

THE METROHEALTH SYSTEM
PURCHASE ORDER TERMS AND CONDITIONS
Purchase of goods and/or services

This purchase order (“Purchase Order”) for goods (“Goods”) and/or services (“Services”) issued by The MetroHealth System, a county hospital established and operated under Chapter 339 of the Ohio Revised Code (“MetroHealth”), shall be governed by these terms and conditions (“Terms and Conditions”) unless Vendor has entered into a written agreement or instrument (“Agreement”) with MetroHealth that sets forth terms and conditions for the purchase of Goods and/or Services. In such event, the terms and conditions of such Agreement shall take precedence over these Terms and Conditions. Terms and conditions in any acceptance by Vendor, that are in addition to or not identical to the Terms and Conditions referenced herein or in an applicable Agreement, will not become a part of any contract or agreement between the parties. By acceptance of this Purchase Order, Vendor agrees to and accepts the above-referenced Terms and Conditions or those set forth in an applicable Agreement. No other terms or conditions, including, but not limited to, any terms and conditions set forth in a document issued by Vendor, will be binding upon the parties unless accepted by them in a writing signed by both parties. The performance of all or any portion of the Goods and/or Services covered by this Purchase Order will constitute Vendor’s unqualified acceptance of these Terms and Conditions or those set forth in an applicable Agreement.

1. Names and Logos. Vendor agrees not to use any name or mark of MetroHealth to quote the opinion of any of MetroHealth employees in any advertising or other publicity, including in client lists or on Vendor’s website, without obtaining the prior written consent of MetroHealth.
2. Debarred Vendors. Neither Vendor nor any agent of Vendor that will be providing Goods and/or Services under this Purchase Order has any undisclosed interest in the Purchase Order that would constitute a conflict of interest or other violation of Ohio or federal ethics laws and rules or has been excluded, suspended, debarred, or otherwise sanctioned from participation in any federal or state healthcare program, including Medicare, Medicaid, or TRICARE/CHAMPUS programs or has been convicted or found to have violated any federal or state fraud and abuse or illegal remuneration law. In the event that during the term of this Purchase Order, Vendor or any of its agents are so excluded, suspended, debarred, or sanctioned or are convicted or found to have violated any federal or state fraud and abuse or illegal remuneration law, Vendor shall promptly notify MetroHealth of such event by email to compliance@metrohealth.org.
3. Data. Vendor agrees and acknowledges that MetroHealth data remains the sole and exclusive property of MetroHealth and can only be used as required under this Purchase Order. Further, Vendor agrees that MetroHealth may disclose the pricing available under this Purchase Order to a third-party if MetroHealth has entered into a written agreement with such third-party that prohibits the third-party from (i) disclosing the pricing in any way that identifies MetroHealth or the Vendor; (ii) disclosing the pricing in a way that may be linked to MetroHealth’s performance or demographics; (iii) disclosing pricing

trends with respect to MetroHealth whether or not MetroHealth is named; and (iv) publishing the pricing in the public domain in any form.

4. Confidentiality. Vendor acknowledges that, in the course of meeting its obligations under this Purchase Order, Vendor may become aware of or come into possession of certain MetroHealth Confidential Information. “Confidential Information” means all written and oral information, documents and data previously or hereafter obtained by Vendor from MetroHealth in connection with this Purchase Order, including but not limited to negotiated contract rates and pricing, technical data, programs, marketing plans, and operating practices. Unless required by law to disclose such information, Vendor agrees to hold all Confidential Information in confidence and, at the expiration or termination of this Purchase Order, return and/or destroy all Confidential Information as specified by MetroHealth.
5. Intent of Parties / No Referrals. Neither Vendor nor MetroHealth intend that any payments made under this Purchase Order be in return for the referral of ongoing business, if any, or in return for the purchasing, leasing, or ordering of any Goods or Services other than the specific Goods or Services described within the Purchase Order. All payments specified herein are consistent with what the parties reasonably believe to be a fair market value for the Goods and/or Services provided.
6. Indemnification. Vendor agrees to indemnify, hold harmless and defend MetroHealth, including its trustees, officers, directors, and employees from any claim, damage, liability, injury, attorney fees, expense or loss arising out of, directly or indirectly, the Vendor’s performance or nonperformance (including any subcontractors) under this Purchase Order.
7. Warranty.
 - a. Warranty on Goods. Unless more favorable warranty terms are extended to MetroHealth in a quotation, purchase order, or other similar document issued by Vendor and relating to this Purchase Order, Vendor shall provide MetroHealth with Vendor’s standard warranty terms for the Goods being sold to MetroHealth pursuant to the Purchase Order. In furtherance and not in limitation of the foregoing, Vendor warrants that (i) all Goods and work with the exception of instruments will be of new material, merchantable, free from defects, and unreasonable hazards, in design, material, and workmanship, fit for the purposes described in their FDA clearance and so long as unaltered will conform to Vendor’s specifications for such Goods and to the FDA compliant requirements set forth in the Purchase Order, (ii) Vendor has taken all proper and necessary precautions for the safety and protection of persons and property, and has provided all proper warnings for hazards related to Goods and work that cannot be eliminated, (iii) the Goods will not infringe, misappropriate or violate any intellectual property or other right of any person or entity, and (iv) Vendor has the authority to enter into the Purchase Order and to perform its obligations hereunder

