

Appendix 4 – HealthPRO Terms & Conditions

ARTICLE 1 LEGAL EFFECT OF SUBMITTING A PROPOSAL

- 1.1 Submission of a Proposal confirms Supplier's agreement that the Terms and Conditions set out herein will govern the Proposal and form part of any resulting Contract for the supply of any of the subject Products.
- 1.2 In the event Supplier purports to include any provisions in its Proposal or supporting materials, by means of reference or otherwise, which in any way are contradictory to or purport to alter in any way any of the Terms and Conditions set out herein, such provisions will be deemed to not form part of Supplier's Proposal and will not form part of any resulting Contract created in the event HealthPRO issues an Award Letter.
- 1.3 In the event Supplier intends to enter into a separate agreement with a committed member (a "Supplier/Member Agreement") in order to detail specific arrangements, commercial or otherwise, for the same Products or services which are the subject matter of this RFP, Supplier undertakes and agrees that any provision in such a Supplier/Member Agreement which in any way contradicts or purports to alter (i) any term of its Proposal submitted hereunder or (ii) this RFP (including these Terms & Conditions), or purports to add any term not contained in its Proposal or this RFP (including these Terms & Conditions), which term, in HealthPRO's opinion is disadvantageous to the member, will be void and unenforceable by Supplier against the member.
- 1.4 By submitting a Proposal, Supplier agrees to supply, in accordance with these Terms and Conditions, those Products and services (each a "Product") from the attached RFP Response Workbook which it specifies in its Proposal at the prices and terms, including rebates, set out therein.
- 1.5 Supplier covenants that each Product provided pursuant to a Contract awarded hereunder will correspond in all respects with the sample submitted by Supplier as part of its response to this RFP.
- 1.6 If the use or management of a Product is typically made effective or enhanced by means of an additional part or component, that part or component, including the cost thereof, is to be fully described in the Proposal, failing which any resulting cost to the Member to utilize the part or component will be borne by Supplier.
- 1.7 Each Product having an expiry date will be delivered with the longest possible shelf life and, in any event, no less than six (6) months from the date of its delivery to the Member.
- 1.8 Unless otherwise specifically stated in this RFP, all stipulations of the Proposal (other than any stipulation which offends Section 1.2, above), including prices and terms, will remain firm from the date HealthPRO receives the Proposal to the date which is 350 days following the Closing Date.

ARTICLE 2 SUPPLIER ACKNOWLEDGMENTS

2.1 Supplier acknowledges that:

- (a) HealthPRO reserves the right, in its sole discretion, to:
 - (i) correct any errors in the RFP before SUBMISSION CLOSING;
 - (ii) modify the RFP process, cancel or withdraw the RFP with or without substituting another process;
 - (iii) alter the Terms and Conditions of this RFP before SUBMISSION CLOSING (including, without limitation, extending the times and deadlines referred to herein);
 - (iv) request clarification where any submission is unclear or where, in the opinion of HealthPRO, there is an irregularity or omission in the information submitted by a Supplier, provided, however, that HealthPRO is not obliged to seek clarification of any aspect of a Proposal;
 - (v) verify any Supplier's statements or claims by whatever means HealthPRO deems appropriate, including contacting the references offered by Supplier and obtaining references from other than those offered by Supplier;
 - (vi) select Suppliers for any of the Products as it deems appropriate, including selecting a Supplier for fewer Products than contemplated by this RFP;
 - (vii) provide Supplier's responses regarding any functionally equivalent Products to its members at any time, including following the award of any resulting Contract, whether or not Supplier has been awarded the Contract;
 - (viii) reject any Proposal, or part thereof, based on HealthPRO's assessment of Supplier's conduct in any other contractual relationship, whether with HealthPRO or otherwise;
 - (ix) permit a Supplier to correct any clerical errors in any Proposal prior to the award of any Contract;
 - (x) accept or reject any Proposal, or accept any Proposal in whole or in part, and/or for time periods less than the Contract Period;
 - (xi) award supply Contracts for additional related Products to a successful Supplier;
 - (xii) award a Contract to a Supplier who has not submitted the Proposal with the lowest price;
 - (xiii) negotiate the provisions of any Proposal prior to a Contract award;
 - (xiv) amend this RFP or split into different RFPs before SUBMISSION CLOSING;
 - (xv) cancel this RFP at any time;

