



AGREEMENT FOR EVALUATION OF MEDICAL EQUIPMENT

This Agreement (“Agreement”) is entered into and effective as of the last date of signature, by and between **HENNEPIN HEALTHCARE SYSTEM, INC.**, a public subsidiary corporation of HENNEPIN COUNTY, doing business as Hennepin County Medical Center, 701 Park Avenue South, Minneapolis, Minnesota 55415-1676 (hereinafter “HCMC”) and _____ (hereinafter “SUPPLIER”).

RECITALS

WHEREAS, SUPPLIER manufactures and sells medical device equipment for use by physicians and other health care professionals in the treatment of patients;

WHEREAS, SUPPLIER and HCMC agree that HCMC will use the medical device equipment described below on a no-cost, trial basis during the term of this Agreement for use and evaluation in the course of patient treatment on the terms set forth herein;

THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement, HCMC and SUPPLIER agree as follows:

1.0 Use and Ownership of Equipment

- 1.1 SUPPLIER agrees to provide HCMC with the medical device equipment more fully described in Exhibit A to this Agreement, attached hereto and incorporated herein by reference (hereinafter “the Equipment”).
- 1.2 The Equipment will be used by HCMC, HCMC’s faculty, employees, and students.
- 1.3 HCMC agrees to use the Equipment during the term of this Agreement in a manner that is consistent with any written installation specifications, directions for use, operating and training manuals and any on-site training provided to HCMC by SUPPLIER, its officers, employees and agents.
- 1.4 The Equipment is, and shall at all times during this Agreement remain, the property of SUPPLIER. HCMC shall neither have nor acquire any right, title or interest therein as a result of this Agreement. SUPPLIER assumes all responsibility and expense for shipping and insurance of the Equipment to and from HCMC with such responsibility commencing when Equipment first leaves SUPPLIER en-route to HCMC, and expiring upon such time as the Equipment is returned to SUPPLIER at a location designated by SUPPLIER.
- 1.5 Both HCMC and SUPPLIER acknowledge and agree that the purpose of this Agreement is for a limited trial use of the Equipment only, and not for the purpose of renting, leasing or

purchasing the Equipment from SUPPLIER. Any such rental, lease or purchase of the Equipment by HCMC would be subject to a new and separate agreement.

2.0 Term and Termination

- 2.1 This Agreement shall be for a term of six (6) months commencing on the effective date, which term may be extended upon the mutual, written agreement of the parties. The trial shall be scheduled during the term of this Agreement and shall not exceed sixty (60) days.
- 2.2 Each party shall have the right to terminate this Agreement at any time, upon ten (10) days written notice to the other party. Following such termination, SUPPLIER shall promptly remove the Equipment from HCMC's premises.

3.0 Costs

- 3.1 SUPPLIER hereby agrees to allow HCMC to use the Equipment, for the term of this Agreement at no cost to HCMC.

4.0 Warranty and Maintenance

- 4.1 SUPPLIER hereby warrants and represents that SUPPLIER has obtained and shall maintain all approvals, permits and licenses required by any federal, state or local law, regulation or ordinance including, without limitation, approvals from the United States Food and Drug Administration (FDA), for use of the Equipment at HCMC.
- 4.2 SUPPLIER hereby warrants and represents to HCMC that, to the best of its knowledge, it is the owner of all rights and title to the Equipment or that it has a valid license to use or distribute the Equipment in accordance with the terms of this Agreement.

5.0 Use and Alterations

- 5.1 HCMC shall use the Equipment in a reasonable and lawful manner, and shall not make any alterations, additions or improvement to the Equipment without the prior written consent of SUPPLIER.
- 5.2 Any alterations, additions or improvements made to or for the Equipment by HCMC, its employees, agents or students, shall belong to SUPPLIER.

6.0 Delivery, Inspection, Surrender

- 6.1 SUPPLIER shall deliver the Equipment, freight prepaid, in good working condition to HCMC at its place of business. If installation or set-up of the Equipment is required before its use, the SUPPLIER shall provide sufficient personnel, trained in the operation and use of the Equipment, to install the Equipment at HCMC.

- 6.2 SUPPLIER shall have the right to inspect the Equipment, while it is installed and in service at HCMC, during business hours upon prior notice to HCMC.
- 6.3 At the expiration of this Agreement, SUPPLIER shall retrieve the Equipment, at its own cost and expense, from HCMC, who shall maintain the Equipment in as good condition as existed at the commencement of this Agreement, reasonable wear and tear expected.
- 6.4 Medical Equipment evaluations require inspection by the HCMC Bioelectronics Department prior to use. SUPPLIER must coordinate the inspections, preferably seventy-two (72) hours, in advance and provide the following documentation:
- 6.4.1 Executed Evaluation Contract and/or Purchase Order.
- 6.4.2 Preventative Maintenance and repair records meeting manufacturer recommended guidelines in electronic format by email to: bioelectronics@hcmcd.org, subject line: Equipment Evaluation Contract #_____ / PO #_____.
- 6.5 SUPPLIER representatives shall be registered with HCMC's Online Supplier Compliance Network and shall comply with all applicable policies and procedures concerning supplier access to HCMC facilities, staff and patients.

7.0 Loss and Damage

- 7.1 SUPPLIER shall bear the risk of loss, theft, destruction or damage to the Equipment, provided that such loss results directly from actions by HCMC, its employees, agents or students in accordance with SUPPLIER's instructions and does not result from negligence, willful misconduct by HCMC or its employees, agents or students.

