

**GOODS SUPPLY
AGREEMENT**

AGREEMENT # *[INSERT]*

BETWEEN

[INSERT NAME OF PURCHASER]

- AND -

[INSERT NAME OF SUPPLIER]

DRAFTING NOTES: ALL INPUT FIELDS HAVE BEEN FORMATTED IN ITALICS, BOLD AND HIGHLIGHTED. AFTER INSERTING THE RELEVANT INFORMATION, CHANGE THE FORMATTING TO ALIGN WITH THE SURROUNDING TEXT.

REMOVE ALL INSTRUCTIONS AND ENSURE REFERENCE TO OTHER SECTIONS ARE ACCURATE BEFORE ISSUING.

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GOODS SUPPLY AGREEMENT

THIS AGREEMENT (“**Agreement**”) is made as of *[Insert date]*, between *[Insert legal name of Purchaser]*, with an office at *[Insert address]* (the “**Purchaser**”) and *[Insert legal name of supplier]* with an office at *[Insert address]* (the “**Supplier**”).

WHEREAS the Purchaser issued a request for proposals (“**RFP**”) dated *[Insert date]* for the purchase and installation of the Goods, and the Supplier submitted a proposal dated *[Insert date]* offering to sell the Goods to and install the Goods for the Purchaser;

AND WHEREAS upon the completion of the evaluation process pursuant to the RFP, the Supplier was identified by the Purchaser as the preferred proponent pursuant to the RFP;

AND WHEREAS the Supplier and the Purchaser were able to agree on the terms and conditions of this Agreement;

NOW THEREFORE, for good and valuable consideration, the parties hereto agree as follows:

Article 1 Interpretation

1.1 Definitions

In this Agreement, unless the context otherwise requires, the following terms have the meanings indicated below:

- (a) “**Acceptance**” means acceptance, or deemed acceptance as provided for herein, by the Purchaser that the Goods meet or exceed the Specifications as determined by the Acceptance Test(s).
- (b) “**Acceptance Certificate**” has the meaning attributed to it in Section 2.12.1.
- (c) “**Acceptance Test(s)**” and “**Acceptance Testing**” means the process whereby the Goods are tested to verify that they meet or exceed the Specifications.
- (d) “**Acceptance Testing Period**” has the meaning attributed to it in Section 2.12.1.
- (e) “**Adjustment**” means any update, correction or change to the Goods made during the life of the Goods, and includes any modification, correction, or adjustment, associated with patient or operator safety, or in response to all Alert and Safety Notifications pursuant to Section 7.3 (Alerts and Safety Notifications).
- (f) “**Authorized Third Party Logistics Provider**” means a separate entity that supplies warehousing and distribution services to the Purchaser.
- (g) “**Business Day**” or “**Business Days**” means Monday to Friday between the hours of 9:00 a.m. to 5:00 p.m., except when such a day is a public holiday, as defined in the *Employment Standards Act* (Ontario) or as otherwise agreed to by the parties in writing.

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- (h) “**Canada Customs Invoice**” means the Canada Border Services Agency form of customs invoice.
- (i) “**Days**” means calendar days.
- (j) “**Delivery Site(s)**” means ***[Insert location(s)]***.
- (k) “**Disapproval Notice**” has the meaning attributed to it in Section 2.12.1.
- (l) “**Effective Date**” means the date that this Agreement is made, as first shown above.
- (m) “**New Technology**” means any substantial innovation or advance that materially affects the operation, safety, or efficiency of the Goods and results in new or substantially improved Goods being generally available to the Supplier’s customers.
- (n) “**Event of Force Majeure**” means any cause beyond the reasonable control of a party to this Agreement, including any act of God, outbreak, or epidemic of any kind, communicable and virulent disease, strike, flood, fire, embargo, boycott, act of terrorism, insurrection, war, explosion, civil disturbance, shortage of gas, fuel or electricity, interruption of transportation, governmental order, unavoidable accident, or shortage of labour or raw materials.
- (o) “**FIPPA**” means the *Freedom of Information and Protection of Privacy Act* (Ontario).
- (p) “**Goods**” means the goods described in the Goods and Prices Schedule, and includes all supplies and operational and service documents to be delivered by the Supplier to the Purchaser described in the Supplier’s Proposal, including all parts provided during the Warranty Period, and further includes all work to be performed by Supplier necessary to deliver and install the Goods.
- (q) “**Governmental Authorities**” means governments, regulatory authorities, governmental departments, agencies, agents, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals, or dispute settlement panels or other law, rule, or regulation-making organizations or entities having or purporting to have jurisdiction on behalf of any nation, province, territory, state, or other geographic or political subdivision thereof; or exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory, or taxing authority or power, and includes the MOHLTC and Health Canada.
- (r) “**Indemnitees**” means the Purchaser and its officers, directors, agents, employees, or physicians.
- (s) “**Loadsheets**” means the Excel file that identifies certain details of the Goods, including but not limited to, description of Goods, Supplier part number, unit of measure, Supplier quantity unit of measure, tiered pricing quantity, unit price, classification code, Medical Device License (MDL) number or Drug Identification Number (DIN), MDL class number, latex information, manufacturer name, and manufacturer part number.

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- (t) “**MOHLTC**” means the Ministry of Health and Long Term Care.
- (u) “**NAFTA**” means the *North American Free Trade Agreement*.
- (v) “**NAFTA Certificate of Origin**” means a certification information form that is based on the origin requirements in NAFTA.
- (w) “**OEM**” means original equipment manufacturer.
- (x) “**Personal Information**” means recorded information about an identifiable individual or that may identify an individual (including PHI), but does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.
- (y) “**PHI**” means personal health information as defined in the *Personal Health Information Protection Act, 2004* (Ontario).
- (z) “**Privacy Office**” means the privacy office of the Purchaser.
- (aa) “**Purchase Price**” means the price set out in Section 2.1 (Purchase).
- (bb) “**Purchasing Organization**” means the organization that conducted the RFP process on behalf of the Purchaser.
- (cc) “**Release**” means a release document completed by the Purchaser or an Authorized Third Party Logistics Provider on behalf of the Purchaser, which orders specific quantities of specific Goods for delivery at a named Delivery Site and time pursuant to the terms of the Agreement. The Release may take the form of a release, a purchase order, a procurement card order, an electronic order, or other writing referencing this Agreement. In the event of any conflict between the provisions of a Release and the provisions of the Agreement, the provisions of the Agreement will control.
- (dd) “**Scientific Validation Report**” means the documentation from an independent third party or a statement by an officer of the Purchaser on the ability of the process and equipment required to achieve the desired level of sterility for the Goods and its intended uses.
- (ee) “**Specifications**” means the drawings and specifications for the Goods set out in the Specifications Schedule.
- (ff) “**Supplier’s Personnel**” means the Supplier’s employees, agents, representatives, and subcontractors.
- (gg) “**Term**” means the effective period of the Agreement as set out in Section 6.1 (Term).
- (hh) “**Upgrade**” means a new version of or addition to the Goods and constitutes an improvement or modification that enhances the performance of the Goods or provides a new feature or functionality.

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- (ii) “**Warranty Period**” has the meaning attributed to it in Section 5.2 (Limited Goods Warranty).

1.2 Schedules

The following Schedules are attached to and form an integral part of this Agreement:

- (a) Goods and Prices Schedule
- (b) Supplier’s Proposal Schedule
- (c) Specifications Schedule
- (d) Information Practices Schedule

[This list may require alteration or may be augmented to reflect the RFP process.]

1.3 Order of Precedence

In the event of any conflict or inconsistency in the Agreement, the following is the order of precedence of documents comprising this Agreement:

- (a) Article 1 (Interpretation) to Article 7 (General) of this Agreement;
- (b) the Schedules annexed to this Agreement, except for the Supplier’s Proposal Schedule; and
- (c) the Supplier’s Proposal Schedule.

1.4 Rules of Interpretation

This Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine and feminine includes the other gender.
- (b) Words in the Agreement shall bear their natural meaning.
- (c) References containing terms such as “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- (d) In construing the Agreement, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are

followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.

Article 2 Supply of Goods

2.1 Purchase

Subject to the terms of this Agreement, the Purchaser hereby orders and purchases from the Supplier, and the Supplier agrees to sell and provide to the Purchaser, the Goods and related services for the total Purchase Price, exclusive of all harmonized sales tax. The Purchase Price is subject to any applicable withholding taxes, and shall be payable as set forth in Article 4 (Prices and Payment).

2.2 Forecasts

The Purchaser may provide the Supplier with a usage forecast of the Goods. Such forecast is strictly for the general guidance of the Supplier and shall not be binding on the Purchaser in any way, nor shall the Purchaser have any liability in respect thereof.

2.3 Orders

The Purchaser may order, from time to time, such quantities of the Goods as it may determine. Orders shall be affected by the Purchaser sending to the Supplier, by facsimile or other form of electronic communication, a Release specifying the Goods, their quantity, and their required delivery dates and Delivery Site(s). Upon receipt of each such Release, the Supplier shall be deemed to have accepted the order specified therein upon the terms and conditions thereof and of this Agreement. The Purchaser shall not be required to order any minimum number, volume, or dollar value of any Goods or group of Goods unless otherwise agreed to in writing.

2.4 Cancellation

The Purchaser shall have the right at any time to cancel, in whole or in part, any order for Goods made pursuant to this Agreement upon prior notice to the Supplier. There shall be no penalty for cancellation of an order if the Purchaser has cancelled such order at any time prior to the shipment of such Goods.

2.5 Substituted Goods

In the event that the Supplier is unable to supply to the Purchaser a Good listed in the Goods and Prices Schedule, the Supplier may temporarily substitute a good considered to be equivalent to the Good on the following conditions:

- (a) the Supplier shall give a minimum of 10 Business Days notice to the Purchaser and the Authorized Third Party Logistics Provider where applicable, and where possible, notice shall be given within 5 Days of knowing that the contracted Good will be unavailable. The notice shall state:
 - (i) that the contracted Good will be unavailable;

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- (ii) the affected Purchaser users or departments where possible;
 - (iii) the proposed substitute Good;
 - (iv) the specifications of the substituted Good;
 - (v) the length of time the requested Good will remain unavailable; and
 - (vi) the price for the substitute Good.
- (b) the price shall be equal to or less than the price for the listed Good;
- (c) the proposed substitute good is approved by the Purchaser;
- (d) the substituted Good shall automatically become subject to the terms of the Agreement;
- (e) the substituted Good shall be counted in any minimum quantity threshold, if any;
- (f) notwithstanding Section 2.5(c) above, if for any reason the Purchaser is not satisfied with the substitute good, the Supplier, on notice, shall at its expense have the good picked up within 7 Days of the Purchaser's notice and the amount paid for the equivalent good at the Purchaser's option shall be refunded to the Purchaser or used as a credit against further Purchaser purchases;
- (g) in the event that the proposed substitute good is deemed to be not acceptable by the Purchaser or if the Purchaser is not satisfied with the substitute good, the Purchaser can purchase an alternative good from another supplier without penalty, without affecting this Agreement until such time as the requested Good is available from the Supplier and the Supplier shall be responsible for and shall pay to the Purchaser any increase in price;
- (h) the Supplier shall be responsible for and shall pay any additional costs such as training and implementation;
- (i) the Supplier shall use its best efforts to restore the supply of the requested Good on an as soon as possible basis; and
- (j) notwithstanding the efforts of the Supplier and the Purchaser's willingness to co-operate and use substitutes or any other provisions in this Section 2.5 (Substituted Goods), the Purchaser reserves the right to substitute another good on an immediate basis if
- (i) there is risk to any person or a situation exists that the Purchaser considers warrants such a substitution; or
 - (ii) the Purchaser was not able to adapt in time to the change in goods based on the notice provided.

