



STANDARD TERMS AND CONDITIONS

ARTICLE 1 – INTERPRETATION

1.01 Defined Terms

The following words or expressions have the following meanings:

“Agreement” means the aggregate of all documents as applicable; RF(x), addendums, amendments, schedules, appendices, Vendor responses, excluding purchase order;

“Authority” means any government authority, agency, body or department, whether federal, provincial or municipal, having or claiming jurisdiction over the Contract; and **“Authorities”** means all such authorities, agencies, bodies and departments;

“Business Day” means any working day, Monday to Friday inclusive, but excluding statutory and other holidays, and any other day, which DSM has elected to be closed for business;

“Conflict of Interest” includes, but is not limited to, any situation or circumstance where, in relation to the performance of its contractual obligations in a DSM Contract, the Vendor’s other commitments, relationships or financial interests (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment; or (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its Contractual obligations;

“Contract” means the Agreement and the Purchase Order(s);

“Deliverables” means everything developed for or provided to DSM in the course of performing under the Contract or agreed to be provided to DSM under the Contract by the Vendor or its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors, including but not limited to any Equipment, Products or Service or any and all Intellectual Property and any and all concepts, techniques, ideas, information, documentation and other materials, however recorded, developed or provided;

“Diagnostic Services Manitoba (“DSM”)” means all or some of the 70+ DSM laboratory and/or imaging locations throughout Manitoba;

“Documentation” means user manuals for the Deliverables, all addenda, corrections, and new editions of these materials, and any other materials in any form, that Vendor customarily provides to end-users of the Deliverables. Documentation includes, without limitation, all of the published specifications for the Deliverables on the date that the applicable Contract takes effect;

“Equipment” means the laboratory or diagnostic imaging equipment defined in the Agreement for purchase;

“Expiry Date” is as set out in the applicable Agreement and/or Purchase Order;

“FIPPA” means the *Freedom of Information and Protection of Privacy Act*, C.C.S.M. c. F.175, as amended;

“Holdback” means the amount to be withheld by DSM, pursuant to the Agreement from the amounts due and payable to the Contractor;

“Industry Standards” include, but are not limited to (a) the provision of any and all labour, supplies, equipment and other goods or services that are necessary and can reasonably be understood or inferred to be included within the scope of the Contract or customarily furnished by Persons providing Deliverables of the type provided hereunder in similar situations in the Province of Manitoba and; (b) adherence to commonly accepted norms of ethical business practices, which shall include the Vendor establishing, and ensuring adherence to, precautions to prevent its employees or agents from providing or offering gifts or hospitality of greater than nominal value to any person acting on behalf of or employed by DSM;

“Intellectual Property” means any intellectual, industrial or other proprietary right of any type in any form protected or protectable under the laws of Canada, any foreign country, or any political subdivision of any country, including, without limitation, any intellectual, industrial or proprietary rights protected or protectable by legislation, by common law or at equity;

“Person” if the context allows, includes any individuals, persons, firms, partnerships or corporations or any combination thereof;

“Performance Specifications” if applicable, means the speed, capacity, reliability and availability requirements that the Deliverables must meet, as may be described in the Agreement;

“Product” means the consumable items defined in the Agreement for purchase;

“Project” if applicable, means all of the activities required to be performed to provide and complete the Deliverables in order to complete the implementation;

“Project Managers” if applicable means the individual representatives appointed by DSM and the Contractor;

“Project Team” if applicable means those individuals identified by DSM and the Contractor to carry out a particular Project;

“Purchase Order” means the notification sent to the Vendor by DSM indicating types, quantities, and agreed Rates for Deliverables



(which may include an Agreement), subject to approval and funding by Manitoba Health, acceptance of which forms the Contract;

“Rates” means the applicable price, in Canadian funds, to be charged for the applicable Deliverables, as set out in the Contract, representing the full amount chargeable by the Vendor for the provision of the Deliverables, including but not limited to: (a) all applicable duties; (b) all labour and material costs; (c) all travel and carriage costs; (d) all insurance costs; and (e) all other overhead including any fees or other charges required by law;

“Record” for the purposes of the Contract, means any recorded information, including any Personal Information, in any form: (a) provided by DSM to the Vendor, or provided by the Vendor to DSM, for the purposes of the Contract; or (b) created by the Vendor in the performance of the Contract;

