



**The Henry M. Jackson Foundation for the
Advancement of Military Medicine, Inc.
HJF General Purchasing Standard Terms and Conditions**

1. **COMPLETE AGREEMENT.** These HJF General Purchasing Standard Terms and Conditions shall become binding upon Seller commencing performance in accordance with or otherwise acknowledging acceptance of a Purchase Order from The Henry M. Jackson Foundation for the Advancement of Military Medicine, Inc. (“HJF” or “Buyer”). These terms and conditions, together with any applicable Supplemental Terms and Conditions (as referenced below), statement of work, specifications, drawings, or other documents referenced in the Purchase Order, which are incorporated by this reference, constitute the entire agreement between the parties. All prior negotiations, proposals, and writings pertaining to the Purchase Order or the subject matter thereof are superseded hereby. Any reference to Seller’s quotation, bid, or proposal does not imply acceptance of any term, condition, or instruction contained in such document. Any preprinted terms and conditions stated in any invoice, acknowledgment, or other communication issued by Seller in connection with the Purchase Order shall not be applicable to the Purchase Order and shall not be considered to be Seller’s exceptions to the provisions of the Purchase Order. Trade custom and/or trade usage is superseded by the Purchase Order and shall not be applicable in the interpretation of the Purchase Order. Seller shall notify HJF immediately of any ambiguities, express conflicts, or discrepancies in the statement of work, specifications, drawings, or other documents that are a part of the Purchase Order and shall comply with the reasonable determination of HJF in such matter. Headings and numbering in the Purchase Order are for convenience of reference only.
2. **SUPPLEMENTAL TERMS & CONDITIONS.** If this Purchase Order is placed under a Government Prime Procurement Contract or Assistance Agreement, the applicable clauses set forth in the Supplemental Terms and Conditions, attached as Supplement 1 FAR Clauses, Supplement 2, DFAR Clauses, and Supplement 3 Uniform Guidance Clauses, are incorporated by reference into this Purchase Order with the same force and effect as though set out in full text herein.
3. **ACCEPTANCE OF THIS PURCHASE ORDER.** Seller’s written acknowledgement of the Purchase Order, its commencement of any performance under the Purchase Order, or acceptance of any payment under the Purchase Order, shall constitute Seller’s unqualified and irrevocable acceptance of this Purchase Order subject solely to these terms and conditions. In the event that this Purchase Order does not state price or delivery terms, Buyer will not be bound to any prices or delivery terms to which it has not specifically agreed in writing. Any terms or conditions proposed by Seller inconsistent with or in addition to the terms and conditions contained in this Purchase Order shall be void and of no effect unless specifically agreed to in writing by Buyer, regardless of whether or not such terms and conditions materially alter this Order and irrespective of any payment by Buyer hereunder.
4. **ACCEPTANCE OF GOODS AND SERVICES:**
 - (a) All goods and/or services provided by Seller under this Purchase Order shall be in accordance with the requirements of this Purchase Order, including all applicable exhibits and attachments, and shall be subject to rejection if such goods and/or services are nonconforming. No inspection or evaluation performed by Buyer (and/or Buyer’s customer, if applicable) shall in any way relieve Seller or its suppliers of their obligation to furnish all required goods and/or services in strict accordance with the requirements of this Purchase Order. If any of the goods and/or services provided hereunder do not conform with the requirements of this Purchase Order, Buyer may require Seller to replace the goods or perform the work and/or services again in conformity with the applicable requirements at no cost to Buyer.
 - (b) At Buyer’s sole option, any rejected items may be returned for credit or replacement at Seller’s risk and expense, and all handling and transportation expenses, both ways, shall be assumed by Seller. No items returned as defective shall be replaced without written authorization from Buyer.
 - (c) Acceptance of goods and/or services will be made by Buyer only in writing and through a document entitled “Final Acceptance” issued by Buyer. It is expressly agreed that payment by Buyer to Seller for goods and/or services provided under this Purchase Order shall not constitute acceptance. It is further

agreed that nothing in this Purchase Order shall require Buyer to accept any goods and/or services prior to acceptance thereof by Buyer's customer, if applicable.

(d) Acceptance shall be conclusive, except for latent defects, fraud, or gross mistakes amounting to fraud.

