



## 1 DEFINITIONS

The following terms will apply to the RFT and to any agreement that may result from the acceptance of a Bid. Submission of a Bid in response to this RFT indicates acceptance, on the part of the proposing Bidder, of all the following terms and expressions:

**"Agreement"**: The terms and conditions substantially in the form found within Section 4 of this Schedule "A", that includes by reference the RFT, the Selected Bidder's Bid, the Vendor Product Award List and the Award Letter. The Vendor Product Award List and the Award Letter will be issued to the Selected Bidder(s) once an award decision has been determined. The Bidder agrees to be bound by the terms and conditions including the Award Letter and the Award Product List, unless otherwise agreed to by the WRHA and the Selected Bidder, in writing.

**"Bid"**: the written submission from a Bidder in response to the RFT.

**"Bidder"**: a proprietor, partnership or corporation who or which submits a Bid in response to the RFT. A Bidder, therefore, may be one of the following entities:

- prime contractor, where a single Bidder proposes to assume full contractual liability;
- prime contractor, with various sub-contractors, where the prime contractor assumes full contractual liability but will sub-contract specific tasks;
- prime contractor consisting of two or more Bidders who incorporate or enter into a partnership or joint venture which a single entity assumes full contractual liability.

**"Closing Date"**: the Closing Date as stated in Section 3.1 of the RFT.

**"Products"**: the products to be provided by the Selected Bidder.

**"RFT"**: the main body of the Request for Tender document, all Schedules and Appendices, and all addenda that may be issued in respect of the RFT prior to the Closing Date.

**"Selected Bidder(s)"**: the Bidder(s) whose Bid is selected by the WRHA in response to this RFT.

**"Shall", "must", "mandatory", or "required"**: a requirement that must be met in order for a Bid to be considered compliant and to be evaluated.

**"Should", "desirable", "preferred", or "rated"**: a requirement having a significant degree of importance to the objectives of this RFT.

**"Signature"**: A handwritten signature that is in original ink or a reproduction of that handwritten signature by way of facsimile or electronic transmission.

**"Site(s)"**: the location(s) where products, services and/or deliverables are to be performed or provided by the Selected Proponent.

**"Supplier Incentive"**: Any product, product credit, rebate, grant, early payment discount, electronic funds transfer (EFT) discount, quantity discounts or other discount/incentive, any of which under this competitive bid, will directly impact upon the effective purchase price, of

the product(s), services and/or deliverables to the Site(s), and/or to the entire WRHA, including WRHA Facilities, as calculated by the WRHA Contracting Services, acting in its sole discretion.

**“Value Added Benefit(s)”**: Any funds, items or services which directly benefit one or more specifically identified WRHA Facilities/program/agency and are not identified as a requirement herein.

**“Winnipeg Health Region”**: the health region established under *The Regional Health Authorities Act* (Manitoba) for the geographical area of the City of Winnipeg and East and West St. Paul, Manitoba.

**“Winnipeg Regional Health Authority (WRHA)”**: the Regional Health Authority for the Winnipeg Health Region responsible for planning, managing, contracting and delivering a range of health care services based on population need in the Winnipeg Health Region and in areas with a mandated provincial role.

**“WRHA Contracting Services”**: a division of WRHA that acts on behalf of the WRHA and designated health care facilities for the purposes of establishing contracts for goods and services.

**“WRHA Facilities”**: a facility, facilities, a hospital(s) or other clinical facility in Winnipeg, whether owned by the WRHA, operated by the WRHA or funded in whole or in part by the WRHA.

**2 INTERPRETATION** In the event of a conflict between the main text of the RFT and any of the Schedules or Appendices, the main text of the RFT (and any addenda) shall govern.

### **3 FURTHER INSTRUCTIONS TO BIDDERS**

**3.1 General Terms and Conditions:** All terms and provisions set forth in this RFT are deemed to be accepted by the Bidder and incorporated by reference in a Bidder’s Bid.

**3.2 Bid Ownership and Confidentiality:** All Bids submitted in response to this RFT shall become the property of the WRHA. All Bids will be kept in the strictest confidence, subject to any disclosure as may be required under the provisions of *The Freedom of Information and Protection of Privacy Act* (Manitoba) or at law or in satisfaction of a court order.