“Requirements of Law” mean all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licenses, authorizations, directions, and agreements with all Authorities that now or at any time hereafter may be applicable to either the Contract or the Deliverables or any part of them;

“Re-procurement Costs”: means any and all reasonable costs incurred by DSM to re-procure the Deliverables;

“RF(x)” means the method of competitive bid including but not limited to; request for proposal, request for quote etc;

“Services” means the activity provided by the Vendor as defined in the Agreement for purchase;

“Statement of Work (SOW)” means a future document which may be prepared which will describe the Deliverables to be provided by the Contractor in respect to the Project;

“Vendor” means the entity identified in the Contract who agrees to sell the Deliverables;

“Vendor’s Quote or Bid Submission” shall have the meaning set out in the RF(x) and/or Purchase Order;

“Term” means the period of time from the effective date set out in the applicable Agreement or Purchase Order, up to and including the earlier of: (i) the Expiry Date or (ii) the date of termination of the Contract in accordance with its terms;

“Third-Party Intellectual Property” means any Intellectual Property owned by a party other than DSM or the Vendor.

ARTICLE 2 – GENERAL TERMS

2.01 Entire Contract

The Contract embodies the entire Agreement between the parties with regard to the provision of Deliverables and supersedes any prior understanding or Agreement, collateral, oral or otherwise with respect to the provision of the Deliverables, existing between the parties at the date of execution of the Contract.

2.02 Option/On-Boarding

DSM may, at any time up to and including the expiration or earlier termination of the Agreement, notify the Vendor, in writing, that it wishes to proceed with adding further sites within DSM and/or adding other regional health authorities within Manitoba and/or other public entities within the Province of Manitoba and/or other health authorities to receive the Deliverables pursuant to the Agreement. DSM and the Vendor agree to the right of the sites/organizations described above to on-board and procure the same Deliverables under substantially the same terms and conditions without further competition. If such additional Deliverables are required, (with the exception of DSM sites) the Vendor will enter into an Agreement(s) with the site/organization that is distinct and separate. DSM does not commit at this time that any additional Deliverables will be required, nor does DSM relinquish any right to issue another separate competitive procurement process for additional Deliverables.

2.03 Severability

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

2.04 Survival

Those sections, rights and obligations that by their very nature are intended to survive the termination or expiration of this Agreement shall survive, including (without limitation) Articles 2.07, 3.04, 6, 7, 8 and 9.04.

2.05 Force Majeure

Neither party shall be liable for damages caused by delay or failure to perform its obligations under the Contract where such delay or failure is caused by an event beyond its reasonable control. The parties agree that an event shall not be considered beyond one’s reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as those contained in the Contract would have put in place contingency plans to either materially mitigate or negate the effects of such event. Without limiting the generality of



the foregoing, the parties agree that force majeure events shall include natural disasters and acts of war, insurrection and terrorism but shall not include shortages or delays relating to the Deliverables. If a party seeks to excuse itself from its obligations under this Contract due to a force majeure event, that party shall immediately notify the other party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period of delay or non-performance. If the anticipated or actual delay or non-performance exceeds fifteen (15) Business Days, the other party may immediately terminate the Contract by giving notice of termination or suspension and such termination or suspension shall be in addition to the other rights and remedies of the terminating party under the Contract, at law or in equity.

2.06 Notices by Prescribed Means

Notices shall be in writing and shall be delivered by postage-prepaid envelope, personal delivery or facsimile and shall be addressed to, respectively, the DSM Address to the attention of the DSM Representative set out in the applicable Agreement or Purchase Order and to the Vendor Address to the attention of the Vendor Representative. Notices shall be deemed to have been given: (a) in the case of postage-prepaid envelope, three (3) Business Days after such notice is mailed; or (b) in the case of personal delivery or facsimile one (1) Business Day after such notice is received by the other party. In the event of a postal disruption, notices must be given by personal delivery or by facsimile. Unless the parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this paragraph.

Either party may at any time designate a different Representative or address for the purposes of receiving notices or other communications under this Agreement, provided that such designation is communicated in writing to the other parties.

Both parties acknowledge that electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. The parties shall not have any liability to each other arising from or in connection with the electronic communication of information. Both parties, acting reasonably, shall assess whether to use hard copy transmission for information that relates to a matter of significance.

2.07 Governing Law

The Contract shall be governed, construed and interpreted in accordance with the laws of the Province of Manitoba and the laws of Canada applicable therein, and the courts of the Province of

Manitoba shall have exclusive jurisdiction with respect to all matters relating to this Contract.

