

STANDARD PURCHASING TERMS AND CONDITIONS

Revised: January 11th, 2012

PART I - DEFINITIONS

1. Definitions

- 1.1 In these standard purchasing terms and conditions ("**Terms and Conditions**"):
- (a) "**Accounts Payable Department**" means the Hospital department where invoices and payments are processed currently located at 30 Bond Street, Toronto, ON M5B 1W8, Tel: 416-864-6009, Fax: 416-864-5439.
 - (b) "**Authorized Hospital Representative**" means the staffperson in the Hospital's Vendor Administration Department who has issued the Purchase Order;
 - (c) "**Authorized Manager**" means the Manager, or his or her designate, in the department of the Hospital that will be receiving and using the Products;
 - (d) "**Confidential Information**" means any Contract and any information relating to the Hospital, the Personal Health Information of its patients, or otherwise proprietary to the Hospital, issued to, used by, accessed by, or disclosed to the Supplier, directly or indirectly, in connection with the performance of the Supplier's obligations under these Terms and Conditions;
 - (e) "**Contract**" includes these Terms and Conditions and any other purchase orders, invoices, or documents relating to the supply of Products signed by both parties;
 - (f) "**Equipment**" means any equipment purchased under these Terms and Conditions, including Medical Devices;
 - (g) "**FIPPA**" means the *Freedom of Information and Protection of Privacy Act* (Ontario), as amended from time to time;
 - (h) "**Hazardous Substances**" means and includes, without limitation, the following: Acrylonitrile, Arsenic, Asbestos, Benzene, Bisphenol-A (BPA), Chlorine, Di-2-ethylhexyl phthalate (DEHP), Ethylene Oxide, Halogenated – organics, Isocyanate, Lead, Latex, Mercury, Persistent Bioaccumulative Toxins (PBTs), Carcinogens and Reproductive Toxins (Proposition 65), Silica, Vinyl or Polyvinyl Chloride (PVC), or any combination thereof;
 - (i) "**Hospital**" means St. Michael's Hospital, having an address for notice at 30 Bond Street, Toronto, ON M5B 1W8, Vendor Administration Department, Tel: 416-864-5028, Fax: 416-864-5556.
 - (j) "**Medical Device**" has the meaning given to it in the Medical Devices Regulations under the *Food and Drugs Act* (Canada);

- (k) **“Personal Health Information”** has the meaning given to it in PHIPA and includes information:
- (i) that identifies (or could reasonably identify) an individual and that is collected in the course of providing health care services to that individual, such as information that relates to the physical or mental health of that individual; that individual’s family history, as reflected in the patient’s record at the Hospital; that individual’s payment or eligibility for funding for health care;
 - (ii) that relates to that individual’s donation of a body part or bodily substance;
 - (iii) that identifies that individual’s substitute decision-maker; and
 - (iv) such as that individual’s health card number;
- (l) **“PHIPA”** means the *Personal Health Information Protection Act, 2004* (Ontario);
- (m) **“Products”** includes all goods, whether tangible or intangible, purchased under these Terms and Conditions, such as Equipment, Medical Devices, and Software, and including all intellectual property rights sold, leased, licensed, or otherwise provided by Supplier to the Hospital, and any installation, training, implementation, maintenance, labour or other services provided to the Hospital in relation to the provision of such goods;
- (n) **“Purchase Order”** means the numbered document issued by the Hospital to the Supplier identifying the nature of the Products and/or Services to be provided under this Contract and the amounts payable therefor and confirming the purchase of such Products and/or Services;
- (o) **“Receiving Dock”** means the receiving docks at the Hospital located at the Shuter Street, and Victoria Street
- (p) **“Service Levels”** means the performance targets identified in Purchase Order to be met by the Supplier while providing the Services;
- (q) **“Services”** means services provided by Supplier to the Hospital, provided separate and apart from the supply of the Products and described in the Purchase Order;
- (r) **“Software”** means any software licensed under these Terms and Conditions;
- (s) **“Supplier”** means the supplier of Products to the Hospital under these Terms and Conditions;
- (t) **“Warranty Period”** means the 12-month period following the date of delivery or, if applicable, the date of acceptance of the Product; and
- (u) **“WSIB”** means Ontario’s Workplace Safety and Insurance Board.