- (xvi) decline to award a Contract in connection with this RFP;
 - (xvii) reopen this RFP;
 - (xviii) issue a new RFP;
 - (xix) reject any and all submissions and seek additional responses;
 - (xx) contact any Supplier to inquire as to its intention to respond, or not respond, to this RFP.
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- (b) A list of members participating in each Contract will be forwarded by HealthPRO to the successful Supplier(s) at the time HealthPRO advises of the Contract award.
 - (c) HealthPRO may, by providing written notice to Supplier at any time during the term of a Contract, extend participation in the Contract to any HealthPRO member (existing or new) who may not have originally made a commitment in advance to the Contract.
 - (d) Where HealthPRO deems it appropriate (for any reason, including, without limitation, clinical, preservation of competition, patient safety or ensuring Product supply), it reserves the right to award Contracts, and to modify existing Contracts, for the supply of any Product to more than one Supplier.
 - (e) This RFP does not commit HealthPRO or any of its members to any specific course of action, including, entering into an agreement with a Supplier for any Product. This RFP does not bind HealthPRO or constitute an offer of any kind.
 - (f) HealthPRO makes no representation or warranty as to the accuracy or completeness of the information provided in connection with this RFP and disclaims all express and implied representations, warranties and conditions in connection with this RFP. Neither HealthPRO nor any member, officer, director, employee or agent of HealthPRO will be liable to any person or entity as a result of any information contained or provided in connection with this RFP. Suppliers should make their own investigations, projections and conclusions, and consult their own advisors, to independently verify the information contained in this RFP, and obtain any additional information they may require, prior to making a submission.
 - (g) HealthPRO reserves the right to correct any clerical errors in any resulting Contract and upon such correction reserves the right to reasonably amend or terminate the Contract and/or to reopen the RFP process.
 - (h) In the event that Supplier is, pursuant to an existing Contract with HealthPRO, currently supplying any of the Products or services which are the subject of this RFP to any members of HealthPRO, and the current net price and/or other terms to such members is more beneficial than the net price and/or other terms set out in the Proposal, an explanation for such difference is to be included with the Proposal.
 - (i) By participating in this RFP process and submitting a Proposal, Supplier acknowledges and agrees that it will not be excused from performance of any resulting Contract by reason of increased cost of production or supply.

ARTICLE 3
CONFIDENTIALITY, PRIVACY AND COMPLIANCE WITH LAW

- 3.1 Each of HealthPRO and Supplier agrees to safeguard and keep confidential and not disclose other than as required pursuant to this RFP process and any resulting Contract, any confidential information of the other, including, without limitation, information and material relating to this RFP, the Proposal, the Contract, the business of the other, member information, prices, costs, business processes and methods of doing business. Supplier specifically acknowledges that HealthPRO may share the contents of Supplier's Proposal with its members, which it is agreed will not constitute a breach of this Article 3. Each page of Supplier's Proposal that is not to be shared with members not directly participating in a HealthPRO committee must be clearly watermarked "CONFIDENTIAL – NOT FOR DISTRIBUTION". It is further agreed that notwithstanding anything contained herein, in no event shall HealthPRO or any of its members be required to return any material provided by Supplier, provided that none of the intellectual property rights in said material will pass to HealthPRO or any member. Nothing in this Section 3.1 shall be construed to prohibit disclosure where required by law.
- 3.2 Without limiting the generality of Section 3.1, Supplier agrees that it will, on its own behalf and on behalf of its employees, agents and other representatives, hold, from this point forward, all information concerning the affairs of HealthPRO and its participating members which may be communicated to Supplier from time to time or to which Supplier may have access, including this RFP and its Terms and Conditions, as well as the particulars of any resulting Contract, confidential and in trust for HealthPRO and further agrees not to disclose or use said information other than for the benefit of HealthPRO and its participating members. Notwithstanding the foregoing, nothing in this Section 3.2 shall be construed to prohibit disclosure where required by law, provided that prior to disclosing any such information where required by law, Supplier will provide reasonable notice to HealthPRO so that it may seek a protective order or other appropriate remedy.
- 3.3 In all matters relating to this RFP and any Contract which may be awarded, Supplier will comply with all applicable legislation and regulation. Without limiting the generality of the foregoing, (i) Supplier agrees that where required (for example pursuant to the Workplace Hazardous Materials Information System ("WHMIS"), or any equivalent legislation/regulation), it will deliver all necessary particulars about Products/services being provided pursuant to the Contract, and (ii) where applicable, Supplier will comply with appropriate Workplace Safety legislation and provide all necessary documentation as required by said legislation.
- 3.4 Each of HealthPRO and Supplier acknowledges that in the performance of this Agreement it may obtain information concerning individuals which information is subject to protection in accordance with applicable legislation and regulation including, without limiting the generality of the foregoing, the Personal Health Information Protection Act ("PHIPA"), the Personal Information Protection and Electronic Documents Act (Canada) ("PIPEDA") and any other applicable Act or Regulation. Each Party agrees to safeguard any such information in accordance with all such legislation/regulation and use same solely to comply with its obligations under this Agreement.
- 3.5 Any amendments to a Contract requiring the approval of a party will only be effective if made in writing, signed by an authorized representative of both parties. For clarity, any person from either party signing any amendments will be deemed to be an authorized representative of that party.
- 3.6 No Contract may be assigned by a Supplier in whole or in part without the express written consent of HealthPRO, which consent may be withheld in HealthPRO's absolute discretion.

