ELLIS MEDICINE AGREEMENT AND PURCHASE ORDER TERMS AND CONDITIONS

1. GENERAL

1.1 These Standard Terms and Conditions (“STC”) have been approved by Legal Counsel and are to be used for all contractual agreements entered into with Ellis Medicine (“ELLIS”).

1.2 The term “Contractor” is used to describe the party with whom ELLIS is contracting.

1.3 In the event of any conflict, inconsistency, or ambiguity between the terms and provisions of this STC and the Agreement to which it is attached, this STC shall govern and control.

2. COMPLIANCE PROGRAM PARTICIPATION

2.1 Compliance Policies. ELLIS represents that ELLIS has in effect a policy providing information regarding certain federal and state laws pertaining to health care fraud and abuse, as well as information regarding the processes which ELLIS has to detect and prevent health care fraud, abuse and waste. The policy as well as updates to the policy may be accessed through the ELLIS intranet or through the Office of Corporate Compliance. Questions related to the policy may be directed to the Compliance Officer, 518-243-4404. Concerns potentially implicating the laws cited herein may be reported anonymously to ELLIS by calling 243-3600.

2.2 Culture of Compliance. Contractor acknowledges that ELLIS promotes a compliance attitude and has established a culture that fosters the prevention, detection and resolution of instances of misconduct. Contractor adopts ELLIS’ False Claims Act policy. Contractor acknowledges that ELLIS’ Compliance Policies and Procedures can be accessed through ELLIS’ Corporate Compliance Department.

2.3 Notification of Violation or Suspected Violation. Contractor shall immediately notify ELLIS’s Office of Corporate Compliance (Tel. # 243-4404) of any known or suspected violation of any applicable law, regulation, third party payor requirement or breach of ELLIS’s ethics program of which Contractor or its employees or agents become aware of during the term hereof. Contractor shall instruct its employees and agents working in ELLIS’s facility of this requirement.

2.4 Cooperation. Contractor shall cooperate with ELLIS in responding to or resolving any complaint, investigation, inquiry or review initiated by a governmental agency or otherwise. Contractor shall cooperate with any insurance company providing protection to ELLIS in connection with the foregoing. In connection with the foregoing, Contractor shall, consistent with applicable law, fully follow the directions of ELLIS.

2.5 Compliance with Applicable Law. Contractor shall comply with all federal, state and local constitutions, statutes, laws, ordinances, requirements, rules and regulations and orders in providing services hereunder. Contractor shall do all things necessary to comply with the requirements of any applicable constitution, statute, ordinance, law,
rule, regulation, manual provision, or order of any governmental or quasi-

governmental body or agency, JCAHO, state or national professional organization’s
ethical guidelines respecting the provision of items and services hereunder.
Contractor shall comply with all ELLIS rules, regulations and policies and the terms
and conditions of this Agreement.

3.  REQUIREMENTS OF LAW.

3.1  Non-Exclusion. Contractor represents and warrants that it (i) is not excluded from
participation in any federal health care program, as defined under 42 U.S.C. §1320a-7b
(f), for the provision of items or services for which payment may be made under such
federal health care programs and (ii) has not arranged or contracted (by employment
or otherwise) with any employee, contractor or agent that such party or its affiliates
know or should know are excluded from participation in any federal health care
program, to provide items or services hereunder. Contractor represents and warrants
to that no final adverse action, as such term is defined under 42 U.S.C. §1320a-7e (g),
has occurred against it or to its knowledge against any employee, contractor or agent
engaged to provide items or services under this Agreement.

3.2  Federal Government Access. In the event that 42 USC §1395x(v)(1)(i) is deemed
applicable to this Agreement, the parties will make available to the Secretary of the
Department of Health and Human Services, the United States Comptroller General, or
their duly authorized representatives, this Agreement and such books, documents, and
records as are necessary to substantiate the nature and costs incurred hereunder. Each
party agrees to promptly notify the other in the event that such a request for access to
records is made.

4.  MISCELLANEOUS.

4.1  Independent Contractor. In the performance of the work, duties, and obligations
devolving upon Contractor under this Agreement, it is mutually understood and
agreed that Contractor is at all times acting and performing as an independent
contractor. ELLIS shall neither have nor exercise any control or direction over the
methods by which Contractor shall perform its work and functions. Contractor shall
not have any claim against ELLIS for: vacation pay; sick-leave; retirement benefits;
social security; workers compensation; disability or unemployment insurance
benefits; or ELLIS employee benefits of any kind.