PART II – TERMS AND CONDITIONS - GENERAL

2. Terms and Conditions Apply and Prevail

- 2.1 These Terms and Conditions apply to all Products and Services purchased by the Hospital with this document, including any purchase by the Hospital through a purchasing group.
- 2.2 In the event of any conflict or inconsistency with the terms of any other Contract, these Terms and Conditions, wherever possible, shall prevail over any terms and conditions contained in any other Contract. These Terms and Conditions shall always be deemed to supplement the terms and conditions of any other Contract, where no conflict or inconsistency exists.

3. Financial Matters

- 3.1 All prices, fees, and other amounts quoted or invoiced shall accord with the Hospital's Purchase Order and shall separately identify all duties, taxes and levies, where applicable, that may be levied or imposed in connection with the supply of the Products and/or Services, including provincial sales tax ("**PST**"), the goods and services tax ("**GST**"). and the harmonized sales tax ("**HST**")
- 3.2 In any situations where such prices, fees, and other amounts invoiced do not accord with the Hospital's Purchase Order, the Supplier understands and agrees that the Hospital shall have no obligation to pay such invoice. All other costs, charges or out-of-pocket expenses, including any transportation or handling costs, are not allowable unless they have been pre-approved by an authorized Hospital representative in writing. Any request for reimbursement of out-of-pocket expenses must be accompanied by appropriate supporting documentation. All out-of-pocket expenses must be shown separately. The Supplier shall apply tax to out-of-pocket expenses solely in accordance with current tax legislation.
- 3.3 Unless otherwise indicated, all dollar amounts referred to in Hospital documents, including the Purchase Order, are in Canadian funds.
- 3.4 Every delivery or shipment and packing slip relating thereto shall quote the Hospital's Purchase Order number and shall be delivered to the Hospital's Receiving Dock. The Supplier shall suitably pack, mark, and ship the Products in adequate protective packaging. The Hospital shall have the right to a final inspection within a reasonable time after the arrival of the Products at the receiving dock. The Hospital may, at any time after delivery, reject unordered, defective or non-conforming Products. The Supplier shall be responsible for the removal or replacement of such rejected Products at its own expense. Any Products rejected by the Hospital shall be at the Supplier's risk for damage or loss.
- 3.5 Invoices may only be submitted to the Hospital's Accounts Payable Department after delivery, completion or acceptance of the Products, as applicable. All invoices must quote the Hospital's Purchase Order number. The Hospital shall pay all non-disputed invoiced amounts within the later of forty-five (45) days after the date of each invoice, or in accordance with the terms as are set out in the specific Purchase Order for the Products. The Hospital may at its discretion accept any early payment discount terms offered by the Supplier. As a medical and research centre affiliated with the University of Toronto, the Hospital may be afforded educational discounts offered by the Supplier. Any amounts disputed

by the Hospital in good faith shall be submitted to the dispute resolution process under these Terms and Conditions and, if determined to be owing, shall be paid by the Hospital with interest as ordered by the arbitrator.

- 3.6 The Hospital shall be entitled to withhold and to deduct from any amount payable to the Supplier any amounts that must be remitted to any taxing authority on account of withholding tax in respect of any Products or Services, and any amount so remitted shall be considered to have been paid to the Supplier.
- 3.7 The Supplier agrees to work with the Hospital, at no cost to the Hospital, to establish automated electronic data interchange (“**EDI**”) procedures and processes for the ordering, delivery, inventory management, invoicing, and Electronic Funds Transfer (“**EFT**”) of all Products and/or Services. The Supplier agrees to accommodate any on-line purchasing system implemented by the Hospital, provided that such systems are compatible with the Supplier’s existing order management systems.
- 3.8 In order to receive payment for any Services that are provided by the Supplier, the Supplier shall provide the Hospital with a certificate of completion signed by the Supplier, as well as evidence that the Services have been accepted by the Authorized Manager.
- 3.9 For all Products requiring testing to ensure proper performance, the Supplier acknowledges and agrees that twenty-five percent (25%) of the total payments due to the Supplier shall be withheld until an authorized representative of the Hospital has provided the Hospital’s signed Certificate of Acceptance Form in the form attached as Schedule “A”. A copy of such Certificate of Acceptance must be submitted by the Supplier with the invoice in order to release the final payment.