For purposes of clarity, and by way of example, any attempt by Supplier to assign responsibility for the supply of any contracted Product to any other entity without HealthPRO's written consent will be ineffective and Supplier will remain responsible for compliance with all of the Contract terms.

- 3.7 In the event any disagreement or conflict arises during the Contract Period, HealthPRO and Supplier agree to notify each other in writing thereof and use reasonable efforts to resolve same.
- 3.8 This RFP and any resulting Contract shall be governed by, and interpreted pursuant to the laws of the Province of Ontario, without regard to the conflict of law provisions therein and the Courts of the Province of Ontario shall have exclusive jurisdiction. Communications related to this RFP and any resulting Contract will be in the English language.
- 3.9 Supplier warrants and represents that it has, and will at all times maintain, the right to use and to provide HealthPRO members the right to use, all necessary intellectual property rights relating to the Products to enable the members to use the Products in accordance with the terms of the Contract and to enable the members to use, copy and distribute electronically or otherwise the documentation related to the Products. Supplier warrants and represents that to the best of its knowledge the Products and related documentation do not infringe upon or violate any existing or pending intellectual property right of any third party.
- 3.10 Supplier will indemnify and hold HealthPRO and each HealthPRO member harmless against, and Supplier will at its own expense defend any action brought against HealthPRO and each HealthPRO member, to the extent such action is based upon any third party claim that any aspect of a Product infringes any trademark, copyright, patent or trade secret under the laws of Canada or the United States; provided that Supplier is immediately notified in writing of any such claim; and provided, further that Supplier shall have the exclusive right to control such defense; provided further that the obligation of indemnification shall not apply to the extent that any committed Member has modified, altered, deleted from or added to any of the Products, or used any of the Products for any use not specified on the label of such Products, in each case in such a way so as to cause the issue in respect of which the indemnification is being sought. In no event shall HealthPRO or a HealthPRO member settle any such claim, lawsuit or proceeding without Supplier's prior written approval. In the event of any such claim, litigation or threat thereof, Supplier may, either:
- (a) Procure for the members a right to continue to use the Product; or
 - (b) Subject to the prior approval of HealthPRO, acting reasonably, replace or modify the Product so as to be non-infringing without materially affecting the functions of the Product.

Term and Condition 3.10 in its entirety provides the sole and exclusive remedy in the event of a claim of infringement for the Products.

ARTICLE 4 COMMERCIAL TERMS AND CONDITIONS

- 4.1 Shipments are to be made on a Delivery Duty Paid basis to the locations designated by the individual participating members, in accordance with their requirements. No term contained on Purchase Orders and/or Invoices conflicting with terms herein shall have any legal effect and as such shall be deemed null and void. Supplier will notify its authorized distributor(s), wholesaler(s) or similar (collectively "Subcontractors") of all communications related to this RFP

and the applicable details of any resulting Contract and will provide HealthPRO with a complete listing of all distributor codes related to any awarded Products.