4.2  Termination. Either party may terminate this Agreement without prior notice
should the other party become insolvent, voluntarily file for bankruptcy or
receivership or should the other party have commenced against it any proceeding,
suit or action in bankruptcy or receivership provided such proceeding, suit or action
is not dismissed within thirty (30) days.

4.3  Termination Due to Legislative or Administrative Changes. In the event that there
shall be a change in applicable health care law or the interpretation thereof,
including, without limitation, Medicare or Medicaid, statutes, regulations, or general
instructions, (or the application thereof), the adoption of new legislation or
regulations applicable to this Agreement, the implementation of a change in
payment methodology in any material third party payor reimbursement system, or
the initiation of an enforcement action with respect to any applicable health care law, any of which affects the continuing viability or legality of this Agreement or the ability of either party to be reimbursed for services or items provided hereunder or the ability of others to make referrals, then either party may, by notice, propose an amendment to conform this Agreement to applicable laws. If notice of such proposed change is given and the parties hereto are unable to agree within sixty (60) days upon an amendment, then either party may terminate this Agreement by thirty (30) days' advance written notice to the other party, unless a sooner termination is required under applicable law or circumstances.

4.4 **Contract Execution.** This contract shall be deemed executed and in effect when all required signatures have occurred and both parties have a fully executed original in their possession.

4.5 **Invalidity or Unenforceability.** The invalidity or unenforceability of any particular provision of this Contract shall not affect its other provisions, and this Contract shall be construed in all respects as if such invalid or unenforceable provisions had been omitted.

4.6 **Entire Agreement.** This Contract constitutes the entire agreement between the parties and contains all of the agreements between them with respect to the subject matter hereof. It supersedes any and all other agreements or contracts, either oral or written, between the parties with respect to the subject matter hereof.

4.7 **Amendments.** Except as otherwise specifically provided, the terms and conditions of this Contract may be amended at any time by mutual agreement of the parties, provided that before any amendment shall be valid or effective, it shall have been reduced to writing and signed by authorized representatives of both parties.

4.8 **Governing Law.** This Agreement shall be governed by the laws of the State of New York. Jurisdiction of any dispute shall be within the State of New York, County of Schenectady.

4.9 **Insurance.** The parties hereby acknowledge and agree that ELLIS may self-insure and self-administer all or any portion of any required insurance, and to the extent that ELLIS does self-insure, such insurance will not be deemed to exceed the scope of coverage and/or limits that would have been provided in an actual policy of insurance that satisfies the insurance requirements set forth in this Agreement. Further, no insurance coverage maintained by ELLIS, whether self-insurance or otherwise, will be construed to expand any indemnification obligations that may be contained in this Agreement.

4.10 **Nonwaiver.** No waiver of any term or condition of this Agreement by either party shall be deemed a continuing or further waiver of the same term or condition or a waiver of any other term or condition of this Agreement.

4.11 **Invalid Provision.** In the event that any portion of this Agreement shall be determined to be invalid, illegal or unenforceable, the remainder of this Agreement shall be deemed to continue to be binding upon the parties hereto in the same
manner as if the invalid or unenforceable provision were not a part of this Agreement.

4.12 **Notice.** Any notice required or allowed to be given hereunder shall be deemed to have been given upon deposit in the United States mail, registered or certified, with return receipt requested and addressed to the party to this Agreement to whom notice is given.

4.13 **Headings.** The headings to the various sections of this Agreement have been inserted for convenience only and shall not modify, define, limit, or expand express provisions of this Agreement.

4.14 **Counterparts.** This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

4.15 **Severability.** The parties have negotiated and prepared the terms of this Agreement in good faith and with the intent that every term, covenant, and condition be binding upon and inure to the benefit of the respective parties. If any one or more of the terms, provisions, promises, covenants, or conditions of this Agreement or the application thereof to any person or circumstance shall be determined to be, to any extent, invalid, unenforceable, void, or voidable for any reason whatsoever by a court of competent jurisdiction, that provision shall be as narrowly construed as possible, and all the remaining terms, provisions, promises, covenants, and conditions of this Agreement or their application to other persons or circumstances shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

4.16 **Purchase Order.**

4.16.1 **Electronic/Facsimile Transmission.** If this Purchase Order is transmitted by fax or by other means of electronic transmission, such transmission shall have the legal significance of a duly executed original delivered to the Contractor, but only if the Transmit Terminal Identification on the Form includes the notation "Ellis Medicine" or "Ellis Hospital"

4.16.2 **Payment.** Discount terms are as set forth in the Purchase Order. If no terms are specified, the net amount shall be payable within 45 days after the later of (i) delivery and acceptance of goods or other performance conforming with the terms of this Purchase Order and (ii) invoicing. Unless expressly otherwise provided in the Purchase Order, Ellis shall not be liable for any shipping, handling, fuel surcharges or similar fees.

