier under this Agreement. The Supplier shall claim compensation to be due and payable only for such time Supplier's employees are actively performing the work, and no other charge(s) for time will be submitted by Supplier or paid by UPMC.
- 11.11 **No Liens.** Supplier will not place any liens or encumbrances of any nature whatsoever against the Products or other properties of UPMC due to the non-payment of any invoice disputed by UPMC.
- 11.12 **Unauthorized Payments.** Supplier shall not make any payments out of funds received from UPMC to third parties if such payments would be in violation of the law. Supplier shall make no payments on UPMC's behalf for political purposes or to obtain political influence, and Supplier acknowledges that no employee of UPMC has any authority to give direction, written or oral, in connection with the making of any commitment by Supplier to any third party in contravention of the foregoing.
- 11.13 **Disaster Recovery Plan.** If Supplier's Disaster Recovery Plan is included in this Agreement, Supplier will at all times during the Initial Term and any Renewal Term, or Extension of this Agreement, maintain in effect a Disaster Recovery Plan equal to or better than the plan included in this Agreement.
- 11.14 **Record Retention Policy.** If Supplier's Record Retention Policy is included in this Agreement, Supplier will at all times during the Initial Term and any Renewal Term, or Extension of this Agreement, maintain in effect a Record Retention Plan equal to or better than the policy included in this Agreement.
- 11.15 **Non-Solicitation of Employees.** During the term of the Agreement, neither party will, directly or indirectly, recruit or solicit the other party's employees or representatives who provide or receive Services under the Agreement; provided, however, that neither party will be precluded from engaging in general recruiting techniques that do not target the employees of the other party and from employing any person responding to such general solicitation. This Section shall not apply to any employee of Supplier that was previously an employee of UPMC immediately prior to such employee's employment by Supplier.

**11.16 Safeguarding UPMC Customer Information**

11.16.1 Supplier shall maintain an information security program designed to:

- (i) Ensure the security and confidentiality of UPMC's customer information
- (ii) Protect against any anticipated threats or hazards to the security or integrity of such information
- (iii) Protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any UPMC customer

11.16.2 At UPMC's option, Supplier shall permit Purchaser to audit Supplier compliance with the provisions of paragraph (i) above, or Supplier shall provide an independent third party audit of such compliance acceptable to UPMC.

**11.16 Debarment.**

11.16.1 Supplier certifies that neither it nor its Affiliates, nor any of such entities' employees is excluded, debarred, or otherwise ineligible for participation in any federal health care program or in any other governmental payment program. If Supplier, or any employee of Supplier, is excluded or debarred from participation in any federal health care program or other government payment program, or becomes otherwise ineligible to participate in any such program, Supplier will notify UPMC in writing within three (3) business days after learning of such event, and if an employee is at issue, will remove such employee from working on any UPMC project. If Supplier becomes excluded, debarred or ineligible, whether or not such notice is given to UPMC, UPMC may immediately terminate the whole or any part of this Agreement, and will have no obligation to make any further payments. If subcontracting is permitted under this Agreement, Supplier will include this clause in all subcontract agreements.

11.16.2 Medicare Certification. Supplier certifies to UPMC that it has not been convicted of, or sanctioned or excluded for violations of, any Federal or State laws governing the Medicare and Medicaid programs. Supplier agrees to notify UPMC within seventy-two (72) hours by certified mail if Supplier is excluded from participation in any Medicare or Medicaid programs, or otherwise sanctioned by any Federal or State regulatory body having authority over such programs and will include the grounds for sanction or exclusion and the duration thereof.

**11.18 Regulatory and Accreditation Requirements.**

11.18.1 Supplier warrants and attests that products and any services covered by this agreement including any that may have been subcontracted per the terms of this agreement, are compliant under the Federal Food, Drug and Cosmetic Act.

11.18.2 Supplier further warrants and attests that products and any services covered by this agreement including any that may have been subcontracted per the terms of this agreement, are compliant to all applicable UPMC policies, specifically those pertaining to Vendor Access practices within UPMC facilities, conflicts of interest and interaction between industry representatives and UPMC, vendor responsibilities under the Deficit Reduction and False Claims Acts.

11.18.3 With respect to Supplier operations, Supplier shall comply with the all applicable Standards of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) as detailed in the most recent Accreditation Manual for Hospitals, as well as applicable requirements of the PA Department of Health, and other agencies with appropriate jurisdiction. In addition, Supplier shall cooperate with UPMC as required to establish compliance with licensure accreditation and other pertinent agency requirements, including but not limited to

production of relevant documents and records as they pertain to the Services and other services provided by Supplier hereunder.

- 11.19 **Compliance with UPMC Policies.** Supplier agrees to adhere to UPMC's Vendor Access and Industry Relations policies as published at:  
<http://www.upmc.com/Services/supplychainmanagement/Pages/policies.aspx>
- 11.20 **Criminal Background Check; Drug Testing.**
- 11.20.1 Supplier shall complete background checks and appropriate drug testing on all personnel providing the Services under this Agreement from or to any Facility, including but not limited to all supplier personnel, agents or contractors who visit or come onto any property of UPMC or enter any UPMC facility in connection with the Services. Prior to assigning any individual to any such role, supplier shall provide a summary of the results of the background check to UPMC and obtain written acknowledgement and acceptance from UPMC of the results of the background check. Supplier shall not in any event permit any employee, agent or contractor with any criminal record or history, including but not limited to any conviction, arrest or pending charge, or who has failed drug testing or is impaired in any way by drugs or alcohol, to visit or come onto any UPMC property or enter any UPMC facility in connection with the Services.
- 11.21 **Gifts, Gratuities and Kickbacks:**
- 11.21.1 It is a violation of UPMC's official policy (HS-MM0300) for any employee to accept, solicit, or receive, either directly or indirectly, from any person, firm or corporation any gift or gratuity. UPMC employees who procure goods and services may not accept gifts, gratuities or kickbacks from vendors or service providers. "Kickbacks," as used in this clause, means any money, fee, commission, credit, gift, gratuity, favor, thing of value, or compensation of any kind which is provided directly or indirectly, for the purpose of or the appearance of improperly obtaining or rewarding favorable treatment.
- 11.21.2 This agreement is subject to, and Seller agrees to comply with, the provisions of the Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276(c)) as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"), which provides in part that contractors or sub-recipients are prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which such person is otherwise entitled. The Anti-Kickback Act imposes criminal penalties on any person who knowingly and willfully engages in the prohibited conduct addressed in the Act, and provides for civil penalties of twice the amount of the kickback for each violation and up to \$10,000 for each occurrence.
- 11.21.3 Supplier (i) certifies that it has not paid kickbacks directly or indirectly to any UPMC employee for the purpose of obtaining this or any other UPMC Purchase Order, and (ii) agrees to cooperate fully with any investigation involving a possible violation of the Act; and (iii) agrees to report any suspected violations of the Act to the UPMC Ethics and Compliance Officer.

