



SQI DIAGNOSTICS SYSTEMS INC. MEDICAL DEVICE PURCHASE AGREEMENT

WHEREAS, SQI Diagnostics Systems Inc. (“SQI” or “Supplier”) provides a Diagnostic Solution in accordance with a quote and/or a purchase order for testing the presence of pathogens and viruses;

WHEREAS, Customer purchases Solution to utilize for its purposes;

WHEREAS, SQI agrees to offer Customer its Solution and other services as agreed upon;

NOW, THEREFORE, in consideration of the premises set forth above and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by acceptance of quote and subsequent purchase order or acceptance of invoice, the Parties agree as follows:

1. Interpretation and Definition

1.1 Definitions. In this Agreement the following terms have the meanings indicated in this Section 1 unless set out in the body of the Agreement:

“Affiliate” of a Party means any other person or entity that, directly or indirectly, controls, is controlled by or is under common control with such party.

“Authority” means Health Canada, the United States Food and Drug Administration and/or any other international medical device regulatory authority or government body.

“Confidential Information” means financial, business, technical information and/or Personal Information of the Discloser, regardless of the form or manner in which the information is disclosed or learned, including, but not limited to, marketing and product plans, ideas, concepts, business plans, employees and employee information, inventions, algorithms, decision technology and/or models, processes, designs, specifications, drawings, samples, improvements, developments, applications, engineering, manufacturing and marketing data and plans, software code (object and source code), documentation (including without limitation manuals, training materials, and presentations), and functionality, security procedures and approaches, know-how, customer names and information, experimental work, distribution arrangements and trade secrets and other information marked confidential by the Discloser.

“Consumables” means any part of Solution that is a one-time use, including but not limited to Biomeme M1 Sample Prep, Biomeme SARS-CoV-2 Go-Strips, Quidel Sofia2 SARS Antigen FIA (including all of its components), pipette tips, syringes, tubes and collection caps.

“Control” means the power, directly or indirectly, to direct or cause the direction of the management and policies of another person or entity, whether through ownership of voting securities, by contract or otherwise.

“Cooperation” means Customer’s general cooperation and providing access to information that is reasonably required to allow Supplier to perform its obligations under this Agreement, including without limitation: (i) providing data and materials in the format and according to the specifications required by Supplier, (ii) complying with all terms, conditions, and requirements set forth in this Agreement; and (iii) cooperating with Supplier to make decisions and communicate information in a timely manner, including in instances which deviate from Documentation as required by Supplier. Other variations of “Cooperation” shall have the meaning in context herein.

“Deliverable” means any Solution, Good, artifact, item, service, component provided by SQI.



“Discloser” means a party that discloses or provides Confidential Information pursuant to this Agreement.
“Documentation” means that information which is provided by SQI as part of Solution and sets out details in respect of Solution components and their usages.

“Documentation” means applicable labels, training manuals, and/or user instructions for a Solution or any component thereof, as the case may be.

“Goods” means Consumables and Hardware in Solution.

“Hardware” means any part of Solution which is not one time use, including the Biomeme Franklin three9 thermocycler, the Quidel Sofia2 Analyzer.

“Intellectual Property Rights” means rights associated with all or any of the following anywhere in the world, whether or not filed or registered: (i) patents, patent applications, and inventors’ certificates; (ii) copyrights (including moral rights and author’s rights), works of authorship, copyright registrations and applications; (iii) database rights; (iv) know-how, trade secrets, and rights in and to Confidential Information; (v) industrial designs (including utility models); (vi) trademarks, trade names, service marks, logos, internet addresses (URLs), and the goodwill associated with them; (vii) semi-conductor topography rights; (viii) divisions, continuations, renewals, reissuances and extensions of any of the foregoing (to the extent applicable); and (ix) any other proprietary rights relating to intangible property anywhere in the world.

“Non-SQI Sourced Items” mean any item, part, component, product or service which is utilized by Customer to utilize the Solution but which is not provided by SQI under this Agreement.

“Party” means either SQI or Customer. Collectively, SQI and Customer are “Parties”.

“Personal Information” means information that can identify an individual directly or through reasonably available means.

“P.O.” or “Purchase Order” means the document provided by the Customer to SQI which sets out the details in respect of Solution or the quantity of a particular component of Solution, as applicable, and other details relevant to the ordering of Solution.

“Quote” means the document which sets out the details in respect of Solution, including pricing and any additional terms and conditions applicable to any component of Solution.

“Recipient” means a party that receives Confidential Information of Discloser pursuant to this Agreement.

“Shipment Date” means the date upon which SQI has shipped a given product pursuant to this Agreement to a Customer.

“Solution” means the Hardware, Consumables, Software and/or any other services provided under this Agreement and Quote (if applicable) and ordered by Customer pursuant to a P.O.

“Software” means the software which is installed on any Hardware that is part of Solution.

