

**Spacelabs Healthcare**  
**Terms of Sale**

1. **Terms of Agreement.** This agreement for the sale of equipment ("Equipment"), the license of software ("Software") and/or the provision of services (collectively "Products") by Spacelabs Healthcare ("Spacelabs") shall be only upon the terms of the Spacelabs Customer Quote applicable to the Product and the terms herein stated (the "Agreement"). Any additional or different terms, including terms in any purchase order, will be of no effect unless expressly accepted in writing by Spacelabs. Spacelabs' performance shall not, under any circumstances, be deemed Spacelabs' acceptance of any of the terms and conditions contained in any Customer document. If Customer issues a purchase order or other Customer document to procure the Products, then such issuance shall be deemed to constitute Customer's acceptance of these Terms of Sale. Acceptance of or payment for any of the Products shall also be deemed to constitute Customer's acceptance of these Terms of Sale.
2. **Purchase Price.** The purchase price for Equipment Products and service Products and the license fee for Software Products shall be as set forth in the Spacelabs Customer Quote. Such price assumes delivery of Products within 12 months, shipped FOB manufacturing facility for shipments within the U.S. and Ex Works for shipments outside the U.S. Prices do not include taxes, shipping and handling, or insurance, which are the responsibility of Customer. Spacelabs may partially ship orders, and will be responsible for any additional shipping charges resulting from partial shipments.
3. **Payment Terms.** Thirty (30) days after date of invoice. Spacelabs reserves the right to change Customer's payment terms or suspend shipments if Customer's financial creditworthiness or payment history fails to meet commercially acceptable standards as reasonably determined by Spacelabs. Customer agrees to pay collection expenses and legal fees incurred by Spacelabs in collecting past due balances.
4. **Customer Reporting.** Customer agrees to properly report and disclose any discounts granted by Spacelabs to Customer on the purchase of Products, to the extent required by applicable state or federal law.
5. **Software License**
  - 5.1. **License.** The term "Software" means firmware, standalone software, and updates, upgrades, or new versions of such software as are provided by Spacelabs to Customer. Spacelabs grants Customer a perpetual and nonexclusive license to install and use the Software in machine readable executable object code on the equipment for which it was designated by Spacelabs in accordance with the Software's documentation and the Quote. Customer is entitled to use the Software Product only on a single computer or terminal at any one time, unless otherwise authorized by Spacelabs. Customer has no right to sublicense the Software. This license is non-transferable except as appurtenant to a Spacelabs-authorized transfer of the related equipment; provided that, in the event of any such transfer, Customer shall deliver a copy of this Software License to the transferee and shall ensure that such transferee agrees to be bound by this Software License. Customer's license to use the Software shall commence upon the earlier of (i) the execution by Customer of an agreement with Spacelabs containing these Software terms; (ii) Customer's opening of the Software packaging; or (iii) Customer's commencement of use of the Software.
  - 5.2. **Third Party Software.** The Equipment or Software may utilize certain other Software in its operation purchased under license from third party authors ("Third Party Software"). Transfer of such Third Party Software to Customer from Spacelabs the terms of the license granted by the original licensor or, if such terms are not separately provided to Customer by Spacelabs, the terms of this Agreement (in which case the Third Party Software shall be deemed part of the Software). Customer hereby acknowledges and agrees to be bound by the terms of the license granted by the original licensor. Customer agrees to execute any such amendments to this Software License as may be required from time to time in order to comply with terms and conditions of any Third Party Software licensor. Further, Customer acknowledges and agrees that Spacelabs' suppliers, including Third Party Software vendors, are third party beneficiaries of this agreement entitled to enforce its terms directly with respect to the Products, or elements thereof, that they provide.
  - 5.3. **Limitations.** Customer hereby expressly acknowledges that Spacelabs and its Third Party Software suppliers own throughout the world all right, title and interest in the Software, any copies thereof and all intellectual property rights contained or embodied therein including the ownership to any modifications or translations of the Software. No title to or ownership of Software or the patent, copyright, trademark, trade secret or other proprietary rights to such Software is transferred to Customer. Customer shall not take any action in violation of Spacelabs' or any third party author's copyright or other intellectual property rights in the Software. Customer shall not (i) trace, disassemble, decompile, modify or reverse engineer such Software; (ii) copy or transfer the Software or any part thereof, except as expressly permitted by applicable law and except (in the case of Software that is a tool for the development of application software) as occurs in the course of using the Software in accordance with its documentation; or (iii) rent or lease the Software to another party. When information regarding the internal structure of the Software is necessary in order to obtain interoperability of the Software with other software programs, Customer shall immediately contact Spacelabs. Spacelabs may terminate any license granted hereunder if Customer breaches its obligations under the terms of this Agreement. Upon termination, Customer must destroy or return all copies of the Software.
  - 5.4. **U.S. Government Rights: Commercial Computer Software and Documentation, Use Governed by Standard Commercial License.** If a Software Product is being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), then the U.S. Government (and any prime contractor or subcontractor at any

