

# Biomedical Equipment Purchase and Rental Terms of Sale - Extended Care

The terms of sale set forth in this Agreement ("Agreement") apply to all biomedical equipment purchased ("Purchased Equipment") by you ("Buyer"), on your own behalf or on behalf of your Facilities, from McKesson Medical-Surgical Minnesota Supply Inc., acting on behalf of itself and its affiliates, ("Seller"), and biomedical equipment rented by Buyer, on your own behalf or on behalf of your Facilities, from Seller ("Rental Equipment") (collectively, Purchased Equipment and Rental Equipment shall be referred to as "Biomedical Equipment and Services"). "Facility" means any extended care facility including long term care, home health care, assisted living, durable medical equipment, home infusion therapy, pharmacy or other location with respect to which Buyer exercises control over the selection of a wholesale medical distributor, whether by ownership, contract or otherwise, that is purchasing Equipment Services under this Agreement. Seller and Buyer are sometimes referred to individually as a "Party" and collectively as "Parties." This Agreement supersedes the terms and conditions of any written agreement between the Parties, unless such written agreement is executed by an authorized representative of Seller, any Buyer purchase order or other business form, or any oral agreement between the Parties. In the event of any conflict or inconsistency between these Terms and Conditions and a separate document signed by both Parties, the terms of the separate document signed by both Parties shall control. Prior courses of dealings between us will have no effect on this Agreement and would be inadmissible to explain, modify, or contradict this Agreement.

## 1. Invoice, Payment, and Finance.

**1.1. Standard Credit and Payment Terms.** Any invoiced amount remaining unpaid after the due date will be "Past Due." Past Due balances are subject to an interest charge of one and one-half percent (1.5%) per month. Any interest charged and collected in excess of applicable state law will be returned. If Buyer or a Facility fails to pay any or all of the invoiced amount when due or if Buyer or a Facility's credit or financial status erodes or otherwise renders Seller insecure, Seller may, in its sole discretion: (i) immediately suspend Seller's performance or cancel all or any part of an order hereunder; (ii) change any payment term to a payment term determined by Seller (including imposing the requirement of cash payment upon completion of Biomedical Equipment and Services); (iii) pay any incentives, rebates, fees, or other discount arrangements net of (a) any amounts due hereunder from Buyer or a Facility; and (b) any unauthorized deductions and service charges; (iv) terminate and/or declare Buyer or a Facility ineligible for any incentives, rebates, fees, or other discount arrangements; (v) declare immediately due and payable all other amounts invoiced by Seller to Buyer or a Facility regardless of when such payments would otherwise be due from Buyer or a Facility; and/or (vi) increase the prices for Products and/or services. If any of the specified payment term Due Dates fall on a weekend day or holiday, payment is due and payable on the preceding business day.

**1.2.** Buyer agrees to render payment in full to Seller on the applicable due date without making any deductions or adjustments to such payment obligation or seeking to condition such remittance on any demand for or receipt of proofs of delivery.

**1.3.** In the event Buyer files or is involved in any bankruptcy, insolvency, or similar case or proceeding, Seller shall apply any amounts owed by Seller to the Buyer, first to any pre-bankruptcy, non-11 U.S.C. § 503(b)(9) claims, and then to the 11 U.S.C. § 503(b)(9) claims.

**1.4.** Seller may set-off any amount owing at any time from Buyer (and with respect to any Buyer account) to Seller (including its subsidiaries and affiliates) against any amount payable at any time by Seller to Buyer, whether arising under this Agreement or otherwise.

**1.5.** Buyer agrees to provide Seller with financial statements upon request. Buyer authorizes Seller, its employees, representatives, and agents to (i) investigate information provided and Buyer's credit, financial and banking records, (ii) obtain Buyer's credit bureau report and (iii) share with its affiliates experiential and transactional information regarding Buyer and Buyer's account. Seller is authorized to retain information obtained as part of the application process whether or not the requested account and/or credit is granted. Buyer hereby unconditionally guarantees the performance of all obligations of any of its facilities under this Agreement, including the prompt payment of the purchase price and any applicable interest and other charges for all Equipment Services provided to the Facilities, and agrees to pay any outstanding Past Due amounts to Seller immediately upon demand by Seller.

**1.6.** Buyer agrees to pay all reasonable attorneys' fees, expenses, or costs incurred by Seller in enforcing its rights to collect amounts due from Buyer.

**1.7. Taxes.** All amounts payable under this Agreement are exclusive of sales, use, value-added, gross receipts, and other tax transaction taxes ("Transaction Taxes"). Buyer will promptly pay and indemnify Seller against all such Transaction Taxes legally imposed upon and payable by Buyer unless Buyer provides Seller satisfactory evidence of a valid tax exemption within applicable statutory requirements. Seller shall be fully responsible for and not entitled to any reimbursement for any taxes imposed upon Seller's net income, unemployment insurance or social insurance, or pensions maintained pursuant to any laws, ordinances, codes, or regulations.