2.08 Time Of Essence

Time shall in every respect be of the essence of this Contract.

2.09 Recalls

The Vendor shall immediately forward any Recall Notice for items under Agreement or evaluation with DSM as per the Recall Process as described at www.dsmanitoba.ca.

ARTICLE 3 – NATURE OF RELATIONSHIP BETWEEN DSM & VENDOR

3.01 Vendor's Power to Contract

The Vendor represents and warrants that it has the full right and power to enter into the Contract and there is no agreement with any other Person which would in any way interfere with the rights of DSM under this Contract.

3.02 Representatives May Bind the Parties

The parties represent that their respective Representatives have the authority to legally bind them to the extent permissible by the Requirements of Law.

3.03 Vendor Not a Partner, Agent or Employee

The Vendor shall have no power or authority to bind DSM or to assume or create any obligation or responsibility, express or implied, on behalf of DSM. The Vendor shall not hold itself out as an agent, partner or employee of DSM. Nothing in the Contract shall have the effect of creating an employment, partnership or agency relationship between DSM and the Vendor (or any of the Vendor's directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors).

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

3.04 Responsibility of Vendor

The Vendor agrees that it is liable for the acts and omissions of its directors, officers, employees, agents, partners, affiliates, volunteers and subcontractors. This paragraph is in addition to any and all of the Vendor's liabilities under the Contract and under the general application of law. The Vendor shall advise these individuals and entities of their obligations under the Contract and shall ensure their compliance with the applicable terms of the Contract. In addition to any other liabilities of the Vendor pursuant to the Contract or



otherwise at law or in equity, the Vendor shall be liable for all damages, costs, expenses, losses, claims or actions arising from any breach of the Contract resulting from the actions of the above mentioned individuals and entities.

3.05 Vendor Subcontracting or Assignment

The Vendor shall not assign, transfer or subcontract the whole or any part of the Contract or any monies due under it without first obtaining written consent from DSM, which consent shall be in the sole discretion of DSM and subject to the terms and conditions that may be imposed by DSM. Without limiting the generality of the conditions which DSM may require prior to consenting to the Vendor's use of a subcontractor, every contract entered into by the Vendor with a subcontractor shall adopt all of the terms and conditions of this Contract as far as applicable to those parts of the Deliverables provided by the subcontractor.

If the Vendor is a corporation, any change in control of such corporation shall and is hereby deemed to be an assignment of this Contract. No assignment or transfer of this Contract or subcontracting shall relieve the Vendor of any obligations under this Contract, except to the extent they are properly performed by the Vendor's permitted assigns or subcontractors.

3.06 DSM' Reserved Right to Assign

DSM reserves the right to assign to another regional health authority, another health care facility, a successor entity, or the Government of Manitoba all or any part of this Contract.

3.07 Conflict of Interest

The Vendor shall: (a) avoid any Conflict of Interest in the performance of its Contractual obligations; (b) disclose to DSM without delay any actual or potential Conflict of Interest that arises during the performance of its Contractual obligations; and (c) comply with any requirements prescribed by DSM to resolve any Conflict of Interest. In addition to all other contractual rights or rights available at law or in equity, DSM may immediately terminate the Contract upon giving notice to the Vendor where: (i) the Vendor fails to disclose an actual or potential Conflict of Interest; (ii) the Vendor fails to comply with any requirements prescribed by DSM to resolve a Conflict of Interest; or (iii) the Vendor's Conflict of Interest cannot be resolved. This paragraph shall survive any termination or expiry of the Contract.

3.08 Contract Binding

The Contract shall enure to the benefit of and be binding upon the parties and their successors, executors, administrators and their permitted assigns.

ARTICLE 4 – PERFORMANCE BY VENDOR

4.01 Commencement of Performance

The Vendor shall commence performance upon receipt of written instructions from DSM.

4.02 Deliverables Warranty

The Vendor hereby represents and warrants that the Deliverables (i) shall be provided fully and diligently in a professional and competent manner by persons qualified and skilled in their occupations; and (ii) shall be free from defects in material, workmanship and design, suitable for the purposes intended, in compliance with all applicable specifications and free from liens or encumbrance on title; and furthermore that all Deliverables shall be provided in accordance with: (a) the Contract; (b) Industry Standards; and (c) Requirements of Law. If any of the Deliverables, in the opinion of DSM, are inadequately provided or require corrections, the Vendor shall forthwith make the necessary corrections at its own expense as specified by DSM in a rectification notice.

