

MASTER PURCHASE AGREEMENT:

By and between:

HARFORD COUNTY PUBLIC SCHOOLS, MARYLAND

102 S. Hickory Avenue

Bel Air, MD 21014

AND

FISHER SCIENCE EDUCATION

4500 Turnberry Drive

Hanover Park, IL 60133

THIS MASTER PURCHASE AGREEMENT made and entered into this 24th day of June, 2008, by and between Harford County Public Schools, Maryland (hereinafter referred to as "School District", "HCPS", or "District"), and Fisher Science Education, a corporation authorized to conduct business in the State of Maryland (hereinafter referred to as "Supplier").

This agreement is made on behalf of Harford County Public Schools, Maryland and other participating governmental agencies, through the U.S. Communities Government Purchasing Alliance.

WITNESSETH:

WHEREAS, pursuant to a request by the District, Supplier has submitted a proposal to provide a master agreement for a National Award covering the following: furnish, supply and deliver science supplies, equipment, furniture, labware, services and related science instructional items in accordance with the scope, terms and conditions of Request for Proposal, RFP #08-04026, addenda, amendments, appendices and related correspondence. The Request for Proposal is incorporated in its entirety and included as part of this agreement.

WHEREAS, HCPS desires to engage Supplier to perform said services; and

WHEREAS, HCPS and Supplier desire to state the terms and conditions under which Supplier will provide said services to Harford County Public Schools (Lead Agency) and participating public agencies who have registered with U.S. Communities.

NOW, THEREFORE, in consideration of the mutual covenants, condition and promises contained herein, the parties hereto agree as follows:

- A. Services.** Supplier will provide Miscellaneous Science/Labware Supplies and Equipment as detailed in the referenced RFP and related services for HCPS in its response to the heretofore referenced RFP to HCPS, which is attached hereto and incorporated herein as a part of this Master Purchase Agreement.
- B. Purchase Order.** Purchase order shall mean any authorized written, electronic, telephone or fax order sent or made by HCPS pursuant hereto, including, but not limited to, written purchase orders, faxed purchase orders, and orders in such other form and/or mode of transmission as HCPS and Supplier may from time to time agree including purchases made via procurement credit card.

- C. **Term.** The initial term of this Master Purchase Agreement shall be five (5) years from on or about July 1, 2008. This Master Purchase Agreement may then be renewed by mutual written agreement of the parties for two (2) additional, one (1) year periods.
- D. **Compensation.** HCPS agrees to pay and Supplier agrees to accept as compensation for the products provided pursuant to this Master Purchase Agreement, the following:
1. The price proposal set forth in the best and final RFP Response, dated May 27, 2008 and marked Amendment 1, 2, and 3.
- E. **Invoicing.** Supplier agrees to invoice HCPS as deliveries are completed or charge purchases to an authorized HCPS Visa credit card. Invoices shall be delivered to HCPS accounts payable. Each invoice shall include – as applicable – the following data: Item Number, Purchase Order Number, Item Description, Quantity purchased, Unit Price, Extended price and Delivery location. All purchase orders will be invoiced separately. Each invoice submitted by Supplier shall be paid by HCPS within thirty (30) days after approval. The Supplier has agreed to accept payment via a procurement credit card (i.e. Visa, MasterCard, etc.) which is the preferred method of payment.
- F. **Customer Service Representative.** Supplier shall endeavor to provide customer service representative(s) who shall be available from 8:00 a.m. to 5:00 p.m., Monday through Friday, except general holidays, either by phone, fax, or e-mail.
- G. **Insurance.** Supplier shall maintain at its own cost and expense (and shall cause any Subcontractor to maintain) insurance policies in form and substance acceptable to HCPS as detailed in the Request for Proposal.
- H. **Termination of Contract.** This contract may be terminated as per the General Requirements of the RFP, Section VIII, C (page 75).
- I. **Notification.** Notices under this Master Purchase Agreement shall be addressed as follows:

John R. Miller, Director of Purchasing
Harford County Public Schools
102 S. Hickory Avenue
Bel Air, MD 21014

Supplier: Fisher Science Education
Attn: Amit Agarwal, General Manager
Address: 4500 Turnberry Drive
Suite A
Hanover Park, IL 60133
Phone: 630-259-4751

The effective date of any notice under this Master Purchase Agreement shall be the date of receipt by the addressee. The failure of either party to give notice of default, or to strictly enforce or insist upon compliance with any of the terms or conditions of this Master Purchase Agreement, the waiver of any term or condition of this Master Purchase Agreement, or the


granting of an extension of time for performance shall not constitute the permanent waiver of any term or condition of this Master Purchase Agreement. This Master Purchase Agreement and each of its provisions shall remain at all times in full force and effect until modified by the parties in writing.