**1.8. Purchase of Rental Equipment.** In the event any invoiced amount remains unpaid after ninety (90) days after the date of invoice, Buyer agrees that McKesson will have the right to invoice Buyer for the purchase of the Rental Equipment at Seller's then current sell price for such Rental Equipment. Buyer shall pay for the purchase of such Rental Equipment according to the terms contained in the invoice. No returns are accepted under this subsection. Any Rental Equipment so purchased is the "Purchased Equipment." Buyer hereby grants to McKesson Corporation, a Delaware corporation, for itself and as collateral agent for each of its affiliates including, but not limited to, McKesson Medical-Surgical Inc., McKesson Medical-Surgical Minnesota Supply Inc., (collectively "McKesson") a security interest in and lien on all of Buyer's right, title and interest in and to the Purchased Equipment and all products and proceeds thereof, as security for Buyer's payment obligations hereunder. Buyer hereby authorizes McKesson to file any UCC financing statement or amendment that McKesson considers necessary to perfect or protect such security interest. If Buyer defaults under this Agreement, McKesson has all rights and remedies under applicable law for enforcement of its security interest, which may include the right to self-help repossession of such Purchased Equipment.

**2. Discrepancies.** All requests for proof of delivery for reasons other than shipment, price, or payment disputes must be made within sixty (60) days of Seller's invoice date. Seller will have no obligation to resolve, and Buyer will hold Seller harmless if such claim is not made within the above-described sixty (60) day period. Notwithstanding the terms set forth in Section 20 (Acceptance of Order and Rental Equipment) below, Buyer waives any rights to dispute any discrepancy, to claim any credit or refund, or to demand replacement any goods if such claim is not made within the above-described sixty (60) day period.

**2.1. Shipment Discrepancies.** Notwithstanding the terms set forth in Section 20 (Acceptance of Order and Rental Equipment) below, any discrepancy between any order placed under this Agreement by Buyer, and Seller's corresponding performance of such Biomedical Equipment and Services, must be reported to Seller for resolution within ten (10) days of Seller's invoice date.

**2.2. Price or Payment Discrepancies.** Notwithstanding the terms set forth in Section 20 (Acceptance of Order and Rental Equipment) below, any price or payment discrepancies or any claims for reimbursement must be reported to Seller for resolution before the applicable invoice due date.

**3. External Event.** Pricing for Biomedical Equipment and Services may be adjusted by Seller in its sole discretion: (i) to reflect actual or reasonably anticipated changes in Seller's cost of performing Biomedical Equipment and Services hereunder or supplier price change(s); (ii) due to an External Event; or (iii) if Buyer becomes a Non-Compliant Buyer (as defined herein). "External Event" shall mean an event or series of events external to and beyond the control of Seller that has or is likely to have a significant adverse impact on Seller's business or operations including, but not limited to, material market fluctuations, actual or prospective changes in laws or regulations, actual or proposed enactment or promulgation of regulations or administrative actions, a fundamental change in Seller's cost of performing Biomedical Equipment and Services, a supplier's pricing or distribution policies, or changes in the demand for or availability of a particular biomedical equipment model. Buyer will be considered a "Non-Compliant Buyer" if Buyer fails to perform any other obligation or commitment set forth in this Agreement, including, but not limited to, applicable credit terms.

## 4. Freight.

**4.1. Freight.** Purchased Equipment and Rental Equipment, except as provided in Section 23 (Rental Equipment Periodic Maintenance) and Section 24 (Rental Equipment Return) below, shall ship via ground delivery from the default local biomedical distribution center designated by Seller to the destination specified by Buyer. Shipping and handling charges, if any, for standard ground deliveries will be mutually agreed upon by separate agreement or by disclosure on the invoice. Shipping and handling charges may be added to the shipping invoice for deliveries outside the contiguous forty-eight (48) states, additional deliveries, emergency orders, or rush orders, or drop shipments shipped directly from an original equipment manufacturer.

**4.2. Packaging.** If Buyer requests special packaging, the cost of such packaging shall be borne by Buyer. Seller shall, at its sole discretion, select a common carrier and shall ship in accordance with Seller's standard practices. Purchased Equipment and/or Rental Equipment not regularly stocked in Seller's local serving distribution center are subject to an additional shipping and handling charge determined by Seller and disclosed to Buyer prior to or at the time of order. Buyer agrees that it is responsible in all circumstances for ensuring that Rental Equipment is shipped to Seller in accordance with the OSHA Blood Borne Pathogen Standards, 29 C.F.R. 1910.1030. Buyer further agrees that, prior to the shipment of Rental Equipment, Buyer will clean all Rental Equipment, remove all contaminated disposables, remove any applicable proprietary drug library or patient data from memory modules, and package the Rental Equipment in a clearly marked biohazard plastic bag and a box clearly labeled with a biohazard label. Receipt of Rental Equipment by Seller does not constitute acceptance. Seller may affix and apply bar code labels and/or stickers to each unit of Rental Equipment serviced or each unit of Purchased Equipment.

