

BVI Standard Terms and Conditions

These Standard Terms and Conditions ("Terms and Conditions") shall apply to and govern the sale of the Equipment, including any accessories, and other BVI Products set forth in the Quote Agreement (herein after referred to as the "Quote" or "Agreement"), purchase order and invoice by BVI to Buyer to the exclusion of all other terms and conditions, including any terms and conditions which Buyer may purport to apply under Buyer's purchase order or similar document or which could be implied by trade custom, practice or course of dealing. BVI objects to other terms and conditions that may be proposed by Buyer, including Buyer's Purchase Order. Any variation to these Terms and Conditions (including any special terms agreed between the parties) shall be inapplicable unless agreed in writing by BVI.

No particulars, statements or descriptions, whether contained in any advertising matter, catalogues, brochures, price lists or otherwise provided by BVI concerning the Products, nor any oral representations by any employee, agent or representative of BVI shall form part of the agreement between the parties (including these Terms and Conditions) or be treated as a representation on the part of BVI.

BVI and Buyer agree as follows:

Section A. The Products.

1. Equipment Purchase

BVI shall sell to Buyer and Buyer shall purchase from BVI the equipment and its accessories identified in the Quote (collectively the "Equipment") in accordance with these Terms and Conditions. Upon execution of the Quote, Buyer will submit a purchase order ("Purchase Order") to BVI. The issuance of a Purchase Order is, however, not necessary in order for the parties to be irrevocably bound in accordance with the terms of the Quote.

2. Returned Equipment

BVI in its sole discretion may accept the returned equipment, accessories and other reusable devices from Buyer in the state "as is" at the Effective Date. The consideration for the returned equipment, accessories and other reusable devices set out in the Quote may be deducted from the Price set forth in the Quote for the Equipment payable by Buyer. Upon request, Buyer will make the returned equipment, accessories and other reusable devices available for pick up by BVI at Buyer's location and at a date to be confirmed between BVI and Buyer. Buyer represents and warrants that it has full and unencumbered legal title to the returned equipment and that the return of such equipment does not violate any contractual or other legal provision to which Buyer may be bound.

3. Consumable Products and, if applicable, Minimum Purchase Volume Commitment

The price payable by Buyer for the Consumable Products (the "Products") will be as set out in a Quote. Buyer will issue to BVI from time-to-time purchase order(s) ("Purchase Order" or "PO") for the purchase of the Products. Purchase orders can be issued to BVI on paper, by electronic mail or by any other means of electronically exchanging information. Each accepted Purchase Order constitutes a separate sales contract between Buyer and BVI governed by the provisions of this Agreement.

If applicable, during each twelve (12) month period during the Term of this Agreement, Buyer may agree to purchase an annual minimum purchase volume of the Products. Such agreement shall be set out in a separate agreement (the "Minimum Purchase Volume Commitment").

Section B. General Conditions

1. Term

This Agreement is entered into on the "Effective Date" as set forth in the Quote and shall remain in effect for a period of one (1) year (the "Initial Term"), upon the expiry of which this Agreement will automatically be prolonged for an indefinite term (the "Term"). During the Term, this Agreement may be terminated by either party

at any time with (i) ninety (90) days prior written notice, or (ii) immediately in case of breach by the other party of its obligations thereunder.

2. Orders, prices, fees and payments

2.1 Orders

By entering into this Agreement and/or placing an order, Buyer warrants that it is in compliance with and respects all applicable laws and regulations regarding the purchase, importing, and delivery of the Equipment and Products. Once placed, the order is binding on Buyer and cannot be cancelled by it without the written consent of BVI.

All Purchase Orders shall be governed by and interpreted in accordance with the terms and conditions contained herein and all Purchase Orders confirmed by BVI constitute an integral part of this Agreement. The parties agree that any pre-printed terms and conditions contained on a Purchase Order shall be overridden and of no force or effect.

BVI reserves the right to alter orders (quantities, delivery dates and/or lead times) (i) where quantities specified in an order, including an accepted Purchase Order, are significantly higher than historical norms, or (ii) in times of short supply. BVI further reserves the right to deliver the Products by instalments in any sequence and to tender a separate invoice in respect of each instalment.

