

**PREFERRED TERMS APPENDIX**

to be completed

**AGREEMENT # *[to be inserted]***

<b>EQUIPMENT PURCHASE &amp; INSTALLATION AGREEMENT</b>
--

**Between**

*[Insert Name of Hospital]*

**- AND -**

*[Insert Name of Vendor]*

**The Vendor is advised that these preferred terms are subject to Hospital review and approval.**

The preferred agreement terms that the CCPC (CAHO Capital Procurement Cooperative) would like to incorporate in any agreement pursuant to this RFP are set out in this Preferred Terms Agreement Appendix. The Vendor should indicate in the Preferred Terms Appendix any particular term to which it objects, the reasons for its objection and the replacement language which it proposes. The Vendor is put on notice that individual agreements with the individual Hospitals will be entered into for Hospital specific purchases as per the RFP and that the terms of the agreements with different hospitals may differ.

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# EQUIPMENT PURCHASE AND INSTALLATION AGREEMENT

THIS AGREEMENT is made as of the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

**BETWEEN:**

*[NAME AND FULL ADDRESS OF HOSPITAL]*  
(the “Hospital”)

– and –

*[NAME AND FULL ADDRESS OF VENDOR]*  
(the “Vendor”)

**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 Test(s)” has the meaning given thereto in Section 2.10 Acceptance Test;
- b) “Business Day” means Monday, Tuesday, Wednesday, Thursday, and 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;
- c) “Canada Customs Invoice” means the Canada Border Services Agency form of customs invoice;
- d) “CBSA” means the Canada Border Services Agency;
- e) “CCPC” means the CAHO Capital Procurement Cooperative;

- f) “Central Processing Department” means the Central Processing Department, Regional Processing Centre, or Sterile Processing Department as applicable of the Hospital and if there is more than 1 such Department, as specified by the Hospital;
- g) “Delivery Site(s)” means *[to be inserted]*;
- h) “Effective Date” means *[to be inserted]*;
- i) “Equipment” means those quantities of the Equipment described in the Equipment Appendix;
- j) “Event of Force Majeure” means acts of God, outbreaks or epidemics of any kind, communicable and virulent disease, strikes, floods, fires, embargos, boycotts, terrorism, insurrection, war, explosion, civil disturbance, shortage of gas, fuel or electricity, interruption of transportation, governmental orders, unavoidable accident, shortage of labour or raw materials or any other cause beyond the control of a party to this Agreement;
- k) “Hospital Requirements” means the Hospital’s requirements for the functions and capabilities of the Equipment set forth in the Hospital’s Requirements Appendix;
- l) “Housekeeping Department” means the Housekeeping Department of the Hospital and if there is more than 1 such Department, as specified by the Hospital;
- m) “MOHLTC” means the Ministry of Health and Long Term Care;
- n) “Indemnitees” means the Hospital or its officers, directors, agents, physicians or employees;
- o) “Information Technology Engineering” means the Information Technology Engineering Department of the Hospital and if there is more than 1 such Department, as specified by the Hospital;
- p) “Materials Management Department” means the Materials Management Department of the Hospital and if there is more than 1 such Department, as specified by the Hospital;
- q) “Medical Engineering Department” means the Medical Engineering or Biomedical Engineering Department of the Hospital and if there is more than 1 such Department, as specified by the Hospital;
- r) “NAFTA” means North American Free Trade Agreement;
- s) “NAFTA Certificate of Origin” means a CBSA certification information form, which is based on the origin requirements in NAFTA;

- t) “New Technology” means newly developed technology that improves patient care using evidence based outcome criteria as a measure;
- u) “Occupational Health & Safety Department” means the Occupational Health & Safety Department of the Hospital and if there is more than 1 such Department, as specified by the Hospital;
- v) “OEM” means original manufactured equipment;
- w) “PHI” means personal health information as defined in the *Personal Health Information Protection Act, 2004* (Ontario);
- x) “Plant Engineering Department” means the Plant Engineering Department of the Hospital and if there is more than 1 such Department, as specified by the Hospital;
- y) “Privacy Office” means the Privacy Office of the Hospital;
- z) “Purchase Price” means the price set out in Section 2.1 Purchase;
- aa) “Receiving Department” means the Receiving Department of the Hospital and if there is more than 1 such Department, as specified by the Hospital;
- bb) “Scientific Validation Report” means the documentation from an independent third party on the ability of the process and equipment required to achieve the desired level of sterility for the Equipment being purchased and its intended uses;
- cc) “Specifications” means the drawings and specifications for the Equipment set forth in the Specifications Appendix;
- dd) “Statement of Origin” means a statement of origin by the Vendor, which is based on a commercial invoice by the Vendor for goods less than \$1,600.00 Canadian;
- ee) “Vendor’s Personnel” means the Vendor’s employees, agents, representatives, permitted subcontractors and permitted assigns;
- ff) “Vendor’s Project Manager” means the manager as set out in Section 2.2 Vendor’s Project Manager; and
- gg) “Warranty Period” means the period referred to in Section 5.1 Vendor’s Representations and Warranties.

## **1.2 Appendices**

The following Appendices are attached to and form part of this Agreement:

Executive Summary Appendix  
Equipment Appendix  
Specifications Appendix  
Hospitals Background Information and Additional Requirements Appendix  
Implementation Appendix  
Services and Support Appendix  
Site Planning and Turnkey Requirements Appendix  
Information Practices Appendix

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

### **1.3 Entire Agreement**

This Agreement 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 Vendor and Hospital or Vendor and CCPC. 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.

The Vendor acknowledges that CCPC has no authority to assume or create any obligation whatsoever, express or implied, in the name of or on behalf of the Hospital with respect to this Agreement.

### **1.4 Order of Precedence**

To the extent there is a conflict or inconsistency in the Agreement, the following is the order of precedence of documents comprising this Agreement:

- a. Executive Summary Appendix;
- b. Article 1 – Article 7 of this Agreement;
- c. the Appendices annexed to this Agreement, except for the Executive Summary Appendix

### **1.5 Time of Essence**

Time shall be of the essence of this Agreement.

### **1.6 Applicable Law**

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 all courts competent to hear appeals therefrom.

## **1.7 Assignment and Enurement**

### **1.7.1 General**

This Agreement shall ensure 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.

## **1.8 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 Hospital may make changes to the attached appendices as set forth in 2.12 Changes to Appendices. 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.

## **1.9 Vendor not Agent**

This Agreement does not create the relationship of principal and agent or employer or employee between the Hospital and the Vendor and under no circumstances is either party to be considered the agent of the other. The Vendor shall have no authority to assume or create any obligation whatsoever, express or implied, in the name of or on behalf of the Hospital.

## **1.10 Currency**

Unless otherwise indicated, all dollar amounts expressed in this Agreement are in Canadian funds.

## **1.11 Legislation**

When an Act is referred to in this Agreement, it shall be interpreted to include all of the regulations to the Act.

## **ARTICLE 2 – PURCHASE AND INSTALLATION OF EQUIPMENT**

### **2.1 Purchase**

Subject to the terms of this Agreement, the Hospital hereby orders and purchases from the Vendor, and the Vendor agrees to sell and provide to the Hospital, the Equipment and related services for the total Purchase Price, exclusive of all goods and services tax and provincial sales tax, of *[\$to be inserted]*. The Purchase Price is subject to any applicable withholding taxes, and shall be payable as set forth in ARTICLE4- PRICES AND PAYMENT.

## **2.2 Vendor's Project Manager**

The Vendor shall promptly designate a Vendor's Project Manager and inform the Hospital of the designation. The Project Manager must be approved by the Hospital and shall have adequate authority and competency to deal with the Hospital in an effective and timely manner with respect to the Equipment. The Vendor's Project Manager shall:

- a) be responsible for co-coordinating with the Hospital the site preparation, delivery and installation of the Equipment and provision of the related services;
- b) oversee the various stages of the delivery and installation of the Equipment to ensure their effective and timely delivery;
- c) ensure that the Vendor's obligations are completed in an efficient and timely manner; and
- d) be readily available by telephone and electronic communication during hours mutually agreed upon in writing to interface with the Hospital regarding this Agreement, including, without limitation, responding to requests, queries and complaints from the Hospital and communicating them the Vendor.

