

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 when HealthPRO issues an Award Letter.
- 1.3 In the event Supplier intends to enter into a separate agreement with a member (a "Supplier/Member Agreement") in order to detail specific arrangements, commercial or otherwise, which could, in any way, relate to the 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 even if such offending term is only to become applicable following the termination of the contract which is the subject of this RFP.
- 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 "Product/Price List" which it specifies in its Proposal at the prices and terms set out therein.
- 1.5 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, will 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.
- 1.6 All Products having expiration dates must be supplied with the longest possible shelf life.
- 1.7 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 180 days following the closing date for the Proposal submission.
- 1.8 If the Proposal relates to an earlier RFQ, except to the extent that Supplier specifically advises HealthPRO to the contrary in writing as part of its Proposal, the information contained in its RFQ response will remain accurate and binding on Supplier for the life of the contract anticipated by this RFP.

**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;
 - (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 (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 submission;
 - (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;

- (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.
- (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 amend or terminate the Contract and/or to reopen the RFP process.
 - (h) In the event that Supplier is, 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.
- 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 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 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. 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.

ARTICLE 4 COMMERCIAL TERMS AND CONDITIONS

- 4.1 Supplier will notify its authorized distributor(s) 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.
- Suppliers' use of a distributor(s) will not relieve Supplier of its obligation under the Contract.
- 4.2 Subject to Section 4.18 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. In the event Supplier's Proposal, as accepted by HealthPRO includes references to price increase and, Supplier wishes to implement such a price increase, Supplier will provide a minimum of ninety (90) days prior written notice, accompanied by Supplier's justification and any supporting documentation relating to the requested price increase.
- 4.3 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.
- 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 On a commercially reasonable efforts basis, Supplier will continuously provide real time up-to-date Product availability information and, at a minimum, will immediately notify HealthPRO in writing whenever an awarded Product is to be unavailable for shipment for a period of thirty 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 provide HealthPRO with prior written notice of any intention to allocate the supply of contracted Products amongst HealthPRO members, which notice will also include the proposed terms of such allocation, provided that in each case allocation is to be calculated based on each members' normal purchasing volumes during the Contract to date, with adjustment as necessary where purchases to date are not representative of normal requirements. Supplier will cooperate with HealthPRO to ensure allocation is equitable in minimizing the disruption to members;
 - (b) 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; 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.

- 4.8 In the event an awarded Product is to become permanently unavailable, Supplier will provide HealthPRO with sixty (60) days' advance written notice. Any resulting inability of Supplier to comply with its obligation to provide Product, or a substitute Product(s) acceptable to HealthPRO, acting reasonably, at the contracted price, 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 a recall 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 is to continue for a period of thirty(30) days or longer 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. By way of example and for purposes of clarity, Supplier will be deemed not in compliance with this obligation by offering a different size of the subject product unless the economic effect on the applicable member(s) is neutral. In the event Supplier fails to do so and should a participating member, as a result of the delay or non-performance, purchase a direct substitute of this Product from an alternate source at a higher price, Supplier will be responsible to pay the difference between the cost of the direct substitute Product and the cost to the member calculated at the contract price, provided that in each case the cost will be calculated using the member's normal purchasing volumes. In addition, Supplier will be responsible to pay HealthPRO the foregone rebates in respect of the lost sales of that Product.
- 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 30 days following the end of each month, Supplier shall, unless otherwise specifically agreed by HealthPRO in writing, submit a national line fill rate, monthly sales report to HealthPRO recording purchases of each Contracted Product by each HealthPRO member during that month in accordance with the manner prescribed by HealthPRO.
- 4.14 Within 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 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).
- 4.18 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 publicly funded 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, or healthcare region, or publicly funded 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 forth.
- 4.19 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.
- 4.20 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". Prior to the expiry of the term of the Contract, HealthPRO may, in its discretion, invite Supplier to submit the

financial terms it proposes for the option year(s), provided that such terms must, in no event, exceed any price escalators in respect of the option year(s) which were set out in the accepted Proposal.

- 4.21 HealthPRO also reserves the right, in consultation with a successful Supplier, to extend the Contract or any extension thereof for additional year(s)
- 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. 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 this standard.
- 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 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, 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.