2.2 Prices

Prices for Products are set forth in the Quote. All prices quoted shall be in United States Dollar (“USD”). Unless otherwise agreed to by the Parties, after the Initial Term, BVI may increase prices at any time for any reason in its sole discretion but will use its reasonable efforts to give Buyer at least thirty (30) days prior written notice before the effective date of the price changes.

All prices and other fees under this Agreement are exclusive of any tax, levy, import duties or similar governmental charge (including VAT taxes, excise taxes, and sales and use taxes) that may be assessed by any jurisdiction, whether based on gross revenue, the delivery, possession or use of the Products and/or the Equipment, performance or use of the services, the execution or performance of this Agreement or otherwise. BVI reserves the right to change prices at any time following expiry of the Term.

2.3 Payment

Unless expressly agreed otherwise in the Quote, payment terms are net thirty (30) days from the date of invoice of the Products and/or the Equipment. For Equipment, Buyer will be invoiced on the earlier of: (i) installation of the Equipment, or (ii) ten (10) days of delivery of Equipment.

Any credit terms or extension of credit may be changed or withdrawn at any time. If in the opinion of BVI, the credit-worthiness of Buyer deteriorates before delivery of the Products and/or the Equipment, BVI may require full or partial payment of the price prior to delivery of the Products and/or the Equipment or the provision of security for payment by Buyer in a form acceptable to BVI. BVI will notify Buyer of this requirement.

Non-payment, when due, of a single invoice shall render the outstanding balances on all the other invoices recoverable immediately, even those that have not fallen due yet. In case of non-payment of any invoices related to the sale of the Equipment, Buyer shall, on BVI's first request, make available the Equipment for pick up by BVI and in such case, Buyer shall pay the transportation and other costs incurred by BVI in originally installing the Equipment and in returning the Equipment to BVI's premises following pick up.

2.4 Interest and set off

Interest on late payments shall accrue daily and compound monthly at a yearly interest rate of ten percent (10%) (without exceeding the highest lawful rate of interest (if any)), calculated from the date such amount was due until the date payment is received by BVI.

Buyer may not set-off, deduct or withhold payment of any amount due to BVI because of any counter-claim, abatement, or other reason, whether arising from breach of contract, tort (including negligence), breach of statutory duty or any other matter whatsoever in order to justify withholding payment of any such amount in whole or in part.

3. Delivery, Risk and Title

3.1 Delivery of the Products

The Products are delivered in accordance with the shipping arrangement as set out in the Quote and will be delivered FOB destination. Products will be shipped in accordance with BVI's Order and Shipping Policy. Delivery dates or lead times set out in the Quote for delivery of the Products are intended as estimates only and shall not be of the essence. BVI shall not be liable in any way for any direct or indirect loss, damage or expense (including loss of profits and liability to third parties) suffered or incurred by Buyer as a consequence of any delay in delivery. All visible defects or discrepancies (shipping, shortages, overages, missing documents, damages, pricing, billing charge etc.) are to be reported within eight (8) calendar days of physical delivery date via phone call, email and/or debit memo notification. Failure to provide notification within eight (8) calendar days of the physical receipt will be grounds for denial of the claim.

3.2 Risk and Title

Risk in the Equipment and the Products shall pass to Buyer on delivery to Buyer's facility.

Title, property and ownership in the Equipment shall pass from BVI to Buyer on the earlier of: (i) installation of the Equipment, or (ii) ten (10) days of delivery of Equipment.

Title, property and ownership in the Products shall pass to Buyer on delivery to Buyer's facility.

4. Warranty

4.1 General

Except as expressly provided in this Section B.4, all warranties, conditions, representations, indemnities and guarantees with respect to the Products, whether express or implied, arising by law, custom, prior oral or written statements by BVI or otherwise (including, but not limited to any warranty of merchantability, non-infringement, or fitness for a particular purpose) are hereby overridden, excluded and disclaimed.