4. General Representations and Warranties – Products; Warranty Period

- 4.1 The Supplier represents and warrants as follows in relation to its supply of Products:
 - (a) it has all necessary power and authority to agree to these Terms and Conditions;
 - (b) it has all right and title to the Products, free and clear of any charges, liens and encumbrances or, alternatively, has obtained the rights necessary to supply the Products to the Hospital;
 - (c) it possesses all permits, licences and regulatory approvals necessary in connection with the provision of the Products to the Hospital;
 - (d) if applicable, it has secured and has in place appropriate workers’ compensation coverage;
 - (e) during the Warranty Period, the Products shall:
 - (i) be free from any defects in design, materials or workmanship;
 - (ii) perform in accordance with all written specifications applicable to such Products and shall meet or exceed all relevant industry standards;

- (iii) be of merchantable quality and shall be fit for the purpose for which the Hospital has made known to the Supplier that they will be used;
- (iv) have received all applicable approvals of the Canadian Standards Association, Underwriters' Laboratories of Canada, or any other organization that certifies the Products;
- (v) unless the Hospital has specifically waived this requirement in writing, be environmentally friendly and free of Hazardous Substances;
- (vi) to the extent that the Products include services:
 - A. such services shall be performed in a conscientious, professional and worker-like manner, with reasonable skill, care and diligence, in accordance with industry standards;
 - B. such services shall be performed by employees, contractors or agents who are qualified and competent and have the appropriate skills and experience to perform the duties assigned to them;
 - C. upon request, the Supplier shall furnish a certificate of clearance from the WSIB.

4.2 During the Warranty Period, if the Hospital notifies the Supplier of any breach of any of the foregoing warranties, the Supplier shall use its best efforts, at no expense to the Hospital, to remedy the breach as quickly as possible to ensure that the Hospital's operations are not negatively impacted or interrupted.

4.3 In the event that, despite using its best efforts, the Supplier is unable to remedy the breach, the Hospital shall be entitled, at its option, to return the affected Products, or with respect to any service obligations hereunder, to terminate the Contract and to receive a refund of all amounts paid or to require the Supplier to replace the affected Product with another product of equivalent function and performance. These remedies are in addition to any other remedy that the Hospital may have in law or in equity.

5. General Representations and Warranties – Services

5.1 The Supplier represents and warrants to, and covenants with, the Hospital in relation to the provision of the Services as follows:

- (a) there is no proceeding in progress or pending or threatened against, related to or affecting the Supplier including, without limitation, in connection with the Services provided, which might be expected to have a materially adverse effect on the Services or the Service Levels provided;
- (b) in the course of providing the Services, it shall comply with all applicable laws;
- (c) the Supplier possesses all permits, licences and regulatory approvals necessary in connection with the provision of the Services to the Hospital;
- (d) the Services shall be performed:

- (i) in a conscientious, professional and worker-like manner, with reasonable skill, care and diligence, in accordance with industry standards;
 - (ii) by employees, contractors or agents who are qualified and competent and have the appropriate skills and experience to perform the duties assigned to them; and
- (e) the Supplier shall furnish upon request a certificate of clearance from the WSIB.

6. Quality and Service Covenants – General

- 6.1 The Supplier covenants that, in the course of providing any Products or Services, it shall comply with all applicable laws.
- 6.2 While on Hospital premises, the Supplier agrees that its employees, contractors and agents will:
- (a) not enter any Hospital patient treatment areas without the Hospital's consent;
 - (b) wear photo identification; and
 - (c) comply with all Hospital rules and policies made known to the Supplier, including safety, health and security rules and policies.

7. Quality and Service Covenants – Products

- 7.1 In the event of a medical alert, consumer alert or other form of Product recall issued by the manufacturer of the Products or by any other qualified authority, the Supplier will immediately advise the Hospital and take all reasonable steps to minimize the Hospital's risk and to remedy the situation, at the Supplier's expense. The Supplier shall also be responsible for reimbursing the Hospital for all out-of-pocket costs and related expenses incurred, including return freight and packaging.
- 7.2 Upon request, the Supplier shall disclose to the Hospital the composition and/or chemical breakdown of the Products provided to the Hospital. The Hospital agrees to keep such information confidential.
- 7.3 The Supplier shall inform the Hospital of any Product containing Hazardous Substances. Each shipment of Products containing any Hazardous Substances shall be labelled as such and shall identify the Hazardous Substance or Substances contained therein.

