BASIC TERMS AND CONDITIONS FOR PRODUCT PURCHASE BY THE REGENTS OF THE UNIVERSITY OF MICHIGAN

The following terms and conditions shall be observed. Any Supplier terms and conditions included with Supplier's invoice or any other document provided by Supplier shall be of no effect.

1.0 No Document Modifications. Any handwritten changes on the face of this document shall be ignored and have no legal effect unless initialed by both parties.

2.0 Delivery, Risk of Loss. Delivery shall be FOB destination to the University and risk of loss will not pass to the University until the products have been actually received and accepted by the University at the destination specified by the University. Supplier assumes full responsibility for packing, crating, marking, transporting and liability for loss or damage in transit, notwithstanding any agreement by the University to pay freight, express, or other transportation charges. As applicable, Supplier will confirm before shipment, that all doorways, hallways, elevators, room sizes, service access spaces, and utilities are present before making any delivery of product. This confirmation should be made immediately upon receipt of order and any discrepancies or impediments to delivery and installation will be called immediately to the attention of the designated University personnel. Electrical plug size shall be compatible with the existing outlet at the installation, set-up and calibration.

3.0 Acceptance and Inspection of Products. The University shall have a reasonable time (but not less than thirty [30] days) after receipt to inspect and test the products provided under this Agreement and reject any or all items that are nonconforming or defective. Products rejected or supplies in excess of quantities ordered may be returned to Supplier at Supplier's expense. Any acceptance by the University shall not be deemed a waiver or settlement of any defect or nonconformity in the products or any support services.

4.0 Warranties and Representations of Supplier. Supplier acknowledges that the University is relying on these representations and warranties as essential elements to this Agreement, representing as they do, material inducements, without which the University would not have entered into this Agreement.

4.1 General Product Warranty. Supplier represents that all products and any support services provided under this Agreement (a) are new and unused (unless otherwise specified or agreed to in writing by the University) and free from defects in material and workmanship; (b) are of the quality, size, dimension and specifications ordered; (c) meets the highest performance and manufacturing specifications as described in documents or writings made available by the Supplier to the public or the University; (d) comply with all applicable laws, codes and regulations (including any published by any national or statewide association or groups); (e) are not restricted in any way by patents, copyrights, trade secrets, security interest, lien, or any other encumbrances or rights of third parties, and (f) shall have been properly stored, labeled, handled and shipped by Supplier.

4.2 Qualifications. Supplier warrants that it, as well as its employees, agents and subcontractors engaged to provide the products or services under this Agreement (collectively "Supplier Personnel"), has and will maintain all the skills, experience, and qualifications necessary to provide the services contemplated by this Agreement, including any required training, registration, certification or licensure.

4.3 Conflict of Interest. Supplier warrants that to the best of Supplier's knowledge, there exists no actual or potential conflict between Supplier and the University, and its products and services under this Agreement, and in the event of change in either Supplier's private interests or products or services under this Agreement, Supplier will inform the University regarding possible conflict of interest which may arise as a result of the change. Supplier also affirms that, to the best of Supplier's knowledge, there exists no actual or potential conflict between a University employee and Supplier.

4.4 Nondiscrimination. Supplier warrants that Supplier is an equal opportunity employer and that, during the performance of this Agreement, it will comply with Federal Executive Order 11246, as amended, The Rehabilitation Act of 1973, as amended, and the respective regulations thereunder, and the Michigan Civil Rights Act of 1976.

4.5 Good Standing. Supplier warrants that Supplier is legally organized entity in good standing under the laws of the state of its organization and, where required, in good standing under the laws of the State of Michigan.

4.6 Noninfringement. Supplier warrants that the Supplier's products and/or the University's use of the products, processes, techniques and methodologies provided by Supplier or developed by Supplier shall not infringe upon the copyright, patent or other proprietary rights of others.

4.7 Not Excluded. Supplier warrants that neither Supplier, nor, to the best of Supplier's knowledge, Supplier Personnel, is excluded from participating in the Medicare or Medicaid program nor currently debarred or suspended or listed on the General Services Administration's ("GSA") List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Executive Orders 12549 and 12689, "*Debarment and Suspension"*. Supplier shall immediately notify the University if it becomes debarred or suspended during the term of this Agreement. Supplier further represents that no adverse action by the federal government that will or may result in exclusions from a federal health care program has occurred or is pending or threatened against Supplier or its affiliates, or to the best of its knowledge, against any Supplier Personnel. Supplier agrees that it shall not perform any act that shall cause Supplier to be excluded from a federal health care program or debarred, suspended or listed in the GSA's List of Parties Excluded from Federal Procurement or Nonprocurement Programs during the term of this Agreement.