and thereunder. These warranties, Vendor's service guarantees, and implied warranties, shall survive inspection, testing, and acceptance. MetroHealth's remedies under the warranties shall include at MetroHealth's election (a) repair by Vendor or persons designated by Vendor and accepted by MetroHealth of any Goods found to be defective in violation of these warranties, without charge, (b) replacement of Goods with new Goods that conform to the above requirements or, (c) if repair or replacement is not possible, return and full refund of the purchase price paid by MetroHealth for such unused Goods. Vendor shall be responsible for all shipping and other fees in connection with return and/or replacement of defective Goods so long as MetroHealth obtains a Return Authorization ("RA") number from Vendor's customer support organization and includes the RA number on the outside packaging of such returned Goods.

- b. Warranty on Services. Where Vendor provides Services, Vendor hereby represents and warrants that any Services being provided by Vendor and/or in connection with the Goods being sold pursuant to this Purchase Order (including but not limited to installation, repair, preventive maintenance, and the like) shall be performed promptly, diligently, and professionally to meet MetroHealth's needs and requirements and to MetroHealth's reasonable satisfaction. Further, Vendor hereby represents and warrants that, at all times, the Services will be performed by personnel with the necessary skills and expertise to perform the Services in a professional and workmanlike manner. Vendor warrants that Services will not infringe, misappropriate or violate any intellectual property or other right of any person or entity.

8. Compliance with Laws.

- a. Vendor shall comply with all applicable federal, state, and local laws, regulations, including non-discrimination and equal employment opportunity provisions, and executive orders in performance of the Purchase Order. Vendor acknowledges that MetroHealth is subject to Ohio's public records laws and rules.
 - b. Vendor shall comply with all MetroHealth policies, procedures and protocols, as applicable for the performance of its obligations under this Purchase Order. Vendor acknowledges that MetroHealth's Ethics and Compliance Department operates and manages the MetroHealth Code of Conduct (the "Code"), available at: <https://www.metrohealth.org/about-us/ethics-and-compliance>. Vendor acknowledges that it, and any individual providing Services to MetroHealth under the Agreement, must comply with the Code.
9. Access to Books and Records. If this Purchase Order is for the provision of Services with a value of Ten Thousand Dollars (\$10,000) or more within a twelve (12) month period, then until the expiration of four (4) years after the furnishing of any Services pursuant to this Purchase Order, Vendor shall make available, upon written request by the Secretary of the United States Department of Health and Human Services or from the United States Comptroller General, or any of their duly authorized representatives, this Purchase Order

and such books, documents, and records of Vendor as are necessary to certify the nature and the extent of the reasonable cost of Services to MetroHealth. If Vendor enters into an agreement with any related organization to provide Services pursuant to this Purchase Order with a value of Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period, such agreement shall contain a clause identical in content to the first sentence of this paragraph. This paragraph shall be of force and effect only to the extent required by 42 U.S.C. § 1395x(v)(1)(I).

