



AGREEMENT BY PURCHASE ORDER GENERAL TERMS AND CONDITIONS

1. INTRODUCTION

1.1 **THE SUPPLIER'S ACCEPTANCE OF ANY ORDER FROM THE PURCHASERS FOR THE SUPPLY OF PRODUCT(S) OR THE SHIPMENT OF ANY PRODUCTS OR COMMENCEMENT OF PERFORMANCE OF ANY SERVICES BY THE SUPPLIER SHALL CONSTITUTE THE SUPPLIER'S AGREEMENT TO A BINDING CONTRACT AND THE SUPPLIER'S UNCONDITIONAL ACCEPTANCE BY THE SUPPLIER OF ALL OF THE FOLLOWING TERMS AND CONDITIONS (the "Terms and Conditions").**

1.2 This Agreement constitutes the entire agreement between the Supplier and the Purchaser with respect to the subject matter and contains all of the representations, undertakings and agreements of the Supplier and Purchaser. The Agreement supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether verbal or written, of the Supplier and the Purchaser with respect to the subject matter of the Agreement. The Supplier and Purchaser acknowledge and agree that there are no general or specific warranties, representations or other agreements by or between the Supplier and the Purchaser in connection with the entering into of the Agreement or the subject matter of the Agreement, except as specifically set forth in the Agreement. **FOR GREATER CERTAINTY, BUT WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE SUPPLIER'S TERMS AND CONDITIONS, IF ANY, ARE OF NO FORCE AND EFFECT AND SHALL NOT BE APPLICABLE IN THE INTERPRETATION OF THE AGREEMENT.**

1.3 The Terms and Conditions apply to each agreement by Purchase Order for the supply of goods, services, materials and/or equipment to the Purchaser). **HOWEVER, IN THE EVENT THE PURCHASER HAS ENTERED INTO AN AGREEMENT FOR THE SUPPLY OF SPECIFIC GOODS, SERVICES, EQUIPMENT AND/OR CONSUMABLES, IN WRITING IN RESPECT OF THE PRODUCTS DETAILED IN THE PURCHASE ORDER, THE TERMS OF THAT SPECIFIC AGREEMENT SHALL GOVERN.**

1.4 In the event of a conflict or contradiction between these Terms and Conditions and any other terms or conditions attached to the Purchase Order by the Purchaser, the most stringent terms and conditions applicable to the Supplier's performance shall govern.

2. ADDENDUM TO TERMS AND CONDITIONS

2.1 Any addendum of some or all of these Terms and Conditions shall be issued, in writing, by the Purchaser, and by the Purchaser only, and shall be delivered to the Supplier in accordance with Article 30 hereof. All such addendum shall form part of this Agreement and all Products delivered, supplied and/or rendered thereafter shall be subject to these Terms and Conditions as amended thereby.

3. DEFINITIONS

3.1 "Acceptance" means:

- (a) for Equipment forming all or part of the Products,
 - (i) where samples of the Products have been evaluated, used and tested by the Purchaser prior to the issuance of a Purchase Order for the Products, the first clinical use of the Products; or
 - (ii) in all other circumstances, written verification by the Purchaser of its inspection and acceptance of the Products;
- (b) for Consumables forming all or part of the Products, written verification by the Purchaser of its receipt of the Products. However, in the event a Supplier provides to the Purchaser a pallet, or any other form of shipping container which contain multiple products, including the Products, Acceptance shall only occur when the Purchaser has unpacked such container and provided written verification to the Supplier of their receipt of each Product contained in such container. and
- (c) for the Software forming all or part of the Products, written verification by the Purchaser that the Software has been successfully installed on the Purchaser's computers and/or the Equipment, is fully operating and



executing on those computers and Equipment, and the Acceptance Standards applicable to the Software have been complied with.

3.2 **“Acceptance Period”** means

- (a) for Equipment forming all or part of the Products;
 - (i) where samples of the Products have been evaluated, used and/or tested by the Purchaser prior to the issuance of a Purchase Order, the period of time after installation or delivery of the Products until the first clinical use of the Products; or
 - (ii) in all other circumstances, a period of ninety (90) days from the date of delivery and/or installation of the Product(s), as applicable;
- (b) for Consumables forming all or part of the Product, a period of ninety (90) days from the date of delivery of the Product(s),
- (c) for Software forming all of part of the Products, a minimum period of ninety (90) days from the date of delivery of the media containing the Software, in the case of Software which is to be downloaded from an Internet website, from the date of download or, in the case of Software which is already installed on the Equipment, from the date of delivery of the Equipment.

provided that if the Purchaser does not provide written verification of Acceptance, where applicable, the Acceptance Period shall expire ninety-one (91) days after delivery and/or installation of the Products, as applicable.

3.3 **“Acceptance Standards”** means those specifications, standards and performance requirements for a Product:

- (a) as set forth in this Agreement;
- (b) as provided by the Supplier to the Purchaser in connection with the purchase of the Products;
- (c) as set forth in the Supplier’s or manufacturer’s published literature on the Commencement Date;
- (d) as required by applicable law; and
- (e) the criteria according to good engineering practice as determined by the Purchaser, in its sole discretion.

3.4 **“Agreement”**, **“hereto”**, **“hereof”**, **“herein”**, **“hereby”**, **“hereunder”** and similar expressions collectively refer to these Terms and Conditions, the Purchase Order and any addendum issued by the Purchaser pursuant to Section 2.1 of this Agreement, and **“Article”**, **“Section”**, **“Subsection”**, **“Paragraph”**, **“Clause”**, **“Item”** and **“Schedule”** followed by a number or letter refer to the specified article, section, subsection, paragraph, clause, item or schedule, as the case may be, of this Agreement.

3.5 **“Business Day”** means a day on which chartered banks are open for business in the City of Winnipeg, Manitoba but does not include a Saturday, Sunday or statutory holiday in the Province of Manitoba.

3.6 **“Commencement Date”** means the later of the commencement date set forth in the Purchase Order, or the date of the delivery of all of the Products set out in the Purchase Order by the Supplier to the Purchaser.

3.7 **“Confidential Information”** means any non-public information that the Supplier, or the Purchaser, designate as confidential or that, under the circumstances of its disclosure should reasonably be considered or understood by the Parties, exercising reasonable business judgement, to be confidential, whether disclosed or submitted by either Party or by a third party to the other Party, orally, in writing, or by any other media, and includes:

- (a) any Supplier related, or Purchaser related, information, material, documents, data, media, and trade secrets in whatever form and whether given directly or indirectly to the Supplier, in writing or orally or by inspection of processes and including information, knowledge or data of an intellectual, technical, scientific, commercial or industrial nature (including drawings, specifications, schematics, samples, models or prototypes, or parts thereof and the name of customers or partners (whether potential or actual)); proprietary,



developmental, marketing, sales, operating, performance, cost, know-how, business and process information; computer programming techniques and all record bearing media containing or disclosing such information and techniques; or of a financial, cost, pricing, or security nature relating to the business, operations or property of the Supplier or of the Purchaser, including this Agreement; and

- (b) all personal information as defined in the FIPPA and personal health information as defined in the PHIA, collected, used, stored, disclosed to or observed by the Supplier or Supplier's Staff;

but shall not include;

- (c) the name of the Supplier and the Products supplied by it.

- 3.8 **“Consumables”** means those Products which are goods and materials designed or intended to be expended upon use.
- 3.9 **“Documentation”** means all materials, regardless of format, necessary for the Purchaser to make the full intended use of, or to fully enjoy and consume, the Products, including the materials described in Section 5.4 hereof.
- 3.10 **“Delivery Locations”** means those locations which the Purchaser specifies from time to time as the locations to which Products are to be delivered by the Supplier, and **“Delivery Location”** means any one of them.
- 3.11 **“Drugs”** has the meaning given to it in the *Food and Drugs Act* (Canada).
- 3.12 **“Equipment”** means Products which are goods and materials designed or intended to be non-expendable upon use.
- 3.13 **“FIPPA”** means *The Freedom of Information and Protection of Privacy Act* (Manitoba).
- 3.14 **“Force Majeure”** means circumstances and conditions beyond the control of a Party which cannot be reasonably foreseen and provided against and which render it impossible for that Party to fulfill its obligations under this Agreement or which will delay that fulfillment beyond what is a delay acceptable to the other Party. Such circumstances shall include war, acts of God, acts of terrorism, civil war, earthquake, flood, fire or other natural physical disaster, or other matters similar in nature or severity to the herein mentioned. An event of Force Majeure does not include an event that merely renders fulfillment of a Party's obligation under this Agreement more difficult such as financial hardship, a change in legislation, regulation or government policy or the administration thereof or a pandemic or similar form of epidemic.
- 3.15 **“GST”** means goods and services tax within the meaning of the *Excise Tax Act* (Canada).
- 3.16 **“Health Canada”** means the federal department responsible for helping Canadians maintain and improve their health through the administration of the *Canada Health Act*, the regulation of health-related products and the dissemination of health-related information;
- 3.17 **“Hazardous Substances”** means any substance, waste, product, material or good identified, defined or designated as a hazardous substance or declared to be a contaminant, pollutant, dangerous substance, toxic substance, deleterious substance, waste, special waste, hazardous waste or dangerous good or similar term in or pursuant to any applicable laws or regulations relating to environment, natural resources, safety or health matters.
- 3.18 **“includes” and “including”** mean includes or including without limiting the generality of the foregoing.
- 3.19 **“Information Manager”** means a person or body that:
 - a) processes, stores or destroys personal health information for a Trustee, or
 - b) provides information management or information technology services to a Trustee;
- 3.20 **“IPC Policies”** means all policies and procedures related to Infection, Prevention and Control as enacted by the WRHA as of the Commencement Date, and as shall be enacted, amended or replaced from time to time thereafter.
- 3.21 **“Internal Code”** means microcode, BIOS, utility programs, device drivers, diagnostics, and any other code delivered with Equipment for the purpose of enabling the Equipment's function(s).