8. Service Levels – Products

- 8.1 The Supplier shall provide to the Hospital the Services, in compliance with the Service Levels and for the period identified in the Purchase Order. The Supplier shall furnish all labour, materials, parts and equipment to provide the Services and shall complete the Services in the manner as set out in this Agreement.
- 8.2 The scope and pricing of the Services may be amended from time to time upon mutual agreement of both parties as to the scope of the changes. Any change to the Services required by a change in law or regulation shall be implemented immediately by the Supplier upon receipt of notice from the Hospital, and the

parties shall in good faith agree on revised pricing, if any, relating to such change.

- 8.3 Within thirty (30) days of performance of the Services, the Hospital shall provide the Supplier with written notice of any deficiencies in the Services provided, and the Supplier shall be required to re-perform the Services or correct such deficiencies. If the Services are not re-performed or corrected, the Hospital is entitled to recover the fees paid to the Supplier for such deficient Services.

9. Passing of Title; Acceptance Period

- 9.1 Title to the Products, as applicable, shall pass from the Supplier to the Hospital on the later of the date on which:

- (a) delivery or, if applicable, acceptance of the Products (acceptance is as defined in section 9.2); or
- (b) payment is made in full by the Hospital.

- 9.2 The Supplier acknowledges that for all Equipment, Software and other Products requiring testing to ensure proper performance, the Hospital shall have a minimum period of sixty (60) days, or such longer period as the parties may agree, from the date of the installation of the Products or, where installation is not done by the Supplier, from the date of the delivery to the Hospital (the "**Acceptance Period**"), to conduct such testing as the Hospital deems appropriate to determine whether each Product is suitable for its purposes.

- 9.3 On or before the end of the Acceptance Period, the Hospital shall notify the Supplier if any of the Products has failed to perform in accordance with its specifications and request the Supplier to rectify specified defects, in which case the Acceptance Period shall be extended for a further twenty (20) days, provided that any time spent by the Supplier correcting any such defects shall not count as part of the Acceptance Period, and provided that in no event and under no circumstances shall any Products be deemed to have been accepted by the Hospital until the Hospital has issued a written notice of acceptance to the Supplier.

- 9.4 No Product will be deemed to be delivered or accepted unless all applicable schematics, specifications, operating instructions, maintenance and training manuals, and WHMIS material safety data sheets are delivered with the Product. The Supplier shall provide the Hospital with all materials in hard copy and electronic formats.

- 9.5 Acceptance of any part of a Product order shall not bind the Hospital to accept further shipments or deprive the Hospital of the right to return Products already received, in accordance with these Terms and Conditions.

10. Title to Work Product

- 10.1 Unless otherwise agreed in writing by the parties, title to all working papers, materials, reports, and work-in-progress created, developed or performed by the Supplier during the course of providing the Products or Services (the "**Work Product**") shall vest in the Hospital. The Supplier conveys and assigns to the Hospital all intellectual property rights in such Work Product and shall execute any additional documents required to evidence same, including a waiver of moral rights.

11. Risk

- 11.1 The Supplier agrees to indemnify, and undertakes to defend and hold harmless, the Hospital, its directors, officers, employees and agents from and against all liability, loss, damage or expense, including reasonable legal fees, resulting from any action, claim or demand arising as a result of the negligence or misconduct of the Supplier or anyone the Supplier is responsible for at law, including any claim for death, bodily injury, or loss of or damage to property.
- 11.2 The Supplier agrees to indemnify the Hospital for any damage caused to the Hospital's premises or property by the Supplier or anyone for whom the Supplier is responsible at law in the course of providing or installing a Product and or providing a Service under these Terms and Conditions.
- 11.3 The Supplier agrees to indemnify, and undertakes to defend and hold harmless, the Hospital, its directors, officers, employees and agents from and against all liability, loss, damage or expense, including reasonable legal fees, resulting from any action, claim or demand alleging that the supply, use or copying of any products infringes any patent, copyright or other proprietary right or trade secret of any third party, provided that the Hospital provides notice to the Supplier of any such claim and cooperates with the Supplier, at Supplier's expense, in the defence of statement of such a claim, and provided further that that the alleged infringement does not result from any alterations, modifications or enhancements carried out by the Hospital or by a third party on the Hospital's behalf.
- 11.4 If a claim has occurred under section 11.3, or in the Supplier's opinion is likely to occur, the Hospital agrees to permit the Supplier, at its option and expense, either to procure for the Supplier the right to continue using the Product or to replace or modify the same so that it becomes non-infringing without loss of functionality, or if none of the foregoing alternatives is reasonably available, and the Hospital consents, to refund to the Hospital any fees paid in respect of such Product.
- 11.5 The Supplier will carry insurance of such types and amounts that are consistent with industry standards, including a comprehensive commercial general and product liability insurance policy of two million dollars (\$2,000,000) per occurrence.

