

**TERMS AND CONDITIONS OF SALE  
PRODUCTS AND SERVICES**

**1. DEFINITIONS AND RELATED MATTERS**

- 1.1 **"908 Devices"** or **"Seller"** means 908 Devices Inc. or one of its directly or indirectly wholly owned subsidiaries.
- 1.2 **"Buyer"** means the customer entity on the Sales Quote (as defined in Section 2.1) or, if no Sales Quote was issued, the name of the purchaser on the Purchase Order (as defined in Section 2.1) submitted to Seller to purchase the Products or Services.
- 1.3 **"Consumables"** means all items to be supplied by Seller, except Devices and Software.
- 1.4 **"Device"** means all electronic equipment, hardware and other electronic or mechanical items agreed to be supplied by Seller, including any accessories and/or spare parts for such Device, and excluding any Consumables sold separately.
- 1.5 **"Documentation"** means any specification sheets, user manuals or other user documentation accompanying, or provided by Seller regarding, or for use in connection with, a Product or related Service, including any documentation listed on Seller's website at <https://www.908devices.com>.
- 1.6 **"Product"** means each item, including any Device, Software and/or Consumable, listed in the applicable Sales Quote or, in the event a Sales Quote was not issued, listed in Seller's then-current price list applicable to Buyer's jurisdiction and channel, and identified in a Purchase Order.
- 1.7 **"Services"** means any services provided by Seller to Buyer related to the repair, maintenance, upgrade, installation, calibration, and/or validation of the Products.
- 1.8 **"Software"** means any firmware, software or data compilations (i) identified in the Agreement (as defined in Section 2.1) or (ii) provided by Seller in connection with the installation or operation of any Device. For the avoidance of doubt, Software shall not include any "open source" firmware, software or data compilations, as any such "open source" firmware, software or data compilations will be subject to the terms and conditions set out in the relevant "open source" license.

**2. TERMS, CONDITIONS AND ORDERS**

- 2.1 Terms and Conditions. Unless otherwise agreed in writing between the parties, the sale or license of any Products or Services (except Software, which is only licensed) by Seller to Buyer shall be governed by these Terms and Conditions of Sale – Products and Services (these **"Terms"**), together with any written sales quotation issued by Seller (a **"Sales Quote"**), and Buyer's statement of the following information, and only such information: (i) the name and identity of the Products and/or Services purchased, (ii) quantity, (iii) bill to address, (iv) ship to address, and (v) if accurate, price (items (i)-(v), collectively, the **"Purchase Order Specifics"**), set forth on Buyer's purchase order or other instrument submitted by Buyer in any manner, including by e-mail PDF or other electronic delivery (a **"Purchase Order"**). These Terms, the Sales Quote (if any) and the Purchase Order Specifics shall be referred to herein collectively as this **"Agreement."** In case of a conflict, inconsistency or addition in a Purchase Order not expressly accepted in writing by Seller, the terms and conditions of sale provided in this Agreement shall be considered as superseding the conflicting, inconsistent or additional terms stated in a Purchase Order or other instrument submitted by Buyer.
- 2.2 Acceptance of Orders. No Purchase Order shall be binding upon Seller unless and until accepted by Seller, in writing or otherwise, and Seller shall have no liability or obligation to Buyer with respect to Purchase Orders that are not accepted. Purchase Orders delivered by Buyer, accepted by Seller and in process cannot be changed or cancelled without the prior written approval of Seller. Seller's offer to sell Products to and perform Services for Buyer is expressly conditioned on Buyer's acceptance of this Agreement. Any of the following constitutes Buyer's acceptance of this Agreement: (i) written acknowledgement; (ii) issuance of a Purchase Order that is confirmed by Seller; (iii) acceptance of any shipment of Products or performance of Services; (iv) payment for any Products or Services; or (v) any other act or expression, in writing, of acceptance by Buyer.

### 3. LICENSES AND USE RESTRICTIONS

3.1 Limited License. Subject to these Terms, and to all applicable end user license agreement(s), notices, terms, conditions and/or use restrictions (i) printed on any Product packaging, label or insert, (ii) appearing in or included with the Software or any Documentation, or (iii) listed on Seller's website at <https://www.908devices.com>, Seller grants to Buyer a paid-up, non-exclusive, non-transferable, non-sublicensable license to use the Products sold and/or licensed to Buyer by Seller or its authorized representative only in accordance with the applicable, then-current Documentation.