tier) hereby acknowledge and agree that this Software Product and any data relating thereto or derived therefrom are "commercial items" as defined in 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. If the end user is a U.S. Government agency, department, or instrumentality, then the use, duplication, reproduction, release, modification, disclosure or transfer of the Software Product and any data relating thereto or derived therefrom, is restricted in accordance with 48 C.F.R. §12.211, 48 C.F.R. §12.212, 48 C.F.R. §227.7102-2, and 48 C.F.R. §227.7202, as applicable. The object code of the Software and documentation are copyrighted and published products of Spacelabs (except source code, which is copyrighted but unpublished), and all rights not granted expressly herein are reserved.

- 5.5. Products of Other Manufacturers. The right to use other manufacturers' products in connection with the Software shall be limited to items specified by Spacelabs. Despite such specification or approval, Customer shall remain solely responsible for (i) the suitability of the Software as part of any system based on Software and on equipment of other manufacturers; (ii) the verification of the mutual compatibility of Software and those of other manufacturers; and (iii) the intended purpose, limits of use and adequacy in the labeling and instructions for use of systems based on Software and on equipment of other manufacturers.
- 5.6. Upgrades. Should Customer receive any copy of the Software Product to upgrade a previous version of such Software Product, such upgraded version of the Software Product shall be the only version Customer is entitled to use unless otherwise agreed and, unless expressly otherwise permitted by Spacelabs, Customer shall destroy or erase all program material and related documentation, including all copies and modifications, relating to the previous Software Product.
- 5.7. Infringement Claims. If any third party alleges in a claim against Customer that all or a part of the Software Product licensed hereunder as used within the scope of the license infringes any intellectual property rights in the country in the territory of Customer's domicile or main place of business (the "Indemnified Claim"), Spacelabs will defend the Indemnified Claim at its expense and will hold Customer harmless against any judgment with respect thereto. This defense and indemnification obligation is contingent upon (i) Customer giving Spacelabs prompt written notice of any claim; (ii) Spacelabs being granted control of the defense, compromise or settlement of such claim, and (iii) Customer's assistance to the extent reasonably required for such defense. In the event Spacelabs receives information concerning an intellectual property infringement claim (including an Indemnified Claim) related to the Software Product it may, at its expense and without obligation to do so, upon notice to Customer to cease use of the allegedly infringing Software Product, either: (i) procure for Customer within a commercially reasonable period of time the right to continue to use the allegedly infringing Software Product, (ii) replace or modify the Software Product to make it non-infringing, or (iii) repay the license fees paid to Spacelabs for such Software Product, in which event Customer shall discontinue all use of such Software Product and Spacelabs' obligations under this Section 5.7 shall terminate with respect to such Software Product.
- 5.8. Infringement Liability Limitations. Spacelabs shall have no liability for any intellectual property infringement claim based on Customer's (i) use of the Software Product after Spacelabs' notice that the Customer should cease use of the allegedly infringing Software Product; (ii) combination of the Software Product with a product, program or data not authorized by Spacelabs; or (iii) adaptation or modification of the Software Product. For all claims described in this section Customer agrees to indemnify and defend Spacelabs, its affiliates and suppliers (including Third Party Software suppliers) from and against all damages, costs and expenses, including reasonable attorneys' fees.
- 5.9. Audit Rights. Spacelabs and any third party provider of Software shall have the right, as regards their Software, to inspect and audit, at any time during normal business hours during the applicable Software license and for three (3) years thereafter, Customer's use of the Software to verify that the customer's use has not exceeded the scope of the license rights purchased. Spacelabs or, as applicable, the third party Software provider shall conduct no more than one audit in any 12 month period. In the event that any such inspection or audit reveals that Customer has exceeded the scope of the applicable license, Spacelabs shall deliver written notice of noncompliance to Customer with an invoice for all fees and other amounts due and unpaid relating to such noncompliance at the then current fee rates together with accrued interest (accruing from the date on which the scope of the license rights purchased by Customer was first exceeded), and Customer shall promptly pay such amounts.