- 4.2 Supplier's use of a Subcontractor will not, irrespective of any related contractual arrangements between a member and the Subcontractor, relieve Supplier of any of its obligations under the Contract, including, without limitation, its delivery obligations.
- 4.3 Subject to Sections 4.17, 4.18 and 4.19 hereof, the prices or pricing levels, including any variable pricing, and all other financial terms contained in Supplier's Proposal will, if accepted by HealthPRO by means of a Contract award, be binding on Supplier for the duration of any resulting Contract, notwithstanding any changes to volumes for any reason, including, without limitation, hospital closures, hospital mergers and/or alliances, bed closures or changes in clinical practice. All prices shall be in Canadian funds.
- 4.4 Any and all loss and/or damage occurring to Products or materials prior to delivery to the location designated by the participating member shall be the responsibility of Supplier and Supplier shall reimburse for loss and/or damages accordingly.
- 4.5 The minimum acceptable term for payment is Net 30 days, from the later of date of receipt of Supplier's invoice and date of receipt of the Product.
- 4.6 Invoices are to be submitted directly to the participating HealthPRO members. All invoices must show the amount of G.S.T. or H.S.T., as applicable, charged separately and include Supplier's applicable Registration Number.
- 4.7 Supplier will, on a commercially reasonable efforts basis provide continuous, real time up-to-date Product availability information in the manner prescribed by HealthPRO, and will immediately notify HealthPRO in writing whenever it expects an awarded Product is to be unavailable for shipment for a period of ten days or more, in which notice it will advise HealthPRO what steps, including the proposed timeline, it is taking to remedy the situation. In addition, and without limiting the generality of the foregoing obligation:
 - (a) Supplier will maintain, carry out and perform periodic comprehensive contingency plans, including a pandemic plan, sufficient to enable Supplier to carry out its obligations under this Agreement, including continuation of supply to members in the event of such an emergency, by way of alternative sources of supply and back-up manufacturing facilities.
 - (b) For each awarded Product, the Supplier will:
 - (i) Maintain sufficient Canadian Inventory (namely, inventory within Canada and suitable for sale and delivery to HealthPRO Members assigned to Supplier) of ninety (90) forward days of demand for such Product.
 - (ii) In each case where a Product has a limited shelf life, ensure that as at the date of delivery to a Member, it has a minimum remaining shelf life of six months.
 - (iii) Notify HealthPRO should its Canadian inventory fall below ninety (90) forward days of demand and, thereafter, provide HealthPRO with

information every two weeks, or more often as the circumstances may require, of the steps it is taking to manage the potential backorder.

- (c) Supplier will notify HealthPRO in writing forthwith in the event an unanticipated interruption of any of its processes which could potentially have an adverse effect on Supplier's ability to supply a Product as required under the Contract.
- (d) Supplier will provide HealthPRO with three (3) months' prior written notice of any planned change to, or interruption of any of its processes which could potentially have an adverse effect on Supplier's ability to supply a Product under the Contract.
- (e) Supplier will, if anticipating a shortage, provide HealthPRO with a minimum of 90 (ninety) days prior written notice and will accept HealthPRO's direction to equitably allocate Product to all affected members taking into consideration each member's historical purchase volumes for the subject Product. For the purpose of this analysis, each of Supplier and HealthPRO will share with the other its available data about each member's applicable historical purchase volumes for the subject Product.
- (f) When a Product has been on backorder for more than 60 days, Supplier shall submit to HealthPRO in writing a plan and timeline to remedy the backorder situation in accordance with its contingency plans; Supplier shall provide an updated plan to HealthPRO every 15 days; if HealthPRO determines, acting reasonably, that the plan is not satisfactory, HealthPRO reserves the right to take whatever reasonable steps it deems necessary to ameliorate the backorder situation, including, without limitation, terminating the subject Contract or any part thereof; notwithstanding any such action taken by HealthPRO, Supplier will remain liable to HealthPRO and its members on account of all resulting damages to the end of the Contract term with such damages being measured with reference to the history of member purchases prior to the termination.
- (g) Supplier acknowledges the importance of keeping HealthPRO as current as possible in respect of possible supply interruptions. As a result, and in addition to the available remedies of HealthPRO set out hereunder, Supplier acknowledges that any failure to comply with this obligation will negatively impact its opportunity in future RFP submissions.
- (h) For purposes of clarity, where Supplier utilizes a distributor to store and/or deliver its Product(s) pursuant to any resulting Contract it (i) will require such distributor to comply with Supplier/s applicable obligations set out in this Section 4.7 and (ii) assumes responsibility for any failure of a distributor to do so.