## **2.3 Preparation of the Delivery Site**

The Hospital and the Vendor shall complete their respective site preparation obligations as described in the Implementation Appendix and Site Planning and Turnkey Requirements Appendix. The Vendor shall complete its inspection of the Delivery Site(s) at least *[to be inserted]* days before the date set for installation. The Vendor shall promptly notify the Hospital's project manager or representative in writing of any deficiencies at the Delivery Site(s).

The Vendor shall clearly identify in writing all Hospital responsibilities or failing such identification the Vendor is deemed to be responsible by default for any such responsibilities. In addition to the requirements set out in the Specifications, Implementation Appendix, and Site Planning and Turnkey Requirements Appendix the Vendor shall be responsible to:

- a) to work with the facilities Plant Engineering Department and Medical Engineering Department of the Hospital during the planning, construction and installation phases of this Agreement; and
- b) during working hours if noise level or vibrations are excessive or detrimental to patient care or staff health, an alternate time for such work will be scheduled in consultation with the Hospital.

## **2.4 Inspection**

The Hospital and its representatives shall have the right to inspect the Equipment at any time, and from time to time, during the Vendor's design, engineering, manufacturing, storage and installation processes, as applicable and shall be afforded co-operation and access to the

Vendor's premises for such purposes during any Business Day. The making of or failure to make any such inspection in accordance with this Section shall in no way impair the Hospital's right to inspect or reject any Equipment under Section 2.7 Rejection or to conduct Acceptance Tests under Section 2.10 Acceptance Test or to exercise any of its other rights or remedies provided in this Agreement or by law.

## **2.5 Shipment**

The Vendor shall suitably pack, mark and ship the Equipment in adequate protective packaging and in accordance with any instructions from the Hospital and the requirements of common carriers, in a manner to secure the lowest transportation cost, appropriate for the Equipment being purchased and no additional charge shall be made by the Vendor therefore, unless otherwise specified in this Agreement. The Vendor shall be liable for any difference in freight/transportation charges or damage to the Equipment or any costs to the Hospital, resulting directly or indirectly from the Vendor's failure to comply with this Section.

## **2.6 Delivery**

*[Some of the following instructions relating to delivery may not be applicable for Sunnybrook Health Sciences Centre and Women's College Hospital. These instructions should be confirmed, prior to the completion of this Agreement.]*

### **2.6.1 General**

The Vendor shall deliver the Equipment to the Delivery Site(s) on the date or dates specified in the Implementation Appendix. **The Hospital may from time to time change delivery dates or temporarily suspend scheduled deliveries.**

### **2.6.2 All Risk**

All risk of damage or loss until completion of delivery shall be on the Vendor. Acceptance of Equipment shall not bind the Hospital to accept future shipments.

### **2.6.3 Specified Delivery**

Where a delivery date or schedule is specified in this Agreement, timely delivery shall be made in accordance with Section 1.5 Time of Essence, and the Vendor shall be responsible to ensure that such delivery is made and shall advise the Hospital immediately of any anticipated delays and the reasons therefore.

### **2.6.4 Delivery Particulars**

The Vendor must notify the *[choose as appropriate - Medical Engineering Department; Plant Engineering Department; Information Technology Department; Receiving Department]* of delivery particulars in advance of delivery as required by the Hospital, and without limiting the particulars required, shall provide the following: delivery date, mode of shipment, name of shipping/courier company, courier tracking or identification number and special instructions

regarding handling, uncrating, and assembly. The Vendor shall send the information to the following address as applicable, prior to the delivery date(s) specified, if any:

*[Choose as appropriate - Medical Engineering Department; Receiving Department; Plant Engineering Department; Information Technology Department and list the address of the appropriate Department]*

### **2.6.5 Large Volume Shipments**

Large volume shipments, larger than 1 standard drop skid, must be made through special arrangements with *[choose as appropriate - Medical Engineering Department; Plant Engineering Department; Information Technology Department]*. For large volume shipments, the Vendor should advise the Hospital no later than 14 days prior to delivery, the expected date and time of Equipment arrival.

### **2.6.6 Disposal of Packaging**

The Vendor is responsible, at its expense, for the disposal off-site of the crating and packaging of the Equipment when requested by the Hospital. If disposal off-site is not possible, disposal on-site shall be made through the approval of the Housekeeping Department at the Vendor's expense.

### **2.6.7 Complete Delivery**

Delivery shall not be complete, and title shall not pass to the Hospital, until Equipment, which has been received, complies with the terms and conditions of this Agreement. Acceptance of the Equipment by the Hospital upon delivery at the Delivery Site(s) does not indicate that the Equipment complies with the terms and conditions of this Agreement.

## **2.7 Rejection**

All Equipment delivered to the Delivery Site(s) shall be subject to inspection by the Hospital, and the Hospital may, at any time after delivery, reject unordered, defective or non-conforming Equipment included in the delivery, as well as any Equipment delivered in advance of the delivery dates or in excess of the quantity ordered. The Vendor shall be responsible for removal or replacement of such rejected Equipment at its own expense. **Equipment rejected by the Hospital as aforesaid shall be at the Vendor's risk for damage or loss.**

The making or failure to make any inspection, or the payment for any Equipment by the Hospital, shall in no way impair the Hospital's right to reject non-conforming, unordered or defective Equipment, or to avail itself of any other remedies to which the Hospital may be entitled.

## **2.8 Quality Control**

The Vendor shall conduct all quality control testing necessary to ensure quality control, and that all Equipment produced or manufactured by it are in compliance with the provisions of this Agreement. The Vendor shall use all reasonable commercial efforts to maintain ISO

certification for the manufacturing, production and distribution processes used by it for the Equipment.

*[Note to drafters: The second sentence in this Section 2.8 Quality Control relating to ISO certification should only be included where applicable.]*

## **2.9 Installation**

The Vendor shall install the Equipment at the Delivery Site(s) on the date or dates specified in the Implementation Appendix.

The Vendor shall supply all labour, materials, tools, equipment, permits, fees, inspection and testing costs, and supervision for the complete and satisfactory installation of the Equipment at the Delivery Site(s).

When installing the Equipment, the Vendor shall not damage any of the Hospital's property, and shall not disrupt or interfere with the Hospital's systems or procedures, except as specified in the Implementation Schedule. In the event of any such damage, disruption or interference, the Hospital and its agents, contractors and employees may take all such steps as it considers appropriate to repair or restore such damage, disruption or interference and render an account therefore to the Vendor or deduct the amount of any such account from any monies owing by the Hospital to the Vendor.

During installation of the Equipment, the Vendor shall keep the Delivery Site(s) in as tidy a condition as practicable and, upon completion of the installation, the Vendor shall remove all tools, equipment, surplus materials and debris and shall leave the Delivery Site(s) in a clean and safe condition satisfactory to the Hospital.

## **2.10 Acceptance Test**

### **2.10.1 General**

Without prejudice to the Hospital's right to reject unordered, defective or non-conforming Equipment as specified in Section 2.7, the Hospital shall be entitled to conduct Acceptance Tests. The Equipment must comply with the manufacturer's published specifications and any acceptance criteria that are mutually defined ("Acceptance Criteria"). In all instances where the Vendor's published specifications are not available, the Acceptance Criteria shall be mutually defined. The Acceptance Testing shall be based on the Vendor's formal factory test procedures and the Acceptance Criteria unless otherwise agreed to. A successful Acceptance Test shall have occurred only after the Equipment has fully met the requirements set out in this Section \_\_ for a period of *[to be inserted]* consecutive calendar days following validation.

All Acceptance Criteria used as part of the Acceptance Testing shall be considered as baseline parameters of performance and shall be used by the Hospital for comparison purposes during all subsequent quality assurance testing.

### **2.10.2 Acceptance Test Environment**

Unless otherwise agreed to by the parties, the Vendor agrees that all Acceptance Testing shall occur during the peak working period of the use of the Equipment as determined by the Hospital.

