

# Contract Conditions and Instructions Between Blue Cross and Blue Shield of North Carolina (Purchaser) and Seller (Vendor)

**ACCEPTANCE OF GOODS:** All goods/services purchased under this Purchase Order (this "Order") shall operate to the satisfaction of Purchaser, and if requested, Vendor will promptly furnish to Purchaser a Bill of Sale warranting title to any equipment free and clear of encumbrances. All goods furnished under this Order must be as specified on this Order. Regardless of whether any specifications are given, the goods shall be of a standard quality as understood in the trade, and all goods will be subject to inspection and approval of Purchaser after delivery, notwithstanding any prior payments. Purchaser shall be able to inspect goods in any manner and for any amount of time reasonable in light of the goods in question. Receipt of the goods by Purchaser for an opportunity to inspect the goods does not constitute acceptance of the goods. Purchaser reserves the right to reject and return at the risk and expense of Vendor, for full credit, all or any portion of any shipment which may be defective or fail to comply with specifications, without invalidating the remainder of this Order. If rejected, goods will be held for disposition at the expense and risk of Vendor, and such material is to be replaced only at Purchaser's option.

**RESERVATION OF RIGHT:** Purchaser reserves the right to change, modify, and/or cancel this Order upon issuance of a change notice. Such change notice will be deemed effective as between the parties to this Order unless Purchaser receives notice from Vendor that Vendor does not agree to such change, modification, or cancellation within 10 days after the issuance of the change notice.

**PRICE:** This Order is placed subject to shipment at prices, amounts and transportation rates not in excess of those indicated on the face of this Order. Any discount payment terms will begin upon completion of delivery and acceptance of goods or service by Purchaser or the date of the invoice, whichever is later. If price is not stated on this Order, the goods shall be billed at the price last quoted, or the market price, whichever is lower.

**FAILURE OF DELIVERY:** Each shipment must be shipped and marked to the attention of the individual indicated on the face of this Order, labeled plainly with our purchase order number. Vendor is required to make all contracts for shipping according to reasonable commercial standards. Complete packing list must accompany each shipment. If Purchaser stipulates packing instructions hereon, such instructions must be adhered to; otherwise Vendor shall pay the cost of repacking. If delivery is not made on or before the dates set forth herein, Purchaser may, at its option, terminate this Order without penalty, and any money previously paid by Purchaser to Vendor will be refunded. Acceptance of any delivery not made on or before the dates set forth herein shall not be considered a waiver of such requirement. Termination of this Order by Purchaser does not forfeit any other rights the Purchaser may have in connection with this Order. If delivery is not made on or before the dates set forth herein, Purchaser may, at its option, without further notice, supply itself on the open market to the extent of the deficiency in delivery and hold accountable Vendor for any resulting loss.

**PAYMENT:** An invoice must be submitted in triplicate to Accounts Payable within 30 days of the final completion of delivery or furnishing of services. Failure to do so may result in non-payment.

**NON-ASSIGNMENT:** This Order to Vendor is nontransferable and non-assignable without the express written permission of Purchaser.

**RISK OF LOSS:** Vendor shall maintain adequate insurance on the goods ordered until delivered to Purchaser and accepted by Purchaser. Said goods shall be delivered to Purchaser in new condition (unless otherwise specified) and undamaged. Risk of loss as well as title to the goods shall pass from Vendor to Purchaser only upon delivery and acceptance by Purchaser.

**GOOD TITLE:** Vendor warrants that it is the sole owner of the goods herein described and that it has the unrestricted right to convey a clear title to Purchaser, free and clear of all encumbrances.