10. Audit Right. Notwithstanding the value of the Goods and/or Services provided herein, MetroHealth shall have access to and the right to examine and copy any books, documents, papers, and records of Vendor involving transactions related to this Purchase Order until the expiration of four (4) years after final payment hereunder. Vendor further agrees to promptly furnish, when requested by MetroHealth, such books, documents, and records of Vendor as are necessary to verify the accuracy of the amounts invoiced to MetroHealth against any past or current Goods and/or Services provided by Vendor. If any audit discloses an overpayment by MetroHealth or a discrepancy in the amount invoiced by Vendor against the Goods and/or Services actually provided by Vendor, Vendor will promptly reimburse MetroHealth, within thirty (30) days of MetroHealth's notification to Vendor, of any such overpayment, rectify such discrepancy, or both, and further reimburse MetroHealth for any costs and expenses incurred by MetroHealth for any such audit, including in connection with its retention of any third-party auditor.
11. Governing Law and Venue. This Purchase Order shall be construed and enforced in accordance with and governed by the laws of the State of Ohio, without regard to conflict of law rules. Proper venue for all unresolved disputes, controversies and litigation arising under the Purchase Order shall be exclusively with the state and federal courts located in Cuyahoga County, Ohio and each hereby agrees to submit to the personal jurisdiction of such courts.
12. Insurance. Vendor shall, at its own expense, for the duration of this Purchase Order, maintain policies of (i) commercial general liability insurance naming MetroHealth as an additional insured in an amount of at least One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) annual aggregate, and (ii) products and completed operations liability in an amount of at least One Million Dollars (\$1,000,000) each claim and Three Million Dollars (\$3,000,000) annual aggregate to insure it, its employees, and agents against all claims and liabilities arising out of or related to this Purchase Order. Umbrella or excess liability policies may be used to meet aggregate amounts. All insurance policies shall be written with companies that have a minimum AM Best Rating of A VII or evidence of the financial solvency of self-insured programs or captive insured programs. Vendor shall notify MetroHealth in writing thirty (30) days prior to any material alterations, cancellations, or replacement of the existing policy(s). Evidence of such coverage shall be presented to MetroHealth prior to execution of the Purchase Order or upon request by MetroHealth. In the event that such coverage is written on a claims made basis then for two (2) years after the completion of performance under the Purchase Order, Vendor shall arrange appropriate tail coverage or prior acts

coverage consistent with the requirements of this section in the event that such claims made policy is canceled or not renewed.

13. Limitation on Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY UNDER THIS PURCHASE ORDER FOR ANY SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING FROM THE PERFORMANCE OR NONPERFORMANCE OF THIS PURCHASE ORDER. WITH RESPECT TO THE PURCHASE ORDER, IN NO EVENT SHALL METROHEALTH BE LIABLE TO VENDOR FOR AGGREGATE DAMAGES IN EXCESS OF THE FEES PAYABLE TO VENDOR AS SET FORTH IN THE PURCHASE ORDER. THE EXCLUSIONS AND LIMITATIONS OF LIABILITY IN THIS SECTION DO NOT APPLY TO (I) ANY LIABILITIES OR OBLIGATIONS UNDER THE SECTIONS ENTITLED CONFIDENTIALITY, DEBARRED VENDORS, INDEMNIFICATION, COMPLIANCE WITH LAWS, HIPAA CONFIDENTIALITY, AND INSURANCE; (II) ANY CLAIMS FOR DEATH OR PERSONAL INJURY; (III) ANY CLAIMS RESULTING FROM GROSS NEGLIGENCE OR WILFUL MISCONDUCT OR FRAUD OF A PARTY; OR (IV) ANY OTHER FORMS OF LIABILITY WHICH BY LAW CANNOT BE LIMITED OR EXCLUDED.