11.22 **Business Review.** On a regular basis, the parties will review Suppliers' performance as part of an overall review of the relationship between the parties ("Regular Review") and Supplier may be required to complete a periodic due diligence questionnaire as provided by UPMC. During the Quarterly Review the parties shall meet to review all aspects of their relationship and to discuss any potentially desirable changes to the Agreement to carry out the purposes of this Agreement and to facilitate a more efficient relationship. Supplier shall have an ongoing obligation to identify areas of improvement within the Product & Services and to provide UPMC with a plan for how to implement the proposed improvements.

11.23 **Direct Deposit Payments.** Supplier is required to execute an authorization agreement form for direct deposit of payments. (See Attachment N)

12. **Representations and Warranties of Supplier.** Supplier represents and warrants to UPMC the following which shall be continuing in nature and remain in full force and effect while this Agreement is in effect, or if so provided, thereafter.

12.1 **Existence, Power and Authority.** If not a natural person, Supplier is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization, has the power and authority to own and operate its assets and to conduct its business, and is duly qualified, licensed and in good standing to do business in all jurisdictions where its ownership of property or the nature of its business requires such qualifications or licensing. Supplier is duly authorized to execute and deliver this Agreement, all necessary action to authorize the execution and delivery of this Agreement has been properly taken, and Supplier is and will continue to be duly authorized to perform all of the other terms and provisions of this Agreement during its term.

12.1.1 **Fictitious Name Registration** - Where a fictitious name is used, a certificate must be attached showing that the fictitious name is duly registered with the state.

12.2 **Experience, Qualification.** Supplier is an experienced firm capable of performing the Services and/or supplying the Products.

12.3 **Intellectual Property.** Supplier owns or is licensed to use and is authorized to permit UPMC to use all patents, patent rights, trademarks, trade names, service marks, copyrights, intellectual property, technology, know-how and processes necessary for the conduct of its business as currently conducted that are material to the condition (financial or otherwise), business or operation of Supplier and Supplier's performance under this Agreement. This warranty shall survive the termination of this Agreement.

12.4 **Compliance with Law.** Supplier is in compliance with all applicable federal, state, and local laws, rules, practices, regulations, standards, and orders affecting the nature of the Supplier's business.

12.5 **Clear Title.** Supplier warrants that all Products and Services sold hereunder or pursuant hereto will be free of any claim of any nature by any third person and that the Supplier will convey clear title to the UPMC as provided hereunder. This warranty shall survive the termination of this Agreement.

12.6 **No Defects.** Supplier warrants and represents that all Products sold hereunder or pursuant hereto will be new, free from all defects in design, workmanship and materials, and will be merchantable and fit for the particular purposes for which they are intended and that the Products and Services are provided in strict accordance with the technical specifications, data sheets, referenced standards, samples, drawings, designs and other requirements (including performance guarantees) set forth in this Agreement. The provisions of this warranty, including the warranty term(s), are set forth in detail in Attachment I, "Warranty Statement."

12.7 **Best Price.** Supplier warrants that the prices for the Products and/or Services are as low as prices given by Supplier to any other customer for like products and/or services, and Supplier agrees that if at any time before the Products are received or a Service is performed at the UPMC facility specified, Supplier quotes or sells at lower net prices, similar services or products under similar terms and conditions, such lower net prices shall thereupon be substituted for the prices stated herein.

12.8 **Compliance with Code of Ethics.** Supplier has not given and shall not give anything of material value, either directly or indirectly, to any employee of UPMC with the purpose of securing the Agreement or receiving favorable treatment with respect to its performance of the Agreement.

12.9 **Product Warranty.** Included in the pricing of each Product is a minimum one (1) year warranty, copies of which are attached to this Agreement as Schedule I and incorporated by reference. The warranty for each Product purchased pursuant to this Agreement shall commence upon first use of Product by UPMC notwithstanding prior acceptance of the Product. Supplier further warrants that Product shall conform to its product specifications and Supplier's representations regarding the functions and uses for which a Product is marketed. Supplier warrants that all Products are free from defects in material and workmanship. All of the warranties referenced or set forth in this section shall be in addition to all other warranties that may be prescribed by law. With respect to pharmaceutical products furnished pursuant to this Agreement, Supplier warrants that all Products provided under this Agreement are free from defects in material and workmanship, meet product specifications set forth in the Product package insert as approved by the Food and Drug Administration and are manufactured in compliance with all applicable federal, state, and local laws and regulations. The warranty for each Product purchased under this Agreement shall commence upon the initial use of the respective Product by UPMC.

12.10 **Manufacturers' Warranties.** Supplier shall provide to UPMC all warranties for Products it receives from its vendors and all manufacturers' warranties. Supplier assigns to UPMC, by execution of this Agreement, all vendors' and manufacturers' warranties and rights of action under these warranties. Supplier authorizes UPMC to enforce all warranties received hereunder and shall provide all cooperation reasonably requested by UPMC in enforcing same. Any manufacturers' or vendors' warranties shall be in addition to the warranties provided in this Section and as otherwise provided under this Agreement.

12.11 **Extension of Warranties.** Supplier's warranties provided in this Section and as otherwise provided in this Agreement shall run to and extend to, and are for the benefit of, UPMC, and its respective successors, assigns, customers, patients, and users of Products, and to any other person or entity to whom a Product is transferred.

12.12 **Services Warranty.** Supplier represents and warrants that its employees, agents, and representatives have the skills and qualifications necessary to perform Services under this Agreement in a timely, competent, first class, and professional manner in accordance with the highest industry standards and all applicable governmental requirements, laws, ordinances, rules, and regulations, and that Supplier is able to fulfill the technical service requirements and all other services' requirements of this Agreement.