4.8 In the event an awarded Product is to become permanently unavailable, Supplier will provide HealthPRO with six (6) months' advance written notice. Any resulting inability of Supplier to comply with its obligation to provide Product throughout the Contract period will result in Supplier being held responsible, at HealthPRO's discretion, for an amount up to 100% of the resulting damages, with such damages being measured with reference to the history of member purchases prior to the failure to supply, and costs, such amount to be reflective of the circumstances.

4.9 If, after a Product becoming unavailable, Supplier re-introduces said Product to market during the term of the original Contract, HealthPRO reserves the right to demand, and Supplier will be liable to pay, any difference between the amount originally charged to Supplier pursuant to

Section 4.8, above, and 100% of the damages and costs for which Supplier could have been held responsible under said Section 4.8.

- 4.10 In the event of any recall of an awarded Product, Supplier will notify HealthPRO immediately upon identifying the need for and the type of recall as designated by Health Canada and will provide HealthPRO with all available information on the impact of the recall on the supply chain and, in particular, the availability of Product inventory over the short, medium and long term.
- 4.11 In the event any delay in delivery or non-performance of the Contract on the part of Supplier and the cause of such non-performance or delay is other than as a result of an event referenced in Section 4.12, Supplier will provide a substitute Product(s) acceptable to HealthPRO, acting reasonably, at the Contracted price. For clarity, and notwithstanding Section 4.22 hereof, an acceptable Product will include a Product approved for importation by Health Canada pursuant to the Special Access Program or an equivalent, provided that in such case Supplier will assume any incremental costs resulting therefrom. Notwithstanding the foregoing, in the event a member has reasonable grounds to conclude that a substitute Product proposed by Supplier and accepted by HealthPRO is not in fact a suitable substitute, it may, with notification to HealthPRO, proceed to purchase an alternative Product in which case it will be entitled to pursue the remedies anticipated by the balance of this Section. In the event Supplier fails to provide a suitable substitute, as determined in accordance herewith, and should a participating member, as a result of the delay or non-performance, purchase an alternative Product from an alternate source at a higher cost, which Product is reasonably considered to be a replacement for the subject Product, Supplier will reimburse the member an amount equal to the difference between the cost of the substitute Product and the cost to the member calculated at the Contract price, in each case calculated to reflect any differences in the relative format and strength of the two Products, as well as any resulting wastage as a result of these differences. In each case the obligation to reimburse will be calculated using the member's normal purchasing volumes. In addition, Supplier will be responsible to reimburse any administrative fee which may be levied by HealthPRO and to pay HealthPRO the foregone rebates in respect of the lost sales of that Product. The reimbursement pursuant to this Section 4.11 is due on or before the date which is forty-five (45) days from the date Supplier receives the applicable reimbursement claim from HealthPRO or the member, as the case may be.
- 4.12 Supplier shall not be considered in default by reason of any failure in performance of a Contract if such a failure arises out of causes beyond the control and without the fault or negligence of Supplier. Such causes may include, but are not restricted to, acts of God or of a public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, third-party strikes or work stoppages, freight embargoes, failures of utilities or communications, and unusually severe weather, but in every case the failure to perform must be beyond the control of and without fault or negligence by Supplier. For purposes of clarity, Supplier shall not be entitled to rely on this section to the extent that the failure to perform could have been prevented by Supplier making reasonable plans, or taking reasonable steps, to prevent the event from occurring such as, by way of example, arranging for alternative source(s) of supply or establishing a suitable business interruption plan. In the event this section is applicable, any obligations which incorporate a specific delay or which must be performed on a specific date shall be extended by the number of days such causes were manifest and present. Notwithstanding the foregoing, where the delay or failure to perform persists for a period of thirty (30) days or more, HealthPRO may, in addition to all of its other rights herein, terminate the Contract in whole or in part which is the subject of the delay or non-performance.
- 4.13 Within fifteen (15) days following the end of each month, Supplier shall, unless otherwise specifically agreed by HealthPRO in writing, submit or cause its distributor to submit, a monthly

sales report to HealthPRO recording purchases of each Contracted Product by each HealthPRO member ("Purchase Particulars") during that month in accordance with the manner prescribed by HealthPRO. In addition to the foregoing, Supplier shall, within 48 hours of any request, provide HealthPRO with Purchase Particulars to the date of the request.