- 3.22 **“Medical Devices”** has the meaning given to it in the Medical Devices Regulations under the *Food and Drugs Act* (Canada).
- 3.23 **“MSDS”** has the meaning ascribed to that term in Section 5.5 hereof.
- 3.24 **“Package”** means the container or parcel containing smallest amount of the Product or Products.
- 3.25 **“Party”** means either the Purchaser or the Supplier and **“Parties”** means both of them.
- 3.26 **“PHIA”** means *The Personal Health Information Act* (Manitoba)
- 3.27 **“Product”** and **“Products”** means the goods and/or services, and all accessories, whether tangible or intangible, purchased by the Purchaser pursuant to this Agreement including all Documentation, Software, all intellectual property rights purchased, licensed, or otherwise acquired from the Supplier by the Purchaser, and any installation, training, maintenance, construction, labour or other service provided to the Purchaser in connection therewith.
- 3.28 **“Purchase Order”** means any individual purchase order or other form of requisition, in written or electronic form, issued by the Purchaser to the Supplier in respect of the supply of Product(s) by the Supplier to the Purchaser, as the same may be amended or supplemented from time to time.
- 3.29 **“Purchaser”** means collectively those of the WRHA and/or any of the Sites which are described in the Purchase Order.
- 3.30 **“Site(s)”** means one or more of the organizations listed in the Purchase Order.
- 3.31 **“Software”** means any software, computer programs, and machine-readable instructions licensed or sold to the Purchaser under the terms of the Agreement, and includes Internal Code and any software which is incidental to the supply, operation and/or maintenance of any Equipment or services forming the Product.
- 3.32 **“Staff”** means, as applicable, employees, officers, directors, shareholders, representatives, agents and subcontractors of the Supplier or the Purchaser.
- 3.33 **“Supplier”** means the individual and/or other legal entity engaged to supply or provide the Product or Products as identified in the applicable Agreement, and its Staff.
- 3.34 **“Termination for Convenience”** has the meaning ascribed to that term in Article 25 hereof..
- 3.35 **“Trustee”** means a health professional, health care facility, public body, or health services agency that collects or maintains personal health information which includes the Purchaser.
- 3.36 **“WHMIS”** has the meaning ascribed to that term in Section 5.5 hereof.
- 3.37 **“WRHA”** means the Winnipeg Regional Health Authority.

4. AGREEMENT

- 4.1 Subject to Section 1.3 hereof, the Agreement shall constitute the entire contract with reference to the subject matter thereof and shall not be altered, amended, varied, supplemented cancelled or waived without the prior written approval of the Purchaser.

5. SHIPPING

- 5.1 The Supplier shall be solely responsible for, and shall prepay, all freight costs, packing costs and insurance costs relating to the delivery of the Products to the Delivery Locations. The Supplier shall pack, protect and maintain at the appropriate temperature, as applicable, all Products in accordance with best practices, having regard to ensuring Product quality, to methods of carriage and handling and to weather conditions likely applicable to the transportation and delivery to the Delivery Locations and the Purchaser may reject any Products that are deemed by the Purchaser, acting reasonably, to have not been shipped in accordance with the requirements herein.



- 5.2 The Supplier shall comply with all applicable laws, and all corporate and industry standards respecting the safe and proper handling, transportation, cartage and delivery of the Products and, in the event of any conflict amongst any of them, the most stringent provision shall apply. Without limiting the generality of the foregoing, the Supplier shall ensure that if pallets are used in making deliveries, the Supplier's pallets must meet all Workplace Safety and Health regulations and the Purchaser may reject any pallets that are deemed by the Purchaser, acting reasonably, to be a risk to safety to any of the Staff of the Purchaser. Without limiting the generality of the foregoing, the Supplier shall ensure that if any of the Products fall within the Transportation of Dangerous Goods Regulations, the Products shall be shipped in an approved container with all required and appropriate markings on the sides thereof.
- 5.3 A Package of Consumables shall have printed upon it the product code number, the lot number, as well as the description, the expiry date and the quantity of Products in the Package. A Package of Equipment shall have printed upon it the manufacturer's name, the model number and the serial number. The shipping documents and invoices shall include the Agreement number, the product code number, the model number, the serial number, the description, and the quantity of the Products, as applicable, included in the shipment and related invoice. An itemized packing slip must be included with all deliveries and shall be securely fastened to the outside of any shipping container. In the event an itemized packing slip is not contained with a delivery, the Purchaser's count of quantity will be accepted as final and conclusive. Goods imported to Canada by the Supplier and shipped directly to the Purchaser shall include in the Canadian Customs form, provided in quintuplicate, sent with the shipment the full description of the contents of the shipment, including, if applicable, the nature of any Product and its attachments and accessories. The Supplier shall provide an Exporter's Certificate of Origin with the documents provided to the freight carrier.
- 5.4 The Supplier shall provide the Purchaser with all relevant information concerning the safe and proper mode of employment, handling, use, implementation, and maintenance and cleaning of the Products, and such information as may be requested by the Purchaser including, as applicable, detailed information about the material composition of a specific Product or changes in the composition of a specific Product, operator/user manuals, Software manuals, education media, and, if applicable, unabridged service manuals, as issued to field and factory service technicians, containing operating instructions, electrical, mechanical and pneumatic schematics, diagnostic codes, commands, and passwords as required for the installation, use, maintenance, troubleshooting, and testing of the Products. The Purchaser shall have the full right to duplicate and use all such information, including schematics, drawings, technical documentation, operating instructions, Equipment manuals, Software manuals, maintenance manuals and other information as the Purchaser deems appropriate for the use, implementation, maintenance, troubleshooting, and testing of the Products. The Supplier shall provide the Purchaser with two (2) complete sets of the Documentation in hard copy and, if available, in electronic format.
- 5.5 The Supplier shall inform the Purchaser, in writing, of any Product containing Hazardous Substances. Each shipment of Products containing any Hazardous Substances shall be labelled as such and shall identify each Hazardous Substance contained therein and shall contain instructions for shipping, safety, handling, exposure and disposal in a form sufficiently clear for use by the Purchaser's non-technical personnel and sufficiently specific to identify all action which the user must take concerning the Hazardous Substance. The Supplier shall fully comply with Workplace Hazardous Materials Information System ("WHMIS") legislation and/or the regulations thereto, as required thereby, and to cooperate with any of the Purchaser's request for Product data and related requirements. Material Safety Data Sheets ("MSDS") as defined by the WHMIS legislation and the regulations thereto must accompany all first shipments of Products to the Purchaser.
- 5.6 The Purchaser shall not be liable for payment of any goods delivered in excess of the quantities ordered and/or goods rejected for failure to comply with any of the requirement set out Article 5 hereof, and the Supplier shall pick up such over-shipments or rejected shipments within twenty-four (24) hours following the Purchasers' notification of such shipment. All goods held by the Purchaser under this Section 5.6 shall be held at the Supplier's risk.

6. TRAINING

- 6.1 To the extent that the Products include Equipment, and where requested by the Purchaser, the Supplier shall provide, at the sole expense of the Supplier, in-service training with regard to the proper use, care, and routine maintenance and cleaning of the Products as designated by the Purchaser which training shall be provided to any of the Staff as designated by the Purchaser. In-service training and follow-up in-service training shall be made available to the Purchaser at their request, at the Supplier's sole expense, at any time before the expiry of the period of 12 months following Acceptance by the Purchaser.
- 6.2 To the extent that the Products include Equipment, and where requested by the Purchaser, the Supplier shall provide, at the sole expense of the Supplier, service training with regard the Products as designated by the Purchaser which training shall be provided to any of the Staff as designated by the Purchaser and shall be on par with the service training



provided to the technicians of the manufacturer of the Products. Service training shall be made available to the Purchaser at their request, at the Supplier's sole expense, at any time before the expiry of the period of sixty (60) months following Acceptance by the Purchaser.

- 6.3 Subject only to Article 20 hereof, the Purchaser shall have the full right to duplicate, disseminate to its Staff, and use all such information received during in-service training and/or service training as the Purchaser deems appropriate for the enjoyment, use, implementation, maintenance, troubleshooting, and testing of the Products.
- 6.4 In providing the training as set out in this section, the Supplier shall pay for all expenses and costs related to the training provided, including, tuition fees, training materials, transportation, accommodations and meals.

7. TITLE

- 7.1 Subject always to Section 5.6 and Article 8 of these Terms and Conditions, title, ownership and risk of loss of or damage to the Products will pass to the Purchaser upon inspection of the Products after delivery to the Delivery Locations. The Purchaser shall have the right to inspect all Products supplied to determine whether the Products appear to be in accordance with the requirements of this Agreement.

8. REJECTION OF PRODUCTS

- 8.1 The Purchaser shall have until the expiry of the Acceptance Period to conduct testing of the Products as the Purchaser deems appropriate. The Purchaser may reject any and all defective Products or Products which fail to comply with the Acceptance Standards. On or before the expiry of the Acceptance Period, the Purchaser may notify the Supplier if any of the Products are defective or fail to conform to the Acceptance Standards or otherwise do not comply with the terms hereof. In the event that the Products are defective or fail to conform to the Acceptance Standards, the Purchaser may, at their option, acting in their absolute discretion, require the Supplier to provide replacement Products or to rectify any such defects or failure. If the Purchaser requests the Supplier to rectify defects the Acceptance Period shall be extended until twenty (20) days after the date upon which the Supplier has rectified the defects. If, upon expiry of the Acceptance Period, including any extension thereof on account of rectification of defects, Acceptance has not occurred, the Purchaser shall return the Products to the Supplier at the Supplier's sole expense and risk.
- 8.2 Acceptance shall not prejudice any rights of the Purchaser under the Agreement or in law in respect of defective Product, regardless of any verification of Acceptance or other document executed by the Purchaser. The making or failure to make any inspection of, or payment for, the Products covered by the Agreement shall in no way impair the Purchaser's right to reject non-conforming or defective Products, nor be deemed to constitute Acceptance by the Purchaser of the Products, nor affect in any way the Supplier's obligations under the Agreement nor the Supplier's liability for Products that are defective or fail to meet the Acceptance Standards or from any consequences resulting therefrom, notwithstanding the Purchaser's opportunity to inspect the goods or services, the Purchaser's knowledge of the non-conformity or defect, its substantiality or the ease of its discovery, nor the Purchaser's earlier failure to reject any Product.

