

Purchase Order Terms and Conditions

Freight Requirements:

FedEx Express and Ground (Small Package) Shipments

Unless otherwise authorized, single shipments up to 150 lbs. must be shipped **FedEx Ground** and billed third party to Sanford.

- FedEx Express services - authorized only by Sanford's personnel.
- Bill 3rd party FedEx Ground/Express to account number: **1927-4912-3**
- Include Sanford's Purchase Order number on all shipping documentation including the reference field on the airway bill and packing list.

FedEx Freight (LTL) Shipments

Unless otherwise authorized, single shipments over 150 lbs. or larger multiple package shipments should be palletized and shipped via **FedEx Freight Economy** and billed to Sanford.

- Bill 3rd Party to **FedEx Freight** account number: **497650682**
- Include Sanford's Purchase Order number on all shipping documentation including the reference field and packing list.

If the Products/Services being purchased under this Purchase Order are subject to an agreement currently in force between the parties, the terms of that agreement will control in the event of a conflict with the terms set forth below.

Sanford

“Sanford” shall mean Sanford Health; Sanford North; Sanford West; Marshfield Clinic Health System, Inc.; Sanford Health of South Dakota; and The Evangelical Lutheran Good Samaritan Society, and each of their respective subsidiaries, affiliates, and other entities that directly or indirectly control, are controlled by, or are under common control with any of the foregoing.

Products and Services

For purposes of the Purchase Order, “Products” are defined as any product or other deliverable provided by Supplier to Sanford under the Purchase Order including, but not limited to, software, and “Services” are defined as any services provided by Supplier to Sanford under the Purchase Order including, but not limited to, service, support, or maintenance of Products or other professional services provided by Supplier to Sanford. Supplier warrants: (i) the Services shall be performed in a timely, competent, good and workmanlike manner by appropriately-qualified personnel, and in accordance with the highest professional standards for such Services, the best practices in Supplier’s industry, and the requirements of the Purchase Order; (ii) the Products shall be free from defects in material, workmanship, design, and manufacturing, shall conform to the specifications, drawings, and samples furnished by Supplier, and shall be safe for their intended use; (iii) Supplier has and will continue to comply with all applicable laws; (iv) the Products or

Services do not infringe intellectual property of a third party; and (v) there are no existing or threatened legal proceedings against Supplier that would have an adverse effect upon its financial condition, operations, or ability to perform. Supplier agrees to guarantee all work performed under this Purchase Order against defects in material and/or workmanship for a period of one year after acceptance by Sanford. Supplier shall be responsible for the compliance of all Services with all applicable federal, state and local laws, rules, regulations and licensing requirements. Supplier shall maintain all necessary licenses, permits or other authorizations as required to perform requested Services, if any. Unless expressly set forth, Supplier shall bear any costs related to packaging and shipment of Products. Risk of loss shall at all times remain with Supplier until Products are delivered in good condition to the Sanford facility.

Unless otherwise specified, the Supplier shall furnish all items to be delivered under this Purchase Order "F.O.B. Destination, Freight Prepaid and Allowed". As used herein, "F.O.B. Destination" means title of ownership transfers to Sanford upon receipt and acceptance of items at Sanford's designated receiving point. "Freight Prepaid and Allowed" means the Supplier pays and bears the freight charges for the items.

Medicare Access

In accordance with Public Law 96-499, until the expiration of four years after the furnishing of services under the applicable Purchase Order, Supplier shall make available, upon written request to the Secretary, U.S. Department of Health and Human Services or upon request to the U.S. Comptroller General, or any of their duly authorized representatives, the contracts, books, documents, and records of Supplier that are necessary to certify the nature and extent of the costs of performing its obligations under the applicable Purchase Order. If Supplier carries out any of its duties under the applicable Purchase Order through a subcontract with a related organization with a value or cost of \$10,000 or more over a 12-month period, such subcontract shall contain a clause to the effect that until the expiration of four years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary or upon request to the Comptroller General, or any of their duly authorized representatives, the subcontract, and books, documents, and records of such organization that are necessary to verify the nature and extent of such costs.

Taxes

Any charges payable under a Purchase Order are exclusive of any applicable taxes, surcharges, or other like amount assessed by any governmental entity ("Taxes"). Such Taxes shall be included on the invoice. If Sanford is tax exempt or pays state Taxes directly, Sanford will provide Supplier with a copy of a current tax exemption certificate issued by the appropriate state taxing authority.