12.13 **Warranties Cumulative.** The warranties provided in this Section and all other warranties provided under this Agreement are cumulative and shall apply to any replacement or modification of Products by Supplier or its employees, agents, or representatives, and these warranties provided under this Section are in addition to any warranties provided at law or in equity

12.14 **Product Recalls.** Supplier maintains and attests to its obligation to notify UPMC SCM and the VAT Program Office immediately upon receiving notification of an FDA imposed alert or recall of any product which Supplier sells to UPMC or a UPMC affiliate. Supplier will provide assistance and information to UPMC SCM and the VAT Program Office in relaying relevant information to the end user.

13. **Indemnity by Supplier.**

13.1 Supplier shall indemnify and hold harmless each of the UPMC, its Affiliates, and their respective directors, officers, employees and agents (the "Indemnified Parties") from and against any and all claims, damages, losses, liabilities, fines, penalties, judgments or amounts paid in settlement (or actions, suits or proceedings, or investigations in respect thereof) and expenses (including, without limitation, all fees of counsel with whom any Indemnified Party may consult and all expenses of litigation or preparation therefor) hereafter ("Losses.") which any Indemnified Party may incur or which may be asserted against any Indemnified Party in connection with or arising out of the matters referred to in this Agreement including, without limitation, personal injury caused by Supplier' Products or Services or by Supplier's employees, agents or representatives, which arises out of or relates to this Agreement; provided, however, that the foregoing indemnity agreement shall not apply to Losses solely attributable to an Indemnified Party's gross negligence or willful misconduct. The indemnity agreement contained in this paragraph 13.1 and paragraph 13.2 shall survive the termination of this Agreement, and assignment of any rights hereunder

13.2 In addition to the indemnity contained in paragraph 13.1, in the event that any claim is made or any action or proceeding is instituted against the Indemnified Parties alleging that a Product or Service or UPMC's use thereof infringes any patent or copyright, constitutes misappropriation of a trade secret, or violates any other intellectual property or other proprietary right of any third party, Supplier shall defend, indemnify and hold the Indemnified Parties harmless from all damages, awards, cost and expenses (including without limitation, all fees of counsel with whom any Indemnified Party may consult and all expenses of litigation or preparation therefor) associated therewith. If UPMC's use is enjoined or threatened, Supplier shall use its best efforts to, in the priority order indicated, (1) procure for UPMC the right to continue using the Product or Service; (2) modify the Product or Service so as to render it non-infringing while remaining functionally equivalent to the original Product or Service; or (3) provide a substitute non-infringing Product or Service of substantially equal utility acceptable to UPMC at no additional charge to UPMC, consistent with Supplier's obligations under this Agreement. If none of these alternatives appear to be reasonably feasible, then UPMC may terminate this Agreement and shall receive a prompt refund of all fees paid during the term of the Agreement.

14. **Insurance.**

Worker's Compensation - Supplier hereby agrees to perform the work described in this Agreement, and further certifies that it has accepted the provisions of the Worker's Compensation and Occupational Disease Acts, as amended and supplemented, insofar as the work covered by this Agreement is concerned, and that it has insured its liability thereunder in accordance with the terms of the said Acts, as evidenced by the certificate of insurance it has caused to be attached hereto, or will file with the Director of Strategic Sourcing, before the execution of this Agreement, a certificate of exemption form for insurance from the Bureau of Workmen's Compensation of the Department of Labor and Industry. Unless otherwise agreed, during the term of this Agreement and any Renewal Term(s) or extensions(s) thereof, Supplier agrees to purchase and maintain at its own expense, from a company or companies licensed to do business in the Commonwealth of Pennsylvania, such insurance as will protect Vendor, UPMC, its directors, officers, employees and all subsidiaries, affiliates and any other legal entity associated with UPMC, collectively herein referred to as "UPMC", from and against any and all damages liabilities, losses, costs, including reasonable attorney's fees, judgments, expenses, claims and causes of actions of any kind which may arise or result from Vendor's obligations pursuant to the terms of this Agreement. The insurance required shall be written for not less than the following minimum limits, or greater if required by law:

COVERAGE	LIMITS
Workers Compensation	Statutory
Employers Liability	\$100,000 each Accident \$500,000 disease policy limit \$100,000 disease each employee
Comprehensive General Liability including but not limited to, Premises Medical with \$10,000 limit, Personal Injury, and contractual	\$1,000,000 Combined Single Limits for Bodily Injury and Property Damage per Occurrence and \$4,000,000 Annual in the Aggregate.
Automobile Liability, including any auto, hired and non-owned autos	\$1,000,000 Combined Single Limits for Bodily Injury and Property Damage Each Accident
Professional Liability (Errors & Omissions)	\$1,000,000 Per Claim

Supplier shall name UPMC as an additional insured with respect to the insurance policies identified above, with the exception of Workers' Compensation. Certificates of insurance evidencing coverage required above shall be filed with UPMC's Corporate & Captive Insurance Department, 200 Lothrop Street, Pittsburgh, PA 15213, at least fifteen (15) days before the furnishing of any services required by this Agreement. Such certificates shall provide that the insurer will give UPMC not less than thirty (30) days advance notice of any material changes in or cancellation of coverage. Supplier shall be responsible for the acts of its employees, agents, and representatives while on UPMC property and, accordingly, shall take all necessary measures to train and equip such personnel properly, and to prevent injury and loss to persons or property located thereon. All subcontractors used by Supplier must maintain and provide, at their own expense, evidence of insurance coverage identified above.

Supplier agrees that any personal injury to Supplier, to Supplier's employees, agents or representatives, to third parties, or any property damage resulting solely from performances of Services hereunder by Supplier shall be the responsibility of Supplier. Supplier will indemnify, defend, and hold harmless UPMC from any claims, demands, lawsuits, liability, attorneys fees and expenses, and any settlements or award of damages arising out of Supplier's performance of Services pursuant to this Agreement, except to the extent such are caused by the sole fault or negligence of UPMC.

In the event Supplier is self-insured for the coverage required hereunder, it shall provide proof of self-insurance to UPMC by submitting (a) a letter stating that fact, (b) Supplier's most recent financial statement, and (c) a state certification from the Supplier's state of incorporation.

Without limiting any other provision contained herein, UPMC agrees to (a) notify Supplier in writing after any loss or damage is discovered, (b) furnish Supplier with satisfactory and reasonable proof of such loss or damage, and (c) assist Supplier and Supplier's insurance carriers to the extent practicable in recovery of any loss. Upon full payment by Supplier or its insurance carrier for such loss or damage, either shall be subrogated to any rights or remedies of UPMC for recovery of such loss.