5. **SHIPMENT, INVOICES, AND RETURNS.** Seller agrees to ensure that shipments are properly packed and described in accordance with HJF's specifications and applicable carrier regulations. No charge shall be allowed for packing, shipment, or handling unless otherwise stated in the Purchase Order. On all shipments, a packing list shall accompany each container and shall describe the contents of that container and reference the appropriate Purchase Order and item number. The bill of lading also will reference the Purchase Order and item number. Seller agrees to ship via carrier specified by HJF, if any. Seller shall bear any premium freight cost incurred by HJF or Seller beyond that specified by HJF. Seller is responsible for all shipments that are damaged in transit due to improper packaging, improper marking, improper judgment, or other act or omission of the Seller. Partial shipments, if authorized by HJF, shall not be construed as making the obligations of Seller severable. All goods received in excess of Purchase Order requirements shall be subject to return for credit at Seller's expense. Invoices must be itemized and bear HJF's Purchase Order number.
6. **DELAYS, TIME IS OF THE ESSENCE, FORCE MAJEURE.** The delivery dates indicated by HJF on the Purchase Order are of the essence. Failure to meet the agreed delivery schedule shall be considered a breach of the contract. Seller agrees to pay to HJF any penalty and damages imposed upon or incurred by HJF for failure of Seller to deliver articles, materials, or work on scheduled delivery dates. Where the delay is caused by "Force Majeure," HJF shall have the right to either: (i) terminate, by written notice to Seller, all or part of the Purchase Order without liability to Seller of any kind for the terminated part(s) or (ii) extend the date of delivery or performance for a period equal to the duration of the delay, but Seller shall not be entitled to any extra compensation for such delay. "Force Majeure" means fires; strikes; riots; embargoes; explosions; earthquakes; floods; wars; acts of terrorism; the elements; labor disputes; shortages of or inability to secure materials or transportation facilities; regulatory acts of government; or other causes or events beyond a party's control. Seller shall not be excused from performance hereunder where alternate sources of materials, goods, or services are available.
7. **TITLE.** Seller warrants full and unrestricted title to HJF for the goods and services furnished by Seller under the Purchase Order, free and clear of any and all liens, restrictions, reservations, security interests, or encumbrances. Transfer of title shall occur upon acceptance of goods and services or 30 days after receipt of goods and services, whichever is earlier. If HJF makes progress payments to Seller under the Purchase Order, title to the goods ordered hereunder (including work in progress, components thereof, and materials therefor) shall pass to HJF at the time the first progress payment is made or as otherwise specified in the Purchase Order. Seller shall clearly identify such goods by visible marking or tagging, and HJF shall have the right, at HJF's option, to inspect and verify that said goods have been identified as HJF's property. Care, custody, and control of such goods remain with Seller until such time as HJF takes physical possession or otherwise agrees in writing by change order to the Purchase Order.
8. **NO WAIVER.** Except as otherwise expressly provided, no failure or delay of either party in exercising any power, right, or remedy will operate as a waiver thereof, nor will any single or partial exercise of any power or right preclude any other or further exercise thereof or the exercise of any other power, right, or remedy.
9. **WARRANTY.** Final acceptance of material by HJF will not be until after arrival at the destination specified by HJF, unless otherwise specified by HJF. Seller warrants that all articles, material, and work supplied by Seller under the order conform to the requirements, specifications, drawings, samples, or other descriptions specified in the Purchase Order, that they are of good material and workmanship and free from all defects in manufacture or design, and that they are of merchantable quality and fit for their intended purpose. Such warranties by Seller shall run to the benefit of HJF and purchasers from HJF. Seller's warranty shall be effective for a period of time as set forth on the face of the Purchase Order. If no such time period is set forth on the face of the Purchase Order, the warranty shall be effective for a period of one year from the date of acceptance by HJF or date of shipment by Seller of non-defective goods, whichever is later, or for any longer period specified by Seller. Return of articles and material to Seller for breach of warranty shall be at Seller's expense. Any article or materials not accepted by HJF may be returned to Seller at Seller's expense for full credit of the purchase price. Inspection may be performed at HJF's option on a statistical sampling basis; the entire lot may be

rejected based on defects revealed by such sampling. At HJF's option, the rejected lot will be either returned to Seller for replacement or credit or 100% screened by HJF with cost of screening paid by Seller. The initial inspection performed at HJF on receipt of material is a conditional acceptance, which shall not waive the right of HJF to return material to Seller that exhibits or develops defects due to latent causes during or after installation or testing of the end product.

