

**SSW PURCHASE ORDER**  
**STANDARD TERMS AND CONDITIONS**  
**EFFECTIVE MARCH 1, 2018**

**IF A PURCHASE ORDER THAT IS ATTACHED TO, OR REFERENCES, THESE TERMS AND CONDITIONS IS ISSUED UNDER A WRITTEN AGREEMENT BETWEEN THE COMPANY TO WHOM IT IS ADDRESSED (THE "SUPPLIER") AND THE HOSPITAL (AS DEFINED IN SCHEDULE A OF THESE TERMS AND CONDITIONS) COVERING THE DELIVERABLES SPECIFIED IN THIS PURCHASE ORDER, THE PURCHASE ORDER AND THESE TERMS AND CONDITIONS WILL BE SUBJECT TO THAT AGREEMENT AND THE TERMS OF THAT AGREEMENT WILL OVERRIDE THESE TERMS AND CONDITIONS IN THE EVENT OF ANY CONFLICT OR INCONSISTENCY. IF THERE IS NO PRE-EXISTING WRITTEN AGREEMENT BETWEEN THE PARTIES, THE PURCHASE ORDER, THESE TERMS AND CONDITIONS, AND ANY ATTACHMENTS HERETO ARE THE SOLE AGREEMENT BETWEEN THE SUPPLIER AND THE HOSPITAL WITH RESPECT TO THE DELIVERABLES SPECIFIED IN THE PURCHASE ORDER.**

**1. Terms and Conditions Apply and Prevail**

- 1.1 Capitalized terms are defined in Schedule A.
- 1.2 These Terms and Conditions apply to all Deliverables purchased by the Hospital with this Contract, including any purchase by the Hospital through a purchasing group.

**2. Acceptance and Changes**

- 2.1 This Contract is an offer to purchase the Deliverable(s) set forth on the purchase order that is attached to, or references, these Terms and Conditions. Any of the following acts by Supplier shall constitute acceptance of the Contract: signing and returning a copy of this Contract; delivery of any of the Deliverable(s) ordered in this Contract; commencement of performance; or written acknowledgment of the terms of this Contract. Any terms proposed by Supplier that are additional or inconsistent with the terms of this Contract will not be binding on the Hospital unless the Hospital accepts such terms in writing.
- 2.2 The Hospital reserves the right at any time prior to delivery to change specifications, methods of shipment or packing, or place or time of delivery, and will do so by means of a revised purchase order. If any such change causes an increase or decrease in the cost or the time required for performance of Supplier's obligations under this Contract, an equitable adjustment shall be made in the contract price or delivery schedule, or both, or the Hospital may at its option cancel this Contract if an equitable adjustment cannot be agreed upon.

**3. Financial Matters**

- 3.1 All prices, fees, and other amounts invoiced shall be as agreed to by the Hospital on the Hospital's purchase order and each invoice from the Supplier shall separately identify:
  - (a) all duties, taxes and levies that may be levied or imposed in connection with the supply of the Deliverables, including provincial sales tax (HST);
  - (b) all other costs, charges or out-of-pocket expenses, including any transportation or handling costs. Any request for reimbursement of out-of-pocket expenses must be incurred in accordance with the Broader Public Sector Expenses Directive and accompanied by appropriate supporting documentation; and
  - (c) all cash discounts, which will be computed from the date that title passes to the Hospital.
- 3.2 All invoices and packing slips must quote the Hospital's purchase order number and should be directed to the address indicated on the purchase order.
- 3.3 Invoices may only be submitted to the Hospital after delivery, completion or acceptance of the Deliverables, as applicable. The Hospital shall pay all non-disputed invoiced amounts within thirty (30) days of the date of each invoice.
- 3.4 If the Supplier is a non-resident under the *Income Tax Act* (Canada), the Supplier shall specifically identify in each invoice submitted to the Hospital: (i) those services that were rendered by the Supplier in Canada; and (ii) the amounts that are payable by the Hospital with respect to such services.
- 3.5 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 Deliverables, and any amount so remitted shall be considered to have been paid to the Supplier.
- 3.6 The Supplier agrees to work with the Hospital, at no cost to the Hospital, to establish automated electronic data interchange (EDI) and/or electronic funds transfer (EFT) procedures and processes for the ordering, delivery, inventory management, and invoicing of all Deliverables. 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.