### **2.10.3 Timing of Acceptance Test**

*Unless otherwise agreed to by the Hospital, Equipment shall not be considered ready for any Acceptance Test unless all quantities of all components related thereto have been delivered to the Delivery Site(s) and, where appropriate, installed.*

In accordance with any delivery arrangements *[and the Section entitled Documentation]*;

- a) the Vendor shall give approximately 2 weeks notice prior to the Hospital to organize the appropriate people within the Hospital for acceptance testing;
- b) the Acceptance Test shall commence upon the Hospital's receipt of the Vendor's written notice that the Equipment is validated for use; and

### **2.10.4 Acceptance Test**

The Acceptance Test shall extend for a period of *[to be inserted]* days, or such longer period as the parties may agree. If the Equipment does not meet the Acceptance Criteria, during the initial *[to be inserted]* consecutive day period, the Hospital shall provide immediate written notice of the failed Acceptance Test to the Vendor. The Vendor shall take corrective measures within 24 hours of receipt of the failed Acceptance Test notice and provide written notice to the Hospital when the Vendor is ready to commence a second *[to be inserted]* consecutive calendar day acceptance testing period. Should the Equipment not meet the Acceptance Criteria during this second *[to be inserted]* consecutive day period, the Hospital provide immediate written notice of failed Acceptance Test to the Vendor. The Vendor shall take corrective measures within 24 hours of the receipt of the failed Acceptance Test notice and provide written notice to the Hospital that the Equipment is ready to commence a third *[to be inserted]* acceptance testing period. If the Equipment fails to meet the Acceptance Criteria during the third *[to be inserted]* day acceptance test period, the Hospital may, at its option:

- a) request and have replaced the Equipment that has been the source of the failure;
- b) grant an extension of the period allowed for successful completion of the Acceptance Test in which case, the Vendor shall promptly make every reasonable commercial effort to correct the deficiencies and defects, and the Acceptance Test(s) period shall be extended for such further period of time as the Hospital may determine in order to permit the Vendor a reasonable opportunity to correct the deficiencies and defects and for the Hospital to conduct any new Acceptance Test(s); or
- c) terminate this Agreement and request immediate removal of the Equipment from the Hospital's premises, at no cost to the Hospital and provide a full refund of money paid to date to the Hospital. Upon the removal, the Vendor shall ensure the

installation site is returned to its original condition, to the Hospital's satisfaction, at the Vendor's experience.

#### **2.10.5 Successful Acceptance Test**

If the Acceptance Test is successful, following the end of the Acceptance Test(s) period, the Hospital shall notify the Vendor that the Equipment is accepted and the date of such notification shall be deemed to be the date of delivery of the accepted Equipment.

#### **2.10.6 Title and Risk of Loss**

Regardless of whether or not any payment has been made for the Equipment, in the case of Equipment subjected to Acceptance Test(s), title and risk of loss or damage to such Equipment shall only pass to the Hospital, upon the Hospital notifying the Supplier in writing that the Equipment has been accepted as specified in Section 2.10.5 above.

#### **2.10.7 Warranty**

The Vendor agrees that the warranty shall only commence upon the date of acceptance.

#### **2.10.8 Other remedies**

The holding of, or the failure to hold any Acceptance Test(s), shall in no way impair the Hospital's right to avail itself of any other remedies to which the Hospital may be entitled in respect of defective or non-conforming Equipment.

#### **2.10.9 Deemed Notice**

The absence of an official written notice from the individual Hospital participant within 30 days after the commencement of the last acceptance testing period stating that acceptance testing has failed shall mean that acceptance has occurred.

#### **2.10.10 Other Acceptance Testing Procedures**

The Vendor is advised that individual hospitals may have other procedures for acceptance testing that may need to be included in any final agreement.

#### **2.11 Manuals, Bulletins and Documentation**

*[Certain of the documentation listed below, may not be applicable for all procurements. Please review and amend accordingly.]*

The following manuals/materials shall be provided at no charge and shipped with the Equipment, unless otherwise specified in this Agreement:

- c) 2 complete sets 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.);
- d) 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;
- e) 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 Equipment, replacement parts, and the current parts costs. The ***[choose as appropriate - Medical Engineering Department; Plant Engineering Department; Information Technology Department]*** of the Hospital should be notified of such requirements before the Equipment is shipped; and
- f) schematics, drawings, blueprints and data sheets;
- g) all service documentation for diagnostic software; and
- h) 2 copies of As-built drawings at the end of construction in electronic form suitable to the Hospital.

The Vendor shall, on a timely basis, forward to the ***[choose as appropriate - Medical Engineering Department; Plant Engineering Department; Information Technology Department]*** of the Hospital:

- i) any service bulletins, clinical user bulletins, or similar type of or related bulletin including, but not limited to, on-line technical resources that relate to the Equipment; and
- ii) updates to the manuals/materials referred to in this Section

as long as the Equipment is still being used or the Hospital still requires the Equipment, at no additional cost to the Hospital.

The Vendor shall complete, at no additional charge, all documentation required for MOHLTC approval on the Hospital's behalf. This will include all MOHLTC forms required, room drawings with Equipment location and shielding requirements.

## **2.12 Changes to Appendices**

The Hospital reserves the right to make changes to the attached Appendices. If any such change results in an increase or decrease in the cost of or the time required for the delivery of the Equipment or performance of any part of this Agreement, an equitable adjustment shall be made to the Purchase Price or delivery date or both and this Agreement shall be modified in writing accordingly. No claim for an increase in cost hereunder shall be asserted by the Vendor unless submitted in writing to the Hospital within 30 days of the notification of change from the Hospital.

## **2.13 No Liens**

While the Vendor is engaged in installation of the Equipment, it shall promptly pay all of the Vendor's Personnel, its consultants, contractors and suppliers for any work materials or services which may be done, supplied or performed at any time in respect of the installation of the Equipment, and the Vendor shall do all things necessary to ensure that no lien is registered against any property of the Hospital (including, without limitation, obtaining a waiver of lien from any of its contractors and subcontractors), and if any lien is made, filed or registered, the Vendor shall discharge it or cause it to be discharged forthwith, at the Vendor's sole expense.

## **2.14 New Technology**

### **2.14.1 General**

In the event that New Technology is introduced or made available that the Hospital becomes aware of during the Term of the Agreement that the Hospital is interested in using in place of the Equipment or in connection with the Equipment supplied under this Agreement, the Hospital shall notify the same to the Vendor. The Vendor shall have 7 days to notify the Hospital if it has comparable equipment that could be made available to the Hospital that meets the applicable terms and conditions of this Agreement and provide a description of the same. If the Hospital considers that the Vendor's equipment is comparable, the Vendor shall facilitate the Hospital's evaluation of the New Technology, expediently and according to mutually acceptable timelines. The provisions in Section 2.14.1 are subject to the provisions of Section 2.14.5 Replacement.

### **2.14.2 Evaluation**

In the event that the evaluation is acceptable to the Hospital, as determined by the Hospital, the Hospital shall provide the Vendor with the opportunity to supply the New Technology equipment, at the Hospital's option, in lieu of or in addition to the Equipment, at a price satisfactory to the Hospital and all other terms and conditions of this Agreement shall remain the same unless mutually agreed to in writing by the parties.

### **2.14.3 Failure to Provide**

If the Vendor is unable or unwilling to provide the New Technology product within a period of 3 months or if the Hospital considers that the evaluation is unsuccessful, at its sole discretion and without liability or penalty, the Hospital shall:

- a) be entitled to evaluate any New Technology at any time during the Term of the Agreement *[as applicable - notwithstanding any exclusivity provisions in the Agreement]*;
- b) may terminate the Agreement effective at the end of the 3 month period;
- c) may modify the Agreement, with the assistance of the Vendor, by deleting Equipment from the list of Equipment being supplied that the New Technology equipment will be replacing and continue with the modified Agreement; and
- d) shall be relieved of any obligation to meet any stated volumes in the Agreement.

### **2.14.4 Disputes**

If there is any dispute as to the suitability of the equipment that the Vendor proposes that the Hospital use to replace the Equipment or to use in connection with the Equipment in any respect or with respect to the evaluation, the decision of the Hospital shall govern.

### **2.14.5 Replacement**

Notwithstanding anything other provisions set out in this Agreement, in the event that new equipment or hardware enhancements for any Equipment purchased is introduced by the Vendor and available for sale up to 12 months after the Agreement has been finalized and a purchase order issued, the Hospital shall be notified and the Hospital will be able to replace the applicable Equipment, at its sole discretion and at no additional cost, with the new equipment. The new equipment shall be subject to Acceptance Testing set out in Section 2.10 and all other terms and conditions of this Agreement shall apply unless otherwise agreed to. These replacement provisions shall include all sub-components as well.

## **ARTICLE 3 – SERVICES**

### **3.1 General**

All services to be performed by the Vendor under this Agreement shall be performed by the Vendor in a good and workmanlike manner. The Vendor 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 Vendor's Project Manager. The Vendor shall be responsible to the Hospital for the acts and omissions of the Vendor's Personnel.