9. RETURN OF PRODUCTS

- 9.1 Products delivered in error, unauthorized late deliveries and unordered Products will be returned to the Supplier, and Products rejected, defective Products and Products not in accordance with the Acceptance Standards may be returned to the Supplier, at the Supplier's sole expense and risk. If the Supplier does not provide return instructions within a reasonable time after being requested to do so, the Purchaser may dispose of those Products, as it deems appropriate, at the Supplier's sole expense and risk and the Purchaser shall have no liability or responsibility to the Supplier whatsoever in that regard. Return of Products shall not prejudice any other right or remedy available to the Purchaser with respect to those Products.
- 9.2 The Supplier shall refund to the Purchaser any money paid for returned or rejected Products or, upon request from the Purchaser, credit that amount to the account of the Purchaser within thirty (30) days of the date upon which the Purchaser notifies the Supplier of its return of or refusal to accept the Products. The refund or credit for Products returned under this Article 9 shall not be subject to any re-stocking or similar charge unless the delivery of the Products by the Supplier was a direct result of an error made by the Purchaser, in which case the Supplier may apply a re-stocking fee or similar fee to the refund or credit up to a maximum, for all such fees, of 10% of the purchase price of, not including GST or Manitoba retail sales tax, as applicable to, such returned Products,



10. CUSTOM PACKAGING AND PRODUCTS

- 10.1 In the event a Product is custom or has custom packaging as required by the Purchaser, the Purchaser shall not be responsible for the Supplier's maintenance of an inventory of that Product or that Product's custom packaging greater than the typical three (3) month order of that Product by the Purchaser.

11. WARRANTY

- 11.1 The Supplier, at its expense (including the expense of removal, packing, transportation and reinstallation) shall promptly, at the option of the Purchaser, acting in their sole discretion, either repair or replace any Products furnished to the Purchaser which, within twelve (12) months after Acceptance, shall fail to conform to the Acceptance Standards or to the requirements of this Agreement. In the event that the Purchaser opts for the Supplier to repair the Products, the Supplier shall take all reasonable steps to minimize the Purchaser's inconvenience and interruption of operations during the repair of the Products including those steps as set out in Section 14.1 hereof. Products that are repaired or replaced by the Supplier pursuant to this warranty shall be warranted, according to the terms hereof, to the end of the later of the remainder of the twelve (12) month period after Acceptance or for an additional six (6) months from the date of the repair or replacement. Notwithstanding the right of the Purchaser to opt for the repair of any Products pursuant to this warranty, within twelve (12) months after Acceptance, the Supplier must either replace, any Product that has required two previous repairs, or accept the return of the Product in accordance with Section 9.1 hereof, as determined by the Purchaser, acting in their sole discretion. The Supplier shall at all times be liable for and shall reimburse the Purchaser for repairs made by the Purchaser to correct a failure to meet the warranty herein where the Supplier has been given notice of the failure and thereafter has failed to take prompt and effective action to correct the failure in accordance with the foregoing. Should any component of a system supplied by the Supplier fail to function, causing a dysfunction in that system, the warranty period for that system shall be extended for a period equal to the time that the dysfunction existed. Any repair work by the Purchaser to the Products shall not void or diminish any Product warranty, provided that in the event the Purchaser damages the Product in conducting such repairs, the Supplier shall not be responsible to repair such damage, or shall repair such damage, at the request of the Purchaser, at the Purchaser's sole expense.
- 11.2 The above warranties are in addition to all other warranties as may be express or implied at law or in equity. In the event this Agreement provides for a warranty more favourable to the Purchaser, the more favourable warranty shall apply
- 11.3 Immediately following the repair or replacement of any of the Products, regardless of when or where the service is performed, the Supplier shall provide the Purchaser with a detailed service report including the Products serial number and/or model number, the problem identified, parts serviced or replaced, materials used, the labour costs and the parts costs to repair or replace the Product. If the repair or replacement is to be conducted at any site of the Purchaser, the Supplier shall notify the Purchaser in advance of any service calls and the Purchaser may choose to have a member of the Staff present while the service work is performed. The Supplier acknowledges and agrees that the detailed service report or any reports created thereof shall not be considered to be Confidential Information and shall not be subject to the obligations of Section 20.1 hereof.

12. THIRD PARTY WARRANTIES

- 12.1 The Supplier, if a distributor of the Products, hereby assigns to the Purchaser such assignable rights as the Supplier may have under any and all manufacturers' and other warranties provided with respect to the Products. To the extent that such rights cannot be assigned to the Purchaser, the Supplier shall at the direction of the Purchaser exercise such rights on behalf of the Purchaser.

13. PAYMENT

- 13.1 All Product invoices that are mailed, in duplicate, to the Purchaser or provided to the Purchaser in such other manner (i.e. electronic invoices), as may be agreed to in writing by the Purchaser, shall be sent to the Purchaser at the address(es) detailed in the Agreement. A separate invoice must be issued for each shipment.
- 13.2 Invoices may only be submitted to the Purchaser's accounts payable department after delivery of the Products. The Purchaser shall pay all non-disputed invoiced amounts within forty-five (45) days of receipt of invoice in proper form, or in such other time period as agreed to by the Parties in writing. The Purchaser shall not be subject to interest charges, penalties or late payment fees for payments made within forty-five (45) days of receipt of an invoice received in accordance with this Agreement. Interest charges, penalties or late payment fees for payments made after forty-five (45) days of receipt of an invoice shall in no event exceed, in aggregate, the equivalent of 5% per annum, compounded



annually, not in advance, and the Purchaser shall only be liable to pay for same if the Purchaser has previously agreed, in writing, to such charges and fees. Upon the request of the Purchaser, the Supplier shall provide all information necessary, in any form required by the Purchaser, to facilitate the payment of the Supplier's invoices by means of electronic funds transfer.

13.3 All amounts invoiced to the Purchaser by the Supplier shall be in accordance with the Agreement and the Purchaser's policies, as may be enacted or amended from time to time, and shall separately identify all duties, brokerage fees, taxes and levies, where applicable, which are levied or imposed in connection with the supply of the Products. The Supplier shall not be entitled to receive, and shall not invoice the Purchaser for, any fees, costs, charges or surcharges, out-of-pocket expenses, not included in the Agreement, including 1) any transportation or handling charges (F.O.B. Delivery Locations), minimum order charges, duties and brokerage fees, unless they have been pre-approved by the Purchaser in writing or 2) any travel expenses related to the provisions of the Products, unless they have been pre-approved by the Purchaser in writing and are in accordance with the Purchaser's Business and Travel Expense Policy. The Supplier shall be responsible to pay all government assessments including income tax, employment insurance relating to the Supplier and its Staff, workers compensation and Canada Pension Plan relating to the Supplier. Any Products supplied by the Supplier outside the scope of the Products agreed to by the Purchaser and without the prior written consent of the Purchaser shall be deemed gratuitous on the Supplier's part, and the Purchaser shall have no liability with respect to such Products. Unless otherwise directed by the Purchaser, each of the Supplier's invoices shall comply with the following:

- (a) each invoice shall include:
 - (i) the Purchaser's name and Agreement number, and
 - (ii) the itemized prices for Products covered by the invoice, in Canadian Funds, exclusive of Federal Goods and Services Tax (GST) and Manitoba Retail Sales Tax (PST);
- (b) invoices related to a period of time or a point in time shall be rendered within fourteen (14) days of the end of the period of time or the occurrence of the point in time, as the case may be;
- (c) all charges and credits are to be itemized and shown on the invoice;
- (d) if required by the Purchaser, the Supplier shall provide such supporting vouchers, statements, receipts, time logs and any other information as requested; and
- (e) invoices shall not be rendered prior to the date that the applicable Products have been delivered to the Delivery Locations.

Delays in receiving invoices, errors or omissions in the invoices shall be considered just cause for withholding payment without loss of cash discount privileges. No invoice shall be paid by the Purchaser without an authorized Agreement.

13.4 The Purchaser shall:

- (a) withhold from all amounts payable to the Supplier such amounts in respect of non-resident withholding taxes, as applicable and as the Purchaser may be required to withhold under the terms of the Income Tax Act (Canada) or the terms of the any other law of international treaty or convention to which the Purchaser is subject or by which it is bound;
- (b) remit such withholding tax to the appropriate taxing authority as required by the Income Tax Act (Canada) or the terms of the any other law of international treaty or convention to which the Purchaser is subject or by which it is bound; and
- (c) deduct any such amount withheld and remitted, as required by the Income Tax Act (Canada) or the terms of the any other law of international treaty or convention to which the Purchaser is subject or by which it is bound, from the amount payable to the Supplier under this Agreement.



14. RECALL OF PRODUCT

14.1 In the event of a medical alert, consumer alert or other form of Product recall issued by the Supplier, the manufacturer of the Product or by any qualified authority, including Health Canada, the Supplier:

- (a) will immediately advise the Purchaser in writing (at the address specified in Article 30 of these Terms and Conditions) and take all reasonable steps to minimize the Purchaser's risk and to remedy the situation, all at the Supplier's sole cost and expense, which steps will include:
 - (i) in respect of Equipment, the provision of loaner Products to the Purchaser until the remedy of the situation;
 - (ii) the delivery and installation of any and all Software and hardware as may be necessary to rectify the situation;
 - (iii) the coordination with the Purchaser of the removal and replacement of, or the repair of, the affected Products;
 - (iv) the provision of new, and/or extension of existing, warranties as set out in Article 11 hereof;
 - (v) in respect of Consumables, the provision of alternative or substitute Products, acceptable to the Purchaser, in its sole discretion; and
 - (vi) the provision of training, in accordance with Article 6 hereof, as may be requested by the Purchaser during, or after rectification of, the situation.
- (b) upon the Purchaser's request, will provide the Purchaser with all technical data in the Supplier's possession or control relating to the Product recalled and the reason for the Product recall, including:
 - (i) in respect of Consumables, the lot number, product code number, description of the Products affected by the recall or alert; and
 - (ii) in respect of Equipment, the manufacturer, the model number(s), and the serial number(s) of the Products affected by the recall or alert;and any proposed solution of the Supplier to the issue identified in the Product recall.
- (c) upon the Purchaser's request, will accept return by the Purchaser of all recalled Products for full refund;
- (d) if the Purchaser determines, in its sole discretion, that it must obtain the Product or a product similar to the Product from an alternative supplier, will immediately reimburse the Purchaser for any additional costs incurred by the Purchaser in obtaining such products, which costs shall include, without limitation, any price for a Product or similar product paid by the Purchaser in excess of the price of any such recalled Product set forth in the Agreement and any costs associated with obtaining any other item that is necessary for the use of the replacement Product; and
- (e) will be responsible for and will pay all costs and expenses incurred by the Purchaser with respect to any of the foregoing, including all labour costs, including overtime costs, costs of collecting recalled Products, costs of distribution of alternate Products, return freight, insurance and packaging.