This RFT contains information that is confidential to the WRHA. The used and reproduction of this RFT, or any part thereof, by photographic, electronic or other means is permitted solely for the purposes of preparing a Bid.

**3.3 Withdrawal of Bid Prior to Closing Date:** A Bidder who has submitted a Bid may request that such Bid be withdrawn prior to the Closing Date, **so long as the WRHA contact person listed above receives** a request in writing on the Bidder’s letterhead and signed by the appropriate authorizing officer(s) of the Bidder.

**3.4 Rules of Engagement – Communications Restrictions:** With the issuance of this competitive bid document, a communication “black out period” will take effect and continue until formal contract award has been completed (issuance of award and regret letters). The communication “black out period” will encompass and include any communication directly or indirectly related to this competitive bid, including oral and/or written communication with WRHA committee members, WRHA clinicians

and/or facility staff. In accordance with the aforementioned, the following Rules of Engagement will apply to the “black out period”:

- 3.4.1 Proponents will not attempt to communicate with the Proposal Evaluation Committee, PRES Committee, clinicians, facility staff and/or any representative of WRHA as applicable to, and at any stage of, this competitive bid process (the “black out period”) on any matters directly or indirectly related to this competitive bid, except as expressly directed or permitted by the competitive bid Contract Specialist identified in this competitive bid document.
  - 3.4.2 Contravention of this directive (Section 3.4), may, in the sole and absolute discretion of the WRHA, result in the offending Proponent’s proposal(s), associated with this competitive bid, being removed from consideration by the WRHA.
  - 3.4.3 It is understood and expected that, during the black out period, Proponents will continue to carry on day-to-day established business and communications with the WRHA sites to ensure patient treatment is not compromised during this competitive bid process. Such communications will be considered to be outside of this competitive bid process and includes any existing vendor and/or contracted commitments for products, service, equipment and/or associated education.
  - 3.4.4 Any new technology developments or introduction of new products, services or equipment during the black out period shall be brought to the attention of the competitive bid Contract Specialist for assessment and further direction.
- 3.5 Agreement:** The terms and conditions substantially in the form found within Section 4 of this Schedule “A”, that include by reference the RFT, the Selected Bidder’s Bid, the Vendor Product Award List and the Award Letter will form the Agreement among the Selected Bidder, the WRHA and the Sites. The Vendor Product Award List and the Award Letter will be issued to the Selected Bidder(s) once an award decision has been determined. The WRHA shall, in its sole discretion, establish a commencement date for the provision of the Products.
- 3.6 WRHA Approval:** Notwithstanding anything to the contrary, Bidders are advised that any Agreement is subject to the appropriate approvals of the WRHA. If such approvals are not obtained, the Agreement is void and of no force and effect, and the WRHA will not have any obligation or liability whatsoever to any Bidder in conjunction with this RFT. All payments by the WRHA pursuant to an Agreement are subject to and expressly conditional upon the Legislature of the Province of Manitoba and the WRHA duly appropriating funds in the fiscal year, being April 1 to March 21, in which they are required to be paid under the Agreement.
- 3.7 No Award or Cancellation of RFT Process:** The WRHA, in its sole discretion, reserve the right to select any Bid other than the highest scoring Bid, or to reject any and all Bids submitted in response to this RFT. No award may result from this RFT process. **Bidders are advised that any Bid may not necessarily be accepted.** The WRHA reserves the right to award the RFT in whole or in part of the basis of the Bids received. The WRHA reserves the right to repeat, renew or cancel this RFT where, in its sole discretion, none of the Bids

submitted in response to the RFT warrant acceptance or where it would be in the WRHA's best interest to do so. Without being obligated to do so, if the RFT is cancelled, WRHA may, in its sole discretion, issue a further RFT for the same or similar requirements as described in this RFT. The WRHA further reserves the right to enter into negotiations with one or more Bidders if the highest scoring Bidder's price exceeds WRHA's budget.

- 3.8 Rejection of Bid:** Bidders are advised that they must refer to the actual paragraphs in the RFT for the full description of the requirements that must be met. **Any Bid which does not meet all the mandatory requirements shall be deemed to be non-compliant and shall be rejected for failure to comply with all the mandatory terms and conditions as set out in this RFT.**

The WRHA reserves the right to accept substantially compliant Bids, in its sole discretion. All decisions and determinations made as to whether a Bidder meets the mandatory criteria, the score assigned to a Bidder or the determination as a Selected Bidder, shall be determined solely by the WRHA or its designates, in its discretion. The WRHA's determinations in this regard shall be final. No Bid will be considered that is in any way conditional or proposes to impose conditions on the WRHA that are inconsistent with this RFT and the terms and conditions stipulated herein or in any of the Schedules attached to this RFT.