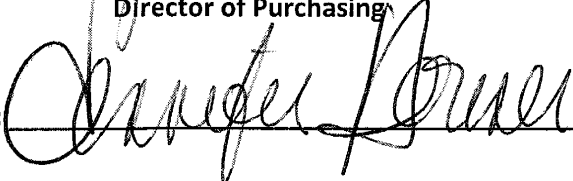
- J. **Governing Law.** This contract shall be interpreted under and governed by the laws of the State of Maryland. Disputes will be settled as per the stipulations contained within the Request for Proposal.
- K. **Incorporation of Appendices.** All provisions of Appendices and Amendments are hereby incorporated herein and made a part of this Master Purchase Agreement. In the event of any apparent conflict between any provisions set forth in the main body of the Master Purchase Agreement and any provision set forth in the Appendices and Amendments the provisions shall be interpreted, to the extent possible, as if they do not conflict. In the event that such an interpretation is not possible, the provisions set forth in the main body of this Master Purchase Agreement shall control.
- L. **Entire Master Purchase Agreement.** This Master Purchase Agreement including the entire RFP solicitation and the Appendices attached hereto contain all the terms and conditions agreed upon by both parties. No other understandings, oral or otherwise, regarding the subject matter of this Master Purchase Agreement shall be deemed to exist or to bind any of the parties hereto. Any agreement not contained herein shall not be binding on either party, nor of any force or effect. The revised Best and Final Offer contained within Amendment 1, 2, and 3 are also included and becomes part of the Master Agreement.
- M. **Participating Public Agencies.** Supplier agrees to extend the same terms, covenants and conditions available to HCPS under this Master Purchase Agreement to other government agencies ("Participating Public Agencies") that, in their discretion, desire to access this Master Purchase Agreement in accordance with all terms and conditions contained herein or attached hereto. Each Participating Public Agency will be exclusively responsible and deal directly with Supplier on matters relating to ordering, delivery, inspection, acceptance, invoicing, and payment for products and services in accordance with the terms and conditions of this Master Purchase Agreement. Any disputes between a Participating Public Agency and Supplier will be resolved directly between them in accordance with and governed by the laws of the State in which the Participating Public Agency exists.

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT IN THE YEAR AND DAY AS NOTED:

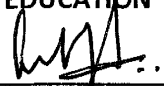
HARFORD COUNTY PUBLIC SCHOOLS, MARYLAND

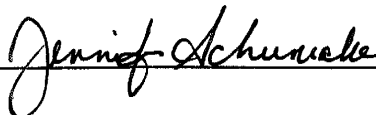
by  7/1/08
Superintendent of Schools Date

by  7/8/08
Director of Purchasing Date

Attest:  7/8/08

FISHER SCIENCE EDUCATION

by  Amit Agarwal 6/27/08
General Manager Date

Attest:  Jennifer Schumaker 6/27/08

May 27, 2008

**Fisher Science Education – Best and Final Offer
Summary of Price Proposal**

I. For products in Fisher Science Education's portfolio

Base Discount

29.5%

Sole award discount by U.S. Communities

1.5%

Total discount with sole award by U.S. Communities

31.0

Additional discount to Participating Members

Members that designate Fisher as sole source

1.0%

Total discount with sole award both by U.S. Communities and
By Participating Members

32.0

Note: Total discount with sole award by Participating Agency, but not
by U.S. Communities

30.5%

Additional incentives

Volume rebate

Large order discount

E-commerce incentive

0.5% to 1.0%

0.5% to 1.0%

0.5%

Total benefit if all discounts and incentives utilized

33.5% to 34.5%

Amendment 1 (continued)

II. For Products in Fisher Advanced Science and Fisher Safety 2008 Catalogs and Full Web Product Line

Base Discount off of Fisher Advance Science/Fisher Safety 2008 Catalogs And Full Web Product Line	18.0%
Additional discount to Participating Members that Designate Fisher as sole supplier	1.0%
Additional incentives	
Volume rebate	0.5% to 1.0%
Large order discount	0.5% to 1.0%
E-commerce incentive	0.5%

Explanation of Incentives to Participating Members:

- I. **Volume Rebate** – Fisher will provide a 0.5% annual rebate when sales in a defined 12-month contract period surpass \$200,000. The rebate will grow to 1% if the annual volume exceeds \$500,000. Rebates will be calculated by district, based on total sales for the school year purchased through this agreement.
- II. **Large Order Incentive** – Fisher will provide a 0.5% extra discount incentive for single orders greater than \$10,000 net. The incentive will grow to 1% for single orders that exceed \$25,000 net. Incentive will be calculated on orders shipping to one location and purchased through this agreement.
- III. **E-commerce Incentive** – Fisher will provide a 0.5% rebate incentive if a Participating Member purchases at least 50% of their orders through e-commerce in any school year. The incentive will be calculated on orders purchased through this agreement.
- IV. **Sole Supplier Discount** – Additional discount of 1.0% to Participating Members across all categories if a Member designates Fisher as their sole science supplier for all products in Fisher's portfolio.
- V. **Lab Safety Training** – Free Lab Safety Workshop (up to 4 hours) for any school district purchasing \$200,000 in any school year. Districts ordering \$100,000 or more will receive a free lab safety webinar.

Amendment 2

Harford County Public Schools
US Communities Government Purchasing Alliance

Response to RFP #08-04026
Science/Labware Supplies and Equipment

Comments or Notes to Discount Offering

Discounts are subject to the following conditions:

1. All discounts and incentives are valid for the full 5-year duration of the contract, plus any additional extension years.
2. All rebates and incentives are calculated on invoiced, paid sales off this contract, net of credits and returns.
3. 12-month period for incentive rebates will vary by district and will start on the date when a particular school system agrees to start using the U.S. Communities agreement for its science products purchases. If a specific district wishes to set the 12-month term to follow their annual school or budget year, we will accommodate that.
4. The catalog discounts are subject to a GP floor of 18.0%. A lower GP floor of 16.0% will apply to products with list price of more than \$500. Rebates and incentives are not subject to GP floor.
5. Catalog discounts are subject to current catalog prices only and are not applicable to sale items or special quotations.
6. To receive the "sole Primary Supplier" participating member extra discount, districts will not be required to purchase all science materials from Fisher, as no single company is able to provide access to all needed items. The only requirement is that the district designates Fisher Science Education as the district's sole primary science supplier for the products that are in our product portfolio, and purchase those products solely from Fisher, where possible.
7. Free Freight on orders over \$100 excluding Live, Hazardous, Motor Freight Items and shipments to Alaska/Hawaii. There will be no freight minimum requirement for any district that selects Fisher Science Education as its sole primary supplier for the products that we supply. A hazardous materials surcharge of \$21.50 will be charged where applicable. Freight charges for live, motor freight items and shipments to Alaska/Hawaii are provided on requests.
8. There is no minimum order requirement.
9. We are waiving fuel surcharge charges.
10. Discounts do not apply to items noted as "ND" in any catalog.
11. In its normal course of the catalog based business, Fisher does, on occasion:
 - a. Update prices
 - b. Substitute products
 - c. Change units of measure
 - d. Delete products

For any products/changes that impact U.S. Communities agreement, Fisher will work with the purchasing or other specified office with respect to such changes, based on terms negotiated in this RFP.

Amendment 3

Harford County Public Schools
US Communities Government Purchasing Alliance

Response to RFP #08-04026
Science/Labware Supplies and Equipment

Comments from Fisher Science Education's Legal Review

Our legal team reviewed the terms and conditions outlined in the RFP. Further legal review will take place at the time of final contract negotiation and execution. We have following comments for your consideration:

1. Comments on general requirements for Harford County Public Schools, MD, beginning on page 74, are as follows:
 - a. Page 74, Section IV – In line 1, after the word “property”, insert “to the extent”; in line 3, at the beginning of the sentence, before the words “The Contractor”, insert “To the extent caused by the Contractor or its employees or agents,”
 - b. Page 74, Section V (B) – At the end of this section, insert “except to the extent caused by the act or omission of HCPS or its employees, agents or contractors.”
 - c. Page 75, Section VIII © - In line 2 of the first paragraph, after the word “contract”, insert “and such failure or violation continues for a period of thirty (30) days after written notice to Contractor”
 - d. Page 76, Section IX © - In line 5, after “HCPS”, insert “to the extent”
 - e. Page 76, Section X – At the end of this section, insert “All such access shall be subject to reasonable prior notice, scheduled at mutually convenient times, and shall be conducted in a manner to minimize disruption to Contractor’s business”
 - f. Page 82, Insurance Requirements, Section 3 – In line 1, after the word “law”, insert “but only to the extent caused by Contractor or its employees or agents”; in line 4, delete the phrase “services provided by”, and insert “negligence or willful misconduct”
 - g. Page 82, Insurance Requirements, Section 4 – In line 3, after the word “fees”, insert “for property damage”
 - h. Page 82, Insurance Requirements, Section 5 – In line 7, after the word “Board”, insert “except to the extent that such injury is caused by the act or omission of HCPS or the Board; delete the penultimate sentence of this section
 - i. Page 83, Insurance Requirements, Section 6 – at this end of this section, insert “except to the extent that such damage is caused by the act or omission of the Board of HCPS or their respective employees, agents or contractors”
2. In addition, we would like the following to be reflected in final executed agreements:
 - a. Page 34, Under “Corporate”, at the end of first bullet point, insert “for supplies, equipment and services used for teaching science”
 - b. Page 41, at the end of section 1, add “Annual sales figures shall be net of all returns and credits for purposes of determining administrative fees”
 - c. Payment terms to supplier shall be net 45 days from date of invoice

