

**OPTIM
TERMS AND CONDITIONS OF PURCHASE**

1. **Buyer.** "Buyer" shall mean, Beaumont Services Company, L.L.C., ("BSC") a Michigan limited liability company.
2. **Acceptance.** Buyer's purchase orders are subject to these Terms and Conditions of Purchase ("Agreement"). In this Agreement, "goods" and "services" refer to the goods or services described on the face of this purchase order to be purchased by Buyer from the vendor named on the face of the purchase order ("Seller"). Upon acceptance by Seller of the purchase order, the purchase order shall constitute a part of this Agreement, which includes all the Terms and Conditions hereof including, but not limited to, confirmation of goods or service and any insurance/indemnification requirements specified. If goods are to be picked up at Sellers location, a BSC employee I.D. badge must be presented.
3. **Receiving Hours.** Shipments must be made to Buyer's designated receiving area. Shipments to individuals or departments must receive prior approval. The Receiving Department is open Monday through Friday 8 AM – 3:30 PM.
4. **Invoices and Payment Terms.** Seller shall mail invoices to Accounts Payable promptly after shipment is made. Payment terms, including discount periods, shall run from the latest of (i) the scheduled date for delivery or performance, (ii) the actual date of delivery of conforming goods or performance of conforming services, and (iii) the date of Seller's invoice. Penalties will not be paid. Separate invoices shall be issued for each shipment pursuant to this purchase order, showing purchase order number and release date where applicable. Purchase order numbers must be reflected on all invoices and packing slips. Failure to do so will result in delay of payment without penalty to Buyer.

Invoices must be mailed to:

**Beaumont Services Company, L.L.C.
D/B/A OPTIM
Attn: OPTIM Accounts Payable
850 Stephenson Hwy., Suite 615
Troy, MI 48083**

Buyer requests that Seller send monthly statements to the attention of Accounts Payable at the above address for reconciliation of the account. Payment shall be due 45 days from date of invoice. Buyer shall retain the option of payment via credit card capabilities. C.O.D. shipments will not be accepted.

If applicable, Buyer may order additional parts, items/pieces of equipment through Internet access, and any such items ordered using this method shall be governed by this Agreement. Seller shall establish an account for the Buyer's use in order to facilitate ordering additional parts and/or items/pieces of equipment as described above.

5. **Extra Charge.** No charge of any kind, including charges for boxing, packing, or cartage, will be allowed unless specifically authorized on the face of this purchase order or the written approval of Buyer.
6. **Buyer's Handling Charges/Quantity.** Any additional handling charges incurred by Buyer resulting from Seller's failure to comply with Buyer's shipping instructions will be paid by Seller. Any unauthorized quantity is subject to Buyer's rejection and return at Seller's expense. Unless Buyer agrees otherwise in writing, Seller shall deliver all of the goods in a single delivery and not in installments. Buyer's acceptance of a delivery containing less than the required quantity shall not relieve Seller of its obligation to deliver the balance of the ordered goods at the price and on the other terms specified in this purchase order. If Seller delivers the goods before the scheduled delivery date, Buyer may, at Seller's expense and risk, either store them or return them to Seller. Buyer's acceptance of an early delivery shall not change the payment terms.
7. **Blanket Order.** If the face of this purchase order states that it is a blanket purchase order or blanket purchasing agreement, then, except to the extent otherwise expressly stated on the face of this purchase order, (i) Seller is obligated to deliver to or perform for Buyer all goods or services ordered or released by Buyer during the period, or in accordance with the delivery or performance schedule, specified on the face of this purchase order, (ii) Buyer is not obligated to order, release or purchase from Seller any particular quantity or volume of goods or services and (iii) Buyer may purchase any or all of the goods or services from others.

8. **Price.** If no price is specified on this purchase order, the goods shall be billed at the price last quoted to Buyer or at the prevailing market price, whichever is lower. This purchase order is not to be filled at higher prices than last quoted or charged, without Buyer's written consent.

9. **Delivery.** Time is of the essence. If delivery of goods or rendering of services is not completed by the time promised, Buyer reserves the right, without liability and in addition to its purchase order rights and remedies, to terminate this purchase order or Contract. Notice will be effective when received by Seller as to goods not yet shipped or services not yet rendered and to purchase substitute goods or services elsewhere and charge Seller with any loss incurred.