3.2 Software. Buyer agrees that Software is licensed, not sold, by Seller to Buyer. Seller retains all right, title, and interest in the Software. Seller grants to Buyer a paid-up, non-exclusive, non-transferable, non-sublicensable license to use the Software in combination with the Products or Devices purchased under this Agreement, or on a standalone basis if so permitted in the Sales Quote. Buyer agrees to maintain confidentiality of such Software and shall not transfer, assign, sublicense, license, or otherwise make such Software available to any third party, copy, modify, reverse-engineer, decompile, or create derivative works of such Software. The Software license shall terminate when the license term set forth in the Sales Quote expires or when Buyer's ownership of the Products or Devices on which the Software is installed ceases.

3.3 Certain Use Restrictions. Buyer acknowledges that the Products do not have United States Food and Drug Administration ("FDA") or equivalent non-U.S. regulatory agency clearance or approval ("**Approval**"). Buyer acknowledges that the Products are labeled and intended **FOR RESEARCH USE ONLY** and/or **NOT FOR USE IN DIAGNOSTIC PROCEDURES**. Unless otherwise expressly stated by Seller in writing, no claim or representation is made or intended by Seller that any Product has any Approval for use in any diagnostic or other clinical procedure in connection with any law, regulation or governmental policy (collectively, "**Regulatory Laws**"). Buyer agrees that if it elects to use a Product for a purpose that would subject Buyer, its customers or any Product to the application of Regulatory Laws, Buyer shall be solely responsible for obtaining any required Approvals. Except where authorized by Seller in writing, Buyer agrees not to transfer a Product to any third party (including, but not limited to, re-sale, donation, or loan).

3.4 Reachback. The Products and Seller's reachback services are intended to provide initial determinations and to be used as information resources in the field and not as absolute or conclusive identifications of unknown substances. The results provided by the Products and the Seller's reachback services should be verified using other appropriate techniques. Seller makes no recommendations for, nor does it assume any liability for, how the information is utilized.

### 4. PRICES, TAXES AND PAYMENT

4.1 Prices. The price for any Product or Service shall be the applicable price stated in the Sales Quote, or, if no Sales Quote is issued, in Seller's then-current price list applicable to Buyer's jurisdiction and channel, which is subject to change without notice. Seller's Sales Quotes are only valid for thirty (30) days from the quotation date unless otherwise expressly stated in the Sales Quote.

4.2 Taxes; Shipping Charges. Unless otherwise expressly stated in the Sales Quote, Buyer's purchase price does not include any U.S. or non-U.S. federal, state, local, sales, VAT, GST or other taxes, duties, or governmental assessments ("**Taxes**") that may be applicable to the Products or Services, nor does the price include freight and insurance; Buyer will be responsible for any such charges. All Taxes shall be paid by Buyer, or in lieu thereof, Buyer shall provide Seller with a tax exemption certificate acceptable to the applicable taxing authorities. If Seller is required to prepay any Taxes, duty, custom, freight, insurance or other fee, Buyer shall reimburse Seller for any such prepayment.

4.3 Payment. Unless otherwise expressly stated in the Sales Quote, Seller shall invoice Buyer for a Product, and any and all Services ordered in connection with a Product, upon shipment of the Product; or, if a Service Plan (as defined in Section 7.2) is purchased separately from the purchase of a Product, on the applicable start date of such Service Plan; or, if no such start date is provided, upon Seller's acceptance of Buyer's Purchase Order, and such invoice shall cover Buyer's purchase price for the Product and/or related Services and any freight, insurance, Taxes or other applicable costs initially paid or payable by Seller to be ultimately borne by Buyer, and Buyer shall pay all such amounts. Unless otherwise expressly stated in the Sales Quote, all invoices shall be issued and payable in U.S. Dollars, and are due and payable thirty (30) days from date of invoice,

subject to credit approval. Each delivery shall be considered a separate and independent transaction and payment therefor shall be made accordingly. Amounts outstanding thirty (30) or more days from the date of invoice shall be subject to a service charge of one and one-half percent (1.5%) per month, or the maximum allowed by applicable law, if less. Buyer shall pay all of Seller's costs and expenses (including reasonable attorneys' fees) to enforce and preserve Seller's rights under this section. If Buyer fails to make any payment when due or if Seller deems Buyer to be or to have become un-creditworthy, then, without prejudice to Seller's rights, Seller may, at its option, cancel and/or suspend future deliveries, and/or require prepayment, an irrevocable letter of credit, or other payment method(s).