“Taxes” mean all present and future taxes, duties, import deposits, assessments, and other governmental charges (and any related penalties and interest not attributable to the fault or delay of Supplier), however designated, that are now or hereafter imposed by or under any governmental authority or agency that are: (i) associated with the performance by Supplier of its obligations under this Agreement; (ii) associated with the payment of any amount by Customer to Supplier pursuant to this Agreement; (iii) based on the license or use of any Supplier-provided product or service; or (iv)

associated with the importation of any Supplier-provided product into or use of any Supplier-provided service within a country other than the that in which Supplier is incorporated, excepting only (a) Supplier's corporate franchise taxes and taxes imposed on Supplier's net income by the governmental authorities or agencies in any jurisdictions in which Supplier is required to pay those taxes; (b) withholding, employment, and payroll taxes relating to Supplier's employees; and (c) personal property taxes on Supplier property.

1.2 Order of Precedence. As between the Parties, the express terms and conditions contained in this Agreement, an applicable Quote and any P.O. issued hereunder exclusively govern and control each of the Parties' respective rights and obligations regarding the purchase and sale of Solution. Notwithstanding the foregoing, if any terms and conditions contained in a Quote or P.O. conflict with any terms and conditions contained in this Agreement, the order of precedence is:

- (a) the P.O., but only to the extent it clearly references the clause in this Agreement or applicable Quote that the conflicting P.O. clause is overriding;
- (b) the Agreement; and
- (c) the applicable Quote.

Without limiting anything contained in this Section 1.2, any additional, contrary or different terms contained in any P.O. or any other request or communication by Customer to SQI pertaining to the sale of Solution hereunder, or any of SQI's invoices or other communications, and any other attempt to modify, supersede, supplement or otherwise alter this Agreement, are deemed rejected by SQI and will not modify this Agreement or be binding on the Parties unless such terms have been fully approved in a signed writing by authorized representatives of both Parties.

1.3 Interpretation & Extensions. In this Agreement, words importing the singular number only include the plural and vice versa and words importing any gender include all genders. The term "including" means "including without limiting the generality of the foregoing". A definition applies to other forms of the word. "Shall" and "will" mean "must", not "may". Section headings are only for purposes of information and shall not be utilized in any manner to determine the meaning of the words set out in the body of a clause under such heading.

2. Purchase; Grants; Delivery and Returns

2.1 Purchase and Sale. Subject to the terms and conditions of this Agreement, Customer shall purchase Solution from SQI, and SQI shall provide Solution to Customer at the prices set out in the applicable Quote for Customer's use in accordance with this Agreement and applicable Documentation. SQI shall, subject to the warranty set out under Section 4.3 herein, only provide the materials, goods and services as specified under the applicable Quote or P.O.

2.2 License. Upon receipt of payment of all applicable fees under a Quote or P.O., SQI grants Customer a royalty free, non-sublicensable and non-assignable right to use Solution Software.

2.3 Reservation of Rights. Supplier reserves all rights not expressly granted to Customer under this Agreement. Unless otherwise expressly provided, all Intellectual Property Rights in a Solution, including any Goods, Documentation, services custom code, other Deliverables, or know how owned or developed in whole or in part by Supplier or its licensors are retained exclusively by Supplier or its licensors. Subject to Supplier's obligations with respect to Customer's Confidential Information, Supplier and its licensors shall be free to use any ideas, concepts, techniques, and know-how developed pursuant to this Agreement.

2.4 Limitations on Sale. This Agreement does not limit SQI's right to provide or sell, or preclude SQI from providing or selling, to any person, or entering into any agreement with any other person related to the supply and sale of Solution and other goods or products that are similar to or competitive with Solution. Customer agrees that it does not have any resale or sublicense right under this Agreement in respect of Solution, including Third Party Items, and will not provide any part of the Solution, including Third Party Items, to any party that is not an Affiliate in exchange for any value or for free.

2.5 Delivery and Title

(a) Destination. Unless otherwise agreed by SQI in writing, all Deliverables will be delivered to a destination specified by Customer (i) in the U.S. and Canada; or (ii) if outside U.S. and Canada FOB SQI's shipping point. Title and risk of loss in respect of all Goods purchased under a P.O. passes to Customer upon shipment.

(b) Dates. Delivery dates provided by SQI are estimates only. SQI will not be liable for any shipping delays beyond the SQI's reasonable control. In the event of delay due to a force majeure event, SQI reserves the right to terminate part or all of a P.O., or reschedule the delivery of a Deliverable in a commercially reasonable manner, and Customer shall not refuse such delivery.

(c) Acceptance. Customer must inspect Solution and Goods upon receipt. All Solutions and Goods will be deemed irrevocably accepted unless Customer reports a claim in writing for defects, damages, or shortages which are discoverable on inspection in writing within ten (10) days of receipt.

(d) SQI's Right to Cancel an Order. SQI may reject a P.O. or cancel a previously accepted P.O., which it may do without liability or penalty, and without constituting a waiver of any of SQI's rights or remedies under this Agreement or any Purchase Order, by providing written notice to Customer specifying the applicable date of rejection or cancellation.

(e) Changing Orders. A P.O. will not be subject to cancellation or reduction in any amount without SQI's written consent. Any other changes to an order requested by Customer will require the prior written approval of SQI, which approval may be subject to price adjustments as determined on a case-by-case basis.