Accepted: _____

Signature

Date

John K. Miller for Harford County Public Schools 6/18/2008

Amendment 4

BOARD OF EDUCATION OF HARFORD COUNTY

DECISION ON CONTRACT AWARD ON SCIENCE /LABWARE SUPPLIES AND EQUIPMENT

June 23, 2008

Background Information:

Harford County Public Schools has traditionally procured its requirements for science and labware supplies either through a competitive line item bid process or by “piggybacking” other competitive awards by school districts, most recently the Fairfax County Public School bid which offered a catalog discount of approximately 29.5% with free shipping. Annually HCPS procures approximately \$100,000 of these supplies including chemicals and live specimens.

Discussion:

Harford County Public Schools as a member of U.S. Communities Public Services Alliance (www.uscommunities.org) has used many U.S. Communities contracts for commodities such as copiers, office supplies, sporting goods, security cameras –as well as many others. U.S. Communities asked Harford County Public Schools to be the Lead Agency on the Science Labware catalog contract. This will allow public agencies around the country to utilize our contract as their contracting vehicle.

The Purchasing Department issued a Request for Proposal (RFP#08-04026) and proposals were received on April 30, 2008. An evaluation committee consisting of purchasing professionals from Davis United School District-California, Hillsborough County Public Schools-Florida, Anne Arundel County Public Schools –Maryland as well as members of the Harford County Public Schools Purchasing Department (including an ex-officio role by Mr. Mark Herzog), met for two days to evaluate the proposals received. Of the four proposal received, two were found to be non-responsive (Sargent Welch and Science Kit). The evaluators scored two proposals received from Fisher Scientific and Frey Scientific. The evaluators decided that the proposal from Fisher Scientific was the most favorable and offered the best value both in terms of the technical and price submissions. The following summarizes the price proposals of the two proposers:

	Fisher	Frey
1. Base discount off catalog	31%	28%
2. Additional discount if designated a sole provider by school district	1.0%	None
3. Rebates: Volume/Large Order/E-commerce	1.5-2.5%	1.0%
4. Minimum order amount	None	None
5. Shipping	None**	None*

*Free Shipping on all items except furniture, hazardous material and live specimens.

**Free Shipping on all items except live and hazardous material when Fisher is designated a sole supplier with certain exceptions by the customer. Alaska and Hawaii not included.

This will be a five year agreement with the option to renew for one additional two-year period.

Superintendent's Recommendation:

The Superintendent of Schools recommends that the Board of Education accepts the recommendation made by the evaluation committee to approve the award of a national contract for science and labware supplies to Fisher Science Education, 4500 Turnberry Drive, Hanover Park Illinois, 60133.

Amendment 5

MASTER PURCHASE AGREEMENT:

By and between:

HARFORD COUNTY PUBLIC SCHOOLS, MARYLAND

102 S. Hickory Avenue

Bel Air, MD 21014

AND

FISHER SCIENCE EDUCATION

4500 Turnberry Drive

Hanover Park, IL 60133

Harford County Public Schools, Maryland and Fisher Science Education hereby agree to amend the Master Purchase Agreement (the "Agreement") made and executed by the parties, as follows:

1. On page 1 of the Agreement, delete the third paragraph, and insert:

"WHEREAS, pursuant to a request by the District, Supplier has submitted a proposal to provide a master agreement for a National Award covering the following: furnish, supply and deliver science supplies, equipment, furniture, labware, services and related science instructional items used for teaching science in the classroom or laboratory, but not for advanced research use in accordance with the scope, terms and conditions of Request for Proposal, RFP #08-04026, addenda, amendments, appendices and related correspondence. The Request for Proposal is incorporated in its entirety and included as part of this agreement."