2.6 Backorders

No Goods shall be back-ordered for more than 30 Days except with the prior consent of the Purchaser, and where any Good are not available for shipment within that time, the Supplier shall so notify the Purchaser and the Purchaser may cancel the order for the Goods.

In the event that the Supplier back-orders Goods, causing the Purchaser to purchase equivalent goods from a third party at a higher price, the Supplier shall reimburse the Purchaser the difference between the Agreement Purchase Price and the alternate price paid.

2.7 Inspection

Provided that the Purchaser complies with the confidentiality obligations set out in the Agreement, and provided that the Purchaser complies with the Supplier's safety and site policies made known to the Purchaser, the Purchaser shall be entitled to inspect the Goods at its own cost, at a mutually agreed upon time. In addition, from time to time during the Supplier's manufacturing, storage, and installation processes, as applicable, the Supplier shall co-operate with, and provide access to, the Purchaser for the purpose of inspecting the Goods during any Business Day on reasonable notice. The conduct or the failure to conduct any such inspection shall in no way affect or impair the Purchaser's right to inspect or reject any Goods under Section 2.10 (Rejection) or to conduct Acceptance Tests under Section 2.12 (Acceptance Test), or to exercise any of its other rights or remedies provided in this Agreement, at law or in equity.

2.8 Shipment

The Goods shall be shipped in a manner that does not result in any charge payable by the Purchaser on delivery, and in the event of any such charge, the Supplier shall forthwith reimburse the Purchaser for such charge.

2.9 Delivery

[These instructions should be confirmed, prior to the completion of the Agreement.]

2.9.1 General

The Supplier shall deliver the Goods to the Delivery Site(s) on the date or dates specified in the Release. Provided that the Purchaser provides reasonable notice to the Supplier, the Purchaser may from time to time change delivery dates or temporarily suspend scheduled deliveries.

2.9.2 Risk and Title

All risks of damage to or loss of the Goods until delivery of the Goods to the Purchaser shall be assumed by the Supplier. Thereafter, until title to the Goods passes to the Purchaser as provided for herein, the Purchaser shall be responsible for providing and maintaining appropriate insurance coverage for the risk of loss or damage to the Goods. The Purchaser shall ensure that rules of good storage management are applied to accepted deliveries, including any deliveries waiting to be returned to the Supplier. Acceptance of the delivery of the Goods, or any part thereof, shall not bind the Purchaser to accept future shipments of the Goods, if any. Title to the

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Goods or any part thereof shall pass to the Purchaser upon delivery of the Acceptance Certificate or upon deemed Acceptance as provided herein.

Where no Acceptance Test is intended to be conducted, risk and title to the Goods shall pass on delivery of the Goods to the Delivery Site(s), provided that title shall not pass (at the option of the Purchaser) if in the event that the Goods do not comply with the terms and conditions of the Agreement.

2.9.3 Specified Delivery

Except in the case of an Event of Force Majeure, where a delivery date or schedule is specified in the Agreement, timely delivery shall be made in accordance with the requirements of Section 7.15 (Time of Essence), and the Supplier shall be responsible to ensure that such delivery is made and shall advise the Purchaser immediately of any anticipated delays, with the reasons for such delays.

2.9.4 Delivery Particulars

The Supplier shall notify the Purchaser of delivery particulars in advance of delivery, as may be required by the Purchaser, and without limiting the particulars required, shall provide the following information: delivery date, mode of shipment, name of shipping/courier company, courier tracking or identification number, and special instructions regarding handling, unpacking, and assembly. The Supplier shall send such information to the following address, as applicable, prior to the delivery date(s) specified, if any:

[Insert]

2.9.5 Disposal of Packaging

The Supplier shall be responsible, at its expense, for the disposal off-site of the crating and packaging of the Goods, as and when requested by the Purchaser. In the event that disposal off-site is not possible, disposal on-site shall be made through the approval of the Purchaser at the Supplier's expense.

2.9.6 Delivery of Perishable Goods

In addition to the provisions in Section 2.9.1 (General) to Section 2.9.5 (Disposal of Packaging), in the transportation and the delivery of perishable Goods, the Supplier shall:

- (a) ensure that the perishable Goods, packing slip, and carrier manifest are clearly marked as perishable and with an expiry date if applicable;
- (b) use dry ice for the perishable Goods as applicable;
- (c) provide the carrier with the necessary instructions for transportation;

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- (d) notify the Purchaser immediately upon the shipment of the perishable Goods from the Supplier's warehouse of the following information: waybill tracking number and expected date and time of arrival at the destination;
- (e) take all steps necessary to ensure that if the perishable Goods go through customs that they do so on an expedited basis, including issuing a pre-alert to the Purchaser's customs broker and fully completing a Canada Customs Invoice or commercial invoice by using the instructions referred to below for completing the Canada Customs Invoice. The Canada Customs Invoice or commercial invoice must contain the Purchase Order number and non-generic description of the perishable Goods. A pre-alert consists of a copy of the commercial documents with tracking number forwarded via email or facsimile to the customs broker. The Canada Customs Invoice forms and instructions can be located at ***[Link to be inserted]***. The customs broker's contact information can be found at the web site noted above;
- (f) make 3 delivery attempts to deliver all perishable Goods within a period of 24 hours from the time the perishable Goods are first available for delivery, subject to the carrier's policy; and
- (g) ensure that the perishable Goods are accepted by the receiving department responsible for the perishable Goods and request that the carrier endeavour to ensure that the perishable Goods are off-loaded from the carrier's vehicle and kept separate from non-perishable Goods also being off-loaded to prevent co-mingling.

In the event that the perishable Goods arrive at the Purchaser in a spoiled state, as determined in the Purchaser's sole discretion, the Supplier shall, on notice to the Purchaser,

- (i) make arrangements to have the perishable Goods returned to the Supplier at no cost to the Purchaser;
- (ii) reissue and replace the perishable Goods for the Purchaser within a timeframe agreeable to the Purchaser at no additional cost; and
- (iii) follow the above noted process in reissuing the perishable Goods. When shipping re-issued or replacement perishable Goods, the Canada Customs documentation shall clearly indicate that the perishable Goods are a no-charge replacement and its value shall be shown.

2.10 Rejection

All Goods delivered to the Delivery Site(s) shall be subject to inspection by the Purchaser, and the Purchaser may reject any Goods that are defective or non-conforming in any material respect. The Supplier shall be responsible, at its own expense, for the removal or replacement of such rejected Goods. Notwithstanding Section 2.9.2, the risk of damage to or loss of any Goods so rejected by the Purchaser shall remain with the Purchaser for ***[Insert]*** days following Purchaser's notice of such rejection (unless otherwise agreed to by the Parties, acting reasonably), and the Supplier shall be responsible for the risk of damage to or loss of any Equipment so rejected after that period. The Purchaser shall ensure that rules of good storage management are applied

pending the return of any Goods. For greater certainty, the conduct or failure to conduct any inspection, or the payment by the Purchaser for any Goods, shall in no way affect the Purchaser's right to reject defective or non-conforming Goods, or affect its right to avail itself of any other remedy to which the Purchaser may be entitled.

2.11 Quality Control

The Supplier shall conduct all quality control testing necessary to ensure quality, and shall further ensure that the Goods produced or manufactured by it complies with the requirements of this Agreement. The Supplier shall use all reasonable commercial efforts to maintain ISO certification for the manufacturing, production and distribution processes used by it for the Goods.

[The second sentence in this Section 2.11 (Quality Control) relating to ISO certification should only be included where applicable.]

2.12 Acceptance Test

[Optional – An Acceptance Test may apply depending on what is being purchased.]

2.12.1 General

Without prejudice to the Purchaser's right to reject defective or non-conforming Goods as specified in Section 2.10 (Rejection), the Supplier shall notify the Purchaser in writing when it has completed the installation and the Goods are, in the Supplier's opinion, operating in accordance with the Specifications. The Purchaser shall have a period of 30 Days from such notification to perform Acceptance Testing ("**Acceptance Testing Period**"). The Purchaser and the Supplier shall agree on the date for conducting Acceptance Testing.

During the Acceptance Testing Period, the Purchaser, with the assistance of a qualified engineer, shall perform Acceptance Testing, with the assistance of the Supplier, in accordance with the Specifications. Within two Days of completion of Acceptance Testing, either of the following shall occur:

- (a) Designated representatives of the Purchaser and the Supplier respectively shall sign a certificate confirming that the Goods have achieved Acceptance ("**Acceptance Certificate**").
- (b) The Purchaser shall send a written notice of the Purchaser's disapproval of the Goods ("**Disapproval Notice**"), setting out the extent to which the Goods do not operate in accordance with the Specifications with sufficient specificity to allow the Supplier to evaluate and respond to the Purchaser's disapproval, supported by relevant documentation and a detailed report of the reasons for the Purchaser's disapproval.

The Purchaser shall not withhold signing the Acceptance Certificate on account of minor omissions or defects in the Goods. "Minor omissions or defects" mean those that do not substantially affect the use, functionality, and/or safety of the Goods.

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Notwithstanding any provision to the contrary, the Purchaser shall be deemed to have accepted the Goods on the date the Purchaser first successfully uses the Goods outside the test environment in the Purchaser's operations.

2.12.2 Procedure for Disapproval Notice

Where the Purchaser issues a Disapproval Notice, the Supplier shall have an additional 10 Days to cure the deficiencies and defects and achieve Acceptance. In the event that Acceptance is not achieved within such 10 Day period, the Purchaser may, at its option:

- (a) request and have replaced by the Supplier, at no additional cost to the Purchaser, the Goods, or the components of the Goods that have been the source of the failure, in which case the Supplier shall have a reasonable period of time to replace the Goods; or
- (b) terminate the Agreement and request prompt removal of the Goods from the Purchaser's premises, at no cost to the Purchaser, and the Supplier shall provide a full refund of the money paid to date to the Purchaser within a reasonable period of time following such removal.

Upon the removal of the Goods, if applicable, the Supplier shall, unless otherwise directed by the Purchaser, return the immediate area where the Goods are located ("**Goods Area**") to its original condition (as defined herein) to the Purchaser's reasonable satisfaction, at the Supplier's expense. For the purposes of this provision, "original condition" means the condition the Goods Area was in prior to the final preparation of the Goods Area for installation of the Goods. For greater certainty, the Supplier shall only be responsible for the direct and reasonable costs associated with the removal of the Goods and the return of the Goods Area to the original condition or as otherwise reasonably necessary to install suitable equivalent goods, and such responsibility shall be subject to the Supplier (i) being provided full control over the means in which the Goods are removed, provided that such removal is performed in accordance with the Supplier's standard practices, and (ii) having oversight over the decisions made relating to the return of the Goods Area to the original condition.

