1. Offer and Acceptance. Each purchase order that Sparrow Health System, a Michigan nonprofit corporation, or its affiliate (in either case, “Buyer”) issues (each a “Purchase Order”), together with these Terms and Conditions of Purchase, is Buyer’s offer to purchase the goods (“Goods”) and services (“Services”) identified in that Purchase Order. Each Purchase Order, together with these Terms and Conditions of Purchase (these “Terms”), and any other documents specifically incorporated into the Purchase Order by Buyer or separately agreed to in writing, such as specifications, drawings, requirements of Buyer’s customer, or quality requirements, are, collectively, a “Supply Agreement.” All sales by Seller to Buyer are conditional on Seller’s assent to the terms of the Supply Agreement exclusively and without regard for any Seller-proffered terms or conditions. If these Terms are first tendered to Seller before Seller tenders Seller’s terms and conditions to Buyer, these Terms are in lieu of any terms and conditions later submitted by Seller and Buyer rejects all additional or different terms and conditions of Seller, whether confirmatory or otherwise. If Buyer tenders these Terms after the tender by Seller of other terms and conditions, whether as part of a Seller-proffered terms or conditions later submitted by Seller and Buyer rejects all additional or different terms and conditions of Seller, whether confirmatory or otherwise, then Seller’s acceptance of any offer by Seller associated with Seller’s terms and conditions is expressly conditioned upon Seller’s acceptance of the Supply Agreement, including these Terms, exclusively and to the exclusion of any proffered Seller terms or conditions, regardless of whether these Terms contain any terms additional to, or different from, any terms proffered by Seller. Seller’s confirmation or acknowledgement of a Purchase Order, these Terms, or a Supply Agreement, Seller’s commencement of performance, or Seller’s tendering of Goods or Services ordered to constitute Seller’s acceptance of these Terms, and of the Supply Agreement, exclusively.

2. Invoices. Seller must submit invoices plainly marked with Buyer’s purchase order number. Except as otherwise expressly stated in a Purchase Order, Buyer will pay all undisputed amounts under Seller’s properly-issued invoices within 30 days after the later of receipt of the invoice or receipt of the Goods and/or Services to which the invoice applies.

3. Pricing. The prices contained in each Purchase Order are firm prices that are not subject to change, regardless of materials prices, the prices of labor, or any other causes. For the avoidance of doubt, under no circumstances will UCC Sec. 2-615 or any other similar rule of law be construed to permit any change in pricing. Pricing includes all taxes associated with the provision or receipt of the Goods and/or Services other than any such inspections. Buyer will pay all applicable environmental, occupational, safety, health and other laws, rules, and regulations applicable to the design, function, or use of the Goods and/or Services in any jurisdiction of which Buyer informs Seller; and (g) whether the Goods and Services, nor their possession or use by any Buyer Indemnitee (defined below) as contemplated by these Terms or the Supply Agreement will infringe upon, violate, or misappropriate any intellectual property, contract, or other right of a third party. Seller shall immediately notify Buyer of any Buyer in errors of specifications, drawings provided by Buyer to the extent that Seller is aware of same or that a third party prices and/or terms that are more favorable than the prices and/or terms with respect to a Good or Service under any Supply Agreement, Seller will immediately notify Buyer of such more favorable price(s) and/or term(s) and give to Buyer the more favorable price(s) and/or term(s).

4. Taxes. Buyer will not be liable to Seller for, and Seller may not collect from Buyer, any taxes associated with the provision or receipt of the Goods and/or Services other than taxes imposed by a governmental unit that expressly requires Seller recognizes that Buyer is a tax-exempt entity and Buyer will provide Seller with its exemption certificate on request. All invoices of Seller to Buyer shall exclude taxes that are excluded under Buyer’s tax-exempt status.

5. Subcontracts. Buyer will subcontract such taxes from Buyer. Whenever federal, state, or local taxes are charged or collected, Buyer must list taxes separately on each invoice.

6. Shipping Terms. Unless expressly otherwise stated in a Purchase Order, all prices are F.O.B. (UCC Sec. 2-319) Buyer’s location for orders shipped within the United States and FPO/DPO (Incorpors 2010) Buyer’s location for orders shipped internationally.