2. On page 1 of the Agreement, delete Section A, and insert:

"Services. Supplier will provide Miscellaneous Science/Labware Supplies and Equipment as detailed in the referenced RFP for use in teaching science in the classroom or laboratory, but not for advanced research use and related services for HCPS in its response to the heretofore referenced RFP to HCPS, which is attached hereto and incorporated herein as a part of this Master Purchase Agreement."

3. On Amendment 3, delete Section 2(c).

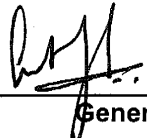
IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AMENDMENT 5 TO MASTER PURCHASE AGREEMENT IN THE YEAR AND DAY AS NOTED:

HARFORD COUNTY PUBLIC SCHOOLS, MARYLAND

By 
Director of Purchasing

7/8/08
Date

FISHER SCIENCE EDUCATION

By  Amit Agarwal
General Manager

6/27/08
Date

Amendment 6

MASTER PURCHASE AGREEMENT:

By and between:

HARFORD COUNTY PUBLIC SCHOOLS, MARYLAND

102 S. Hickory Avenue

Bel Air, MD 21014

AND

FISHER SCIENCE EDUCATION

4500 Turnberry Drive

Hanover Park, IL 60133

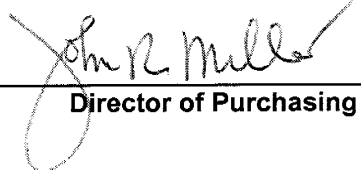
Harford County Public Schools, Maryland and Fisher Science Education hereby agree to amend the Master Purchase Agreement (the "Agreement") made and executed by the parties, as follows:

1. Insert the following as new Section N of the Agreement:

"N. Terms and Conditions of Sale. To the extent that they do not conflict with the terms and conditions of this Master Purchase Agreement or those of RFP #08-04026, the terms and conditions attached hereto as Exhibit A will be applicable to the sales of all products and services pursuant to the Master Purchase Agreement.

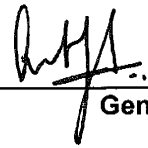
IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AMENDMENT 6 TO MASTER PURCHASE AGREEMENT IN THE YEAR AND DAY AS NOTED:

HARFORD COUNTY PUBLIC SCHOOLS, MARYLAND

By 
Director of Purchasing

7/8/08
Date

FISHER SCIENCE EDUCATION

By  Amit Agarwal
General Manager

6/27/08
Date

EXHIBIT A TO AMENDMENT 6

TERMS AND CONDITIONS OF SALE

UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING, ALL SALES ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

GENERAL. Fisher Science Education ("Seller") hereby offers for sale to the buyer named on the face hereof ("Buyer") the products listed on the face hereof (the "Products") on the express condition that Buyer agrees to accept and be bound by the terms and conditions set forth herein. Any provisions contained in any document issued by Buyer are expressly rejected and if the terms and conditions in this Agreement differ from the terms of Buyer's offer, this document shall be construed as a counter offer and shall not be effective as an acceptance of Buyer's offer. Buyer's receipt of Products or Seller's commencement of the services provided hereunder will constitute Buyer's acceptance of this Agreement. This is the complete and exclusive statement of the contract between Seller and Buyer with respect to Buyer's purchase of the Products. No waiver, consent, modification, amendment or change of the terms contained herein shall be binding unless in writing and signed by Seller and Buyer. Seller's failure to object to terms contained in any subsequent communication from Buyer will not be a waiver or modification of the terms set forth herein. All orders are subject to acceptance in writing by an authorized representative of Seller.

PRICE. All prices published by Seller or quoted by Seller's representatives may be changed at any time without notice. All prices quoted by Seller or Seller's representatives are valid for thirty (30) days, unless otherwise stated in writing. All prices for the Products will be as specified by Seller or, if no price has been specified or noted, will be Seller's price in effect at the time of shipment. All prices are subject to adjustment on account of specifications, quantities, raw materials, cost of production, shipment arrangements or other terms or conditions which are not part of Seller's original price quotation.

TAXES AND OTHER CHARGES. Prices for the Products exclude all sales, value added and other taxes and duties imposed with respect to the sale, delivery, or use of any Products covered hereby, all of which taxes and duties must be paid by Buyer. If Buyer claims any exemption, Buyer must provide a valid, signed certificate or letter of exemption for each respective jurisdiction.