## 6. Product Warranty.

- 6.1. Equipment Products. Equipment Products manufactured by Spacelabs will be free from defects in material and workmanship and will perform according to the written specifications for the Products for a period of twelve months from delivery.
- 6.2. Software Products: Spacelabs warrants that it either owns or has the right to license the Software Products. Spacelabs further warrants that (i) the Software Products shall perform in accordance with the specifications contained in Spacelabs' documentation for the Software Products at the date of delivery, (ii) the media manufactured by Spacelabs on which Software Products operate shall be free from defects in material and workmanship under normal use for a period of ninety (90) days from the date of delivery thereof by Spacelabs, and (iii) the media not manufactured by but delivered by Spacelabs on which the Software Products operate will be in accordance with the media manufacturer's warranty.
- 6.3. Spare Parts: "Spare Part(s)" mean replaceable spare parts used in the Equipment Products and listed in the Spacelabs Spare Parts Price List. Spare Parts do not include disposable or user parts that must be routinely replaced, items listed in the Supplies and Accessories Price List, or computer products or peripheral devices not manufactured by Spacelabs or produced on Spacelabs' behalf. Any original Spare Part for which Spacelabs has supplied a replacement Spare Part

shall become the property of Spacelabs. Spare Parts shall be free from defects in material and workmanship for 120 days. Spacelabs reserves the right to use a refurbished part as a replacement spare part.

- 6.4. Supplies and Accessories: Single patient use, disposable or consumable supplies and accessories will be free from defects in material and workmanship at the time of delivery. All other supplies and accessories shall be free from defects in material and workmanship for 120 days from the date of delivery unless otherwise specified.
- 6.5. Service Products. Spacelabs warrants that service will be performed in a prompt, diligent, competent and workmanlike manner, and will be free from defects in material and workmanship for a period of one year from completion.
- 6.6. Third Party Products. Products manufactured by a third party manufacturer shall carry the warranties given by such third party.
- 6.7. Conditions and Limitations. For the warranty to apply, Spacelabs must witness or be able to reproduce the defect. Spacelabs' warranties and obligations will not apply if the defect results from: (i) misuse or abuse of the Product by Customer; (ii) defects caused by normal wear and tear or deterioration of the Product; (iii) installation, repair or alteration of the Product by persons not authorized by Spacelabs (Customer's biomedical engineering staff will be deemed authorized personnel to repair a Product upon successful completion of Spacelabs technical training for the Product); (iv) defects caused by a product, software or part not originating from Spacelabs; (v) failure of Customer to maintain the Product according to the Product documentation or, for Software, use of the Software in violation of the licensing terms stated herein or failure to install the most recent no cost, mandatory software update within 120 days after release by Spacelabs; or (vi) failure resulting from natural causes, power fluctuation, or failure. Spacelabs' obligation and liability under any warranty is limited to repair or replacement of a defective Product. If the Product is not repaired or replaced in a reasonable time, Spacelabs shall credit Customer the defective Product's purchase price upon return of the defective Product to Spacelabs. Customer must obtain a return of goods authorization including packaging and shipping instructions from Spacelabs before Equipment or Software Products can be returned for warranty service or adjustment. SPACELABS AND ITS SUPPLIERS MAKE NO OTHER WARRANTY OF ANY KIND WHATEVER, EXPRESS OR IMPLIED, AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY SPACELABS AND ITS SUPPLIERS.
- 6.8. Customer Responsibilities during Warranty Coverage.