10. **Patents.** Seller shall indemnify and hold harmless Buyer and BSC, and their respective officers, directors, employees, shareholders, partners, joint ventures, agents, affiliates, predecessors, successors, assigns, and legal representatives, and all parties claiming by, through or under any of the above, from and against any suits, claims, actions, losses, damages, expenses (including attorney's fees and court costs) or liabilities that may result by reason of any alleged violation, infringement, or misappropriation of a patent, trade secret, copyright or other proprietary right based on Buyer's use of any goods provided under this purchase order. Buyer shall promptly notify Seller of any claim of infringement, violation, or misappropriation for which Seller is responsible and shall cooperate with Seller to facilitate the defense or settlement of such claim. Seller or Seller's attorney shall keep Buyer reasonably apprised of the continuing status of the claim, including any resulting lawsuit and shall permit Buyer, upon Buyer's written request, to participate in the defense or settlement of such claim. If the use of the goods shall be prevented or appears likely to be prevented by court order or settlement resulting from any such claim, Seller shall, at its expense, either: (a) by license or release from the claim of violation, infringement, or misappropriation, procure for Buyer the right to continue using such goods; or (b) modify any such goods so that they are functionally equivalent to the original goods but are no longer subject to a claim of violation, infringement, or misappropriation; or (c) remove such goods from the premises of Buyer and replace same with equally suitable substitute goods free from claim of violation, infringement, or misappropriation. Unless otherwise agreed in writing by Buyer, Seller shall use its best efforts to procure the right for Buyer to use the goods as provided in (a) above. This indemnification, defense, and hold harmless obligation shall survive the delivery of any goods and the termination of this purchase order.

11. **Warranty.** Seller expressly warrants that all goods or services furnished under this purchase order shall conform to all specifications, shall be merchantable, and will be free from any defects in material or workmanship. If Seller knows or has reason to know the particular purpose for which Buyer intends to use the goods or services, Seller warrants that such goods or services will be fit for such particular purpose. The goods, their manufacture and sale, and the services shall comply with all applicable federal, state and local laws, regulations, standards, and orders, including, without limitation, the Fair Labor Standards Act of 1938 and the Occupational Safety and Health Act of 1970, as amended. If Buyer requests it, Seller shall give Buyer certificates of compliance with applicable laws and regulations. Buyer's approval of a sample, drawing, specification, or standard shall not relieve Seller of any of its warranties under this paragraph, including, without limitation, its warranties of merchantability, fitness, and compliance with laws. Seller's warranties extend to future performance of the goods and services and survive inspection, tests, acceptance and payment. Seller's warranty shall run to Buyer, its successors, assigns and customers, and users of products sold by Buyer, Seller shall indemnify and hold Buyer harmless from any breach of this warranty, and no limitations on Buyer's remedy in Seller's documents shall operate to reduce this indemnification. This warranty is in addition to all warranties contained under the law.

12. **Representations and Warranties by Seller.** Seller represents and warrants to Buyer that (i) Seller has all necessary experience, qualifications, expertise, authority, licenses, and permits to enable it to perform its obligations under the Contract, (ii) the Contract is the valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, (iii) Seller is solvent, (iv) Seller has not offered or given, and shall not offer or give, any gratuity or thing of value to any employee of Buyer or of any affiliate of Buyer and (v) Seller is and shall continue to be in compliance with all equal employment and affirmative action provisions of Executive Order 11246, the Vietnam Era Veterans' Readjustment Assistance Act ("VEVRAA"), Section 503 of the Rehabilitation Act of 1973 and all implementing regulations under that Order, VEVRAA and Section 503.

13. **Indemnification.** To the fullest extent permitted by law, Seller agrees to defend, pay on behalf of, indemnify, and hold harmless Owner, BSC, their subsidiaries and their agents, directors, officers, trustees, employees, and volunteers (collectively referred to as "Indemnitees") from and against any and all claims, demands, suits, damages, losses, and expenses including but not limited to reasonable attorney's fees and court costs, which may be alleged, claimed, or recovered against Indemnitees arising out of, resulting from, or in any way connected to the goods or services supplied under this purchase order, whether as a result of breach of contract, tort or otherwise, including but not limited to any such claim, demand, suit, damage, loss, or expense attributed to personal injury, sickness, disease, death, or injury to or destruction of property, including loss of use, caused in whole or in part by the negligent acts or omissions or resulting in any way from any defect in the goods or services of Seller, any subcontractor, agent, or

anyone directly or indirectly employed by Seller or anyone for whose acts Seller is, or may be, liable or any other person or persons including but not limited to Buyer or BSC, their agents and employees. Seller's obligations of indemnification shall exclude only those matters in which the claim, demand, suit, damage, loss, or expense arises out of allegations of the sole negligence of Buyer, BSC or any of their respective agents, servants and employees.