TERMS OF PAYMENT. Seller may invoice Buyer upon shipment for the price and all other charges payable by Buyer in accordance with the terms on the face hereof. If no payment terms are stated on the face hereof, payment shall be net thirty (30) days from the date of invoice. If Buyer fails to pay any amounts when due, Buyer shall pay Seller interest thereon at a periodic rate of one and one-half percent (1.5%) per month (or, if lower, the highest rate permitted by law), together with all costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) incurred by Seller in collecting such overdue amounts or otherwise enforcing Seller's rights hereunder. Seller reserves the right to require from Buyer full or partial payment in advance, or other security that is satisfactory to Seller, at any time that Seller believes in good faith that Buyer's financial condition does not justify the terms of payment specified. All payments shall be made in U.S. Dollars.

DELIVERY, CANCELLATION OR CHANGES BY BUYER. The Products will be shipped to the destination specified by Buyer, F.O.B. Seller's shipping point. Seller will have the right, at its election, to make partial shipments of the Products and to invoice each shipment separately. Seller reserves the right to stop delivery of Products in transit and to withhold shipments in whole or in part if Buyer fails to make any payment to Seller when due or otherwise fails to perform its obligations hereunder. All shipping dates are approximate only, and Seller will not be liable for any loss or damage resulting from any delay in delivery or failure to deliver which is due to any cause beyond Seller's reasonable control. In the event of a delay due to any cause beyond Seller's reasonable control, Seller reserves the right to terminate the order or to reschedule the shipment within a reasonable period of time, and Buyer will not be entitled to refuse delivery or otherwise be relieved of any obligations as the result of such delay. Products as to which delivery is delayed due to any cause within Buyer's control may be placed in storage by Seller at Buyer's risk and expense and for Buyer's account. Orders in process may be canceled only with Seller's written consent and upon payment of Seller's cancellation charges. Orders in process may not be changed except with Seller's written consent and upon agreement by the parties as to an appropriate adjustment in the purchase price therefor. Credit will not be allowed for Products returned without the prior written consent of Seller.

TITLE AND RISK OF LOSS. Notwithstanding the trade terms indicated above and subject to Seller's right to stop delivery of Products in transit, title to and risk of loss of the Products will pass to Buyer upon delivery of possession of the Products by Seller to the carrier; provided, however, that title to any software incorporated therein or forming a part of the Products shall at all times remain with Seller or the licensor(s) thereof, as the case may be.

WARRANTY. Seller warrants that the Products will operate or perform substantially in conformance with Seller's published specifications and be free from defects in material and workmanship, when subjected to normal, proper and intended usage by properly trained personnel, for the period of time set forth in the product documentation, published specifications or package inserts. If a period of time is not specified in Seller's product documentation, published specifications or package inserts, the warranty period shall be one (1) year from the date of shipment to Buyer for equipment and ninety (90) days for all other products (the "Warranty Period"). Seller agrees during the Warranty Period, to repair or replace, at Seller's option, defective Products so as to cause the same to operate in substantial conformance with said published specifications; provided that Buyer shall (a) promptly notify Seller in writing upon the discovery of any defect, which notice shall include the product model and serial number (if applicable) and details of the warranty claim; and (b) after Seller's review, Seller will provide Buyer with service data and/or a Return Material Authorization ("RMA"), which may include biohazard decontamination procedures and other product-specific handling instructions, then, if applicable, Buyer may return the defective Products to Seller with all costs prepaid by Buyer. Replacement parts may be new or refurbished, at the election of Seller. All replaced parts shall become the property of Seller. Shipment to Buyer of repaired or replacement Products shall be made in accordance with the Delivery provisions of the Seller's Terms and Conditions of Sale. Consumables are expressly excluded from this warranty.

Notwithstanding the foregoing, Products supplied by Seller that are obtained by Seller from an original manufacturer or third party supplier are not warranted by Seller, but Seller agrees to assign to Buyer any warranty rights in such Product at Seller may have from the original manufacturer or third party supplier, to the extent such assignment is allowed by the original manufacturer or third party supplier.

No event shall Seller have any obligation to make repairs, replacements or corrections required, in whole or in part, as a result of (i) normal wear and tear, (ii) accident, disaster or event of force majeure, (iii) misuse, fault or negligence of Buyer, (iv) use of the Products in a manner for which they were not designed, (v) causes external to the Products such as, but not limited to, power failure or electrical power surges, (vi) improper storage and handling of the Products or (vii) use of the Products in combination with equipment or software not supplied by Seller. If Seller determines that products for which Buyer has requested warranty services are not covered by the warranty hereunder, Buyer shall pay and reimburse Seller for all costs of investigating and responding to such request at Seller's then prevailing time and materials rates. If Seller provides repair services or replacement parts that are not covered by this warranty, Buyer shall pay Seller therefor at Seller's then prevailing time and materials rates. ANY INSTALLATION, MAINTENANCE, REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE PRODUCTS PERFORMED BY ANY PERSON OR ENTITY OTHER THAN SELLER WITHOUT SELLER'S PRIOR WRITTEN APPROVAL, OR ANY USE OF REPLACEMENT PARTS NOT SUPPLIED BY SELLER, SHALL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED PRODUCTS.