2.12.3 Warranty and Remedies

The Supplier agrees that the warranty for the Goods shall come into effect on the date of issue of the Acceptance Certificate, or the date of first successful use where there is no Acceptance Test.

For greater certainty, the conduct of any Acceptance Test(s) shall in no way affect the Purchaser's right to avail itself of any remedy to which the Purchaser may be entitled at law or in equity in respect of defective or non-conforming Goods.

2.12.4 Documentation

[Optional Clause]

The documentation referred to in Section 2.13 (Manuals, Bulletins, and Documentation) is considered essential and integral to the Goods and shall be delivered no later than the date of

delivery of the Goods. The Purchaser may withhold commencement of any Acceptance Test(s) until it has received such documentation.

2.13 Manuals, Bulletins, and Documentation

[Optional – some of the documentation listed below may not be applicable for all procurements. Review and amend accordingly.]

- (a) The following manuals/materials shall be provided at no charge to the Purchaser and shipped with the Goods, unless otherwise specified in this Agreement:
 - (i) 1 complete set of operator/user manuals, including software manuals as applicable and any other printed or electronic media available for user education (e.g. videos, CD-ROMS, etc.);
 - (ii) 1 complete set of service manuals including but not limited to, electrical/mechanical/pneumatic schematics manuals, parts lists, pricing lists or schedules, software manuals, troubleshooting guides, training, health and safety manuals, as applicable;
 - (iii) a list of any installation and/or special test tools and/or components and/or preventative maintenance kits requirements for the proper use and maintenance of the Goods, replacement parts, and the current parts costs. The Purchaser shall be notified of such requirements before the Goods are shipped;
 - (iv) schematics, drawings, blueprints, and data sheets;
 - (v) all service documentation for diagnostic software; and
 - (vi) 2 copies of as-built drawings at the end of construction in electronic form suitable to the Purchaser.
- (b) The Supplier shall, on a timely basis, forward to the Purchaser:
 - (i) any service bulletins, user bulletins, or similar type of or related bulletin including, but not limited to, on-line technical resources that relate to the Goods; and
 - (ii) updates to the manuals/materials referred to in this provision;

provided that the Goods are still being used or the Purchaser still requires the Goods, at no additional cost to the Purchaser.

The materials mentioned in Section 2.13(a) and Section 2.13(b)(i) will be provided upon completion of the training of a designated and qualified person affiliated with or retained by the Purchaser by a Supplier certified technician.

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The Supplier shall complete, on the Purchaser's behalf and at no additional charge to the Purchaser, all documentation required by Governmental Authorities in connection with the purchase of the Goods hereunder.

2.14 Changes to Schedules

The Purchaser shall be entitled to make changes to the schedules at any time provided that where any such change results in an increase or decrease in the cost or time required for the delivery of the Goods or performance of any requirement of this Agreement, an equitable adjustment shall be made to the Purchase Price or to the delivery date, or to both. In the event of a change to any schedule, the Agreement shall be amended accordingly, in writing.

2.15 Maintenance of Supply

Subject to the terms of this Agreement, the Supplier shall supply the Goods to the Purchaser for the Term. If the Supplier anticipates any change in production that would affect the supply of the Goods, the Supplier shall provide at least 180 Days notice to the Purchaser before implementing any change.

2.16 New Technology

[Option 1]

The parties acknowledge that during the Term and, whether by reason of innovation or changes in practices or standards or technology or otherwise, some of the Goods may no longer be required by the Purchaser, the Specifications for some of the Goods may change, and both the Supplier and third parties may develop new goods with additional or superior features or functions which the Purchaser may wish to purchase. The parties shall regularly communicate with each other regarding such New Technology and shall discuss with the other in good faith the possibility of adding such New Technology and its pricing to the Goods and Prices Schedule or changing the Specifications in each case in accordance with the provisions of Section 2.14 (Changes to Schedules).

In the event that, after such discussions, a new good is not added to the Goods and Prices Schedule, for any reason whatsoever, including, without limitation, the failure of the Supplier to produce such new goods or failure of the parties to agree on pricing, delivery, features or functionality, the Purchaser reserves the right to enter into agreements to purchase such new goods from third party suppliers without penalty notwithstanding that such goods may be similar to or competitive with or improved versions of the Goods.

[OR Option 2 – includes the following three sections]

2.16.1 General

In the event that during the Term:

- (a) New Technology is introduced by the Supplier; or

[Agreement Health Goods Template]

- (b) the Purchaser becomes aware of New Technology provided or offered by another supplier

and the Purchaser is interested in using such New Technology in place of a Good or in connection with the Goods supplied under this Agreement, the Purchaser shall:

- (i) be entitled to evaluate any New Technology at any time during the Term **[Include as applicable, notwithstanding any exclusivity provisions in the Agreement]**;
- (ii) provide 120 Days' notice that the Purchaser is interested in using another good in place of a Good or in connection with the Goods and information about the New Technology;
- (iii) provide the Supplier the opportunity to supply, within the 120 Day notice period and thereafter during the Term, the New Technology or comparable goods, at the Purchaser's option, in lieu of or in addition to a Good, at a price satisfactory to the Purchaser and all other terms and conditions of this Agreement shall remain the same unless mutually agreed to in writing by the parties; and
- (iv) be afforded a reasonable opportunity to test and evaluate the New Technology proposed by the Supplier.

2.16.2 Failure to Provide

In the event the Supplier is unable or unwilling to provide the New Technology within the 120 Day notice period in accordance with Section 2.16.1 (General), the Purchaser, at its sole discretion and without liability or penalty:

- (a) may terminate this Agreement effective at the end of the 120 Day period;
- (b) may modify this Agreement, with the assistance of the Supplier, by deleting any Good(s) from the Agreement (such Goods being replaced by New Technology from some other source), and the Purchaser shall continue to purchase from the Supplier the other listed Good(s) under the terms and conditions of the modified Agreement; and
- (c) shall be relieved of any obligation to meet any stated volumes in this Agreement (provided that the volumes will be modified in accordance with mutually agreed upon terms).

To the extent that pricing is contingent upon meeting volumes, the parties will agree on modifications to volumes or pricing

2.16.3 Suitability of New Technology

In the event there is any dispute as to the suitability, in any respect, of any New Technology that the Supplier proposes that the Purchaser use to replace a Good or to use in connection with the Goods, the decision of the Purchaser shall govern.

2.17 Authorized Third Party Logistics Provider

[Optional – Use as applicable and amend the agreement accordingly]

The Authorized Third Party Logistics Provider performs a critical role in the efficient supply chain management of the Goods and supplies warehousing and distribution services to the Purchaser. As such, the Authorized Third Party Logistics Provider may provide a significant portion of the Releases to the Supplier for the provisioning of the Goods to the Purchaser. To facilitate such a role the Supplier agrees:

- (a) to provide to the Authorized Third Party Logistics Provider information with respect to any obligations under this Agreement that may be requested by the Authorized Third Party Logistics Provider for the efficient supply chain management of the Goods, including but not limited to the Goods, pricing, payment, and delivery;
- (b) that when the Authorized Third Party Logistics Provider issues a Release under this Agreement on behalf of the Purchaser, the Supplier shall provide to the Authorized Third Party Logistics Provider the pricing and other terms and conditions for the Goods afforded under this Agreement; and
- (c) to work with the Authorized Third Party Logistics Provider to streamline and maximize efficiency of the warehouse replenishment Release process. As warehousing and distribution services provided may involve other Purchaser customers, actions that may be required of the Supplier related to this could include but are not limited to harmonized acquisition costs, weighted average customer acquisition costs, or the provision of an Authorized Third Party Logistics unique customer number.

Article 3 Services

3.1 General

All services to be performed by the Supplier under this Agreement shall be performed by the Supplier in a good and workmanlike manner. The Supplier shall only employ and retain competent workers, fit and skilled in the work assigned to them, who shall function under the direction and control of the Supplier. The Supplier shall be responsible to the Purchaser for the acts and omissions of the Supplier's Personnel.

3.2 Training

3.2.1 General

The Supplier shall provide to the Purchaser the training specified in ***[Insert name of appropriate Schedule]***. Training may be provided directly by the Supplier's Personnel and/or any third party retained by the Supplier to provide such training, provided that applicable obligations of confidentiality are passed on to such third party. The Purchaser may chose to record all training sessions, provided that such recorded sessions shall be used solely by the Purchaser to train its own personnel. The cost of all of the training, including travel and accommodation for the Purchaser's personnel to attend such training course(s) at the Supplier's facilities, if necessary,

[Agreement Health Goods Template]

shall be borne by the Supplier. The Purchaser may request different types of training to be provided to different individuals, at no additional charge to the Purchaser.

3.2.2 Subsequent Training

[Optional Clause]

After the training has been completed, the Purchaser reserves the right to request, at the Purchaser's expense, the following:

- (a) additional follow-up training as reasonably required; and
- (b) technical and consultative support. Such support shall include, but shall not be limited to, support for and assistance with the resolution of any problem or difficulty with the operations of the Goods.

3.3 Service Support/Replacement Parts

[The provisions that follow under Sections 3.3 (Service Support/Replacement Parts) to 3.8 (Support) are optional. Ensure that Section 3.9 (Services and Support) of the RFP, and the questions set out in the Services and Support Schedule complement each other.]

3.3.1 Availability

The Supplier shall:

- (a) ensure that full service support and parts are available for a period of 7 years following the last date of production of the Goods and its accessories;
- (b) provide full access to telephone technical support, at no charge to the Purchaser, provided that the Goods remain in use by the Purchaser; and
- (c) without limiting the generality of Section 3.3.1 (a), provide the Purchaser with a 1 year written notification prior to the Goods parts no longer being available, and failing such notification, the Supplier shall provide the Purchaser sufficient notice to ensure that the Purchaser may purchase the parts that are no longer available.

3.3.2 Delivery

The Supplier shall deliver satisfactory new replacement parts within ***[Insert]*** Days from the time of order placement, or if requested by the Purchaser, the Supplier shall deliver rush-order replacement parts within ***[Insert]*** Days. All replacement parts must be OEM specified or as otherwise agreed to in writing and documentation to that effect shall be provided to the Purchaser when the parts are delivered or within 30 Days of delivery.

3.3.3 Costs

The Supplier shall supply and deliver spare parts to the Purchaser, at the Supplier's own expense, where the Purchaser makes a request for such spare parts within the Warranty Period.

[Agreement Health Goods Template]

The cost of parts and preventive maintenance kits outside the Warranty Period shall remain fixed for a period of ***[Insert]*** years from the expiry of the Warranty Period, at the price set at the Effective Date. Thereafter, yearly increases for replacement parts and preventive maintenance kits shall not exceed the yearly increase in the cost of living, as established by the published Canadian Consumer Price Index. The cost of any part and labour outside the Warranty Period shall be invoiced through a new purchase order.