- 3.9 RFT Modifications by the WRHA:** The WRHA reserves the right to review and modify the requirements contained in the RFT at any time prior to the Closing Date. In the event of desired changes, or if the RFT is deemed unclear or information is missing, an addendum will be issued prior to the Closing Date. Such addenda will form part of and be incorporated into this RFT, and will be posted on BiddinGo. It is the responsibility of the Bidders to obtain the addenda, and the Bidders should acknowledge receipt of the addenda. This RFT will be deemed to include all addenda and it is the responsibility of the Bidders to respond to the amendments contained therein. The WRHA will endeavor not to issue any addenda later than five days prior to the Closing Date.
- 3.10 Bidders' Expenses, No Contractual or Financial Obligations:** All costs and any liabilities incurred by a Bidder including (without limitation) those associated with the preparation of the Bidder's Bid will be borne entirely by the Bidder. The WRHA does not assume any contractual or financial obligation by the issuance of this RFT, by receiving, accepting, or evaluating Bids, or by the determination of a Selected Bidder(s).
- 3.11 Additional Information:** The WRHA reserves the right to obtain any additional information from the Bidder for clarification purposes only, respecting the Bid, experience, financial ability, and general suitability, before the determination of the Selected Bidder(s).
- 3.12 Authority to Execute and/or Modify:** Any Agreement or modification of an Agreement entered into by the WRHA and the Selected Bidder shall not be effective or binding on the WRHA unless executed on its behalf by an authorized officer(s) of the WRHA.
- 3.13 Multiple Bids:** Bidders may submit more than one Bid. Should a Bidder submit more than one Bid, each Bid shall be submitted as a separate package. Each Bid will be evaluated as a separate Bid. Each Bid must meet all of the mandatory requirements of this RFT.

- 3.14 Consortium Responses:** Consortium responses will be accepted with the understanding that the WRHA shall regard only one of the parties of the consortium as the Bidder. Submissions must clearly indicate which party is the Bidder. The Bidder shall be completely responsible for all additional parties.
- 3.15 Imbedded References:** Bidders are advised that the WRHA has an obligation to diligently evaluate all bids and must ensure that the information it is evaluating is consistent. Therefore, Bidders are advised that any information that is to be considered as part of the evaluation process must be attached to its bid and not included as an embedded reference to a website.
- 3.16 Appeals:** Should any Bidder have a legitimate concern regarding fair and equitable treatment throughout the Bid process, then the Bidder may initiate an appeal through a written submission to the contact person outlining its concerns, within forty-five (45) days from the date of notification by WRHA to the Bidder of determination of the Selected Bidder(s). Only written submissions will be considered.
- 3.17 Governing Law:** This RFT and any Agreement executed pursuant to this RFT shall be governed, construed, and interpreted in accordance with the laws of the Province of Manitoba and the laws of Canada applicable therein, and the courts of the Province of Manitoba shall have exclusive jurisdiction with respect to all matters relating to this RFT and the Agreement.

#### **4 TERMS AND CONDITIONS**

The following terms and conditions shall apply to the Agreement among the WRHA, the Sites and the Selected Bidder(s), hereinafter referred to as the "Vendor":

**4.1 Appendices:**

The following appendices form an integral part of the Agreement:

- (a) Appendix "A" – The Request for Tender ("RFT");
- (b) Appendix "B" – Vendor's Bid submitted in response to the RFT;
- (c) Appendix "C" – Vendor Product Award List (attached);
- (d) Appendix "D" – Award Letter.

**4.2 Participating Sites:** The Sites that will be participating under this Agreement are as listed at Schedule "B" to the RFT.

**4.3 Products:** WRHA agrees to retain the Vendor to provide the products as set out in Appendix "C" – Vendor Product Award List, hereto (the "Products") throughout the term of this Agreement.

The Vendor agrees to provide such Products on the terms and conditions set out in this Agreement.