- 6.8.1. Customer shall ensure appropriate biomedical and nursing personnel participate in Spacelabs biomedical and clinical education training and provide training to peers, as appropriate. Prior to implementation of the Spacelabs products, Customer shall have developed and implemented a process to handle first call response within their biomedical, nursing and information technology teams;
- 6.8.2. Customer shall make appropriate resources available to facilitate resolution of any issue that may arise during the warranty period;
- 6.8.3. If Customer cannot resolve an issue with reasonable and good faith efforts, Customer shall promptly telephone the Spacelabs Technical Support Team regarding such issue, then work cooperatively with Spacelabs Technical Support Team to troubleshoot issue and facilitate resolution. If field service is needed, Customer shall provide Spacelabs field service engineers with appropriate contact information and reasonable support in its resolution of the matter;
- 6.8.4. Customer shall provide Spacelabs with advance notification of any planned system changes that may impact the Spacelabs Software Products; and
- 6.8.5. Customer is responsible for the support of all non-Spacelabs equipment used in conjunction with the Spacelabs Products, including but not limited to non-Spacelabs computer hardware, operating systems and network cabling, routers, and switches.
- 6.8.6. Customer is responsible for removing PHI prior to return of Product to Spacelabs unless the Product cannot be operated to complete such removal.

6.9. Description of Warranty Coverage.

- 6.9.1. Telephone Support. Spacelabs shall provide reasonable telephone support in the operation, planned maintenance and corrective maintenance of Products covered by the Agreement. Spacelabs does not warrant that telephone support alone will be sufficient to resolve Product issues.
- 6.9.2. Remote Diagnostics Support. Spacelabs shall, subject to all necessary software, hardware and phone lines being installed at Customer's site, provide reasonable remote dial-up support in the corrective maintenance of the Products. Spacelabs does not warrant that such support alone will be sufficient to resolve Product issues.
- 6.9.3. Corrective Maintenance Coverage. Customer may choose one of the following two types of corrective maintenance coverage; save that for anesthesia machines, only Corrective Maintenance Onsite Coverage applies.
  - 6.9.3.1. Corrective Maintenance Onsite Coverage. If Product issues cannot be resolved telephonically through good faith efforts of the parties, Spacelabs shall, upon Customer's request and between 8:30 am and 5:00 pm local time Monday through Friday (holidays excluded), provide any travel, accommodation, labor and Spare Parts required to complete, at Customer's site, required corrective maintenance. Customer agrees to promptly notify Spacelabs in writing or by phone of any Product failure which may require corrective maintenance.
  - 6.9.3.2. Corrective Maintenance -- Return to Depot CM Labor Coverage. If Product issues cannot be resolved telephonically through good faith efforts of the parties, Spacelabs shall, upon Customer's request and

between 8:30 am and 5:00 pm PST Monday through Friday, provide at Spacelabs' site any labor and Spare Parts needed to complete required corrective maintenance. Customer agrees to promptly notify Spacelabs in writing or by phone of any Equipment failure which may require corrective maintenance and secure an RMA number to facilitate the Equipment's return. Customer shall be responsible for all freight and insurance charges in shipping the Products to Spacelabs; Spacelabs shall pay all return shipment costs. Risk of loss shall pass to Spacelabs upon receipt of the Product.

6.9.4. Service Loaners. If available from Spacelabs' stock of loaner equipment, Spacelabs will upon Customer request provide a loaner unit for Customer use during warranty repair.

6.10. Subsequent Agreed Coverage. After the expiration of the warranty set forth above, Customer will receive the amount of Depot Repair coverage identified in the Customer Quote (if any) on Spacelabs' standard terms for same. Such additional coverage shall be provided for any Spacelabs Product that is not a Spare Part or on Spacelabs Supplies and Accessories Price List. Depot Repair coverage shall be provided as described above under Corrective Maintenance -- Return to Depot CM Labor Coverage. Telephone support and remote diagnostic support shall also be provided.

7. Product Installation and Training. Spacelabs shall provide installation and training services in accordance with and to the extent of Spacelabs' then current installation and training policies.

8. Return of Products and Restocking Charges. Return of Equipment or Software Products must be approved in writing by Spacelabs prior to return and must take place within twelve months of shipment. Products which Spacelabs agrees may be returned for Customer convenience will be charged a restocking fee of 20% if returned within the first six months after shipment, and 40% for the seventh through twelfth month.

