

PURCHASE ORDER TERMS AND CONDITIONS



THE FOLLOWING TERMS AND CONDITIONS SHALL GOVERN THE PURCHASE OF PRODUCTS OR SERVICES,

- 1. Insurance:** Company shall at its own expense secure and continuously maintain the following insurance with companies qualified to do business in the jurisdiction in which the services will be performed and rating A-VIII or better in the current Best's Insurance Reports published by A.M. Best. Any exceptions to these requirements must be referred to Prisma Health for prior approval. In the case, of Claims-Made Coverages, Company must maintain continuous coverage and extended reporting period "tail" options. The insurance will apply as primary and noncontributory. Evidence of Insurance (Certificates of Insurance) shall be provided to Prisma Health thirty (30) days post binding.
 - a. Worker's Compensation Insurance, which shall fully comply with the statutory requirements of all applicable state and federal laws.
 - b. Commercial General Liability Insurance with a combined single limit of liability of \$1,000,000 per occurrence and \$3,000,000 aggregate for bodily injury, death, property damage, personal injury, and products.
 - c. Excess (Umbrella) coverage with respect to Sections 1 and 2 above with a per occurrence limit of \$3,000,000.
 - d. Cyber and Errors and Omissions (Professional Liability) Insurance with limit of \$10,000,000, covering liabilities arising from a) product or service financial injury caused by a product or service defect or performance failure; b) technology-related injury caused by an error or omission; c) a breach of Company systems or data, including Prisma Health data.
- 2. Liability and Indemnification:** To the extent applicable and notwithstanding anything to the contrary in this Agreement, Prisma Health's liability shall be limited to South Carolina limitations under the South Carolina Code of Laws Tort Claims Act and charitable entities statute as set forth in Section 33-56-180 and/or Section 15-78-120 of the South Carolina Code. The indemnification obligations set forth herein shall survive the termination and/or expiration of this Agreement.

Company agrees to defend, indemnify, and hold harmless Prisma Health, its affiliates, subsidiaries, officers, trustees, employees, and its subsidiaries' employees, agents, and representatives from and against any and all claims, actions, liability, damage, loss, and expense (including, without limitation, reasonable attorney fees and court costs) arising out of the acts or omissions of the Company related to this Agreement and the use of the goods or services provided hereunder.

- 3. Relationship of the Parties:** Nothing in this Agreement is intended to or shall be construed to; create an employer/employee relationship, partnership relationship, or joint venture relationship between the parties. To the extent permitted by applicable law, each party will be responsible for the acts and/or omissions of their respective officers, employees, students, agents, and representatives.
- 4. Confidentiality:** Company acknowledges that, because of its work with Prisma Health, Company may have access to certain confidential and proprietary information. For purposes of this Agreement, "Confidential Information" means any information and documents, including, without limitation, data, educational materials, materials relating to business, protocols, guidelines, pricing, strategies, compensation levels, financial information, trade secrets, and technology related to Prisma Health, its affiliates, subsidiaries, patients, employees, agents, or representatives and other similar proprietary and confidential information of Prisma Health or any of its affiliates and subsidiaries. Company will hold all Confidential Information in the strictest confidence and protect all Confidential Information with the same degree of care that it exercises with respect to its own confidential and proprietary information. Notwithstanding any other provision of this Agreement to the contrary, Prisma Health shall have the right to disclose pricing and other terms of this Agreement to Prisma Health's attorneys, accountants, group purchasing organizations, and other third parties retained by Prisma Health (collectively, the "Prisma Health Consultants") provided that any such Prisma Health Consultants shall be bound to the same level of confidentiality set forth in this Agreement. This obligation will survive the termination or the expiration of this Agreement for five (5) years or, in the case of patient information, indefinitely. In the event Company has entered into a business associate agreement related to this Agreement, the business associate agreement will control Company's obligations with respect to protected health information.
- 5. Information Security:** Company certifies that any electronic data or systems received by or accessed by Prisma Health have been scanned with up-to-date anti-virus/malware software in a commercially reasonable

manner supported by a major software provider. Company agrees that if it uses a device to connect to Prisma Health's information systems or network, the device will have on it active, commercially reasonable anti-virus/malware protection. Prisma Health expects that Company will provide an immediate, informal notification to Prisma Health's Privacy Officer regarding all suspected or actual information security incidents that are likely to affect Prisma Health's information, information systems, or network.