14. **Insurance.** Seller shall maintain insurance coverage that will fully protect both Seller and Buyer from any and all claims and liabilities of any kind or nature for property damage, personal injury, death and economic damage, to any person, that shall arise from the goods or their use or the performance of the services or any activities connected with the services. Seller shall maintain employee's liability and compensation insurance that will protect Buyer from any and all claims and liabilities made by Seller or any employee or agent of Seller under any applicable worker's compensation or occupational disease acts. All insurance required by this paragraph shall be in amounts and coverages as set forth in Exhibit A, and shall be issued by insurers that shall be satisfactory to Buyer. Upon request by Buyer at any time, Seller shall furnish Buyer with certificates evidencing required insurance.

15. **Inspection/Testing.** Payment for the goods delivered hereunder shall not constitute acceptance thereof. Goods shall only be deemed accepted when they have actually been inspected and tested by Buyer and found to be in conformance with this purchase order. However, failure to inspect or test by Buyer shall not relieve Seller of any responsibilities hereunder.

16. **Compliance with Laws.** In performance of work under this purchase order, Seller agrees to comply with all applicable Federal, state, and local laws, rules, regulations, and ordinances relating to the manufacture, storage, sale, and delivery of all goods sold and delivered hereunder. Seller agrees to defend, protect, indemnify, and hold Buyer and BSC harmless against all suits and any damages, penalties, claims, and demands arising out of Seller's violation of such laws, rules, regulations, and ordinances.

17. **Applicable Law.** This Agreement and purchase order shall be governed by, and interpreted according to, Michigan laws. Any action based upon or arising out of this Agreement or purchase order shall be brought in a state court in Oakland County, Michigan or a federal court in Wayne County, Michigan, and Seller irrevocably consents that the court shall have personal jurisdiction over Seller and waives any objection that the court is an inconvenient forum.

18. **Taxes.** Buyer shall pay sales or use taxes on materials so furnished and Seller shall indemnify and hold harmless Buyer from any damage, costs, expenses, or penalties on account of such taxes.

19. **Termination for Convenience of Buyer.** Buyers reserve the right to terminate this Agreement and/or purchase order or any part hereof for its sole convenience. In the event of such termination, Seller shall immediately stop all work hereunder, and observe written instructions from Buyer, as to work in process. Seller shall be paid an equitable adjustment for work already performed. This purchase order may be cancelled by Buyer upon 30 days written notification. Termination under this paragraph shall not impair Seller's obligations under *Paragraphs 11, 12, 13, 14, 17, 21, 22, and 30* of this Agreement.

20. **Termination for Cause.** Buyer may also terminate this Agreement, purchase order, or any part hereof for cause in the event of any default by the Seller, if the Seller fails to comply with any of the terms and conditions of this Agreement, or if Seller fails to provide adequate assurance of future performance upon reasonable demand by Buyer. In the event of termination for cause, Buyer shall not be liable to Seller for any amount and Seller shall be liable to Buyer for any and all damages sustained by reason of the default, which give rise to the termination. Termination under this paragraph shall not impair Seller's obligations under *Paragraphs 11, 12, 13, 14, 17, 21, 22 and 30* of this Agreement.