4.8 Standard Merchandise. Supplier warrants that the product(s) are of a type and model made available by Supplier generally within the United States and elsewhere and that modifications, if any, of the product are reversible and of only incidental cost to the Supplier.

5.0 Payment Terms. In the case of products, payment shall not be due prior to thirty (30) days (a) from the date the invoice is received by the University at the address indicated in the "Bill To" field on the face of the purchase order or (b) from the date the products are delivered to the destination specified in the "Ship To" field on the face of the purchase order, *whichever is later*. Invoices presented for payment must be submitted in accordance with instructions contained on the purchase order including reference to the purchase order number and submittal to the correct address for processing. The University may withhold payment in whole or in part for products or services found by the University to be defective, untimely, unsatisfactory, or otherwise not

conforming to the products description, or not in accordance with all applicable federal, state, and local laws, ordinances, rules and regulations.

6.0 Termination. The University may terminate this Agreement in whole or in part for its sole convenience upon ninety (90) days prior notice. Upon notice of such termination, Supplier shall immediately stop all work including shipment of the products and cause its suppliers and/or subcontractors to cease their work related to this Agreement. Supplier shall be paid for products or support services satisfactorily provided or performed. In no event shall Supplier be paid for costs incurred or support services performed after receipt of notice of termination, or for costs incurred by suppliers or subcontractors which reasonably could have been avoided.

The University may terminate the Agreement in whole or in part for cause upon seven (7) days written notice if Supplier fails to comply with any material term or condition of this Agreement. Late delivery of products or support services or delivery of products or services that are defective or do not conform to the University's specifications shall, without limitation, be causes allowing the University to terminate for cause. In this event, the University will not be liable for any amounts; but Supplier shall be liable to the University for all losses, damages, and expenses, including, without limitation, the excess cost of reprocuring similar products or services; shipping charges for any items the University may at its option return to Supplier, including items already delivered, but is no longer able to use for the intended purpose because of Supplier's default; and amounts paid by the University for any items the University has received but returns to Supplier. If a determination is made that the University improperly terminated the Agreement for cause, then the termination shall be deemed to have been for the University's convenience.

7.0 Compliance with Laws, Policies & Procedures. Supplier is advised that the University has established a compliance program to assure compliance with applicable laws and University policies designed to prevent and detect fraud, waste, and abuse. To the extent applicable to the Products and Services , Supplier shall fully comply with all federal, state, local, and University laws, rules, regulations, ordinances, policies and licenses, including applicable building policies and procedures, the University's Ordinances (reference website http://www.umich.edu/~regents/ordinance.html) and any standards of the Centers for Medicare and Medicaid Services ("CMS"), Michigan Department of Community Health ("MDCH") and Joint Commission of Accreditation of Healthcare Organizations ("JCAHO"), all as may be amended from time to time. Supplier acknowledges that Information about (1) the UMHS Compliance Program, (2) UMHS policies and procedures, (3) federal and state false claims and false statements laws, as well as (4) information about whistleblower protection under these laws, is available at http://finance.umich.edu/procurement/supplierinfo. Supplier agrees to further disseminate information about applicable University policies, as necessary, to ensure that all Supplier Personnel and subcontractors, as applicable, involved in providing Products and Services are aware of the existence and location of applicable University policies as well as how and where to make reports to the University regarding any compliance concerns. To the extent that University policies provide for reviews or audits of claims or services arising from this Agreement, Supplier agrees to participate in such audit insofar as it is relevant and applicable to Supplier Products and Services and Supplier Personnel's interaction with University. If Supplier identifies potential non-compliance with any applicable laws, regulations or policies in connection with the provision of the Products and Services, Supplier shall promptly contact the University of Michigan Compliance Hotline at 866-990-0111 and provide details concerning the suspected wrongdoing sufficient to facilitate an investigation by University.