BVI SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES FOR BREACH OF THE LIMITED WARRANTY. TO THE MAXIMUM EXTENT PERMITTED BY LAW. BVI EXPRESSLY DISCLAIMS, AND BUYER EXPRESSLY WAIVES, ALL OTHER WARRANTIES, WHETHER EXPRESSED, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

4.2 Warranty Terms

BVI represents and warrants that the Equipment (Ref OME6000U), including the console and the wireless footswitch (excluding VueProbe Single Use Probes ELP19SU5 and ELP19CU5**, and Sterile drapes SD6000), shall be free from material defects in materials and workmanship for a period of one (1) year from the date of invoice. The foregoing warranty shall not apply to any Single Use Probe, and will be void if the Product(s) has been misused, neglected, improperly stored or handled, altered, abused or used for any purpose other than the one for which it was manufactured or if the Products failure to conform to the foregoing warranty was due in whole or in part to other conditions beyond the control of BVI. The warranty shall also not apply in case of installation/service being performed by entities not previously certified and approved in writing by BVI.

(**) The warranty on any Single Use Probes and sterile drapes shall be for a period of sixty (60) days from date of invoice.

This warranty is not transferable and is subject to limitations herein.

Buyer must notify BVI of any (latent) defect within eight (8) days after Buyer has or could have reasonably discovered the defect. Notwithstanding anything to the contrary herein, the following defects will not be covered by any warranty hereunder:

- defects due to mishandling during shipping (to the extent the shipping of the Products is at Buyer's risk) or storage; or
- defects due to use that does not comply with:
 - applicable laws and regulations,
 - the instructions provided by BVI,
 - good clinical practice, or
 - the information in the Product instructions and/or on its packaging; or
- defects that did not exist at the time of delivery and/or that are the result of normal wear and tear on the Products, or that are the result of deterioration or accidents caused by carelessness, abuse or clumsiness, or lack of maintenance of the Product(s).

For the avoidance of doubt, Buyer shall have no claim against BVI for any defects in the Products after expiration of the warranty period.

BVI reserves the right to ascertain whether the defective Products have been altered, tampered with, in any way, or have been damaged by improper use. The opinion of BVI's laboratory shall be binding upon the parties.

The warranty is void if the serial number of the Product(s) has been lost or has been tampered with and/or found to be illegible.

Without prejudice to the warranty terms as set out herein, Buyer's sole and exclusive remedy, and BVI's sole obligation in satisfying Buyer's claims for defects under the respective warranties, shall be to replace or, at BVI's sole discretion, grant Buyer a credit for such returns against future purchases.

4.3 Additional Services

In case the Quote mentions Additional Services (preventive maintenance or comprehensive maintenance), the terms and conditions applicable to such Additional Services will be set out in a separate services agreement between the Parties.

4.4 Returns

Products may not be returned to BVI unless BVI has authorized the return in writing in accordance with BVI's Return Policy. Buyer's sole and exclusive remedy, and BVI's sole obligation in satisfying Buyer's claims for defects, shall be to replace or, at BVI's sole discretion, grant Buyer a credit for such returns against future purchases.

5. Recall

Buyer agrees to cooperate and assist BVI in a reasonable manner in any recall actions in respect of the Products and to follow any reasonable guidelines or instructions issued by BVI in connection therewith.

6. Training and Technical Support

If requested by Buyer, and unless agreed otherwise at Buyer's sole expense, BVI will provide reasonable training in respect of the Products and/or the Equipment or their use and/or reasonable on the job technical support.

7. Expiration of Products

Buyer shall no longer use and shall see to it that its customers, employees and/or affiliates will no longer use, any and all Products for which the validity period specified in the labelling of the Products has expired.

8. Complaints and Adverse Events

Buyer shall immediately and no later than within two (2) days of Buyer's receipt or knowledge, report Buyer complaints and adverse events to BVI through normal channels for resolution and to BVI's Quality Assurance Department. Buyer's report to BVI shall include a copy of all communications with Buyer or relevant third party.

Complaints may take the form of failure to meet BVI specifications, quality, durability, reliability, safety, effectiveness, or performance. If requested by BVI in writing, Buyer shall use its best efforts to procure the Products and/or Equipment that have, or have possibly been, the cause of a Buyer complaint/adverse event and return said Products and/or the Equipment to BVI to permit BVI to perform an evaluation of the Products and/or the Equipment. The steps taken by Buyer in such circumstances shall be detailed in writing to BVI. Buyer shall consult with BVI before taking any steps in response to any complaint or adverse event. Where a corrective action is determined to be necessary Buyer shall, when so requested in writing, assist BVI in the execution of such action.