12. Termination

- 12.1 The Hospital reserves the right to cancel any proposed purchase under these Terms and Conditions within thirty (30) days from issuance of the Purchase Order, unless otherwise agreed.
- 12.2 The Hospital may terminate any Contract on the following conditions:
 - (a) immediately, upon written notice to the Supplier, if the Supplier becomes bankrupt or insolvent or seeks the protection of any law for bankrupt or insolvent debtors;
 - (b) at any time, with or without cause, by giving the Supplier thirty (30) days' written notice; or
 - (c) immediately, if the Supplier breaches any material term of any Contract and such breach has not been cured following ten (10) days' written notice thereof from the Hospital.

13. Confidentiality

- 13.1 The Supplier shall use the Confidential Information solely for the purposes of fulfilling its obligations under these Terms and Conditions and for no other purpose whatsoever.
- 13.2 The Supplier shall not disclose the Hospital's Confidential Information to any person or entity except:
- (a) to the Supplier's employees, contractors and agents who legitimately and reasonably require same in connection with fulfilling the Supplier's obligations under these Terms and Conditions; or
 - (b) as required by law.
- 13.3 On the request of the Hospital, the Supplier shall forthwith return to the Hospital all the Confidential Information in its possession. The Supplier's obligations with respect to Confidential Information shall survive the expiration or termination of this Contract for any reason.
- 13.4 Notwithstanding any other provision in these Terms and Conditions, the Confidential Information shall not include information that is or becomes a part of the public domain through no fault of the Supplier or anyone for whom the Supplier is responsible at law, is received by the Supplier from a third party free of restriction, or can be established by written evidence to be already in the Supplier's possession without obligation of confidentiality prior to disclosure by the Hospital.
- 13.5 The Supplier may not, in its advertising or otherwise, indicate that it has or may supply Products or Services to the Hospital, without the express written consent of the Hospital.

14. Protection of Personal Health Information

- 14.1 The Supplier shall only access Personal Health Information with the Hospital's consent and as required to fulfill its obligations under these Terms and Conditions. When accessing Personal Health Information, the Supplier is an agent of the Hospital, as the term "agent" is defined in PHIPA, and with all the obligations imposed on an agent under PHIPA.
- 14.2 The Supplier shall ensure that its employees, contractors, sub-contractors and agents are aware of and agree to be bound by the confidentiality provisions that are set out in these Terms and Conditions.
- 14.3 In the event of a breach of these confidentiality provisions by an employee, contractor or agent of the Supplier, the Hospital may require that individual to cease providing services under this Contract.
- 14.4 In order to safeguard the privacy of the Personal Health Information that is accessed or used by the Supplier, the following procedures shall be followed:
- (a) The Supplier shall institute confidentiality policies, procedures and protocols that protect against the disclosure of Personal Health Information to people who are not authorized to have that information.