Supplier shall, within a reasonable amount of time, not to exceed thirty (30) days, after receiving evidence of loss, promptly satisfy all claims made by UPMC which the evidence demonstrates are the responsibility of Supplier.

In the event of losses or damages to equipment caused by the negligence of Supplier or its workers, Supplier's liability shall be to the extent of the declared value or replacement cost of the equipment, whichever is greater.

Notwithstanding any other provision of this Agreement, it is understood and agreed that Supplier shall not be liable for any loss caused by or resulting from:

hostile or war-like action in time of peace or war;

direct loss by fire resulting from nuclear reaction or nuclear radiation or radioactive contamination, either controlled or uncontrolled; or

theft or damage by others who are not a party to this Agreement, except when the loss or damage is the result of the gross negligence or willful misconduct of Supplier, its agents or workers.

14.10 The maintenance of insurance shall not affect the liability of Supplier, such liability to be determined by provisions of the Agreement other than the insurance provisions.

## **15. Supplier Diversity Program**

15.1 It is the policy of UPMC to ensure that Minority, Women and Disadvantaged Businesses, (collectively, "MWDBE vendors"), are provided the maximum opportunity to participate as a supplier or contractor for Products and/or Services provided to UPMC.

15.2 Supplier agrees that if it is a MWDBE vendor, it will provide a copy of its certification from a UPMC approved accredited certifying agency. This certification should be sent to:

Supplier Diversity Coordinator  
UPMC  
Supply Chain Management  
U.S. Steel Tower 59<sup>th</sup> Floor  
600 Grant Street  
Pittsburgh, PA 15219

15.3 In the event Supplier is not a MWDBE vendor but has an existing Supplier Diversity Program, Supplier will track and maintain data with such MWDBEs and will report second tier direct expenditures and/or second tier indirect expenditures to UPMC by the 30<sup>th</sup> day of the month following the close of the calendar quarter through the UPMC automated second tier reporting system.

15.4 If Supplier is not a MWDBE vendor and does not have an existing Supplier Diversity Program, Supplier agrees to develop a MWDBE program plan within 30 days of the effective date of this agreement. The plan will outline the steps Supplier will take to assist UPMC in meeting its overall MWDBE goals. UPMC will work with Supplier, as needed, to help develop the program plan.

15.5 Supplier's MWDBE program plan will outline the commercially reasonable efforts Supplier will use to procure a percentage of the total contract value from MWDBEs through the subcontracts it awards. UPMC believes that a world class supplier would source a minimum of 5% of its' spend volume with MWDBE firms. The program plan must be delivered to the Supplier Diversity Coordinator at the above address, within 30 days from the commencement of this agreement. It must include:

1. MWDBE vendors name(s). [The MWDBE vendors are required to have a certification from a UPMC approved accredited certifying agency and be members of the UPMC Supplier Diversity Program.]
2. Description of Products and Service and estimated dollar portion of Agreement with all MWDBE vendors(s) referenced in number 1 above.
3. Describe how Supplier will track, maintain and report spend data with MWDBEs' to UPMC.

16. **Management Reports.**

16.1 Supplier agrees to develop, prepare, and provide UPMC with management information reports, and at such intervals, all as more fully described in "Required Management Information Reports" attached hereto and made a part hereof as Attachment F. Such Management Information Reports shall be furnished in hard copy form and/or by electronic transmittal, as requested by UPMC.

17. **Notices.**

17.1 All notices, demands, requests, consents, approvals and other communications required or permitted hereunder must be in writing and will be effective upon receipt if delivered personally to such party, or by nationally recognized overnight courier service, or if sent by facsimile transmission with confirmation of delivery, to the address set forth below or to such other address as any party may give to the other in writing for such purpose:

**To the UPMC:**

UPMC Supply Chain Management  
 U.S Steel Tower  
 59<sup>th</sup> Floor  
 600 Grant Street  
 Pittsburgh, PA 15219

**To the Supplier:**

18. **E-Procurement**

18.1 UPMC has initiated an electronic procurement system ("e-Procurement") that, among other things, utilizes PeopleSoft. As such, Supplier agrees that it shall utilize the UPMC's e-procurement system and abide by its requirements, as may be amended from time to time, when transacting business with UPMC. The e-procurement system may, among other things, be used to maintain catalogs, order products/services, monitor inventory and handle presentment and payment of invoices. UPMC reserves the right to modify the policies and procedures for its e-Procurement systems, as UPMC deems appropriate, in its sole discretion, and Vendor shall comply with same.

19. **Miscellaneous.**

19.1 **Preservation of Rights.** No delay or omission on the part of the UPMC to exercise any right or power arising hereunder will impair any such right or power or be considered a waiver of any such right or power or any acquiescence therein, nor will the action or inaction of the UPMC impair any right or power arising hereunder. UPMC's rights and remedies hereunder are cumulative and not exclusive of any other rights or remedies which the UPMC may have under other agreements, at law or in equity.

19.2 **Illegality.** In case any one or more of the provisions contained in this Agreement should

be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

19.3 **Changes in Writing.** This Agreement may be amended only by a written amendment signed by both UPMC and Supplier, provided, however, that UPMC may amend the Affiliate List and Facilities Location List by written Notice to Supplier. No modification, amendment or waiver of any provision of this Agreement nor consent to any departure by Supplier therefrom, will in any event be effective unless the same is in writing and signed by the UPMC, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No consent by the UPMC in any one case will entitle the Supplier to any other or further consent in the same, similar or other circumstances.

19.4 **Entire Agreement.** This Agreement constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

19.5 **Counterparts.** This Agreement may be signed in any number of counterpart copies and by the parties hereto on separate counterparts, but all such copies shall constitute one and the same instrument.

19.6 **Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of the Supplier and UPMC and their respective heirs, executors, administrators, successors and assigns provided, however, that the Supplier may not assign this Agreement in whole or in part without the prior written consent of UPMC, but UPMC at any time may assign this Agreement in whole or in part.