7. Packaging; Containers. Seller will plainly mark all containers, crates, boxes, and packages with the purchase order number and include packing lists with all shipments. Failure to properly mark purchased Goods will delay payment until Buyer receives proper documentation.

8. Deliveries. (a) Time is of the essence in all of Seller’s performances under any Supply Agreement. Deliveries of Goods must be made between 7:00 a.m. and 3:30 p.m., Monday through Friday, unless otherwise instructed in the Purchase Order notes. If Seller fails to deliver Goods within such times, Buyer may, among other remedies, (1) require that Seller ship by express or other more rapid means of delivery, any additional expense to be paid by Seller, or (2) cancel all or any part of the applicable Supply Agreement. Seller will promptly give notice to Buyer of any fact or circumstance of which Seller is aware of or of which Seller could, with reasonable diligence, be aware, that could reasonably be expected to delay any delivery of Goods or Services under any Supply Agreement. Seller may not ship excess quantities unless expressly authorized by Buyer in a signed writing. If Seller ships unauthorized excess quantities, Buyer may ship the same back to Seller F.O.B. (UCC Sec. 2-319) Buyer’s location of, if Buyer retains the unauthorized excess quantities, Seller will reimburse Buyer for the reasonable costs of storing any unauthorized excess quantities delivered and, in any case, risk of loss to the Goods will remain with Seller. Buyer need not perform incoming inspections of any Goods or Services and Seller waives any right to require Buyer to conduct any such inspections.

(b) Seller will conform to Buyer’s then-current Transportation Routing Guide.

9. Inspection; Acceptance. All Goods and Services, and the facilities at which Seller manufactures, processes, or provides the same, are subject to inspection and/or test at any reasonable time or place, and in any quantity by Buyer or Buyer’s direct or indirect customer(s). If any such inspection and/or test is made on Seller’s premises or the premises of Seller’s subcontractor(s), Seller will furnish, without additional charge, all reasonable facilities and assistance required by the inspectors. Such inspections and/or tests shall not relieve Seller of the obligation to make full and adequate inspections and for the delivery of Goods and/or Services which meet these Terms and Conditions of Purchase. If any such inspections and/or tests fail to verify acceptance of Buyer of any Goods or Services. If a Good or Service is non-conforming, the Buyer may reject such Goods and/or Services or require their replacement or correction. Buyer may return all rejected Goods or Services at Seller’s invoice price plus delivery, all Material Safety Data Sheets and any other information necessary to handle and store the Goods safely.

10. Warranties. Seller represents and warrants to Buyer and to each of Buyer’s direct and indirect customers and users (a) that the Goods and Services will conform strictly to the specifications, drawings, samples or descriptions; (b) that the Goods and Services and new of good quality and workmanship; (c) that the Goods and Services will be free of any defects in design, material, and manufacture; (d) that the Goods and Services shall conform to all applicable environmental, occupational, safety, health and other laws, rules, and regulations, and that Seller’s Goods and Services will not infringe upon, violate, or misappropriate any intellectual property, contract, or other right of a third party. Seller shall immediately notify Buyer of any Buyer in errors of specifications, drawings provided by Buyer to the extent that Seller is aware of same or that a third party prices and/or terms that are more favorable than the prices and/or terms with respect to a Good or Service under any Supply Agreement, Seller will immediately notify Buyer of such more favorable price(s) and/or term(s) and give to Buyer the more favorable price(s) and/or term(s).

11. Hazardous Materials. If any Goods are, or contain, materials that are identified by any workplace health or safety or environmental law as hazardous, Seller will prominently label the Goods as such and will provide to Buyer, before delivery or concurrently with delivery, all Material Safety Data Sheets and any other information necessary to handle and store the Goods safely.

12. Documentation Seller will, for no additional consideration, provide to Buyer all technical documentation and other literature necessary to enable Buyer to properly use the Goods and Services.