**INDEMNIFICATION AND HOLD HARMLESS:** Vendor is an independent contractor and shall in no event be construed to be an employee of Purchaser. Vendor agrees to comply with all applicable laws, regulations, rules and orders of Federal, State and Municipal government bodies and agencies, and will defend and save Purchaser harmless from any loss or damage arising out of any violation thereof. Vendor will also defend and save

Purchaser harmless from loss or damage by reason of actual or alleged infringement of letters patent, copyright, or other intellectual property right of a third party. Vendor agrees to indemnify and hold harmless Purchaser, its agents, and employees from and against all claims, damages, losses, and expenses including attorney's fees arising out of or resulting from the performance of this Order, including bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, which is caused by any wrongful or negligent act or omission of the Vendor, its agents, or employees.

**PURCHASE OF SERVICES:** This Order may also be used to order services, and all references to goods herein shall also apply to any services covered, except where these provisions are clearly inconsistent.

**MATERIALITY:** Time is of the essence in the performance of this Order, and all conditions are deemed material. Upon violation of any term of this Order by Vendor, Purchaser may, at its option, terminate this Order. Failure to terminate this Order by the Purchaser shall not be held or deemed a waiver of the ability to do so for any subsequent violation of this Order by Vendor. Termination of this Order by Purchaser shall not preclude Purchaser from seeking any other remedies it is entitled to under law.

**MODIFICATION:** No changes or substitutes in this Order or the terms and conditions contained herein shall be binding on Purchaser unless in writing signed by the originating Purchasing Officer. This term cannot be orally modified. No waiver by Purchaser, either direct or by operation of law or in equity, of strict compliance with any term or condition of this Order, or of any breach of it on the part of the Vendor shall be deemed to be a waiver of any subsequent failure of strict compliance with any and every term or of any breach of the Order by the Vendor.

**ACCEPTANCE OF TERMS:** This Order constitutes Purchaser's offer to Vendor, and commencement of performance pursuant to this Order shall constitute acceptance by Vendor. Conditions stated by Vendor in acknowledging receipt of this Order shall not affect Purchaser's offer as represented by this Order, and shall not be binding on Purchaser if in conflict with or in addition to any of the terms of this Order, unless expressly agreed to in writing by Purchaser.

**FEDERAL SUBCONTRACT PROVISIONS:** This agreement may be subject to certain federal procurement clauses, including those in 48 CFR Chapter 16. Vendor agrees to comply with such clauses and with the Federal Acquisition Regulations in Title 48 of the Code of Federal Regulations as applicable and incorporated herein, including but not limited to the following: §§ 52.209-6 (Contractors debarred, suspended or proposed for debarment), 52.222-26 (Equal Opportunity); 52.222-35 (Equal Opportunity for Special Disabled and Vietnam Era Veterans); 52.222-36 (Affirmative Action for Workers with Disabilities); and 52.222-37 (Employment Reports), 52.244-6 (Subcontracts for commercial items), 52.247-63 (Preference for U.S. flag Air Carriers); 52.203-7 (Anti-kickback), 52.215-2 (Audits and Records).

**FORCE MAJEURE:** Neither party will be deemed to be in breach of this Agreement if it is delayed in or prevented from performing any of its obligations under this Agreement as a result, direct or indirect, of any labor disputes, natural disasters or acts of God, or any other causes beyond the control of the parties, to the extent that the cause affects the parties' ability to perform under this Agreement. Upon removal of the cause affecting the delay or nonperformance, the affected party shall resume performance of its obligations under this Agreement. In addition, pursuant to the provisions of North Carolina General Statute 58-2-46, BCBSNC reserves the right to delay payment under this Agreement for the statutorily-defined deferral period: (1) whenever a state of disaster is proclaimed for the State of North Carolina or for an area within the State of North Carolina under North Carolina General Statute 166A 6 or whenever the President of the United States has issued a major disaster declaration for the State of North Carolina or for an area within the State under the Stafford Act, 42 U.S.C. § 5121, et seq., as amended, and (2) when the disaster area includes a location having an impact on BCBSNC's ability to perform under the Agreement. This right extends to payments that become due pursuant to the other terms of the Agreement during the period for which the state of disaster is in effect.

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**BlueCross BlueShield  
of North Carolina**