**5. Assignment.** Buyer shall not assign or transfer any interest under any order accepted by Seller or delegate any obligation hereunder without the prior written consent of Seller.

**6. Limitation of Liability.** IN NO EVENT WILL SELLER BE LIABLE IN CONNECTION WITH OR RELATED TO THIS AGREEMENT FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, MISREPRESENTATION, OR ANY OTHER CAUSE OF ACTION (INCLUDING LOST PROFITS) FROM ANY CAUSE, INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM ANY UNAVAILABILITY OF OR DEFECT IN BIOMEDICAL EQUIPMENT AND SERVICES OR MISSHIPMENT OF PURCHASED EQUIPMENT AND/OR RENTAL EQUIPMENT, AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR THE PROVISION OF BIOMEDICAL EQUIPMENT AND SERVICES. THIS PROVISION WILL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

IN NO EVENT SHALL SELLER'S TOTAL AGGREGATE LIABILITY TO BUYER FOR ANY AND ALL DAMAGES TO BUYER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND THE EQUIPMENT PROVIDED AND SERVICES PERFORMED PURSUANT THERETO EXCEED THE PRICE OF THE PARTICULAR PURCHASED EQUIPMENT OR RENTAL EQUIPMENT GIVING RISE TO THE CLAIM. THIS LIMITATION OF LIABILITY APPLIES TO ANY AND ALL CAUSES OF ACTION, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR MISREPRESENTATION. IN NO EVENT SHALL SELLER HAVE ANY LIABILITY FOR LOSS OR DAMAGE TO BIOMEDICAL EQUIPMENT AND SERVICES. THIS PROVISION WILL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

**7. Confidential Information.** The Parties and their employees or representatives (collectively, the "Receiving Party") agree that the existence of this Agreement and all proprietary and confidential information ("Confidential Information") disclosed by the other ("Disclosing Party") will be maintained in confidence and not disclosed to any third party except as may be required by law, or with the Disclosing Party's express written consent. Pricing and terms of this Agreement are Confidential Information of Seller. Confidential Information does not include information that (i) is now in the public domain or subsequently enters the public domain through no fault of the Receiving Party; (ii) the Receiving Party can establish is presently known or becomes known to the Receiving Party from its own independent sources; (iii) is received from any third party not under any obligation to keep such information confidential; or (iv) the Receiving Party can establish is not Confidential Information disclosed by the other Party under this Agreement. Violation of this provision may give rise to equitable and legal liability including, but not limited to, injunctive relief. This confidentiality provision will survive five (5) years from the termination or expiration of this Agreement. Notwithstanding the foregoing, Seller may provide purchase data to its affiliates, data aggregators, vendors, and designated group purchasing organizations. This provision will survive termination or expiration of this Agreement.

**8. Data Rights.** Seller may use, repurpose, copy, modify, distribute, display and publish Buyer data for Seller's own use and for commercial purposes. Buyer acknowledges that Seller may provide information and reports to group purchasing organizations, suppliers, and other third parties relating to Buyer's purchases from Seller. Buyer hereby waives any rights of confidentiality with respect to such information to the extent necessary to allow Seller to provide such information to group purchasing organizations, suppliers, and other third parties.

**9. Indemnification.** Buyer agrees to indemnify, hold harmless and defend Seller from and against all losses, claims, suits, damages, actions, causes of action, proceedings, demands, assessments, settlements, judgments, costs, expenses, and any other liabilities of any kind or nature, including reasonable attorneys' fees, imposed on or arising out of, or relating to Buyer's negligence or willful act or omission. Seller shall not be required to take any action or make any claim against a third person as a precondition to seeking indemnification here under. Seller shall timely notify Buyer of any intended claim for indemnification.

**10. DISCLAIMER.** SELLER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY OF ANY PURCHASED EQUIPMENT OR RENTAL EQUIPMENT OR ITS FITNESS FOR ANY PARTICULAR USE OR PURPOSE. BUYER SHALL LOOK TO THE MANUFACTURER OF PURCHASED EQUIPMENT AND RENTAL EQUIPMENT FOR ANY WARRANTY THEREON. NO AGENT, EMPLOYEE, OR REPRESENTATIVE OF SELLER HAS ANY AUTHORITY TO MAKE ANY AFFIRMATION, REPRESENTATION, OR WARRANTY CONCERNING BIOMEDICAL EQUIPMENT AND SERVICES THAT IS NOT SET FORTH IN THIS AGREEMENT. BUYER SHALL NOT HOLD SELLER LIABLE FOR ANY DEFECT IN BIOMEDICAL EQUIPMENT AND SERVICES, REGARDLESS OF KIND. BUYER AGREES TO FILE SOLELY WITH THE MANUFACTURER OF THE PURCHASED EQUIPMENT OR RENTAL EQUIPMENT, INCLUDING THOSE MANUFACTURERS THAT ARE SUBJECT TO THE DEFENSE PRODUCTION ACT OF 1950, AS AMENDED (50 U.S.C. APP. 2061 ET SEQ.), ANY CLAIM OR LAWSUIT ALLEGING LOSS, INJURY, DAMAGE, OR DEATH ARISING OUT OF OR CAUSED BY THE USE, SALE, DISTRIBUTION, OR POSSESSION OF PURCHASED EQUIPMENT OR RENTAL EQUIPMENT. THIS PROVISION WILL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