- 4.14 Within thirty (30) days following the end of each quarter, Supplier shall, unless otherwise specifically agreed by HealthPRO in writing, pay the agreed-to rebates and/or purchasing allowances to HealthPRO. Payment is to be by electronic funds transfer or by cheque addressed to the attention of the Office Manager.
- 4.15 Supplier shall maintain full, true and accurate books and records containing information necessary for the purpose of determining the rebates and/or purchasing allowances payable to HealthPRO. Such records shall be retained for a period of at least two (2) years following the end of the period to which they pertain and shall remain open for inspection and audit at all reasonable times by an independent certified public accountant appointed by HealthPRO for the purpose of verifying the reports and rebates/purchasing allowances paid or payable. The costs of any audit shall be the responsibility of HealthPRO unless the audit shows that there is a deficiency of more than five percent (5%) in the amount actually due as payment on account of the rebates/purchasing allowances for any period audited, in which case Supplier shall reimburse HealthPRO for the cost of the audit.
- 4.16 HealthPRO may terminate any Contract resulting from Supplier's response to this RFP if Supplier commits a material breach of any obligation under the resulting Contract and fails to cure such breach within thirty (30) days following receipt of notice thereof from HealthPRO.
- 4.17 If, during the Contract Period, a lower price or more favourable terms or conditions for any Contracted Product becomes available, HealthPRO will notify Supplier in writing of same. In such case, Supplier will have the right, within ten (10) business days from the date of such notice, to offer a revised price or revised Proposal. If Supplier fails to offer a revised Proposal, or if Supplier and HealthPRO fail to agree on the revised Proposal, HealthPRO reserves the right, 60 days following the issuance of the notice, to remove the relevant Product(s) from the Contract or, at its option, provided it is acting reasonably, terminate the Contract in its entirety.
- 4.18 Supplier acknowledges that therapeutic or technological advancements may result in a Product or service which is capable of being used in place of a Product or service which is the subject of a Contract. If this occurs, HealthPRO will notify Supplier in writing of same. In such case, Supplier will have the right, within the 30 days from the date of such notice, to provide a resolution acceptable to HealthPRO. In the event Supplier does not provide such a resolution within this 30 day period, HealthPRO reserves the right to issue an RFP and award a Contract or Contracts in respect of any such new technology, in which case members, including members then participating in a Contract with Supplier, will have the right to elect to participate, wholly or partially, in any such new Contract(s).
- 4.19 At no time during the Contract period will any price, pricing level or other financial term (collectively "Financial Terms") under the Contract be less favourable to HealthPRO than the price for the equivalent Product offered directly or indirectly through a purchasing entity, to any individual hospital, or healthcare region or association within the same geographical area to which the contract applies. If, during the Contract Period, Supplier offers more favourable financial terms or a price or pricing level lower than the awarded price to an individual hospital, healthcare region, or association, in that geographical area, at HealthPRO's option, the HealthPRO Contract will be deemed amended, effective five (5) days from written notice from HealthPRO, to reflect the lower pricing or more favourable financial terms from that point forward.