This Article 14 shall survive the expiry or termination of this Agreement.



15. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE SUPPLIER

15.1 The Supplier hereby represents and warrants to and covenants with the Purchaser as follows:

- (a) the Supplier has all necessary power and authority to enter into the Agreement and the necessary personnel, skills, expertise, and experience to provide the Products;
- (b) the Supplier fully understands all of the requirements of the Purchaser, including the Acceptance Standards and the Supplier will be able to satisfy these requirements;
- (c) the Agreement is enforceable against the Supplier in accordance with its terms;
- (d) the execution, delivery and performance of the Agreement will not violate, nor be in conflict with, nor constitute a default under, any contract, agreement or undertaking (whether verbal or written) to which the Supplier is a party, or by which it is bound or under any judgment, decree, order or law applicable to the Supplier;
- (e) the Supplier has all right and title to the Products, free and clear of any charges, liens, encumbrances, security interests and other interests and the Purchaser shall acquire title to the Products free and clear of any charges, liens, security interests, encumbrances or other interests;
- (f) to the extent that the Purchaser will require use of the intellectual property rights of any third party in connection with the Products, the Supplier, at its sole expense, has obtained from the third party all necessary licenses, consents or assignments of those intellectual property rights for the benefit of the Purchaser;
- (g) the Products comply with, and the Supplier, in the performance of this Agreement shall comply with, all applicable laws, ordinances, rules and regulations, including *The Workplace Safety and Health Act* (Manitoba) and any amendments or replacement thereto and all acts for the protection of the environment applicable in the Province of Manitoba;
- (h) the Supplier possesses all applicable permits, licences, authorizations and regulatory approvals necessary in connection with the sale and use of the Products to and by the Purchaser;
- (i) the Products will be new, and will conform with the Acceptance Standards and with all written specifications, drawings, and other descriptions of the manufacturer thereof and will be of merchantable quality, fit and sufficient for the purposes for which they are intended, of good materials, design and workmanship, free from defects, and will fulfill satisfactorily any operating conditions specified in this Agreement;
- (j) the Products have received all applicable certifications and approvals, including those related to the use of the Products as intended by the Purchaser and be labelled accordingly, from the Canadian Standards Association, Underwriters' Laboratories of Canada, Health Canada, and any other organization that licenses or certifies the Products, which organization is accepted by the WRHA and which approvals shall include, but not be limited to, if applicable:
 - (i) Canadian Standard Association standards for electrical and medical Consumables and Equipment; and/or
 - (ii) Canadian Standard Association standards for electromagnetic compatibility of the Consumables and Equipment ;
- (k) the Products are free of Hazardous Substances, except for those Products which the Supplier has informed the Purchaser contain Hazardous Substances in accordance with Section 5.5;
- (l) service support and new parts required to service the Products shall be available until the later of the period of seven (7) years following the effective date of the Agreement or following the last date of productions of the Products, or as required by Health Canada and the Supplier shall provide the Purchaser with a minimum of twenty-four (24) months written notice in advance of the date when parts shall no longer be available for the Products and/or of the date of the Products' end of support by its manufacturer;



- (m) all parts ordered to service or repair the Products shall be expedited, with no delays or surcharges imposed by the Supplier;
- (n) the Supplier shall provide new parts only to service or repair the Products, whether provided directly to the Purchaser, or to any of the Purchaser's provider(s) of post-warranty services to the Purchaser including the Canadian Medical Equipment Protection Plan;
- (o) the Supplier shall provide on-line technical support (telephone and/or on-line), if available, to the Purchaser, at the Supplier's sole expense;
- (p) the Supplier, its agents and representatives, in compliance with the Industry Relationships Policy 10.00.110 of the WRHA, including all amendments and replacements thereto, have:
 - (i) not offered gratuities (in the form of entertainment, gifts or otherwise) to the Purchaser or the Staff of the Purchaser, or any other person connected to the Purchaser, with a view toward securing this Agreement or securing favourable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of, this Agreement, nor has the Supplier directly or indirectly, paid any fee for the solicitation, negotiation or obtaining of this Agreement to any person other than an employee of the Supplier acting in the normal course of the employee's duties; and
 - (ii) have disclosed all payments or transfers of value to the Purchaser or to any of its Staff.
- (q) to the extent the Products include services, the services will:
 - (i) be performed in a conscientious and professional manner, with reasonable skill, care and diligence, in accordance with industry standards;
 - (ii) be performed by employees, contractors or agents who are qualified and competent and have the appropriate skills and experience to perform the duties assigned to them;
 - (iii) be performed by employees, contractors or agents with proper training, equipment and all other things necessary to perform the services assigned to them and under proper supervision;
 - (iv) only be performed while the Supplier is in compliance with applicable worker compensation requirements in respect to the Supplier's employees, or permitted subcontractors and the Supplier shall provide, at the request of the Purchaser, satisfactory written evidence of all required Worker's Compensation Board of Manitoba coverage; and
 - (v) be performed in a consultative manner with the Purchaser and to the full satisfaction of the Purchaser.
- (r) in respect of Drugs and Medical Devices only:
 - (i) the Products are registered with Health Canada, Therapeutic Products Directorate and comply with all applicable regulations and standards;
 - (ii) the Drugs and Medical Devices are authorized for sale in Canada under the *Food and Drugs Act* (Canada);
 - (iii) each Drug forming part of the Products, if any, has a valid drug identification number;
 - (iv) the Drugs and Medical Devices are duly licensed in accordance with the *Food and Drugs Act* (Canada) and related regulations, and a copy of the license will be provided or, alternatively, the Supplier will produce evidence of its license in another manner acceptable to the Purchaser, such as through the web-based database maintained by Health Canada and any limitations or qualifications on the license have been conveyed in writing to the Purchaser;



- (v) each Drug having an expiration date must be supplied with the longest possible shelf life, which shelf life shall not be less than 12 months, with the exception of Drugs with a natural shelf life of less than 12 months, and all unopened Packages of stale-dated Drugs may be exchanged for the same non-expired Drug without additional cost;
 - (vi) the import, sale, advertising, labelling, manufacturing and distribution of the Drugs and Medical Devices, and any other activities related to the Drugs and Medical Devices, comply in all respects with the *Food and Drugs Act* (Canada) and related regulations and any other applicable laws; and
 - (vii) all proofs of registration or authorization and licenses shall be provided by the Supplier to the Purchaser by including them in the packing slips required with all deliveries of the Products.
- (s) in respect of Software only:
- (i) the Supplier has all necessary right to sell the Software to the Purchaser or to grant a licence in the Software to the Purchaser as provided herein;
 - (ii) the Supplier has the necessary intellectual property rights and interests required to perform its obligations hereunder and to provide the Purchaser with all rights or licenses referred to herein;
 - (iii) the Supplier has provided to the Purchaser all keys, authorization codes and other devices and information required in order for the Software to be installed, operating and executing successfully
 - (iv) the Software does not contain any back door, time bomb, drop-dead device or other software routine designed to disable the software automatically, with the passage of time or under the positive control of any person other than the Purchaser;
 - (v) the Software shall be free from any computer code or programming instructions that are constructed with the ability to damage, interfere with or otherwise adversely affect computer programs, the data files or hardware without the consent or intent of the computer user, including self-replicating and self-propagating programming instructions commonly called “viruses”, “trojans”, “malware” and “worms”;
 - (vi) any compact disks or any other computer storage media on which the Software is supplied will be free from defects in design, material and workmanship under normal use, and will perform in compliance with published specifications;
 - (vii) the Software will be compatible with the information systems of the Purchaser, as identified by the Purchaser and the Supplier; and
 - (viii) the Supplier shall provide the Purchaser, for the life of the Products, at the Supplier’s sole expense, all Software which is corrective in nature, which has been initiated to correct software errors, to meet regulatory requirements, or for safety reasons or which enhances existing Software features.
- (t) if at any time the Product is declared, by the Supplier, to be “latex free” which for the purposes of this paragraph shall mean that the Product does not contain, the packaging does not contain, and neither the Product or its packaging has come in contact with, latex, in any form, the Supplier shall inform the Purchaser in writing, if at any time the “latex free” status of the Product changes;
- (u) to provide, at the request of the Purchaser, the sales volume/utilization statistics for each of the Products purchased by each of the Site(s), which report shall be provided as frequently as requested and within thirty (30) calendar days following the period for which the report has been requested;
- (v) to provide the proper methods of cleaning and sterilizing the Products and, at the request of the Purchaser, to provide the list of cleaning agents that can be safely used to properly clean and/or sterilize the Products or to confirm that the cleaning agents used by the Purchaser can be used on the Products for such purposes; and
- (w) to comply with, and take all such steps and do all such things as may be necessary to ensure that its employees comply with, the IPC Policies.



The above representations and warranties are in addition to all other warranties as may be express or implied at law or equity. The representations shall be true and correct during the entire term of the Agreement and shall survive the expiry or early termination of the Agreement until all of the obligations of the Supplier hereunder have been fulfilled.