### **3.2 Training**

*[Choose the option that is applicable]*

The Vendor shall provide to the Hospital's employees the training specified in the Implementation Appendix.

*Or*

#### **3.2.1 Training**

The Vendor shall provide the following training for at least 2 individuals specified by the Hospital:

- a) Service Training which shall include technical training for at least 2 individuals from the Medical Engineering Department within 90 days of the Effective Date of the Agreement unless otherwise agreed to. Training to include but should not be limited to diagnostic software and integration of the Equipment with the Hospital's existing systems;
- b) Clinical Training on the Equipment regarding operation of the Equipment until such time that the Hospital staff that have been trained on the Equipment are fully competent in using or operating the Equipment, as determined by the Hospital, based on information from the Vendors and the Hospital staff with operating the Equipment; and
- c) Sterilization Training for the cleaning, disinfecting and sterilizing of Equipment that is not intended to be single use or any single-use Equipment received unsterile which requires sterilization prior to use.

All training shall be provided directly by the Vendor's Personnel. There shall be no third party training unless otherwise agreed to in writing. The Hospital shall have the right to videotape all such training sessions, provided, however, that such taped sessions shall be used solely by the Hospital to train its staff. The cost of all the training, including travel and accommodation for the Hospital's staff to attend training course(s) at the Vendor's facilities if necessary, shall be borne by the Vendor. The Hospital reserves the right to have different types of training provided to different individuals.

#### **3.2.2 Subsequent Training**

After the Training on the Equipment has been completed, the Hospital reserves the right to request:

- a) additional follow-up training as reasonably required to ensure the Equipment is utilized efficiently; and
- b) technical and consultative support for the Equipment sold by the Vendor to the Hospital under this Agreement. Such support shall include, but shall not be limited to, support for and assistance with the resolution of any problems or difficulties with the operations of the Equipment.

### **3.3 Service Support/Replacement Parts**

#### **3.3.1 Availability**

The Vendor shall

- a) ensure that full service support and parts must be available for a period of 7 years following the last date of production of the Equipment and their accessories; and
- b) provide full access to telephone technical support, at no charge, as long as the Equipment remains in use by the Purchaser; and
- c) subject to (a) above, provide the Purchaser with a 1 year written notification of the Equipment parts that are no longer being available.

#### **3.3.2 Delivery**

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

#### **3.3.3 Costs**

The Vendor shall supply and deliver spare parts to the Hospital at the Vendor's own expense, if the request for such spare parts is made by the Hospital within the Warranty Period.

With respect to replacement parts and preventive maintenance kits outside the Warranty Period, the cost shall remain fixed at the price at the Effective Date of the Agreement for a period of 5 years from date that the Warranty Period ends. 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 and shall be in accordance with Section 4.4 Most Favoured Customer Pricing. The cost of the parts outside the Warranty Period and labour shall be invoiced on a new purchase order.

#### **3.3.4 Third Party Spare Parts**

Notwithstanding the foregoing, the Hospital shall be entitled to use or attach spare parts for or to the Equipment, which spare parts have not been obtained from the Vendor, without invalidating the warranties set forth in Section 5.1 Vendor's Representations and Warranties or any other warranties provided by the Vendor.

### **3.3.5 Alternative Arrangements and Obligations**

The Vendor shall specify alternative arrangements available to minimize the downtime of the system, such as on-site storage of a complete/partial system or consignment parts. Delivery of any spare parts pursuant to this Agreement does not relieve the Vendor of its obligation to repair and/or replace defective Equipment pursuant to Section 5.2 Remedy of Breach.

### **3.4 Turnkey Requirements:**

In addition to the turnkey requirements set out in the Implementation, Site Planning and Turnkey Requirements or Specifications Appendix as applicable, the Vendor shall adhere to the following:

- a) all Appendices and revisions are to be approved by the Hospital prior to implementation in accordance with Changes to Appendices 2.12;
- b) disruptions of services are to be coordinated with the Plant Engineering Department In that respect the Vendor understands that evening, night and weekend work may be required;
- c) any additional renovation requirements that are identified after the Proposal submission or subsequent to any issuance of the Purchase Order will be provided at the Vendor's expense; and
- d) the Hospital has the right to request specific contractors to assist in the resolution of problems encountered with interface or connection to existing systems and building envelope.

Any additional renovation requirements that are identified after the RFP submission or subsequent to the issuance of the Purchase Order will be provided at the Vendor's expense.

### **3.5 Preventative Maintenance**

#### **3.5.1 Preventative Maintenance Schedule**

A full year's schedule for preventative maintenance shall be decided in consultation with the Hospital prior to Equipment acceptance. This will apply for the Warranty Period and any service contracts that include preventative maintenance.

#### **3.5.2 Evaluation**

The Vendor shall arrange a mutually agreed upon time with the Hospital, in co-operation with personnel to be designated by Hospital to perform a complete evaluation 30 days before the end of the warranty period.

*[Choose 1 of the following options]*

The Vendor shall provide an optional 5 year service contract effective after the Warranty Period expires and after any warranty extensions. The terms of services provided shall be equivalent to the current service provisions.

**OR**

After the expiry of the Warranty Period applicable to the Equipment purchased under this Agreement, the Hospital may, at its option, subscribe to the extended warranty plan, if any, offered by the Vendor or if the Vendor does not offer an extended warranty plan, the Vendor shall, in good faith upon request by the Hospital, enter into negotiations with the Hospital to establish a service agreement between the Hospital and the Vendor for the provision of further support (including repair and/or replacement of the Equipment and the provision of spare parts) for the Equipment for such period of time as the parties may agree upon. The terms of any such extended warranty plan or service agreement shall be commercially reasonable and shall comply with Section 4.4 Most Favoured Customer Pricing.

### **3.6 Response Time to Malfunctions**

At any time when the Hospital is using the Equipment, the Vendor's response to malfunctions shall be *[Insert Time Here]* by telephone and *[Insert Time Here]* 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 loaner system or components of equal or superior performance, satisfactory to the Hospital, shall be provided immediately or made available within 48 hours of the initial telephone call at no charge to the Hospital. During the Warranty Period, there shall be no charge for the services referred to in this Section.

### **3.7 Service Records**

The Vendor shall submit to the Medical Engineering Department a detailed service report for any service work performed on this Equipment. The service report shall include the problem(s) identified, parts serviced or replaced, materials used, and any costs associated with this service. The labour and parts costs shall be itemized separately. The Vendor will notify the *[choose as appropriate - Medical Engineering Department; Plant Engineering Department; Information Technology Department]* of the Hospital of any service visits made on-site.

### **3.8 Updates and Upgrades**

#### **3.8.1 Updates**

Software, firmware or hardware changes to the Equipment which are corrective in nature and are initiated due to errors or as a result of any action taken pursuant to Section 7.4 Medical Alerts and Safety Notifications shall be delivered and installed at no charge, as long as the Equipment is still being used or the Hospital still requires the Equipment. Any additional hardware required due to a Vendor initiated update will be provided by the Vendor at no charge.

### **3.8.2 Upgrades**

Software, firmware or hardware changes, which solely enhance existing features, shall also be provided at no charge. The Vendor shall notify the [*choose as appropriate - Medical Engineering Department; Plant Engineering Department; Information Technology Department*] of the Hospital in writing of any software, firmware or hardware changes or enhancements as soon as they become available.

All training associated with any acquired upgrade or update will be provided at no charge.

## **3.9 Support**

### **3.9.1 Diagnostic Software**

The Vendor shall provide all diagnostic software available to maintain, troubleshoot, and support the Equipment. The diagnostic software shall be identical to that used by the Vendor's service representatives.

### **3.9.2 Special Tools**

The Vendor shall:

- a) supply any special tools, jigs, or phantoms necessary for testing or servicing of the Equipment, including computer(s), software (including but not limited to the calibration software), and/or computer interfaces; and
- b) upgrade the items referred to in this Section 3.9.2 Special Tools as new releases become available.

### **3.9.3 Preventive Maintenance Kits**

*[Optional – Depending if PMKs are required]*

The Vendor shall provide:

- a) an itemized list of all the components that make up a preventive maintenance kit;
- 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.

### **3.10 Equipment**

#### **3.10.1 General**

The Vendor shall supply all its own equipment for this Agreement except as otherwise agreed to in this Agreement.