(f) Returns. Subject to Section 4.3 (Warranty), all returns are subject to prior approval of SQI, in its sole discretion, and require documentation of the return goods authorization ("RGA") number requested by Customer and provided by SQI. Solution returned without an RGA number will be returned to Customer at Customer's expense and Customer will bear all risk of loss or damage to the returned Solution while in transit. All RGA requests must include one of the following: the original Customer purchase order number, the SQI sales order number, or the SQI invoice number. Issuance of an RGA number by SQI does not guarantee that a return will be accepted. In the case of an alleged damaged or defective Good or component thereof, SQI will only accept returns if (i) there is no breach of the restrictions set out in this Agreement or a Quote or actions by Customer contrary to Documentation, (ii) the alleged damage or defect is established to the satisfaction of SQI; (iii) such component or Good is still covered by the warranty; and (iv) Customer has notified SQI in writing within (a) ten (10) days of delivery in the case of a defect or damage that is discoverable on a visual inspection or (b) ten (10) days of discovery of the defect. SQI will not accept returns of any Solution, Good, or component thereof other than returns relating to a product deficiency or associated with an authorized RGA. For clarity, no returns of any Solution, Good or component thereof will be accepted for reasons of convenience, inventory balancing, time delay, or in respect of Consumables which have been received, stored, used or opened.

(g) Shipment of Returns. All authorized returned Solution, Goods, and components thereof (“Returned Good”) must be shipped by Customer freight and insurance prepaid to the location indicated in writing by SQI. SQI does not take possession of a Returned Good until it is received in SQI’s system. All Returned Goods must be current inventory items in new condition (other than defective items), in the boxes or other original packaging in which they were shipped and are subject to quality control inspection prior to acceptance. Any damage occurring in transit is between the carrier and Customer. SQI will assist in the resolution of such claims if requested to do so by Customer. SQI will deduct the amount of all approved returns from the invoice or account of Customer, less any freight, shipping, insurance or handling charges (except as otherwise provided herein). SQI reserves the right to refuse any good returned to SQI without SQI’s prior approval. Unauthorized returns will remain Customer’s responsibility and may be destroyed or returned to Customer at Customer’s expense. Any freight, shipping, insurance or handling charges associated with a return or cancellation resulting from an error or omission of SQI will be borne by SQI.

(h) Restricted Use. Customer shall not, unless expressly agreed upon in writing: (i) directly or indirectly reverse engineer any part of Solution; (ii) pass off any part of Solution as its own or any other party’s other than SQI or its licensors; (iii) make any claim in any way in respect of Intellectual Property Rights in Solution or make any derivative works from Solution, (iv) take any action which shall detract from the Intellectual Property Rights of SQI or its Solution, (v) act as a reseller or distributor of Solution to another party, regardless of fees charged to such party by Customer, (vi) purchase Solution hereunder for any purpose other than to utilize Solution for the purpose they were provided by the SQI; (vii) disparage SQI publicly or any Deliverable without giving SQI a chance to address Customer’s concerns; (viii) make any claims or representations about Solution other than those provided to Customer explicitly in the Documentation; (ix) provide any warranty or promise anything to any party in respect of Solution other than what is in the Documentation; and (x) breach any additional use restrictions set out in the Documentation, including (xi) in respect of who is allowed to use, operate or handle any part of Solution or any results therefrom, (xii) utilizing Solution, including Third Party Items, in a manner that is contrary to recommendations set out in the Documentation, and (xiii) altering, reframing, interpreting, amending or manipulating any result from Solution that would reasonably be construed by an observer to be misleading or false.

(i) Confidentiality of Fees. Customer acknowledges that the fees and charges for a Solution under this Agreement are strictly confidential, and Customer shall not reveal such amounts to any party that is not an Affiliate or to any person other than a director, officer or an authorized representative who needs to know the fees and charges in relation to this Agreement.

3. Confidential Information and Privacy

3.1 Purpose for Disclosure. Recipient may use Confidential Information of the Discloser only for the purposes of exercising Recipient’s rights and fulfilling Recipient’s obligations under this Agreement.

3.2 Exceptions. Recipient’s obligation under this Agreement to treat information as Confidential Information does not apply to information that: (i) is already known to Recipient at the time of disclosure and was not obtained, directly or indirectly, from Discloser; (ii) is independently developed by Recipient without reference to or use of the Discloser’s Confidential Information; (iii) is obtained by Recipient from another source without a breach of any obligation of confidentiality owed by that source to Discloser; or (iv) is or becomes publicly available through no wrongful act of Recipient or any party that obtained the information from Recipient. If Recipient is served with a subpoena or other legal process, court, or governmental request or order requiring disclosure, or is otherwise required by law or securities exchange requirement to disclose, any of Discloser’s Confidential Information, Recipient shall, unless prohibited by law, promptly notify Discloser of that fact and cooperate fully (at Discloser’s expense) with Discloser and its legal

counsel in opposing, seeking a protective order, seeking to limit, or appealing the subpoena, legal process, request, order, or requirement to the extent deemed appropriate by Discloser. Recipient may comply with the subpoena or other legal process or requirement after complying with the foregoing sentence, but only to the extent necessary for compliance. A non-public disclosure made pursuant to the foregoing sentence will not, by itself, remove any Confidential Information from the protections of this Agreement.