16. INDEMNITY

16.1 Notwithstanding any other provision of the Agreement to the contrary, and except to the extent caused or contributed by one Party or a third party, the other Party (the “Responsible Party”) shall:

(a) be liable to the other part(ies)y and affiliates, officers, directors, members, agents, employees, licensees, subcontractors and invitees (in this Section “**Others**”) for; and

(b) indemnify, hold harmless and defend the other part(ies)y and the Others from and against,

any and all liabilities, obligations, losses, claims, proceedings, demands, suits or actions, fines, penalties, costs, damages and expenses whatsoever (including legal fees on a solicitor-client full indemnity basis) which may be brought or made against the other part(ies)y or Others (including claims by third parties), or which the other part(ies)y or Others may sustain, pay or incur as a result of or in connection with:

(c) any breach or non-observance of any covenant, representation, warranty, agreement, term or condition applicable under the Agreement by the Responsible Party, its officers, employees, agents, or subcontractors or any other party for which the Responsible Party is responsible at law including any breach or non-observance of any applicable law;

(d) injury to or death of any persons (including employees of the other part(ies)y, the Responsible Party and Others) or from damage to or loss of any real property and tangible personal property (including the property of the other part(ies)y and Others) to the extent arising, directly or indirectly, out of the performance or failure to perform by the Responsible Party of its obligations under the Agreement or caused out of any wilful or negligent acts, errors or omissions of the Responsible Party, its officers, employees, agents, or subcontractors or any other party for which the Responsible Party is responsible at law;

(e) contamination, pollution, or public or private nuisance arising, directly or indirectly, out of the performance or failure to perform by the Responsible Party of its obligations under the Agreement or out of any act or omission of the Responsible Party or its Others whatsoever; and

(f) any violation or infringement of rights in any patent, copyright, proprietary information, trade secret or other property right caused or alleged to be caused by any of the Products or any Software, goods, materials, equipment, methods, processes, designs or information furnished by the Responsible Party, its officers, employees, agents, or subcontractors or any other party for which the Responsible Party is responsible at law (in this Section, a “Furnished Good”) or the use or disclosure thereof, unless such violation or infringement results from any modification, use or disclosure of the Furnished Good by the other part(ies)y or Others in a manner not authorized, permitted or recommended by the Responsible Party,

except to the extent arising out of the gross negligence or wilful misconduct of the party claiming indemnity and provided that:

(g) the Others shall notify the Responsible Party, within a reasonable amount of time after it becomes aware, of a potential third party claim;

(h) upon receipt of a notice of a potential claim, in accordance with subsection 16.1(g), the Responsible Party shall have the right to assume and control the defence and to manage any third party claims and the Others shall cooperate fully with the Responsible Party in such defence; and

(i) the Others shall not settle any third party claims, without the prior written consent of the Responsible Party, which may be withheld, if the settlement does not include a full and final release of all liability of the Responsible Party.

16.2 To the extent that the Products include services, in the event that the services are not provided within a specified time as set out in the Agreement, the Supplier agrees that damage will be sustained by the Purchaser and it will be impractical and extremely difficult to ascertain and determine the actual damage that the Purchaser will suffer in the



event of and by reason of such delay. The sum set forth as liquidated damages is not a penalty but an estimate of the cost to the Purchaser for the costs that will accrue after the specified time limit. It is agreed by the Parties that liquidated damages shall be 1/60th of the cost of the Products set out in the Agreement for every day and this sum represents a reasonable estimate of actual damages per day. The Supplier therefore agrees to the Purchaser deducting, from the Agreement payments, the sum set for as liquidated damages for each additional calendar day required to complete the delivery of the Products after the specified time limit.

- 16.3 In the event that the Supplier cannot supply any or all of the Products within a specified time as set out in the Agreement, the Supplier shall provide Product(s) from an alternate source at the same agreed price or to reimburse the Purchaser for any additional costs resulting from the purchases required by the Purchaser of reasonable quantities made directly from another Vendor.
- 16.4 In the event that any indemnity provisions in this Agreement are contrary to applicable law, the indemnity obligations hereunder shall be construed to apply to the fullest extent allowed by applicable law.
- 16.5 Notwithstanding anything contained in this Article 16, the Purchaser shall not be liable to the Supplier or its officers, employees, agents, or subcontractors, for any injury, death or damages to or loss of property of the Supplier or its officers, employees, agents, or subcontractors.
- 16.6 This Article 16 shall survive the expiry or early termination of the Agreement.

17. CONSEQUENTIAL LOSS & LIMITATION OF LIABILITY

- 17.1 In no event shall either Party be liable to the other Party for any special, indirect, special, incidental, remote or consequential loss or damage, loss of profit or expected profit, loss of goodwill, business interruption, lost business, punitive damages or exemplary damages, incurred or suffered by the other Party regardless of awareness of the other Party of such damage or loss and regardless of cause, whether in contract, warranty or tort, including negligence.
- 17.2 Notwithstanding anything contained in Article 16 hereof, the Supplier's total liability for damages arising from or in connection with the Agreement under any cause of action shall be as indicated within the insurance provisions stated in Section 19.1 hereof, provided that such limitation of liability for damages shall not limit the liability for damages of the Supplier for claims, demands, losses, damages, liabilities, deficiencies, costs and expenses by a third party, including employees of the Purchaser, related to: personal injury or death; physical harm to, or loss of, real property and tangible personal property; due to breaches of the confidentiality provisions set forth in the Agreement or in any separate agreement for the protection of Confidential Information; or for contamination, pollution, or public or private nuisance.
- 17.3 The applicable limitations, exclusions and disclaimers set out in this Article 17 shall apply irrespective of the nature of the cause of action, demand or claim, including but not limited to, breach of contract, tort (including negligence) or any other legal theory and shall survive termination of these terms and conditions, a fundamental breach or breaches and/or failure of the essential purpose of these terms and conditions or any remedy contained herein. The allocations of liability in this section represent the agreed and bargained for understanding of the parties and the Supplier's compensation reflects such allocations.

18. NO RELIANCE

- 18.1 The Purchaser shall not be liable for any loss, liability, cost or claim suffered or incurred by the Supplier as a result of the Supplier's reliance in any way upon any information or data supplied to the Supplier by the Purchaser unless specifically contained in the Agreement. The Supplier shall be solely responsible for checking, verifying and validating the accuracy, sufficiency and completeness of any information or data supplied to the Supplier by the Purchaser, unless specifically contained in the Agreement.

19. INSURANCE

- 19.1 The Supplier, at its sole cost, shall obtain and maintain in force until two (2) years after the completion of its obligations under the Agreement (including any warranty period) insurance of the following types, with limits not less than those set forth below:
 - (a) Workers' Compensation Insurance including occupational illness or disease coverage, where required by the laws of the nation, state, territory or province having jurisdiction over the Supplier's employees, and in



respect of Products requiring any of the employees of the Supplier to attend to the premises of the Purchaser, coverage of its employees through the Worker's Compensation Board of Manitoba;

- (b) Comprehensive General Liability Insurance with a minimum combined single limit of liability of \$5,000,000 for each occurrence covering death, bodily injury, property damage, personal injury, advertising injury, products and completed operations liability including Broad Form Products liability and completed operations with a Products Recall extension. Such policy shall have cross liability coverage, completed products and operations coverage on terms acceptable to the Purchaser and a general aggregate limit of not less than \$5,000,000. The Purchaser as well as their its shall be named as additional insured on all comprehensive general liability insurance policies of the Supplier;
 - (c) Automobile Liability Insurance covering use of all owned, non-owned and hired vehicles;
 - (d) errors and omissions liability insurance with a minimum combined single limit of liability of \$5,000,000 per occurrence, if the Supplier provides services or training, clinical or otherwise, in connection with, or as part of the Product being supplied and if the Products, to the extent that they include services provided by professional staff excluding physicians but including other licensed practitioners, and registered nurse who are working in the professional capacity are covered against professional liability for a minimum amount of \$5,000,000 per occurrence or claim, through their membership in a professional association or by a separate liability insurance policy and if the Products, to the extent that they include services provided by physicians who are working in their professional capacity are covered against professional liability though the Canadian Medical Protective Association or by a separate professional liability insurance policy satisfactory to the Purchaser;
 - (e) if the Supplier will utilize tools, equipment and personal vehicles in the performance of its services under this Agreement, Equipment Floater Insurance (Tools and Equipment Insurance) covering physical damage to or loss of all major tools and equipment, construction office trailers and their contents, and vehicles shall be insured for business use, all of which the Supplier is responsible, throughout the course of the performance of its obligations under this Agreement;
 - (f) if the Supplier performs any operation using or involving Hazardous Substances in connection with the Product, Hazardous Substances (pollution) liability insurance covering death, bodily injury and property damage of \$5,000,000 for each occurrence and, in the aggregate;
 - (g) if the Supplier transports or hauls Hazardous Substances in connection with the Product, insurance covering death, bodily injury and property damage arising from transporting or hauling Hazardous Substances with limits of no less than \$5,000,000 for each occurrence and, in the aggregate; and
 - (h) if the Supplier performs any insulation or construction services in connection with the Product, Builder's All Risk insurance covering the risk of loss to property that is in the course of construction or which has been delivered to the site for incorporation into the work of the Supplier.
- 19.2 The Supplier hereby releases the Purchaser, its affiliates and their respective officers, directors, agents, employees, licensees and invitees, and shall cause the Supplier's insurers to waive any rights of subrogation and cross claims against the released Parties, for losses or claims for death, bodily injury, property damage or other insurance claims arising out of the Supplier's performance of this Agreement. The foregoing insurance shall provide a severability clause to the effect that a breach by one insured will not adversely affect the coverage of the other insureds.
- 19.3 Prior to the Supplier providing any Products, Certificates of Insurance satisfactory in form to the Purchaser shall be supplied to the Purchaser evidencing that the above insurance is in force, that all premiums due and owing have been paid by the Supplier, that not less than thirty (30) days written notice will be given the Purchaser prior to any cancellation or restrictive modification of the policies, that the waivers of subrogation and severability clauses are in force, and that all levies, assessments and penalties made against the Supplier pursuant to The Workers Compensation Act (Manitoba) have been paid by the Supplier. The Supplier shall also provide with the Certificates of Insurance executed copies of any additional insured endorsements required in the Agreement.
- 19.4 The foregoing insurance coverage shall be primary and non-contributing with respect to any other insurance or self insurance which may be maintained by the Purchaser. The fact that the Supplier has obtained the insurance required in this Article 19 shall in no manner limit or qualify the Supplier's other obligations or liabilities set forth in this Agreement. By requiring the foregoing minimum insurance coverage, the Purchaser is not representing that such amounts or types of insurance are adequate to cover all possible claims or losses that the Supplier may suffer and the



Purchaser expressly disclaims such a representation. The Supplier acknowledges and agrees that it is its sole responsibility for determining the adequacy of its insurance coverage.