4.03 Use and Access Restrictions

The Vendor acknowledges that unless it obtains specific written preauthorization from DSM, any access to or use of DSM property, technology or information that is not necessary for the performance of its contractual obligations with DSM is strictly prohibited. The Vendor further acknowledges that DSM may monitor the Vendor to ensure compliance with this paragraph. This paragraph is in addition to and shall not limit any other obligation or restriction placed upon the Vendor.

4.04 Notification by Vendor to DSM

During the Term, the Vendor shall advise DSM promptly of: (a) any contradictions, discrepancies or errors found or noted in the Contract; (b) supplementary details, instructions or directions that do not correspond with those contained in the Contract; and (c) any omissions or other faults that become evident and should be corrected in order to provide the Deliverables in accordance with the Contract and Requirements of Law.

4.05 Condonation Not a Waiver

A term or condition of this Agreement can be waived or modified only by written consent of both DSM and the Vendor. Forbearance or indulgence by either DSM or the Vendor in any regard shall not constitute a waiver of the term or condition to be performed, and



either DSM or the Vendor may invoke any remedy available under this Agreement or by law despite such forbearance or indulgence.

4.06 **Changes By Written Amendment Only**

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

4.07 **Vendor to Comply With Reasonable Change Requests**

DSM may, in writing, request changes to the Contract, which may include altering, adding to, or deleting any of the Deliverables. The Vendor shall comply with all reasonable DSM change requests and the performance of such request shall be in accordance with the terms and conditions of the Contract. If the Vendor is unable to comply with the change request, it shall promptly notify DSM and provide reasons for such non-compliance. In any event, any such change request shall not be effective until a written amendment reflecting the change has been executed by the parties.

4.08 **Pricing for Requested Changes**

Where a DSM change request includes an increase in the scope of the previously contemplated Deliverables, DSM shall set out, in its change request, the proposed prices for the contemplated changes. Where the Rates in effect at the time of the change request (a) include pricing for the particular type of goods or services contemplated in the change request, the Vendor shall not unreasonably refuse to provide those goods or services at prices consistent with those Rates; or (b) are silent to the applicable price for the particular goods or services contemplated in the change request, the price shall be negotiated between DSM and the Vendor within a reasonable period of time and in any event, such change request shall not become effective until a written amendment reflecting the change has been executed by the parties.

4.09 **Non-Exclusive Contract, Work Volumes**

Unless otherwise agreed to, the Vendor acknowledges that it is providing the Deliverables to DSM on a non-exclusive basis. DSM makes no representation regarding the volume of goods and services required under the Contract. DSM reserves the right to contract with other parties for the same or similar goods and services as those provided by the Vendor and reserves the right to obtain the same or similar goods and services internally.

4.10 **Performance by Specified Individuals Only**

As applicable, the Vendor agrees that to the extent that specific individuals are assigned to or named in the Contract as being responsible for the provision of the Deliverables, only those individuals shall provide the Deliverables under the Contract unless otherwise requested by DSM. Vendor shall assign personnel

satisfactory to DSM. The Vendor shall not replace or substitute any of the individuals named in the Contract without the prior written approval of DSM, which may not arbitrarily or unreasonably be withheld. Should the Vendor require the substitution or replacement of any of the individuals named in the Contract, it is understood and agreed that any proposed replacement must possess similar or greater qualifications than the individual named in the Contract. The Vendor shall not claim fees for any replacement individual greater than the Rates established under the Contract.

4.11 **DSM Rights and Remedies and Vendor Obligations Not Limited to Contract**

The express rights and remedies of DSM and obligations of the Vendor set out in the Contract are in addition to and shall not limit any other rights and remedies available to DSM or any other obligations of the Vendor at law or in equity.

4.12 **Notice to DSM of Labour Disputes**

Except as otherwise prohibited by law, Vendor shall immediately notify DSM of any actual or potential labour dispute that may disrupt the timely performance of the Contract or impair the quality of the Deliverables to be delivered, whether DSM or the Site has requested such status or not.

4.13 **Acceptance of Deliverables**

DSM shall accept the Deliverables or give Vendor notice of rejection within a reasonable time after delivery, notwithstanding any payment or prior test or inspection. No inspection, test, delay or failure to inspect or test or failure to discover any defect or other nonconformance shall relieve Vendor of any of its obligations under this Contract or impair any rights or remedies of DSM or DSM's customers.