21. **Buyer's Rights.** Without limiting other rights and remedies available to it, Buyer may, at its option, (i) return nonconforming goods to Seller, at Seller's risk and expense, and require Seller either to give Buyer full credit against the price, or promptly to repair or replace the goods at Seller's risk and expense, (ii) retain nonconforming goods and set off losses against any amount due seller or (iii) repair or replace nonconforming goods and charge Seller with the expense. If at any time (a) Seller defaults in the performance of any of Seller's obligations to Buyer under the Agreement, purchase order, or under any other agreement between Seller and Buyer, (b) Seller repudiates the Agreement or (c) any warranty or representation of Seller to Buyer in or in connection with the Contract shall be false or misleading, the Buyer may terminate the Contract, in whole or part, without liability to Seller, and Seller shall promptly pay to Buyer all damages that Buyer incurred as a result of the termination and as a result of the event or circumstance on the basis of which Buyer terminated. If Buyer does terminate the Contract, the Seller, if and to the extent demanded by Buyer, shall immediately deliver to Buyer all finished and unfinished goods and all work-in-process and raw materials acquired for use in the manufacture or processing of the goods. Payment of part of all of the purchase price by Buyer shall not be a precondition to Seller's obligation to make the delivery. After Seller makes the delivery and Buyer's damages (including, without limitation, any cost of "cover" or of completing the manufacture

or processing of the goods) are determined., Buyer shall pay to Seller any excess of (i) any unpaid part of the purchase price properly allocable to any such goods, work-in-process and raw materials delivered to Buyer or (ii) Buyer's damages. Termination by Buyer under this paragraph shall not impair Seller's obligations under *Paragraphs 10, 11, 12, 13, 14, 17, 21, 22, and 30* of this Agreement. In addition to Buyer's rights set out in the purchase order, Buyer has all of the other rights and remedies that the law gives to buyers, including the right to recover incidental and consequential damages resulting from any breach by Seller. Buyer shall not lose any right just because it does not exercise it. Buyer shall have the full statutory period of limitations to bring any action arising out of Buyer's agreement with Seller. A reasonable time for Buyer to notify Seller of any breach is not less than two years from when Buyer discovers the breach.

22. **Proprietary Information – Confidentiality.** Seller shall consider all information furnished by Buyer to be confidential and shall not disclose any such information to any other person, or use such information itself for any purpose other than performing this purchase order or Contract, unless Seller obtains written permission from Buyer to do so. If there is a breach of this paragraph (either actual or threatened) by Seller, Buyer's remedies at law will be inadequate. Therefore, Buyer shall have the right of specific performance or injunctive relief, or both, in addition to any and all other remedies and rights at law or in equity, and Buyer's rights and remedies shall be cumulative.

23. **Force Majeure.** Neither of the parties shall be liable to the other for any delay or failures in performance due to fires, strikes, threatened strikes, stoppage of work, embargoes, requirements imposed by governmental regulations, civil or military authorities, act of God, or public enemy or other causes which are beyond the control of the party unable to perform ("force majeure"). If a force majeure occurs, the party delayed or unable to perform shall give immediate notice to the other party. In the event Seller is the party delayed or unable to perform, Buyer may elect: (a) to terminate this Agreement or purchase order relating to goods not already delivered or services not performed without liability to Seller; or (b) to suspend performance for the duration of the force majeure, during which period Buyer may buy elsewhere substitute goods or services, and, if applicable, allow Seller to resume performance once the force majeure ceases. Buyer's exercise of the preceding option (b) shall not prevent Buyer from subsequently terminating this Agreement or purchase order. Unless written notice of termination is given by Buyer, option (b) shall be deemed selected.

24. **Changes.** Buyer shall have the right at any time to make changes in this purchase order and Seller agrees to accept such changes. Any change in, or waiver of, any provision of this purchase order or this Agreement must be contained in writing signed by Buyer. If any such changes result in additional costs, Buyer will modify the purchase order, provided such additional costs are itemized by Seller and agreed to by Buyer.

25. **Limitation on Buyer's Liability – Statute of Limitations.** In no event shall Buyer be liable for anticipated profits or for incidental or consequential damages. Any action resulting from any breach on the part of Buyer as to the goods or services delivered hereunder must be commenced within one year after the cause of action has accrued.

26. **Waiver.** Buyer's failure to insist on performance of any of the terms or conditions or to exercise any right or privilege shall not thereafter be a waiver of any other terms, conditions, or privilege. Buyer's waiver of any breach hereunder shall not thereafter be a waiver of any other terms, conditions, or privileges, whether of the same or similar type.