Order Acceptance

Supplier will not accept any orders unless Supplier receives a Purchase Order from Sanford. Any invoice received by Sanford that does not reference an authorized Purchase Order shall not be considered valid and Sanford shall not be obligated to pay the amount on the invoice.

Invoicing

Supplier agrees to bill Sanford on a timely basis. Supplier must submit all invoices for payment within three (3) months from the date the Products or Services were delivered or performed. If an invoice arrives past this deadline, Sanford shall have the discretion to pay or not pay the requested amounts. Nonpayment by Sanford under this section shall not constitute a breach.

Payment Terms; Disputed Amounts

Invoices shall be due payable sixty (60) days after the date of the invoice. If any amount of an invoice is disputed by Sanford in good faith, Sanford will provide a written explanation specifying the amount in dispute and may include documentation supporting the disputed amount. The Parties shall work in good faith to resolve disputes in a timely manner.

Termination

1. **Termination for Convenience.** Sanford may terminate a Purchase Order, in whole or in part, for its convenience upon written notice to Supplier.
2. **Termination for Cause.** Sanford may terminate a Purchase Order immediately upon written notice if Supplier (i) materially breaches any term of the Purchase Order or these PO Terms and fails to cure such breach within ten (10) days after written notice (or, if the breach is not capable of cure within ten (10) days, fails to commence and diligently pursue cure within such period), (ii) fails to deliver Products or perform Services as required, or (iii) becomes insolvent, makes an assignment for the benefit of creditors, has a receiver appointed, or becomes subject to bankruptcy proceedings.
3. **Effect of Termination.** Upon termination, Supplier shall stop work as directed and promptly deliver to Sanford any completed or partially completed Products and work product paid for by Sanford. Sanford will pay Supplier for conforming Products delivered and conforming Services performed prior to the effective date of termination, provided Supplier submits a proper invoice and supporting documentation. Sanford will have no obligation to pay for (a) nonconforming Products or Services, (b) work not authorized by the Purchase Order, or (c) anticipatory profits.

Confidentiality

During the course of the parties' relationship, either party may disclose to the other nonpublic, proprietary, or confidential information, including pricing, business plans, operations, workflows, trade secrets, and other information that is designated as confidential or that reasonably should be understood to be confidential ("Confidential Information"). The receiving party will (i) use the disclosing party's Confidential Information solely to perform or receive performance under the Purchase Order, (ii) protect the Confidential Information using at least the same degree of care it uses to protect its own confidential information (and no less than reasonable care), and (iii) disclose Confidential Information only to its employees, agents, and subcontractors who have a need to know and who are bound by confidentiality obligations at least as protective as those in this section. Upon request, the receiving party will promptly return or securely destroy the disclosing party's Confidential Information, except for copies retained as required by law or record retention policies. Confidentiality obligations do not apply to information that the receiving party can demonstrate (i) is or becomes publicly available through no breach, (ii) was lawfully known by the receiving party without restriction before receipt, (iii) is received from a third party without breach of a duty of confidentiality, or (iv) is independently developed without use of the Confidential Information. This section survives completion or termination.

HIPAA

The parties do not intend for Supplier to create, receive, maintain, or transmit Protected Health Information ("PHI") (as defined under HIPAA) in performing under a Purchase Order unless the parties first execute a business associate agreement ("BAA") as required by HIPAA. Supplier will not request PHI from Sanford, and Sanford will not provide PHI to Supplier, absent a fully executed BAA. If Supplier receives PHI

inadvertently, Supplier will promptly notify Sanford and cooperate with Sanford's reasonable instructions to return or securely destroy the PHI.

Indemnification

To the fullest extent permitted by law, Supplier shall fully defend, indemnify and hold harmless Sanford, its subsidiaries, affiliates, and its and their agents, officers, directors, employees, predecessors and successors in interest from and against any and all actions, claims, demands, liabilities, damages, losses, costs and expenses, including attorneys' fees and costs, which involve or relate to: (i) any breach of the Purchase Order by Supplier or Supplier's agents; (ii) personal or bodily injury, sickness, disease, death, or property damage related in any way to the Products or Services; (iii) any negligence or willful misconduct by Supplier or Supplier's agents; (iv) any claim that the Products or Services infringe intellectual property; and (v) any violation of law by Supplier or Supplier's agents.