14. Invoicing and Payment.

- a. Invoicing. Vendor shall invoice MetroHealth for the delivery of Goods or Services only in accordance with the Purchase Order. For purchases providing for invoicing on an ongoing basis, in no event shall Vendor invoice MetroHealth more frequently than monthly. Each invoice submitted by Vendor (i) shall reference the correct MetroHealth purchase order (“PO”) number (with only one PO number per invoice); (ii) for Goods, the invoice shall match the line items on the corresponding PO; (iii) for Services on a time and/or materials basis, the invoice shall contain detailed time entries with hours worked, locations where work was performed, personnel performing the work; nature of the work and (if applicable) cost of materials; and (iv) for Services where payment is contingent on deliverable(s), the invoice shall state the recipient of the deliverable(s) and the date(s) delivered. Invoices shall be submitted for approval to accountspayable@metrohealth.org. In the event MetroHealth reasonably requests additional substantiating detail, Vendor shall promptly provide such detail, and the time during which such request is pending shall extend the due date for payment. Vendor shall not issue multiple invoices for the same Goods or Services. Vendor may issue statements of account indicating the status of Vendor’s invoices to MetroHealth by invoice number.
- b. Payment Terms. Payment terms are sixty (60) days upon MetroHealth’s receipt of an accurate and complete invoice. MetroHealth’s payments may be made through one or more of the following methods: (i) check, (ii) automated clearing house (“ACH”) funds transfer in accordance with Vendor’s instructions, or (iii) corporate or electronic credit or debit card. MetroHealth may require Vendor to enroll in MetroHealth’s ePayables program. MetroHealth may withhold payment of particular charges or amounts that MetroHealth disputes in good faith, provided

MetroHealth notifies Vendor of such dispute at the time of withholding. Notification for this purpose means providing Vendor with a reasonably detailed explanation, including any supporting documentation if applicable, of the basis for such withholding. The Parties shall use commercially reasonable efforts to promptly resolve any such payment dispute.

- c. Reimbursable Expenses. Any actual expenses reasonably and properly incurred in performing Services under this Purchase Order will only be reimbursable by MetroHealth if approved by MetroHealth in writing prior to Vendor incurring the expense (“Reimbursable Expenses”). Reimbursable Expenses for travel shall only include reasonable transportation, meal, and lodging costs relating to travel that is specifically requested by MetroHealth and that is directly related to performing duties under this Purchase Order. To qualify for reimbursement, all Reimbursable Expenses must be evidenced by original receipts (or legible copies thereof) for lodging, meals and incidentals and may not exceed U.S. GSA Per Diem amounts for the Cleveland/Cuyahoga County, Ohio areas (as set forth on <https://www.gsa.gov/travel/plan-book/per-diem-rates/per-diem-rates-lookup>) and expense reimbursement for personal vehicle use shall be at then current IRS mileage rates. MetroHealth is not obligated to reimburse Vendor for Reimbursable Expenses that (i) are not documented in accordance with this Section, (ii) exceed any specific amount or limit set forth in the Purchase Order, or (iii) are submitted for reimbursement more than sixty (60) days after the date such expenses were incurred.

15. Evaluation. Services engagements directed related to patient care that involve care, treatment or services provided to MetroHealth patients will be evaluated on at least a semi-annual basis by MetroHealth to ensure Services are being provided in a safe and effective manner and in accordance with all performance expectations. Such evaluation will be based upon criteria which include, but are not limited to, fulfillment of contractual obligations, customer service, quality of service, overall staff competency, and compliance with accreditation standards and/or state/federal requirements.

16. Delivery and Acceptance.

- a. All deliveries of Goods purchased under the Purchase Order will be Free on Board, Destination. For purposes of this paragraph, the term “Free on Board, Destination” means that Vendor shall: (i) bear all costs associated with shipping the Goods to MetroHealth; (ii) bear the risk of loss until MetroHealth takes possession of the Goods, which Goods must be in new and acceptable condition upon receipt by MetroHealth; and (iii) be responsible for insuring Goods while in transit.
- b. MetroHealth shall have a reasonable time, but not less than thirty (30) days, after receipt to inspect Goods tendered by Vendor pursuant to this Purchase Order. MetroHealth at its option may reject all or any portion of such Goods which do not conform in every respect with each and every term and condition of this Purchase Order. MetroHealth may elect to reject any or all Goods tendered even if

only a portion thereof is nonconforming. Any acceptance by MetroHealth, even if unconditional, shall not be deemed a waiver or settlement of any defect in such nonconforming Goods, or a waiver or settlement of any warranty claim MetroHealth may have with respect thereto.