19.7 **Interpretation.** In this Agreement, unless the UPMC and the Supplier otherwise agree in writing, the singular includes the plural and the plural the singular; words importing any gender include both genders; references to "Law" or "Laws" are to be construed as including all provisions consolidating, amending or replacing the Law referred to; the word "or" shall be deemed to include "and/or", the words "including", "includes" and "include" shall be deemed to be followed by the words "without limitation"; references to articles, sections (or subdivisions of sections) or exhibits are to those of this Agreement unless otherwise indicated; and references to agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications not prohibited by the terms of this Agreement. Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

19.8 **Governing Law and Jurisdiction.** This Agreement has been delivered to and accepted by UPMC and will be deemed to be made in the State where the UPMC's principal office indicated above is located. This Agreement will be interpreted and the rights and liabilities of the parties hereto determined in accordance with the laws of the state where the UPMC's principal office indicated above is located, excluding its conflict of laws rules. Supplier hereby irrevocably consents to the exclusive jurisdiction of any state or federal court for the county or judicial district where UPMC's principal office indicated above is located, and consents that all service of process be sent by nationally recognized overnight courier service directed to the Supplier at the Supplier's address set forth herein and service so made will be deemed to be completed on the Business Day after deposit with such courier; provided that nothing contained in this Agreement will prevent the UPMC from bringing any action, enforcing any award or judgment against any security or against any property of the Supplier within any other county, state or other foreign or domestic jurisdiction. UPMC and Supplier agree that the venue provided above is the most convenient forum for both the UPMC and the Supplier, and Supplier waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Agreement.

19.9 **Force Majeure.** Neither party shall be held liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control or without its fault or negligence, such as acts of God, acts of civil or military authority, government regulations, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accident, floods, power blackouts, volcanic action, major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities, or acts or omissions of transportation common carriers or suppliers.

19.10 **Remedies Cumulative.** All remedies provided for under the terms of this Agreement shall be cumulative and not alternative.

19.11 **No Third Party Rights.** This Agreement shall not provide any person not a party to the Agreement with any remedy, claim, liability, reimbursement, cause of action, or other right in excess of those existing without reference to this Agreement. For the purpose of this paragraph 19.11, UPMC's Affiliates shall not be deemed to be third parties.

19.12 **Set-Off.** UPMC shall be entitled at all times to set off any amount owing at any time from Supplier to UPMC or any of its affiliated companies against any amount payable at any time by UPMC in connection with this Agreement.

19.13 **Waiver of Jury Trial.** Each of the Supplier and UPMC irrevocably waives any and all right it may have to a trial by jury in any action, proceeding or claim of any nature relating to this Agreement, any documents executed in connection with this Agreement or any transaction contemplated in any of such documents. Supplier and UPMC acknowledge that the foregoing waiver is knowing and voluntary.

19.14 **Right to Audit.** From time to time during the term of this Agreement, Supplier shall allow UPMC or persons authorized by and acting on behalf of UPMC, including UPMC and its independent public accountants, and federal and state governmental and bank regulatory authorities having jurisdiction over UPMC's business, reasonable access during normal business hours to the books, records, procedures and facilities of Supplier related to this Agreement to inspect, review, examine and audit such books, records, procedures and facilities. Supplier shall reasonably cooperate with UPMC, such other persons authorized by UPMC and any governmental and bank regulatory authorities in the conduct of such examination and audit, including giving them access for discussion of any audit, to officers and the independent public accountants of Supplier. Any third party provider, subcontractor or agent of Supplier in the performance of this Agreement shall be required by Supplier to grant UPMC, its authorized persons and such governmental and bank regulatory authorities the same access and audit rights.

19.15 **Effect of Inspection and Acceptance.** Inspection, testing, acceptance, payment, or use of Product or Services by UPMC shall not affect or limit UPMC's rights or Supplier's obligations under the warranties provided in this Section and under any other warranties provided in this Agreement.

19.16 **Title.** Supplier warrants that it has good and merchantable title to Product and that Product shall be delivered free and clear of all liens and encumbrances.

19.17 **Financial Security for Performance and Labor and Material Indemnity** - The successful Supplier may be required to provide financial security up to One Hundred Percent (100%) of the contract amount for the protection of claimants supplying labor or materials to either the prime contractor or any subcontractor for work performed in furtherance of the contract. Any required financial security must be in form acceptable to UPMC.

19.18 **Compliance With Pennsylvania "Right To Know" Law; Superfund** - UPMC is obligated to comply with the Pennsylvania Worker and Community Right to Know Act (35 P.S. 7301-7320) and

Superfund Amendments and Reauthorization Act ("SARA") (42 U.S.L.; 9601 et seq.). Successful Suppliers, where applicable, must submit a Material Safety Data Sheet ("MSDS") for all chemicals that UPMC purchases under this agreement.

Submit all Material Safety Data Sheets to:

UPMC  
Forbes Tower  
Corporate Services  
200 Lothrop Street  
Pittsburgh, PA 15213

**19.19 Settlement of Disputes** - It is expressly covenanted and agreed that in the event of a disagreement or controversy arising between the Supplier and the UPMC, as to the interpretation, specifications, or proper execution of this Agreement, or in the event any disagreement, dispute under this Agreement or as to the work involved, such dispute shall be brought immediately to the attention of UPMC's Director of Strategic Sourcing (Director) in writing. The Director shall decide upon the dispute and such decision shall be final and conclusive, as to all matters in controversy, without exception or appeal, and all right(s) of action at law, in equity or otherwise, under and by virtue of this contract are hereby expressly waived.

**19.20 Worker's Compensation** - Supplier hereby agrees to perform the work described in this Agreement, and further certifies that it has accepted the provisions of the Worker's Compensation and Occupational Disease Acts, as amended and supplemented, insofar as the work covered by this Agreement is concerned, and that it has insured its liability there under in accordance with the terms of the said Acts, as evidenced by the certificate of insurance it has caused to be attached hereto, or will file with the Director of Strategic Sourcing, before the execution of this Agreement, a certificate of exemption form for insurance from the Bureau of Workmen's Compensation of the Department of Labor and Industry.

**19.21 Delivery/Freight-** All shipping and handling charges shall be included in the final price – F.O.B. delivery to destination.