3.3.4 Third Party Spare Parts

Notwithstanding the foregoing, the Purchaser shall be entitled to use for, or attach spare parts to, the Goods, which spare parts have not been obtained from the Supplier, but have been declared interoperable or acceptable by the Supplier. The use or attachment of such spare parts shall not invalidate the warranties set out in Section 5.1 (Supplier's Representations and Warranties) and Section 5.2 (Limited Goods Warranty), or any other warranty provided by the Supplier.

3.3.5 Alternative Arrangements and Obligations

The Supplier shall specify alternative arrangements available to minimize the downtime of the Goods. Delivery of any spare parts pursuant to this Agreement shall not relieve the Supplier of its obligation to repair and/or replace any defective Goods pursuant to Section 5.2 (Limited Goods Warranty).

3.4 Maintenance

3.4.1 Preventative Maintenance Schedule

Within 30 Days from the Effective Date, the parties shall agree on the details of the schedule for preventative maintenance services to be provided by the Supplier during the Warranty Period and any service contract that includes preventative maintenance.

3.4.2 Preventative Maintenance Post-Warranty

The parties shall agree on the timing to perform a complete evaluation of the preventative maintenance 30 Days before the end of the Warranty Period.

[Choose 1 of the following options]

The Supplier shall provide an optional 3 year service contract effective from the expiry of the Warranty Period or from the expiry of any warranty extensions, whichever occurs later, provided that the terms of the services provided shall be equivalent to the current service provisions.

[OR]

After the expiry of the Warranty Period, the Purchaser may, at its option, subscribe to the extended service plan, if any, offered by the Supplier, or if no such plan is offered by the Supplier, the Supplier shall, in good faith and upon request by the Purchaser, discuss with the Purchaser the establishment of a service agreement between the Purchaser and the Supplier for the provision of further support (including repair and/or replacement of the Goods and the

provision of spare parts) for the Goods for such period of time as the parties may agree upon. The terms of any such extended service plan or agreement shall be commercially reasonable.

3.5 Response Time to Malfunctions

At any time when the Purchaser is using the Goods, the Supplier's response to malfunctions shall be within ***[Insert]*** hours by telephone and within ***[Insert]*** hours on-site if the malfunction cannot be resolved over the telephone. In the event that a malfunction cannot be resolved within 24 hours of the initial telephone call, a working system of equal or superior performance, satisfactory to the Purchaser, shall be provided immediately or made available within 48 hours of the initial telephone call, at no charge to the Purchaser. During the Warranty Period, no charge shall be imposed by the Supplier for the services described in this provision.

[OR – Use the following option when it is not feasible for the Supplier to provide loaner goods.]

At any time when the Purchaser is using the Goods, the Supplier's response to malfunctions shall be within ***[Insert]*** hours by telephone and within ***[Insert]*** hours shipped to the Supplier's service location if the malfunction cannot be resolved over the telephone. During the Warranty Period, no charge shall be imposed by the Supplier for the services described in this provision.

3.6 Service Records

The Supplier shall submit to the Purchaser a detailed service report for any service work performed on the Goods. Such service report shall include the problem(s) identified, parts serviced or replaced, materials used, and any costs associated with the service. The labour and parts costs shall be itemized separately. The Supplier shall notify the Purchaser of any service visits made on-site.

3.7 Adjustments and Upgrades

3.7.1 Adjustments

Any additional hardware required due to an Adjustment shall be provided by the Supplier, at no charge to the Purchaser. During the Term, Adjustments shall be provided at no cost to the Purchaser, including delivery and installation. Any training associated with any Adjustments shall be provided at no charge to the Purchaser, unless otherwise agreed by the parties in writing.

3.7.2 Upgrades

Upgrades shall be chargeable and shall be made available to the Purchaser, regardless of the conditions of service selected by the Purchaser during the post Warranty Period. The Supplier shall notify the Purchaser in writing of any Upgrade as soon as it becomes available. Any training associated with any acquired Upgrade shall be provided at no charge to the Purchaser.

3.8 Support

3.8.1 Diagnostic Software

Prior to the expiry of the Warranty Period or the extended service period, the Supplier shall identify to the Purchaser any diagnostic software available to maintain, troubleshoot, and support the Goods that used by the Supplier's service representatives – to the extent that same are made commercially available.

3.8.2 Special Tools

Prior to the expiry of the Warranty Period or the extended service period, the Supplier shall, at no cost to the Purchaser, identify:

- (a) any special tools, jigs, or phantoms necessary for the testing or servicing of the Goods, including computer(s), software (including but not limited to the calibration software), and/or computer interfaces (and shall identify any new or updated special tools as new releases become available); and
- (b) what training courses are available in connection with the use of the foregoing;

to the extent that same are made commercially available.

3.8.3 Preventive Maintenance Kits

[Optional – Depending if PMKs are required.]

The Supplier shall provide:

- (a) an itemized list of all of the components that make up a preventive maintenance kit, to the extent that same are made commercially available;
- (b) a detailed procedure describing how to install a preventive maintenance kit, as well as a description of any other procedures that need to be completed at the time of the preventive maintenance kit installation; and
- (c) pricing on replacement preventive maintenance kits.

3.8.4 Third Party Services

The Supplier shall supply the Purchaser with any and all information to allow the Purchaser to service the Goods or have a third party service provider perform such service post-warranty, as the Purchaser may determine. The Supplier shall supply all service reports and service passwords allowing the Purchaser full access to any diagnostics included with the Goods and any other services required. The Supplier shall also respond to any inquiries placed by the Purchaser in association with the service work performed by the Supplier.

Where requested by the Supplier, the Purchaser shall sign a non-disclosure agreement, which it shall provide to the Supplier with all appropriate authorizations.

3.9 Supplier's Equipment

3.9.1 General

The Supplier shall supply all of its own equipment to meet its obligations under this Agreement, except as otherwise specified in this Agreement.

3.9.2 Installation

Written authorization must be received prior to the installation or attachment of any of the Supplier's or the Supplier's Personnel's equipment, software, or devices on or to equipment, software, or communications networks owned or leased by the Purchaser. In the event of any problem created by any such installation or attachment as referred to in this Section 3.9 (Supplier's Equipment), the Supplier shall be solely responsible for all repairs and services to correct such problem.

3.10 Application of Purchaser's Rules to Supplier's Personnel

All policies and procedures applicable to the employees of the Purchaser regarding their conduct in connection with the business and affairs of the Purchaser shall, insofar as the same shall be required by the Purchaser, be applicable to the Supplier and the Supplier's Personnel while on the Purchaser's premises. It is the responsibility of the Supplier's Personnel to familiarize themselves with all such policies and procedures, which the Purchaser shall provide to the Supplier prior to, or at the time of execution of the Agreement.

In the event that any of the Supplier's Personnel fails or refuses to abide by such policies and procedures, Supplier shall ensure that such person no longer performs any Services for the Purchaser, and such person may be removed from or not admitted to the Purchaser's premises. The Purchaser shall have no liability in connection with the foregoing.

If requested by the Purchaser, the Supplier shall, based on the Purchaser's internal hiring policies, provide a criminal background or security check of the Supplier's Personnel. The Purchaser may disallow admittance to any of the Supplier's Personnel to the Purchaser's premises where such person does not meet the Purchaser's security requirements.

3.11 Workers' Compensation

The Supplier shall make all payments required under the *Workplace Safety and Insurance Act* (Ontario), and under similar legislation in other jurisdictions, and shall indemnify and hold harmless the Indemnitees from any failure to comply. The Supplier shall provide the Purchaser with a certificate that the Supplier is in good standing under the relevant workers' compensation legislation.

3.12 Workplace Safety

The Supplier shall:

[Agreement Health Goods Template]

- (a) maintain a safe workplace or work site in accordance with safe work practices and housekeeping;
- (b) comply with the *Occupational Health and Safety Act* (Ontario) and all of its regulations pertaining to the type of work being performed;
- (c) have actual knowledge of, and comply with the Purchaser's safety policies and appropriate safe work procedures;
- (d) provide the necessary protective equipment, devices, or related safety item(s) as required by the *Occupational Health and Safety Act* (Ontario) and all of its regulations, as well as the Purchaser's safety policies, and ensure that such equipment, devices, and items are used in the performance of the requirements of the Agreement;
- (e) if requested, provide the Purchaser with a copy of the Supplier's written health and safety policy as required by the *Occupational Health and Safety Act* (Ontario); and
- (f) where applicable, provide product performance information relating to anti-microbial effectiveness, to be documented for the review and approval of the Purchaser and the Purchaser's infection control units.

3.13 Cleaning, Disinfecting and Sterilization

[Optional – Use this clause, only as applicable] For any Goods that are not intended to be single use, or any single-use Goods received unsterile and which requires sterilization prior to use, at the Effective Date, the Supplier shall submit to the Purchaser:

- (a) a letter from a senior officer of a quality, safety, regulatory, or compliance department or unit of the manufacturer of the Goods clearly stating the recommended validation process parameters for the specific Goods and/or a Scientific Validation Report that deals with the efficacy of the cleaning, disinfecting, and sterilization of the Goods, as applicable;
- (b) reprocessing instructions: step-by-step instructions on the cleaning, disinfecting, maintaining, sterilization, reprocessing, disassembly, and reassembly of the specific Goods;
- (c) for Goods sets containing multiple instruments: a picture of the Goods set contents and a catalogued list of the individual pieces of the Goods sets; and
- (d) for containerized sets: a letter and/or a Scientific Validation Report stating Goods consisting of multiple instruments can be sterilized as a set in the container provided and a catalogued list of the individual pieces of the containerized Goods sets.

3.14 Reports

3.14.1 Monthly Reports

The Supplier shall submit to the Purchaser, on a monthly basis and in a format satisfactory to the Purchaser, a written report by the 15th day of the following month containing the following information:

- (a) date of the report;
- (b) total volume per line item;
- (c) total dollar per line item;
- (d) back order;
- (e) length of backorder; and
- (f) a list of all Goods identified in the Agreement ordered by the Purchaser and the quantity ordered.

[List any other items that you need in a monthly report.]

3.14.2 Quarterly Reports

The Supplier shall, on a quarterly basis, submit to the Purchaser, in a mutually agreeable format, a written report containing the following information:

- (a) a list of all new goods that have been ordered by the Purchaser and supplied by the Supplier setting out the quantity ordered and the price charged; and
- (b) a copy of all documentation provided to the Purchaser by the Supplier with respect to the new goods.

3.14.3 Clarification

Upon request, the Supplier shall provide clarification on or additional information from the Supplier with respect to the report information.

3.14.4 Final Report

Promptly upon expiry of the Term or termination of this Agreement, the Supplier shall provide a final report to the Purchaser setting out:

- (a) the quantity of Goods ordered;
- (b) the quantity of Goods delivered;

[Agreement Health Goods Template]

- (c) the prices applicable to all such Goods during the period since the date of the last report to the date of the final delivery of the Goods; and
- (d) such other information relating to the Goods or this Agreement as the Purchaser may reasonably request.

3.15 Revisions to Goods

[The following provisions are optional, and apply to longer-term, supply arrangements.]