10. **PATENTS.** Seller, at its sole expense, shall indemnify, hold harmless, and defend HJF, its officers, agents, employees, successors, and customers (mediate and immediate) from and against any suit or proceeding brought against HJF based on a claim, actual or alleged, that the purchase, manufacture, use, or sale of any goods or services or any part thereof supplied under the Purchase Order, constitutes infringement of any patent, copyright, trademark, or proprietary information right of others, and Seller shall pay all loss, expense, liability, damages, and costs awarded therein against HJF at law or in equity. Seller shall be promptly notified, in writing, of the suit or proceeding and shall be given adequate authority, information, and assistance, at Seller's expense, for the defense of same, subject to the right of HJF to participate at its expense and to be fully advised by Seller in advance of all actions taken. In case said goods or any part thereof are, in such suit, held to constitute infringement or the sale or use of said goods or parts thereof are enjoined, regardless of whether such determination constitutes a final judgment, Seller shall, at its expense, either procure for HJF the right to sell and use said goods or part thereof or replace the same with substantially equal but non-infringing goods.
11. **INDEMNITY.** For and in consideration of the covenants of HJF under the Purchase Order, including the agreement of HJF to pay to Seller the amounts that may become due and payable under the terms of the Purchase Order, Seller hereby agrees to assume the risk of and to release, defend, indemnify, and hold harmless HJF, and HJF's customers, and each of their related entities, directors, officers, employees, agents, and assigns ("Indemnitees") from and against all loss, damage, liability, cost, and expense (including reasonable attorneys' fees) arising out of any injury or death to any person or damage to any property arising from or related to the performance of the Purchase Order or Seller's breach of the Purchase Order or the goods or services furnished thereunder, regardless of whether or not such loss, damage, liability, cost, or expense is caused in part by an Indemnitee. Neither this Section nor any other provision of the Purchase Order shall be construed in any circumstances to constitute an indemnification against any loss, damage, liability, cost, or expense caused solely by the negligence of such Indemnitee. The indemnity obligations in the Purchase Order shall be deemed to be modified as required to exclude indemnification that is expressly prohibited by applicable law.
12. **LIMITATION OF LIABILITY. EXCEPT FOR SELLER'S LIABILITY FOR INTELLECTUAL PROPERTY RIGHT INFRINGEMENT OR FOR BREACH OF CONFIDENTIALITY OBLIGATIONS, OR FOR IMPROPER MARKING(S) IMPLICATING PATENT PROTECTION, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR SPECIAL, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.** In no event will HJF's liability hereunder for damages of any nature exceed the Purchase Order value. No action, regardless of form, arising out of the transactions under the Purchase Order, may be brought by either party more than one (1) year after the cause of action has accrued. HJF and Seller expressly acknowledge that the limitations contained in this Section represent the parties' agreement based upon the level of risk associated with the performance of their respective obligations hereunder. This Section will survive the expiration or termination of the Purchase Order.
13. **CHANGES.** HJF shall have the right to make changes in the instructions, specifications, and drawings for goods or services covered by the Purchase Order. If Seller believes that any such change increases or decreases the price or time of delivery for such goods or services, Seller shall so notify HJF (in writing, with adequate supporting documentation) within fifteen (15) days after receipt of written direction from HJF to make such change. Seller's request for any adjustments shall be deemed waived unless submitted in writing within such fifteen (15) days. Seller shall not implement the change unless directed in writing by HJF to perform said change, and, if Seller timely requests, HJF and Seller shall mutually agree in writing upon an equitable adjustment in the price and/or delivery date to reflect the effect of such change. Seller shall not suspend performance of the unaffected portion of the Purchase Order while HJF and Seller are in the process of making such changes and any related adjustments, or at any time thereafter, unless so instructed in writing by HJF. No agreement or understanding modifying or waiving the conditions or terms of the Purchase Order shall be

binding upon HJF, nor shall extra compensation be paid by HJF, unless the agreement or understanding is made in writing and signed by a duly authorized representative of HJF.

14. **CANCELLATION FOR CONVENIENCE.** This Purchase Order is being issued pursuant to an agreement between HJF and its customer(s). In the event that HJF's customer(s) terminates its agreement with HJF in its entirety or terminates that portion which relates to this Purchase Order, HJF shall have the right, upon written notice to Seller, to cancel, for its convenience, further performance of all or any part of the Purchase Order. Such termination shall not be a breach of contract. On the date of cancellation stated in the notice, Seller shall discontinue all work pertaining to the Purchase Order, shall place no additional orders, and, pending HJF's instructions, shall preserve and protect materials on hand purchased for or committed to the Purchase Order, work in progress, and completed work both in Seller's and in its suppliers' plants, and shall dispose of same in accordance with HJF's instructions. HJF and Seller shall mutually agree on appropriate cancellation payment to Seller or refund to HJF, if any, taking into consideration that portion of the work satisfactorily performed to the date of cancellation, including reimbursement for reasonable overhead and profit on such work, reasonable and necessary expenses resulting from the cancellation, as substantiated by documentation satisfactory to and verified by HJF, and amounts previously paid by HJF.
15. **CANCELLATION FOR DEFAULT.** If Seller at any time shall default on or fail to perform any of its obligations under the Purchase Order, be adjudged bankrupt, or make a general assignment for the benefit of its creditors, or if a receiver shall be appointed on account of Seller's insolvency, HJF may, by written notice to Seller, without prejudice to any other rights or remedies that HJF may have, cancel further performance by Seller under the Purchase Order. In the event of such cancellation, HJF may complete the performance of the Purchase Order by commercially reasonable means, and Seller shall be responsible for the additional costs incurred by HJF in so doing. Any amounts due Seller for goods and services completed by Seller in full compliance with the terms of the Purchase Order prior to such cancellation shall be subject to offset HJF's additional costs of completing the Purchase Order and other damages incurred by HJF as a result of Seller's default.
16. **LAWS AND REGULATIONS.** Seller agrees that, in performance of the Purchase Order, Seller will comply with all applicable laws, statutes, rules, regulations, and orders of any state, country, or political subdivision thereof.
17. **MECHANICS' LIENS.** Seller's obligations under the Purchase Order shall include keeping premises of HJF and HJF's customers free from all claims, liens, and encumbrances. Seller, for itself and all of its contractors and suppliers, waives all rights of lien against the property and premises of HJF and HJF's customers for labor performed or for goods furnished for the work.
18. **INSURANCE.** In the event the Purchase Order is for the performance of services, or installation of goods by Seller upon any property, premise, or project of HJF or its customer, Seller shall examine the premises to determine whether they are safe for such services and shall advise HJF promptly of any situation it deems unsafe. Seller shall maintain and, upon HJF request, shall provide written proof of the following insurance coverage: Worker's Compensation in amounts required by law and Employer's Liability Insurance with minimum limits of \$500,000 per occurrence; Comprehensive General Liability with a combined single limit of \$2,000,000 per occurrence for bodily injury and property damage, protecting Seller against bodily injury, including death, and property damage arising out of Seller's operations; Automobile Liability Insurance with a combined single limit of \$1,000,000 per occurrence for bodily injury, contractual endorsement, products, hazards, environmental liability, and property damage covering use and operation of owned, non-owned, and hired vehicles. If Seller subcontracts any of the work to a third party, Seller shall require such third party to furnish the same insurance and indemnity as are required of Seller hereunder. While on the premises of HJF or its customer, Seller and its employees shall comply with all applicable safety and health laws, regulations, and ordinances and with HJF's or its customer's safety and plant rules. Seller shall keep said premises and the vicinity thereof clean of debris caused by its work, and upon completion of work, shall leave the premises clean and ready for use. Upon request of HJF and at no expense to HJF, Seller shall promptly remove from said premises any person under the control of Seller who violates any of the aforesaid safety, health, or plant laws, regulations, ordinances, or rules, who may cause or threaten to cause a breach of the peace, or who is otherwise objectionable to HJF or its customer.