Unless otherwise agreed to by the WRHA, in the event that the Vendor cannot supply any or all the Products, the Vendor shall provide product(s) from an alternate source at the same agreed price or to reimburse the Site for any additional costs resulting from the purchases required by the WRHA or the Site of reasonable quantities made directly from another Vendor. The selected Bidder shall at all times during the term of the awarded Agreement:

- (a) maintain personnel authorized to administer the Agreement and make all necessary decisions required to be made under and in respect of the Agreement; and

(b) provide all Products on the commencement date established by WRHA and thereafter for the term on the terms and conditions set out in the Agreement.

**4.4 Product Volumes:** The Vendor acknowledges that the Product volume(s) as indicated on Appendix “C” – Vendor Product Award List, represent an anticipated **annual** volume for all participating Sites and is provided for estimate purposes only. This Agreement shall be limited to the actual purchases made throughout the Agreement term.

It is understood that the WRHA and/or the Sites reserve the right to increase or decrease the volumes purchased by Products individually or by all Products combined should a change or changes in clinical procedure(s) or practice by the WRHA and/or the Sites so warrant.

The Vendor acknowledges that the Products listed on Appendix “C” – Vendor Product Award List showing zero volumes are products that have been identified as potential future requirements, however, usage estimates are unknown at this time. Should the product be required by the WRHA and/or the Sites, the Vendor agrees the initial lead time will apply from receipt of first Purchase Order.

**4.5 Products Delivery:** It is understood that all Products are to be delivered F.O.B. destination (title transfer of products), freight prepaid and borne by the Vendor unless otherwise agreed to in writing by the WRHA. A packing slip indicating the Site’s Purchase Order Number must accompany each shipment. Each shipment must be invoiced separately.

Product(s) supplied shall be subject inspection and acceptance at all times by the Sites. It is understood that the Sites’ decision shall be final.

The Vendor is responsible to ensure that if pallets are used in deliveries they must meet all Workplace Safety and Health regulations. Pallets that are broken or damaged in any manner that could jeopardize the safety of the WRHA/Site’s employees will be rejected. The Vendor is responsible to ensure that any and all perishable products delivered pursuant to this Agreement are delivered in either refrigerated containers and/or shipped via refrigerated vehicles to ensure quality of products. The WRHA and/or Sites reserve the right to reject any shipment that is not delivered accordingly. Any and all costs associated with shipments rejected will be borne solely by the Vendor.

**4.6 Latex Free Designation:** Product(s) that the Vendor has declared as “latex free” appear on Schedule “C” to the RFT – Latex Free Declaration. It will be the responsibility of the Vendor to inform the WRHA should the latex free status, if applicable, of a Product change during the term of the Agreement.

**4.7 Workplace Hazardous Material Information System:** In accordance with federal and provincial legislation governing *The Workplace Hazardous Material Information System* (WHMIS), the Vendor shall label all controlled Products accordingly and shall supply all Material Safety Data Sheets (MSDS). The Vendor shall ensure compliance with this legislation. Advance copies of MSDS shall be forwarded by the Vendor before shipping to the Sites’ Receiving Department as well as traveling with such Products.

**4.8 Transportation of Dangerous Goods Regulations:** In accordance with the Transportation of Dangerous Goods regulation, the Contractor shall be responsible to ensure that class 3, 4, 5, 6, 1, 8 and 9 of dangerous goods are transported in a UN approved container with all appropriate markings on the side of the containers rather than on the bottom. The Contractor

shall be responsible for any additional charges for the transport of dangerous goods, unless otherwise agreed to by the WRHA.

**4.9 Electrical/Electronic Materials:** The Vendor agrees that any and all electrical or electronic equipment shall bear a label on the equipment of certification by a Standards Council of Canada accredited electrical equipment certification body, or special acceptance authorized by the Manitoba Department of Labour. The Vendor agrees to be solely responsible for obtaining any and all required certifications and approvals and for any and all costs associated. The Vendor acknowledges the potential need for re-calibration of any automated technology that may form part of this Agreement. The Vendor agrees to be solely responsible for any and all costs associated with such re-calibration.