3.15.1 General

In the event that any new good has been ordered by the Purchaser and supplied by the Supplier, the Supplier shall, within 3 weeks from the anniversary date of the Effective Date, prepare and deliver a revised Goods and Prices Schedule, for the Purchaser to review. Such schedule will contain the following information

- (a) date;
- (b) complete Goods listing, separately identifying all new goods since the prior update of the Goods and Prices Schedule; and
- (c) prices of all the Goods including the new goods.

3.15.2 Finalization

The Purchaser shall review the revised Goods and Prices Schedule and inform the Supplier if any changes are required. The Supplier shall use its best efforts to ensure that any changes are made within 2 weeks of a request by the Purchaser. If the revised Goods and Prices Schedule is satisfactory, the parties shall sign the revised Goods and Prices Schedule and it shall replace the current Goods and Prices Schedule and become the Goods and Prices Schedule to the Agreement. The process set out in Section 3.15.1 (General) and 3.15.2 (Finalization) shall be repeated as applicable.

3.16 Loadsheets

[Optional]

The Supplier shall provide accurate and complete Loadsheets to the Purchaser as required by the Purchaser, including but not limited to, the unit of measure and identification of ***[Insert]*** commitments. The Supplier is responsible for collecting information for the Loadsheets from other sources as required. The Supplier shall provide the Loadsheets in a timely manner but no later than 5 Business Days prior to the actual date of the change.

3.17 Electronic Commerce and Global Standards

[Optional]

The Supplier confirms that it is able, or will obtain the capability within ***[Specify number]*** months of the date of this Agreement, to communicate and process transactions electronically via a mutually acceptable network and protocol. The details with respect to processing order types shall be set out in the Electronic Commerce and Global Standards Schedule (e.g., the types of electronic transactions, how electronic commerce will be facilitated and the cataloguing of goods).

Article 4 Prices and Payment

4.1 Purchase Price

Subject to the holdback provisions of the Construction Lien Act (Ontario) if applicable, to any adjustment pursuant to Section 2.14 (Changes to Schedules) ***[Optional – and Section 4.3 (Discount)]***, the Purchase Price for the Goods and any related services shall be the sum of ***[\$Insert]***, which shall be payable by the Purchaser to the Supplier, as follows:

- (a) ***[Insert]*** percent upon execution of this Agreement by both parties to this Agreement;
- (b) ***[Insert]*** percent upon delivery of all of the Goods to the Delivery Site(s);
- (c) ***[Insert]*** percent upon the issuance of the Acceptance Certificate; and
- (d) ***[Insert]*** percent ***[Insert]*** months after the date of issuance of the Acceptance Certificate.

[OR – In appropriate circumstances, such as where there are no milestone payments, the following can be used in place of the above for this section.]

Subject to any adjustment pursuant to Section 2.14 (Changes to Schedules) ***[Optional – and Section 4.3 (Discount)]***, the Purchase Price for the Goods and any related services shall be the sum of ***[\$Insert]***.

4.2 Invoicing

The Supplier shall submit invoices to the Purchaser for payment in accordance with Section 4.1 (Purchase Price). No additional or contrary term or condition, which may be contained in the Supplier's invoice, shall have any application to this Agreement. Invoices shall reference this Agreement number and shall contain a brief, point form narrative relating to the amounts set out in it.

[Where there are milestone payments, the following paragraph should be deleted.]

The Purchaser's payment term shall be net ***[Insert]*** Days, unless, within that period, the Purchaser, acting reasonably, gives notice to the Supplier that the Goods are not in accordance with the terms hereof in some material respect. ***[Specify: 30 Days or 60 Days or as applicable.]***

4.3 Discount

[Optional]

The Purchaser may deduct from the gross amount owing under an invoice, a discount equal to *[Insert the appropriate percentage %]* of such amount if the Supplier receives payment from the Purchaser of the net amount owing under such invoice within *[Insert the appropriate Days]* Days after receipt by the Purchaser of such invoice.

4.4 Taxes

As the Purchase Price is exclusive of all harmonized and local sales taxes, if any, each shall be clearly set out on the Supplier's invoice and paid by the Purchaser unless it provides evidence of exemption therefrom.

4.5 Delivery Costs

The Purchase Price is inclusive of all costs related to the delivery of the Goods to the Delivery Site(s) including, without limitation, all packing, boxing, cartage, freight, and insurance, brokerage, and all taxes, fees, and duties related thereto, except any applicable harmonized sales tax.

4.6 Other Costs and Expenses

The Purchaser shall not be responsible for any costs or expenses of the Supplier relating to this Agreement that are not set out at Section 4.1, including, without limitation, in respect of accommodation or travel, unless expressly agreed to by the Purchaser in writing. Notwithstanding any agreement by the Purchaser to additional costs or expenses, all expenses that are to be reimbursed or paid by the Purchaser must be in accordance with the Purchaser's rules with respect to travel, meal and hospitality expenses, as established under the Broader Public Sector Expenses Directive. For greater certainty, meals, hospitality and incidental expenses will not be reimbursed by the Purchaser.

Article 5 Representations, Warranties, Indemnities

5.1 Supplier's Representations and Warranties

[Use and add as applicable]

The Supplier represents and warrants to the Purchaser and acknowledges that the Purchaser is relying thereon, as follows:

- (a) all Goods shall be new and unused, unless agreed to in writing by the parties;
- (b) *[Use the following as applicable: "subject to the provisions of this Section 5.1 (Supplier's Representations and Warranties), at the time of installation"]* all Goods shall have received all required approvals of, and shall comply with, all applicable standards and requirements referred to in the Specifications or required by law, including,

[Agreement Health Goods Template]

but not limited to, the applicable approvals, standards or requirements referred to in this Section 5.1 (Supplier's Representations and Warranties), referred to in the documentation shipped with or provided for use with the Goods and those required by applicable Governmental Authorities;

- (c) ***[Use the following as applicable: "at the time of installation"]*** all electrical Goods shall be authorized or approved in accordance with the Ontario Electrical Safety Code, current as at the date of this Agreement, by a Certification Organization, accredited with the *Standards Council of Canada Act* (Canada), and shall bear the Certification Organization's mark which identifies goods certified for use in Canada. Certification shall be to the standard that is appropriate for the intended use of the Goods at the Purchaser's facilities;
- (d) both the Supplier and the Goods shall have received all applicable licensing under, and shall comply with, the *Food and Drugs Act* (Canada) and its regulations, unless exempted. All licenses shall remain valid for the duration of the Agreement and shall be provided upon request;
- (e) the Supplier shall provide documented evidence that the Goods meet the applicable standards or that the Supplier has the applicable licenses referred to in this Section 5.1 (Supplier's Representations and Warranties), the Specifications or by law;
- (f) on completion of the installation of the Goods at the Delivery Site(s), there shall be no liens outstanding in regard to such Goods or installation;
- (g) the Supplier has full power and legal right to enter into the Agreement and to fulfill all of its obligations hereunder, and title to all of the Goods shall pass to the Purchaser in accordance with the terms set out in the Agreement free and clear of all liens, claims, and encumbrances whatsoever;
- (h) the Supplier is not aware of any proceeding in progress or pending or threatened against, related to or affecting the Supplier which might be expected to have a materially adverse effect on the Goods or impact the Supplier's ability to meet its obligations under this Agreement;
- (i) all representations, warranties, confirmations, and statements set out in the Supplier's proposal/quotation and in this Agreement shall remain accurate in their entirety during the Term;
- (j) the Supplier recognizes that the Purchaser is working towards minimizing user and Purchaser personnel exposure to latex to reduce adverse reactions and to promote a latex safe environment and in that regard the Supplier shall provide the Purchaser with the following information, whether:
 - (i) the Goods contain any latex; and
 - (ii) the packaging of the Goods contains any latex;

[Agreement Health Goods Template]

- (k) the Supplier has disclosed whether mercury exists in the Goods; and
- (l) to the best of its knowledge, neither the Purchaser, the Purchasing Organization nor any of their respective personnel or affiliated organizations has any significant influence in the Supplier or any of its associates or affiliates, or will receive any direct or indirect proceeds from the Agreement other than as expressly stated in the Agreement.

5.2 Limited Goods Warranty

The Supplier represents and warrants to the Purchaser and acknowledges that the Purchaser is relying thereon, that, on delivery, *[Choose from: “and for a period of [to be inserted] months following the acceptance of the Goods by the Purchaser pursuant to Sections 2.9 (Delivery) and 2.10 (Rejection),” OR, where any Acceptance Test(s) is conducted: “and for a period of [to be inserted] months following the date that the Purchaser notifies the Supplier in writing that the Goods have been accepted as specified in Section 2.12 (Acceptance Test),”]* (the “Warranty Period”) the Goods shall:

- (a) conform to the applicable Specifications, samples, and descriptions approved by the Purchaser in all material respects, and be in good operating condition and free of defects in design, workmanship, and material;
- (b) operate in accordance with the published performance specifications for such Goods as contained in the Supplier’s product manuals delivered with such Equipment; and
- (c) operate in accordance with the Specifications (if used in accordance with the Supplier’s documentation which accompanies the Goods).

In the event that any of the Goods fail to perform in accordance with this limited product warranty, without limiting any other right under this Agreement or in law, the Supplier shall promptly repair or replace, at the Supplier’s option, those Goods or any part thereof.

5.3 Nature of Warranties

Except as expressly set forth herein, there are no other warranties or conditions, express or implied, including any warranty or condition of merchantability or fitness for a particular purpose, on any goods or services supplied to the Purchaser hereunder.

5.4 Indemnity

Subject to the limitation of liability set out in Section 5.5, the Supplier shall indemnify, defend (at its expense) and hold the Indemnitees harmless in respect of any action, claim, demand, cost, charge, losses, and expenses (including legal costs on a substantial indemnity basis), whether or not well-founded, (“Losses”) brought against or suffered by the Indemnitees arising out of or related to:

- (a) claims for bodily injury, including death, and claims asserted by third parties for bodily injury, including death;

[Agreement Health Goods Template]

- (b) claims for loss or damage to tangible property, and claims asserted by third parties for loss or damage to tangible property;
- (c) allegations that the operation or use of any Goods, or any part thereof, infringes any third party's copyright, trade secret, patent, or any other intellectual property right;
- (d) any breach or alleged breach by the Supplier of any of its obligations, warranties, or representations in the Agreement;
- (e) any and all Goods supplied by the Supplier pursuant to the Agreement, the use thereof or any alleged defect(s) therein, including, without limitation, any alleged inaccuracy or improper statement or claim or direction on the label or packaging thereof and all services performed under this agreement;
- (f) the Supplier's manufacturing or other operations; or
- (g) the sale or transportation of any Goods by the Supplier.

except to the extent that such Losses were not caused by the Supplier. The foregoing indemnity shall be conditional upon the Purchaser notifying the Supplier as soon as is reasonably practicable in the circumstances of any Losses in respect of which this indemnity may apply and of which the Purchaser has knowledge, and the Purchaser co-operating with the Supplier in the defence of any such claim or action. No such claim or action shall be settled or compromised by the Supplier without the Purchaser's prior written consent.