3.3 Limitations on Disclosure and Use. Recipient shall use the same degree of care, but no less than a reasonable degree of care, to protect against the unauthorized disclosure or use of Discloser's Confidential Information as it uses to protect its own confidential information of a similar type. Recipient shall disclose Confidential Information of Discloser only to its employees or independent contractors who have a need to know for the above stated purpose, and who are bound by obligations of confidentiality no less restrictive than the terms of this Agreement. Recipient shall not remove any confidentiality or proprietary notices from Discloser's Confidential Information. If Recipient provides Discloser with comments, suggestions or other input regarding Discloser's Confidential Information or any item which is subject to Discloser's Intellectual Property Rights, Discloser will have an unrestricted, worldwide, royalty-free right to use those comments, suggestions, or other input for any purpose and in any manner, and to authorize others to do so.

3.4 Privacy. Customer covenants and warrants that it shall not provide any Personal Information to SQI unless reasonably required for SQI to perform its obligations under this Agreement. Customer undertakes and warrants that it will comply with all applicable laws, policies and government guidance documents governing the collection, use, disclosure and other processing of Personal Information that occurs in relation to Solution, good or other products or services purchased from or provided to Customer by SQI, or arising out of the relationship between the Parties.

3.5 Injunctive Relief. The Parties acknowledge that the remedies at law available for the protection of Confidential Information or Intellectual Property may be inadequate, and, without limiting any rights available at law, each Party is entitled to seek injunctive relief for any breach of this Agreement relating to the protection of its Confidential Information or Intellectual Property Rights.

4. Representations, Warranties and Covenants

4.1 Each Party represents that: (i) it is duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation or organization; and (ii) it has the power and authority to enter into and perform all of its obligations under the Agreement. The foregoing representations also apply to each Quote and P.O.

4.2 Customer acknowledges that:

- (a) Subject to the warranties under Section 4.3, SQI is only responsible for Solution components, and not any item which is a non-SQI sourced item;
- (b) Solution contains Goods which are defined as Class III and/or IV medical devices in Canada;
- (c) Solution contains Goods which have been authorized by Health Canada under Interim Order in Canada and SQI does not warrant Solution's or Goods' approval or certification by any other Authority; and
- (d) Customer shall communicate any incidents (Incident) related to: (i) a failure of a Solution or Good; (ii) deterioration in a Solution's or Good's quality or effectiveness; (iii), and any inadequacy in a Solution's or Good's labeling or its directions for use as soon as possible. The Customer shall information SQI immediately of any Incident that has led to or could lead to serious deterioration in the state of health of a patient, user or other person.

4.3 Warranty

(a) Disclaimer. Except to the extent expressly provided in a Quote, Supplier does not warrant that any product, service, or deliverable provided by Supplier will (i) meet Customer's requirements, (ii) operate in combination with hardware, software, systems or data not expressly specified in writing by Supplier, (iii) meet any performance level, resource utilization, response time, or system overhead requirements or (iv) operate uninterrupted, free of errors, or without delay. Supplier is not responsible for problems caused by: (a) use of any product, service, or deliverable provided by Supplier outside the scope of this Agreement or not used in compliance with applicable Documentation; (b) any modification to a product, service or deliverable not made by Supplier; (c) any change in or modification to the operating characteristics of Customer's system or any component of Customer's system that is inconsistent with Solution or Services documentation or specification; or (d) use of any product or deliverable provided by Supplier with hardware or software that is not indicated in the applicable documentation to be interoperable with that product or deliverable.

(b) Solution contains components which are not manufactured by SQI (each a "Third Party Item") and may require the use of non-SQI sourced items. All Third Party Items, unless subject to part (d) below, will carry the original manufacturer's warranty, copies of which are available on reasonable request. Unless otherwise advised, all warranty claims in respect of Third Party Items shall be submitted to SQI which shall handle such claims on behalf of Customer against the applicable third party in accordance with such third party's warranty policy, provided however, SQI takes no responsibility for enforcing such warranty. SQI MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO ANY THIRD PARTY ITEM EXCEPT AS EXPLICITLY IDENTIFIED BELOW IN SECTION 4.3(d). SQI shall have no liability or obligation whatsoever in respect of a Non-SQI Sourced Item to any party.

(c) SQI will have no warranty obligation whatsoever with respect to any damage to a Solution or Good caused by or associated with: (i) external causes, including, without limitation, accident, vandalism, natural disaster, acts-of- God, power failure, or electric power surges; (ii) abuse, misuse, or neglect of Solution or Good or use of unauthorized third party filters or other consumables and accessories or chemistries that have not been validated by SQI; (iii) usage, installation, and maintenance contrary to SQI's instructions; (iv) servicing or repair not authorized by SQI; (v) improper handling or shipping or storage of any item by Customer or its representatives; (vi) any deficiency in any item used by Customer that is not provided by SQI; or (vii) use contrary to the restrictions set out in Section 2.1, including use of Solution for non-medical uses, or, in the event of any geographic constraints agreed upon by the Parties, outside the agreed upon territory. All warranties will be voided automatically upon Customer's resale or provision of such Solution to a third party without SQI's prior written consent.