19. **INDEPENDENT CONTRACTOR.** Seller is not an agent, partner, legal representative, employee, or joint venturer of HJF for any purpose. HJF and Seller will at all times remain independent contractors, each engaged in its own separate business and each responsible for its own employees and costs of doing business.
20. **KICKBACKS AND GRATUITIES.** HJF, by written notice to Seller, may terminate the right of Seller to proceed or continue under the Purchase Order if it is found that any kickback or any gratuity in the form of money, entertainment, gift, or other thing of any value, was offered or given by Seller, or any agent or representative of Seller, to any officer or employee of HJF with a view toward securing the Purchase Order or securing favorable treatment with respect to the awarding, amending, or making of any determinations with respect to the Purchase Order. If the Purchase Order is terminated under this provision, HJF shall be entitled to the same remedies against Seller as HJF could pursue in the event of a material breach of the Purchase Order by Seller.
21. **PROPRIETARY INFORMATION.** If there is a nondisclosure agreement in effect between the parties on the issue date of the Purchase Order, that nondisclosure agreement is incorporated herein and applies to Proprietary Information exchanged by the parties in performance of the Purchase Order. If there is no such nondisclosure agreement, the Purchase Order and the documents incorporated therein and all information designated by HJF as confidential or proprietary shall be deemed "Proprietary Information," and Seller agrees to maintain and keep all Proprietary Information in confidence and not to disclose it to any third party or use such information for any other purpose, except as authorized by HJF for the performance of the Purchase Order, except with respect to Confidential Information that (i) was known to Seller without a duty of confidentiality before receipt from HJF as evidenced by written records made prior to such receipt or disclosure (when such prior knowledge did not become known to Seller through disclosure by a third party known to Seller to be subject to an obligation to maintain the confidentiality thereof); (ii) is or becomes a matter of public knowledge through no fault of the Seller or any of its agents; (iii) is rightfully received by Seller from a third party without a duty of confidentiality; or (iv) is independently developed by Seller as evidenced by written records of Seller. Seller shall return or destroy all Proprietary Information and copies thereof to HJF upon request and shall destroy any notes, analyses, and other documents that contain or otherwise reflect Proprietary Information. This provision shall survive the expiration, termination, or cancellation of the Purchase Order.
22. **DISPUTE RESOLUTION.**
- (a) In the event any controversy, claim, dispute, difference, or misunderstanding (a "Dispute") arises out of or relates to the Purchase Order, HJF and Seller will attempt in good faith to amicably resolve such Dispute. If the parties are unable to resolve the Dispute, each party will prepare a written position statement summarizing the unresolved issues and such party's proposed resolution. These position statements will be delivered to the designated senior executive officers of each party, who then will attempt to resolve the Dispute. If after thirty (30) days the parties continue to be unable to resolve the Dispute, either party may initiate arbitration, except that in Disputes affecting ownership of intellectual property, implicating patents of either party, involving Proprietary Information, or by which either party seeks to obtain from the other monetary damages in excess of \$500,000, either party may commence an action in a court of competent jurisdiction in lieu of proceeding with arbitration.
- (b) Subject to the exclusions and limitations stated in the remainder of this Section, any such conflict that the Parties are unable to resolve promptly shall be settled through arbitration conducted through the American Arbitration Association unless the Parties agree to use a different ADR organization, except that only one arbitrator will be selected, and the arbitrator must be in the Washington D.C. Metropolitan Area. In addition, the arbitrator, before being selected, must agree to issue the ruling on the dispute not later than 180 calendar days from the initial filing for Arbitration, and shall have no authority to make any award for damages excluded in the agreement, nor for attorneys' fees. Arbitration discovery, to the extent permitted at all, shall be limited. If the Parties do not agree to the scope and nature of discovery, then the Arbitrator shall decide the extent to which discovery is allowed. If the Arbitrator must decide, then no interrogatories or requests for admission shall be allowed, and depositions, to the extent that any at all are permitted based on a showing of substantial need, shall be limited to no more than three per Party, including no more than one corporate deposition, if allowed. No motions practice will be allowed. Unless the Parties agree, the Arbitrator shall decide whether to require pre-hearing exchanges of exhibits and summaries of witness testimony upon which each Party is relying, and proposed rulings and remedies on each issue.