4.14 **Food & Drugs Act/Medical Devices Regulations**

Where applicable, all Products/Equipment supplied under this Agreement must be in compliance with the Food & Drugs Act (Canada) which encompasses the Medical Devices Regulations.

The Vendor shall ensure that a valid Medical Devices Licence(s) and/or Establishment Licence(s) is maintained for the applicable Product(s)/Equipment at all times during the term of the Contract.

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

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



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

When requested, failure to provide evidence of any of the above will result in immediate termination of applicable Deliverable(s) from the Agreement and outstanding Purchase Order(s) and may result in termination of Contract in its entirety as determined by DSM, in its sole discretion. Termination shall be at no penalty to DSM.

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

4.15 Reporting

The Vendor shall provide, at the request of DSM, and at minimum on an annual basis the sales volumes/utilization statistics by Product/Services purchased by DSM participating sites. The report shall be provided within thirty (30) calendar days following DSM's request.

ARTICLE 5 – PAYMENT FOR PERFORMANCE

5.01 Payment According to Contract Rates

DSM shall, subject to the Vendor's compliance with the provisions of the Contract, pay the Vendor for the Deliverables provided at the Rates established under the Contract.

5.02 Invoicing and Payment Process

Unless otherwise stated by DSM, the following invoicing and payment process shall apply:

- i. Invoices will be paid forty-five (45) calendar days after receipt of invoice, or Deliverables, whichever is later, unless other terms are mutually agreed to by DSM and the Vendor in writing.
- ii. No invoice shall be paid without an appropriately authorized Purchase Order. Unauthorized invoices shall not be settled and shall be returned to the Vendor accordingly.
- iii. Payment due date, including discount periods, shall be computed from the date of the later of the scheduled delivery date of Deliverables, the actual delivery date of Deliverables or the date of receipt of a correct invoice.

iv. Payment shall be deemed to have been made on the date the DSM's cheque is mailed or payment is otherwise tendered.

v. Vendor shall promptly repay to DSM any amounts paid in excess of amounts due Vendor.

5.03 Invoices

The Vendor acknowledges that DSM's various locations each maintain their own purchasing and accounting systems and therefore Purchase Orders may be created separately and invoiced accordingly.

5.04 No Expenses or Additional Charges

There shall be no other charges payable by DSM under the Contract to the Vendor other than the Rates established under the Contract.

5.05 Payment of Taxes and Duties

Unless otherwise stated, the Vendor is liable for and shall pay, all taxes, impositions, charges and exactions incurred by or on the Vendor's behalf with respect to the Contract, except for applicable sales taxes that are separately stated on Vendor's invoice.

5.06 Price Reductions

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

ARTICLE 6 – CONFIDENTIALITY AND FIPPA

6.01 Confidentiality and Promotion Restrictions

Any publicity or publications related to the Contract shall be at the sole discretion of DSM. DSM may, in its sole discretion, acknowledge the Deliverables provided by the Vendor in any such publicity or publication. The Vendor shall not make use of its association with DSM without the prior written consent of DSM. Without limiting the generality of this paragraph, the Vendor shall not, among other things, at any time directly or indirectly communicate with the media in relation to the Contract unless it has first obtained the express written authorization to do so by DSM.

6.02 Confidentiality

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

- i. treat as confidential all information, data, documents and materials acquired, or to which access has been given in



the course of, or incidental to this Agreement, which includes, without limitation, personal information and personal health information ("Confidential Material");

- ii. not use, or permit the use of, the Confidential Material, except for the proper performance of its obligations under the Agreement;
- iii. not disclose, or permit the disclosure of, the Confidential Material to any person, corporation, organization or other entity without first obtaining the permission of the party originally in possession of the Confidential Material (the "Disclosing Party"); and
- iv. comply with all reasonable restrictions, procedures, rules and directions made or given by the Disclosing Party, with respect to the safeguarding or ensuring the confidentiality of the Confidential Material prior to, during and subsequent to the term of this Agreement.
- v. advise its officers, employees, agents and subcontractors that they may, during the course of discharging their individual or collective responsibilities under this Agreement, have access to or be in possession of Confidential Material, and shall advise such officers, employees, agents and subcontractors of all of the obligations contained in this Agreement pertaining to the protection of Confidential Material.