#### **3.10.2 Installation**

Written authorization must be received prior to the installation or attachment of any of the Vendor's or the Vendor's Personnel's equipment, software, or devices on or to Hospital owned or leased equipment, software, or communications networks. In the event of problems created by any such installation or attachment as referred to in this Section 3.10 Equipment, the Vendor shall be solely responsible for all repairs and services to correct the problems.

### **3.11 Application of Hospital's Rules to Vendor's Personnel**

All rules and regulations applicable to employees of the Hospital regarding their behaviour and conduct in connection with the business and affairs of the Hospital shall, insofar as the same shall be required by the Hospital, be applicable to the Vendor and the Vendor's Personnel when on the Hospital's premises. Without limiting the generality of the foregoing, the Vendor agrees that the Vendor's Personnel, when using the premises of the Hospital, shall comply with all security regulations in effect at such premises and any Hospital policies that may be presented to the Vendor or posted in the Hospital. It is the responsibility of the Vendor's Personnel to familiarize themselves with the all such policies and regulations that govern the conduct of all staff and visitors to the Hospital's premises.

In the event that any of the Vendor's Personnel shall fail or refuse to abide by such rules or regulations, such person(s) shall be removed by the Vendor from performing any services for the Hospital. If such removal is not carried out within a reasonable time, or within the time period specified by the Hospital, failure to so comply shall be deemed a breach of a material term of this Agreement. In the event of such removal of the Vendor's Personnel by the Vendor, no liability of any kind or nature whatsoever shall attach to the Hospital. The Hospital further reserves to itself the right to disallow any of the Vendor's Personnel admittance to the Hospital's premises where such person fails or refuses to abide by such rules and regulations.

The Vendor shall, if requested by the Hospital and, in a form specified by the Hospital, provide the Hospital with authorization in writing to undertake security checks, including but not limited to criminal background checks, of the Vendor's Personnel. The Hospital shall be the sole arbiter as to whether or not an individual meets the Hospital's security requirements. The Hospital reserves the right to disallow any of the Vendor's Personnel admittance to the Hospital's premises where such person does not meet the Hospital's security requirements.

### **3.12 Workers' Compensation**

The Vendor 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 Hospital and its officers, directors, agents, physicians and employees from any

failure to comply therewith. If requested, the Vendor shall provide the Hospital with a certificate that the Vendor is in good standing under the relevant workers' compensation legislation.

### **3.13 Workplace Safety**

The Vendor shall:

- 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 be in compliance with the Hospital'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 Hospital's safety policies, and ensure that such equipment, devices and items are used in the performance of work;
- e) if requested, provide the Hospital with a copy of the Vendor'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 Hospital and the Hospital's infection control units.

### **3.14 Cleaning, Disinfecting and Sterilization**

***[Use this clause, only as applicable]*** For any Equipment that is not intended to be single use, or any single-use Equipment received unsterile which requires sterilization prior to use, at the Effective Date of this Agreement, the Vendor shall submit to the Manager/Director of the Regional Processing Centre/Central Processing/Sterile Processing/Central Supply and Reprocessing unit or department of the Hospital:

- a) a letter from a senior official of a quality, safety, regulatory or compliance department or unit of the manufacturer of the Equipment clearly stating the recommended validation process parameters for the specific Equipment and/or a Scientific Validation Report that deals with the efficacy of the cleaning, disinfecting and sterilization of the Equipment, as applicable;
- b) reprocessing instructions: step-by-step instructions on the cleaning, disinfecting, maintaining, sterilization, reprocessing, disassembly and reassembly of the specific Equipment;

- c) for Equipment sets containing multiple instruments: a picture of the Equipment set contents and a catalogued list of the individual pieces of the Product sets; and
- d) for containerized sets: a letter and/or a Scientific Validation Report stating Equipment 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 Equipment sets.

***[Insert Hospital contacts as appropriate from the Contact Information List.]***

## **ARTICLE 4 – PRICES AND PAYMENT**

### **4.1 Purchase Price**

Subject to adjustment pursuant to Section 2.12 Changes to Appendices, ***[Optional – Section 4.3 Discount]*** and Section 4.4 Most Favoured Customer Pricing, the Purchase Price for the Equipment and any related services is the sum of ***[\$to be inserted]*** which shall be payable by the Hospital to the Vendor as follows:

- a) ***[to be inserted]*** percent upon execution of this Agreement by both parties to this Agreement;
- b) ***[to be inserted]*** percent upon delivery of all of the Equipment to the Delivery Site(s);
- c) ***[to be inserted]*** percent upon the Hospital's written notification to the Vendor that the Equipment is accepted in accordance with Section 2.10 Acceptance Testing and that all training set forth in the Implementation Appendix, has been completed; and
- d) ***[to be inserted]*** percent ***[to be inserted]*** months after the date of the notice of acceptance referred to in Subsection 4.1 c) above, subject to any continuing holdbacks required under the *Construction Lien Act* (Ontario).

### **4.2 Invoicing**

The Vendor shall submit invoices to the Hospital for payment in accordance with Section 4.1 Purchase Price. No additional or contrary terms or conditions, which may be contained in the Vendor'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.

The Hospital's payment term is net ***[to be inserted]*** days. ***[Specify: 30 days or 60 days or as applicable.]*** The time period specified for payment of invoices, or for accepting any payment of

discounts offered, shall run only from the date that correct invoices are furnished to the Hospital and in accordance with Section 4.1 Purchase Price, whichever shall be the later.

#### **4.3 Discount**

*[Optional]*

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

#### **4.4 Most Favoured Customer Pricing**

The Vendor represents and warrants that, on the date hereof, the Purchase Price, as well as all terms, warranties and benefits granted to the Hospital under this Agreement are, and for the period up to and including the projected delivery date stated in the Implementation Appendix, shall continue to be, comparable to or more favourable than the equivalent prices, terms, warranties and benefits offered by the Vendor and its affiliates and associates to any of its or their other customers purchasing substantially similar Equipment in substantially similar volumes in Canada.

The Vendor agrees that where the Hospital provides evidence that the Vendor is in breach of its obligation to provide most favoured customer pricing to the Hospital, it shall adjust this Agreement retroactively to date of the breach in order to comply with such obligation.

#### **4.5 Taxes**

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

#### **4.6 Delivery Costs**

The Purchase Price is inclusive of all costs related to the delivery of the Equipment 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 provincial sales tax and goods and services tax. No additional charges shall be made by the Vendor with respect to such delivery costs.

### **ARTICLE 5 – REPRESENTATIONS, WARRANTIES, INDEMNITIES**

#### **5.1 Vendor's Representations and Warranties**

*[Use and add as applicable]*

The Vendor represents and warrants to the Hospital and acknowledges that the Hospital is relying thereon as follows:

- a) all Equipment shall be new and unused, unless agreed to in writing by the parties;
- b) ***[subject to the provisions of this Section 5.1 Vendor's Representation and Warranties, at the time of installation]*** all Equipment shall have received all applicable approvals of, and shall be in compliance with all applicable standards and requirements referred to in the Specifications or required by law, including, but not limited to, the applicable approvals, standards or requirements referred to in this Section 5.1 Vendor's Representations and Warranties, referred to the documentation shipped with or provided for use with the Products, and those required by Agriculture and Agri-Food Canada;
- c) ***[at the time of installation]*** all electrical Equipment 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 equipment certified for use in Canada. Certification shall be to the standard that is appropriate for the intended use of the Equipment at the Hospital's facilities;
- d) both the Vendor and the Equipment shall have received all applicable licensing under, and shall be in compliance 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 Vendor shall provide documented evidence that the Equipment meets the applicable standards or has the applicable licenses referred to in this Section 5.1 Vendor's Representations and Warranties, the Specifications or by law;
- f) on completion of the installation of the Equipment at the Delivery Site(s), there shall be no construction or other liens outstanding in regard to such Equipment or installation;
- g) the Vendor has full power and legal right to enter into this Agreement and to fulfill all of its obligations hereunder, and title to all of the Equipment shall pass to the Hospital in accordance with the terms hereof free and clear of all liens, claims and encumbrances whatsoever;
- h) there is no proceeding in progress or pending or threatened against, related to or affecting the Vendor in connection with the Equipment which might be expected to have a materially adverse effect on the Equipment or impact the Vendor's ability to meet its obligations under this Agreement;