## **5. DELIVERY AND ACCEPTANCE OF PRODUCTS**

5.1 Delivery and Acceptance. Unless otherwise expressly stated in the Sales Quote, all deliveries of Products are EXW Seller's facility (ICC Incoterms 2020). Seller's title (except for Software, which is only licensed) and all risk of loss passes to Buyer, and Seller's liability as to delivery ceases upon delivery of the Product(s) at the EXW shipping point. For avoidance of doubt, if the above-identified shipping terms are deemed not to apply, title and risk of loss shall pass to Buyer upon transfer of the Product(s) from Seller to the carrier unless both parties agree otherwise in advance and in writing. Unless specific shipping instructions have been agreed to in writing between Seller and Buyer, Seller will ship in accordance with its standard practices. All shipping dates are approximate only, and Seller will not be liable for any loss or damage resulting from any delay in delivery or failure to deliver which is due to any cause beyond Seller's reasonable control. In the event of a delay due to any cause beyond Seller's reasonable control, Seller reserves the right to reschedule the shipment within a reasonable period of time, and Buyer will not be entitled to refuse delivery or otherwise be relieved of any obligations as the result of such delay. Products for which delivery is delayed due to any cause within Buyer's control may be placed in storage by Seller at Buyer's risk and expense. For multiple unit and/or multiple Product orders, unless otherwise agreed to by the parties that a "Complete Shipment" is required, Seller may deliver such orders in installments, and each installment shall be deemed to be a separate sale. Seller may issue a separate invoice for each installment, which shall be paid without regard to prior or subsequent installments. All Products shall be conclusively and irrevocably deemed accepted without qualification by Buyer upon delivery.

5.2 Inspection and Installation. Without limiting the preceding section, Buyer shall promptly visually inspect any Product upon receipt and notify Seller in writing of damage or missing parts that Buyer notes. If Buyer fails to comply with this section, Buyer shall be deemed to have waived its rights to claim incorrect or incomplete delivery or packaging and any related warranty rights. If Seller has agreed to install the Device, it is Buyer's responsibility, at Buyer's cost, to prepare the installation site in accordance with Seller's site preparation specifications (including no hazardous or unsafe conditions). Buyer shall have appropriate Buyer personnel present at any such installation.

## **6. LIMITED WARRANTIES ON PRODUCTS**

6.1 Limited Warranty and Remedy for Devices and Software. Seller warrants to and only to Buyer that the Software and Devices shall be free from defects in material and workmanship, when subjected to normal, proper and intended usage by properly trained personnel, and shall operate and perform substantially in conformance with Seller's published specifications at the time of purchase, for a period of twelve (12) months from the date of shipment to Buyer (the "**Warranty Period**"). When allowed under the applicable law, any statutory warranties and warranty periods are hereby expressly rejected, and the terms herein shall apply. Representations, oral or written, which are in addition to or inconsistent with this warranty or the Seller's published specifications are not binding on Seller.

Seller agrees during the Warranty Period, to repair or replace, at Seller's option, defective Products so as to cause the same to operate in substantial conformance with said published specifications; provided that Buyer shall (a) promptly notify Seller in writing upon the discovery of any defect, which notice shall include the product model and serial number (if applicable) and details of the warranty claim; and (b) after Seller's review, Seller will provide Buyer with service data and/or a Return Material Authorization ("**RMA**"), which may include biohazard decontamination procedures and other product-specific handling instructions, then, if applicable, Buyer may return the defective Products to Seller with all reasonable return shipment costs

either prepaid or reimbursed by Seller. Replacement parts may be new, reconditioned or refurbished products, parts or subassemblies, at the election of Seller. All replaced parts shall become the property of Seller.