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

- I. were in the public domain or known to the receiving Party ("Receiving Party") prior to the time of disclosure, or become publicly available other than through a breach of this Agreement; or
- II. become known to the Receiving Party from a source other than the Disclosing Party, without breach of any duty of confidentiality; or
- III. are approved, in writing, for disclosure without restriction by the Disclosing Party; or
- IV. are required to be disclosed by operation of law or regulation to which either party is subject, notice of such requirement of disclosure shall first be provided to the Disclosing Party, wherever possible; or
- V. are developed independently by the Receiving Party without a breach of any duty of confidentiality.

6.03 Restrictions on Copying

The Vendor shall not copy any DSM Confidential Material, in whole or in part, unless copying is essential for the provision of the Deliverables. On each copy made by the Vendor, the Vendor must reproduce all notices, which appear on the original.

6.04 Injunctive and Other Relief

The Vendor acknowledges that breach of any provisions of this Article may cause irreparable harm to DSM or to any third-party to whom DSM owes a duty of confidence, and that the injury to DSM or to any third-party may be difficult to calculate and inadequately compensable in damages. The Vendor agrees that DSM is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third-party) or any other remedy against any actual or potential breach of the provisions of this Article.

6.05 Notice and Protective Order

If the Vendor or any of its of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors become legally compelled to disclose any DSM Confidential Material, the Vendor will provide DSM with prompt notice to that effect in order to allow DSM to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with DSM and its legal counsel to the fullest extent. If such protective orders or other remedies are not obtained, the Vendor will disclose only that portion of DSM Confidential Material which the Vendor is legally compelled to disclose, only to such person or persons to which the Vendor is legally compelled to disclose, and the Vendor shall provide notice to each such recipient (in co-operation with legal counsel for DSM) that such DSM Confidential Material is confidential and subject to non-disclosure on terms and conditions equal to those contained in the Contract and, if possible, shall obtain each recipient's written agreement to receive and use such DSM Confidential Material subject to those terms and conditions.

6.06 FIPPA Records and Compliance

The Vendor and DSM acknowledge and agree that FIPPA applies to and governs all Records and may require the disclosure of such Records to third parties. Furthermore, the Vendor agrees (a) to keep Records secure; (b) to provide Records to DSM within seven (7) calendar days of being directed to do so by DSM for any reason including an access request or privacy issue; (c) not to access any Personal Information unless DSM 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 are not authorized by DSM; (e) to ensure the security and integrity of Personal Information and keep it in a physically secure and separate location safe from loss, alteration, destruction or intermingling with other records and databases and to implement, use and maintain the most appropriate products, tools, measures and procedures to do so; (f) to restrict access to Personal Information to those of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors who have a need



to know it for the purpose of providing the Deliverables and who have been specifically authorized by a DSM representative to have such access for the purpose of providing the Deliverables; (g) to implement other specific security measures that in the reasonable opinion of DSM would improve the adequacy and effectiveness of the Vendor's measures to ensure the security and integrity of Personal Information and Records generally; and (h) that any confidential information supplied to DSM may be disclosed by DSM where it is obligated to do so under FIPPA, by an order of a court or tribunal or pursuant to a legal proceeding and the provisions of this paragraph shall prevail over any inconsistent provisions in the Contract.

ARTICLE 7 – INTELLECTUAL PROPERTY

7.01 DSM Intellectual Property

The Vendor agrees that all Intellectual Property and every other right, title and interest in and to all concepts, techniques, ideas, information and materials, however recorded, (including images and data) provided by DSM to the Vendor shall remain the sole property of DSM at all times.

7.02 No Use of DSM Insignia

The Vendor shall not use any insignia or logo of DSM except where required to provide the Deliverables, and only if it has received the prior written permission of DSM to do so.

7.03 No Restrictive Material in Deliverables

The Vendor shall not incorporate into any Deliverables anything that would restrict the right of DSM to modify, further develop or otherwise use the Deliverables in any way that DSM deems necessary, or that would prevent DSM from entering into any contract with any contractor other than the Vendor for the modification, further development of or other use of the Deliverables.

7.04 Vendor Representation and Warranty Regarding Third-Party Intellectual Property

The Vendor represents and warrants that the provision of the Deliverables shall not infringe or induce the infringement of any Third-Party Intellectual Property rights.