**19.22 Green Purchasing-** UPMC is committed system-wide to an Environmentally Preferable Purchasing (EPP) process. EPP is the act of purchasing products and services whose environmental impacts have been considered and found to be less damaging to the environment and human health when compared to competing products and services. UPMC embraces an environmentally responsible approach within all aspects of its operations so long as feasible "green" alternatives exist that do not compromise patient care. UPMC will continue to review supply opportunities without compromising its existing sourcing practices, contractual negotiations, or its mission to obtain optimal products/services and pricing. UPMC will strive to purchase environmentally safe products such as mercury-free equipment and supplies for non-clinical and lab applications. Clinical equipment and devices purchased by UPMC will also be mercury-free unless such equipment compromises the quality of care or patient safety.

**19.23 Market Competition -** The Supplier agrees to monitor and review market conditions with UPMC. In the event that new competitive entries have an impact or the market changes beyond the value of the pending contract, the Supplier agrees to work with UPMC to maintain discounts and pricing in a manner relative to the original contract. In the event the Supplier is unable or unwilling to reduce pricing based on market conditions, UPMC and Supplier agree this to be considered a material breach of contract and UPMC may terminate this agreement as per section 3.2.1.

**19.24 Efficiency Opportunities and Shared Savings -** Suppliers are encouraged to provide additional incremental savings opportunities to UPMC throughout the term of the agreement. The proposed

opportunities may include but should not be limited to efficiency in operations, reduction in pricing or product substitution. Incremental savings shall be presented by Supplier and reviewed by UPMC for approval or rejection. If approved, new savings initiatives achieved under the Agreement will be calculated for a twelve (12) month period beginning on the date agreed upon that establishes full implementation, based on a 70% (UPMC) / 30% (Supplier) split. Payments will be made in the first month following the twelfth (12th) month unless otherwise provided for in this Agreement. No payments shall be made to the Supplier beyond the term of the agreement or in case of termination for breach. Any savings opportunities exclusively identified and implemented by UPMC are not part of this agreement. All Initiatives must have UPMC written approval to be calculated as savings. Savings calculation will not begin until the initiative is fully implemented and operational. Consideration for calculation of savings for ramp up initiatives shall be mutually agreed upon prior to authorization.

IN WITNESS WHEREOF, Supplier and UPMC have executed this Agreement by their duly authorized officer(s) as of the date first above written.

**SUPPLIER:** \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**UPMC**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTACHMENT A**

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**AFFILIATE LIST**

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This list of Affiliates is current as of the date of this Agreement. UPMC may add and/or delete one or more Affiliates to or from this Attachment A, at UPMC's discretion. If required, UPMC will provide written notice of additions or deletions to the Affiliates List.

Available upon request

**ATTACHMENT B**

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**INVOICING TERMS AND PRICING SCHEDULE/BID SHEET**

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**B.1 INVOICING AND PAYMENT TERMS**

**B. 1.1** If an invoice is disputed by UPMC, UPMC agrees to notify Supplier of any disputed items on such invoice and make a reasonable effort to work with the Supplier to resolve the alleged discrepancy.

**B. 1.2** Supplier agrees to notify UPMC in writing of any invoice(s) which remain unpaid after sixty (60) days. Supplier will identify the invoice(s) by invoice number, amount, date, account number, and market center. Supplier will also provide a duplicate copy of such invoice(s) if requested to do so by UPMC.

**B. 1.3** All invoicing must comply with all of the accounting requirements of UPMC as communicated to Supplier from time to time.

**B.1.4** Payment of all invoices will be **net forty-five (45) days**

**B.1.5** All invoices are to be forwarded directly to:

**UPMC  
PO Box 660842  
Dallas, TX 75266-0842**

unless otherwise indicated on the Purchase Order.

**B.2 PRICING/BID SHEET** A separate document may be attached if bid content requires additional space.

**B.2.1**

<u>Description</u>	<u>Unit of Measure</u>	<u>Price</u>
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**ATTACHMENT C**

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**DESCRIPTION OF SERVICES, TERMS AND CONDITIONS/ SPECIFICATIONS**

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**C.1 SERVICES**

**C.1.1 Product Requirements**

**C.1.2 Service Performance**

**C.1.3 Delivery, Installation, and Maintenance Performance**

**C.1.4 General Conditions**

**ATTACHMENT D**

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**PRODUCT SPECIFICATIONS AND FEATURES DESCRIPTION /  
CUSTOMER SERVICE**

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**D.1 PRODUCT SPECIFICATIONS**

D.1.1

**ATTACHMENT E**

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**FACILITIES LOCATION LIST  
(To include but not limited to)**

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Available upon request or visit [www.upmc.com](http://www.upmc.com)

**ATTACHMENT F**

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**MANAGEMENT INFORMATION REPORTS**

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F.1 Supplier agree to provide to UPMC the following reports:

F.1.1 Supplier shall issue monthly a comprehensive year to date and current month report (preferably in excel format) to Supply Chain Management that will include but not be limited to:

F.2 Supplier agrees to provide UPMC other reports as may be reasonably requested from time-to-time.

**ATTACHMENT G**

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**SUPPLIER'S PUBLISHED DISASTER RECOVERY PLAN**

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G.1 Supplier's published disaster recovery plan

G1.1

G.1.2 .

G.1.3 .

G.1.4

G.1.5.

**ATTACHMENT H**

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**STATEMENT OF MAINTENANCE REQUIREMENTS**

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H1

H1.1

H1.2

H1.3

H1.4

**ATTACHMENT I**

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**WARRANTY STATEMENT**

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I.1

I.1.1

I.1.2

I.1.3

I.2.1

I.2.2

I.2.3

I.2.4

I.2.5

I.2.6

**ATTACHMENT J**

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**RECORD RETENTION POLICY /**

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**ATTACHMENT K**

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**REFERENCES**

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A. UPMC will verify the Bidders competence in the type of work required by the proposed contract through a check of the references submitted below.

B. Please state three (3) references for which you have performed the type of work required in this agreement:

1. Owner/Principal: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Project Title: \_\_\_\_\_  
Location of Work Site: \_\_\_\_\_  
Scope of Work: \_\_\_\_\_  
Contract Price: \_\_\_\_\_  
Additional Cost for Extras: \_\_\_\_\_
  
2. Owner/Principal: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Project Title: \_\_\_\_\_  
Location of Work Site: \_\_\_\_\_  
Scope of Work: \_\_\_\_\_  
Contract Price: \_\_\_\_\_  
Additional Cost for Extras: \_\_\_\_\_
  
3. Owner/Principal: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Project Title: \_\_\_\_\_  
Location of Work Site: \_\_\_\_\_  
Scope of Work: \_\_\_\_\_  
Contract Price: \_\_\_\_\_  
Additional Cost for Extras: \_\_\_\_\_

## ATTACHMENT L

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### FUEL SURCHARGE

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**Does not Apply to this agreement.**

**Fuel Surcharge** (X.XX – Must indicate dollar amounts below)

If the Energy Information Administration (EIA) Central Atlantic Index (see link below), goes above \$X.XX per gallon for 87 octane unleaded or regular diesel, adjustments to fuel charges will be considered for delivery services upon Supplier written request. Any fuel surcharge approved by UPMC will be based on the percentage of fuel proportional to the total cost of goods / services provided.