- (b) The Supplier shall prepare a plain language description of any services provided to the Hospital under these Terms and Conditions, including a description of all safeguards in place to protect Personal Health Information. This plain language description shall be provided to the Hospital and may be made available to the public at the Hospital's discretion. The Supplier shall further provide to the Hospital a general description of security safeguards implemented, and any directives, guidelines and policies that apply to the provision of services to the Hospital. For greater certainty, the Supplier is not obligated to disclose its trade secrets or confidential scientific, technical, commercial or labour relations information in this plain language description.
 - (c) The Supplier shall provide the Hospital with a report of how the provision of any services under these Terms and Conditions may affect patient privacy. In particular, the Supplier shall provide to the Hospital an assessment of any threats, vulnerabilities and risks to the security and integrity of the Personal Health Information.
 - (d) The Supplier shall undertake monitoring activities to assist in ensuring that these privacy provisions are being followed by its employees, contractors and agents. In particular, the Supplier shall monitor and be capable of reporting to the Hospital, upon request, all access, use and disclosure of Personal Health Information by the Supplier, including individual access and time of access.
 - (e) In the event that the Supplier becomes aware that Personal Health Information has been stolen or lost, or a person has obtained unauthorized access to Personal Health Information, or the Supplier has used, disclosed or disposed of Personal Health Information other than as contemplated in these Terms and Conditions, the Supplier shall at the first reasonable opportunity notify the Hospital by telephone followed by written notice.
 - (f) The Hospital may, upon reasonable notice, assess and review the Supplier's procedures for receiving and processing Personal Health Information, for the purposes of ensuring that the privacy provisions of this Contract are being complied with. For these purposes, the Supplier shall provide the Hospital with reasonable access to the policies, procedures and protocols used for purposes of providing any services and any documents that may be relevant.
- 14.5 The Supplier will cooperate with any privacy assessment or audit conducted by or on behalf of the Hospital.
- 14.6 In the event that the Hospital makes a formal complaint to the Supplier in respect of the Supplier's compliance with these confidentiality or privacy provisions, the Supplier shall, within five (5) days of receipt of the complaint, investigate the matter and provide the Hospital with an oral report stating the cause of the deficiency, if any, and the steps taken to prevent a recurrence, if required. Within a further five (5) days, the Supplier shall provide the Hospital with a written report documenting the complaint, investigation, deficiency, if any, and the steps taken to prevent a recurrence, if required.
- 14.7 In the event of any breach of the Supplier's obligations hereunder, the Supplier shall indemnify the Hospital from and against all liabilities, costs and expenses arising from the Supplier's breach.

15. Freedom of Information and Protection of Privacy Act

The Supplier acknowledges and understands that, as of January 1, 2012, the Hospital is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) (“**FIPPA**”) and that records in the custody or control of the Hospital, including records related to any Purchase Order, are accordingly subject to disclosure obligations in accordance with FIPPA.

PART III – INTELLECTUAL PROPERTY PROVISIONS

16. Provisions Specific to Products containing Intellectual Property

16.1 The Supplier represents and warrants to the Hospital that:

- (a) the Supplier has all necessary right to grant a licence in the Software to the Hospital;
- (b) the Supplier has the necessary intellectual property interests required to perform its obligations hereunder and to provide the Hospital with the necessary rights or licenses that the Hospital requires;
- (c) the Software does not contain any back door, time bomb, drop-dead device or other software routine designed to disable the software automatically, with the passage of time or under the positive control of any person other than the Hospital;
- (d) the Software shall be free from any computer code or programming instructions that are constructed with the ability to damage, interfere with or otherwise adversely affect computer programs, the data files or hardware without the consent or intent of the computer user, including self-replicating and self-propagating programming instructions commonly called “viruses” and “worms”;
- (e) any diskettes or any other computer storage media on which the Software is supplied will be free from significant defects in materials and workmanship under normal use, and will perform in compliance with published specifications for the Warranty Period; and
- (f) will be compatible with the information systems of the Hospital, as identified by the Hospital to the Supplier.

16.2 With respect to any Equipment or Software that processes dates, it:

- (a) is capable of processing dates and date data without error, regardless of day, month, year or century; and
- (b) will not terminate or malfunction as a result of date-related operations, interfaces, or calculations.

16.3 The Supplier will provide, during the Supplier’s business hours (as conveyed to the Hospital from time to time), assistance by telephone, internet or otherwise with respect to support of the Software.

- 16.4 Notwithstanding any other provision in these Terms and Conditions, shrinkwrap Software is supplied according to its own terms and conditions.
- 16.5 The Hospital agrees not to copy or otherwise reproduce, reverse engineer or decompile the Software.
- 16.6 The Supplier acknowledges and agrees that the Hospital shall have all right, title and interest in and to any enhancements to the Products as may developed by the Hospital or its staff.