7.05 Records and Audit

Vendor shall retain all records and documents pertaining to the Deliverables for a period of no less than three years after final payment. Such records and documents shall date back to the time the contract was issued and shall include without limitation, catalogs, price lists, invoices and inventory records for purposes of verification of prices or rates charged by Vendor. DSM shall have the

right to examine, reproduce and audit all such records related to pricing and performance to evaluate the accuracy, completeness and currency of cost and pricing data submitted with Vendor's bid or offer to sell; and related to Pricing for Requested Changes, Immediate Termination of Contract or Termination on Notice articles of this Contract.

ARTICLE 8 – INDEMNITIES AND INSURANCE

8.01 Indemnity

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

- a. all damages and costs for personal and bodily injury to any persons, including death, caused by the willful or negligent acts, errors or omissions of the Responsible Party, its officers, employees, agents or subcontractors or any other party for whom the Responsible Party is responsible at law;
- b. all damages and costs for physical harm to, or loss of, real and tangible personal property caused by the willful or negligent acts, errors or omissions of the Responsible Party, its officers, employees, agents or subcontractors or any other party for whom the Responsible Party is responsible at law;
- c. all damages, losses and costs sustained or incurred by the other Part(ies)y due to breaches of the confidentiality and privacy provisions set forth in this Agreement by the Responsible Party, or any of its officers, employees, agents or subcontractors or another party for whom the Responsible Party is responsible at law;
- d. direct damages caused by the acts, errors or omission of the Responsible Party, its officers, employees, agents or subcontractors or any other party for whom the Responsible Party is responsible at law; and
- e. costs to restore records or data.
- f. re-procurement costs incurred by DSM to re-procure the Deliverables or portions thereof for use by DSM and/or to procure Deliverable(s) from another contractor, or using DSM's own resources, including, without limitation:
 - (i) de-installation and return of Deliverables to the Vendor if applicable;
 - (ii) any extra costs incurred by DSM as a result of the Vendor being unable to meet the obligations of this Agreement, this may include but not be limited to repeat testing and all related costs to conduct the repeat testing, costs incurred to



send testing to another DSM location for completion, among other costs, with DSM acting reasonably;

- (iii) administrative costs and legal costs (on a solicitor and client basis) of selecting another contractor or re-tendering for a Deliverable (or portions of that Deliverable) for use by DSM, and for alternative Deliverables having equivalent functionality, performance and quality to the Contracted Deliverables, if applicable; and
- (iv) any increase in price payable by DSM for alternative Deliverables having equivalent functionality, performance and quality to the Deliverables under Contract;

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

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

8.02 Proof of Workplace Safety Insurance Act Coverage

If the Vendor is subject to the Workplace Safety and Health Act (Manitoba) ("WSHA"), and to the extent that the Deliverables involve work that is performed on DSM's premises, the Vendor warrants and agrees that it has complied and will comply with all applicable workplace safety and insurance laws and regulations and will provide proof of valid Manitoba WSHA coverage by means of a clearance certificate to DSM upon request.

8.03 Electrical/Electronic Materials

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

8.04 DSM's Property

If applicable, Vendor shall clearly mark, maintain an inventory of and

keep segregated or identifiable all of DSM's property and all property to which DSM acquires an interest by virtue of this contract. Vendor assumes all risk of loss, destruction or damage of such property while in Vendor's possession, custody or control.

8.05 Insurance

i. Commercial General Liability

The Vendor hereby agrees to put in effect and maintain insurance for the Term, at its own cost and expense, with insurers having a secure A.M. Best rating of B or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person in the business of the Vendor would maintain including, but not limited to commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than **\$2,000,000** per occurrence and including products and completed operations liability The policy is to include the following: (a) DSM as an additional insured with respect to liability arising in the course of performance of the Vendor's obligations under, or otherwise in connection with, the Contract; (b) cross-liability and severability of interests clause; and (c) employers liability coverage.

ii. Automobile Liability

If licensed vehicles will be used in connection with the performance of the Deliverables, the Vendor shall carry and maintain, and ensure that any subcontractor thereof whose licensed vehicle is used in connection with the performance of the Deliverables carries and maintains, throughout the period when the Deliverables are being performed and until final acceptance by DSM.

iii. Workers' Compensation

Throughout the period when the Deliverables are being performed and until final acceptance by DSM, the Vendor shall cover or maintain insurance in accordance with the applicable laws relating to Workers' Compensation with respect to all of their respective employees working on or about DSM's premises.

iv. Certificate of Insurance

At DSM's request, Vendor shall provide copies of certificates of insurance reflecting full compliance with the requirements set forth above in paragraphs (i) Commercial General Liability; (ii) Automobile Liability; and (iii) Workers' Compensation. Such certificates shall be kept current and in compliance throughout the period when the Deliverables are being performed and until final acceptance by DSM, and shall provide for thirty (30) days advance written notice to DSM in the event of cancellation, termination or material change.