**11. Buyer Representations and Warranties.** Neither Buyer nor any of its affiliates, employees, or contractors: (a) have been convicted of a criminal offense related to healthcare; (b) are listed on the Office of Inspector General's List of Excluded Individuals/Entities, or are otherwise currently excluded, suspended or debarred from participating in any federal healthcare program; (c) are under investigation (civil or criminal) by any federal or state enforcement, regulatory, administrative or licensing agency; or (d) are currently listed on the General Services Administration List of Parties Excluded from the Federal Procurement and Non-Procurement Programs.

**12. AED Devices.** Buyer acknowledges that Buyer may purchase Automated External Defibrillator ("AED") devices from Seller, however, all AED compliance programs, and training would be offered and performed by a third party, not Seller.

**13. Chargebacks.** In consideration of Seller allowing Buyer or Facility to purchase products at discounted prices, Buyer or Facility agrees that Seller will be paid the difference between Seller's acquisition cost and the discounted cost of the product from the applicable supplier ("Chargeback(s)"). In the event Seller is denied any Chargeback from a supplier as a result of Buyer or Facility providing incomplete, inaccurate, or incorrect information to Seller or supplier, Buyer or Facility will be liable to Seller for such Chargeback amount. In the event supplier: (i) makes an assignment for the benefit of creditors, files a petition in bankruptcy, is adjudicated insolvent or bankrupt, or if a receiver or trustee is appointed with respect to a substantial part of supplier's property or a proceeding is commenced against it which will substantially impair its ability to pay on Chargebacks; or (ii) otherwise defaults in the payment of Chargebacks to Seller, Buyer or Facility will be invoiced and become liable for the unpaid Chargebacks allocable to its purchases from supplier.

**14. Third-Party Logistics Provider Services.** If Seller is providing third-party logistics provider services to Buyer or otherwise providing direct patient/consumer shipment services for Buyer, Buyer represents and warrants that (i) it has all required permits, licenses and prescriptions/physician orders necessary to dispense or administer products to its patients, including, without limitation, all required licenses to dispense or administer the products into the states in which Buyer dispenses, administers or sells products and (ii) it has verified that all recipients of the products are appropriately registered or otherwise authorized to receive delivery of the products. Buyer is solely responsible for confirming that the products ordered are appropriate and medically necessary for its patients and in compliance with the required prescriptions or physician orders.

**15. Identification of All Online Stores.** Buyer must disclose all Buyer-owned or Buyer-operated business entities selling products including, but not limited to: online store(s) with URLs, store alias(es) (e.g., brick and mortar), legal operating entity, and marketplace store name(s) with ID. If a Buyer creates a new business entity through which it intends to conduct sales pursuant to this Agreement, Buyer must immediately disclose such business entity to Seller. Buyers must create a unique Seller account(s) for each class of trade entity, (e.g., brick and mortar, marketplace, online stores).

**16. Prohibition Against Selling on Marketplaces.** Buyer agrees to exclusively receive and process orders via publicly accessible e-commerce platforms which are owned or operated by Buyer and which have been previously disclosed to Seller. Any violation of this policy including, but not limited to, selling on or through third-party marketplace websites (e.g., Amazon.com, eBay, Alibaba, etc.), drop-ship accounts (e.g., Buy.com, Newegg.com, Overstock.com, Groupon.com, etc.), classified sites (e.g., Craigslist.com, Facebook Marketplace, etc.), or direct messages on social media or online forums is strictly prohibited unless expressly approved in writing by Seller.

**17. License Grant.** Seller hereby grants to Buyer during the term of this Agreement a limited, non-exclusive, non-transferable, royalty-free license to use certain photographs and product descriptions of products ("Content") solely for the purpose of developing sales and marketing materials for the products represented in the Content in order to offer such products to Buyer's End-User Consumers through printed materials on its site. Buyer's use of the Content shall inure to the sole benefit of Seller and supplier represented in the Content. Nothing in this Agreement shall be deemed to grant to Buyer any ownership interests in the Content. If Buyer acquires any rights in any Content by operation of law or otherwise, Buyer will immediately, at no expense to Seller, assign such rights to Seller or to a third party designated by Seller along with any associated goodwill, applications and/or registrations.

**18. Security Interest.** Buyer hereby grants to McKesson Corporation, a Delaware Corporation, for itself and as collateral agent for each of its affiliates, including, but not limited to, McKesson Medical-Surgical Inc. and McKesson Medical-Surgical Minnesota Supply Inc. ("McKesson"), a security interest in a lien on all of Buyer's right, title, and interest in and to any Purchased Equipment and all proceeds thereof, as security for Buyer's payment obligations hereunder. Buyer hereby authorizes McKesson to file any UCC financing statement or amendment that McKesson considers necessary to perfect or protect such security interest. If Buyer defaults under this Agreement, Seller has all rights and remedies under applicable law for enforcement of its security interest, which may include the right to self-help repossession of such Equipment.