**4.10 Vendor's Representations, Warranties And Other Obligations:**

The Vendor represents, warrants and as follows:

- (a) that the Vendor possesses the necessary personnel, skills, expertise and experience to provide the Products;
- (b) that the Vendor fully understands the WRHA's requirements under this Agreement and will be able to satisfy these requirements;
- (c) to provide the Products in a professional and prudent manner to the satisfaction of the WRHA;
- (d) to comply with all reasonable directions and requests of the WRHA;
- (e) to comply with all laws, regulations, directives and orders that apply to the Vendor or to the Products; and
- (f) to comply at all times with the requirements of *The Workplace Safety and Health Act* (Manitoba) and its regulations thereto.

**4.11 Pricing:** Subject to the following subsections, in consideration of the Products provided to the satisfaction of the WRHA/Sites, the WRHA/Sites shall pay to the Vendor the pricing as listed at Appendix "C" – Vendor Product Award List.

Invoices will be paid forty-five (45) calendar days after receipt of invoice, or products, whichever is later, unless other terms are mutually agreed to by the WRHA and the Vendor in writing.

The Vendor acknowledges that the Sites each maintain their own purchasing and accounting systems and therefore purchase orders will be created separately by each Site and invoiced accordingly.

No invoice shall be paid without an appropriately authorized Purchase Order. Unauthorized invoices shall not be settled and shall be returned to the Contractor accordingly.

All amounts in this Agreement are stated in Canadian currency and all payments shall be made in Canadian currency, unless otherwise agreed to by the WRHA.

The Vendor shall provide to the WRHA any and all price reductions or decreases due to economic downturns, market conditions and/or industry price reductions.

- 4.12 Reporting:** The Vendor shall provide, at the request of the WRHA, on a quarterly basis and within thirty (3) calendar days following said period, the sales volumes/utilization statistics by Product purchased by Sites to the WRHA.

Any communications by the Vendor relating the Agreement issues shall be submitted in writing to the WRHA. This will include, but not be limited to, such issues as any product substitutions, deletions, or significant changes. The WRHA must subsequently approve, in writing, its acceptance prior to implementation.

- 4.13 Product Information/Product Labeling:** Through the term of the Agreement, the Vendor agrees: (a) to supply to the WRHA, at WRHA's request and in a timely manner, detailed information about the material composition of a specific Product or information on subsequent changes to the composition of components prior to the Site being supplied with a revised Product; to supply Products or packaging supplies with appropriate and acceptable labeling including without limitation an appropriate removable or permanent adhesive, an appropriate surface/finish that does not smudge and is durable, and labeling or packaging that complies with all labeling standards that may exist for a Product/packaging. Should the label of the Product(s) or packaging change during the term of the Agreement, the Vendor agrees to notify the WRHA and provide samples of the new label to the WRHA at least sixty (60) days prior to the change.

- 4.14 Recall Notices:** Recall Notices for Products either under evaluation or under Agreement shall be forwarded by the Vendor to the WRHA.

- 4.15 New Product Evaluation:** The parties agrees that the WRHA/Sites have the right to evaluate any product(s) from the Vendor or competitive source during the term of the Agreement. New products include any therapeutically or technologically improved product that was not available or clinically proven at the time prior to the Closing Date of the RFT.

Should the **new** product(s) be the product(s) of choice to purchase after the evaluation period, the WRHA shall notify the Vendor in writing. The Vendor shall respond to the WRHA within thirty (30) days of receipt of this letter advising of its intention to pursue new comparable and competitively price product(s). If the Vendor is pursuing this new technology, they shall be given six (6) months to develop **new** and comparable product(s). The Vendor agrees that **new** product(s) must be clinically or by practice acceptable to the WRHA/Sites and be competitively priced in the marketplace.

The Vendor agrees that failure of the Vendor to satisfy the WRHA/Sites on matters of acceptability of competitiveness will be justification for deleting the Product(s) from the Agreement and the withdrawing of any initial commitment made at the time of Agreement award by the WRHA to the Vendor. Should the Product(s) addressed comprise the entire Agreement, then the Agreement shall be rendered null and void with no penalty or further responsibilities due to the Vendor by the WRHA/Sites.

**4.16 Food & Drugs Act/Medical Devices Regulations:** All Products supplied under this Agreement must be in compliance with the *Food & Drugs Act* (Canada) which encompasses the Medical Devices Regulations.

The Vendor shall ensure that a valid Medical Devices License(s) and/or Establishment License(s) is maintained for the applicable Product(s) at all time during the term of this Agreement.