**4. General Representations and Warranties; Warranty Period**

- 4.1 The Supplier represents and warrants as follows:
  - (a) it has all necessary power and authority to agree to this Contract;
  - (b) it has all right and title to the Deliverables, free and clear of any charges, liens and encumbrances or, alternatively, has obtained the rights necessary to supply the Deliverables to the Hospital;
  - (c) it possesses all permits, licences and regulatory approvals necessary in connection with the provision of the Deliverables to the Hospital;
  - (d) the Deliverables:
    - (i) do not infringe, and will not cause another product to infringe, any intellectual property right or any contractual right of any third party; and
    - (ii) conform to the Hospital's specifications, as communicated to the Supplier in writing, and with any written representations made by the Supplier to the Hospital; and
  - (e) during the Warranty Period, the Deliverables shall:
    - (i) be free from any defects in design, materials or workmanship;
    - (ii) perform in accordance with all written specifications applicable to such Deliverables and shall meet or exceed all relevant industry standards;

- (iii) have received all applicable approvals of the Canadian Standards Association, Underwriters' Laboratories of Canada, or any other organization that certifies the Deliverables;
  - (iv) if the Deliverables include electrical apparatus and fixtures, bear the Canadian Standards Association or Hydro One approval labels, or appear on the C.S.A., Hydro One, or C.E.M.A. approved products list, and all electrical line-operated equipment must be supplied appropriately grounded via a green wire in the service cord; and
  - (v) to the extent the Deliverables include services:
    - A. be performed in a conscientious, professional and workman-like manner, with reasonable skill, care and diligence, in accordance with industry standards;
    - B. 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; and
    - C. the Supplier shall provide the Hospital with a Certificate of Clearance from the Workplace Safety and Insurance Board prior to providing the services.
- 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 Deliverables and receive a refund of all amounts paid or to require the Supplier to replace the affected Deliverables with other products of equivalent function and performance. These remedies are in addition to any other remedy that the Hospital may have in law or in equity.
- 4.4 As to whether a delivered Deliverable meets the requirements of these Terms and Conditions, the decision of the Hospital shall be final and binding on both parties.

## 5. Quality and Service Covenants

- 5.1 The Supplier covenants that, in the course or providing any Deliverables, it shall comply with all applicable laws.
- 5.2 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 sign in with the Hospital and obtain a Hospital visitor badge, as per Hospital policy; and
  - (c) comply with all Hospital rules and policies made known to the Supplier, including health, safety, confidentiality, privacy and security rules and policies.
- 5.3 In the event of a medical alert, consumer alert or other form of Deliverable recall issued by the manufacturer of a Deliverable or by any other qualified authority, the Supplier will immediately advise the Hospital and SSW 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 reasonable costs incurred, including return freight and packaging.
- 5.4 If the Deliverables include services, Supplier shall notify the Hospital in writing if the Supplier is a non-resident, as defined in the *Income Tax Act* (Canada).