8.0 Indemnification

- 8.1 HCMC shall defend, indemnify and hold harmless SUPPLIER, its officers, employees and agents from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from negligence, willful misconduct, or failure to act in accordance with SUPPLIER' instructions for use by HCMC or its employees, agents or students.
- 8.2 SUPPLIER shall defend, indemnify and hold harmless HCMC, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from negligence or willful misconduct by SUPPLIER or its employees, or agents.

- 8.3 SUPPLIER shall indemnify, defend, and hold harmless HCMC, its officers, agents, and employees against all losses, damages, liabilities, costs, and expenses (including but not limited to attorneys' fees) resulting from any judgment or proceeding in which it is determined, or any settlement agreement arising out of the allegation, that SUPPLIER's furnishing or supplying HCMC with the Equipment under this Agreement or HCMC's use of the Equipment hereunder, constitutes an infringement of any patent, copyright, trademark, trade name, trade secret, or other proprietary or contractual right of any third party.
- 8.4 The foregoing Subsections of Section 8 shall not apply unless the party seeking indemnification has informed the other party as soon as practicable of the suit or action alleging the injury or damages at issue. The indemnifying party shall not settle such suit or action without the consent of the indemnified party. The indemnified party retains the right to participate in the defense against any such suit or action.

9.0 Insurance

- 9.1 SUPPLIER agrees to effect and maintain, adequate comprehensive public liability and property damage insurance for the term of the agreement with at least the following combined single limits as follows: (1) Bodily injury and property damage Each Occurrence: \$500,000; (2) Products/Completed Operations Aggregate per occurrence and in the aggregate: \$5,000,000; Personal and Advertising Injury: \$1,000,000; and General Aggregate: \$5,000,000. All insurance carriers will maintain an A.M. Best rating of not less than A-.
- 9.2 If the above insurance is written on a claims-made form, it shall continue for three years following termination of the Agreement. The insurance shall provide for retroactive date of placement prior to or coinciding with the effective date of the Agreement.

10. Delay

- 10.1 No delay or failure to enforce any provision of this Agreement shall constitute a waiver or limitation of rights enforceable under this Agreement.

11. Governing Law

- 11.1 This Agreement shall be governed by and construed under the laws of the State of Minnesota, which shall be the forum for any lawsuits arising from or incident to this Agreement.

12. Privacy

- 12.1 SUPPLIER acknowledges that during the term of this Agreement, SUPPLIER may have access to trade secrets, proprietary information, and confidential information of HCMC. SUPPLIER agrees to protect and preserve the confidential and proprietary nature of HCMC's confidential and/or proprietary information and shall not disclose such information to any other person or entity, except to the extent required to carry out the duties and responsibilities set forth in this Agreement, or as may be otherwise required by law. Upon the request of HCMC at any time and upon termination of this Agreement, all copies of confidential and/or proprietary

information shall be returned to HCMC. SUPPLIER agrees to comply with the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 (“MGDPA”), the Health Insurance Portability and Accountability Act (HIPAA), and the Health Information Technology for Economic and Clinical Health Act (“HITECH”) and all other applicable state and federal laws, rules, regulations and orders relating to data privacy or confidentiality. Pursuant to Minnesota Statutes, Sections 13.05, subd. 11 and 13.387, if SUPPLIER creates, collects, receives, stores, uses, maintains or disseminates data because it performs functions of HCMC pursuant to this Agreement, SUPPLIER must comply with the requirements of the MGDPA as if it were a government entity, and may be held liable under the MGDPA for noncompliance. SUPPLIER agrees to promptly notify HCMC if it becomes aware of any potential claims, or facts giving rise to such claims, under the MGDPA. To the extent applicable under law, HCMC agrees to protect any data classified under the MGDPA as “trade secret” or “competitive data.”

13. Records – Availability/Access

13.1 Subject to the requirements of Minn. Stat. Section 16C.05, Subd. 5, SUPPLIER agrees that HCMC, the State Auditor, or any of their authorized representatives, at any time during normal business hours, and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of SUPPLIER and involve transactions relating to this Agreement. SUPPLIER shall maintain these materials and allow access during the period of this Agreement and for six (6) years after its termination or cancellation.

13.2 In accordance with Medicare requirements under Section 952 of the Omnibus Reconciliation Act of 1980 (PL 96-499) as well as any final regulations relating thereto as may be promulgated by the Secretary of the U.S. Department of Health and Human Services (the “Secretary”), and to the extent that the requirements are applicable to this Agreement, SUPPLIER shall, while this Agreement is effective and until the expiration of four (4) years after furnishing of any Services, make available, upon written request to the Secretary, or the Comptroller General of the United States (the “Comptroller General”), or any of their authorized representatives, a copy of this Agreement and books, documents and records of SUPPLIER as are necessary to certify the nature and extent of the costs incurred by HCMC for the Services furnished. If SUPPLIER carries out any of the duties hereunder through a subcontractor, with a value or cost of \$10,000.00 or more over a twelve (12) month period, SUPPLIER shall require subcontractor to make available upon written request to the Secretary or Comptroller General any such books, documents and records.

14. Survival of Provisions

14.1 Provisions that by their nature are intended to survive the term, cancellation or termination of this Agreement include but are not limited to: Use and Ownership of Equipment; Indemnification; Insurance; Privacy; Records – Availability/Access; and Governing Law.

IN WITNESS WHEREOF, authorized representatives of the parties hereto have executed this Agreement on the dates indicated below.

HENNEPIN COUNTY MEDICAL CENTER	SUPPLIER
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