The Vendor shall ensure that all Class 2, 3 and 4 Medical Devices meet the CMDCAS, ISO13485/88 requirements (effective November 1, 2003).

The Vendor shall produce evidence of valid Medical Devices License(s) and/or Establishment License(s) and/or CMDCAS Certificate(s) upon request of the WRHA.

Should the Vendor not be able to meet the requirements and/or such License(s) be amended or revoked during the term of the Agreement, the Vendor shall notify the WRHA immediately.

Failure to provide evidence of valid licensing will result in immediate termination of applicable Product(s) from the Agreement in its entirety as determined by the WRHA, in its sole discretion. Termination shall be at no penalty to the WRHA/Sites.

The Vendor assumes full and complete responsibility and liability respecting any Products supplied by the Vendor as a trial purchase or for a pre-purchase trial or evaluation period.

**4.17 Restriction on Other Work, No Advertising:** While this Agreement is in effect, the Vendor shall not provide product to any other person, firm, corporation or organization in any manner which might interfere or conflict with the Vendor's obligations or undertakings under this Agreement.

The Vendor declares that is 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 Vendor shall declare it in writing immediately to the WRHA. The WRHA shall, in its sole discretion, take whatever action it deems necessary, including termination of this Agreement.

The Vendor 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 but not limited to written, electronic, or verbal, except with the prior written authorization of the WRHA.

**4.18 Confidentiality:** While this Agreement is in effect and at all times thereafter, the parties hereto and their respective officers, employees, agents and subcontractors shall:

(a) treats as confidential all information, data, documents and materials acquired, or to which access has been given in the course of, or incidental to this Agreement, which includes, without limitation, personal information and personal health information ("Confidential Material");

(b) not use, or permit the use of, the Confidential Material, except for the proper performance of its obligations under the Agreement;

(c) no disclose, or permit the disclosure of, the Confidential Material to any person, corporation, organization or other entity without first obtaining the permission of the party originally in possession of the Confidential Material (the "Disclosing Party"); and  
(d) comply with all reasonable restrictions, procedures, rules and directions made or given by the Disclosing Party, with respect to the safeguarding or ensuring the confidentiality of the Confidential Material prior to, during and subsequent to the term of this Agreement.

Each Party agrees to advise its officers, employees, agents and subcontractors that they may, during the course of discharging their individual or collective responsibilities under this Agreement, have access to or be in possession of Confidential Material, and shall advise such officers, employees, agents and subcontractors of all the obligations contained in this Agreement pertaining to the protection of Confidential Material.

For the purposes of this Agreement, information, data, documents and materials will not be deemed to be Confidential Material if they:

- (a) were in the public domain or known to the receiving Party ("Receiving Party") prior to the time of disclosure, or become publicly available other than through a breach of this Agreement; or
- (b) become known to the Receiving Party from a source other than the Disclosing Party, without breach of any duty confidentiality; or
- (c) are approved, in writing, for disclosure without restriction by the Disclosing Party; or
- (d) are 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 Disclosing Party, wherever possible; or
- (e) are developed independently by the Receiving Party without a breach of any duty of confidentiality.

**4.19 Indemnification:** Except to the extent caused or contributed by one party or a third party, the other party ("Responsible Party") agrees to indemnify and save harmless the other part(ies)y from and against all claims, demands, proceedings, losses, damages, liabilities, deficiencies, costs and expenses (including all legal and other professional fees and disbursements, interest, penalties and amounts paid in settlement) suffered or incurred by the other part(ies)y for:

all damages and costs for personal and bodily injury to any persons, including death, caused by the willful or negligent acts, errors or omissions of the Responsible Party, its officers, employees, agents or subcontractors or any other party for whom the Responsible Party is responsible at law';

(a) all damages and costs for physical harm to, or loss of, real and tangible personal property caused by the willful or negligent acts, error or omissions of the Responsible Party, its officers, employees, agents or subcontractors or any other party for whom the Responsible Party is responsible at law;

(b) all damages, losses and costs sustained or incurred by the other Part(ies)y due to breaches of the confidentiality and privacy provisions set forth in this Agreement by the Responsible Party, or any of its officers, employees, agents or subcontractors or another party for whom the Responsible Party is responsible at law;

(c) direct damages caused by the acts, errors or omission of the Responsible Party, its officers, employees, agents or subcontractors or any other party for whom the Responsible Party is responsible at law; and

(d) costs to restore records or data.