## 6. Shipping; Passing of Title; Acceptance Period

- 6.1 Deliverables must be delivered in accordance with the delivery schedule specified in the purchase order attached to these Terms and Conditions, failing which the Hospital reserves the right to cancel an order or any unshipped portion thereof without penalty or prejudice to its other rights.
- 6.2 Unless otherwise stated in this Contract, shipments are to be shipped (prepaid by Supplier) to the address indicated on the purchase order. If coming from outside Canada, Deliverables are to be delivered with a Canada Customs invoice stating clearance by a properly licensed customs broker.
- 6.3 No charge shall be made by the Supplier for packaging or storage. Packing lists, preferably in duplicate, must accompany each shipment. Deliverables shall be packaged, marked, and otherwise prepared in accordance with good commercial practices to obtain the lowest shipping rates. On containers, Supplier shall mark handling and loading instructions, shipping information, order number, item and account number, shipment date, and the names and addresses of the Supplier and the Hospital. An itemized packing list shall accompany each shipment.
- 6.4 Title to the Deliverables, 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 Deliverables (acceptance is as defined in section 6.5) occurs; and
  - (b) payment is made in full by the Hospital.
- 6.5 For equipment, Software and other Deliverables that require testing to ensure proper performance, the Hospital shall have a period of at least thirty (30) days, or such longer period as the parties may agree, from the date of installation of the Deliverables or, where installation is not done by the Supplier, from date of delivery to the Hospital (the **Acceptance Period**) to conduct such testing as the Hospital deems appropriate to determine whether each Deliverable is suitable for its purposes and passes inspections for safety, performance and compliance with manufacturer's specifications. On or before the end of the Acceptance Period, the Hospital shall notify the Supplier if any of the Deliverables 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 shall any Deliverables be deemed to have been accepted by the Hospital until the Hospital is satisfied, acting reasonably, that the Deliverable performs in accordance with the specifications. Notwithstanding the foregoing, where the Deliverable performs month-end or year-end functions, the Acceptance Period shall not end until the Deliverable has been tested to perform such functions in accordance with the Deliverable's specifications, which shall be no less than industry standard.
- 6.6 No Deliverable 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 Deliverable.
- 6.7 Acceptance of any part of a Deliverable order shall not bind the Hospital to accept further shipments or deprive the Hospital of the right to return Deliverables already received, in accordance with these Terms and Conditions.
- 6.8 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 Deliverables (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.

- 6.9 The Hospital reserves the right to return any Deliverable that is equipment should it fail more than 3 times during the Warranty Period. The Hospital may return the Deliverables for a full refund or request a new replacement of the same type of equipment to be delivered, with a full warranty (including parts and labour) at no cost to the Hospital. Failures that result from user negligence or unfamiliarity with the system shall not constitute equipment failure under this section.

## **7. Risk Allocation**

- 7.1 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, 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.
- 7.2 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, installing, or performing a Deliverable under this Contract.
- 7.3 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 Deliverable 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 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.
- 7.4 If a claim has occurred under section 7.3, 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 Deliverable 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 Deliverable.
- 7.5 The Supplier will carry insurance of such types and amounts that are consistent with industry standard, including a comprehensive commercial general and product liability insurance policy of five million dollars (\$5,000,000) per occurrence, unless a higher amount is specifically requested by the Hospital and noted in the purchase order.

## **8. Termination**

- 8.1 The Hospital reserves the right to cancel all or any part of this Contract at any time prior to delivery of the relevant Deliverables by providing written notice to the Supplier.
- 8.2 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;
  - (c) immediately, following the occurrence of any material change in the Hospital(s)'s requirements for Deliverables which results from regulatory or funding changes or recommendations issued by any government or public regulatory body; or
  - (d) immediately, if the Supplier breaches any material term of any Contract and such breach has not been cured following thirty (30) days' written notice thereof from the Hospital.

## **9. Confidentiality and Privacy**

- 9.1 Supplier shall not make or authorize any news release, advertisement, or other disclosure relating to this Contract without the prior written consent of the Hospital, except as may be required to perform this Contract.
- 9.2 The Supplier shall use the Confidential Information provided by the Hospital solely for the purposes of fulfilling its obligations under this Contract and for no other purpose whatsoever.
- 9.3 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 this Contract; or
  - (b) as required by law.
- 9.4 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.
- 9.5 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.
- 9.6 The Supplier may not, in its advertising or otherwise, indicate that it has or may supply Deliverables to the Hospital, without the express written consent of the Hospital.
- 9.7 The Supplier and the Hospital acknowledge and agree that FIPPA applies to and governs all Records and may require the disclosure of such Records to third parties. Furthermore, the Supplier agrees:
- (a) to keep Records secure;
  - (b) to provide Records to the Hospital within seven (7) days of being directed to do so by the Hospital for any reason including an access request or privacy issue;
  - (c) not to access any Personal Information unless the Hospital determines, in its sole discretion, that access is permitted under FIPPA and is necessary in order to provide the Deliverables;