20. CONFIDENTIALITY

20.1 While this Agreement is in effect and at all times thereafter, except with the other Party's express prior written consent, which consent may be arbitrarily withheld, a Party hereto shall:

- (a) hold, and shall cause its Staff to hold, all Confidential Information of the other Party in strict confidence;
- (b) not use the Confidential Information of the other Party other than for the performance of its obligations under this Agreement, and in the case of the Purchaser, in connection with its consumption, enjoyment, use, service or maintenance of the Products;
- (c) not disclose the Confidential Information of the other Party to anyone other than any of its Staff and then only to the extent that the Confidential Information is directly required to be disclosed in order for the Party to properly perform its obligations pursuant to this Agreement and in the case of the Purchaser, in connection with its consumption, enjoyment, use, service or maintenance of the Products;
- (d) except as otherwise permitted under this Article 20, not disclose the Confidential Information of the other Party to any third party;
- (e) implement reasonable physical, technical and administrative measures to protect the privacy and security, availability and integrity of the Confidential Information of the other Party and comply with all reasonable physical, technical and administrative measures to protect the privacy and security, availability and integrity of the Confidential Information of the other Party;
- (f) ensure that its Staff are aware of their obligations with respect to Confidential Information of the other Party;
- (g) only collect, access, use, and disclose the minimum Confidential Information of the other Party necessary to perform the Party's obligations contemplated by this Agreement and in the case of the Purchaser, in connection with its consumption, enjoyment, use, service or maintenance of the Products; and
- (h) not send, transmit or access any Confidential Information of the other Party, whether in electronic or physical formats, outside of the territorial borders of Canada, and without limiting the generality of the foregoing, the Supplier will keep all Confidential Information within Canadian territorial borders and shall not deliver or transmit, nor permit any of its subcontractors, or any affiliated parent or subsidiary company or other person with whom it may deal, to deliver or transmit any such Confidential Information to any person or entity situated, residing or carrying on business outside of the territorial borders of Canada, unless it first obtains the prior, express written permission of the Purchaser to do so, which permission may be refused at the Purchaser's discretion.

20.2 Except for any personal health information as defined in the PHIA, and personal information as defined in FIPPA the obligations of confidentiality set out in this Article 20 do not apply to any Confidential Information which:

- (a) is known to the public through no act of a Party hereto at the time of the acquisition thereof by that Party;
- (b) after the acquisition thereof by a Party, becomes known to the public through no act of that Party;
- (c) becomes known to one of the Parties from a source other than from another Party to this Agreement;
- (d) is approved, in writing, for disclosure without restriction by the other Party;
- (e) is required to be disclosed by operation of law or regulation to which either Party is subject, notice of such requirement of disclosure shall first be provided to the other Party, wherever possible;
- (f) is disclosed by the Purchaser, or by any one or more of the Site(s), to any provider of post warranty services for service or repair of the Product including the Canadian Medical Equipment Protection Plan;



(g) is pricing or cost information related to the Products disclosed by the Purchaser, or by any one or more of the Site(s), by the posting it in its facilities (for its Staff's education as to the costs of the provision of healthcare services), including the pricing or cost information posted in public areas (i.e. areas in which third parties have access); or

(h) is developed independently by the disclosing Party without breach of any obligations herein;

provided that:

(h) Confidential Information shall not be deemed to be in the public domain merely because any part of said information is embodied in general disclosures or because individual features, components or combinations thereof are now or become known to the public and

(i) Confidential Information, which is required to be disclosed pursuant to Paragraph 20.2(e) hereof, shall remain otherwise subject to the obligations as set out in this Agreement and in particular, this Article 20.

20.3 Notwithstanding the provisions of Sections 20.1 and 20.2, the Supplier shall at all times comply with the applicable provisions of all privacy laws (including the PHIA and FIPPA), regulations and as well as policies and directives issued by the Purchaser relating to privacy and information security which are now, or at anytime in the future become, applicable to the Supplier or to the Confidential Information. The Supplier, or one or more of its Staff, shall, at the request of the Purchaser, attend a PHIA orientation session and/or sign a separate agreement in accordance with PHIA and/or FIPPA for the protection of personal information and personal health information as defined in PHIA and FIPPA.

20.4 The Parties acknowledge that for the purposes of the PHIA and FIPPA, the Confidential Information of the Purchaser remains under the ownership and control of the Purchaser.

20.5 The Supplier shall immediately return to the Purchaser or destroy, as directed by the Purchaser, all Confidential Information of the Purchaser, including all copies thereof, upon the earlier of a) after the Supplier no longer needs the Confidential Information to perform its obligations pursuant to the Agreement; b) upon the request of the Purchaser. The Supplier shall take all necessary and required steps to ensure that all copies of all Confidential Information, whether or not incorporated in other programs, data compilations, or otherwise intermingled with data not subject to this Agreement, shall be removed from all electronic data systems and storage media. If the Purchaser requests the destruction of the Confidential Information, then the Supplier shall provide certification in writing that all copies thereof have been destroyed in a manner which protects the confidential nature thereof.

20.6 In the event that the Supplier receives or is notified of any rule, order, document or legal proceeding requiring it to disclose Confidential Information of the Purchaser, it shall immediately notify the Purchaser of same. The Supplier shall cooperate with the Purchaser as reasonably necessary to help the Purchaser obtain a protective order or other appropriate remedy to protect and prevent the disclosure of its Confidential Information.

20.7 With regard to the Confidential Information of the Purchaser, the Supplier shall immediately notify the Purchaser of: i) any release or disclosure of Confidential Information that is contrary to the provisions of this Agreement, ii) any request to access any of the Confidential Information, or iii) any notice of an investigation from any private or public body. The Supplier shall cooperate with the Purchaser' investigation or response to such situations.

20.8 The Supplier acknowledges and agrees that if it is providing the services of an Information Manager, then the Supplier shall comply with the same requirements concerning the protection, retention and destruction of personal health information that a Trustee are required to comply with under PHIA. As required by Section 4(1) of the Personal Health Information Regulation (MR 245/97), where personal health information or personal information is in electronic form, the Supplier shall create and maintain a record of user activity. The Supplier will produce the record of user activity to the Purchaser, upon request.

20.9 Nothing in this Agreement obligates the Purchaser to disclose any particular Confidential Information, personal information or personal health information to the Supplier.

20.10 The Supplier acknowledges that its failure to comply with the provisions of this Section 20 may cause irreparable harm to the Purchaser entitling the Purchaser to seek immediate injunctive relief, in addition to any other remedies to which it may be entitled.



This Article 20 shall survive the expiry or early termination of the Agreement.

21. RESTRICTION ON WORK AND NO ADVERTISING

21.1 The Supplier shall not provide the Products to any other person, firm, corporation or organization in any manner which might interfere or conflict with the Supplier's obligations or undertakings under this Agreement. The Supplier declares that it has no financial interest in the business of any third party that would cause either an actual or perceived conflict of interest in the carrying out of the work. Should such an interest be acquired during the term of the Agreement, the Supplier shall declare it in writing immediately to the Purchaser. The Purchaser shall, in its sole discretion, take whatever action it deems necessary, including termination of this Agreement.

21.2 The Supplier agrees that it shall not refer to, or permit any reference to, this Agreement in any advertising or promotional material in any and all formats, including written, electronic, or verbal, except with the prior written authorization of the Purchaser, as applicable. The Supplier shall not publicize the existence or scope of the Agreement without the Purchaser's written consents

22. INTELLECTUAL PROPERTY

22.1 If, as a result of any proceeding, suit or action, the sale or use of any Product is enjoined by court order, or, should any Products be the subject of a claim of infringement of a patent, copyright, trademark, registered industrial design, confidential information, trade secret or other intellectual property right, the Supplier shall at its expense, at the Purchaser's option either:

- (a) procure for the Purchaser the right to continue using the Product;
- (b) replace or modify the Product with functionally-equivalent goods (subject to the Purchaser's approval and satisfaction in its sole and arbitrary discretion), provided that any such modification or replacement is of equal or better quality and provides equal or better performance to the infringing Product; or
- (c) return to the Purchaser the purchase price for any Product that the Purchaser is unable to make use of due to the infringement claim and reimburse the Purchaser for any associated costs and expenses.

22.2 Where the Products contain or include Software, the Parties shall enter into a separate licence agreement, on terms and conditions acceptable to the Purchaser, which grants a licence to the Purchaser to use the Software. Where Parties have failed to enter into such a licence agreement, then in addition to the other provisions of the Agreement the following shall apply:

- (a) the Supplier hereby grants to the Purchaser an irrevocable world-wide and fully paid up licence for the Purchaser and its Staff to use the Software;
- (b) there are no restrictions on the number of persons authorized to use the Software or on the locations or computers in or on which the Software may be installed and operating, except as may be set out in the Purchase Order;
- (c) the Software shall operate in accordance with its published specifications including the Acceptance Standards applicable to the Software and the specifications set out in the Documentation for the Software;
- (d) the Purchaser may make copies of the Software up to the number of copies specified in the Purchase Order (if any) and may also make a reasonable number of copies to be used solely for backup and archival purposes; and
- (e) the Purchaser shall not reverse assemble or reverse engineer the Software, and shall retain all copyright and other proprietary notices that may be part of or accompany the Software.

22.3 Notwithstanding Section 22.2, the Supplier hereby grants to the Purchaser and to all persons who may use or have possession of the Equipment a non-exclusive licence to use on or in conjunction with the Equipment the Internal Code which is installed on or accompanies the Equipment. Without limiting the foregoing, the Purchaser shall be entitled to:

- (a) run and execute the Internal Code to enable the Equipment to function in accordance with its published specifications and to maintain the Equipment; and



- (b) make a reasonable number of copies of the Internal Code (if the Internal Code is capable of being copied) to be used solely for backup and archival purposes, provided that the Purchaser in each case use the copies solely for the purpose of replacing the original copy of the Internal Code and they retain all copyright and other proprietary notices that may be part of or accompany the Internal Code.