ARTICLE 9 – TERMINATION, EXPIRY AND EXTENSION



9.01 Immediate Termination of Contract

Without restricting any other remedies or termination rights available at law, DSM may immediately terminate the Contract upon giving notice to the Vendor where:

- (a) the Vendor is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of the Vendor's insolvency;
- (b) the Vendor breaches any provision in Article 6 (Confidentiality and FIPPA) of the Contract;
- (c) the Vendor breaches the Conflict of Interest paragraph in Article 3 (Nature of Relationship Between DSM and Vendor) of the Contract;
- (d) the Vendor, prior to or after executing the Contract, makes a material misrepresentation or omission or provides materially inaccurate information to DSM;
- (e) the Vendor undergoes a change in control which adversely affects the Vendor's ability to satisfy some or all of its obligations under the Contract;
- (f) the Vendor subcontracts for the provision of part or all of the Deliverables or assigns the Contract without first obtaining the written approval of DSM;
- (g) the Vendor fails to secure or renew any license or permit required by law, or if such license or permit is revoked or suspended;
- (h) the Vendor or any officer or director of the Vendor is found guilty of an indictable offence;
- (i) the Vendor is in breach of any applicable statute, by-law or regulation;
- (j) technological changes or changes in legislation require immediate change in the use of Deliverables;
- (k) change in clinical procedure(s) or practice by DSM so warrants;
- (l) the Vendor's acts or omissions constitute a substantial failure of performance; or
- (m) the Vendor's acts or omissions adversely affect patient and/or staff safety and the standards of patient care and/or client services.
- (n) the Vendor's Deliverable in the case of a consumable Product;
 - Is unsatisfactory or inadequate;

- Has unacceptable shelf life/expiration dates;
- Has inadequate technical and/or sales support;

Provided that DSM has first notified the Vendor in writing of the default or failure and the Vendor has failed or neglected to remedy such default or failure to the satisfaction of DSM within fifteen (15) calendar days following the date of DSM's notice to the Vendor.

In addition to its other rights of hold back or set off, DSM may hold back payment or set off against any payments owed if the Vendor fails to comply with its obligations on termination.

9.02 Dispute Resolution

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

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

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

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

9.03 Termination on Notice

DSM reserves the right to terminate the Contract, without cause, upon thirty (30) calendar days, prior notice to the Vendor.



9.04 Vendor's Obligations on Termination

On termination of the Contract, the Vendor shall, in addition to its other obligations under the Contract and at law (a) at the request of DSM, provide DSM with any completed or partially completed Deliverables; (b) provide DSM with a report detailing: (i) the current state of the provision of Deliverables by the Vendor at the date of termination; and (ii) any other information requested by DSM pertaining to the provision of the Deliverables and performance of the Contract; (c) execute such documentation as may be required by DSM to give effect to the termination of the Contract; and (d) comply with any other instructions provided by DSM, including but not limited to instructions for facilitating the transfer of its obligations to another Person. This paragraph shall survive any termination of the Contract.

9.05 Vendor's Payment Upon Termination on Notice

On termination of the Contract, DSM shall only be responsible for the payment of the Deliverables provided under the Contract up to and including the effective date of any termination. Termination shall not relieve the Vendor of its warranties and other responsibilities relating to the Deliverables performed or money paid

9.06 Termination in Addition to Other Rights

The express rights of termination in the Contract are in addition to and shall in no way limit any rights or remedies of DSM under the Contract, at law or in equity.

9.07 Expiry and Extension of Contract

Unless otherwise agreed to, the Contract shall expire on the original Expiry Date, unless DSM exercises its option to extend the Contract for a period of up to the duration of the original term, such extension to be upon the same terms (including the Rates in effect at the time of extension), conditions and covenants contained in the Contract, excepting the option to renew. The option shall be exercisable by DSM giving written notice to the Vendor not less than thirty (30) days prior to the original Expiry Date. The notice shall set forth the precise duration of the extension.