- i) on delivery, and for a period of *[to be inserted]* months following the acceptance of the Equipment by the Hospital pursuant to Sections 2.6 Delivery and 2.7 Rejection or, where any Acceptance Test(s) is conducted, for a period of *[to be inserted]* months following the date that the Hospital notifies the Vendor in writing that the Equipment has been accepted as specified in Section 2.10, the Equipment shall conform to the applicable Specifications, samples and descriptions approved by the Hospital and the Hospital's Requirements shall be in good operating condition and free of defects in design, workmanship and material and shall operate in accordance with the published performance specifications for such Equipment as contained in the Vendor's product manuals delivered with such Equipment;
- j) the Equipment, when installed, will operate with the Hospital's existing equipment in full satisfaction of the Hospital's Requirements and will be of merchantable quality and fit for its intended purpose(s) and for those purpose(s) made known to the Vendor;
- k) all representations, warranties, confirmations, and statements set out in any Proposal/Quotation in response to *[RFP/RFQ]* *[insert RFP/RFQ number]* and in this Agreement shall remain accurate in their entirety during this Agreement;
- l) the Vendor recognizes that the Hospital is working towards minimizing patient and Hospital staff exposure to latex in order to reduce adverse reactions and to promote a latex safe environment and in that regard the Vendor shall provide the Hospital with the following information, whether:
  - i) the Equipment contains any latex;
  - ii) the packaging of the Equipment contains any latex; and
  - iii) the Equipment indicates on the smallest unit packaging if there is latex in the Equipment or if it is latex free;
- m) the Vendor has disclosed whether mercury exists in the Equipment; and
- n) all construction and renovation must meet Ontario Building Codes, Canadian Electrical Code, Ontario Fire Code, local Municipal Building Codes and Bylaws, CSA Standards, and all other applicable codes and laws.

## **5.2 Remedy of Breach**

Where the Hospital notifies the Vendor that it is in breach of any of its representations or warranties contained in Section 5.1 Vendor's Representation and Warranties, the Vendor shall use its best efforts, at no expense to the Hospital, to remedy such breach as quickly as possible, but not longer than 30 days following such notification, including providing additional or alternate Equipment or services, satisfactory to the Hospital, to ensure that the Hospital's operations are not disrupted by such breach.

Where the Vendor is unable to correct the breach within the said 30 day period, the Hospital without restricting its recourse, including the right to claim damages and legal fees on a solicitor and client basis, shall be entitled to return any or all affected Equipment, and the Vendor shall reimburse the Hospital for all amounts previously paid for by the Hospital for such Equipment, including taxes, installation, de-installation and transportation costs within 15 days following the return of such Equipment. Alternatively, the Hospital shall have the right to require the Vendor, at no additional cost to the Hospital, to replace any of the affected Equipment, with other equipment providing equivalent functions and performance satisfactory to the Hospital. In the event that other equipment is provided, the relevant terms of this Agreement shall be applicable.

### **5.3 Nature of Warranties**

The representations and warranties contained in Section 5.1 Vendor's Representations and Warranties are in addition to any other warranties or service guarantees given by the Vendor to the Hospital or implied by law, are separate and discrete from any other warranties specified in this Agreement or the Equipment's warranty documentation, and are not subject to any disclaimer of warranty or exclusive remedy or limitation of liability, which may be specified in the Equipment's warranty documentation and shipping documents used by the Vendor, this Agreement or any document incorporated into this Agreement by reference.

### **5.4 Conflict of Interest Warranty**

The Vendor represents and warrants that, to the best of its knowledge, neither the Hospital nor any of the respective staffs, medical personnel or affiliated organizations has any significant influence in the Vendor or any of its associates or affiliates, or will receive any direct or indirect proceeds from this Agreement other than as expressly stated in this Agreement.

### **5.5 Indemnity**

The Vendor will defend, at its expense, any claim or action (whether or not well-founded and whether for damage to property or injury or death to humans) brought against the Hospital or its officers, directors, agents, physicians or employees (collectively, the "Indemnitees") arising out of or related to:

- a) any breach or alleged breach by the Vendor of any of its obligations, warranties or representations in this Agreement;
- b) any and all Equipment ordered by the Hospital from or supplied by the Vendor pursuant to this 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;
- c) the Vendor's manufacturing or other operations; or
- d) the sale or transportation of any Equipment by the Vendor.

The Vendor shall indemnify and hold the Indemnitees harmless against any such claim or action with respect to all resulting costs, liabilities and damages, including legal costs on a solicitor and client basis, provided that the Hospital promptly notifies the Vendor of any claim or action in respect of which this indemnity may apply and of which the Hospital has knowledge and the Hospital co-operates with the Vendor in the defence of any such claim or action. No such claim or action shall be settled or compromised by the Vendor without the Hospital's prior written consent.

#### **5.6 Intellectual Property Indemnity**

The Vendor will defend, at its expense, any claim or action (whether or not well-founded) brought against the Indemnitees which is based on any or all allegations that the operation or use of any Equipment, or any part thereof, infringes any third party's copyright, trade secret, patent or other rights. The Vendor shall indemnify and hold the Indemnitees harmless against any such claim or action with respect to all resulting costs, liabilities and damages, including legal costs on a solicitor and client basis, provided that the Hospital promptly notifies the Vendor of any claim or action in respect of which this indemnity may apply and of which the Hospital has knowledge, and the Hospital co-operates with the Vendor in the defence of any such claim or action. No such claim or action shall be settled or compromised by the Vendor without the Hospital's prior written consent.

#### **5.7 Injunction Against Continued Use of Equipment**

In the event that an injunction or order is obtained against the Hospital's use of any Equipment or if, in the Vendor's opinion, any Equipment is likely to become the subject of a claim of infringement or violation of a patent, copyright, trade secret, trade name, trade mark or a proprietary right of a third party, the Vendor shall, at its expense:

- a) procure for the Hospital the right to continue using the affected Equipment; or
- b) modify or replace the affected Equipment so that such Equipment becomes non-infringing, but only if the modification or replacement does not materially affect the Equipment or its use by the Hospital; or
- c) if neither a) nor b) above are commercially practicable, remove the affected Equipment from the Hospital or its logistics provider and unconditionally refund and pay to the Hospital all amounts paid to the Vendor by the Hospital in respect of such Equipment. The remedies in this Section 5.7 Injunction Against Continued Use of Equipment are in addition to the indemnification rights of the Hospital in Section 5.6 Intellectual Property Indemnity and any other remedies available to it at law.

## **ARTICLE 6 – TERM AND TERMINATION**

### **6.1 Term**

The Term of this Agreement will be for a five (5) year period. The Agreement will commence (the “Effective Date”) [*Effective Date*] and will end on [*Termination Date*] (the “Termination Date”).

The Term of this Agreement is subject to any and all rights of either party to terminate this Agreement pursuant to the terms of this Agreement or otherwise available to either party at law or in equity.

### **OR**

This Agreement shall become effective on the Effective Date and shall expire, unless the Term is terminated early in accordance with the provisions of the Agreement, when

- a) the Supplier has been notified in accordance with Section 2.10 that the Equipment has passed the Acceptance Test(s) and is accepted;
- b) installation of the Equipment has been completed to the satisfaction of the Hospital, as applicable;
- c) all other Supplier obligations under this Agreement have been met to the satisfaction of the Hospital; and
- d) the Hospital has made all payments required under the Agreement.

If required, either party can ask for confirmation that the Agreement has expired. The Term of this Agreement is subject to any and all rights of either party to terminate this Agreement pursuant to the terms of this Agreement or otherwise available to either party at law or in equity

### **6.2 Termination by Either Party**

Either party may terminate this Agreement on written notice to the other, if such other party neglects or fails to perform or observe any material term or obligation in this Agreement and such failure has not been cured within 30 days written notice being provided.

### **6.3 Termination by Hospital**

The Hospital shall be entitled to terminate this Agreement, without liability, cost or penalty:

- a) on written notice to the Vendor, if any proceeding in bankruptcy, receivership, liquidation or insolvency is commenced against the Vendor or its property;

- b) on written notice to the Vendor, if the Vendor makes an assignment for the benefit of its creditors, becomes insolvent, commits an act of bankruptcy, ceases to carry on its business or affairs as a going concern, files a notice of intention or a proposal or seeks any arrangement or compromise with its creditors under any statute or otherwise;
- c) on written notice to the Vendor, following the occurrence of any material change in the Hospital's Requirements which results from regulatory or funding changes or recommendations issued by any government or public regulatory body;
- d) at any time, without cause, by giving the Vendor at least 180 days written notice;
- e) on 30 days written notice to the Vendor in the event of a breach of the representation regarding conflict of interest in Section 5.4 Conflict of Interest Warranty;
- f) as per any provision of this Agreement that provides for early termination; and
- g) on 30 days written notice, notwithstanding any other termination provisions in this Agreement, in the event that the successor or assign or a member hospital or health facility enters into an agreement with the Vendor during the term or any renewal period of the Agreement:
  - i) in order to be included in an agreement entered into by Hospital(s) and the Vendor; or
  - ii) if the Hospital equipment agreements are to be included in a consolidated agreement with the Vendor for the supply of Equipment.