## 19. Title and Risk of Loss.

**19.1. Purchased Equipment.** Title and risk of loss for all Purchased Equipment shall pass to Buyer upon Seller's delivery to a common carrier selected by Seller, except that drop shipments directly from a supplier will be shipped in accordance with the supplier's shipping policies. In no event shall Buyer be responsible for any delay, loss or damage of any kind that occurs while the Purchased Equipment or Rental Equipment is in the care, custody, and control of a third-party. All claims against any such third-party shall be brought solely against that third-party, and Seller will reasonably cooperate with Buyer, at Buyer's cost, in the prosecution of any such claims.

**19.2. Rental Equipment.** Except as set forth in subsection 1.8 (Purchase of Rental Equipment) above, all Rental Equipment and accessories shall remain the sole and exclusive property of Seller. Buyer shall have no right, title or interest to or in the Rental Equipment and accessories, except the right to make use thereof and the right to maintain possession thereof in accordance with the terms of this Agreement. Risk of loss shall pass to Buyer upon Seller's delivery to a common carrier selected by Seller. Risk of loss shall remain with Buyer until such returned Rental Equipment is received by Seller at its biomedical distribution center. Seller hereby represents and warrants to Buyer that Seller has the full legal right and authority to rent the Rental Equipment to Buyer as set forth herein. Buyer agrees to clearly identify all Rental Equipment as Seller property. Seller may affix and apply bar code labels and/or stickers to each unit of Rental Equipment.

**20. Acceptance of Order and Rental Equipment.** All Rental Equipment orders are subject to acceptance by Seller. The first to occur of the following events will be deemed to be an "acceptance" of Buyer's order by Seller: (a) written acceptance by Seller; or (b) shipment by Seller in whole or in part of any Rental Equipment order. Each order for Rental Equipment will include a packing slip detailing all Rental Equipment and accessories shipped. All Rental Equipment and accessories shall be deemed accepted by Buyer as conforming and free from defect unless Buyer notifies Seller of an equipment defect in writing or by contacting Seller's Customer Service Department within four (4) business days of receipt of such Rental Equipment and accessories by Buyer. If Buyer provides Seller with such notice, Buyer's sole and exclusive remedy shall be the repair or replacement of any defective or missing Rental Equipment and accessories, or the return of Rental Equipment and accessories for full credit where Rental Equipment and accessories received by Buyer are different from or in addition to those ordered by Buyer. If Buyer elects to return Rental Equipment and accessories, any delivery, insurance or freight costs shall be borne by Seller.

**21. Rental Equipment Billing.** The rental of Rental Equipment and the accrual of rental fees shall begin on the calendar day following the date of shipment to Buyer and shall terminate on the date that Seller receives the returned Rental Equipment at Seller's biomedical distribution center (the "Possession Period"). Upon termination of a rental under this Agreement, Buyer must return Rental Equipment in good and workable condition, ordinary wear and tear excepted. Buyer shall be liable for any loss of or damage to the Rental Equipment or accessories occurring during the Possession Period. If Buyer fails to return any Rental Equipment as required hereunder, then all of Buyer's obligations including, without limitation, Buyer's obligation to pay rent for such Rental Equipment, at the rental rate applicable under this Agreement, shall remain in full force and effect until such Rental Equipment is returned to Seller and in the condition required hereunder.

**22. Rental Equipment Transfer.** Buyer shall not transfer Rental Equipment to any entity other than Buyer (a "Non-Buyer Entity") without the prior written consent of Seller.

**23. Rental Equipment Periodic Maintenance.** Buyer acknowledges that Rental Equipment requires periodic preventive maintenance ("PM") and recertification services. Buyer also acknowledges its responsibility to review recertification and maintenance requirements set forth by the manufacturer of the Rental Equipment and to return such Rental Equipment and all related accessories to Seller in a timely manner in order that Seller may conduct any necessary maintenance and recertification services (collectively "PM Services"). In all such instances, Buyer agrees to return all Rental Equipment no later than the PM date noted on each device, insurance and freight prepaid, to allow Seller to perform PM Services. Upon receipt, Seller will perform routine PM Services and will return such Rental Equipment to Buyer, insurance and freight prepaid. Routine PM costs are the responsibility of Seller, except if due to Misuse (as that term is defined herein). Buyer further acknowledges that the repair, maintenance, or recertification of Rental Equipment by someone other than Seller will constitute a breach of this Agreement by Buyer and Buyer shall be responsible for all costs associated with returning the Rental Equipment back to the original equipment manufacturer's specification. For purposes of this Agreement, a "Misuse" occurs when: (a) Buyer's use of Rental Equipment is inconsistent with the Rental Equipment's instructions; or (b) the Rental Equipment is used for purposes not indicated on the Rental Equipment's labeling; or (c) Rental Equipment is improperly used or connected to incompatible equipment; or (d) repairs, alterations or other work are/is performed on the Rental Equipment by a party other than Seller; or (e) Buyer uses non-authorized supplies or consumables not specified for use with the Rental Equipment; or (f) Buyer fails to have scheduled maintenance or cleaning performed, as per the Rental Equipment's operating manual or warning messages; or (g) there has been abuse, misuse, accident, or negligence in connection with Rental Equipment on the part of anyone other than Seller. In the event of a Misuse, Seller, in its sole discretion, will charge Buyer either the cost of repair to return the Rental Equipment to original equipment manufacturer specifications or the replacement cost of the Rental Equipment. Seller shall provide Buyer with written notice of the amount of the repair cost or the amount of the replacement cost of the Rental Equipment and accessories, as applicable. Under no circumstances will previously remitted rental fees be applied to cover the cost of repair or replacement.