(d) SQI warrants that each Hardware product furnished under this Agreement will conform to its Specifications for the Warranty Period ("Hardware Product Warranty"). All Hardware Product Warranty claims must be filed in writing with SQI within the applicable Warranty Period. Subject to part (e) below, the duration of the Hardware Product Warranty is specific to each individual Hardware product furnished under this Agreement ("Warranty Period"). The Warranty Period begins on the Shipment Date of the specific Hardware product and expires one (1) year from the Shipment Date;

(e) Any repairs and/or replacement to a Hardware product and/or any spare parts provided for the repair and/or replacement of a Hardware product, shall only be warranted for any remainder of the Warranty Period applicable to the original Hardware product that was the subject of the repair and/or replacement.

4.4 SQI's SOLE LIABILITY under a valid warranty claim will be, at SQI's option, to either replace or repair the defective Solution, Good or component thereof or refund or credit the purchase price to Customer. SQI'S LIMITED WARRANTY HEREUNDER IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, WITH RESPECT TO ANY PRODUCTS, INCLUDING SOLUTION, PROVIDED BY SQI AND SQI DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AS WELL AS WARRANTIES ARISING FROM COURSE OF DEALING AND USAGE OF TRADE, AND SQI DOES NOT REPRESENT OR WARRANT THAT ANY DELIVERABLE WILL MEET BUYER'S REQUIREMENTS. Any oral or written statement, wheresoever written, concerning Solution inconsistent with the limited warranty set forth above will be of no force or effect. Customer will be responsible for reimbursement of SQI's reasonable travel and other expenses incurred in providing on-site warranty and out of warranty services. CLIENT IS SOLELY RESPONSIBLE FOR ITS USE OF ANY SOLUTIONS, GOODS, SERVICES AND DELIVERABLES PROVIDED BY SUPPLIER UNDER THIS AGREEMENT AND FOR ANY LIABILITY ARISING OUT OF DATA OR CONTENT SUPPLIED BY CLIENT.

5. Indemnification

5.1 Intellectual Property Indemnification. Unless otherwise indicated in a Quote, and subject to Sections 5.2 and 5.4 below, Supplier shall defend at its own expense any action against Customer brought by a third party to the extent the action is based upon a claim that a Solution directly infringes a third Party's Intellectual Property Rights, and Supplier will pay those costs and damages finally awarded against Customer in the action that are specifically attributable to that claim, or those costs and damages agreed to in a monetary settlement of the action that are specifically attributable to the claim.

5.2 Conditions. To be entitled to indemnification under this Agreement, Customer must: (i) notify Supplier promptly in writing of the action; (ii) give Supplier sole control of the defense of the action and any related settlement negotiations; (iii) cooperate, as Supplier may reasonably request, in defense or settlement negotiations; and (iv) be and remain in compliance with the material terms of this Agreement.

5.3 Options. If any Solution becomes, or in Supplier's opinion is likely to become, the subject of a claim subject to indemnification under this Agreement, Supplier may, at its option and expense, either: (i) procure for Customer the right to continue to exercise Solution license; (ii) replace or modify Solution so that it becomes non-infringing; or (iii) if neither option (i) or (ii) is available on reasonable terms, terminate Customer's license or subscription for Solution concerned. Unless otherwise provided in the applicable Quote, if Supplier exercises option (iii), Supplier will refund to Customer the unearned portion of any prepaid term Solution fees.

5.4 Exclusions. Supplier has no obligation with respect to any claim based upon: (i) any violation of the terms this Agreement; (ii) any combination or use of Solution with products, equipment, consumables, software, or materials not supplied or approved in writing by Supplier or recommended in Documentation; (iii) any modification of a Solution made pursuant to Customer specifications or any other modification made by any entity other than Supplier; or (iv) any claim that would have been avoided had Customer upgraded to a new version or release of Solution made available by Supplier to Customer.

5.5 Customer Indemnification. Subject to the terms of this Section 5.6, Customer shall defend at its own expense any action against Supplier brought by a Third Party to the extent the action is based upon a claim in relation to Customer's use of Solution or Good in any manner contrary to the Documentation and the restrictions set out under this Agreement. Customer will pay those costs and damages finally awarded against Supplier in the action that are specifically attributable to that claim, or those costs and damages agreed to in a monetary settlement of the action that are specifically attributable to the claim. To be entitled to indemnification under this Section 5.6, Supplier must notify Customer promptly in writing of the action. The Parties will cooperate in the defense of such claim.

(a) To the fullest extent permitted by law, Customer will indemnify, defend, and hold harmless SQI, including SQI's officers, directors, agents, employees, subsidiaries, affiliates, parents, successors, and assigns, from and against any claim, demand, cause of action, debt, liability, loss, fine, damage, or expense (including reasonable attorneys' or legal fees, expenses, and court costs) (collectively, "Liabilities") that relates to: (i) Customer's modification of or addition to any Solution(s) or Goods; (ii) Customer's breach of this Agreement; (iii) Customer's gross negligence or willful misconduct; or (iv) damage to a third party by any Solution or Good distributed or resold by Customer to the extent such claim is based on (a) Customer's modification of or addition to Solution or Good, misuse or abuse of Solution or Good, or breach of any provision in this Agreement; (b) Customer's failure to abide by all applicable laws, rules, regulations, and orders that affect Solution; (c) Customer's gross negligence or willful misconduct; (d) intentional harm to any person or property caused by Customer; or (e) lack of appropriate consents, certifications or approvals from an applicable Authority.