9. Traceability and Storage

Buyer shall keep all stocks of the Products that it holds in conditions appropriate for their storage, including by complying with any storage or handling guidelines as BVI may provide from time to time as well as guidelines and recommendations issued by the health authorities applicable in the territory in which the Products and/or Equipment is used, and to establish and maintain procedures for the control of storage areas and stock rooms for Products to prevent mix-ups, damage, deterioration, contamination, temperature or other adverse effects pending use or distribution and to ensure that no obsolete, rejected, or deteriorated Product is used or distributed. With respect to each of the respective Products, Buyer shall comply with the obligations and rules relating to traceability and storage thereof, as communicated by BVI from time to time.

10. Liability

- (a) Except as expressly stated in this Agreement, BVI does not give any representations, warranties or undertakings in relation to the Products and/or the Equipment or in relation to the performance of its obligations under these Terms and Conditions. Any representation, condition or warranty which might be implied or incorporated into these Terms and Conditions by reason of statute, common law or otherwise is excluded to the fullest extent permitted by law.
- (b) Under no circumstances will BVI, its agents or licensors be liable to or any other person for any loss of income, loss of actual or anticipated profits, loss of business, loss of contracts, loss of goodwill or reputation, loss of anticipated savings, loss of marketing commitments, loss of data, goodwill, use of money, or use of products, interruption in use or availability of data, stoppage of other work or impairment of other assets or any type of *lucrum cessans* or any consequential, indirect, special, punitive, or incidental damages, whether foreseeable or unforeseeable, based on claims in contract (including *grave fault*), indemnity, tort or otherwise arising out of or in connection with this Agreement or any separate contracts thereunder, the sale of Products, or performance of the deliverables resulting therefrom.
- (c) In no event shall the aggregate liability to Buyer or any other person which BVI and its agents or licensors may incur, whether foreseeable or unforeseeable, based on claims in contract (including *grave fault*), tort, indemnity or otherwise arising out of or in connection with this Agreement, the sale or the use of the Products and/or the Equipment, exceed, as applicable, the total amount actually paid to BVI by Buyer for the applicable Products and/or Equipment that caused the damage, or (ii) the total amount paid to BVI by Buyer pursuant to this Agreement in the twelve (12) months prior to the event(s) giving rise to any claim for damages.
- (d) Nothing in this Agreement shall restrict or exclude BVI's liability for death or personal injury caused by BVI's negligence or the negligence of its employees or sub-contractors or any other liability which may not be lawfully excluded or limited.
- (e) The Parties confirm that the provisions on liability as set out in this Section are indivisibly connected to the pricing and remuneration provisions in this Agreement. The Parties expressly acknowledge that without these provisions they would not have concluded this Agreement with these pricing and remuneration provisions.

11. Indemnification

Buyer shall indemnify and hold BVI and its affiliates harmless from and against any liability, judgment, losses, damages or expenses incurred directly as a result of a third party legal action to the extent arising out of, due to or related to any claim, action or proceeding, cost and expense arising from the use or the sale of the Products

and/or Equipment purchased by Buyer from BVI, except to the extent that such claim, action or proceeding, cost and expense arises out of the failure of such Products and/or Equipment to meet the warranty set forth in this Agreement.

Buyer shall furthermore indemnify and hold BVI and its affiliates harmless from and against any liability, judgment, losses, damages or expenses incurred directly as a result of a third party legal action to the extent arising out of, due to or related to any claim, action or proceeding, cost and expense arising from (i) the failure by Buyer to comply with the provisions of this Agreement or of applicable laws and regulations; (ii) a negligent act, misconduct or omission of Buyer; (iii) Buyer's use of the Products and/or the Equipment.

12. Compliance

12.1 General

Buyer covenants and agrees that all of its activities performed, directly or indirectly, in connection with this Agreement shall be carried out in compliance with all applicable laws, regulations, ordinances, rules, industry standards, codes of conducts, best distribution practices, guidelines and regulations of any governmental or regulatory authority having jurisdiction over Buyer and/or its activities.