(c) A demand for arbitration or commencement of litigation shall be filed within a reasonable time after the controversy or claim has arisen, and in no event later than the earlier of: (1) six months after the termination or purported termination of this Agreement, or (2) the date upon which institution of legal proceedings based on such controversy or claim would be barred by the applicable statute of limitations. For the avoidance of doubt, failure to demand arbitration or commence litigation on an issue arising out of or relating to this Agreement or the breach thereof within the time period set forth in the preceding sentence absolutely precludes the later arbitration or litigation of such issue. Such arbitration shall be held in Montgomery County, Maryland. The award through arbitration shall be final and binding. Either Party may enter any such award in a court having jurisdiction or may make application to such court for judicial acceptance of the award and an order of enforcement, as the case may be. Notwithstanding the foregoing, either Party may, without recourse to arbitration, assert against the other Party a third-party claim or cross-claim in any action brought by a third party, to which the subject matter of this Agreement may be relevant. In addition, notwithstanding the foregoing, disputes over ownership of intellectual property and claims for damages in excess of one million dollars are excluded from arbitration and either Party may commence an action for such disputes in a state court of competent jurisdiction in Montgomery County, Maryland, or, if jurisdiction is proper in U.S. Federal court, in the appropriate U.S. Federal District Court for the District of Maryland, and both Parties hereby consent to personal jurisdiction in such state and federal courts in Maryland.

23. **RIGHT TO SETOFF.** HJF, without waiver or limitation of any rights or remedies of HJF, shall be entitled from time to time to deduct from any amounts due or owing by HJF to Seller in connection with the Purchase Order, or any other Purchase Order or contract with HJF, any and all amounts owed by Seller to HJF.
24. **SECURITY.** If HJF makes any advance or progress payment to Seller under the Purchase Order, Seller agrees, upon HJF's request, to execute a security agreement and financing statement (both in form satisfactory to HJF) granting a security interest to HJF, effective in all states of fabrication or manufacture, in the proceeds, raw materials, and goods that are purchased, manufactured, or otherwise obtained pursuant to the Purchase Order.
25. **ASSIGNMENTS.** Neither the Purchase Order nor any part thereof shall be assigned or transferred by Seller without the prior written consent of HJF, and any assignment or transfer without such consent shall be void. Seller shall not contract work under the Purchase Order totaling more than one-third of the Purchase Order value to any third party without prior written approval by HJF.
26. **HAZARDOUS MATERIALS.** Seller shall notify HJF in writing upon receipt of the Purchase Order if any goods or services furnished are subject to laws or regulations relating to hazardous or toxic substances, or to any other environmental or safety and health regulations, or, in the case of goods when disposed of, to regulations governing hazardous wastes. Seller shall furnish all appropriate shipping certification and instructions for shipping, safety, handling, exposure, and disposal in a form sufficiently clear for use by HJF's non-technical personnel and sufficiently specific to identify all action that the user must take concerning the material.
27. **ORDER OF PRECEDENCE.** In the event of irreconcilable conflict between any provisions of this Purchase Order, the following order of precedence shall control: First) Special clauses on the face of the Purchase Order; Second) Statements of Work; Third) Drawings; Fourth) Specifications; Fifth) these Terms and Conditions of Purchase, General Provisions; and Last) any other document attached or incorporated by reference and not constituting a Statement of Work, Drawing, or Specification.
28. **RESERVATION OF RIGHTS.** Subject to the Limitation of Liability Clause above (Clause 9), HJF expressly reserves all rights and remedies available to it at law or equity, including but not limited to rights and remedies set forth in the Uniform Commercial Code. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Purchase Order, and its application is hereby expressly excluded.
29. **PAYMENT TERMS.** Unless otherwise stated in the Purchase Order, net invoices will be paid 30 days from the later of the date of the invoice or HJF's acceptance of the goods or services covered by the invoice. The acceptance of minimal discount offers (e.g., prompt payment discounts) will be at the discretion of HJF.

30. **SEVERABILITY.** Whenever possible, each provision of the Purchase Order will be interpreted in such a manner as to be legal, valid, and enforceable under applicable law, but if any provision of the Purchase Order shall be held by a court having jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions of the Purchase Order will remain in full force and effect as if it had never contained such illegal, invalid, or unenforceable provision. If necessary to effect the intent of the Parties, the Parties will negotiate in good faith to amend the Purchase Order to replace the illegal, invalid, or unenforceable language with legal, valid, and enforceable language that as closely as possible reflects such intent.
31. **GOVERNING LAW.** The Purchase Order shall be governed by and construed in accordance with the laws of the State of Maryland, without regard to principles of conflict or choice of laws.
32. **INTELLECTUAL PROPERTY.** The Seller shall promptly and fully report to HJF, in writing, all data, results, conclusions, discoveries, inventions, improvements, know-how and the like, whether patentable or not, conceived, made, or first reduced to practice by the Seller during the term of this Purchase Order (whether made solely by the Seller or jointly with others) that result from or are suggested by any work the Seller may do pursuant to this Purchase Order (hereinafter "Inventions"). The Seller agrees that all Inventions are discoveries or inventions conceived, made, or first reduced to practice pursuant to any services performed under this Purchase Order shall be the sole property of HJF, and Seller agrees to, and does hereby, assign to HJF or HJF's nominee its entire right, title, and interest in and to any and all Inventions. The Seller shall assist HJF, at HJF's expense, in the preparation of all documentation necessary to effectuate and perfect HJF's rights in the discoveries or Inventions.