THE OBLIGATIONS CREATED BY THIS WARRANTY STATEMENT TO REPAIR OR REPLACE A DEFECTIVE PRODUCT SHALL BE THE SOLE REMEDY OF BUYER IN THE EVENT OF A DEFECTIVE PRODUCT. EXCEPT AS EXPRESSLY PROVIDED IN THIS WARRANTY STATEMENT, SELLER DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. SELLER DOES NOT WARRANT THAT THE PRODUCTS ARE ERROR-FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT.

INDEMNIFICATION.

8.1 **By Seller.** Seller agrees to indemnify, defend and save Buyer, its officer, directors, and employees from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorney's fees) ("Indemnified Items") for (i) injury to or death of persons or damage to property to the extent caused by the negligence or willful misconduct of Seller, its employees, agents or representatives or contractors in connection with the performance of services at Buyer's premises under this Agreement and (ii) claims that a Product infringes any valid United States patent,

copyright or trade secret; provided, however, Seller shall have no liability under this Section to the extent any such Indemnified Items are caused by either (i) the negligence or willful misconduct of Buyer, its employees, agents or representatives or contractors, (ii) by any third party, (iii) use of a Product in combination with equipment or software not supplied by Seller where the Product would not itself be infringing, (iv) compliance with Buyer's designs, specifications or instructions, (v) use of the Product in an application or environment for which it was not designed or (vi) modifications of the Product by anyone other than Seller without Seller's prior written approval. Buyer shall provide Seller prompt written notice of any third party claim covered by Seller's indemnification obligations hereunder. Seller shall have the right to assume exclusive control of the defense of such claim or, at the option of the Seller, to settle the same. Buyer agrees to cooperate reasonably with Seller in connection with the performance by Seller of its obligations in this Section.

Notwithstanding the above, Seller's infringement related indemnification obligations shall be extinguished and relieved if Seller, at its discretion and at its own expense (a) procures for Buyer the right, at no additional expense to Buyer, to continue using the Product; (b) replaces or modifies the Product so that it becomes non-infringing, provided the modification or replacement does not adversely affect the specifications of the Product; or (c) in the event (a) and (b) are not practical, refund to Buyer the amortized amounts paid by Buyer with respect thereto, based on a five (5) year amortization schedule. THE FOREGOING INDEMNIFICATION PROVISION STATES SELLER'S ENTIRE LIABILITY TO BUYER FOR THE CLAIMS DESCRIBED HEREIN.

8.2 **By Buyer.** Buyer shall indemnify, defend with competent and experienced counsel and hold harmless Seller, its parent, subsidiaries, affiliates and divisions, and their respective officers, directors, shareholders and employees, from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) to the extent arising from or in connection with (i) the negligence or willful misconduct of Buyer, its agents, employees, representatives or contractors; (ii) use of a Product in combination with equipment or software not supplied by Seller where the Product itself would not be infringing; (iii) Seller's compliance with designs, specifications or instructions supplied to Seller by Buyer; (iv) use of a Product in an application or environment for which it was not designed; or (v) modifications of a Product by anyone other than Seller without Seller's prior written approval.

9. **SOFTWARE.** With respect to any software products incorporated in or forming a part of the Products hereunder, Seller and Buyer intend and agree that such software products are being licensed and not sold, and that the words "purchase", "sell" or similar or derivative words are understood and agreed to mean "license", and that the word "Buyer" or similar or derivative words are understood and agreed to mean "licensee". Notwithstanding anything to the contrary contained herein, Seller or its licensor, as the case may be, retains all rights and interest in software products provided hereunder.

Seller hereby grants to Buyer a royalty-free, non-exclusive, nontransferable license, without power to sublicense, to use software provided hereunder solely for Buyer's own internal business purposes on the hardware products provided hereunder and to use the related documentation solely for Buyer's own internal business purposes. This license terminates when Buyer's lawful possession of the hardware products provided hereunder ceases, unless earlier terminated as provided herein. Buyer agrees to hold in confidence and not to sell, transfer, license, loan or otherwise make available in any form to third parties the software products and related documentation provided hereunder. Buyer may not disassemble, decompile or reverse engineer, copy, modify, enhance or otherwise change or supplement the software products provided hereunder without Seller's prior written consent. Seller will be entitled to terminate this license if Buyer fails to comply with any term or condition herein. Buyer agrees, upon termination of this license, immediately to return to Seller all software products and related documentation provided hereunder and all copies and portions thereof.