13. Indemnification. Seller will indemnify, defend, and hold harmless Buyer and Buyer’s equityholders, directors, managers, officers, employees, agents, and direct and indirect customers (each a “Buyer Indemnitee”) against any third-party claim or demand for injury or death of persons, property damage, economic loss, and any other damages, losses, costs, and expenses (including reasonable legal fees), regardless of whether the claim or demand arises under tort, contract, strict liability, or other theory, to the extent caused or alleged to have been caused by Seller’s defective design, manufacture, or provision of Goods or Services, Seller’s willful or negligent acts or omissions in its performance under a Supply Agreement, or any other fact that, if true, would be, or be evidence of, a breach by Seller of any warranty under a Supply Agreement.

14. Insurance. Seller will, at all times while performing under a Supply Agreement and for the duration of all warranties, insurance with coverage limits customary in similar transactions. Seller will procure and maintain such insurance as is required to cause Buyer to be listed as an additional insured on such policies.

15. Intellectual Property Infringement. Seller will indemnify, defend, and hold harmless each Buyer Indemnitee from and against all claims, suits, actions, liabilities, losses, damages, penalties, interest, costs, and expenses, including reasonable legal fees, interest, and any suit, action, or proceeding brought in any court out of, or relating to, any actual or alleged infringement by the Goods or the Services (or the possession or use thereof by any direct or indirect customer of Buyer) of a Third-party Intellectual Property Right, contract right, or other right.

16. Compliance with Law. In the performance of all Supply Agreements, Seller will comply will all federal, state, and local laws, ordinances, rules, orders, regulations or restrictions that are applicable to each Supply Agreement and/or to Seller. Seller will, upon Buyer’s request, furnish to Buyer such certificates of compliance with the same, including, but not limited to, Customer environmental requirements, and in such form, as Buyer from time to time requires.

17. Licensure; Permits. Where a rule of law requires that the seller or provider of Goods or Services shall, or shall procure and maintain, a license or permit, Seller will, at all applicable times, procure and maintain such licenses and/or permits. Where Goods or Services are to be delivered or rendered on Buyer’s premises (including, but not limited to, in the case of construction on, or alteration of, real property, or installation requiring a building or similar permit), Seller agrees to issue the respective (whether to Buyer, Seller, or otherwise), such permits as are required to provide the Goods and Services as required.

18. Activities at Buyer’s Facilities. Seller will cause each agent of Seller who enters any facility of Buyer to comply with all workplace rules and security requirements of Buyer.

19. Fraud and Abuse. (a) Seller warrants that neither Seller nor, to the best of Seller’s knowledge, Seller’s personnel, is excluded from participating in the Medicare or Medicaid program nor debarred, suspended or otherwise subject to similar suspension or similar exclusionary list under the General Services Administration’s (“GSA”) List of Parties Excluded from Federal Procurement or Nonprocurement Contracts.
T ERMS AND CONDITIONS OF PURCHASE

Programs in accordance with Executive Orders 12549 and 12689, “Department and Suspension.” Seller shall immediately notify Sparrow if it becomes debarred or suspended during the term of any Supply Agreement.

(b) Seller further represents that no adverse action by the federal government that will or may result in exclusions from a federal health care program has occurred or is pending or threatened against Seller or its affiliates or, to the best of its knowledge, against any Seller personnel. Seller will promptly notify Buyer of any act by Seller or any of its agents (or of any other person or entity with whom Buyer had a relationship, or that is related to Buyer) that is suspected of being excluded from a federal health care program or debarred, suspended, or listed, or in the GSA’s List of Parties Excluded from Federal Procurement or Nonprocurement Programs during the term of this Agreement.

20. Civil Rights. In connection with the performance of services under this Agreement, the parties agree to comply with the provisions of the Elliott-Larsen Civil Rights Act, PA 453 of 1976, as amended, the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and specifically agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment because of a disability that is unrelated to the individual’s ability to perform the duties of a particular job or position, or because of race, color, religion, national origin, age, sex, height, weight, or marital status.

21. Term and Termination.

(a) Generally. Each Supply Agreement will remain in effect for the term specified in the Supply Agreement (which term may be specified as a platform life, product life, quantity, or by other means) unless earlier terminated by Buyer by reasonable (but not less than 30 days’) notice to Seller. Upon termination of a Supply Agreement, Seller will assist Buyer in locating an alternative source for the Goods and Services and in moving production to the alternate source selected by Buyer.