Supplier should maintain proper documentation of their monthly fuel usage which UPMC may require periodically. Such documentation may include copies of receipts, charge slips, fuel supplier monthly reports, vehicle mileage, etc. UPMC reserves the right to reject fuel cost adjustments if proper documentation is not provided. Any approved surcharge will be in effect for no more than thirty (30) days. Supplier must provide a written request every 30 days for continuance of a fuel surcharge.

UPMC will review the EIA Central Atlantic Index to confirm whether any downward adjustment from a baseline of \$X.XX / gallon for 87 octane unleaded or regular diesel fuel is necessary based upon current fuel prices.

<http://tonto.eia.doe.gov/oog/info/gdu/gasdiesel.asp>

**ATTACHMENT M**

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**GUARANTEED SAVINGS**

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**Guaranteed Savings** (XXX Must indicate dollar amounts below)

The execution of this contract shall guarantee \$XXX in savings in year one (1), \$XXX in savings in year two (2) and \$XXX for year three (3) of the Agreement. Calculation of the savings shall be based on previous 12 month invoiced spend and volumes or as otherwise indicted in the Agreement. In the event such savings is not achieved, Supplier will pay the shortfall of the guaranteed savings to UPMC. A check shall be provided to UPMC the following month in which savings is due. The savings amounts indicated above and achieved under the Agreement is allocated solely to UPMC.

ATTACHMENT N

DIRECT DEPOSIT FORM



**UPMC** | University of Pittsburgh  
Medical Center

Corporate Accounts Payable Department U.S. Steel Tower  
28<sup>th</sup> Floor  
600 Grant Street  
Pittsburgh, PA. 15219

**AUTHORIZATION AGREEMENT FOR DIRECT DEPOSITS (ACH CREDITS)**

Company Name \_\_\_\_\_ Federal tax ID Number \_\_\_\_\_

I (we) hereby authorize the **University of Pittsburgh Medical Center**, herein called COMPANY, to initiate credit entries to my (our) \_\_\_ Checking Account/ \_\_\_ Savings Account (select one) which is indicated below at the depository financial institution named below, hereafter called DEPOSITORY, and to credit the same to such account, I (we) acknowledge that the origination of ACH transactions to my (our) account must comply with the provisions of the U.S. law.

Depository Name \_\_\_\_\_ Branch \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Routing Number \_\_\_\_\_ Account Number \_\_\_\_\_

This authorization is to remain in full force and effect until COMPANY has received written notification from me (or either of us) of its termination in such manner as to afford COMPANY and DEPOSITORY a reasonable opportunity to act on it.

Name(s) \_\_\_\_\_

Date \_\_\_\_\_ Signature \_\_\_\_\_

Phone Number \_\_\_\_\_

**Please return the completed form to:**

**UPMC Corporate Accounts Payable Office**  
**U.S. Steel Tower**  
**28<sup>th</sup> Floor**  
**600 Grant St.**  
**Pittsburgh, PA 15219**

Or

Email to: [vendor\\_support@upmc.edu](mailto:vendor_support@upmc.edu)

Or Fax to: 412-647-4337

**ATTACHMENT O**  
**(Use When Appropriate)**

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**ELECTRONIC COMMERCE TRADING PARTNER AMENDMENT**

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*This Electronic Commerce Trading Partner Amendment (“Amendment”) is entered into by the Parties pursuant to the terms of the Master Purchase / Service Agreement \_\_\_\_\_ (“Master Agreement”) dated \_\_\_\_\_ between University of Pittsburgh Medical Center (“UPMC”) and \_\_\_\_\_ (“Supplier”). Except to the extent expressly provided otherwise in this Amendment, all the terms of the Master Agreement are incorporated by reference. In the event of any inconsistent or contradictory terms, the terms of the Master Agreement will control and supersede such inconsistent or contradictory terms. Any terms used specifically this Amendment and not otherwise defined in the Master Agreement will be defined herein.*

1. PURPOSE

*UPMC and Supplier have agreed to conduct the exchange of business transactions using electronic commerce enabling technologies and further agree that the provisions of this Amendment govern the electronic transmission portion of the business transactions covered by the Master Agreement and that such provisions are supplemental to the Master Agreement.*

*UPMC and Supplier will facilitate business transactions by electronically transmitting data. UPMC and Supplier intend that contracts formed by electronically transmitting Data will be as enforceable as contracts formed by the former media.*

2. DEFINITIONS

As used in these terms and conditions, the following terms, when capitalized, shall have the following meanings:

- a. “Data” means information transmitted pursuant to an Exhibit.
- b. “Acknowledgment” means an electronic indicator verifying receipt of the Data.
- c. “Exhibit” means the authorizing document for an electronic transmission. Exhibits set forth the categories of Data to be transmitted, the transaction sets, formats and other information relevant to the transmission. As business requirements dictate, Exhibits will be executed between the parties and upon execution will be subject to this Amendment without further formalities.

3. SYSTEM OPERATIONS

*Each party, at its own expense, will provide and maintain the equipment, software and services necessary to reliably transmit, receive and control Data and will periodically test and monitor such equipment, software, and services to ensure that they are adequate to reliably transmit, receive, and control Data.*

4. DATA TRANSACTIONS

*If one party electronically transmits Data to the other party in accordance with the applicable Exhibit, the other party agrees to receive the Data. Any other transmission of information or requirements is not subject to this Amendment.*

5. MEANS OF TRANSMISSION

- a. The parties will transmit Data directly to one another or through a service provider and in accordance with business requirements identified in Attachment AA.
- b. Each party will be liable to the other for the acts or omissions of its provider (Value Added Network) while transmitting, receiving, storing or handling Data. If both parties use the same provider, the originating party will be liable to the other for the acts or omissions of the provider related to that Data.