Supplier shall be solely responsible for insuring that any recommendations made in connection with providing the Products and Services comply with all applicable federal, state, local and

University laws, rules, regulations, policies and procedures. Unless otherwise expressly provided for in this Agreement, Supplier shall obtain and comply with all permits, licenses and similar authorizations that are necessary to provide the Products and Services. By executing this Agreement, Supplier warrants and represents that it has all legally required licenses and permits needed to provide the Products and Services.

8.0 Insurance.

Insurance Coverages and Levels. Unless more specific insurance provisions are specified, Supplier shall, at Supplier's expense, obtain and maintain the following coverages:

- Commercial General Liability Insurance, including contractual products and completed operations insurance ($1 million per occurrence/$3 million annual aggregate).

  Exceptions:
  1) Medical diagnostic equipment
  2) Patient invasive products/equipment
  3) Products with a purchase price of $100,000 or more

  Above exceptions shall require the levels of ($2 million per occurrence/$5 million annual aggregate). Required minimum limits can be met with a combination of primary and excess/umbrella liability insurance policies.
- Worker's Compensation at statutory limits in accordance with the appropriate State of jurisdiction including Employer's liability (with minimum $500,000).
- Automobile liability for owned, non-owned and hired vehicles minimum limit ($1 million each accident).
- Supplier agrees to have the Regents of the University of Michigan added as additional insured with respect to Commercial General Liability Insurance for purposes of contract performance and incidents arising out of Agreement.
- Supplier agrees to provide the University with thirty (30) days prior written notice of any reduction in limits or cancellation of any of the above insurance.
- If any of the required insurance is on a "claims made" basis and is cancelled during the term of this agreement, Supplier agrees to purchase **tail coverage** or **prior acts coverage** so that such insurance is in effect from the date the Agreement is executed to three (3) years after its termination.
- Supplier shall provide the University with a certificate of the above insurance coverages and amounts. Compliance with the foregoing requirements as to carrying insurance and furnishing evidence of it will not relieve the Supplier of its liabilities and obligations under this Agreement.

9.0 Indemnity. Each party shall defend, indemnify and hold harmless the other party, its board members, officers, employees, agents and students (if the University) from and against any costs, losses, damages, liabilities, expenses, demands and judgments, including court costs and attorney fees, which may arise out of the other party's acts or omissions under this Agreement for which the indemnifying party would be liable in law or equity.

The indemnifying party shall keep the other reasonably apprised of the continuing status of the claim, including any proceedings resulting from it, and shall permit the other party, at its expense, to participate in the defense or settlement of the claim. When a claim is resolved by the indemnifying party's payment of money, it shall have final authority regarding defense and settlement. When a claim resolution requires equitable relief against the non-indemnifying party

or the indemnifying party has not or will not pay the money required for resolution, the parties shall cooperate regarding defense and settlement.

10.0 Audit. The Supplier is responsible for keeping accurate and reasonable records related to its performance and obligations under this Agreement. In particular, records will be kept documenting any price, cost or budget computations required under the Agreement. The Supplier agrees that the University or its duly authorized representative has the right to audit any directly pertinent books, documents, papers and records related to transactions and/or performance of the terms and conditions of the Agreement. The Supplier shall make available to the University or its agents all such records and documents for audit on the Supplier's premises during regular and reasonable working hours within ten (10) business days of a written request for availability. Supplier agrees to either (a) allow the University to make and retain copies of those documents useful for documenting the audit activity and results or (b) sequester the original or copies of those documents the University identifies for later access by the University. The Supplier further agrees to disclose within ninety (90) days of receipt any independent auditors' reports, which bear directly on the performance or administration of this Agreement.

The right to audit shall include periodic examinations of records throughout the term of the Agreement and for a period of three (3) years after its termination. The right to audit shall also apply to agents and subcontractors hired by the Supplier for the purpose of fulfilling the Agreement. In the event that audits discover substantive findings related to fraud, misrepresentation or non-performance, the University may recoup the costs of the audit work from the Supplier.

11.0 Confidentiality. Supplier shall keep confidential and not disclose to third parties any information provided by the University or by private individuals, organizations or public agencies during the course of this Agreement, including protected customer information regarding customers of the University, as defined under the Gramm-Leach-Bliley Act, unless Supplier has received the prior written consent of the University to make the disclosure or unless required by law or legal process. Only Supplier Personnel with a need to know may have access to or use University information. This obligation of confidentiality does not extend to information that is or shall become through no fault of Supplier available to the general public.