Except as provided for in the sections above, each party ("Indemnifying Party") shall indemnify and hold harmless the other party, and the other party's officers, employees, agents and subcontractors, from any and all third party claims, demands or actions caused by the willful or negligent acts, errors or omissions of the Indemnifying Party, its officers, employees, agents or subcontractors to the extent that the Indemnifying Party is liable under law to the third party;

Notwithstanding anything contained herein, the WRHA shall not be liable for any injury to the Vendor, or to any officers, employees or agents of the Vendor, or for any damage to or loss of property of the Vendor, or the officers, employees, or agents of the Vendor.

#### **4.20 Dispute Resolution:**

(a) In the event of a dispute or disagreement, the Vendor and the WRHA will meet to attempt to resolve such dispute or disagreement within a reasonable period of time.

(b) (i) In the event that the parties are unable to resolve the dispute or disagreement within a reasonable period of time, not anticipated to exceed thirty (30) days, then either the WRHA or the Vendor may notify the other Party, in writing, requesting arbitration, except that disputes or disagreements regarding confidentiality or privacy matters, intellectual property right matters, liability and limitations of liability matters shall not be subject to arbitration.

(ii) Provided that both the parties agree to arbitration, then the dispute or disagreement arising shall (subject to the exclusions noted) be referred to and finally resolved by way of arbitration by a sole arbitrator in accordance with The Arbitration Act (Manitoba). The place of arbitration will be in Winnipeg, Manitoba. The award of the arbitrator shall be binding upon both of the parties, both with respect to the substantive aspect of the dispute or disagreement and any costs awarded by the arbitrator. The Vendor shall continue to provide the Products until resolution of the dispute or disagreement, unless the Agreement has been terminated by the WRHA in accordance with section 4.21 of the Agreement.

(c) With the exception of the exclusions from arbitration noted above (disputes or disagreements regarding confidentiality or privacy matters, intellectual property rights matters and liability and limitations of liability matters), no action or legal proceedings shall be commenced by either of the parties regarding matters as are in dispute, unless the defendant party to such action or proceeding has refused or neglected to refer the matter to arbitration.

#### **4.21 Termination:** Without restricting any other available remedies, the WRHA may immediately terminate this Agreement in writing without further notice if in the WRHA's reasonable opinion:

(a) the Products are unsatisfactory or inadequate;

(b) the Vendor has failed in any material respect to comply with any term or condition of this Agreement;

(c) there is any unauthorized price increase;

(d) there is an interruption of supply and availability;

(e) there is deterioration in the quality of Product supplied;

- (f) there is inadequate sales and technical support; or
- (g) the Vendor has failed to provide valid Medical Devices License(s) and/or Establishment License(s);
- (h) the Products are unsatisfactorily labeled;
- (i) the Products have unacceptable shelf life/expiration dates;
- (j) the terms of this Agreement, or the performance of the subject matter of this Agreement adversely affect patient safety, the standards of patient care or client service; or
- (k) the Vendor has failed to provide completed documentation as required under this Agreement; provided that the WRHA has first notified the Vendor in writing of the default or failure and the Vendor has failed or neglected to remedy such default or failure to the satisfaction of the WRHA within fifteen (15) days following the date of the WRHA's notice tot the Vendor.

WRHA may, at its sole discretion, immediately terminate this Agreement in writing if:

- (a) the Vendor is dissolved or becomes bankrupt or insolvent, or a receiver, trustee, or custodian is appointed to manage the affairs and assets of the Vendor;
- (b) the Vendor makes any compromise, arrangement, or assignment with or for the benefits for the creditors of the Vendor;
- (c) any creditor of the Vendor garnishes or attached, or attempts to garnish or attach, any of the funds paid or to be paid by WRHA under this Agreement;
- (d) the Vendor fails to secure or renew any license or permit required by law, or if such license or permit is revoked or suspended;
- (e) the Vendor or any officer or director of the Vendor is found guilty of an indictable offence;
- (f) the Vendor at any time engages in any activities or trade practices which, in the opinion of WRHA, are prejudicial to the interests of WRHA; or
- (g) the Vendor is in breach of any applicable statute, by-law or regulation;
- (h) technological changes or changes in legislation require immediate change in the use of Products;
- (i) change in clinical procedure(s) or practice by the WRHA and/or the Sites so warrant.