(b) Termination for Seller’s Default.

(i) Buyer may forthwith cancel and terminate, in whole or in part, any Supply Agreement in the event: (A) Seller becomes unable to pay its debts as they become due; (B) A receiver or similar custodian or agent is appointed for Seller or any material part of Seller’s business; (C) Seller makes an assignment generally for the benefit of creditors; (D) Seller becomes entitled to demand adequate assurance of performance under UCC Sec. 2-609 and Buyer fails to deliver to Buyer adequate assurance of performance by the end of the fifth day after demand or, if shorter considering the circumstances, a reasonable time after demand; or (E) Seller materially defaults under any of its obligations under any Supply Agreement (whether the Supply Agreement that is the subject of termination or any other Supply Agreement) or any other agreement between Buyer and Seller and fails to cure such default within 10 days after receipt of notice of such default.

(ii) In the event of termination of a Supply Agreement or part thereof by Buyer for Seller’s default, Buyer may, in addition to termination, have any and all remedies available at law or in equity.

22. Confidential Information. Seller will keep in confidence and prevent the disclosure to any third party all information and data disclosed to it by Buyer or that Seller learns from Buyer, in either case that is not readily ascertainable by the public by proper means, including, but not limited to, quotes, business plans, technological techniques, prints, inventions, and information about research and development.

23. Assignment. Third Parties. Seller may not assign or subcontract its duties or responsibilities under any Supply Agreement without the written consent of Buyer. Buyer may freely assign its rights and obligations under any Supply Agreement or part thereof and, thereupon, Buyer will have no liability for any obligation that arises after the date of the assignment. Buyer may, at its option, permit one or more of its affiliates to purchase Goods or Services under any Supply Agreement, any such purchases by Buyer’s affiliates will be solely for each Buyer affiliate’s own account, and Buyer will have no liability for any breach by any Buyer affiliate with respect to such Buyer affiliate’s purchases. All Buyer Indemnities are express third-party beneficiaries of all indemnification obligations and warranties of Seller under these Terms and any Supply Agreement. The Buyer is no other third-party beneficiary of any right or obligation under any Supply Agreement.

24. Limitation of Liability. UNDER NO CIRCUMSTANCES WILL BUYER BE LIABLE UNDER THIS AGREEMENT OR OTHERWISE FOR (A) ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR OTHER INDIRECT DAMAGES OR (B) DAMAGES IN EXCESS OF THE PRICE OF THE GOODS OR SERVICES THAT ARE THE SUBJECT OF THE CLAIM. THESE LIMITATIONS OF LIABILITY APPLY NOTWITHSTANDING THAT THEY CAUSE ANY REMEDY TO FAIL OF ITS ESSENTIAL PURPOSE AND NOTWITHSTANDING THAT BUYER KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

25. Miscellaneous.

(a) Arbitration.

(i) All disputes under any Supply Agreement, including but not limited to, claims for breach of a Supply Agreement, claims based on state or federal statutes, including civil rights claims under state and federal law, and claims based on common law, shall be resolved through arbitration. Arbitration shall be conducted according to the Michigan Court Rules and the applicable rules of the American Arbitration Association (“AAA”). In the event of a conflict between the Michigan Court Rules and AAA Rules, the Michigan Court Rules shall control. Arbitration shall prevail. The party asserting the claim must initiate the arbitration by filing a written demand for arbitration (the “Demand”) with both the AAA and Buyer. The Demand must be filed within one hundred eighty (180) days of the date the claim accrued or the claim shall be forever barred. The arbitration shall be conducted in Ingham County, Michigan. The parties shall have the right to legal counsel and reasonable discovery. The parties shall bear equally the cost of AAA’s filing fee. The arbitrator, however, shall have the authority to grant any remedy or relief that would have been available to the parties had the matter been heard in court, including the allocation of fees. The arbitrator’s award shall be final and binding upon the parties. Judgment upon the arbitration award may be entered in any federal or state court of competent jurisdiction. Judicial review shall not be permitted, unless allowed by Michigan law.

(ii) The prevailing party in any arbitration or litigation arising out of or related to any Supply Agreement shall be entitled to include payment of attorney fees and expenses from the other party, including fees and expenses related to an appeal, as part of the prevailing party’s claim.