- 4.20 The Contract may, at HealthPRO's option, commence during the last month of any pre-existing Contract with another Supplier for the supply of the same or similar Product(s). In addition, HealthPRO reserves the right to enter into a new Contract for the supply of the Contracted Products with a different Supplier with such new Contract to become effective at any time during the final month of the Contract. HealthPRO also reserves the right, upon mutual written agreement with a successful Supplier, to extend the Contract or any extension thereof for additional year(s).
- 4.21 HealthPRO may exercise its option to increase the term of the Contract for additional year(s) to the extent permitted in this RFP under the heading "Contract Period".
- 4.22 HealthPRO and Supplier consent to the use of electronic documents and electronic media for the purpose of the communication of Proposals, awards and other communications relating to a Contract.
- 4.23 Supplier warrants that each Product which is the subject of its Proposal shall have received all required approvals and shall comply with all applicable required standards, laws and regulations, will be free from defects in material and workmanship and will comply with and satisfy all specifications set out in the RFP and will perform as represented and, to the extent applicable, Supplier further warrants that:
- (a) All Products will, at Supplier's cost, be approved for use in Canada as applicable by Health Canada's Biologics and Genetic Therapies Directorate ("BGTD") or Health Canada's Therapeutic Products Directorate ("TPD");
 - (b) It will, coincident with its Proposal, provide HealthPRO with proof of Notice of Compliance ("NOC"), Drug Notification Form, or Medical Device License ("MDL") as applicable; and
 - (c) Each Product has been manufactured in accordance with current Good Manufacturing Practices as set forth in the Food and Drugs Regulations (Canada).

Without limiting HealthPRO's rights under this RFP and at law, Supplier shall repair or replace, at member's option, any Product or service which fails to meet these standards.

- 4.24 If at any time during the term of a Contract Supplier is unable to supply a Product for any reason, including (i) it no longer being the authorized representative or dealer, or (ii) the Product line having been sold, HealthPRO reserves the right to award a Contract for that Product to a new Supplier. Any such action by HealthPRO will not limit HealthPRO's rights, or relieve Supplier from its obligations hereunder.
- 4.25 Unless otherwise specifically requested, submitted in writing as part of this RFP and agreed to by HealthPRO at the time of the award, items provided in exchange for returned items will be of equal or greater value. Items returned without exchange will receive a cash refund or credit against future purchases of equal value to the item(s) returned without reduction or discount.
- 4.26 Supplier agrees to defend, indemnify and save HealthPRO, its members and their respective directors, officers, employees, servants and agents (each an "Indemnified Person") harmless from any and all losses, damages, costs (including legal expenses calculated as between a solicitor and his or her own client), charges, payments, expenses and liability that an Indemnified Person may sustain, incur, suffer, or be put to at any time, either before or after the expiration or termination of the Contract, which are based upon, arise out of or occur, directly or indirectly, by reason of (i) any breach by Supplier of any of these Terms and Conditions or (ii) any defect in material or workmanship or malfunction in the Supplier's Product used in

accordance with its documentation or (iii) any act, error, including while providing training or instructions, or omission of the Supplier or any agent, employee, director, officer or subcontractor of the Supplier in providing the Products or services; except for such liability arising out of any independent negligent act by a member or its employees or agents. This indemnity will survive the expiration or termination of the Contract. It is specifically acknowledged and agreed that HealthPRO members are third party beneficiaries to any resulting Contract and are entitled to pursue the remedies set out herein.

4.27 Supplier shall maintain in force:

- (a) General Commercial Liability Insurance including contractual liability, personal injury liability, property damage liability, Product liability and non-owned automobile liability with such coverage being on a per occurrence basis with a combined single limit of \$10 million per occurrence and minimum general aggregate limit of \$10 million.
- (b) Standard owner's form automobile insurance providing third party liability insurance with \$2 million inclusive limits of coverage, and accident benefits insurance, covering all licensed vehicles owned, leased or operated by or on behalf of the Supplier.

Supplier agrees to provide certificates of insurance in order to confirm such insurance coverage. Supplier agrees to provide HealthPRO with 30 days' advance notice of any proposed change to these minimum coverage provisions. Notwithstanding the foregoing, the Seller at its sole discretion reserves the right to self-insure its insurance obligations in part or in whole.

4.28 In the event a committed member elects to enter into an agreement with a Provincially or Federally licensed entity for the provision of admixing or compounding services relating to a Supplier Product, Supplier will agree to supply the Product(s) to such entity on identical terms to those set out in the Contract.