5.6 Entire Liability. THIS ENTIRE SECTION FIVE (5) STATES SUPPLIER'S ENTIRE LIABILITY AND CLIENT'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT AND MISAPPROPRIATION CLAIMS AND ACTIONS.

6. Limitation of Liability

6.1 IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT UNDER ANY THEORY OF RECOVERY (INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, TORT, AND STRICT LIABILITY) FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL (INCLUDING WITHOUT LIMITATION LOSS OF DATA, USE, INCOME, PROFIT, OR SAVINGS) OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY PRODUCT, SERVICE, SOLUTION OR DELIVERABLE PROVIDED BY SUPPLIER UNDER THIS AGREEMENT, EVEN IF THE RESPONSIBLE PARTY HAD BEEN ADVISED OF THE POSSIBILITY OF THOSE TYPES OF DAMAGES OR EVEN IF THOSE TYPES OF DAMAGES WERE REASONABLY FORESEEABLE, PROVIDED, HOWEVER THE FOREGOING LIMITATION IS INAPPLICABLE TO DAMAGES ARISING FROM OR AS A RESULT OF AN INFRINGEMENT OR VIOLATION OF SUPPLIER'S INTELLECTUAL PROPERTY RIGHTS (INCLUDING BREACH OF ANY LICENSE GRANT OR RESTRICTIONS FOR ANY PRODUCT OR SERVICE).

6.2 EXCEPT TO THE EXTENT THAT THIS LIMITATION IS PROHIBITED BY APPLICABLE LAW, THE TOTAL AGGREGATE LIABILITY OF EITHER PARTY FOR ALL CLAIMS ARISING UNDER OR RELATED TO THIS AGREEMENT, UNDER ANY AND ALL THEORIES OF LIABILITY (INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, BAILMENT, TORT, AND STRICT LIABILITY), WILL NOT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER (EXCLUDING IMPLEMENTATION FEES AND REIMBURSED EXPENSES) FOR SOLUTION(S), GOOD(S), SERVICE(S), OR DELIVERABLE(S) TO WHICH THE CLAIM(S) RELATE(S) DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE DATE OF THE MOST RECENT CLAIM THAT GAVE RISE TO THE LIABILITY. NOTWITHSTANDING THE FOREGOING (A) CLIENT'S OBLIGATION TO PAY AMOUNTS OWED TO SUPPLIER FOR PRODUCTS AND SERVICES PROVIDED BY SUPPLIER UNDER THIS AGREEMENT OR OTHERWISE (INCLUDING COSTS OF COLLECTION OF UNPAID AMOUNTS) IS INDEPENDENT OF AND NOT SUBJECT TO THE FOREGOING LIMITATION; AND (B) THERE IS NO LIMITATION OF LIABILITY FOR DAMAGES ARISING FROM OR AS A RESULT OF AN INFRINGEMENT OR VIOLATION OF INTELLECTUAL PROPERTY RIGHTS (INCLUDING BREACH OF GRANT OR RESTRICTIONS) OF SUPPLIER OR ITS LICENSORS.

7. Payment Terms

7.1 Unless set out differently in a Quote, Customer shall upon issuance of a P.O.: (i) immediately pay SQI 50% of the total fees and charges for all Deliverables subject to the P.O., as the case may be: and (ii) pay the remaining fees and charges, as the case may be, on the date of issuance of an invoice by SQI (such invoice sent electronically and deemed to be delivered on the day of issuance), by EFT or wire transfer. All fees paid hereunder are non-refundable without any right of set-off or deduction.

7.2 All payments must be made in Canadian Dollars or the invoiced currency. If Customers fail to pay all amounts payable at the date applicable, SQI reserves the right to charge interest on the outstanding amount at the rate of one percent (1%) or the highest rate allowed by law, whichever is lower per month. At SQI's discretion, if Customer fails to fulfill the terms of payment or does not meet SQI's continuing credit requirements, SQI will have the option to: (i) decline to accept orders or fulfill pending orders; (ii) require all pending and future orders to be on a prepaid basis; (iii) delay any shipment until payment is received by SQI or further assurances asked for by SQI are received; (iv) declare all outstanding sums immediately due and payable; or (v) require payment for all Deliverables provided hereunder to be made by irrevocable letter of credit in a form approved by SQI. Nothing contained herein will release Customer from any obligation prior to any such action by Supplier. Customer will be liable to SQI for all costs incurred by SQI in its collection of any amounts owing by Customer which are not paid when due, including collection agencies' and attorneys' fees and expenses, regardless of whether a lawsuit is commenced. Customer agrees to provide SQI with all credit information reasonably requested, and Customer represents and warrants to SQI now, and each time Customer places an order, that all information Customer has provided is true and correct.

7.3 Shipping Fees & Insurance. Fees do not include reasonable shipping expenses incurred by Supplier in connection with this Agreement, which Customer agrees to reimburse at Supplier's actual cost. Customers are responsible at their own expense for insurance costs of their shipment during transit from SQI to Customer's shipment destination.