Sanford will promptly notify Supplier of any claim, demand, action, or proceeding of which Sanford becomes aware requiring indemnification; provided, however, that failure to provide such notice within a reasonable period of time shall not relieve Supplier of any of its obligations hereunder except to the extent Supplier is prejudiced by such failure. Supplier will control the defense and settlement of any such matter; provided that: (i) Sanford will, at Supplier's sole cost and expense, reasonably cooperate in the defense by providing reasonable access to witnesses and evidence available to it; (ii) Sanford will have the right to participate in any defense at its own cost and expense to the extent that, in its sole judgment, Sanford believes it may otherwise be prejudiced; and (iii) Supplier will not settle, offer to settle, or admit liability in any matter in which it controls the defense if such settlement, offer, or admission contains any admission of fault or guilt on the part of Sanford, or would impose any liability or other restriction or encumbrance on Sanford, without the prior written consent of an officer of Sanford. This provision shall survive completion or termination of the Purchase Order.

Insurance

Supplier shall obtain, pay for, and maintain in full force and effect insurance coverages and minimum limits appropriate to the Products and Services, including workers' compensation, commercial general liability, and automobile liability (as applicable), and other coverage appropriate to the Products or Services (including professional liability, product liability, and network security or privacy liability where applicable). Supplier shall provide certificates of insurance upon request, name Sanford as an additional insured by endorsement where required, and provide notice of cancellation or material change in coverage.

Use of Marks

Supplier will not use Sanford's service marks, trademarks, or trade or corporate names without Sanford's prior written consent, including, without limitation, use within advertising, marketing materials, publicity, release or sales presentation of Supplier. This provision shall survive completion or termination of the Purchase Order.

Exclusion, Debarment, and Ineligibility

Supplier hereby represents and warrants that it is not currently listed by any governmental agency as excluded, debarred, suspended, or otherwise ineligible for participation in any governmental health care program and that it will not directly or indirectly contract with, employ, or engage any individual or entity that Supplier knows or should have known after reasonable inquiry (a) has been convicted of a criminal offense related to health care and has been excluded from participation in any governmental health care

program (unless reinstated), or (b) is currently listed by any governmental agency as excluded, debarred, suspended, or otherwise ineligible for participation in any governmental health care program. In furtherance of this requirement, Supplier agrees to make reasonable inquiry as to any existing or prospective employee, agent, subcontractor, or independent contractor considered for engagement by Supplier to provide Products or perform Services by reviewing the General Services Administration excluded parties resources, the OIG List of Excluded Individuals/Entities (LEIE), and applicable state Medicaid exclusion lists. This shall be an ongoing representation and warranty during the term of the Purchase Order and Supplier shall immediately notify Sanford of any change in the status of the representations and warranty set forth in this section. Sanford shall not be responsible for payment for any Products delivered or Services performed after the effective date of any exclusion, debarment, suspension, disbarment, or other ineligible participation decision. Supplier shall fully defend, indemnify, and hold harmless Sanford from and against any and all claims, damages, liabilities, losses, harms, costs, and expenses (including attorneys' fees) that Sanford incurs that relate to, arise out of, or pertain to the representations and warranties contained in this section.

Discounts

Sanford acknowledges that during the term of the applicable Purchase Order, the Products and Services may be subject to discount programs that could trigger Federal health care program cost reporting obligations. The Parties intend that, to the extent applicable, any discounts offered or provided on Products or Services purchased by Sanford pursuant to the Purchase Order shall be offered and provided in compliance with the requirements of the discount safe harbor to the federal Anti-Kickback Statute, found at 42 C.F.R. § 1001.952(h). To enable Sanford to meet its cost reporting obligations, Supplier will provide such documentation as Sanford may reasonably require regarding the calculation of any discount(s) and the Products or Services to which such discount(s) apply.

Recall

In the event a voluntary or involuntary Product recall or a court action impacting the Products occurs, Supplier shall notify Sanford within twenty-four (24) hours by emailing such notification to recalls@sanfordhealth.org. Supplier will not charge restocking fees or return shipping costs, and any limitations on liability contained in the Purchase Order are null and void. Supplier shall reimburse Sanford for reasonable costs associated with corrective action, withdrawal, or recall requested by Supplier or required by a governmental entity.

Force Majeure

Neither Party shall be liable for any delay or failure to perform if such delay or failure arises from an act of God, act of civil disobedience, epidemic, war, insurrection, or governmental action. The affected Party shall promptly notify the other Party of the anticipated duration and mitigation steps. Delay is not excused if preventable by due diligence or if the affected Party fails to mitigate promptly.