6. **Audit:** Company will allow Prisma Health, at its own expense, to review and audit all records and documents reasonably related to this Agreement within 10 (ten) days of written notification by Prisma Health.
7. **Policies and Procedures:** Company warrants and represents that it shall ensure that all applicable policies and procedures of Prisma Health and its affiliates are followed, including pre-employment drug screening and health requirements policies, and that Company complies with The Joint Commission and Centers for Medicare and Medicaid Services requirements. Proof of compliance with such policies and procedures shall be required prior to Company employees or representatives beginning work and/or presence at Prisma Health or its affiliated facilities and locations. Company will adhere to the dress code applicable at the site where services are provided and will wear an appropriate identification badge, issued by Prisma Health or its affiliates, while on site. The Company warrants and represents that all workers possess the skills required to perform the services contemplated by this Agreement. No selling of other services will be allowed, except through Prisma Health or any of its affiliates.
8. **Compliance with Laws and Regulations:** The parties shall comply with all applicable federal, state, and local laws, ordinances, rules, and regulations.
9. **Behavior Expectations:** While onsite, Company personnel shall adhere to Prisma Health's Behavior Expectations, which support Prisma Health's Purpose Statement: Inspire Health. Serve with Compassion. Be the Difference.
10. **Shipping:** Shipping shall be FOB Destination.
11. **Invoices:** Company shall invoice Prisma Health upon performance or delivery of requested goods or services. All services must be billed separately, and invoices must contain a valid purchase order issued by a

Prisma Health Supply Chain team member. Team members outside of Supply Chain are not authorized to commit or expend Prisma Health funds to a third party. Failure to list a valid purchase order number(s) on the invoice may result in delay of payment. Company will submit invoices to Prisma Health; consistent with Prisma Health's current billing system (as such billing system may be modified from time to time). Prisma Health will not forfeit cash discounts or other incentives due to Company's negligence or noncompliance. Payment will be made by Prisma Health on the following terms:

- a. **Thirty (30)** days if Company is enrolled in the Prisma Health credit card program;
- b. **Forty-Five (45)** days if Company accepts ACH; and
- c. **Sixty (60)** days if Company receives payment by check.
- d. Invoices must be submitted via EDI or email; for email, as a single PDF per invoice with no more than 5 invoices per email.

- Automated invoice receipt address (Invoices only):

APinvoice@prismahealth.org

- AP Customer Service (Inquiries only):

Accounts.Payable@prismahealth.org

12. Requirements: Company will satisfy all Prisma Health's orders for services during the term of this Agreement. Notwithstanding the foregoing, Company understands and agrees that this Agreement in no way guarantees service volumes or future service purchases during the term of this Agreement.

13. Recalls: Company will send any product recall, field/service advisory, safety notice, or any other notice related to the safety or performance of any services provided under this Agreement promptly to the Prisma Health Supply Chain following receipt of the notice.

14. Returns: Prisma Health has ninety (90) days to return a product. Company's restocking charge, if any, will not exceed the lesser of Company's customary restocking fee or fifteen percent (15%). All returns

will be freight prepaid by Prisma Health within the continental United States; provided, however, mis-shipped goods, damaged goods, over-shipment, or other error attributable to Company will be paid by the Company, including all related fees (e.g., freight, restocking, etc.).

- 15. Replacements:** Company will immediately replace any lost, damaged, or defective products at no additional cost to Prisma Health.
- 16. Warranty of Service:** Company expressly warrants that the goods or services shall be merchantable and fit for an applicable purpose. In addition, to all warranties which may be prescribed by law, the goods or services shall conform to any applicable scope of work.
- 17. Warranty of Price:** Company warrants that the prices charged Prisma Health as indicated herein are no higher than prices charged on orders on similar conditions subsequent to the last general announced price change. Announced price changes by Company must be received by Prisma Health at least thirty (30) days in advance of proposed increase. Thirty (30) days will be calculated from the time the price increase is received by Prisma Health. Prior to thirty (30) days, the previous price will be used by Prisma Health. Prisma Health must provide prior written approval before implementation of any price increase requested by Company.
- 18. Collaborative/GPO Pricing:** Upon becoming a member of any collaborative partnership or changing membership into another collaborative partnership, Prisma Health and Company will have the option to amend this Agreement to reflect any new pricing Prisma Health and Company agree to for that collaborative. Also, if Prisma Health changes its membership from any current GPO organization to another GPO organization, Prisma Health and Company will have the option to amend this Agreement to reflect any new pricing Prisma Health and Company agree to based upon the membership with the new GPO Organization. If there is no pricing structure offered with the new GPO organization, then Prisma Health will be allowed to renegotiate the pricing structure on a "Local Agreement" basis.
- 19. Non-Exclusion and Debarment:** Company represents and warrants to Prisma Health that neither it nor any of its affiliates (including its employees and agents) (a) are excluded from participation in any federal health care program, as defined under 42 U.S.C. §1320a-7b (f), for the provision of items or services for which payment may be made under such federal health care programs and (b) have arranged or contracted (by employment or otherwise) with any employee, contractor, or agent that such party or its affiliates know or should know are excluded from

participation in any federal health care program, to provide items or services hereunder. Company represents and warrants to Prisma Health that no final adverse action, as such term is defined under 42 U.S.C. §1320a-7e (g), has occurred or is pending or threatened against such Company or its affiliates or, to their knowledge, against any employee, contractor, or agent engaged to provide items or services under this Agreement (collectively, "Exclusions/Adverse Actions"). Company agrees to notify Prisma Health if it/they are excluded from participation or have received an adverse action.