8. Termination

8.1 Termination of Quote or P.O. A Party may terminate a Quote or a related P.O. subject to the terms therein by providing written notice to the other Party upon the occurrence of any of the following events:

- (a) uncured breach, where the other Party has committed a material breach of any provision of this Agreement or Quote and has failed to remedy the breach within 30 days after receipt of written notice from the non-breaching party identifying the breach and requiring it to be remedied;
- (b) insolvency, where the other Party ceases to conduct business in the ordinary course or is declared insolvent or bankrupt, or makes an assignment of substantially all of its assets for the benefit of creditors, or has a receiver appointed over all or substantially all of its assets, or any proceeding is demanded by, for, or against the other Party under any provision of bankruptcy or insolvency legislation;
- (c) violations, where the other Party has committed a material breach of the provisions of this Agreement relating to the protection of Confidential Information or Intellectual Property, and Supplier may immediately suspend its performance under or terminate any Quote or P.O. if Customer (i) violates the terms of any applicable restriction, or (ii) violates any applicable import, export, or re-export laws or regulations.

8.2 Termination of Agreement. Notwithstanding anything to the contrary in this Agreement, if Customer is in breach of any provision of this Agreement involving a failure of payment or violation of Supplier's Intellectual Property Rights (including breach of any sale, license grant or restriction), and fails to remedy the breach within 15 days after receipt of written notice, then Supplier may at its option terminate (i) the Quote and/or P.O. subject to the breach, or (ii) this Agreement.

8.3 Effect of Termination or Expiration. Upon termination or expiration of any Quote or P.O. for any reason: (i) all fees and other charges provided for in this Agreement or in any Quote and owing pursuant to a P.O. by Customer will become immediately due and payable; (ii) Supplier shall no longer have any obligation to continue provision of any

further support in respect of any Software; (iii) Customer's right to return any Good shall terminate; and (iv) the Parties shall destroy or return any Confidential Information of the other Party, as requested by the Discloser.

8.4 Survival. The following provisions of this Agreement will survive expiration or termination of this Agreement: Section 1 (Interpretations), Section 2.3 (Reservation of Rights), Section 3 (Confidential Information), Section 4.3 (Warranty), Section 5 (Indemnification), Section 6 (Limitation of Liability), Section 7 (Payment Terms), Sections 8.3 (Effect of Termination) and 8.4 (Survival), and Section 9 (Miscellaneous). In addition, notwithstanding the expiration or termination of this Agreement, this Agreement will continue to apply to any Quote still in effect at the time of the termination or expiration of this Agreement.

9. Miscellaneous

9.1 Relationship of the Parties. The relationship between the Parties is at arm's length. This Agreement is not to be construed as creating any partnership, joint venture, agency, or any other form of legal association that would impose liability upon one Party for the act or failure to act of the other Party.

9.2 Press Releases: Publicity. Supplier may issue a press release stating factual information regarding the relationship between Supplier and Customer at the time this Agreement or any Quote is signed. Supplier shall first submit the press release to Customer for Customer's approval. The Parties may issue additional press releases as mutually agreed by the Parties. All press releases or other publicity sought to be issued by either or both Parties pursuant to this Section must, prior to release, be reviewed and approved by each Party, which approval may not be unreasonably withheld or be delayed more than five (5) business days. Subject to Customer's prior written consent (which must not be unreasonably or arbitrarily withheld), Supplier may include Customer's name in its marketing and promotional materials regarding the availability of any of its products or services to other clients.

9.3 Limitation of Actions. No action, regardless of form, arising out of or relating to this Agreement may be brought by Customer more than two years after the cause of action has accrued.

9.4 No Waiver. No delay or omission by either Party in exercising any right under this Agreement will be construed as a waiver of that right. Even if either Party waives a breach or default under this Agreement, that Party is not deemed to have waived any later or similar breach or default. No waiver will be effective unless in writing and signed by the Party waiving the right.

9.5 Compliance with Laws. Customer is solely responsible for compliance with all laws relating to Customer's use of any product, deliverable, or service provided by Supplier under this Agreement, including but not limited to laws and regulations relating to privacy and export control.

9.6 Governing Law. This Agreement, and any issues arising under or in any way relating to this Agreement, will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada therein, without regard to principles of conflicts of law or international law, including without limitation the 1980 United Nations Convention on Contracts for the International Sale of Goods, as revised, which the Parties expressly agree does not apply to this Agreement.

9.7 Notices. Any notices required to be given in writing under this Agreement must be sent to the recipient's address, e-mail or facsimile (fax) number for notices set forth below. Written notices must be sent by personal delivery, mail (with return receipt provided), major overnight delivery carrier (with return receipt provided), e-mail (only to e-mail provided below) or fax (only if a fax number is provided below). Notices will be deemed given on the actual date of delivery, as indicated by a delivery receipt, e-mail date or fax confirmation, but any notice delivered by fax must be

promptly confirmed in writing using another method for giving notice provided in this Section. Either Party may change its address, e-mail or facsimile number for notices at any time by giving written notice to the other Party as provided in this Section.

For notices to be sent to Supplier:

SQI Diagnostics Systems Inc.
36 Meteor Drive
Toronto, Ontario
M9W 1A4
sales@sqidiagnostics.com

Notices to buyer will be sent to the primary contact named on the P.O., or Quote (if applicable).