The Seller agrees that each and every work of authorship authored and to be authored pursuant to or in furtherance of this Purchase Order is and shall be a "work made for hire" as defined in 17 U.S.C. § 101, and, pursuant to 17 U.S.C. § 201(b), HJF is the author thereof and the owner of all rights comprised in the copyright.

33. **RECORD RETENTION AND AUDIT.** All records related to this Purchase Order, at any time in the possession or control of Seller, shall be retained for a period of three (3) years after the conclusion of this Purchase Order. Without limiting the foregoing, if any litigation, claim, or audit is started before the expiration of the three-year period, the original records shall be retained until all litigation, claims or audit findings involving the records are resolved. HJF, or any of its designees, shall have access to any pertinent books, documents, papers, and records of the Seller as are necessary to verify Seller's performance and all expenses and charges submitted pursuant to the terms of this Purchase Order. Seller shall make such books and records available for inspection during normal business hours at Seller's place of business.
34. **EXPORT CONTROL.** Seller understands and acknowledges that HJF is subject to various national security and export control laws and regulations that prohibit or restrict the export or diversion of certain controlled information and materials. Seller agrees to comply fully with all applicable U.S. laws, Executive Orders, and Federal agency regulations and policies pertaining to the export of any hardware, software, defense service, information or technical data provided by, through or with the cooperation of the Buyer in the performance of this Purchase Order, whether in the United States or abroad. This Purchase Order may involve information or items that are subject to the International Traffic in Arms Regulations (ITAR) or Export Administration Regulations (EAR) and that may not be released to Foreign Persons inside or outside the United States without the proper export authority. Nothing in this Contract shall be construed to permit any dissemination of controlled information or materials in violation thereof.

Seller shall comply with the registration requirements of the International Traffic in Arms Regulations at 22 CFR §122.1, as applicable. Seller shall indemnify and hold Buyer harmless for all claims, demands, damages, costs, fines, penalties, attorneys' fees and other expenses arising or resulting from Seller's failure to comply with this clause.

35. **COMPLIANCE WITH FOREIGN CORRUPT PRACTICES ACT AND OTHER LAWS.** It is HJF's policy to conduct its business in strict compliance with all laws, rules, and regulations applicable to such business in all countries in which it operates and to require all of HJF's contractors and subcontractors to avoid any activities that would involve or potentially involve HJF in any unlawful practice. The Seller agrees to comply with this policy. If any question exists as to the propriety of any proposed transaction, the matter should

be referred to HJF's General Counsel prior to entering into the transaction. The Seller understands and acknowledges that HJF is subject to the U.S. Foreign Corrupt Practices Act ("FCPA"), which is codified at 15 U.S.C. §§ 78dd-1, *et seq.* The Seller hereby represents, warrants, and covenants to HJF that it understands HJF's obligations under the FCPA and that neither it nor any of its employees, representatives, agents, or advisors have made nor will make, directly or indirectly, any solicitation, request, offer, payment, promise to pay, or authorization of any of the foregoing that is in violation of the FCPA. The Seller likewise understands and acknowledges that it is HJF's policy to comply with the provisions of the U.K. Bribery Act. The Seller hereby represents, warrants, and covenants to HJF that neither it nor any of its employees, representatives, agents, or advisors have made nor will make, directly or indirectly, any solicitation, request, offer, payment, promise to pay, or authorization of any of the foregoing that is in violation of the U.K. Bribery Act.

36. **NOTICES.** All notices required or permitted to be sent by either party shall be deemed sufficiently given when delivered by hand delivery or sent by email (which is confirmed), recognized overnight courier service or certified mail, return receipt requested, to the parties at the addresses shown in this Purchase Order for each party and to the attention of the individual who executes this Order on behalf of the party to whom the notice is sent. All notices shall be deemed given (i) on the date of delivery if delivered by hand or sent by email, (ii) on the next business day if sent by recognized overnight courier service and (iii) on the third business day following the date sent by certified mail, return receipt requested. Either party may designate, in writing, a different manner of address for notices under this Purchase Order.
37. **CERTIFICATION REGARDING LOBBYING.** Seller certifies that no U.S. Federal appropriated funds have been paid or will be paid, by or on behalf of the Seller, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any U.S. Federal contract, the making of any U.S. Federal grant, the making of any U.S. Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any U.S. Federal contract, grant, loan, or cooperative agreement. If any funds other than U.S. Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Purchase Order or the related Prime Award, the Seller shall complete and submit, to the Foundation Authorized Official, Standard Form – LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. The Seller shall require the language of this certification to be included in all lower tier contracts, and such lower tier contractors shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this Purchase Order was made or entered into. Submission of this certification is a prerequisite for making or entering into this Purchase Order imposed by 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
38. **OFFICIALS NOT TO BENEFIT.** The Seller certifies that no member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this Purchase Order, or to any benefit arising from it, in accordance with 41 U.S.C. § 22.
39. **GRATUITIES OR KICKBACKS.** No gratuities or kickbacks in the form of money, entertainment, gift, or any other thing of value shall be offered or given by Seller in connection with this Purchase Order. Accordingly, Seller represents that it and its representatives have not offered or given any gratuity to any officer or employee of HJF with a view toward securing the Purchase Order or securing favorable treatment with respect to the awarding, amending, or making of any determinations with respect to the Purchase Order. HJF, by written notice to Seller, may terminate the right of Seller to proceed or continue under the Purchase Order if it is found that any kickback or any gratuity was offered or given by Seller, or any agent or representative of Seller, to any officer or employee of HJF with a view toward securing the Purchase Order or securing favorable treatment with respect to the awarding, amending, or making of any determinations with respect to the Purchase Order. If the Purchase Order is terminated under this provision, HJF shall be entitled to the same remedies against Seller as HJF could pursue in the event of a material breach of the Purchase Order by Seller. If this Purchase Order is for construction or repair, Seller shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. § 874) and

Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Buildings or Public Work Financed in Whole or in Part by Loans or Grants from the United States”).

40. EQUAL OPPORTUNITY

The Henry M. Jackson Foundation for the Advancement of Military Medicine, Inc. (HJF) is an equal opportunity employer and federal contractor or subcontractor. Consequently, the parties agree that, as applicable, they will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) and that these laws are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The parties also agree that, as applicable, they will abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.

41. CERTIFICATION REGARDING DEBARMENT SUSPENSION, AND OTHER RESPONSIBILITY MATTERS. Seller certifies, to the best of its knowledge and belief, that it and its principals:

- (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from performing this Purchase Order by any U.S. Federal department or agency;
- (b) have not within a three-year period preceding this Purchase Order been convicted of or had a civil judgment rendered against it or them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction, violation of U.S. Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- (c) are not presently indicted for or otherwise criminally charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated above; and
- (d) have not within a three-year period preceding this Purchase Order had one or more public transactions (Federal, State, or local) terminated for cause or default.

Any change in the debarred or suspended status of the Seller during the life of this Purchase Order must be immediately reported to HJF. The Seller agrees to incorporate this Debarment and Suspension certification into any subcontract that it awards hereunder.

42. **HIPAA and CONFIDENTIALITY OF PATIENT RECORDS:** Contractor shall comply with the applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), any applicable regulations such as DoD 6025.18-R and DoD 8580.02-R, as amended, and with the following provisions applicable to the disclosure of Protected Health Information to the Contractor under this Contract.

A. It is likely that the source of the Protected Health Information disclosed to Contractor will be the U.S. Government. (In the event that the source of, or the entity responsible for the protection of, Protected Health Information is HJF, the following provision is amended by substituting the word “HJF” for the word “Government.”)

(i) Definitions. As used in this clause:

“Government” means the United States Government.

“Individual” has the same meaning as the term “individual” in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

“Electronic Protected Health Information” has the same meaning as the term “protected health information” in 45 CFR 160.103,

“Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

“Protected Health Information” has the same meaning as the term “protected health information” in 45 CFR 160.103, limited to the information created or received by the Contractor from or on behalf of the Government.

“Required by Law” has the same meaning as the term “required by law” in 45 CFR 164.103.

“Secretary” means the Secretary of the Department of Health and Human Services or his/her designee.

“Security Rule” means the Health Insurance Reform: Security Standards at 45 CFR part 160, 162, and part 164, subpart C.

Terms used in this provision, but not otherwise defined in this Contract, shall have the same meaning as those terms in 45 CFR 160.103, 160.502, 164.103, 164.304 and 164.501.

(ii) The Contractor agrees not to use or further disclose Protected Health Information other than as permitted or required by the Contract or as Required by Law.

(iii) The Contractor agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Contract.

(iv) The Contractor agrees to use administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic protected health information that it creates, receives, maintains, or transmits in the execution of this Contract.

(v) The Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to the Contractor of a use or disclosure of Protected Health Information by the Contractor in violation of the requirements of this Contract. If applicable, these mitigation actions will include as a minimum those listed in the TMA Breach Notification Standard Operating Procedure (SOP), which is available at: <https://www.health.mil/Military-Health-Topics/Privacy-and-Civil-Liberties/Breaches-of-PII-and-PHI>.

(vi) The Contractor agrees to report to the Government any security incident involving protected health information of which it becomes aware.

(vii) The Contractor agrees to report to the Government any use or disclosure of the Protected Health Information not provided for by this Contract.

(viii) The Contractor agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by the Contractor on behalf of the Government, agrees to the same restrictions and conditions that apply through this Contract to the Contractor with respect to such information.

(ix) The Contractor agrees to ensure that any agent, including a subcontractor, to whom it provides electronic Protected Health Information, agrees to implement reasonable and appropriate safeguards to protect it.

(x) To the extent applicable, the Contractor agrees to provide access, at the request of the Government and in the time and manner designated by the Government, to Protected Health Information in a Designated Record Set, to the Government or, as directed by the Government, to an Individual in order to meet the requirements under 45 CFR 164.524.