6. SIGNATURES

*Each authorized representative of a party will adopt a unique, verifiable digital identification consisting of symbols or codes to be transmitted with each transmission. Use of the digital identification will be deemed for all purposes to constitute a "signature" and will have the same effect as a signature on a written document. Each authorized representative of a party will maintain sole control of the use of his or her digital identification and neither party will disclose the digital identification of the other party to any unauthorized person.*

7. GARBLED TRANSMISSIONS

*If a party receives unintelligible Data, that party will promptly notify the sending party (if identifiable from the received Data). If the sending party is identifiable from the Data but the receiving party fails to give prompt notice that the Data is unintelligible, the records of the sending party will govern. If the sending party is not identifiable from the Data, the records of the party receiving the unintelligible Data will govern.*

8. TRANSACTION SECURITY

*Each party will provide appropriate security measures to ensure that all transmissions of Data are authorized and to protect Data from unauthorized access, alteration, or loss. Each party will use reasonable care to maintain the confidentiality of transactions and the Data therein in the same secured manner as it would maintain for paper documents of like kind and importance.*

9. RETENTION

*Each party will retain records of all transactions for at least four weeks after concluding each transaction. The parties will also retain records of transactions to the extent required by the Master Agreement or applicable law.*

10. RECEIPT AND ACCEPTANCE

- a. Proper Receipt. Data shall not be deemed to have been properly received and no Data shall give rise to any obligation, until accessible to the receiving party at such party's receipt computer designated in the implementation guidelines.
- b. Verification. Upon receipt of any Data, the receiver shall promptly and properly transmit an acknowledgment in return, unless otherwise specified in the implementation guidelines. If any acknowledgment is not received within twenty-four (24) hours, the sender shall initiate appropriate inquiries. An acknowledgment shall constitute conclusive evidence that Data has been properly received.

11. INTENTION TO BE BOUND

Written objection must be received within two (2) business days of transmission acknowledgment.

Supplier's silence is evidence of intent to be bound by the Master Agreement.

12. TERMS AND CONDITIONS PRECEDENCE

*All transactions will be subject to the Master Agreement. In the event of a conflict between this Amendment and the Master Agreement, for any electronic transmission related matter, the terms of this Amendment, including the applicable Exhibit, takes precedence, otherwise the Master Agreement controls.*

13. ENFORCEABILITY AND ADMISSIBILITY

- a. Any Data properly transmitted pursuant to this Amendment will be deemed for all purposes: (1) to be a "writing" or "in writing;" and (2) to constitute an "original" when printed from electronic records established and maintained in the ordinary course of the parties' businesses.
- b. Any Data digitally signed pursuant to clause 6 and electronically transmitted pursuant to this Amendment will be as legally sufficient as a written, signed, paper document exchanged between the parties, notwithstanding any legal requirement that the Data be in writing or signed. Data records introduced as evidence in any judicial, arbitration, mediation, or administrative proceeding will be admissible to the same extent as business records maintained in written form.
- c. The conduct of the parties pursuant to this Amendment, including the use of Data properly transmitted hereunder, shall, for all legal purposes, evidence a course of dealing and a course of performance accepted by the parties in furtherance of the purpose of the terms of this Amendment.

14. INCIDENTAL AND CONSEQUENTIAL DAMAGES

*NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING FROM OR AS A RESULT OF ANY DELAY, OMISSION, OR ERROR IN THE ELECTRONIC TRANSMISSION OR RECEIPT OF ANY TRANSACTION SENT PURSUANT TO THIS AMENDMENT.*

15. NATURE OF AGREEMENT

*This Amendment does not express or imply any commitment to purchase or sell goods or services or conduct any other business transaction.*

16. MODIFICATION

*This Amendment may not be contradicted, modified, or supplemented except by a written agreement signed by both parties.*

17. APPLICABLE LAW

*These terms and conditions will be governed and construed in accordance with the governing law applied to the Master Agreement.*

18. ENTIRE AGREEMENT

*The terms and conditions executed pursuant hereto, constitute the complete agreement of parties in relation to electronic transmission portion of the business transactions covered by the Master*

*Agreement and supersede all prior representations or agreements, whether oral or written, with respect to such matters.*

Each party has caused these terms and conditions to be properly executed on its behalf as of the date first written.

**University of Pittsburgh Medical Center**

**[Supplier` Name]**

By \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

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**MATERIAL PRICE ADJUSTMENT**

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Prices may be adjusted on an **annual** basis to take fluctuations in raw material prices for **XXX** and **XXX** into consideration. UPMC and the **<supplier>** will discuss potential pricing adjusts as appropriate to reflect changes in raw material pricing which have occurred during the **preceding year**. No raw material pricing adjustments will be made until the first anniversary of the contract. **<Supplier>** must provide sixty (60) day advance written notice of requested price changes.

UPMC will require documentation of a change in raw materials market that would necessitate the requested price change. UPMC reserves the right to reject such requests for price adjustments, if the supplier does not provide proper notice and/or adequate justification. The basis for any adjustments will reference the same indexes and terms for negotiation that will be used over the term of the contract, as outlined below.

- 1) Price adjustments will be considered only for the raw material portion of the line item price based on the cost breakdown submitted with the supplier’s quotation and as evidenced here.

<b>Materials Cost Breakdown:</b>			
	MATERIAL	% TOTAL COST	AMT TOTAL COST
	Nylon fibers	70%	\$ 0.220
	Polyester fibers	13%	\$ 0.041
	Plastisol ink	10%	\$ 0.031
	Packaging	7%	\$ 0.022
<i>The weighted average landed material only cost is:</i> ----->			\$ 0.314

- 2) Price adjustments will only be considered when the raw material index price (according to **XXXX**) differs by **+/- 10%** from the index at the "agreement commencement" (either the start of the contract or the date of the last price adjustment).
- 3) Difference in the index price for purposes of price adjustments will be calculated by comparing the index at "agreement commencement" with the average index price for the last month of the quarter.
- 4) At the start of the contract, the "agreement commencement" index will be defined as the average index price for the previous four (4) months. For example, if the contract commences June 1<sup>st</sup>, the "agreement commencement" index will be the average of the index price for the previously completed four months, February through May.

**RAW MATERIAL INDEX:** \_\_\_\_\_

**INDEX AT COMMENCEMENT:** \_\_\_\_\_