9. Demonstration and Evaluation Products. If Spacelabs provides Customer with demonstration or evaluation Equipment or Software ("Loaned Materials") in connection with Customer's use of Spacelabs Products, the rights and obligations of the parties in connection with the Loaned Materials will be governed by these terms and conditions, save that i) Spacelabs and its suppliers shall retain ownership of the Loaned Materials; ii) the license for any Software included with the Loaned Materials is non-exclusive, non-transferable, and limited to the term of Customer's use of the Loaned Materials; iii) Customer shall return the Loaned Materials to Spacelabs upon the earlier of Spacelabs' request or 90 days after delivery to Customer; and iv) Customer shall bear the risk of loss or damage to the Loaned Materials while in Customer's possession. Such Loaned Materials will be used only for purposes of patient care. By accepting this evaluation sample of a Spacelabs product, customer agrees to return the evaluation product to Spacelabs within 90 days of delivery.

10. Product Samples. If Spacelabs provides Customer with supplies and accessories Product samples, Customer agrees to use such Product samples only for purposes of patient care, and to ensure the samples are used within 90 days after delivery to Customer.

11. Installation, Implementation, and Product Service Specific Terms.

11.1. Installation and Implementation Service Specific Terms.

11.1.1. Customer will make available to Spacelabs in a timely manner any information, data or documents in Customer's possession which Spacelabs may require to perform the installation and implementation services (the "Project"). Spacelabs will be entitled to rely upon the accuracy and completeness of such information, data or documents.

11.1.2. Customer will designate and make available to Spacelabs on a regular basis a representative who is fully familiar with the Project and who is authorized to act on Customer's behalf in connection with the Project, to approve changes to the Project, and to inspect the Project.

11.1.3. Customer will provide Spacelabs with access to the Project site, and prevent interference with Spacelabs' Project services by Customer employees, visitors, trade unions, patients, and other contractors.

11.1.4. Should Spacelabs or Customer propose a change in the nature or scope of the Project, Spacelabs will submit to the Customer a written description of the work involved in the proposed change and the cost thereof. Should Customer direct Spacelabs to proceed with the change, Spacelabs will prepare a written change order describing the change and the adjustment in the Project Price required by such change ("Change Order"). No change will be effective unless and until it is embodied in a writing signed by the parties.

11.1.5. Customer represents and warrants that no asbestos or other hazardous materials (as defined in the Occupational Health and Safety Act of 1970 and regulations promulgated thereunder) are located within or adjacent to Spacelabs' Project work site, except as may have been disclosed to Spacelabs in writing prior to the execution of the Agreement. In the event that such hazardous materials are found on or adjacent to the Project work site during the course of Spacelabs' services, Spacelabs will immediately suspend all services and notify the Customer orally, with confirmation in writing. Removal of all such hazardous materials will be the sole responsibility of the Customer. Spacelabs may, at its option, treat the presence of such hazardous materials

as grounds for terminating the Agreement or suspending the Project until Customer certifies in writing to Spacelabs and Spacelabs confirms that all such hazardous materials have been removed. Spacelabs will notify Customer in writing within 10 working days after its initial notice of work stoppage if it elects to terminate or suspend the Project services.