5.5 Limitation of Liability

5.5.1 Limitation of Liability

- (a) The limitation of liabilities in this Section shall not apply in respect of (i) any indemnities with respect to intellectual property, bodily injury or death; or (ii) damages arising from a breach of confidence or privacy.
- (b) In the event Supplier is liable to Purchaser in respect of any claim against Supplier whether based in contract, tort (including negligence), or otherwise, including breach by Supplier of any of its obligations under this Agreement (whether or not a fundamental breach), Purchaser' damages shall be limited to payment of no more than:
 - (i) in relation to harm to tangible personal property and real property caused by Supplier or its agents negligence, wilful or intentional acts the greater of (1) **[\$Insert]**, and (2) the total amount of fees paid by Purchaser under this Agreement during the immediately preceding **[Insert]** year period up to the point in time when actual and direct damages were incurred by Purchaser; or
 - (ii) in relation to any other matter not otherwise excluded from this limitation on liability, the greater of (1) **[\$Insert]**, and (2) the total amount of fees paid by Purchaser under this Agreement during the immediately preceding **[Insert]** year

period up to the point in time when actual and direct damages were incurred by Purchaser.

- (c) The parents, affiliates, subsidiaries, directors, officers, employees, agents, representatives, subcontractors and suppliers of a party shall be deemed to be included as part of such party for purposes of this Section 5.5.1.

5.5.2 Indirect Damages

Other than in connection with Section 5.4(a), Section 5.4(c) and Section 7.12, the Supplier shall assume no liability for special, indirect, incidental or consequential damages arising in connection with this Agreement, even if advised of the possibility thereof, including, but not limited to, lost profits, lost business revenue, failure to realize expected savings, other commercial or economic losses of any kind, or for any claim against Purchaser. ***[Consider whether the type of damages to be protected against in the particular procurement could be considered an 'indirect' damage. Since there is often some doubt in this area, it is highly advisable to describe expressly in Section 5.4 (Indemnity), above, what is intended to be covered. That way, it will be treated as 'direct' damages.]***

5.6 Injunction Against Continued Use of Goods

In the event that an injunction or order is obtained against the Purchaser's use of any Goods or if, in the Supplier's opinion, any Goods are likely to become the subject of a claim of infringement or violation of any intellectual property right (including, but not limited to, patent, copyright, trade secret, trade name, trade-mark or a proprietary right of a third party), the Supplier shall, at its expense:

- (a) procure for the Purchaser the right to continue using the affected Goods; or
- (b) modify or replace the affected Goods so that such Goods become non-infringing, but only if the modification or replacement does not materially affect the Goods or its use by the Purchaser; or
- (c) if neither Section 5.6(a) nor Section 5.6(b) are commercially practicable, remove the affected Goods from the Purchaser or its logistics provider and unconditionally refund and pay to the Purchaser all amounts paid to the Supplier by the Purchaser in respect of such Goods. The remedies in this Section 5.5 (Injunction Against Continued Use of Goods) are in addition to the indemnification rights of the Purchaser stated in Section 5.4 and any other remedy available to the Purchaser at law or in equity.

Article 6 Term and Termination

6.1 Term

[Use as applicable.]

This Agreement shall come into force on the Effective Date and shall expire, unless terminated earlier in accordance with the provisions of the Agreement, when all other Supplier obligations

[Agreement Health Goods Template]

under the Agreement have been met to the satisfaction of the Purchaser and the Purchaser has made all of the payments required under the Agreement (the “**Term**”). The Term is subject to any and all rights of either party to terminate the Agreement pursuant to the terms of the Agreement, or otherwise available to either party at law or in equity.

[OR – Use this paragraph in place of the above paragraph when there is a fixed Term.]

This Agreement shall become effective on the Effective Date, and shall expire on ***[Inserted date]*** unless it is terminated early in accordance with the provisions of the Agreement (the “**Term**”). The Term is subject to any and all rights of either party to terminate the Agreement pursuant to the terms of the Agreement, or otherwise available to either party at law or in equity.

6.2 Extension

[Optional – If the Goods were acquired in a RFP process, the following option is only to be used if there is a fixed Term and the RFP document allowed for such an extension.]

The Purchaser, in its sole discretion, may extend the Term for an additional period of ***[Insert the extension period]*** months by giving written notice to the Supplier prior to the commencement of the extension period upon the same terms and conditions.

6.3 Termination by Either Party

Either party may, without liability, cost or penalty, terminate the Agreement on written notice to the other where such other party neglects or fails to perform or observe any material term or obligation of the Agreement and such failure has not been cured within 30 Days of written notice being provided.

6.4 Termination by Purchaser

The Purchaser shall be entitled to terminate the Agreement, without liability, cost, or penalty:

- (a) on written notice to the Supplier where the Supplier: (i) makes any general assignment for the benefit of creditors or otherwise enters into any composition or arrangement with its creditors; (ii) has a receiver and/or manager appointed over its assets or makes an application to do so; (iii) becomes bankrupt or insolvent or commits an act of bankruptcy or takes or attempts to take advantage of any law or statute for the relief of bankrupt or insolvent debtors; (iv) has a resolution or a petition filed or an order made for its winding up; or (v) ceases to carry on business. Notwithstanding the foregoing, the Purchaser shall not be entitled to terminate this Agreement under this Section if the Supplier, or its creditors, or some other party makes suitable provisions for the performance of its obligations hereunder;
- (b) on ***[Insert]*** ***[Days]*** written notice to the Supplier, following the occurrence of any material change in the Purchaser’s requirements which results from regulatory or funding changes or recommendations issued by any Governmental Authority;

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- (c) on written notice to the Supplier if the Supplier breaches in any material respect any of its obligations or covenants hereunder with respect to confidential information or privacy;
- (d) in the event of a material breach of any of the provisions of Section 5.1 (Supplier's Representations and Warranties) (including no conflict of interest), if such breach is not cured within 90 Days of Purchaser giving written notice of such material breach to the Supplier; and
- (e) as per any provision of the Agreement that provides for early termination.

6.5 No Limitation of Remedies

Any termination of the Agreement shall not in any respect limit any of either party's rights or remedies either in law or in equity or relieve either party of any obligation incurred prior to the effective date of such termination.

6.6 Survival

In addition to any other provision dealing with the survival of obligations hereunder, all of the obligations regarding confidentiality, privacy, Intellectual Property Rights, indemnifications, disclaimers and limitations on liability set out in this Agreement shall survive the expiry or termination of this Agreement, as shall all any other provisions which, by their nature, ought reasonably to survive expiry or termination.

Article 7 General

7.1 Liability Insurance

[No Goods should be delivered until the Purchaser is in receipt of a satisfactory certificate, as set out below or as per the insurance broker's instructions. The following are sample provisions only and may not be appropriate in all cases. As such, these provisions need to be customized for each specific procurement and the limitations of liabilities/amounts set out below ascertained from the appropriate sector insurance broker.]

7.1.1 Supplier's Insurance

The duration of each policy shall be from the Effective Date until termination of the Agreement. The Supplier hereby agrees to put in effect and maintain insurance for the Term, at its own cost and expense, with insurers having a secure A.M. Best rating of B + or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person in the business of the Supplier would maintain including, but not limited to, the following comprehensive commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than ***[Insert amount]*** per occurrence, ***[Insert amount]*** aggregate. The policy shall include, but not be limited to, the following:

- (a) the Purchaser as an additional insured with respect to liability arising in the course of performance of the Supplier's obligations under, or otherwise in connection with, the Agreement;

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- (b) products and completed operations;
- (c) contractual liability coverage;
- (d) cross-liability clause;
- (e) 30 Day written notice of cancellation, termination, or material change; and
- (f) owned and non-owned automobile coverage with blanket contractual coverage for hired automobiles.

7.1.2 Proof of Insurance

On the Effective Date and upon the placement, renewal, amendment, or extension of any part of the insurance, the Supplier shall provide the Purchaser with confirmation of coverage and, if requested, a certificate of insurance certified by an authorized representative of the insurer.

7.1.3 Additional Insurance

It shall be the sole responsibility of the Supplier to determine what additional insurance coverage, if any, shall be necessary and advisable for its own protection and/or to fulfill its obligations under the Agreement. Any such additional insurance shall be provided and maintained by the Supplier at its own expense.

7.2 WHMIS

Prior to the initial shipment of Goods hereunder, the Supplier shall provide the Purchaser with, and during the Term the Supplier shall provide and continuously update the Purchaser with, a list of all Goods containing hazardous materials, or any physical agents or devices or equipment producing or emitting physical agents or any substance, compound or product that is deemed to be or contains a designated substance under the *Occupational Health and Safety Act* (Ontario). In accordance with the Workplace Hazardous Materials Information System (WHMIS) Regulation, the Supplier shall provide the appropriate Material Safety Data Sheets, including all updates, during the Term. All Material Safety Data Sheets documentation shall be provided to the Purchaser in a format requested by the Purchaser.

7.3 Alerts and Safety Notifications

In the event that any alert, recall, safety notification, advisory, or warning is issued or communicated, at any time, by the Supplier or the manufacturer of the Goods or a Canadian recognized reporting agency involving any of the Goods or is posted on a government or authorized web site, including but not limited to the Health Canada web site, the Supplier shall:

- (a) communicate the alert, recall, safety notification, advisory, or warning by the most expedient method based on the severity of the alert, recall, safety notification, advisory, or warning to the Purchaser in accordance with the notice provisions set out in Section 7.10 (Notices) save and except that the communication shall be to ***[Insert]***;

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- (b) follow any applicable protocols and requirements authorized by a Governmental Authority;
- (c) honour all applicable warranties; and
- (d) if the Goods are outside the Warranty Period and there is a design defect in the Goods, the Supplier shall work with the Purchaser to take all steps necessary to remedy the situation in a way that is acceptable to the Purchaser acting reasonably.

The Supplier shall also inform the Purchaser of any possible design defect or malfunction condition with the Goods, or goods substantially similar to the Goods, at its earliest possible opportunity after the Supplier becomes aware of the existence of such a defect or malfunctioning condition, but in no event later than as required by applicable law.

7.4 Government or Regulatory Actions

Where any governmental or regulatory authority having jurisdiction requires the Purchaser or the Supplier to recall or cease using any Goods, the Purchaser or the Supplier, as the case may be, shall promptly notify the other of such decision or requirement providing all relevant particulars.

In the case of any recall, seizure, or requirement to cease using any of the Goods by any Governmental Authority having jurisdiction, the Supplier, without limiting the Purchaser's rights or remedies, shall be provided the opportunity to provide the Purchaser with corrective action satisfactory to the Purchaser, as follows:

- (a) replace or repair the Goods and deliver replacement or repaired Goods to the Purchaser, which is satisfactory to the Purchaser; and
- (b) honour all applicable Goods warranties.

In any event, the Supplier shall defend, indemnify, and hold the Indemnitees harmless from and against all damages, liabilities, and costs including legal costs on a substantial indemnity basis, arising from or related to such recall, seizure, or order to cease using, to the extent that such loss was caused by the Supplier.