12.2 Export controls and sanctions

Buyer represents and warrants its understanding that any Products and/or Equipment, or related technical information supplied to Buyer in accordance with this Agreement, may be subject to the jurisdiction of the export control and economic sanctions laws and regulations of the U.S., including but not limited to the United States Export Administration Regulations ("EAR") set forth in 15 C.F.R. §730-774 and the economic sanctions programs as set forth in 31 C.F.R. §500-598 and certain executive orders, the European Union, the United Kingdom, Ukraine and/or of other countries or international organizations (collectively, "**Trade Control Laws**"). Buyer shall take no action that violates, or would cause BVI to be in violation of, the Trade Control Laws.

Buyer shall not re-import into the United States, nor (re-)export any Products and/or Equipment outside of the US without BVI's specific written authorization. In the event such authorization is granted in writing by BVI, Buyer shall (i) comply strictly with all applicable requirements of the Trade Control Laws and any other applicable export control requirements and (ii) cooperate fully with BVI in any official or unofficial audit or inspection that relates to these controls, including, but not limited to, making available to BVI such of Buyer's records that BVI may reasonably request to confirm Buyer's compliance with these controls.

In no event shall Buyer export, re-export, divert, transfer or disclose, directly or indirectly, any Products and/or Equipment, or related technical information, document or material or direct products thereof to any individual or entity, directly or indirectly, who is (i) included on a "Restricted Parties List" maintained by the European Union, United Kingdom, United States, Ukraine or United Nations;¹ (ii) ordinarily resident, located, or organized in a jurisdiction that is the subject of country-wide or territory-wide sanctions administered by the European Union, its Member States, the United Kingdom ("UK"), Ukraine or United States, in each case, in violation of the Trade Control Laws, including but not limited to, Cuba, the Crimea region, the temporarily occupied territories of Ukraine (as this term is defined under the Ukrainian law at any time during the Term of this Agreement), Iran, North Korea, or Syria; (iii) owned or controlled by, or acting on behalf of, any of the foregoing; or (iv) a party with whom transactions are otherwise prohibited under any other laws of the United States, UK, European Union or its Member States or Ukraine, unless otherwise authorized by specific or general licenses or pursuant to other authorization. Buyer covenants and agrees that it will screen or review potential customers against the Restricted Parties Lists prior to re-selling, supplying, or otherwise transferring or releasing any Products and/or Equipment to any person. Buyer further covenants and agrees not to re-sell, supply, or otherwise transfer or release any Products and/or Equipment in connection with this Agreement, to any person if Buyer knows or has reason to

¹ "Restricted Party Lists" include the list of sanctioned entities maintained by the United Nations; the Specially Designated Nationals and Blocked Persons List, the Foreign Sanctions Evaders List, and the Sectoral Sanctions Identifications List, all administered by the U.S. Treasury Department; the U.S. Denied Persons List, the U.S. Entity List, and the U.S. Unverified List, all administered by the U.S. Department of Commerce; the Debarred Parties List administered by the U.S. State Department; the consolidated list of Persons, Groups and Entities of the European Union; and similar lists of restricted parties maintained by the European Union, its Member States, the United Kingdom, United States, or United Nations.

believe that such person intends to export, re-export, release, or otherwise transfer the same in violation of Trade Control Laws.

Buyer shall immediately notify BVI if Buyer has any information or suspicion that there may be a violation of the Trade Control Laws or any of the representations in this Section 12.2 in connection with Buyer's performance under this Agreement.

12.3 Anti-Corruption Compliance

Buyer shall take no action that violates, or would cause BVI to be in violation of, the U.S. Foreign Corrupt Practices Act (the "FCPA"), the UK Bribery Act (the "UKBA"), or similar applicable anti-bribery or anti-corruption laws. Buyer represents, warrants and covenants that it shall fully cooperate with BVI in ensuring compliance with the FCPA, UKBA and all other applicable anti-bribery or anti-corruption laws.