#### **6.4 No Limitation of Remedies**

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

#### **6.5 Survival**

The provisions of ARTICLE 5-REPRESENTATIONS, WARRANTIES, INDEMNITIES and Sections 7.4 Medical Alerts and Safety Notifications, 7.5 Government or Regulatory Actions, 7.11 Publicity, 7.12 Confidentiality and the Information Practices Appendix shall survive the termination of this Agreement.

### **ARTICLE 7 – GENERAL**

## 7.1 Liability Insurance

*[No services under this Agreement shall be commence or Equipment shall be delivered until the Hospital is in receipt of a satisfactory certificate as set out below.]*

The Vendor shall provide, maintain and pay for the insurance coverages described in this paragraph. The duration of each policy shall be from the date of commencement of work under the Agreement until termination of the Agreement. Prior to commencement of services under the Agreement and upon the placement, renewal, amendment or extension of any part of the insurance, the Vendor shall provide the Hospital with confirmation of coverage and, if requested, a certified true copy of the policies certified by an authorized representative of the insurer along with copies of any amending endorsements. The Vendor shall provide the following coverages:

- a) Comprehensive general liability insurance naming the Hospital as additional insureds with limits of not less than \$5,000,000 per occurrence and \$5,000,000 as an annual aggregate covering liability for personal injury or property damage. The cost of such insurance for the term of the Agreement shall be included in the offer forming part of the proposal.
- b) Automobile liability insurance in respect of licensed vehicles with limits of not less than \$5,000,000 per occurrence and as an annual aggregate and including owned and non-owned vehicles.
- c) The above policies are to include a provision requiring the insurer to provide not less than 30 days notice in writing in advance of cancellation, change or amendment which restricts coverage.

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

**OR**

Upon the earlier of the signing of the Agreement with the Hospital or within 5 Business Days of the Effective Date, the Vendor shall furnish the Hospital with a certificate of liability insurance covering public liability, bodily injury, automobile insurance, and property damage, product and completed operations liability and contractual liability in amounts satisfactory to and with a company approved by the Hospital. The amount of coverage will be on a per occurrence basis. Such policy shall contain a cross-liability clause; an endorsement adding the Hospital as an additional insured; and an endorsement stating that the policies shall not be cancelled, allowed to expire or materially changed without 30 days prior written notice to the Hospital.

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

## **7.2 Bonding**

Upon request by the Hospital, the Vendor will furnish the Hospital with a performance bond issued by a surety company licensed to do business in Canada, in an amount equivalent to 100% of the Purchase Price, and otherwise on terms and conditions and with a company satisfactory to the Hospital. The Vendor may also be required to supply a labour and material bond on terms and conditions with a company satisfactory to the Hospital.

## **7.3 WHMIS**

Prior to the initial shipment of Equipment hereunder, the Vendor shall provide the Hospital with, and during the term of this Agreement the Vendor shall provide and continuously update, a list of all Equipment 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 Vendor shall provide the appropriate Material Safety Data Sheets, including all updates, during the term of this Agreement. All Material Safety Data Sheets documentation will be provided to the Hospital's [*choose as appropriate - Medical Engineering Department; Plant Engineering Department; Information Technology Department; Receiving Department; Occupational Health & Safety Department*] in the format requested by the Hospital.

## **7.4 Medical Alerts and Safety Notifications**

In the event that a medical alert, recall, safety notification, advisory or warning is issued or communicated, at any time, by the Vendor or manufacturer of the Equipment or a recognized reporting agency involving any of the Equipment or posted on the Health Canada Web site, the Vendor shall:

- a) communicate the medical alert, recall, safety notification, advisory or warning by registered mail and by facsimile to:

*[Insert Hospital contacts as appropriate from the Contact Information List.]*

- b) follow any Health Canada protocols and requirements; and
- c) take all steps necessary to remedy the situation at no cost to the Hospital.

The Vendor shall also:

- i) inform the Purchaser of any possible design defect or malfunction condition occurring anywhere in the world with the Equipment, or Equipment similar to the Equipment supplied under this Agreement, at its earliest possible opportunity, but in no event, more than 5 days after the Vendor becomes aware of the existence of such a defect or malfunctioning condition; and

- ii) communicate the situation set out in Section 7.4 (i) to the Purchaser in the same manner as set out in Section 7.4 (a) above.

## **7.5 Government or Regulatory Actions**

If the Hospital decides, in its sole discretion, to recall or cease using any Equipment due to health or safety concerns, or if any governmental or regulatory authority having jurisdiction requires the Hospital or the Vendor to recall or cease using any Equipment, the Hospital or the Vendor, as the case may be, shall promptly notify the other of such decision or requirement and all particulars thereof.

In the case of any recall, seizure or requirement to cease using any of the Equipment by any governmental or regulatory authority having jurisdiction, the Vendor, without limiting the Hospital's rights or remedies, shall have the opportunity to provide the Hospital with corrective action satisfactory to the Hospital as follows:

- a) replace or repair the Equipment and deliver replacement or repaired Equipment to the Hospital satisfactory to the Hospital; or
- b) credit the Hospital an amount equal to the remaining undepreciated Purchase Price, calculated on a *[to be inserted - # of years based on the Hospital's estimated use of the Equipment]* year straight line basis, for such Equipment and any other reasonable costs incurred by the Hospital in operating or complying with any such recall, seizure or order to cease using.

In any event, the Vendor shall defend, indemnify and hold the Hospital and its officers, directors, agents, physicians or employees harmless from and against all damages, liabilities, and costs including legal costs on a solicitor and client basis, arising from or related to such recall, seizure or order to cease using.

## **7.6 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 CBSA requirements. The Vendor shall obtain from the Purchaser and show on the relevant commercial documents all that are accessible of the following: the Purchase Order Number or the department name of the Purchaser purchasing the Equipment. Equipment eligible for duty free entry into Canada according to NAFTA shall be accompanied by a fully completed NAFTA Certificate of Origin or 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 Vendor, shall be charged to and paid by the Vendor or shall be deducted from any payment owing to the Vendor.

## **7.7 Compliance with Laws**

The Vendor shall comply with all federal, provincial and local laws, regulations and orders in fulfilling its obligations under this Agreement and as applicable to the production, processing,

packaging, labeling, sale and delivery and installation of the Equipment for the Hospital and the performance of related servicing.

## **7.8 Remedies Cumulative**

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

## **7.9 Force Majeure**

### **7.9.1 General**

Except as expressly provided otherwise in this 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 them by an Event of Force Majeure.

### **7.9.2 Purchase of Equipment**

The Hospital shall not be responsible to purchase the Equipment set out in this Agreement if the needs of the Hospital change due to any Event of Force Majeure occurring. The Hospital shall advise the Vendor if the Hospital's needs change.

### **7.9.3 Notice**

If one of the Events of Force Majeure occurs, the party who is delayed or fails to perform shall give prompt notice to the other party.

### **7.9.4 Performance**

Such party must use its reasonable 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.

### **7.9.5 Right to Termination**

In the event such inability to perform shall continue longer than 30 days, the party who has received notice pursuant to Section 7.9.3 Notice may terminate this Agreement by notice to the other party without further liability, expense or cost of any kind.

### **7.9.6 Alternative Dispute Resolution**

The Vendor is advised that the process for dispute resolution will be at the discretion of the individual hospitals.

#### **7.9.6.1 General**

Should any party default in respect to or contravene any portion of this 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 levels of management within their organizations and given at least *[to be inserted]* days for management to resolve the matter prior to incurring costs under this Section 7.9.6 Alternative Dispute Resolution. Subject to the provisions of this Agreement, each party shall continue the performance of its obligations during the resolution of any dispute or agreement, including payment or undisputed amounts then due.

The arbitration procedures in this Section 7.9.6 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 (including any type of personal information and personal health information).