The responsibility of the Supplier under this provision shall also apply in the case where any Canadian Governmental Authority issues an order to seize the Goods (for example, where the Supplier failed to take the required corrective action and/or the licence of the Goods was revoked).

For clarity, the responsibility of the Supplier to replace or repair the Goods do not apply where the Purchaser decides, in its sole discretion, to cease using the Goods due to health or safety concerns and those concerns have not led to the request by the Canadian Governmental Authority that the Supplier take appropriate action to correct or to cease using the Goods.

7.5 Customs

All commercial customs documents, including but not limited to commercial invoices, Canada Customs Invoices, and bills of lading, as applicable, shall be fully and satisfactorily completed in accordance with the Canada Border Services Agency (“**CBSA**”) requirements. The Supplier shall obtain from the Purchaser and show the following information on the relevant commercial documents in a clearly visible manner: the Purchase Order Number or the department name of the Purchaser purchasing the Goods. Goods eligible for duty free entry into Canada according to NAFTA shall be accompanied by a fully completed NAFTA Certificate of Origin (also referred to as a Statement of Origin), stamped or printed. Penalties assessed by CBSA due to incomplete, inaccurate, or missing information on a commercial customs document shall be the responsibility of the Supplier, shall be charged to and paid by the Supplier or shall be deducted from any payment owing to the Supplier.

7.6 Compliance with Laws

The Supplier shall comply with all federal, provincial, and local laws, regulations, and orders in fulfilling its obligations under the Agreement.

7.7 Remedies Cumulative

The rights and remedies of the parties under this Agreement are cumulative, and are in addition to and not in substitution for any other rights or remedies provided in the Agreement, by law or in equity. Any single or partial exercise by a party of any right under this Agreement, or any failure to exercise or delay in exercising any such right, shall not be or be deemed to be a waiver of, or to prejudice any other rights or remedies to which such party may be entitled.

7.8 Force Majeure

7.8.1 General

Except as expressly provided otherwise in the Agreement, dates and times by which a party is required to render performance under this Agreement shall be postponed to the extent and for the period of time that such party is prevented from meeting such dates and times by an Event of Force Majeure.

7.8.2 Purchase of Goods

The Purchaser shall not be obligated to purchase the Goods in the event that the needs of the Purchaser change due to any Event of Force Majeure, provided that the Purchaser promptly advises the Supplier where the Purchaser’s needs change.

7.8.3 Notice

Where an Event of Force Majeure occurs, the party who is delayed or fails to perform shall give prompt notice to the other party.

7.8.4 Performance

Such party must use reasonable commercial efforts to render performance in a timely manner utilizing to such end all resources reasonably required in the circumstances, including obtaining supplies or services from other sources if the same are reasonably available.

7.8.5 Right to Terminate

In the event such inability to perform shall continue longer than *[Insert]* Days, the party which has received or which was entitled to receive notice pursuant to Section 7.8.3 (Notice) may terminate the Agreement by notice to the other party without further liability, expense, or cost of any kind.

7.9 Alternative Dispute Resolution

[Consider where ADR should exclude the possibility of litigation in all cases.]

7.9.1 General

Should any party default in respect of or contravene any portion of the Agreement, the parties agree to address the breach or dispute through Alternative Dispute Resolution. Before pursuing this Alternative Dispute Resolution, the parties shall have first escalated the dispute to the highest level of management within their respective organization and given at least *[Insert]* Days for such highest level of management to resolve the matter prior to incurring costs under this Section 7.9 (Alternative Dispute Resolution). Subject to the provisions of the Agreement, each party shall continue performing its obligations during the resolution of any dispute, including payment of undisputed amounts then due.

The arbitration procedures in this Section 7.9 (Alternative Dispute Resolution) shall not (i) apply to claims by third parties, or (ii) prevent either party from seeking an injunction or other equitable relief from a court in order to protect its intellectual property rights or its confidential information.

7.9.2 Election

If elected by a party, any breach or claim arising out of or relating to this Agreement or the breach thereof, may be settled by arbitration in accordance with the applicable Ontario arbitration legislation and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

7.9.3 Arbitration Site

The arbitration shall be held at *[Insert city name]* or at such other site mutually determined by the parties. Where the parties are unable to agree upon an arbitrator who is willing to serve within 45 Days of receipt of a demand to arbitrate by a party, then the *[Insert]* shall appoint an arbitrator willing to serve.

7.9.4 Procedure

Subject to the provisions of this Section 7.10 (Notices), the arbitrator shall determine the procedure for the arbitration. Such procedure shall include at least one opportunity for written submissions by or on behalf of each party and may include proceedings by way of exchange of oral argument, hearings with or without witnesses, and such other procedures as the arbitrator deems appropriate. The arbitrator shall have no power to amend the provisions of the Agreement.

7.9.5 Decision

The arbitrator shall not award either party punitive damages and the parties shall be deemed to have waived any right to such damages. The decision shall be in writing and judgment upon the award by the arbitrator may be entered into any court having jurisdiction. Prompt handling and disposal of the issue shall be important. Accordingly, the arbitrator is instructed to assume adequate managerial initiative and control over discovery and other aspects of the proceeding to schedule discovery and other activities for substantially continuous work, thereby expediting the arbitration as much as is deemed reasonable to the arbitrator, but in all events, to effect a final award within 45 Days of the arbitrator's selection or appointment and within 10 Days of the close of evidence.

7.9.6 Confidential Information

The proceedings shall be confidential and the arbitrator shall issue appropriate protective orders to safeguard both parties' confidential information. The arbitrator shall have the right, but not the obligation, to order that the losing party pay the fees of the arbitrator, which shall be designated by the arbitrator. If the arbitrator is unable to designate a losing party or does not order the losing party to pay all such fees, the arbitrator shall so state, and the fees shall be split equally between the parties.

7.9.7 Termination Clauses not Subject

Notwithstanding the above, the termination clause provisions as set out in Sections 6.3 (Termination by Either Party) and 6.4 (Termination by Purchaser) shall not be subject to Alternative Dispute Resolution.

7.10 Notices

7.10.1 General

Subject to the provisions of Section 7.3 (Alerts and Safety Notifications) and the Information Practices Schedule, any notice, demand, request, consent, approval, or acceptance required or contemplated to be given or made hereunder (a "**notice**"), shall be in writing and shall be sufficiently given or made if:

- (a) delivered in person and left with a receptionist or other responsible employee of the relevant party at the applicable address set forth on the first page hereof ;

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- (b) sent by prepaid registered post addressed to the address set forth on the first page hereof;
or
- (c) sent by any electronic means of sending messages, including facsimile transmission, which produces a paper record (in this Section an “**Electronic Transmission**”) during normal business hours on a Business Day charges prepaid **[and confirmed by prepaid registered post]**
 - (i) in the case of the Supplier, to ***[Insert facsimile number and email address];***
 - (ii) in the case of the Purchaser, to ***[Insert facsimile number and email address];***

Each notice sent in accordance with this Section shall be deemed to have been received:

- (d) on the day it was delivered or on the first Business Day thereafter if it was delivered after 5:00 p.m. or if the day on which it was delivered was not a Business Day;
- (e) on the fifth (5th) mail delivery day following the day on which it was posted; or
- (f) on the first Business Day after it was sent by Electronic Transmission.

7.10.2 Changes

Either party may change its address for notice by giving notice to the other party (as provided in this Section 7.10). A party must always provide an address for notice to which notices can be personally delivered.

7.11 Publicity

Each party agrees that the terms of this Agreement are confidential. Neither party shall in any of its advertising or otherwise indicate that it has supplied or purchased or may in the future supply Goods under this Agreement without the express prior written consent of the other party. No acquisition or use of the Goods by the Purchaser shall be construed as an endorsement or approval of such Goods.

7.12 Confidentiality

7.12.1 General

The parties agree that any information concerning the business or affairs of the other party or its directors, officers, agents, employees, clients, patients, and physicians, as applicable, about which the other party becomes aware of in the course of the Supplier supplying and installing the Goods shall:

- (a) be treated as confidential;

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- (b) not be disclosed to any third party or to the Supplier's Personnel or the Purchaser's staff except as may be required in order for the Supplier or the Purchaser, as the case may be, to meet its obligations under this Agreement; and
- (c) not be used for any purpose other than that contemplated by this Agreement and for the benefit of the other party.

The parties agree that any combination of information which includes such information shall be treated as confidential even if individual parts thereof are not confidential. The parties shall use all reasonable efforts to keep such information confidential, using a standard of care no less than the degree of care that the recipient would be reasonably expected to employ for its own confidential information. The parties shall ensure that all recipients of the said information, including the Supplier's Personnel or the Purchaser's staff, assume obligations identical in principle with those which the parties assume under this Section.

In the event a party is required by any applicable law to make disclosure of any such information, the party required to make disclosure shall consult with the other party in advance to the extent reasonably practicable as to the contents and timing of such disclosure in order for the other party to have the opportunity to prevent the disclosure of such confidential information or to obtain a protective order or other remedy. If such protective order or other remedy is not obtained, the disclosing party shall produce only that portion of the confidential information that it is ordered to disclose. In the event that any confidential information is disclosed pursuant to the foregoing, it shall not lose its confidential status through such disclosure.

7.12.2 Exceptions

While neither party shall disclose any confidential information of the other, it shall not constitute a breach of the obligations hereunder if such confidential information was:

- (a) already in the public domain or becomes known within the public domain from no breach of such party;
- (b) already known to such party at the time of disclosure;
- (c) independently developed by the party without reference to or use of the information;
- (d) lawfully received by the party from a third party; or
- (e) made public with the prior consent in writing of the other party.

7.12.3 FIPPA Records and Compliance

The Supplier and the Purchaser acknowledge and agree that FIPPA applies to and governs all Records and may require the disclosure of such Records to third parties. Furthermore, the Supplier agrees:

- (a) to keep Records secure;

[Agreement Health Goods Template]

- (b) to provide Records to the Purchaser within 7 Days of being directed to do so by the Purchaser for any reason including an access request or privacy issue;
- (c) not to access any Personal Information unless the Purchaser determines, in its sole discretion, that access is permitted under FIPPA and is necessary in order to provide the Goods;
- (d) not to directly or indirectly use, collect, disclose, or destroy any Personal Information for any purposes that are not authorized by the Purchaser;
- (e) to ensure the security and integrity of Personal Information and keep it in a physically secure and separate location safe from loss, alteration, destruction, or intermingling with other records and databases and to implement, use, and maintain the most appropriate products, tools, measures, and procedures to do so;
- (f) to restrict access to Personal Information to those of its directors, officers, governors, employees, agents, partners, affiliates, volunteers, or subcontractors who have a need to know it for the purpose of providing and installing the Goods and who have been specifically authorized by the Purchaser to have such access for the purpose of providing and installing the Goods;
- (g) to implement other specific security measures that in the reasonable opinion of the Purchaser would improve the adequacy and effectiveness of the Supplier's measures to ensure the security and integrity of Personal Information and Records generally;
- (h) that any confidential information supplied to the Purchaser may be disclosed by the Purchaser where it is obligated to do so under FIPPA, by an order of a court or tribunal or pursuant to a legal proceeding;

and the provisions of this paragraph shall prevail over any inconsistent provisions in the Agreement.