12.0 Changes, Alterations and Modifications to Products or Support Services. The University may at any time by a written notice change the drawings, designs, specifications, materials, packaging, and the time and place of delivery and/or completion of the products and services to be provided under this Agreement. Promptly upon receipt of the details of any change, Supplier shall either advise the University that the change will not affect its costs, or furnish: (a) a breakdown of estimated cost and changes resulting from the requested change, and (b) a statement of any necessary changes in the time of delivery. Supplier's failure to advise the University within ten (10) days of the effect of any change in cost or delivery time shall constitute Supplier's consent to conform to the change without change to pricing or without change in other terms and conditions of this Agreement. If the change causes a material increase or decrease in costs, than an equitable adjustment of the pricing to be paid to Supplier shall promptly be negotiated by the University and Supplier and incorporated as an amendment to this Agreement.

13.0 "Most Favored Customer" Provision. If Supplier has negotiated terms or conditions for the sale of the products or services to another customer of Supplier which the University deems more favorable than those contained herein, the University may request and shall be afforded the opportunity to purchase those products or services on the same terms and conditions as Supplier has negotiated to provide a third party under reasonably similar circumstances.

14.0 Assurance. If at any time the University in good faith determines that it is insecure with respect to Supplier's ability or intent to fully perform, then Supplier agrees to provide the University with written assurance fully satisfactory to the University, in the University's sole discretion, of Supplier's ability and intent to fully perform. The assurance shall be provided within the time and in the manner specified by the University. Supplier immediately shall notify the University of any circumstance that may cause Supplier to fail to fully perform. Upon the University's good faith determination that Supplier cannot or will not perform, then the University may deem this Agreement to be breached by Supplier and may reprocure from other sources.

15.0 Miscellaneous.

15.1 Use of the University Name and Marks. The University acknowledges Supplier's right to make, without the consent of the University, public statements regarding the existence of the contract, its terms and conditions and an accurate description of the products or services being supplied. However, except as permitted by the previous sentence, Supplier may never make any public statement (for example a press release or any form of advertisement) describing the University's relationship with Supplier or implying or stating the University's endorsement of Supplier or Supplier's product without the prior written consent of the University's Office of Communications. The University may withhold its consent in its absolute discretion. Supplier acknowledges that the University will require ten (10) business days to consider any request for consent. Supplier may not under any circumstances use any University Trademark.

15.2 Use of Premises or the University Property. Supplier shall neither use nor allow Supplier Personnel to use any part of the University premises or property for any purpose other than the delivery, installation, testing, training and maintaining of the products as may be required under this Agreement. Without limiting the generality of the statement above, supplier shall not use the University in any manner that might jeopardize the Medicare provider status of the University or the tax exemptions or casualty insurance of the University.

15.3 Independent Contractor Status of Parties. It is expressly understood that Supplier is an independent contractor and not the agent, partner, or employee of the University. Supplier and Supplier Personnel are not employees of the University and are not entitled to tax withholding, Worker's Compensation, unemployment compensation, or any employee benefits, statutory or otherwise. Supplier shall not have any authority to enter into any contract or agreement to bind the University and shall not represent to anyone that Supplier has such authority.

15.4 Assignment. Supplier may not subcontract, assign or transfer this Agreement or any interest or claim under this Agreement without prior written approval of the University. Notwithstanding any consent by the University to any assignment, Supplier shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirements, in writing, by the University. The Supplier shall retain the right to pledge payment(s) due and payable under this Agreement to third parties.

15.5 Notices. Any notice to either party must be in writing, signed by the party giving it, and served to the addresses indicated on the Request for Quotation (or to such other addressee

as may be later designated by written notice) by personal delivery, recognized overnight courier service, or by the United States mail, first-class, certified or registered, postage prepaid, return receipt requested. All such notices shall be effective when received, but in no event later than three (3) days after mailing.

15.6 Entire Agreement, Amendment. This Agreement constitutes the entire understanding between the parties with respect to the subject matter and may not be amended except by an agreement signed by Supplier and an authorized representative of the University.

15.7 Severability. The terms of this Agreement are severable. If any term or provision is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of the provisions shall continue to be valid and enforceable.