## 24. Rental Equipment Return.

**24.1.** Buyer may terminate the rental of any Rental Equipment under this Agreement by phoning Seller's Customer Service Department and expressing intent to terminate. Seller shall then issue Buyer a Returned Goods Authorization Number (an "RGA Number"). Buyer shall have five (5) calendar days from the date on which Seller issues the RGA number to return the Rental Equipment to Seller (the "Return Period"). Buyer will not accrue any additional rental fees during the Return Period. However, if the Rental Equipment is not received by Seller prior to the expiration of the Return Period, then Buyer shall owe all rental fees incurred from the date on which the RGA Number was issued, and the accrual of rental fees shall resume.

**24.2.** Buyer shall be responsible for returning all Rental Equipment and any manuals and accessories in good and workable condition to Seller, properly packaged and freight and insurance prepaid. Buyer agrees that it is responsible in all circumstances for ensuring Rental Equipment is returned to Seller in accordance with the OSHA Blood Borne Pathogen Standards, 29 C.F.R. 1910.1030. Buyer further agrees that, prior to the return of the Rental Equipment, Buyer will clean all Rental Equipment, remove all contaminated disposables, remove any applicable proprietary drug library or patient data from memory modules, and package the Rental Equipment in a clearly marked Biohazard Plastic Bag and a box clearly labeled with a Biohazard Label. Receipt of Rental Equipment by Seller does not constitute acceptance.

**25. Governing Law.** This Agreement will be governed by and construed in accordance with the Commonwealth of Virginia. Notwithstanding the foregoing, if any terms that are unique to federal government contracting are subject to interpretation, such terms shall be construed and interpreted according to the federal law of government contracts as enunciated and applied by federal statutes, regulations, federal judicial bodies, boards of contract appeals, and other judicial and quasi-judicial agencies of the government.

**26. Compliance.** This provision will survive termination or expiration of this Agreement.

**26.1. General.** Buyer represents and warrants that it will fully comply with all Federal, state and local laws and regulations relating to its obligations under this Agreement or otherwise applicable to the purchase, handling, sale, distribution or dispensing of or the reimbursement for the Biomedical Equipment and Services and/or Products and represents and warrants that: (i) pharmaceutical Products are being purchased for dispensing or administration to patients pursuant to a legitimate prescription; and (ii) any subsequent resale will be in compliance with applicable law and to a licensed healthcare provider for its dispensing or administration to patients pursuant to a legitimate prescription. Buyer will defend, indemnify and hold Seller harmless from any and all liability arising out of or due to non-adherence with such legal or regulatory requirements or the foregoing representation and warranty. This provision will survive termination or expiration of this Agreement.

**26.2. FRAUD AND ABUSE LAWS.** BUYER MAY RECEIVE DISCOUNTS OR OTHER REDUCTIONS IN PRICE IN CONNECTION WITH ITS PURCHASES OF BIOMEDICAL EQUIPMENT AND SERVICES UNDER THIS AGREEMENT, AND SUCH PURCHASES MAY ALSO QUALIFY BUYER FOR DISCOUNTS OR OTHER REDUCTIONS IN PRICE ON CERTAIN PURCHASES MADE PURSUANT TO A SUPPLY AGREEMENT BETWEEN BUYER AND MCKESSON CORPORATION OR ITS SUBSIDIARY SUBJECT TO TERMS AND CONDITIONS THEREOF. BUYER WILL BE RESPONSIBLE FOR REPORTING ALL PRICES, DISCOUNTS, AND REBATES PURSUANT TO THIS AGREEMENT AND PURSUANT TO ANY SUPPLY AGREEMENT BETWEEN BUYER AND MCKESSON CORPORATION, TO REIMBURSING AGENCIES TO THE EXTENT REQUIRED BY LAW OR REGULATION, INCLUDING MEDICARE AND MEDICAID, AND OTHER ENTITIES, MAINTAINING RECORDS THEREOF, AND PROVIDING INFORMATION TO REIMBURSING AGENCIES, IN ACCORDANCE WITH ALL APPLICABLE LAWS. ANY PRICE REDUCTION OR DISCOUNT PROGRAM DESCRIBED IN THIS AGREEMENT OR ANY SUPPLY AGREEMENT BETWEEN BUYER AND MCKESSON CORPORATION IS INTENDED TO BE A DISCOUNT WITHIN THE MEANING OF APPLICABLE FEDERAL AND STATE ANTI-KICKBACK LAWS, INCLUDING, 42 U.S.C. §1320A-7(B) AND THE DISCOUNT SAFE HARBOR PROMULGATED THEREUNDER AND CURRENTLY FOUND AT 42 C.F.R. §1001.952(H). BUYER UNDERSTANDS THAT THIS AGREEMENT AND ANY SUPPLY AGREEMENT BETWEEN BUYER AND MCKESSON CORPORATION MAY NOT REFLECT THE NET COST OF A PRODUCT DUE TO A REBATE OR OTHER DISCOUNT PROGRAM.