Buyer shall ensure that neither Buyer nor any of its principals, employees or agents shall, directly or indirectly through third parties, pay, promise or offer to pay, authorize the payment of, solicit, or accept any money or other thing of value, to or from a Public Official or Entity (as defined below) for purposes of corruptly obtaining or retaining business for or with, or directing business to, any person, including BVI, by (a) influencing any official act, decision or omission of such Public Official or Entity; (b) inducing such Public Official or Entity to do or omit to do any act in violation of the lawful duty of such Public Official or Entity; (c) securing any improper advantage; or (d) inducing such Public Official or Entity to affect or influence any act or decision of another Public Official or Entity. For the purposes of this Section, the term "Public Official" or "Entity" means (v) an officer, employee, agent or representative of any government or military; (w) any department, agency, corporate entity, instrumentality or political subdivision of any government or military; (x) any person or commercial entity acting in an official capacity for or on behalf of any government or military; (y) any candidate for political office, any foreign political party or any official of a foreign political party; or (z) any officer, employee, agent or representative of any public international organization.

Buyer shall ensure that neither Buyer nor any of its principals, employees, sub-Buyers, or agents directly or indirectly promises, offers or provides any corrupt payment, gratuity, emolument, bribe, kickback, excessive gift or hospitality or other illegal or unethical benefit to a customer, a Public Official or Entity or any other individual or organization.

Buyer shall immediately notify BVI if Buyer has any information or suspicion that there may be a violation of the FCPA, the UKBA, or any other applicable anti-bribery or anti-corruption law in connection with Buyer's performance under this Agreement.

12.4 Anti-Terrorism Compliance

Buyer represents and warrants that, in the performance of its activities and obligations under this Agreement, neither it nor any of its owners, employees, or anyone associated with it is listed in connection with any anti-terrorism law (including, without limitation, on the United States Department of Treasury Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List) and it shall not hire or have any dealings with any person so listed, and none of its property or interests are subject to being "blocked" under any anti-terrorism law.

13. Termination

- (a) BVI shall be entitled, without prejudice to any other rights it may have, to terminate this Agreement with Buyer(i) with regard to any agreement that is part hereof and/or any individual sales contract thereunder or, at BVI's sole discretion (ii) in its entirety, with immediate effect and without prior intervention of a court or arbitral tribunal being required, in case:
 - (i) Buyer fails to properly fulfil any of its obligations hereunder, which failure is not cured within fifteen (15) days of BVI's written notice thereof (if capable of being cured);
 - (ii) Buyer violates any of the representations or covenants contained in Section 12 of this Agreement;
 - (iii) Buyer assigns any its property for the benefit of creditors, or in case Buyer (or any other party)

applies for the appointment of a trustee or receiver of any parts of its assets, or commences any proceedings under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, or other liquidation law of any jurisdiction; or

- (iv) in case of bankruptcy, liquidation, insolvency or suspension of payments of or by the Buyer.

BVI's right to terminate the Agreement on the Buyer's default is without prejudice to BVI's right to claim additional damages, or any other rights BVI may have (including the right to suspend its own obligations towards the Buyer).

- (b) In addition, BVI may terminate this Agreement (i) with regard to (all or part of) any agreement that is part hereof and/or any individual sales contract thereunder, or, at BVI's sole discretion, (ii) in its entirety without cause and with immediate effect by providing notice of termination to Buyer upon (a) a change in laws or regulations such that BVI's continued performance under this Agreement becomes contrary to applicable laws, including the Trade Control Laws and the anti-bribery and anti-corruption laws described in Section 12, (b) if any mandatory registration or authorization in the context of the distribution of the Products and/or Equipment is not obtained, lapses, or is revoked, or (c) if BVI withdraws any or all the Products and/or Equipment within the territory in which Buyer is located, loses the right to sell any or all of the Products and/or the Equipment in such territory, or divests any or all Products and/or Equipment or the right to sell any or all Products and Equipment to a third party.
- (c) Termination or expiration of the Term of this Agreement pursuant to this Section 13 shall not release any party from liability to the other party for any unfulfilled obligations or liabilities hereunder, whether due by reason of such expiration, termination or otherwise, or prejudice any rights or remedies of such first party with respect to any unfulfilled obligations or liabilities of the other party hereunder. Except to the extent specifically excluded in this Agreement, all remedies available to any party, either under this Agreement or afforded by law or otherwise, shall be cumulative and not alternative, and the taking of any remedial action by such party shall not preclude the taking of any other action by such party.

14. Effect of termination

All rights granted to Buyer hereunder shall immediately cease upon the effective date of expiration or termination, and Buyer shall pay all outstanding fees or other amounts due to BVI within five (5) business days of expiration or termination and promptly comply with any disengagement obligations specified by BVI in connection with termination (if any).