**4.22 Independent Contractor:** The Vendor is an independent contractor, and this Agreement does not create the relationship of employer and employee, or of principal and agent, between any of the WRHA, the Sites and the Vendor or between the WRHA, the Sites, and any officers, employees, agents or subcontractors of the Vendor.

The Vendor shall be responsible for any deductions or remittances that may be required by law, whether federal, provincial, or municipal, and any amounts payable to any subcontractor engaged by the Contractor to carry out the Products.

**4.23 Time of Essence:** Time shall in every respect be of the essence of this Agreement.

**4.24 Assignments:** The Vendor shall not assign or transfer this Agreement or subcontract without first obtaining written consent from the WRHA, which consent may be arbitrarily withheld. If the Vendor is a corporation, any change in control of such corporation shall and is hereby deemed to be an assignment of this Agreement.

No assignment or transfer of this Agreement or subcontracting shall relieve the Vendor of any obligations under this Agreement, except to the extent they are properly performed by the Vendor's permitted assigns or subcontractors.

This Agreement shall be binding upon the executors, administrators, heirs, successors and any permitted assigns and subcontractors of the Vendor. WRHA reserves the right to assign to another regional health authority, another health care facility, a successor entity, or the Government of Manitoba all or any part of this Agreement.

**4.25 Amendments** No amendment or change to, or modification of, this Agreement shall be valid unless it is in writing and signed by all parties.

**4.26 Severability:** If, for any reason, any provision of this Agreement is declared invalid by a court of competent jurisdictions, that provision shall be considered separate and severable from this Agreement, and the other provisions of this Agreement shall remain in force and continue to be binding upon the parties as though the invalid provision had never been included in this Agreement.

**4.27 Notices:** Any notice or other communication to the WRHA under this Agreement shall be in writing and shall be delivered or sent by registered mail, postage prepaid, or by way of facsimile transmission or email to:

Winnipeg Regional Health Authority Logistics Services  
300 – 5 Donald Street  
Winnipeg MB R3L 2T4

Attention: Contract Specialist FAX: 204-957-7841 Email: (addressed to the Contract Specialist as indicated in the RFT document)

Any notice or communication given in accordance with the methods described in this section and shall be deemed to have received by the addressee on:

- (a) the day served if delivered personally or sent via email;
- (b) the third business day after the date of mailing if sent by prepaid registered mail; or
- (c) the first business day following the date of the transmittal slip if sent by facsimile transmission.

If mail service is disrupted by labour controversy, notice shall be delivered personally. Either party may at any time designate a different person or address for the purposes of receiving notices or other communications under this Agreement, provided that such designation is communicated in writing to the other parties.

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 of 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

**4.28 Survival of Terms:** Those sections, right and obligations that by their very nature are intended to survive the termination or expiration of this Agreement shall survive, including (without limitation) sections 4.14, 4.16, 4.17, 4.18 and 4.19.

- 4.29 Waiver:** A term or condition of this Agreement can be waived or modified only by written consent of both the WRHA and the Vendor. Forbearance or indulgence by either the WRHA or the Vendor in any regard shall not constitute a waiver of the term or condition to be performed, and either the WRHA or the Vendor may invoke any remedy available under this Agreement or by law despite such forbearance or indulgence.
- 4.30 Option:** The WRHA may, at any time up to and including the expiration or earlier termination of this Agreement, notify the Vendor, in writing, that it wishes to proceed with adding further sites within the Winnipeg Health Region and/or adding other regional health authorities within Manitoba and/or other public entities within the Province of Manitoba to receive the Products pursuant to this Agreement on the same terms as provided for in this Agreement. **The fee for these additionally Products shall be at the price payable under this Agreement. Freight charges, if applicable, shall be as negotiated by the WRHA and the Vendor.**
- 4.31 Entire Agreement:** This document and the attached Appendices contain the entire Agreement among the parties. There are no undertakings, representations, or promises, express or implied, other than those contained in this Agreement.
- 4.32 Governing Law:** This Agreement shall be construed, interpreted and governed by the laws of the Province of Manitoba and the laws of Canada applicable therein, and the Courts of the Province of Manitoba shall have exclusive jurisdiction with respect to all matters relating to this Agreement.