ARTICLE 5 SPLIT AWARD TERMS AND CONDITIONS

- 5.1 In the event a Product is awarded to more than one Supplier, each participating member will be assigned a specific primary Supplier and a specific secondary Supplier. Furthermore, the Terms and Conditions set out above will be deemed amended to reflect/include the following Sections of this Article 5.
- 5.2 Section 3.2 is amended by the addition of the following sentences: Supplier is required to keep the other Supplier(s) of that Product informed of any anticipated inability to supply said Product as well as the expected date of resolution of any such inability. By doing so, Supplier will not be in breach of the confidentiality provisions of this Section 3.2.
- 5.3 Section 4.3 is amended by the addition of the following two sentences: 'HealthPRO will develop a price equalization model which requires each awarded Supplier to invoice members at the same price, such price established by HealthPRO. Where this price is higher than Supplier's bid invoice price, Supplier will remit quarterly to HealthPRO a 'balancing payment' equal to the difference between the total amount invoiced by Supplier and the value of Supplier's total invoiced volume calculated at the bid invoice price.'

- 5.4 In addition to the information specified in Section 4.13, Supplier will provide HealthPRO with monthly compliance reports setting out sales by unit and dollar value for each Product, by member and by Province.
- 5.5 Section 4.14 is amended by the addition of the following sentence: 'For purposes of clarity, rebates will be calculated by applying the contracted rebate rate to the value of Supplier's total invoiced volume calculated at the bid invoice price.'
- 5.6 Section 4.11 is amended by adding the following sentence: 'For purposes of clarity, the calculation of a Supplier's obligation under this Section 4.11 in a Split Award Contract will not exceed the percentage share it was awarded under the Contract. Notwithstanding the foregoing, in the event Supplier fails to provide any of the notices referred to herein, Supplier will be liable for any resulting damages.'
- 5.8 In the event a Supplier intends to reintroduce supply following an interruption in the supply of a Product by that Supplier, it will provide HealthPRO and the other Supplier(s) with not less than ten (10) calendar days' notice of the proposed resumption of supply as agreed between the parties acting reasonably, except that, if the interruption in supply has been equal to or greater than ninety (90) days, this required notice to HealthPRO and the other Supplier shall be thirty (30) days. Only following such notice, as applicable, will the original split be resumed.
- 5.9 If a split award Contract is awarded following two bids only, and a new source of supply for the awarded Product subsequently enters the Canadian marketplace, HealthPRO reserves the right, to issue an RFP at any time following the first six (6) months of the Contract and for the remainder of the term of the Contract with any resulting award being a split award Contract.

ARTICLE 6 SINGLE AWARDS

- 6.1 In the event the supply of any Product is awarded to one Supplier only, the following amended Terms and Conditions shall apply to the resulting Contract.
- 6.2 If, a single award Contract is awarded following multiple bids, and a new source of supply for the awarded Product subsequently enters the Canadian marketplace, HealthPRO reserves the right to issue an RFP, at any time following the first six (6) months of the Contract, to obtain a secondary Supplier for that Product. Following any award made pursuant to that subsequent RFP, and subject to the Terms and Conditions, the original Supplier will retain approximately 50% of the total sales volume for that Product for the remainder of the term.
- 6.3 If a single award Contract is awarded following one bid only, and a new source of supply for the awarded Product subsequently enters the Canadian marketplace, HealthPRO reserves the right to issue an RFP, at any time following the first six (6) months of the Contract, to obtain a secondary Supplier for that Product for the remainder of the term of the Contract with any resulting award being single, split or multi-Supplier.

ARTICLE 7 ALTERNATE SUPPLIER

- 7.1 If at any time during the contract term anticipated by this RFP, HealthPRO calls on Supplier to supply any Product(s) which is/are the subject of this RFP as an Alternate Supplier to the Supplier(s) awarded a Contract hereunder (the "Awarded Supplier(s)"), Supplier agrees to

supply such Product(s) at a price equal to (a) the Alternate Supplier Price submitted with Supplier's Proposal; or (b) if Supplier does NOT indicate the Alternate Supplier price and/or rebate, the price submitted with the Supplier's Proposal as a Primary or Secondary Supplier.

- 7.2 This obligation to supply will continue for the period equal to the Awarded Supplier's inability to supply plus (a) ten (10) days if the inability to supply is less than ninety (90) days or (b) thirty (30) days if the inability to supply is ninety (90) days or greater.
- 7.3 In the event Supplier is called on to be an Alternate Supplier, Sections 4.7 - 4.9 and Sections 4.11, 4.17 - 4.19 of these Terms and Conditions will not apply.