15. Intellectual property

The trademarks, domain names, products, software, images and in general any information protected by intellectual property right (whether or not it has been registered) are and remain the exclusive property of BVI.

16. Confidentiality

During the performance of this Agreement, both parties, their directors, officers, employees and agents may have access to Information. “Information” means that information belonging to either party which is marked as confidential, or would reasonably be believed to be confidential, or which has been verbally transmitted, specifically including all details of this Agreement. Neither party's personnel shall copy, remove from the other party's facilities, or use, except as specifically provided herein, any Information except solely for purposes of performing its obligations and exercising its rights under this Agreement. Both parties agree to use at least the same physical and other security measures as it uses to protect its own confidential technical information but in no event less than reasonable measures in order to guard against any unauthorized use or disclosure of such Information. The receiving party and its personnel shall maintain the Information so as not to allow disclosure to any other person, entity or third party, whether prior to, during, or after the termination of this Agreement. Either party and its personnel shall promptly report to the damaged party any unauthorized disclosure, copying or use of any Information. Information shall not include information that: (i) is in or subsequently becomes part of the public domain through no fault of the receiving party; (ii) is lawfully received from a third party having the right to disclose such Information; (iii) is independently developed by the receiving party without breach of this

Agreement; (iv) is disclosed with the written approval of the owning party; or (v) is obligated to be produced under order of a court of competent jurisdiction or other legal requirement. Upon request of the disclosing party, the party receiving such Information shall promptly return all Information and all copies thereof.

17. Applicable law and jurisdiction

- (a) All issues, questions and disputes concerning the validity, interpretation, enforcement, performance or termination of this Agreement (including any agreement that is part hereof and/or any individual sales contract thereunder), or concerning any matters of extra-contractual and/or tort liability, if any, arising out of or in relation to this Agreement (including any agreement that is part hereof and/or any individual sales contract thereunder), shall be governed by and construed in accordance with the internal laws of the State of New York, United States of America, without giving effect to any other choice-of-law or conflict-of-laws rules or provisions (whether of the State of New York or any other jurisdiction) that would cause the laws of any jurisdiction other than the State of New York to be applicable.
- (b) Any dispute, controversy or claim arising out of or relating to this Agreement (including any agreement that is part hereof and/or any individual sales contract thereunder), including its interpretation, validity, enforcement, performance or termination, or to a breach hereof, or concerning any matters of extra-contractual and/or tort liability, if any, arising out of or in relation to this Agreement (including any agreement that is part hereof and/or any individual sales contract thereunder), which cannot be resolved amicably, shall be submitted to the exclusive jurisdiction of the courts of Boston, Massachusetts.

18. Miscellaneous

Entire Agreement. This Agreement, including the Annexes thereto and/or any separate contract thereunder, constitutes the entire agreement and understanding between the parties relating to the subject matter contained herein. For the avoidance of doubt, parties hereby expressly confirm, each acting for itself and for its affiliates, that all previous contracts and agreements between them in relation to the same subject matter have all been terminated in mutual consent with effect as of the Commencement Date of this Agreement and this Agreement supersedes and replaces those previous contracts and agreements.

Each party acknowledges that, in entering into this Agreement, it has not relied on, and neither party shall have any remedy in respect of, any statement, representation, assurance, warranty, condition, term or understanding (whether made negligently or innocently) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement.

Neither party shall have any remedy in respect of any untrue statement made by the other upon which that party relied in entering into this Agreement (unless such untrue statement was made fraudulently). Without prejudice to the foregoing, the only remedy available to a party in respect of a breach of any representation which is incorporated into this Agreement shall be for breach of contract.

Nothing in this Section shall limit or exclude any liability for fraud.

Severability. Whenever possible, the provisions of this Agreement (and/or any separate contract thereunder) shall be interpreted so as to be valid and enforceable under applicable law. However, if one or more provisions of this Agreement (and/or any separate contract hereunder) is found to be invalid, illegal or unenforceable (in whole or in part), the remainder of the provision and of this Agreement shall not be affected and shall continue in full force and effect as if the invalid, illegal or unenforceable provision(s) had never existed, subject, however, to the operation of this clause not negating the essential commercial and other aspects of this Agreement (and/or any separate contract thereunder). Moreover, in this case, the Parties shall amend the invalid, illegal or unenforceable provision(s) or any part thereof and/or agree on a new provision which embodies as closely as possible the purpose of the invalid, illegal or unenforceable provision(s).