The Purchaser shall not use the Internal Code for any purpose other than on or in conjunction with the Equipment, and shall not reverse assemble or reverse engineer the Internal Code.

23. WORK PRODUCT

23.1 The Parties agree that:

- (a) title to all information, working papers, documents and materials, reports, work-in-progress, data research, drawing, designs, plans, photographs and all other material created, discovered, developed or performed by the Supplier during the course of providing the Products (in this Section the “**Work Product**”) shall vest in the Purchaser. The Supplier shall promptly disclose to the Purchaser all Work Product intellectual property as and when created. The Supplier conveys and assigns to the Purchaser, free and clear of all charges, liens, encumbrances, security interests or other interests, all right, title and interest (including any copyright) in all Work Product and shall execute or cause to be executed any additional documents required to evidence same, including unconditional and irrevocable waivers of all moral rights. During this Agreement and at all time thereafter, the Supplier or its Staff shall not use, publish, or disclose the Work Product without first obtaining the written consent of the Purchaser.
- (b) The Purchaser shall have the benefit and ownership of all right, title and interest in and to any enhancements, improvements or modifications to the Products as may be developed by the Purchaser or any of its employees, agents or representatives. The Supplier shall promptly disclose to the Purchaser all such developments as and when created.
- (c) Any equipment, material and supplies provided by the Purchaser for use by the Supplier in the provision of the Products or the performance of this Agreement shall remain the property of the Purchaser and shall be returned without cost upon request.

24. TERMINATION FOR CAUSE

24.1 In the event that:

- (a) the Purchaser believes, in its reasonable opinion, that
 - (i) the Products are unsatisfactory or inadequate;
 - (ii) there has been an unauthorized price increase;
 - (iii) there had been an interruption of supply and availability of the Products;
 - (iv) there is a deterioration in the quality of the Products supplied;
 - (v) there is inadequate sales and technical support;
 - (vi) the Products are inadequately labelled;
 - (vii) the Products have an unacceptable shelf life or expiration dates; or
 - (viii) the Supplier fails to provide the documentation as required under this Agreement;

and if such situation continues for fifteen (15) days after written notice from the Purchaser to the Supplier to remedy the situation or perform as required, the Purchaser, without prejudice to any other right or remedy, may terminate the Agreement, in whole or in part, on notice to the Supplier;



- (b) either Party defaults or fails to perform in accordance with the terms and conditions of the Agreement or the terms and conditions of any other agreement to which the Purchaser are a party with the Supplier, and if such default or failure to perform continues for fifteen (15) days after written notice from the non-defaulting Party to the defaulting Party to remedy the default or perform as required, the non-defaulting Party, without prejudice to any other right or remedy, may terminate the Agreement, in whole or in part, on notice to the defaulting Party;
- (c) the Supplier or any of its affiliates becomes dissolved, insolvent or bankrupt or any proceeding in bankruptcy, receivership or liquidation is initiated against the Supplier or any of its affiliates and is not dismissed within thirty (30) days; or if the Supplier or any of its affiliates makes an assignment, compromise, or arrangement or if for the benefit of its creditors or it files a petition or other proceedings in bankruptcy or for protection from its creditors; or if a receiver or trustee in bankruptcy is appointed over all or any of its assets or business; or if any of any creditor of the Supplier attempts to garnish or attach or does garnish or attach any of the funds paid by the Purchaser, the Purchaser may in their sole and unfettered discretion, by written notice to the Supplier, terminate the Agreement, in whole or in part, without prejudice to any other rights or remedies to which the Purchaser may be entitled;
- (d) the Supplier fails to secure or renew any licenses, permits or authorizations, required by any applicable statute, regulation or by-law, or if secured and renewed, such license or permit is revoked or suspended; or if the Supplier or any of its Staff engage in activities or trade practises which, in the reasonable opinion of the Purchaser, are prejudicial to its interests; or if the Supplier or any of its Staff is found guilty of an indictable offence; or if technological changes, changes in legislation, changes in clinical procedures or practice by the Purchaser warrant same, the Purchaser may in its/their sole and unfettered discretion, by written notice to the Supplier, terminate the Agreement, in whole or in part, without prejudice to any other rights or remedies to which the Purchaser may be entitled;
- (e) notwithstanding Article 28 hereof, a medical alert, consumer alert or other form of Product recall is issued by the manufacturer of the Product or by any qualified authority, including Health Canada; or if the terms of this Agreement or its performance adversely affects patient safety or the standards of patient care; with either resulting in a Product being unusable or requiring a change in the Purchaser's clinical procedures, the Purchaser may in their sole and unfettered discretion, by written notice to the Supplier, terminate the Agreement, in whole or in part, without prejudice to any other rights or remedies to which the Purchaser may be entitled;
- (f) it is found that the Supplier is in breach of the Industry Relationships Policy 10.00.110 of the WRHA, including all amendments and replacements thereto, by, but not limited to, the offering of gratuities (in the form of entertainment, gifts or otherwise) by the Supplier, or any agent or representative of the Supplier to any officer, director, employee or contractor of the Purchaser, their Staff or any other person connected to the Purchaser, with a view toward securing the Agreement or securing favourable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of, the Agreement or that the Supplier, directly or indirectly, paid a fee for the solicitation, negotiation or obtaining of this Agreement to any person other than one or more of the Supplier's employees acting in the normal course of their employment, or by failing to disclose all payments or transfers of value by the Supplier to the Purchaser or to any of its Staff, the Purchaser may in its sole and unfettered discretion, by written notice to the Supplier, terminate the Agreement, in whole or in part, without prejudice to any other rights or remedies to which the Purchaser may be entitled.

24.2 Upon termination of this Agreement pursuant to this Article 24:

- (a) the Supplier shall deliver or assign to the Purchaser any work in progress that the Purchaser may require; and
- (b) the Purchaser shall pay the Supplier the portion of the price for all Products that have been accepted by the Purchaser prior to the effective date of termination, as determined by the Purchaser acting reasonably, subject to any right of setoff available to the Purchaser;

25. TERMINATION FOR A CHANGE IN CLINICAL PRACTICE

25.1 In the event that the Purchaser adopts a clinical practice change which does not require the Products, the Purchaser shall have the right to terminate this Agreement, in whole or in part, for its convenience on a minimum of ninety (90) days advance written notice to the Supplier. On the date of termination stated in the notice, the Supplier:



- (a) shall discontinue all Product delivery and related services pursuant to the Agreement;
 - (b) shall place no additional orders with its suppliers in relation to the Agreement;
 - (c) shall preserve and protect materials on hand purchased for or committed to the Agreement, work in progress and completed work both in the Supplier's and its supplier's facilities, pending the Purchaser's instructions, and shall dispose of same in accordance with the Purchaser's instructions;
 - (d) immediately take all possible action to mitigate any loss incurred by it as a result of the termination and take all other action as reasonably required by the Purchaser in relation to the termination.
- 25.2 Any termination payment to the Supplier or refund to the Purchaser as a result of termination of the Agreement for convenience shall be promptly and mutually agreed to by the Purchaser and the Supplier, based on
- (a) that portion of the price for the Product accrued and due prior to the date of the termination in accordance with the terms of this Agreement, subject to any right of set-off available to the Purchaser; and
 - (b) subject to subsection 25.4(c) below, reasonable and necessary expenses directly resulting from the termination, all as substantiated by documentation satisfactory to and verified by the Purchaser.
- 25.3 In the event the Parties are unable to agree as to the termination payment or refund within sixty (60) days of delivery of the termination notice, the matter shall be determined through arbitration in accordance with Article 27 hereof.
- 25.4 Notwithstanding anything to the contrary herein contained:
- (a) the Supplier shall, at the Purchaser's option, continue to deliver the Products to the Purchaser until the date of termination;
 - (b) subject to Subsection 25.4(c), in no event shall the Supplier have on hand an amount of Products committed to the Purchaser greater than the Purchaser's average thirty (30) day requirements of that Product from the Supplier; and
 - (c) in the event the Purchaser terminates the Agreement pursuant to the terms of this provision, the Purchaser shall not be obligated to make any termination payment to the Supplier on account of the Supplier's inventory of the Product(s) on hand; provided that, if the Supplier is maintaining an inventory of a Product that is custom packaged, the Purchaser shall purchase from the Supplier its inventory of that Product to the extent that the inventory is not in excess of the Purchaser's average ninety (90) day requirements of that Product from the Supplier.
- 25.5 The Parties hereto acknowledge that the Purchaser entered into this Agreement in reliance upon, and on the understanding that, it has the right to terminate this Agreement at its convenience as set out herein.
- 26. SURVIVAL**
- 26.1 Termination of this Agreement shall not affect the validity of any provisions which are, expressly or by implication, to survive or to take effect on or after such termination.
- 27. DISPUTE RESOLUTION**
- 27.1 In the event of a dispute between the Purchaser and the Supplier in respect of any matter pertaining to the Agreement, the following provisions shall apply:
- (a) upon written request of either Party, senior managers from each of the Parties will meet for the purpose of resolving the dispute. The meeting shall occur within five (5) Business Days of the giving of the written request to meet. At the meeting the Parties will discuss the problem and negotiate in good faith without the necessity of any formal proceedings. If neither Party has requested a meeting to resolve the dispute or the meeting does not resolve the dispute, either Party may refer the dispute to binding arbitration in accordance with Subsection 27.1(d) hereof;