(xi) To the extent applicable, the Contractor agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Government directs or agrees to pursuant to 45 CFR 164.526 at the request of the Government or an Individual, and in the time and manner designated by the Government.

(xii) The Contractor agrees to make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by the Contractor on behalf of the Government, available to the Government, or at the request of the Government to the Secretary, in a time and manner reasonably designated by the Government or the Secretary, for purposes of the Secretary determining the Government's compliance with the Privacy Rule.

(xiii) The Contractor agrees to document any such disclosures of Protected Health Information and information related to such disclosures as would be required for the Government to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

(xiv) The Contractor agrees to provide to the Government or an Individual, in the time and manner designated by the Government, information collected in accordance with this Contract, to permit the Government to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

B. General Use and Disclosure Provisions

Except as otherwise limited in this Contract, the Contractor may use or disclose Protected Health Information on behalf of, or to provide services to, HJF and the Government for the purposes set forth in the statement of work, if such use of Protected Health Information would not violate the Privacy Rule, the Security Rule, or DoD 6025.18-R or DoD 8580.02-R if done by the Government.

C. Specific Use and Disclosure Provisions

(i) Except as otherwise limited in this Contract, the Contractor may use Protected Health Information for the proper management and administration of the Contractor or to carry out the legal responsibilities of the Contractor.

(ii) Except as otherwise limited in this Contract, the Contractor may disclose Protected Health Information for the proper management and administration of the Contractor or to carry out the legal responsibilities of the Contractor, provided that disclosures are required by law, or the Contractor obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Contractor of any instances of which it is aware in which the confidentiality of the information has been breached.

(iii) Except as otherwise limited in this Contract, the Contractor may use Protected Health Information to provide Data Aggregation services to the Government as permitted by 45 CFR 164.504(e)(2)(i)(B).

(iv) Contractor may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1).

D. Provisions to Inform the Contractor of Privacy Practices and Restrictions

(i) Upon request the Government shall provide the Contractor with the notice of privacy practices that the Government produces in accordance with 45 CFR 164.520, as well as any changes to such notice.

(ii) The Government may provide the Contractor with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect the Contractor's permitted or required uses and disclosures.

(iii) The Government may notify the Contractor of any restriction to the use or disclosure of Protected Health Information that the Government has agreed to in accordance with 45 CFR 164.522.

E. Permissible Requests of the Contractor

The Government shall not request the Contractor to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule, the Security Rule, or any applicable Government regulations (including without limitation, DoD 6025.18-R and DoD 8580.02-R) if done by the Government, except for providing Data Aggregation services to the Government and for management and administrative activities of the Contractor as otherwise permitted by this clause.

F. Termination

(i) Termination. A breach by the Contractor of this clause may subject the Contractor to termination of this Contract.

(ii) Effect of Termination.

- (a) If this Contract has any records management requirements, the records subject to this clause should be handled in accordance with the records management requirements. If this Contract does not contain any records management requirements, the records should be handled in accordance with paragraphs (b) and (c) below
- (b) If this Contract does not have records management requirements, except as provided in paragraph (c) of this section, upon termination of this Contract, for any reason, the Contractor shall return or destroy all Protected Health Information received from the Government or created or received by the Contractor on behalf of the Government. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of the Contractor. The Contractor shall retain no copies of the Protected Health Information.
- (c) If this Contract does not have records management provisions and the Contractor determines that returning or destroying the Protected Health Information is infeasible, the Contractor shall provide to the Government notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Government and the Contractor that return or destruction of Protected Health Information is infeasible, the Contractor shall extend the protections of this Contract to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as the Contractor maintains such Protected Health Information.

G. Miscellaneous

(i) Regulatory References. A reference in this clause to a section in the Privacy Rule, the Security Rule, DoD 6025.18-R, or DoD 8580.02-R means the section as in effect or as amended, and for which compliance is required.

(ii) Survival. The respective rights and obligations of Contractor under the "Effect of Termination" provision of this clause shall survive the termination of this Contract.

(iii) Interpretation. Any ambiguity in this clause shall be resolved in favor of a meaning that permits the Government to comply with the Privacy Rule, the Security Rule, DoD 6025.18-R, and DoD 8580.02-R, as applicable.

43. ELECTRONIC SIGNATURES/COUNTERPARTS - The parties acknowledge and agree that this Agreement may be executed in counterparts, using electronic or facsimile signatures, and that such a signature shall be legally binding to the same extent as a written signature by a party's authorized representative. Each counterpart shall be deemed an original, and all of which together shall constitute one and the same instrument. Each party waives any legal requirement that this Agreement be embodied, stored or reproduced in tangible media, and agrees that an electronic reproduction shall be given the same legal force and effect as a signed writing.
44. ETHICS POLICY – If the Seller does not have a written Business Code of Ethics, they are expected to conduct themselves in a manner consistent with the principles expressed in the [HJF Code of Ethics](#).
45. CONFLICTS - Seller represents that, to its knowledge, no HJF trustee, officer, employee or any other person affiliated with HJF and having involvement with this Agreement (1) is affiliated with Supplier, and (2) that, to its knowledge, no HJF trustee, officer, employee or any other person affiliated with HJF and having involvement with this Agreement has received, was promised, or will receive anything of value in connection with this Agreement or performance contemplated hereunder.