17. HIPAA Confidentiality. Vendor agrees to safeguard the privacy and security of all Protected Health Information (as defined under the Health Insurance Portability and Accountability Act, amendments thereto, and regulations thereunder (“HIPAA”)) that it receives, accesses, or creates from MetroHealth. Vendor agrees to not use, access, or disclose Protected Health Information of MetroHealth, except to the extent needed directly for patient care or treatment, billing by Vendor, or compliance with Food and Drug Administration requirements or similar laws. Vendor will not use, access, or disclose Protected Health Information for any other purpose, including, without limitation, to provide any service on behalf of MetroHealth. Vendor agrees to comply with all policies and procedures of MetroHealth regarding privacy and security of Protected Health Information. Upon expiration or termination of this Purchase Order, whichever is earlier, Vendor will promptly return all Protected Health Information to MetroHealth or, unless prohibited by law, will destroy such information in a secure manner consistent with U.S. Department of Health and Human Services requirements and guidance. MetroHealth expects that if Vendor’s duties under the Purchase Order make Vendor a business associate as defined by HIPAA, that MetroHealth and Vendor shall execute a valid Business Associate Agreement.
18. Vendor Representative Credentials. Any Vendor representative entering a MetroHealth facility in the course of doing business on behalf of their company must be credentialed through the MetroHealth approved web-based system, prior to their first visit to MetroHealth. Failure to adhere to this requirement will be considered a breach of the Purchase Order.
19. Assignment and Subcontracting. Vendor may not assign or transfer this Purchase Order, or any interests herein or claim hereunder, nor subcontract any obligation, without the prior approval of MetroHealth. In case such prior approval is given, the assignee or subcontractor will be subject to all of the terms of the Purchase Order.
20. Dispute. If there is a dispute arising out of the Purchase Order, the Parties: (i) shall attempt in good faith to amicably resolve such dispute during which time the Parties shall continue performance of the Purchase Order; and, (ii) if an amicable resolution is not reached within sixty (60) days, may pursue any and all remedies available at law and equity. In the event that either party is required to bring any action against the other party to enforce the other party’s obligations under this Purchase Order, then the prevailing party shall be entitled to recover its litigation expenses including reasonable attorneys’ fees and costs.
21. Notice. Any and all notices and other communications required or authorized by this Purchase Order shall be in writing and shall be deemed effectively given on the earlier of (i) the day personally delivered, (ii) three (3) business days next following the day when

deposited in the United States mail, mailed by prepaid certified mail, return receipt request, or (iii) the next business day following deposit with an overnight courier, and when addressed to the other party's address on the Purchase Order.

22. Severability. If any provision of this Purchase Order is subsequently determined to be illegal or otherwise unenforceable, all other provisions of the Purchase Order shall remain in full force and effect and fully enforceable.

23. Waiver. No waiver of any breach of any condition, covenant, or term hereof will be deemed a waiver of any preceding or succeeding breach of the same or any other provisions. No such waiver will be effective unless in a writing that is signed by both Parties and then only to the extent specifically and expressly set forth therein.

24. Ohio Procurement Law. Vendor acknowledges that MetroHealth is subject to the public competitive procurement laws, rules and opinions applicable to Ohio county hospitals. Vendor further acknowledges that MetroHealth has no authority to, and does not, grant any security interest to any property owned by MetroHealth or to which MetroHealth holds title. Notwithstanding any provision to the contrary in the Purchase Order, any attempt by Vendor to claim a security interest in such property shall be deemed null and void.

25. Vendor Terms; Website Incorporation.

a. Any additional terms that Vendor includes in an order form or similar document will be of no force and effect, unless MetroHealth expressly agrees to be bound by such terms in a writing that has been executed by the Parties.

b. MetroHealth expressly states that it will not be bound by any content on the Vendor's website, even if Vendor's documentation specifically references that content and attempts to incorporate it into any other communication, unless MetroHealth has actual knowledge of such content and has expressly agreed to be bound by it in a writing that has been executed by the Parties.

26. Survival. Notwithstanding termination or expiration of this Purchase Order, the provisions of the sections entitled Debarred Vendors, Data, Confidentiality, Indemnification, Warranty, Compliance with Laws, Access to Books and Records, Governing Law and Venue, Insurance, HIPAA Confidentiality and such other terms and conditions that, by nature and context, survive termination or expiration of this Purchase Order, shall survive.