- (d) not to directly or indirectly use, collect, disclose, or destroy any Personal Information for any purposes that is not authorized by the Hospital in writing;
- (e) to ensure the security and integrity of Personal Information and keep it in a physically secure and separate location safe from loss, alteration, destruction, or intermingling with other records and databases and to implement, use, and maintain the most appropriate products, tools, measures, and procedures to do so;
- (f) to restrict access to Personal Information to those of the Supplier's employees, contractors or agents who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized by the Hospital to have such access for the purpose of providing the Deliverables;
- (g) to implement other specific security measures that in the reasonable opinion of the Hospital would improve the adequacy and effectiveness of the Supplier's measures to ensure the security and integrity of Personal Information and Records generally;
- (h) that any Confidential Information supplied to the Hospital may be disclosed by the Hospital where it is obligated to do so under FIPPA, by an order of a court or tribunal or pursuant to a legal proceeding;

and the provisions of this section shall prevail over any inconsistent provisions in this Contract.

9.8 The Supplier shall only access Personal Health Information with the Hospital's consent and as required to fulfill its obligations under this Contract. 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. Schedule B contains the applicable Personal Health Information requirements for any Supplier having access to Personal Health Information.

## 10. Provisions Specific to Deliverables containing Intellectual Property

- 10.1 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 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;
  - (c) 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";
  - (d) 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
  - (e) the Software will be compatible with the information systems of the Hospital, as identified by the Hospital to the Supplier.
- 10.2 The Supplier acknowledges that the Hospital may have multiple sites. Any equipment or Software purchased as a multi-site license shall be multi-site compliant, giving the Hospital the authority to install same at all Hospital sites.
- 10.3 The Supplier will provide assistance by telephone, internet or otherwise with respect to support of the Software.
- 10.4 Should the Supplier become insolvent, bankrupt or cease to actively carry on business, and if there is no escrow arrangement in place with respect to the source code for the Supplier's Software, the Hospital reserves the right to reverse engineer, access and manipulate the source code for the purposes of maintaining functionality.
- 10.5 If a pass-key is required to install or re-install an update or upgrade to Software, such pass-key will be accessible to the Hospital in order to maintain Software functionality (regardless of whether the Hospital has purchased maintenance support for such Software).
- 10.6 Notwithstanding any other provision in these Terms and Conditions, shrinkwrap Software is supplied according to its own terms and conditions.
- 10.7 The Hospital agrees not to copy or otherwise reproduce (except for back-up purposes), reverse engineer or decompile the Software.

## 11. Provisions Specific to Medical Devices

- 11.1 In addition to the general representations and warranties in section 4, to the extent that the Deliverable are, or include, a Medical Device, 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; and
  - (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.
- 11.2 The Supplier shall advise the Hospital if:
- (a) it becomes aware of an adverse event occasioned by the use of a Medical Device of the type supplied under these Terms and Conditions; or
  - (b) there is any change to a licence issued for any Medical Device supplied under this Contract.

## 12. Dispute Resolution

- 12.1 In the event of any dispute between the Supplier and the Hospital with respect to any matter arising out of this Contract, the parties shall initially attempt to settle the dispute within fifteen (15) days after the dispute arises by either party escalating the dispute in writing to the senior managers responsible for this Contract.
- 12.2 If the parties are unable to settle this dispute through negotiation within the fifteen (15) days, any claim or dispute arising out of or in connection with this Contract shall be submitted by the parties to binding arbitration pursuant to the *Arbitration Act, 1991* (Ontario). The party requesting such arbitration shall do so by written notice to the other party. Each party shall bear its own costs relating to the arbitration and the parties shall equally share the fees of the arbitrator(s).