PART IV – MEDICAL DEVICES

17. Provisions Specific to Medical Devices

- 17.1 In addition to the general representations and warranties in section 4, the Supplier represents and warrants that:
 - (a) the Medical Device is authorized for sale in Canada under the *Food and Drugs Act* (Canada);
 - (b) the Medical Device is duly licensed in accordance with the *Food and Drugs Act* (Canada) and related regulations, and a copy of the licence has been provided to the Hospital or, alternatively, the Supplier has produced evidence of its licence in another manner acceptable to the Hospital, such as through the web-based database maintained by Health Canada;
 - (c) any limitations or qualifications on the licence have been conveyed in writing to the Hospital;
 - (d) the import, sale, advertising, labelling, manufacturing and distribution of the Medical Device, and any other activities related to the Medical Device, comply in all respects with the *Food and Drugs Act* (Canada) and related regulations and any other applicable laws;
 - (e) it has secured product liability insurance for the Medical Devices with a minimum coverage of five million dollars (\$5,000,000) per occurrence.
- 17.2 The Supplier shall notify the Authorized Hospital Representative and the Director, Risk Management and Quality Assurance promptly and in writing if:
 - (a) it becomes aware of an adverse event occasioned by the use of a Medical Device supplied under these Terms and Conditions; or
 - (b) there is any change, or to the Supplier's knowledge, a possible change, to a licence issued for any Medical Device supplied under these Terms and Conditions.
- 17.3 Before delivering any Medical Device to the Hospital, the Supplier shall check www.mdall.ca to ensure that the Medical Device has a valid license listing. If the Medical Device is not listed, the Supplier shall not deliver the Medical Device to the Hospital and shall immediately notify the Hospital. Where a Medical Device has been delivered to the Hospital without the Supplier having first ensured the valid license listing for the Medical Device, the Hospital shall have no obligation whatsoever to pay the Supplier for the Equipment received. In the

event that the Hospital has already paid for the Equipment, the Supplier shall refund any such payments to the Hospital and shall pay all costs associated with the use or removal of such Equipment.

- 17.4 The Supplier shall ensure that each first time delivery of the Medical Devices to the Hospital shall be accompanied with complete instruction and training manuals, including comprehensive details on the cleaning and/or reprocessing of the Medical Devices (the “**Manuals**”). The Supplier shall promptly provide the Hospital with notice of any amendments that are made to the Manuals.
- 17.5 The Supplier acknowledges, understands and agrees that all Medical Devices must have the prior written approval of the Hospital’s Infection Control Practitioner and the Clinical Services or Perioperative Services Work Group of the Operational Resources and New Technology Committee before such Medical Devices are approved for purchase. In the event that the Supplier delivers Medical Devices before such approval has been obtained from the Hospital, the Hospital shall have no obligation to pay for such Medical Devices.

18. Alerts and Recalls

In the event of a “Consumer Alert”, “Medical Alert”, or “Product Recall” issued by the manufacturer of any Products or any recognized reporting agency, the Supplier shall immediately advise the Authorized Hospital Representative of such alert or recall and shall take all steps to minimize the Hospital’s risks and to remedy the situation at the Supplier’s sole expense. The Supplier will follow all Health Canada requirements for notification.

19. Dispute Resolution

- 19.1 In the event of any dispute between the parties with respect to any matter arising out of this Contract, upon the written request of either party, senior managers from each of the parties familiar with the Products or Services will meet for the purpose of resolving the dispute. The parties will discuss the problem and negotiate in good faith without the necessity of any formal proceedings. If the dispute cannot be settled within ten (10) days through this informal process, the dispute can be submitted to arbitration by either party, as contemplated below.
- 19.2 Despite anything else to the contrary contained herein, the following matters shall be excluded from arbitration under section 19.3:
 - (a) a decision by either party to terminate the Contract in accordance with these Terms and Conditions; and
 - (b) the Hospital’s right to amend, change or vary any terms of the Contract or these Terms and Conditions.
- 19.3 All disputes between the parties arising out of or concerning this Contract, including without limitation any dispute as to interpretation, any alleged breach, the right of a party to exercise any right or remedy, and any claim by a party for a breach, that have not been settled by informal dispute resolution shall be resolved by binding arbitration in accordance with the *Arbitration Act, 1991* (Ontario) and the following provisions:
- 19.4 The arbitrator process shall be commenced by one party to the dispute providing a written notice to the other party to the effect that the notifying party wishes to have the dispute resolved by binding arbitration. The arbitration shall be

conducted in the City of Toronto by a single arbitrator with suitable expertise to be agreed upon by the parties. If the parties cannot agree on an arbitrator, either party may apply to a judge of the Superior Court of Ontario to appoint an arbitrator, with written notice to the other party.