7.12.4 Information Practices

The Supplier, for the purposes of this Agreement, as an agent of the Purchaser, pursuant to Section 2 of the *Personal Health Information Protection Act, 2004* (Ontario), has reviewed and agrees to abide by the Purchaser's Information Practices set out in the Information Practices Schedule to the extent they are applicable to it.

7.13 Property of the Purchaser

All schematics, drawings, blueprints, Specifications, and other information and documentation, which may be provided by the Purchaser to the Supplier in connection with this Agreement, shall remain the property of the Purchaser.

7.14 Entire Agreement

This Agreement, together with the RFP, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, and discussions, whether written or oral and whether between the Supplier and the Purchaser or between the Supplier and the Purchasing Organization. There are no conditions, covenants, agreements, representations, warranties, or other provisions, expressed or implied, collateral, statutory, or otherwise, relating to the subject matter hereof except as provided herein.

[Depending on the Purchasing Organization's relationship with the Purchaser and if the Purchasing Organization has been involved, use the following sentence, if applicable.]

The Supplier acknowledges that Purchasing Organization has no authority to assume or create any obligation whatsoever, express or implied, in the name of or on behalf of the Purchaser with respect to this Agreement.

7.15 Time of Essence

Time shall be of the essence of this Agreement.

7.16 Assignment and Enurement

This Agreement shall enure to the benefit of and shall be binding on and enforceable by the parties and their respective successors and permitted assigns. Neither party may assign or subcontract any of its rights or obligations hereunder without the prior written consent of the other party. Any act in derogation of the foregoing shall be null and void. For the purposes of this Agreement, the transfer or issuance of shares by the Supplier of more than fifty per cent (50%) of the voting securities of the Supplier to any entity or entities other than to an affiliate (as such term is defined in the Business Corporations Act (Ontario)) or the shareholder or shareholders of the Supplier as of the date of this Agreement, whether or not such transfer or issuance of voting securities takes place in one or more transactions, shall, for the purposes of this Agreement, be deemed to be an assignment of this Agreement requiring the consent of the Purchaser, unless such transfer or issuance of shares is made pursuant to an initial public offering of common shares under the Securities Act (Ontario).

7.17 Amendment and Waivers

This Agreement may not be amended or modified in any respect except by written instrument signed by both parties, provided that the Purchaser may make changes to the attached schedules as set forth in Section 2.14 (Changes to Schedules). No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver constitute a continuing waiver unless otherwise provided.

7.18 Independent Parties

This Agreement does not create a relationship of principal and agent or employer and employee between the Purchaser and the Supplier and under no circumstance shall either party be

considered the agent of the other. The Supplier shall have no authority to assume or create any obligation whatsoever, express or implied, in the name of or on behalf of the Purchaser.

7.19 Currency

Unless otherwise indicated, all dollar amounts expressed in the Agreement are in Canadian currency.

7.20 Legislation

Where a statute is referred to in the Agreement, such statute shall be interpreted to include all of its related regulations, as may be amended from time to time.

7.21 Governing Laws

This Agreement shall be interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the laws of the Province of Ontario, except that such Province's conflict of laws rules and the *United Nations Convention on Contracts for the International Sale of Goods* shall not apply to this Agreement. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Province of Ontario and the courts competent to hear any appeal.

The parties hereby execute the Agreement, which is made as of the Effective Date.

(Name of Purchaser)

(Name of Supplier)

(Authorized Signature)

(Authorized Signature)

Name (Print)
Title (Print)
I have the authority to bind the
Purchaser.

Name (Print)
Title (Print)
I have the authority to bind the Supplier.

(Date)

(Date)

Goods and Prices Schedule

Supplier's Proposal Schedule

Specifications Schedule

Information Practices Schedule

Collection, Use, and Disclosure of Personal Health Information

1. The Supplier agrees to receive PHI from the Purchaser in accordance with the requirements of s. 17 or, in the case of health information network providers, s. 10(4) of the *Personal Health Information Protection Act, 2004* (Ontario) (PHIPA) and its related regulations, as part of the Supplier's provision of services to and on behalf of the Purchaser, and not on the Supplier's behalf or for the Supplier's own purposes.
2. For greater specificity pursuant to the Supplier's obligations under Section 1 of this Information Practices Schedule, in the event that the Supplier is a health information network provider under PHIPA, the Supplier will provide the Purchaser with a Privacy Impact Assessment and a Threat Risk Assessment with respect to the services to be provided to the Purchaser pursuant to the Agreement.
3. The Supplier will only use as much PHI as is reasonably necessary to perform its obligations under the Agreement and will make PHI available only to those employees who require access in order to satisfy those obligations.
4. The Supplier will only use and disclose any PHI it receives from the Purchaser as is permitted or required under the Agreement or the laws of Canada and/or the province of Ontario.
5. The Supplier will ensure that any of its agents or subcontractors to whom the Supplier provides the Purchaser PHI has agreed in writing to the same restrictions and conditions that apply to the Supplier with respect to PHI.
6. The Supplier will not disclose PHI, or any information, to any affiliated or unaffiliated third party without the prior written consent of the Purchaser.
7. The Supplier will maintain a log of access and disclosure of PHI by the Supplier and the Supplier's Personnel and make such log available to the Purchaser as and when requested.

Practices to Protect Personal Health Information

8. The Supplier will employ appropriate safeguards to prevent theft, loss, and unauthorized access, copying, modification, use, disclosure, or disposal of PHI. ***[If information management services are part of the Agreement use the following: Without limiting the generality of the foregoing, the Supplier will take reasonable steps to ensure that all PHI from the Purchaser is securely segregated from any information owned by the Supplier or third parties, including access barriers, physical segregation, and password authorization.]***

[Agreement Health Goods Template]

9. The Supplier will maintain privacy policies in accordance with Canadian and Ontario laws and these policies will be made available for inspection on request.
10. The Supplier will educate its employees on privacy laws and policies and take reasonable steps to ensure employee compliance through staff training, confidentiality agreements, and employee sanctions.
11. The Supplier will ensure that all employees who have access to PHI from the Purchaser have undergone screening that includes reference checks.
12. The Supplier will ensure that its employees who are fired, resign, or no longer require access to PHI from the Purchaser return all PHI to the Purchaser and can, thereafter, no longer access applications, hardware, software, network, and facilities belonging to either the Supplier or the Purchaser.
13. The Supplier will revoke any user's access to PHI if security is breached and on the Purchaser's reasonable request.
14. At the termination of the Agreement, the Supplier will return or destroy all PHI received from, created, or received by the Supplier on behalf of the Purchaser that the Supplier maintains custody of in any form and will retain no copies of PHI thereafter. The Supplier will certify to the Purchaser that all such PHI has been returned or destroyed, as the case may be. If such return or destruction of PHI is not feasible, the Supplier will notify the Purchaser of this fact, extend the protections of the Agreement to all PHI in its custody and will cease all further uses and disclosures.

Notification of and Communication with the Purchaser

15. The Supplier will provide the Purchaser with the name of a contact person at the Supplier's organization responsible for the Supplier's privacy compliance and notify the Purchaser within 24 hours of any changes in the identity of the responsible person.
16. The Supplier will provide notice to the Purchaser's Privacy Office if the nature of the Supplier's business and the services being provided to the Purchaser require that the Purchaser PHI must be transmitted or access be provided to any of the Supplier's Personnel or to any facility situated outside of Ontario. When providing notice, please specify where outside of Ontario the PHI will be transmitted or from where it will be accessed. The Purchaser's Privacy Office can be notified as follows:

[Insert Contact Information as appropriate]

17. The Supplier will report to the Purchaser's Privacy Office at the Supplier's first reasonable opportunity, but in any event no more than 48 hours after the Supplier becomes aware of any use, disclosure (including being legally compelled), theft, or unauthorized access of PHI by the Supplier or any of the Supplier's agents or subcontractors to whom the Supplier provide the Purchaser PHI.

[Agreement Health Goods Template]

18. The Supplier will refer anyone trying to access, correct, or complain about their PHI to the Purchaser's Privacy Office within 48 hours of receiving the complaint or request for access or correction. The Supplier will cooperate with and assist the Purchaser in the management of any such request for access or correction or complaint.
19. The Supplier will, upon request, make PHI available to the Purchaser for amendment and incorporate any amendments into the Supplier's records of PHI. During the Term, the Supplier may never deny the Purchaser access to its patients' PHI.
20. The Purchaser reserves the right to: inspect any equipment used or records maintained by the Supplier in connection with the provision of goods or services; question the Supplier's Personnel regarding their handling of PHI; and otherwise audit and electronically verify compliance with these practices.

Additional Purchaser Rights

21. Notwithstanding anything else contained in the Agreement, the Supplier authorizes, acknowledges, and accepts termination without notice of the Agreement by the Purchaser in the event that the Purchaser determines the Supplier has violated any of these practices.
22. All of the privacy terms provisions in this Information Practices Schedule survive the termination of the Agreement.
23. The Purchaser reserves the right to go to court to obtain an order stopping or preventing the Supplier from violating the privacy terms in this Information Practices Schedule. The Supplier acknowledges that any breach of these practices will result in the Purchaser suffering irreparable harm.

Electronic Commerce and Global Standards Schedule

[Sample Text 1]

Electronic Commerce Capability

The Supplier confirms that it is able, or will obtain the capability within *[Specify number]* months of the date of this Agreement, to communicate and process transactions electronically via a mutually acceptable network and protocol. The details with respect to processing order types shall be set out in an attachment to this Electronic Commerce and Global Standards Schedule (e.g., the types of electronic transactions, how electronic commerce will be facilitated and the cataloguing of goods).

Facilitation of Electronic Commerce

In an effort to facilitate and promote electronic commerce the Supplier shall:

- (a) adopt comprehensive and consistent numbering and naming conventions for the description of the Goods and will utilize these numbering and naming conventions in loading their items to the *[Insert name]* catalogue; and
- (b) ensure that these numbering and naming conventions are reflected consistently on its Purchaser packaging, packing slips, and invoices.

Cataloguing Goods

Each Supplier, when communicating and processing electronic transactions, shall:

- (c) display its complete catalogue of Goods, covered by this Agreement, in the *[Insert name]* catalogue and will update their items in the *[Insert name]* catalogue as frequently as is needed to maintain accurate and reliable data, but no less than once per month; and
- (d) classify its goods using UNSPSC standard coding and include this information in its catalogues.

[Sample Text 2]

7.21.2 Electronic Commerce Capability

The Supplier has the capability, or will obtain the capability within *[Specify number]* months of the date of this Agreement, to communicate and process transactions electronically. The Purchaser has the capability to process the following electronic commerce transaction types: purchase orders (EDI 850), purchase order acknowledgements (EDI 855), advance shipment notifications (EDI 856), electronic invoices (EDI 810), and remittance advice/payment

[Agreement Health Goods Template]

notifications (EDI 820). The Purchaser also has an electronic funds transfer program for which the Supplier may apply.

7.21.3 Cataloguing Goods

Each Supplier shall classify its Goods using UNSPSC standard coding and include this information in its catalogues.