- 12.3 The arbitration shall take place in Toronto, Ontario, Canada, before a single arbitrator to be chosen jointly by the parties. If the parties cannot agree on the choice of arbitrator within thirty (30) days of written notice to submit to arbitration, then the parties shall each choose an arbitrator who in turn will select a third.
- 12.4 The arbitrator will have the authority to award any remedy or relief that a court or judge of the Ontario Superior Court of Justice (or any court that is the successor thereto) could order or grant in accordance with this Contract, including specific performance of any obligation created under this Contract, the issuance of an interim, interlocutory or permanent injunction, or the imposition of sanctions for abuse or frustration of the arbitration process.
- 12.5 The parties may determine the procedure to be followed by the arbitrator(s) in conducting the proceedings, or may request the arbitrator(s) to do so.
- 12.6 The arbitrator may, at any time, fix the date, time and place of meetings and hearings in the arbitration, upon reasonable notice to the parties.
- 12.7 Subject to any adjournments permitted by the arbitrator, the final hearing will, to the extent possible, be continued on successive business days until it is concluded.
- 12.8 All meetings and hearings will be in private unless the parties agree otherwise, and any party may be represented at any meetings or hearings by legal counsel.
- 12.9 Any party may examine, and re-examine, all of its own witnesses at the arbitration and may cross-examine any or all of the other party's witnesses.
- 12.10 The arbitration will be kept confidential and the existence of the proceeding and any element of it (including any pleadings, briefs or other documents submitted or exchanged, and testimony or other oral submission and any awards) will not be disclosed by any party other than to the arbitrators, the parties (and their respective directors, officers, and employees involved in the matter in dispute, legal counsel and other professional advisors consulted in connection with the arbitration), and such other persons as may be necessary to the conduct of the proceeding or required by law.
- 12.11 The arbitrator(s) shall be requested to issue a written award within thirty (30) days of completion of the hearing. The award shall be rendered in such form that judgment may be entered thereon in any court having jurisdiction.
- 12.12 The decision of the arbitrator shall be final and binding on the parties and not subject to appeal.

### **13. General Legal Terms**

- 13.1 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.
- 13.2 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 this Contract without the prior written consent of the Hospital.
- 13.3 This Contract will be governed by and interpreted in accordance with the laws of the Province of Ontario. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract. The parties shall attorn to the jurisdiction of the Courts of Ontario. All dollar amounts are in Canadian currency, unless otherwise indicated.
- 13.4 The Hospital prefers to purchase goods that are mercury free, except when sphygmomanometers containing mercury may be required for calibration. Accordingly, the Supplier should state whether a product or piece of equipment that is being proposed contains any mercury.
- 13.5 Upon request, the Supplier must disclose the latex content of their products. If there is a latex free product available, the Supplier must advise the Hospital of such alternative product for consideration. The Hospital reserves the right to include or exclude these latex free products from their purchases.
- 13.6 All notices under this Contract shall be in writing and shall be delivered by personal delivery/courier, fax 905-287-2873 or registered mail to the other party at the address as 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.
- 13.7 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.
- 13.8 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.
- 13.9 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 Deliverables elsewhere.
- 13.10 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.
- 13.11 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 or if the purchase order is issued under a written agreement executed by authorized signatories of each party. Any amendment to this Contract must be in writing and signed by duly authorized signatories of each party.

#### Schedule A – Definitions

In these Terms and Conditions:

**Confidential Information** means any oral, written or electronic data or information relating to the business or management of the Hospital, other proprietary and trade secrets, technology and accounting records of the Hospital, or information related to the Hospital's patients, its agents, or its customers, and which is treated as confidential by the Hospital or would reasonably be treated as confidential;

**Contract** includes these Terms and Conditions (including Schedules A and B) and the purchase order that is issued by the Hospital to the Purchaser and is attached to, or includes by reference, these Terms and Conditions;

**Deliverables** includes all goods purchased under these Terms and Conditions, such as equipment or products, including but not limited to Medical Devices and Software, and including all intellectual property rights sold, leased, licensed, or otherwise provided by Supplier related thereto, and any services purchased under these Terms and Conditions, including installation, training, and maintenance services provided to the Hospital;

**FIPPA** means Ontario's *Freedom of Information and Protection of Privacy Act, 1990*;

**Hospital** means the corporation(s) identified on the purchase order that is attached to, or references, these Terms and Conditions;

**Medical Device** has the meaning given to it in the Medical Devices Regulations under the *Food and Drugs Act* (Canada);

**Personal Health Information** has the meaning given to it in PHIPA and includes information 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; information that relates to that individual's donation of a body part or bodily substance; the identity of that individual's substitute decision-maker; and that individual's health card number;

**Personal Information** means recorded information about an identifiable individual or that may identify an individual (including Personal Health Information), but does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity;

**PHIPA** means the *Personal Health Information Protection Act, 2004* (Ontario);

**Record** means a record created pursuant to this Contract;

**Software** means any software licensed under this Contract;

**Supplier** means the supplier of Deliverables to the Hospital under this Contract; and

**Warranty Period** means, in respect of a Deliverable, the 12-month period following the date of delivery or, if applicable, acceptance of the Deliverable.