BUYER REPRESENTS AND WARRANTS THAT IT WILL SATISFY ANY AND ALL REQUIREMENTS IMPOSED ON BUYERS, INCLUDING WHEN REQUIRED BY LAW, THE REQUIREMENT TO ACCURATELY REPORT OR MAKE AVAILABLE UPON REQUEST BY A FEDERAL OR STATE HEALTH CARE PROGRAM, THE NET COST ACTUALLY PAID BY BUYER FOR THE PRODUCTS AND SERVICES COVERED BY THIS AGREEMENT AND ANY SUPPLY AGREEMENT BETWEEN BUYER AND MCKESSON CORPORATION. FOR PURPOSES OF COST REPORTING REQUIREMENTS UNDER A FEDERAL OR STATE PROGRAM WHICH PROVIDES COST-BASED REIMBURSEMENT, BUYER UNDERSTANDS THAT ANY SUCH DISCOUNTS, INCLUDING REBATES, SHOULD BE PROPERLY ALLOCATED ON A UNIT BASIS SO AS TO REPORT A NET SALE PRICE THAT ACCURATELY REFLECTS THE TOTAL AMOUNT OF THE DISCOUNT RECEIVED. IN THE EVENT EITHER PARTY DETERMINES THAT THIS AGREEMENT MAY NOT COMPLY WITH SUCH STATUTES, THE PARTIES AGREE TO WORK TOGETHER TO ESTABLISH A DISCOUNT OR REBATE STRUCTURE THAT MEETS THE REQUIREMENTS OF SUCH STATUTES.

**26.3. Controlled Substances and Other Regulations.** If performance of this Agreement would cause Seller to be noncompliant with or in jeopardy of being noncompliant with any federal, state or local law, rule, regulation or ordinance or any governmental requirement, guideline or pronouncement involving either controlled pharmaceutical drugs ("Controlled Substances") or any other regulated products or activities including, but not limited to, the Drug Enforcement Administration's regulatory requirements for verifying its customers and reporting suspicious or excessive orders, Seller may, in its sole and absolute discretion and, notwithstanding anything in this Agreement to the contrary, without any penalty or liability, do any of the following: (i) limit or deny any order for Controlled Substances or other regulated products as warranted by any established diversion monitoring program of Seller and (b) immediately terminate this Agreement, in whole or in part, without liability if: (i) continued performance of any part of this Agreement would violate any federal, state or local law, rule, regulation, or put Seller in jeopardy of violating any federal, state or local law, rule or regulation regarding either Controlled Substances or any other regulated products or activities; or (ii) Seller receives a complaint, notice, or warning letter or other communication from a governmental agency alleging noncompliance with any laws, rules or regulations in relation to Seller's distribution of any Products (including without limitation Controlled Substances) under this Agreement or to Seller's actions or omissions with respect to either Controlled Substances or any other regulated products or activities.

**26.4. Own Use.** Unless agreed to otherwise by the Parties, all purchases under this Agreement by Buyer will be for Buyer's "own use" as that term is defined in judicial or legislative interpretation, and Buyer will comply with applicable manufacturers' pricing criteria and policies. Buyer shall not intentionally or knowingly participate in any Diversion of Products. "Diversion" shall mean: (i) any sale of Products purchased hereunder outside the United States by Buyer; (ii) any sale or transfer of Products into the market by Buyer that are expired or have been withdrawn from the market; (iii) any sale or transfer of Products by Buyer to subsidiaries or affiliates of Buyer for resale; or (iv) any sale or transfer of Products by Buyer to any unauthorized third party for any reason. Buyer acknowledges that purchases of Products from Seller may be subject to pricing, distribution, provenance, identification, return and chargeback policies from the manufacturers of such products and that Buyer is required to comply with all such manufacturer's policies.