- 20. Books and Records:** Company will, to the extent required by Section 1861(v)(I)(1) of the Social Security Act, make available upon written request of the Secretary of Health and Human Services or the United States Comptroller General or any of their duly-authorized representatives, this Agreement and any books, documents, and records of Company that are necessary to certify the nature and extent of costs incurred by Prisma Health under this Agreement until the expiration of four (4) years after the termination or expiration of this Agreement. If Company carries out any of the duties or obligations contemplated by this Agreement through a contract or subcontract with a value of Ten Thousand and No/100ths Dollars (\$10,000.00) or more over a twelve (12) month period, that contract or subcontract shall require this same access to the books, documents, and records of that contractor or subcontractor.
- 21. Disclosure:** Any discounts or rebates issued by Company to Prisma Health under this Agreement may constitute a discount within the meaning of 42 U.S.C. Section 1320a-7b(b)(3)(A) of the Social Security Act. Prisma Health may have an obligation to report and appropriately reflect such discount on cost reports or claims submitted to any state or federal program, which provides cost or charge based reimbursement to Prisma Health for the items to which the discount applies. Further, Prisma Health shall retain invoices and other price documentation and make them available to federal or state officials upon request.
- 22. Conflicts of Interest:** Company represents and warrants to Prisma Health that no employee (or his/her spouse, parent, siblings, or other relative) of Prisma Health or any its affiliates or subsidiaries is an officer, director, trustee, partner, or agent of Company or has a five percent (5%) or more interest in the business of Company. Company agrees that neither it nor any of its representatives shall give gifts of any kind or value or provide special favors to any Prisma Health employee, employee of Prisma Health's affiliates, subsidiaries, or its agents.

- 23. Force Majeure:** Neither Company nor Prisma Health shall be liable for any failure or delay in the performance of its obligations under this Agreement due to causes beyond the reasonable control of such party, including, but not limited to, fires, floods, or acts of God, accidents, embargoes, war, riots, and act or order of any government or governmental agencies (a "Force Majeure Event"). If a Force Majeure Event shall continue for a period of more than thirty (30) days, the Party not claiming such relief shall have the right to terminate this Agreement by furnishing written notice to the other Party.
- 24. Subcontracting:** Company may subcontract to one or more persons or entities for the performance of Company's services covered by this Agreement with prior written approval of Prisma Health or the applicable Prisma Health affiliate(s). The subcontract shall not relieve Company of its obligation and liability under this Agreement, and all persons engaged in performing the services covered by this Agreement shall be deemed employees or agents of Company for the purposes of this Agreement. Prisma Health reserves the right to terminate a subcontract should the performance of a subcontractor not meet the expectations of Prisma Health, Prisma Health affiliate(s), and/or this Agreement. No data or functions performed by Company, or any of its independent contractors, shall be exported or accessed outside the United States without the prior written consent of Prisma Health.
- 25. Non-Waiver:** No waiver of any of the provisions set forth in this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement. No waiver shall be binding unless executed in writing by the party making such waiver.
- 26. Solicitation of Employees and Other Contractors:** Company and Prisma Health agree that during the term of this Agreement and for a period of twelve (12) months after the expiration or the termination of this Agreement, neither party shall solicit or seek to influence, either directly or indirectly, any employee and/or independent contractor of the other party or any of its affiliates to enter into any employment agreement, independent contractor arrangements, or any other arrangements whereby an individual would perform services for compensation, either directly or indirectly, for any person, firm, corporation, other entity, or business.
- 27. Severability:** The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision shall not

affect the validity or enforceability of the other provisions hereof. If any provision or clause of this Agreement, or portion thereof, shall be held by any court or other tribunal of competent jurisdiction to be illegal, void, or unenforceable in such jurisdiction, the remainder of such provision and the other provisions in this Agreement shall not be thereby affected and shall be given full effect, without regard to the invalid portion.

- 28. Assignment:** Company may not assign or transfer this Agreement, in whole or in part, without the prior written consent of Prisma Health, which shall not be unreasonably withheld or delayed. Prisma Health may, after written notice but without Company's consent, assign or transfer this Agreement.
- 29. Operation of Law:** In the event this Agreement, in whole or in part, is deemed to be contrary to local, state or federal law by counsel for Prisma Health or, in the opinion of counsel for Prisma Health, presents substantial legal risk to either party, the parties agree to use their best efforts to make changes to this Agreement to the minimum extent necessary to make this Agreement consistent with applicable law, trying to retain as closely as possible the original terms reflected in this Agreement. If this Agreement cannot be modified or amended in any way that is mutually agreeable to the parties and complies with applicable law after the parties have used their best efforts, then either party may terminate this Agreement; provided, however, that any such termination shall be deemed to be a termination "without cause."
- 30. Headings:** The headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement.
- 31. Counterparts:** This Agreement may be executed in multiple counterparts, each of which will be deemed to be an original and all of which together shall constitute a single instrument.
- 32. Jury Trial Waiver:** Each Party hereby irrevocably waives its rights to a trial by jury in any action or proceeding arising out of this Agreement or the transactions relating to its subject matter.
- 33. Governing Law:** This Agreement shall be governed by, and construed in accordance with, the laws of the State of South Carolina, without giving effect to any choice of law or conflict of law provisions thereof.