**Schedule B**  
**Information Practices Schedule**

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

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

**Practices to Protect Personal Health Information**

8. The Supplier will employ appropriate safeguards to prevent theft, loss, and unauthorized access, copying, modification, use, disclosure, or disposal of Personal Health Information. Without limiting the generality of the foregoing, the Supplier will take reasonable steps to ensure that all Personal Health Information from the Hospital is securely segregated from any information owned by the Supplier or third parties, including access barriers, physical segregation, and password authorization.
9. The Supplier will maintain privacy policies in accordance with Canadian and Ontario laws and these policies will be made available for inspection on request.
10. The Supplier will educate its employees, contractors and agents on privacy laws and policies and take reasonable steps to ensure the compliance of such persons through staff training, confidentiality agreements, and employee sanctions.
11. The Supplier will ensure that all employees who have access to Personal Health Information from the Hospital have undergone screening that includes reference checks.
12. The Supplier will ensure that its employees, contractors and agents who are fired, resign, or no longer require access to Personal Health Information from the Hospital return all Personal Health Information to the Hospital and can, thereafter, no longer access applications, hardware, software, networks, and facilities belonging to either the Supplier or the Hospital.
13. The Supplier will revoke any user's access to Personal Health Information if security is breached or on the Hospital's reasonable request.
14. At the termination of the Contract, the Supplier will return or destroy all Personal Health Information received from, created, or received by the Supplier on behalf of the Hospital that the Supplier maintains custody of in any form and will retain no copies of Personal Health Information thereafter. The Supplier will certify to the Hospital that all such Personal Health Information has been returned or destroyed, as the case may be. If such return or destruction of Personal Health Information is not feasible, the Supplier will notify the Hospital of this fact, extend the protections of the Contract to all Personal Health Information in its custody and will cease all further uses and disclosures.

**Notification of and Communication with the Hospital**

15. The Supplier will provide the Hospital with the name of a contact person at the Supplier's organization responsible for the Supplier's privacy compliance and notify the Hospital within 24 hours of any changes in the identity of the responsible person.
16. The Supplier will provide notice to the Hospital's Privacy Office if the nature of the Supplier's business and the services being provided to the Hospital require that the Hospital Personal Health Information must be transmitted or access be provided to any of the Supplier's employees, contractors and agents or to any

facility situated outside of Ontario. When providing notice, please specify where outside of Ontario the Personal Health Information will be transmitted or from where it will be accessed.

17. The Supplier will report to the Hospital's Privacy Office at the Supplier's first reasonable opportunity, but in any event no more than 48 hours after the Supplier becomes aware of any use, disclosure (including being legally compelled), theft, or unauthorized access of Personal Health Information by the Supplier or any of the Supplier's agents or subcontractors to whom the Supplier provide the Hospital Personal Health Information.
18. The Supplier will refer anyone trying to access, correct, or complain about their Personal Health Information to the Hospital's Privacy Office within 48 hours of receiving the complaint or request for access or correction. The Supplier will cooperate with and assist the Hospital in the management of any such request for access or correction or complaint.
19. The Supplier will, upon request, make Personal Health Information available to the Hospital for amendment and incorporate any amendments into the Supplier's records of Personal Health Information. During the Term, the Supplier may never deny the Hospital access to its patients' Personal Health Information.
20. The Hospital reserves the right to: inspect any equipment used or records maintained by the Supplier in connection with the provision of goods or services; question the Supplier Personnel regarding their handling of Personal Health Information; and otherwise audit and electronically verify compliance with these practices.

**Additional Hospital Rights**

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