- 11.1.6. Spacelabs will not be liable for any claims or damages arising from or related to a) pre-existing site conditions, construction or design; b) information, data, or documents provided by Customer for use by Spacelabs in connection with services; or (3) work of third parties not under contract to Spacelabs.
- 11.1.7. The term "Substantial Completion" means the date when the Project or a designated portion thereof is sufficiently complete, in accordance with the Agreement, for Customer's use. Spacelabs will use reasonable best efforts to achieve "Substantial Completion" of the Project by the estimated completion date as agreed by Spacelabs in writing. Customer will promptly advise Spacelabs in writing of any defects in material or workmanship, which are discoverable with reasonable diligence during the Project services. Spacelabs will notify the Customer when the Project has reached Substantial Completion, whereupon the parties will promptly inspect the Project together and identify any defects, deficiencies or services remaining ("Punch List"). Upon the correction or completion of Punch List items, the Project will be promptly re-inspected. When the Project is completed, Spacelabs will invoice and the Customer will make the final payment.
- 11.1.8. The price for the Project services is stated in the Project Proposal. Such price, except as otherwise stated in such Project Proposal, includes all applicable insurance, permits, freight, taxes, and miscellaneous expenses necessary to perform the Project services. Any utility assessments or connection charges, taxes or fees, licenses or permits relating to the operation of the facility are to be paid by Customer in addition to the Price. The Price may be adjusted for changes or additional work agreed to by the parties in writing. Should Customer direct or approve Project services outside of normal working hours, costs incurred will be at the Customer's expense.
- 11.1.9. In the event this Agreement is terminated for any reason, Customer will pay Spacelabs for the services performed to the termination date, costs of canceling services, materials or equipment ordered, costs of materials not cancelable and other reasonable termination costs. Customer may, at its option and upon timely written notice to Spacelabs, assume all responsibility for any services, materials or equipment ordered, and such assumption will constitute Customer's waiver of any and all claims against Spacelabs.

## 12. Product Service Specific Terms.

- 12.1. Service is in addition to, and not a substitute for, routine Product maintenance. It is Customer's responsibility to follow the routine maintenance instructions provided by Spacelabs in the Product operations manual and accompanying labels and/or inserts for each Product, as failure to comply may result (as determined by Spacelabs in its sole discretion) in increased charges for service, loss of service coverage, and/or loss of warranty coverage for such Product. Customer must ensure that Product made available for service is free of biological hazard materials, additional; Product or Spare Parts returned to Spacelabs must also be free of biological hazard materials. Customer is responsible for removing PHI prior to return of Product to Spacelabs unless the Product cannot be operated to complete such removal. Spacelabs will have no obligation to perform product service or accept returned Products or Spare Part(s) unless these conditions have been satisfied.
- 12.2. Customer must ensure that Product is available for service at the agreed time and place. Spacelabs reserves the right to invoice Customer for service if the Product is not available.
- 12.3. Products will be included for service only after Spacelabs has determined that the Product is in good operating condition and eligible for coverage hereunder. If Spacelabs determines that preliminary Product service or initial repairs are required, Spacelabs shall advise Customer of same and separately invoice Customer for such preliminary service or initial repairs at Spacelabs' then current list prices/rates for time and materials.
- 12.4. Support Service Term; Payment. The support service term for a Product is the period shown in the Customer Quote; provided, however, that Spacelabs shall not be obligated to provide service until it receives advance payment for the billable period set forth on the face hereof.
- 12.5. Service Termination. Either party may terminate Product service in the event the other party is in default of any of that party's obligations as regards service and such default remains uncured 30 days after receipt of notice of such default. Customer may terminate Product service for convenience, with or without cause, by provision of thirty days written notice to Spacelabs.
- 12.6. Limitation on Product Service. Spacelabs shall not be obligated to provide any Product service or spare parts requested to upgrade the Product from the applicable specification at the time of purchase, or for cosmetic reasons, or made necessary in whole or in part by improper use, abuse, neglect, negligence, accident, catastrophe, acts of God or any malfunction resulting from faulty maintenance, improper repair, damage and/or alteration by anyone other than Spacelabs.