27. **Buyer's General Requirements/Specifications for Equipment.** Seller acknowledges and agrees to comply with Buyer's General Requirements/Specifications for Equipment ("Requirements/Specifications") (attached as Exhibit A). Seller hereby agrees to the Buyer's Requirements/Specifications and agrees that all equipment furnished pursuant to this purchase order shall meet or exceed such standards. The goods and services shall conform to the Requirements/Specifications, performance criteria standards, any samples, drawings, or other requirements that are referred to on the face of this purchase order or that Buyer has otherwise specified or agreed to in writing. The Seller understands that the Buyer may elect to withhold payment (in part or whole) until such time as defects are corrected to the Buyer's satisfaction, at the Seller's expense. In the Requirements/Specifications, Buyer is generally referred to as (the "Hospital") or ("WBH"), Seller is generally referred to as ("Vendor"), and BSC is generally referred to as ("Hospital's Buyer").

28. **Entire Agreement.** The terms contained in this Agreement, including any and all purchase orders, Exhibit A, and any and all equipment/operations/performance manuals provided by Seller shall constitute the entire agreement between the parties superseding all prior and contemporaneous understandings and communications, oral or written. Additionally, Buyer shall not be bound by any terms in addition to, or different from, those in this purchase order that may appear subsequently in Seller's acknowledgement or invoice, or any other communication of Seller.

29. **Assignments.** No part of the Agreement or purchase order may be assigned, subcontracted, or delegated without the prior written consent of Buyer.

30. **Other Terms.** Seller shall not have and waives any security interest in or lien (including any statutory or common law lien) upon any Buyer's items or the goods. Buyer may deduct from, and set off against, any amounts at any time owing to Seller under this purchase order any damages or other amounts then owing to Buyer by Seller, whether under this purchase order or otherwise. If at any time Buyer has reasonable grounds for insecurity as to Seller's performance, Seller shall provide adequate assurance of due performance within 10 days after demand by Buyer, which shall be considered to be a reasonable time.

31. **Safety.** Seller shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of this Agreement and purchase order. Seller shall comply with all provisions of federal and applicable state law or regulation relating to transportation, storage and handling of hazardous materials, including, without limitation, all regulations relating to the so-called Hazardous Communications Standard promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act including labeling, Material Safety Data Sheets, and employee information and training requirements. If performance of services or delivery or installation of goods by Seller involves operations by its employees or subcontractors on the premises of Buyer or of a customer of Buyer, (i) Seller shall at all times enforce strict discipline and maintain good order among all persons engaged in the activity on the premises and shall cause them to comply with all fire prevention and safety rules and regulations in force at the premises and (ii) Seller shall keep the premises free from accumulation of waste materials and rubbish caused by its employees or subcontractors and upon completion shall promptly remove all of Seller's equipment and surplus materials.

32. **Services.** If this order covers services, (i) Seller is an independent contractor and neither Seller nor any of Seller's employees or agents shall be considered agents or employees of Buyer and (ii) Seller shall furnish, at Seller's expense, all labor, materials, equipment, transportation, facilities and other items necessary to perform the services.

For all PM or CM work provided by Seller during normal business hours and after hours on equipment (leased or owned by Buyer) whether covered or not by a service maintenance agreement, Buyer shall be given the following: (i) description of the problem, (ii) date and hours that the equipment was out of services (i.e., 1/2/02 2:00PM – 4:00PM), (iii) listing of part(s) replaced and cost of each part, and (iv) labor hours and associated cost (travel time, labor hours, and overtime hours shall be itemized separately). This data shall be provided to Buyer by the 15th of each month for the previous month's activity, if any. This applies to all equipment, even new equipment during the warranty period.

Seller further agrees to provide maintenance services to Buyer on a time and materials basis without a service agreement in effect (i.e., under time and materials, fixed labor rates, parts only contracts). Seller represents and warrants that there shall be no degradation in the quality and timeliness of services provided as described above. No additional fees or surcharges will be billed to Buyer above and beyond the agreed upon time and materials charges.

Seller shall provide Buyer with access to a technical help desk as a resource to obtain answers/solutions to equipment operation problems for no additional charge or fee.

33. **Manuals.** To the extent capable, Seller agrees to provide any and all equipment operations and maintenance manuals in CD-ROM format.

34. **Effective Date.** This Agreement shall become effective _____, and its terms and conditions shall remain in effect unless terminated as provided herein.

ACCEPTED BY:

Beaumont Services Company, LLC.
D/B/A - OPTIM

VENDOR'S NAME

Title: _____

Title: _____

Date: _____

Date: _____