Miscellaneous

(a) The headings contained in these Purchase Order Terms and Conditions ("PO Terms") are for reference purposes only and shall not affect the meaning or interpretation of these PO Terms or any Purchase Order issued by Sanford that incorporates these PO Terms (each, a "Purchase Order"); (b) no waiver shall be effective unless in writing and signed by the party waiving its right, and any waiver of a breach shall not operate or be construed as a waiver of any subsequent breach; (c) if any provision of these PO Terms or a Purchase Order is found to be invalid or unenforceable by any court, such provision shall be ineffective only to the extent that it contravenes applicable law without invalidating the remaining provisions; (d)

Supplier shall not assign a Purchase Order, these PO Terms, or any part thereof, whether voluntarily or by operation of law, without Sanford's prior written consent; provided, however, that no such assignment shall excuse Supplier of continued responsibility; (e) these PO Terms and each Purchase Order shall be governed by, construed and enforced in accordance with the substantive laws of the State of South Dakota without regard to South Dakota's conflict of laws rules, and all disputes arising under or relating to these PO Terms or any Purchase Order shall be brought and resolved solely and exclusively in the State of South Dakota; (f) these PO Terms and the applicable Purchase Order supersede all previous or contemporaneous agreements or understandings relating to the Products and/or Services covered by that Purchase Order; provided, however, that if the Products and/or Services are subject to a written agreement currently in force between Sanford and Supplier, the terms of that written agreement will control in the event of a conflict with these PO Terms or the Purchase Order. Sanford will not be bound by any provisions in any "shrink-wrap," "click wrap," or "click to approve" terms or conditions now or hereafter contained in any documentation, or set forth on any website (including Supplier's website). Any agreement beyond that constituted by Supplier's acceptance of a Purchase Order shall be set forth in a written agreement (designated as such) manually executed by duly authorized representatives of both Sanford and Supplier; and (g) the Purchase Order and these PO Terms may be executed and accepted in counterparts, and facsimile, documents executed, scanned and transmitted electronically, and electronic signatures shall be deemed original signatures for purposes of these PO Terms and any Purchase Order.

Federal Award Flow-Downs.

To the extent any Purchase Order is funded in whole or in part by, or otherwise issued in connection with, a U.S. federal award or other federally funded or assisted project (including construction or Services), Supplier shall comply, and shall cause its employees, agents, subcontractors, and lower-tier subcontractors to comply, with all applicable federal statutes, regulations, executive orders, and agency requirements, including the following, as applicable to the scope of work and the type and dollar value of the Purchase Order:

1. **Non-Discrimination; Equal Opportunity; Affirmative Action.** Supplier shall comply with Title VII of the Civil Rights Act of 1964 (as amended), the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 USC 4212) (as amended), Section 503 of the Rehabilitation Act of 1973 (29 USC 793) (as amended), Executive Order 13496 (as amended), and 41 CFR Chapter 60, including all those parts pertaining to Equal Employment Opportunity and the Office of Federal Contract Compliance Programs and affirmative action.
2. **Limited English Proficiency Notice.** Supplier may be subject to the provisions of Title VI of the Civil Rights Act of 1964 and 45 CFR Section 80.3 with respect to limited English proficiency meaningful access requirements for individuals with limited English proficiency, including as implemented through Executive Order 13166 and applicable agency guidance.
3. **Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 3145).** For any Purchase Order in excess of \$2,000 for construction or repair under a federal award or contract, Supplier shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874, 40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

4. **Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).** When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2,000 shall comply with the Davis-Bacon Act (40 U.S.C. 3141-3148) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, if applicable, Supplier shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.
5. **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, all contracts awarded by recipients in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surrounding or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
6. **Rights to Inventions Made Under a Purchase Order.** If applicable, contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
7. **Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended.** For Contracts and subgrants of amounts in excess of \$100,000 Supplier shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
8. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** For awards of \$100,000 or more, Supplier shall file any required certification and disclosures under 31 U.S.C. § 1352. Supplier certifies it will not and has not used Federal appropriated funds to pay any person or organization 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 obtaining any Federal contract, grant, or other award covered by 31 U.S.C. § 1352, and Supplier shall disclose any lobbying with non-Federal funds in connection with obtaining any Federal award, as required.
9. **Debarment and Suspension (E.O.s 12549 and 12689).** No contract shall be made to parties listed on the federal government's exclusions records maintained in SAM.gov (Exclusions) in accordance with

E.O.s 12549 and 12689, "Debarment and Suspension," and the nonprocurement debarment and suspension regulations at 2 CFR Part 180, as applicable. Contracts with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.