4.16.3 **Tax Exempt.** Ellis is a Not-For-Profit corporation and is tax exempt. Tax exemption forms will be provided upon request.

4.16.4 **Risk of Loss.** Unless the Purchase Order expressly states otherwise, all goods shall be shipped FOB: the "Ship to" location designated in the Purchase Order. Risk of loss shall not pass to Ellis until goods called for in this Purchase Order actually have been received and accepted by the Ellis at the destination specified herein. Contractor assumes full responsibility for packing, crating, marking, transportation and
liability for loss and/or damage even if Ellis has agreed to pay freight, express or other transportation charges.

4.16.5 **Warranty:** Contractor expressly warrants all (i) goods delivered under this Purchase Order to be free from defects in material and workmanship and to be of the quality, size and dimensions ordered and (ii) work performed under this Purchase Order to be in conformity with all plans, specifications and other data incorporated as part of this Purchase Order. Notwithstanding any limitation of warranty, Contractor further represents and warrants that the supply, quality and fitness for the purpose of the goods or services will not be impaired, disrupted or interrupted in whole or in part by the occurrence of any leap year. These express warranties shall not be waived by reason of acceptance or payment by the Ellis. This Purchase Order incorporates by reference all terms of the Uniform Commercial Code as adopted in the State of New York (the "UCC") providing any protection to Ellis for goods, including but not limited to all warranty protection (express or implied) and all of Ellis’s remedies under the UCC. All goods and work shall also be subject to any stricter warranties specified in the Purchase Order or in other materials incorporated by reference.

4.16.6 **Time.** If delivery or completion dates cannot be met, Contractor shall inform Ellis immediately. Such notice shall not, however, constitute a change to the delivery or completion terms of this Purchase Order unless Ellis modifies this Purchase Order in writing. If any item is not received or if any element of the work is not completed by the date specified, the Ellis, at Ellis’s option and without prior notice to Contractor, may either approve a revised date or may cancel this Purchase Order and may obtain such goods or work elsewhere and in either event the Contractor shall be liable to the Ellis for any resulting loss incurred by the Ellis. Contractor’s sole remedy for a delay caused by Ellis shall be an extension in the time for Contractor’s performance equal to the duration of Ellis’s delay. Contractor shall not be liable for damages resulting from Contractor’s failure to deliver or complete, or for delays in delivery or completion, caused solely by strikes not caused by or within the control of Contractor, lock-outs not caused by or within the control of Contractor, fires, war or acts of God. TIMING OF DELIVERY AND/OR PERFORMANCE OF THE WORK IS OF THE ESSENCE OF THIS PURCHASE ORDER.

4.16.7 **Shipping.** Ellis’ standard shipping term is "FOB Destination", which means that title to the material passes from the Seller to Ellis when the freight carrier delivers the material to the Ellis ship-to location indicated on each purchase order.

4.16.8 **Freight.** Ellis purchase order related freight terms are "Freight Prepaid" which means that freight charges are prepaid by the Seller. Unless negotiated into the cost of products with contract Contractors, the freight charges are then added to the invoice as a separate charge.

4.16.9 **Contractor Responsibilities.** In accordance with the agreed upon Purchase Order Terms and Conditions, all Ellis approved Contractors are required to:

4.16.9.1 Not accept any order for products and services without prior receipt of an official Ellis purchase order or a credit card number and cardholder name.

4.16.9.2 Provide timely invoicing for all purchases of products and services.

4.16.9.3 Clearly reference the Ellis purchase order number and invoice date on the invoice.
4.16.9.4 Ensure that the invoice submitted to the Ellis includes an invoice number, invoice date, and correct remit-to information.

4.16.9.5 Mail all purchase order invoices directly to Ellis’s Accounts Payable department as noted on the purchase order.