Assignment. Neither party shall assign this agreement without the other party's prior written consent, which shall not be unreasonably withheld, *provided*, however, consent shall not be required in connection with the sale of all or substantially all of the assets, stock or business of BVI.

No Waiver. Any failure or delay by a party in exercising any right under this Agreement (and/or any separate contract thereunder), the exercise or partial exercise of any right under this Agreement (and/or any separate contract thereunder), or any reaction or absence of reaction by a party in the event of breach by the other party of one or more provisions of this Agreement (and/or any separate contract thereunder) shall not operate or be construed as a waiver (either express or implied, in whole or in part) of its rights under this Agreement or under said provision(s) or preclude the further exercise of any such rights. Any waiver of a right must be express and in writing. If there has been an express written waiver by one party following a specific failure by the other party, this waiver cannot be invoked by the other party in favor of either a new failure, similar to the prior one, or a failure of another nature.

Force Majeure. Neither party shall be liable if the performance of its obligations under this Agreement (and/or any separate contract thereunder) becomes impossible due to causes beyond its reasonable control, such as but not limited to wars, embargoes, strikes, lockouts, accidents, fires, Acts of God, pandemics, epidemics, floods or seizure, or control or rationing imposed by governmental authorities or any other occurrences beyond its reasonable control ("Force Majeure"); provided, however, that such party hereto shall immediately notify the other party hereto in writing of the occurrence of the event of Force Majeure (with reasonable particulars); and provided further, that such party hereto shall thereafter take all commercially reasonable efforts with a view to its performance hereunder being resumed within the shortest possible time.

In case of Force Majeure, parties' obligations under the Agreement (and/or any separate contract thereunder) will be suspended for the duration of Force Majeure and the Term of the Agreement will automatically be prolonged with the period of the (original) Term during which the Parties' obligations were suspended.

Hardship. If a substantial and disproportionate prejudice is caused to the interest of one of the parties as a direct result of changes in economic and/or business conditions beyond the control of such party, then upon written request of such party the parties shall promptly meet to consider whether such hardship exists and, if so, what modifications, if any, to the terms of the agreement are necessary to provide a fair and equitable method of mitigating, removing or avoiding any such hardship; such method to recognize the interests of both parties.

Relationship of the Parties. Nothing in this Agreement shall constitute or be deemed to constitute a partnership between the parties nor, except as expressly provided, shall it constitute, or be deemed to constitute, any party the distributor or agent of any other party for any purpose. Subject to any express provisions to the contrary in this Agreement, Buyer shall have no right or authority to and shall not do any act, enter into any contract, make any representation, give any warranty, incur any liability, assume any obligation, whether express or implied, of any kind on behalf of BVI or bind BVI in any way. Except as expressly provided for in this Agreement, nothing in this Agreement or any separate contract thereunder shall be construed as BVI granting Buyer agency or distribution rights in respect of the sale or distribution of the Products and/or the Equipment. For the avoidance of doubt, any sale of Products and/or the Equipment as between Buyer and a third party shall be affected by Buyer as principal and not as agent or distributor of BVI and Buyer shall not hold itself out as being an agent or distributor of BVI.

Notices. Unless otherwise specified herein, all notices under this Agreement shall be in writing, and shall be effective when sent by certified mail, postage prepaid or by courier to the address of the parties as stated on the Agreement Form. In addition, and again unless otherwise specified herein, notices shall also be effective when sent by email, if such notice is subsequently reconfirmed by certified mail, postage prepaid or by courier within 15 days of dispatch thereof by email. Each party may change its address pursuant to written notice of the other party.

Translations. Translations into any language other than English may be made but are for convenience purposes only, even when executed by one party or both parties.

Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, and this Agreement shall constitute a binding agreement between the parties when a counterpart or counterparts (whether the same or separate) shall have been executed and delivered by or on behalf of each of the parties. A facsimile or .pdf copy of a signature of a party hereto shall have the same effect and validity as an original signature.