#### **7.9.6.2 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 *Arbitration Act* of the Province of Ontario and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

#### **7.9.6.3 Arbitration Site**

The arbitration shall be held at a site mutually determined by both parties. The interpretation and enforcement of this arbitration provision shall be governed by the *Arbitration Act*. If 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 Provincial Arbitration Association shall appoint an arbitrator willing to serve from the stated panel, or, if no such panel exists, then from the “Appointing Committee” at ADR Chambers.

#### **7.9.6.4 Procedure**

Subject to the provisions of this Section 7.9.6, the arbitrator or arbitrators shall determine the procedure for the arbitration. This procedure shall include at least one opportunity for written submissions by or on behalf of each of the parties, and may include proceedings by way of exchange of oral argument, hearings with or without witnesses, and such other procedures as the arbitrator or arbitrators deem appropriate. The arbitrator shall have no power to amend the provisions of this Agreement.

#### **7.9.6.5 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 will be in writing and judgment upon the award by the arbitrator may be entered into any court having jurisdiction thereof. Prompt handling and disposal of the issue is 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 him or her, 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.

#### **7.9.6.6 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 shall 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, he or she shall so state, and the fees shall be split equally between the parties.

#### **7.9.6.7 Termination Clauses not Subject**

Notwithstanding the above, the termination clause provisions as set out in Sections 6.2 and 6.3 are not subject to Alternative Dispute Resolution.

### **7.10 Notices**

#### **7.10.1 General**

Subject to the provisions of Section 7.4 Medical Alerts and Safety Notifications and the Information Practices Appendix, any notice, demand, request, consent, approval or acceptance required or contemplated to be given or made hereunder, shall be in writing and either delivered personally or by courier service, sent by facsimile transmission or by regular mail, postage prepaid, addressed to the address set forth on the first page hereof or,

- a) in the case of the Vendor, to facsimile number *[insert facsimile number]*;
- b) in the case of the Hospital, to facsimile number *[insert facsimile number]*;

or to such other address or number of which either party may from time to time notify the other in writing. The time of giving or making such notice, demand, request, consent, approval or acceptance shall be deemed to have been received:

- i) if sent by facsimile transmission on the first Business Day after confirmed transmission;
- ii) if mailed in Canada on the fifth Business Day after the date of mailing other than during an actual or threatened postal disruption, in which event personal delivery shall be required;
- iii) otherwise, when delivered.

## **7.10.2 Changes**

The parties shall notify the other party if there are any changes in the information set out in this Section 7.10 Notices.

## **7.11 Publicity**

The Vendor agrees that the terms of this Agreement are confidential. The Vendor will not, in any of its advertising or otherwise, indicate that it has supplied or may in the future supply Equipment to the Hospital without the express prior written consent of the Hospital. No acquisition or use of the Equipment by the Hospital shall be construed as an endorsement or approval of such Equipment.

## **7.12 Confidentiality**

### **7.12.1 General**

The Vendor agrees that any information concerning the business or affairs of the Hospital or its directors, officers, agents, physicians, employees, and clients of which the Vendor's Personnel become aware in the course of supplying Equipment shall:

- a) be treated as confidential;
- b) not be disclosed to any third party or to the Vendor's Personnel except as may be required under this Agreement; and
- c) not be used for any purpose other than that contemplated by this Agreement and for the benefit of the Hospital.

The Vendor agrees that any combination of information which includes such information shall be treated as confidential even if individual parts thereof are not confidential. The Vendor 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 Vendor shall ensure that all recipients of the said information, including the Vendor's Personnel assume obligations identical in principle with those which the Vendor assumes under this Section.

In the event the Vendor is required by any applicable law to make disclosure of any such information, the Vendor shall consult with the Hospital to the extent reasonably practicable in advance as to the contents and timing of such disclosure.

### **7.12.2 Information Practices**

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

### **7.13 Property of the Hospital**

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

The parties hereby execute this Agreement as of the date first above written.

\_\_\_\_\_  
(Name of Hospital)

\_\_\_\_\_  
(Name of Vendor)

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

**APPROVED BY:**

\_\_\_\_\_

\_\_\_\_\_  
(Date)

**RECOMMENDED BY:**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
(Date)

**Executive Summary Appendix**  
**of Agreement #, between *[to be inserted]* and *[to be inserted]***

**Equipment Appendix**  
**of Agreement #, between *[to be inserted]* and *[to be inserted]***

**Specifications Appendix**  
**of Agreement #, between *[to be inserted]* and *[to be inserted]***

**Hospitals Background Information and Additional Requirements Appendix**  
**of Agreement #, between *[to be inserted]* and *[to be inserted]***

**Implementation Appendix**  
**of Agreement #, between *[to be inserted]* and *[to be inserted]***

**Services and Support Appendix**  
**of Agreement #, between *[to be inserted]* and *[to be inserted]***

**Site Planning and Turnkey Requirements Appendix**  
**of Agreement #, between *[to be inserted]* and *[to be inserted]***

## **Information Practices Appendix**

**of Agreement #, between [to be inserted] and [to be inserted]**

### **Collection, Use and Disclosure of Personal Health Information**

1. The Vendor agrees to receive PHI from the Hospital in accordance with s. 17 or, in the case of health information network providers, s. 10(4) of the *Personal Health Information Protection Act, 2004* (Ontario) and its related regulations, as part of the Vendor's provision of services to and on behalf of the Hospital, and not on the Vendor's behalf or for the Vendor's own purposes.
2. The Vendor 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.
3. The Vendor will only use and disclose any PHI it receives from the Hospital as is permitted or required under the Agreement or the laws of Canada and/or the province of Ontario.
4. The Vendor will ensure that any of its agents or subcontractors to whom the Vendor provides the Hospital PHI has agreed to the same restrictions and conditions that apply to the Vendor with respect to PHI.
5. The Vendor shall not disclose PHI, or any information, to any affiliated or unaffiliated third party without the prior written consent of the Hospital.
6. The Vendor will maintain a log of access and disclosure of PHI by the Vendor and the Vendor's Personnel and make such log available to the Hospital as and when requested.

### **Practices to Protect Personal Health Information**

7. The Vendor will employ appropriate safeguards to prevent theft, loss and unauthorized access, copying, modification, use, disclosure or disposal of PHI.
8. The Vendor will maintain privacy policies in accordance with Canadian and Ontario laws and these policies will be made available for inspection on request.
9. The Vendor 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.
10. The Vendor will ensure that its employees who are fired, resign or no longer require access to PHI from the Hospital return all PHI to the Hospital and can, thereafter, no longer access applications, hardware, software, network and facilities belonging to either the Vendor or the Hospital.

11. The Vendor will revoke any user's access to PHI if security is breached and on the Hospital's reasonable request.
12. At the termination of the Agreement, the Vendor will return or destroy all PHI received from, created or received by the Vendor on behalf of the Hospital that the Vendor maintains custody of in any form and will retain no copies of PHI thereafter. If such return or destruction of PHI is not feasible, the Vendor will notify the Hospital of this fact, extend the protections of the Agreement to all PHI in your custody and will cease all further uses and disclosures.

### **Notification of and Communication with the Hospital**

13. The Vendor will provide the Hospital with the name of a contact person at the Vendor's organization responsible for the Vendor's privacy compliance and notify the Hospital within 24 hours of any changes in the identity of the responsible person.
14. The Vendor will provide notice to the Hospital's Privacy Office if the nature of the Vendor's business and the services being provided to the Hospital require that the Hospital PHI must be transmitted or access be provided to any of the Vendor'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 Hospital's Privacy Office can be notified as follows:

*[Insert Hospital contacts as appropriate from the Contact Information List.]*

15. The Vendor will report to the Hospital's Privacy Office at the Vendor's first reasonable opportunity, but in any event no more than 48 hours after the Vendor becomes aware of any use, disclosure, theft or unauthorized access of PHI by the Vendor or any of your agents or subcontractors to whom you provide the Hospital PHI.
16. The Vendor will refer anyone trying to access, correct or complain about their PHI to the Hospital's Privacy Office within 48 hours of receiving the complaint or request for access or correction.
17. The Vendor will, upon request, make PHI available to the Hospital for amendment and incorporate any amendments into the Vendor's records of PHI. During the term of the Agreement, the Vendor may never deny the Hospital access to its patients' PHI.
18. The Hospital reserves the right to: inspect any equipment used or records maintained by the Vendor in connection with the provision of goods or services; question the Vendor's Personnel regarding their handling of PHI; and otherwise audit and electronically verify compliance with these practices.

### **Additional Hospital Rights**

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