(b) Choice of Law; Jurisdiction; Venue. These Terms and all Supply Agreements will be governed by and construed in accordance with the law of the State of Michigan without regard for their conflict of law rules. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms or any Supply Agreement. Except as provided in Section 200, of any other government agency or any other representative determine that this Agreement is a contract described in Section 9611(x)(1) of the Social Security Act, then, until the expiration of four (4) years after the furnishing of Goods or Services under any Supply Agreement, each party will make available, upon written request by any such agency or representative, this Agreement and any books, documents, and records that are necessary to certify the nature and extent of the costs incurred. Each party will promptly notify the other party of any requests it receives from any of the entities listed above for access to its books, documents, and records.

(c) Adverting. Seller will not advertise or otherwise disclose to the public its relationship with Buyer or Buyer’s customers without Buyer’s prior written consent, except as is necessary in order to perform a Supply Agreement or as required by law.

(d) Audit Rights. Seller will maintain, for not less than three years after completion of each Supply Agreement, records necessary to support amounts charged to Buyer under such Supply Agreement. Buyer and its representatives may audit such records to the extent needed to verify that Seller’s invoices and any payments to Seller are supported by the Supply Agreement. Any audit will be conducted at Buyer’s expense (but will be reimbursed by Seller if the audit reveals material errors in the amounts charged), at reasonable times, and at Seller’s usual place of business.

(e) Relationship of the Parties. Buyer and Seller are independent contractors, and nothing in these Terms and Conditions or Supply Agreements will create any relationship, upon written request by any such agency or representative, this Agreement and any books, documents, and records that are necessary to certify the nature and extent of the costs incurred. Each party will promptly notify the other party of any requests it receives from any of the entities listed above for access to its books, documents, and records.

(f) Severability. If any provision of a Supply Agreement is invalid or unenforceable in any jurisdiction, such invalidity or unenforceability will not affect the validity or enforceability of any other provision of a Supply Agreement or the validity or enforceability of that provision in any other jurisdiction.

(g) Notice. Any notice required or permitted to be given under this Agreement must be in writing and will be deemed effective (a) if given by personal delivery, upon such personal delivery or (b) if given by nationally-recognized courier or mail service (in either case that has real-time or near-realtime tracking), at the time that the notice is delivered (or an attempt is made to deliver the notice, regardless of whether to deliver the notice as written to the receiver’s premises according to the tracking records of the courier or mail service. The addresses for notice for each party are those on the Purchase Order, Attn: Legal Department. Either party may change its address for notice by giving to the other party notice of the change of address.

(h) Remedies Cumulative. Each and every remedy of Buyer is cumulative and no exercise of any one remedy by Buyer (whether at law or in equity) or by Buyer’s agents or representatives, shall preclude any other remedy available to the parties had the matter been heard in court, including the allocation of fees. The arbitrator’s award shall be final and binding upon the parties. Judgment upon the arbitration award may be entered in any federal or state court of competent jurisdiction. Judicial review shall not be permitted, unless allowed by Michigan law.

(i) Drafting Party. No rule that requires the construction of any language against the drafting party will apply to any Supply Agreement or part thereof.

(l) Business Associate Matters. If, and to the extent that, Seller, is, or becomes, a Business Associate (as that term is defined and understood under the Health Insurance Portability and Accountability Act of 1996, the regulations thereunder, or other Revised 16 April 2017
applicable law) of Buyer and Buyer so requests, Seller will promptly execute, deliver, and perform under Buyer’s then-current standard form of Business associate Agreement. A breach of any Business Associate Agreement is a breach of all applicable Supply Agreements.

(m) Entire Agreement. Each Supply Agreement constitutes the entire agreement between the parties with respect to its subject matter, and each Supply Agreement supersedes all prior oral or written representations or agreements by the parties with respect to the subject matter of that Supply Agreement, including, but not limited to, any Seller quotation unless Buyer specifically incorporates it into in a Supply Agreement in a signed writing. No subsequent terms, conditions, understandings, or agreements purporting to modify the terms of any Supply Agreement will be binding unless in writing and signed by the party against which enforcement is sought.