15.8 Governing Law, Construction and Venue. This Agreement shall be governed by and construed under the laws of the State of Michigan without regard for principles of choice of law. Any claims, demands, or actions asserted against The Regents of the University of Michigan shall be brought in the Michigan Court of Claims. Supplier, its successors and assigns, consent to the jurisdiction of the Washtenaw County Circuit Court for the State of Michigan with respect to any claims arising under this Agreement.

15.9 Headings. The paragraph headings in this Agreement are inserted for convenience only and shall not be construed to limit or modify the scope of any provision of this Agreement.

15.10 Waiver. No delay or omission by either party to exercise any right or remedy under this Agreement shall be construed to be either acquiescence or the waiver of the ability to exercise any right or remedy in the future.

15.11 Survivability. Provisions surviving termination or expiration of this Agreement are those which on their face affect rights and obligations after termination or expiration and also include provisions concerning indemnification, confidentiality, warranty and choice of law and venue.

15.12 Execution. This Agreement may be executed in duplicate, each of which when executed and delivered shall be an original. The parties acknowledge and agree that this Agreement has been mutually discussed, negotiated, and drafted by the parties.

15.13 No Third Party Rights. Nothing in this Agreement shall be construed as creating or giving rise to any rights in third parties or persons other than the named parties to this Agreement.

15.14 Force Majeure. Neither Supplier nor the University shall be liable for failure to perform its respective obligations under the Agreement when failure is caused by fire, explosion, water, act of God, civil disorder or disturbances, strikes, vandalism, war, riot, sabotage, weather and energy related closings, or like causes beyond the reasonable control of the party ("Force Majeure Event"). In the event that either party ceases to perform its obligations under this Agreement due to the occurrence of a Force Majeure Event, the party shall: (a) as soon as practicable notify the other party in writing of the Force Majeure Event and its expected duration; (b) take all reasonable steps to recommence performance of its obligations under this Agreement as soon as possible, including, as applicable, abiding by the disaster plan in place for the University. In the event that any

Force Majeure Event delays a party's performance for more than thirty (30) calendar days following notice by the delaying party pursuant to this Agreement, the other party may terminate this Agreement immediately upon written notice.

15.15 Tax Exempt Status. Supplier acknowledges that the University is a tax-exempt institution, granted such status by authorized taxing units of State of Michigan, and is exempt from Federal Excise Tax and Michigan General Sales Tax (see Michigan Public Act 167 of 1933. Section 4 as amended).

15.16 Dispute Resolution. Supplier and the University will attempt to settle any claim or controversy arising from this Agreement through consultation and negotiation in good faith and a spirit of mutual cooperation. The dispute will be escalated to appropriate higher-level managers of the parties, if necessary. Unless either party has issued a notice of termination, Supplier agrees to continue shipment of product while resolving any outstanding invoices or payment issues.

15.17 Freedom of Information Act. Nothing in this Agreement shall in any way limit the ability of the University to comply with any laws or legal process concerning disclosures by public bodies. The parties acknowledge that any responses, materials, correspondence or documents provided to the University are subject to the State of Michigan Freedom of Information Act ("Act") and may be released to third parties in compliance with that Act or any other law will not constitute a breach or threatened breach of this Agreement.

15.18 Supplier Damage to University Property. Without regard to any other section of the Agreement, Supplier shall be responsible for the costs to return to "as was" condition from any damage caused to the building, grounds, or other equipment and furnishings caused in whole or part by Supplier Personnel while performing activities arising under this Agreement. Supplier shall immediately report in writing the occurrence of any damage to the Building/Project Manager.

15.19 Supplier Clean-Up. Supplier will remove all packing materials and rubbish from University premises associated with Supplier's delivery of the product.

16.0 Confidentiality of Health Information. The parties agree that Supplier's provision of the products under this Agreement does not qualify Supplier as a "Business Associate" of the University as defined in regulations promulgated under the Health Insurance Portability and Accountability Act of 1996, (which act and regulations as amended, restated and superseded from time to time, are collectively referred to as "HIPAA"). Supplier will take all necessary steps to ensure Supplier Personnel do not seek or obtain access to protected health information created, maintained or received by the University. In the event the scope of Supplier's services in support of the product changes or HIPAA changes (including governmental guidance offered on HIPAA) such that the University concludes the Agreement must be amended or further documents executed to ensure the University's compliance with HIPAA, the parties agree to promptly take all actions necessary to ensure the University compliance with HIPAA.