**26.5. Excluded Provider.** Neither Buyer nor any of its affiliates, employees or contractors: (a) have been convicted of a criminal offense related to healthcare; (b) are listed on the Office of Inspector General's List of Excluded Individuals/Entities, or are otherwise currently excluded, suspended or debarred from participating in any federal healthcare program; (c) are under investigation (civil or criminal) by any federal or state enforcement, regulatory, administrative or licensing agency; or (d) are currently listed on the General Services Administration List of Parties Excluded from the Federal Procurement and Non-Procurement Programs.

**27. Government Contracts.** Unless Seller is specifically notified and agrees in writing, Seller will not be bound by the terms and conditions of any government contracts to which Buyer may be a party.

**28. No Violations.** Buyer represents and warrants that its execution, delivery and performance of this Agreement does not and will not constitute (i) a violation of any judgment, order, or decree binding on such Party; (ii) a breach under any contract by which such Party is bound; (iii) an event that would, with notice or lapse of time, or both, constitute such a breach or (iv) require any consent under any agreement between Buyer and any other party. Buyer will defend, indemnify and hold harmless Seller from and against any and all losses arising out of or resulting from its breach of any representation or warranty in this section. This provision will survive termination or expiration of this Agreement.

**29. Force Majeure.** Except for the obligation to pay money, a Party will not be liable to the other Party for any failure or delay caused by a Force Majeure Event, whether or not such matters were foreseeable, and such failure or delay will not constitute a material breach of this Agreement. "Force Majeure Event" means any cause beyond the reasonable control of a Party including but not limited to natural disasters or acts of God; destruction of production facilities; acts of war, terrorism, riots, embargoes; acts of civil or military authorities; outbreak or involuntary compliance with any regulation, law or order of any government; labor disputes or stoppages; denial of or delays in processing of export license applications; transportation delays; epidemics, pandemics or outbreak of communicable disease; quarantines; national or regional emergencies; unavailability of materials, energy or machinery; or internet system encountering hacker's invasion.

**30. Time for Bringing Action.** Any action of any kind arising out of or in any way connected with this Agreement, other than collection of outstanding payment obligations, must be commenced within one (1) year upon which the cause of action accrued.

**31. Publicity and Use of Name.** Neither Party will make any public announcement or press release regarding this Agreement, or any activities performed under this Agreement without the prior written consent of the other Party. Except where expressly granted otherwise in this Agreement, neither Party may use any trade name or service mark of the other Party or any material protected by patents, trademarks or copyrights without the express written permission of the other Party.

**32. Relationship of the Parties.** The Parties hereto are independent contractors. Nothing in this Agreement shall be deemed to create an agency, employment, partnership, fiduciary or joint venture between the Parties. No Party hereto (nor any agent or employee of that Party) shall make any representations or warranties or incur any liability on behalf of the other.

**33. Equipment and/or Rental Equipment Recommendations.** Seller may make available to Buyer certain recommendations concerning Equipment or Rental Equipment that are comparable, functionally equivalent, clinically equivalent, or equivalent to other products used or identified by Buyer ("Equivalency Recommendations"). Buyer agrees and stipulates that in making any Equivalency Recommendation, Seller is relying solely on the independent skill, knowledge and judgment of its suppliers or others in the industry and is not independently providing medical product information upon which Buyer can rely in order to make its product selection decision. Buyer agrees and stipulates that in making Purchased Equipment or Rental Equipment decisions Buyer is relying on its independent professional judgment. Buyer hereby agrees to waive, release, indemnify and hold Seller and its affiliates harmless from any claim arising from an Equivalency Recommendation.

Buyer agrees and stipulates that it is a sophisticated user of medical products and it agrees and stipulates that it is a learned intermediary between Seller and the end user/patient.

THESE EQUIVALENCY RECOMMENDATIONS MAY BE MADE VERBALLY, IN WRITING OR VIA A DATABASE. THE EQUIVALENCY RECOMMENDATIONS ARE RECOMMENDATIONS ONLY AND ARE NOT REPRESENTATIONS OR WARRANTIES CONCERNING ANY EQUIPMENT OR RENTAL EQUIPMENT PERFORMANCE OR EQUIVALENCY AND ANY SUCH REPRESENTATIONS OF WARRANTY ARE HEREBY DISCLAIMED.

**34. Joint and Several Liability.** All obligations of Buyer and any Buyer accounts, regardless of affiliation, will be joint and several. To the fullest extent permitted by law, Buyer waives any and all suretyship defenses, which Buyer might otherwise have with regard to obligations to pay for Biomedical Equipment and Services purchased by any Buyer facility. Without limiting the foregoing, such waiver includes a waiver of the defense that the original obligations were altered in any respect or the remedies or rights of Seller with respect to the original obligations were in any way impaired or suspended.

**35. Waiver of Jury Trial. THE PARTIES HERETO WAIVE ALL RIGHTS TO A JURY TRIAL IN ANY LITIGATION ARISING FROM OR RELATED IN ANY WAY TO THIS AGREEMENT, OR THE TRANSACTION CONTEMPLATED HEREBY.**

LAST REVISED NOVEMBER 17, 2022