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

6.2 Exceptions. In no event shall Seller have any obligation to make repairs, replacements or corrections required, in whole or in part, as the result of (i) normal wear and tear, (ii) accident, disaster or event of force majeure, (iii) misuse, fault or negligence of or by Buyer, (iv) use of the Products in a manner for which they were not designed, (v) causes external to the Products such as, but not limited to, power failure or electrical power surges, (vi) improper storage and handling of the Products or (vii) use of the Products in combination with equipment or software not supplied by Seller. If Seller determines that Products for which Buyer has requested warranty services are not covered by the warranty hereunder, Buyer shall reimburse Seller at Seller's then-current service call fees, including all labor, parts and travel charges, for all work that Seller or its designee incur in investigating or remedying any such Products. ANY INSTALLATION, MAINTENANCE, REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE PRODUCTS PERFORMED BY ANY PERSON OR ENTITY OTHER THAN SELLER WITHOUT SELLER'S PRIOR WRITTEN APPROVAL, OR ANY USE OF REPLACEMENT PARTS NOT SUPPLIED BY SELLER, SHALL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED PRODUCTS.

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

## 7. LIMITED WARRANTIES ON SERVICE PLANS

7.1 Service and Maintenance. After the Warranty Period, Seller may offer to provide extended maintenance, repair, training, support and/or warranty services for such Device pursuant to a separate written service plan that may be purchased by Buyer from Seller.

7.2 Service Plans. If Buyer has purchased a separate written contract for extended maintenance, repair, training, support and/or warranty services or other Seller support for a Device (a "**Service Plan**"), the Sales Quote and the applicable then-current Documentation, if any, for such Service Plan will describe its level and features. During the Service Plan term, Seller or its designee will provide the services described in the Service Plan (the "**Covered Services**"). Maintenance, repairs and replacements may be completed under the Service Plan with new, reconditioned or refurbished products, parts or subassemblies, at the election of Seller. All replaced parts shall become the property of Seller. Any updates or upgrades to the Software, when delivered, shall become part of the Software and shall be subject to the same end user license agreement(s), notices, terms, conditions and use restrictions unless otherwise expressly stated in writing by Seller. Service Plans may not be transferred or assigned without Seller's prior written consent.

7.3 Service Limitations. Buyer agrees to follow the operation procedures published by Seller, including procedures for routine maintenance. Seller shall have no obligation to provide any service or parts required as a result of Buyer's failure to comply with items (i) through (vii) in Section 6.2. Buyer shall reimburse Seller at Seller's then-current service call fees, including all labor, parts and travel charges, for all work that Seller or its designee incur in investigating or remedying any damage or malfunction that Seller reasonably determines to not be part of the Covered Services.

7.4 Non-Covered Equipment. Any and all devices, software and other products, and any parts or subassemblies of the foregoing, that are not provided by Seller or its designee shall be deemed "**Non-Covered Equipment**." Seller shall have no

obligation to provide Covered Services for Non-Covered Equipment; moreover, and notwithstanding anything herein to the contrary, Seller shall have no obligation to provide Covered Services in connection with any Device, part or subassembly: (i) that has been substantially altered (other than by Seller or its designee); (ii) that does not incorporate all of Seller's engineering improvements and other fixes that Seller requested that the Buyer implement; (iii) that incorporates Non-Covered Equipment or has Non-Covered Equipment attached; (iv) that has been operated in conditions outside of Seller's environmental or electrical site specifications, as defined in the applicable, then-current Documentation; (v) that has been operated in hazardous environments or used to analyze hazardous materials that may cause residual contamination, except in accordance with Seller's expected uses set forth in the applicable, then-current Documentation; or (vi) that has been repaired or maintained by anyone other than Seller or its designee, except such routine maintenance as set forth in the applicable, then-current Documentation.

**7.5 Billable Services.** All services performed by Seller or its designee on Buyer's Non-Covered Equipment or which are not Covered Services shall be billable to Buyer at Seller's then-current service call fees, including all labor, parts and travel charges.

**7.6 Access and Service Safety.** Buyer will provide Seller and its designees reasonable and safe access to all Devices for the provision of any services and for any audit of compliance with Seller's installation and operational guidelines. Buyer is responsible for proper disposal of all contaminated material and of contaminated parts and subassemblies that, in Seller's discretion, cannot be safely returned to Seller. Buyer shall inform Seller of any special safety risks or safety regulations applicable to Buyer's site where the Services will be performed. Buyer shall comply with all applicable laws, legislation, regulations and ordinances in connection with the use and handling of the Services. Buyer shall maintain in effect all required licenses, permissions, authorizations, consents and permits. Seller shall not be liable for any delays in the provision of Services in the event and to the extent such delay results from acts or omissions of Buyer; an unusually long processing time for any necessary permit, license or other authorization required to be obtained from a governmental authority; or factors beyond Seller's reasonable control.