9.8 Assignment; Delegation.

(a) Neither Party has the right, without the prior written consent of the other Party, to assign or transfer this Agreement, or any part of this Agreement. Except as provided herein, any attempt to assign or transfer all or any part of this Agreement without first obtaining that written consent will be void and of no force or effect.

(b) In the event of a change of control (where “control” means ownership of a majority (51% or more) of the outstanding voting common stock of the subject entity) of Customer, or if Customer is merged with, is acquired by, or acquires another entity, or undergoes a reorganization or otherwise acquires the right to process the business of another entity, each such event will be deemed an assignment by Customer subject to this Section, and Customer shall not permit that other entity to use Solution(s) or process any data from that entity through Solution(s) (either combined with Customer’s data or as a separate portfolio), or otherwise make any expanded use of any Deliverable provided by Supplier as a result of that event unless and until Supplier provides its written consent.

(c) Notwithstanding the foregoing, Supplier has the right to assign this Agreement to any Supplier Affiliate or by merger, reorganization, change of control, consolidation, or sale of all or substantially all the assets of Supplier or the applicable division or line of business, and Supplier has the right to (i) delegate the performance of this Agreement, in whole or in part, to Supplier Affiliates in any jurisdiction worldwide; and (ii) disclose to those Supplier Affiliates any data or other information received from, on behalf of, or through Customer that Supplier deems appropriate for the performance of the delegated activities, including but not limited to data and other information (including personally identifiable information) about Customer’s customers; but Supplier must require the Supplier Affiliate to adhere to all obligations imposed by this Agreement upon Supplier with respect to that data and other information.

9.9 Force Majeure; Cooperation. Notwithstanding anything to the contrary in this Agreement, except for Customer’s obligations to pay amounts due under this Agreement, neither Party will be deemed to be in default of any provision of this Agreement for any delay, error, failure, or interruption of performance due to any act of God, terrorism, war, insurrection, riot, boycott, strike, or other labor or civil disturbance, interruption of power service, interruption of communications services, problems with the Internet, epidemic, act of any other person not under the control or direction of either Party, or other similar cause. The Party subject to any of the foregoing causes shall give the other Party reasonable written notification of any resulting material or indefinite delay. In addition, Customer acknowledges that Supplier’s performance under this Agreement is dependent on Customer’s Cooperation.

9.10 No Third Party Beneficiaries. Nothing in this Agreement is to be deemed to create any right or benefit in any person not a party to the Agreement.

9.11 Construction; Severability. This Agreement is not to be more strongly construed against either Party, regardless of who is more responsible for its preparation. If any provision of this Agreement is held to be unenforceable, unlawful, or invalid in any respect, then that provision will be deemed ineffective only to the extent of the illegality or invalidity, without invalidating the remainder of that provision or any of the remaining provisions of this Agreement. If a provision is determined to be unlawful or invalid in any respect, then that provision is to be deemed severable to the extent it is unlawful or invalid, and the enforceability, validity, and lawfulness of the remaining portion of that provision or any other provision of this Agreement will not be impaired.

9.12 Entire Agreement; Order of Precedence. This Agreement represents the complete agreement of the Parties and supersedes all prior or contemporaneous agreements, proposals, understandings, representations, conditions, and communications (oral or written), as well as the terms of all existing or future purchase orders and acknowledgments. Any other terms, conditions, supplements, modifications, or amendments to this Agreement will not be binding upon either Party unless expressly set forth in a writing signed by authorized representatives of Customer and Supplier. In the case of any conflict between the provisions of this Agreement and a Quote, with respect to the subject matter of that Quote, the provisions of the Quote control.

9.13 Resolution of Disputes. Any dispute, claim, or controversy arising out of or relating to this Agreement, or the performance, breach, validity, interpretation, application, or termination thereof, including without limitation any dispute concerning the scope of this arbitration clause, (each, a "Dispute"), shall be settled by arbitration before a single arbitrator, in accordance with the *Arbitration Act, 1991* (Ontario). All proceedings relating to arbitration shall be kept confidential, and there shall be no disclosure of any kind. The decision of the arbitrator shall be final and binding and not be subject to appeal on a question of fact, law or mixed fact and law. All costs of the arbitrator shall be borne by such Parties as may be determined by the arbitrator. Nothing in this provision shall prevent or impede a party from seeking injunctive relief from a Court of competent jurisdiction in accordance with section 4.4 above.

9.14 Waiver of Sovereign Immunity. If Customer is a sovereign state or a state agency, or otherwise capable of invoking a defense of sovereign immunity with regard to any dispute under this Agreement, then Customer hereby irrevocably waives any claim to immunity with regard to any proceedings in connection with an arbitration or arbitral award pursuant to this Agreement, including, without limitation, immunity from service of process, immunity from pre-judgment or post-judgment attachment or similar remedy, immunity from the jurisdiction of any court, and immunity from execution of any of its property.

9.15 Language of the Contract and Notices. This Agreement has been written in the English language. Any version of this Agreement in any other language is solely for the convenience of the Parties and will have no binding force or effect. Any notices given pursuant to this Agreement must be in English. In case of a dispute concerning the intent, obligations, or performance of the Parties under this Agreement, this English language text alone must be used to resolve the dispute, and any proceedings or communications relating to such dispute must be in English.