## 13. Miscellaneous.

- 13.1. Proprietary Rights. "Intellectual Property Rights" means patent, copyright, trademark, trade secret and any other intellectual property rights. Spacelabs and its suppliers retain all rights, title and interest in and to the Intellectual Property Rights in the Products and any updates, upgrades, or derivative works thereof. Customer does not acquire any other rights, express or implied, in the Products. Spacelabs' design, drawings, tracings, reproductions and specifications will remain Spacelabs' property.
- 13.2. Confidentiality. Each party agrees to keep the other party's business, technical and proprietary information, including Product pricing, confidential. Each party shall not use such information except as necessary for the performance of this Agreement, and shall not disclose such information except as required by law. Each party shall limit disclosure of such confidential information only to those of its employees and contractors who have a need to know the information and are bound by confidentiality obligations as regards the information that are similar to those stated herein. Upon cancellation of this Agreement or return of the Products, each party will return to the other party all such confidential information.
- 13.3. Liability. Neither party, nor any Spacelabs supplier (including suppliers of Third party Software), shall be liable to the other or to any third party for any incidental, indirect, special or consequential damages in connection with this Agreement or in connection with the Products. Customer shall at all times maintain the necessary backup and security for any and all data and application software used with the Equipment and Software Products, and shall be responsible for any loss of any such data or application software.
- 13.4. Export Controls. Customer acknowledges that export and re-export of the Products is subject to compliance with the Export Administration Act, the regulations of the U.S. Department of Commerce and other export controls of the United States of America as amended from time to time, and the Export Control Act 2002, the Export Control Order 2008, EU Regulation 428/2009 and the Customs and Excise Management Act 1979 and other export controls for the United Kingdom as amended from time to time (the "Export Laws"). Customer shall not export or re-export the Products, Software, technical data, or documentation associated with the Products (including, but not limited to, processes, services, data, and reports derived from the use of the Products) to any country or person to which export or re-export of such items is prohibited by the Export Laws. Spacelabs shall have the right to delay shipments or terminate the Agreement, in whole or in part, and without liability, should Spacelabs not obtain in a timely way all required export licenses and approvals necessary to export the Products.
- 13.5. Compliance with Laws. Spacelabs will comply with all federal and state laws, ordinances, regulations and codes applicable to the Products. Spacelabs and Customer agree to fully comply with the Health Insurance Portability and Accountability Act of 1996 and its associated regulations including 45 C.F.R. §§ 160 and 164, Standards for Privacy of Individually Identifiable Health Information, Final Rule (the "Final Privacy Rule"), and 45 C.F.R. §§ 160, 162 and 164, Health Insurance Reform: Security Standards, Final Rule (the "Final Security Rule"), collectively referred to as ("HIPAA"), as they may be applicable to Spacelabs and Customer. Spacelabs shall use PHI only in connection with services performed under this Agreement or as otherwise authorized by HIPAA.
- 13.6. Governing Law; Jurisdiction. The agreement between the parties regarding the Products shall be governed by and interpreted in accordance with the laws of the State of Washington, USA, without reference to its laws relating to conflicts of law. Any legal action arising out of or relating to the sale of Products shall be brought only in the state and federal courts located in King County, Washington, and the parties irrevocably consent to the jurisdiction and venue of such courts.
- 13.7. Delays. Spacelabs will not be liable for any delay or default caused by events beyond its reasonable control, including by way of example any acts of God; acts of third parties; Customer's (or any of Customer's employees, agents, or representatives) actions or omissions; fires, floods, and other similar natural causes; sabotage; vandalism; labor disputes; strikes; lockouts; lack of storage, labor, supplies, fuel, or power; delays in receiving any permits or licenses; delays caused by any laws, regulations, ordinances, or any government action or inaction; or delays caused by contractors and subcontractors. The time for performance of Spacelabs' obligations hereunder will be extended for a commercially reasonable period of time in the event of any delay or default for such causes.
- 13.8. Access to Records. If and to the extent required by Section 1395x(v)(1)(l) of Title 42 of the United States Code, until the expiration of four (4) years after the termination of the Agreement, Spacelabs shall make available, upon written request by the Secretary of the Department of Health and Human Services, or upon request by the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of the books, documents and records as are necessary to certify the nature and extent of the costs of the services provided by Spacelabs to Customer. Spacelabs further agrees that in the event it carries out any of its duties for Customer through a subcontract with a related organization with a value or cost of Ten Thousand Dollars (\$10,000.00) or more over a twelve (12) month period, such subcontract shall contain a provision requiring the related organization to make available until the expiration of four (4) years after the furnishing of such Services pursuant to such subcontract upon written request to the Secretary of the United States Department of Health and Human Services, or upon request to the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of such subcontract and such books, documents and records of such organization as are necessary to verify the nature and extent of such costs.
- 13.9. Invalidity; Waiver. The invalidity or unenforceability of any provision hereof will not affect any other provision, and all terms and conditions will be construed in all respects as if any such invalid or unenforceable provision(s) were omitted. The failure of either party to require the performance of any obligation will not affect its right to require such performance at any time thereafter. The waiver of any remedy with respect to any default will not be taken as a waiver of any remedy for any succeeding default.