Certain of the software products provided by Seller may be owned by one or more third parties and licensed to Seller. Accordingly, Seller and Buyer agree that such third parties retain ownership of and title to such software products. The warranty and indemnification provisions set forth herein shall not apply to software products owned by third parties and provided hereunder.

10. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE LIABILITY OF SELLER UNDER THESE TERMS AND CONDITIONS (WHETHER BY REASON OF BREACH OF CONTRACT, TORT, INDEMNIFICATION, OR OTHERWISE, BUT EXCLUDING LIABILITY OF SELLER FOR BREACH OF WARRANTY (THE SOLE REMEDY FOR WHICH SHALL BE AS PROVIDED UNDER SECTION 7 ABOVE)) SHALL NOT EXCEED AN AMOUNT EQUAL TO THE LESSER OF (A) THE TOTAL PURCHASE PRICE THEREFORE PAID BY BUYER TO SELLER WITH RESPECT TO THE PRODUCT(S) GIVING RISE TO SUCH LIABILITY OR (B) TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000). NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF USE OF FACILITIES OR EQUIPMENT, LOSS OF REVENUE, LOSS OF DATA, LOSS OF PROFITS OR LOSS OF GOODWILL), REGARDLESS OF WHETHER SELLER (a) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (b) IS NEGLIGENT.

11. **EXPORT RESTRICTIONS.** Buyer acknowledges that each Product and any related software and technology, including technical information supplied by Seller or contained in documents (collectively "Items"), is subject to export controls of the U.S. government. The export controls may include, but are not limited to, those of the Export Administration Regulations of the U.S. Department of Commerce (the "EAR"), which may restrict or require licenses for the export of Items from the United States and their re-export from other countries. Buyer shall comply with the EAR and all other applicable laws, regulations, laws, treaties, and agreements relating to the export, re-export, and import of any Item. Buyer shall not, without first obtaining the required license to do so from the appropriate U.S. government agency; (i) export or re-export any Item, or (ii) export, re-export, distribute or supply any Item to any restricted or embargoed country or to a person or entity whose privilege to participate in exports has been denied or restricted by the U.S. government. Buyer shall cooperate fully with Seller in any official or unofficial audit or inspection related to applicable export or import control laws or regulations, and shall indemnify and hold Seller harmless from, or in connection with, any violation of this Section by Buyer or its employees, consultants, agents, or customers.

12. **MISCELLANEOUS.** (a) Buyer may not delegate any duties nor assign any rights or claims hereunder without Seller's prior written consent, and any such attempted delegation or assignment shall be void. (b) The rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Seller's manufacturing location, without reference to its choice of law provisions. Each party hereby irrevocably consents to the exclusive jurisdiction of the state and federal courts located in the county and state of Seller's manufacturing location, in any action arising out of or relating to this Agreement and waives any other venue to which it may be entitled by domicile or otherwise. (c) In the event of any legal proceeding between the Seller and Buyer relating to this Agreement, neither party may claim the right to a trial by jury, and both parties waive any right they may have under applicable law or otherwise to a right to a trial by jury. Any action arising under this Agreement must be brought within one (1) year from the date that the cause of action arose. (d) The application to this Agreement of the U.N. Convention on Contracts for the International Sale of Goods is hereby expressly excluded. (e) In the event that any one or more provisions contained herein shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall remain in full force and effect, unless the revision materially changes the bargain. (f) Seller's failure to enforce, or Seller's waiver of a breach of, any provision contained herein shall not constitute a waiver of any other breach or of such provision. (g) Unless otherwise expressly stated on the Product or in the documentation accompanying the Product, the Product is intended for research only and is not to be used for any other purpose, including without limitation, unauthorized commercial uses, *in vitro* diagnostic uses, *ex vivo* or *in vivo* therapeutic uses, or any type of consumption by or application to humans or animals. (h) Buyer agrees that all pricing, discounts and technical information that Seller provides to Buyer are the confidential and proprietary information of Seller. Buyer agrees to (1) keep such information confidential and not disclose such information to any third party, and (2) use such information solely for Buyer's internal purposes and in connection with the Products supplied hereunder. Nothing herein shall restrict the use of information available to the general public. (i) Any notice or communication required or permitted hereunder shall be in writing and shall be deemed received when personally delivered or three (3) business days after being sent by certified mail, postage prepaid, to a party at the address specified herein or at such other address as either party may from time to time designate to the other.