- 19.5 The arbitrator shall not be bound by the rules of evidence or of civil procedure, but rather may consider such writings and oral presentations as reasonable business people would use in the conduct of their day-to-day affairs, and may require the parties to make some or all of their submissions in writing or in any other manner which the arbitrator considers to be appropriate. The parties intend to limit live testimony and cross-examination to the extent necessary to ensure a fair hearing on material issues.
- 19.6 The written decision of the arbitrator shall contain a brief statement of each dispute determined, the decision of the arbitrator with respect to such dispute, the reasons for such decision, and an apportionment of costs for the arbitration process. The arbitrator's decisions in the disputes shall be final and binding, with no recourse to appeal.
- 19.7 The parties desire that any arbitration should be conducted in strict confidence and that there shall be no disclosure to any person (other than necessary to carry out the arbitration) of the existence of the dispute or any aspect of the dispute.

20. General Legal Terms

- 20.1 Nothing in this Contract constitutes the Hospital and the Supplier as partners or joint venturers, nor shall the Supplier hold itself out as an agent of the Hospital. The Supplier does not have the authority to bind the Hospital.
- 20.2 Neither party will be entitled to assign this Contract without the prior written consent of the other party. The Supplier may not subcontract any of its obligations under these Terms and Conditions without the prior written consent of the Hospital. Notwithstanding any such consent, the Supplier shall ensure that any approved subcontractor shall also be bound by these Terms and Conditions.
- 20.3 This Contract will be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada.
- 20.4 All notices under this Contract shall be in writing and shall be delivered by personal delivery/courier, fax or registered mail to the other party at:
- (a) for the Hospital, its address indicated in section 1.1 under the definition of Hospital; and
 - (b) for the Supplier, its address indicated on the Purchase Order.

The notice shall be deemed to have been delivered on the day of personal delivery, on the day received by fax (as evidenced by a transmission confirmation), or on the fifth day following mailing.

- 20.5 Each of the provisions contained in these Terms and Conditions is distinct and severable. Any declaration by a court of competent jurisdiction of the invalidity or unenforceability of any provision or part of a provision will not affect the validity or enforceability of any other provision.
- 20.6 The failure of either party to insist upon strict performance of any terms and conditions or to exercise any of its rights set out in these Terms and Conditions shall not constitute a waiver of these rights, and these rights shall continue in full force and effect.
- 20.7 Neither party shall be liable to the other for any failure to perform, or delay in the performance of, any obligation caused by circumstances beyond its reasonable control, including but not limited to: acts of God, fire, labour difficulties, war, or governmental action. It is agreed that the time for performance by either party shall be extended by the period of such uncontrollable circumstances. If, however, the Supplier's performance is delayed for more than one (1) month from the date of such circumstances arising, the Hospital may terminate this Contract and, at its option, procure the Products or Services elsewhere.
- 20.8 This Contract may be executed in any number of counterparts, each of which shall be deemed to be an original document and taken together shall be deemed to constitute one and the same document.
- 20.9 This Contract contains all of the agreements, representations and understanding of the parties and supersede and replace any and all previous understandings, commitments or agreements, oral or written, related to the subject matter hereof, unless otherwise expressly agreed in writing with a specific reference to this document. Any amendment to this Contract must be in writing and signed by duly authorized officers of each party.
- 20.10 Where timelines or delivery dates are specified, time shall be of the essence.

SCHEDULE "A"

CERTIFICATE OF ACCEPTANCE FORM

Equipment or System: (Specify serial numbers, model description, etc.)

Reference Purchase Order Number: _____

I, _____, St. Michael's Hospital
Manager/VP/EVP hereby certify that this Equipment/Application/System is
functionally acceptable at the current time.

I hereby authorize St. Michael's Hospital's Accounts Payable to pay the final
acceptance payment to:

Supplier:

Contact Telephone:

E-mail Address:

This Certificate of Acceptance must accompany the Supplier's final invoice with the
correctly referenced Purchase Order Number.

Manager/VP/EVP Signature

Date

Manager/VP/EVP Name