- (b) notwithstanding the existence of a dispute, the Supplier will continue to perform its obligations under the Agreement, subject to its rights of termination under the Agreement;
- (c) notwithstanding anything contained herein, a decision by the Purchaser to terminate the Agreement shall be excluded from arbitration;
- (d) all disputes between the Parties arising out of or concerning the Agreement, including any dispute as to interpretation, any alleged breach or the right of a Party to exercise any right or remedy, that has not been settled by informal dispute resolution, shall be resolved by binding arbitration in accordance with the following provisions:
 - (i) the arbitration process shall be commenced by one Party to the dispute providing a written notice to the other Party to the effect that the notifying Party wishes to have the dispute resolved by binding arbitration. The arbitration shall be conducted in the City of Winnipeg by a single arbitrator, with suitable expertise, to be agreed upon by the Parties. If the Parties cannot agree on an arbitrator within ten (10) days of the written notice, either Party may apply to a judge of the Court of Queens Bench to appoint an arbitrator in accordance with the *Arbitration Act* (Manitoba), with written notice to the other Party;
 - (ii) the arbitrator shall not be bound by the rules of evidence or of civil procedure, but rather may consider such writings and oral presentations as reasonable business people would use in the conduct of their day-to-day affairs, and may require the Parties make some or all of their submissions in writing or in any other manner which the arbitrator considers appropriate. The Parties intend to limit live testimony and cross-examinations except to the extent necessary to ensure a fair hearing on material issues;
 - (iii) the arbitrator shall be directed to issue a written decision within thirty (30) days of the arbitration. The arbitrator shall be directed to issue a written decision containing a brief statement of each dispute, the decision of the arbitrator with respect to the dispute, the reasons for the decision and an apportionment of costs for the arbitration process. The arbitrator's decisions in the dispute shall be final and binding, with no recourse to appeal; and
 - (iv) the Parties agree that the arbitration shall be conducted in strict confidence and that there shall be no disclosure to any person (other than as necessary to carry out the arbitration) of the existence of the dispute or any aspect of the dispute;
- (e) nothing contained herein will preclude a Party from initiating court proceedings for the limited purpose of seeking urgent injunctive relief.

28. FORCE MAJEURE

- 28.1 Neither Party shall be liable for failure to perform any of its obligations under the Agreement, if and to the extent its performance is prevented, hindered or delayed by a Force Majeure event. The occurrence of a Force Majeure event shall not release the affected Party from its obligations under the Agreement, but shall merely suspend the performance of any obligation so prevented, hindered or delayed during the period of continuance of the Force Majeure event.
- 28.2 In every case the Party alleging a circumstance of Force Majeure event shall take reasonable action and undertake reasonably necessary measures to mitigate the effects of the Force Majeure and to resume, as soon as reasonably possible, the performance of those of its obligations under the Agreement affected by the Force Majeure event, including having in place disaster recovery and business recovery plans.
- 28.3 If an event of Force Majeure results in the Supplier being unable to perform its obligations under the Agreement for more than thirty (30) days, the Purchaser shall have the right to terminate the entire Agreement, or such portion thereof that was affected by the Force Majeure event, forthwith for cause and, at its option, procure the Product elsewhere.

29. RIGHT TO SETOFF

The Purchaser, without waiver or limitation of any of its rights or remedies, and without liability for interest, shall be entitled from time to time to deduct from any amounts due or owing by the Purchaser to the Supplier in connection with this Agreement, any and all amounts owed by the Supplier to the Purchaser, including:



- (a) for any matter which may be in dispute between the Parties until the dispute is settled;
- (b) for any claims or liabilities which may be the basis of a claim made by a third party against the Purchaser; or
- (c) for any default or deemed default by the Supplier of any of its obligations under this Agreement.

30. NOTICES

- 30.1 When any notice is required or permitted to be given under any provision of this Agreement, such notice shall be made in writing and signed by or on behalf of the Party giving such notice to the following addresses for the Purchaser:

Winnipeg Regional Health Authority

Logistics Services
3rd floor – 5 Donald
Winnipeg, Manitoba, Canada R3L 2T4
Fax Number: 204-957-7841

with a copy to:

Legal Services
4th floor – 650 Main Street
Winnipeg, Manitoba, Canada R3B 1E2
Attention: General Counsel
Fax Number: 204-926-7007

with a second copy to:

Site(s)

At the address detailed in the Purchase Order

Supplier

At the address detailed in its invoice or failing which, at their corporate head office.

or to such other address or facsimile number as a Party may from time to time direct in writing.

Any notice delivered before 4:00 p.m. local time on a Business Day shall be deemed to have been received on the date of delivery and any notice delivered after 4:00 p.m. local time on a Business Day, or delivered on a day other than a Business Day, shall be deemed to have been received on the next Business Day. Any notice sent by facsimile before 4:00 p.m. local time on a Business Day shall be deemed to have been received when the sender receives the answer back confirming receipt by the recipient; provided, however, that any facsimile deemed received after 4:00 p.m. local time on a Business Day or received on a day other than a Business Day shall be deemed to have been received on the next Business Day. No notice will be deemed to have been received until actually received. In the event normal mail service is impaired at the time of sending the notice, then personal delivery or facsimile transmission only shall be effective.

Both Parties acknowledge that electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. The Parties shall not have any liability to each other arising from or in connection with the electronic communication of information. Both Parties, acting reasonably, shall assess whether to use hard copy transmission for information that relates to a matter of significance.

31. PAYMENT CONDITION

- 31.1 The payment of any money by the Purchaser to the Supplier under this Agreement is subject to appropriation by the Legislative Assembly of Manitoba and the WRHA for the Fiscal Year during which payment pursuant to the



Agreement is made. For the Purposes of the subsection “Fiscal Year” means April 1 of one year to March 31 of the immediately following year.

32. GENERAL

- 32.1 All dollar amounts referred to in the Agreement shall be in Canadian funds.
- 32.2 Time shall be of the essence of the Agreement.
- 32.3 Wherever the singular, plural, masculine, feminine or neuter is used throughout the Agreement the same shall be construed as meaning the singular, plural, masculine, feminine, neuter, body politic or body corporate where the facts or context so requires.
- 32.4 The Agreement shall be governed by and construed in accordance with the laws of the province of Manitoba and the applicable laws of Canada. The courts having jurisdiction in the province of Manitoba shall have exclusive jurisdiction in relation to any legal proceedings arising in connection with the Agreement. The *United Nations Convention on Contracts for the International Sale of Goods* does not apply to the Agreement and shall be disclaimed and excluded from any contracts placed by the Supplier with its sub-suppliers.
- 32.5 Any reference to a statute in this Agreement will be deemed to refer to the statute and the regulations made thereunder in force as at the date hereof, as the same may be subsequently amended, expanded, added to, supplemented or changed or replaced from time to time, unless otherwise expressly provided in this Agreement.
- 32.6 Any reference to policies or procedures of the Purchaser will be deemed to refer to the policies or procedures in force as at the date hereof, as the same may be subsequently amended, expanded, added to, supplemented or changed or replaced from time to time.
- 32.7 Transmitting devices (i.e., cellular phones, walkie-talkies, smart phones etc.) shall not be used in or near the facilities of the Purchaser’s including patient areas for any reason except in accordance with Purchaser’s policies or procedures, as maybe be amended or replace, from time to time..
- 32.8 The Supplier shall abide by and ensure that all of its employees and/or subcontractors and their employees abide by all policies, rules and regulations related to the provision of the Products and published from time to time by the Purchaser including those related to the use of, and access to, the Purchaser’s property.
- 32.9 The Supplier shall act as an independent contractor and not as an agent or employee of the Purchaser and shall not subcontract performance of any portion of the Agreement without the prior written consent of the Purchaser. Nothing in this Agreement shall create the relationship of employer/employee, or of principal and agent, between any of the Supplier, the WRHA, and the Site(s), or between any of the Staff of the Supplier, the Purchaser with any of the Supplier, the WRHA, and the Site(s).
- 32.10 Each Party agrees to do all acts and things and execute all deeds, instruments, transfers and other documents as may be necessary or desirable to give full effect to the provisions of this Agreement and the transactions contemplated by it.
- 32.11 The Supplier agrees that all deeds, instruments, transfers, packaging, labels, shipping documents, invoices, instructions, training materials, manuals, schematics, warranties, and all other documents as may be provided by the Supplier in fulfillment of its obligations hereunder shall be provided in both official languages of Canada.
- 32.12 On request by the Purchaser, the Supplier shall provide the Purchaser with any further information in relation to the Products as the Purchaser may reasonably request.
- 32.13 No remedy conferred upon a Party is intended to be exclusive of any other remedy available to that Party but each remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing by law or in equity or by statute.
- 32.14 In the event any provision, or any part or portion of any provision of the Agreement shall be held to be invalid, void or otherwise unenforceable, such holding shall not affect the remaining part or portions of that provision, or any other provision hereof.



- 32.15 No waiver by the Purchaser of any provision of the Agreement shall be deemed to constitute a waiver of any other provision of the Agreement, nor shall such waiver be binding unless executed in writing by the Purchaser. No failure on the part of the Purchaser to exercise, and no delay by the Purchaser in exercising any right under the Agreement shall operate as a waiver of such right, nor shall any single or partial exercise by the Purchaser of any such right preclude any other or further exercise of such right or the exercise of any other right.
- 32.16 No portion of the Agreement shall be assigned, subcontracted or delegated by the Supplier without the Purchaser's prior written consent, which consent may be arbitrarily withheld. If the Supplier is a corporation, then any change in control of such corporation shall and is hereby deemed to be an assignment of the Agreement and subject to terms of this Agreement. Any unauthorized assignment, subcontracting or delegation shall be void. Notwithstanding any permitted assignment, subcontracting or delegation, the Supplier shall remain liable for the performance of the Supplier's obligations under the Agreement unless otherwise agreed to in writing by the Purchaser. All or part of the Agreement may be freely assigned by the Purchaser without the written consent of the Supplier including the assignment to another regional health authority, another health care facility, a successor entity or the Government of Manitoba.
- In the event that the Supplier changes its name, the Supplier shall be required to provide proof of such change of name within fifteen (15) days of the effective date of such change of name. In the event that the Supplier is a corporation, if the corporation is amalgamated with other corporate entities, the Supplier shall provide proof of such amalgamation and the new corporate name, if any, within fifteen (15) days of the effective date of such amalgamation. The Purchaser may refuse to fulfill any or all of its obligations under this Agreement until such time as they have received the requisite notice of change of name and/or amalgamation and the Purchaser shall not be liable to the Supplier for any damages they may suffer as a result of same.
- 32.17 The Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns.

[END OF GENERAL TERMS AND CONDITIONS]