**7.7 Limited Service Warranty.** Seller warrants that it will render the Covered Services in a professional and workmanlike manner. As Seller's sole responsibility and Buyer's exclusive remedy in the event of any material failure to meet such standard, Seller shall make a commercially reasonable effort to remedy any resulting discrepancies. Any claim based on the foregoing warranty must be submitted in writing in accordance with Seller's standard procedures within thirty (30) days after delivery or the date of performance of the pertinent services at issue.

**7.8 Term and Termination.** The term of a Service Plan, if purchased, shall commence, as applicable, on the later of: (i) the date of expiration of the Warranty Period; (ii) the Service Plan start date specified in the purchase order; or (iii) the date Seller receives an authorized purchase order from Buyer. Such Service Plan will continue for the period specified in the applicable Sales Quote describing the Service Plan or, if no such term is specified, the term shall be one (1) year. Service Plans shall not be automatically renewed. If Buyer wishes to obtain Covered Services for a Device beyond the term of the Service Plan or for additional Devices, Buyer must submit a new order. Either party may terminate a Service Plan by providing written notice thirty (30) days in advance to the other party and Seller will reimburse Buyer on a *pro rata* basis up to the termination date for any payments made in advance by Buyer, less the implied value of Seller's time and materials costs and expenses in connection with the provision of services under any such Service Plan. No termination of a Service Plan shall release Buyer from any obligation to pay Seller any amount that has accrued or become payable at or prior to the date of termination.

**8. WARRANTY DISCLAIMERS.** THE EXPRESS WARRANTIES AND THE REMEDIES SET FORTH IN SECTIONS 6 AND 7.7 ARE IN LIEU OF, AND SELLER AND ITS LICENSORS, SUPPLIERS AND REPRESENTATIVES HEREBY DISCLAIM, ALL OTHER REMEDIES AND WARRANTIES, EXPRESS, STATUTORY, IMPLIED, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, OR REGARDING RESULTS OBTAINED THROUGH THE USE OF ANY PRODUCT OR SERVICE (INCLUDING, WITHOUT LIMITATION, ANY CLAIM OF INACCURATE, INVALID OR INCOMPLETE RESULTS), IN EACH CASE HOWEVER ARISING, INCLUDING WITHOUT LIMITATION FROM A COURSE OF PERFORMANCE, DEALING OR USAGE OF TRADE, OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SELLER AND ITS LICENSORS, SUPPLIERS AND REPRESENTATIVES SHALL NOT BE LIABLE FOR LOSS OF USE,

PROFITS, REVENUE, GOODWILL, BUSINESS OR OTHER FINANCIAL LOSS OR BUSINESS INTERRUPTION, OR COSTS OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR INDIRECT DAMAGES FOR BREACH OF WARRANTY. ANY PRODUCT OR SERVICE PROVIDED WITHOUT A WRITTEN WARRANTY FROM SELLER IS PROVIDED "AS IS" WITHOUT (AND SELLER HEREBY DISCLAIMS) ANY WARRANTY, STATUTORY, EXPRESS, IMPLIED OR OTHERWISE. Without limiting the generality of Seller's general rejection of conflicting terms presented by Buyer, and for clarification purposes only, Buyer agrees that any different or additional warranty terms stated in a Purchase Order and not accepted by Seller shall be void and of no effect.

**9. LIMITATION OF LIABILITY.** SELLER'S, AND ITS LICENSORS', SUPPLIERS' AND REPRESENTATIVES', LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND/OR THE SALE OF PRODUCTS OR PROVISION OF SERVICES SHALL BE LIMITED TO THE AMOUNT PAID BY THE BUYER FOR THE PRODUCTS AND/OR SERVICES TO SELLER IN THE PRIOR TWELVE (12) MONTHS. IN NO EVENT SHALL SELLER BE LIABLE FOR COSTS OF LOSS OF USE, PROFITS, REVENUE, GOODWILL, ANY COSTS ASSOCIATED WITH RETESTING, BUSINESS OR OTHER FINANCIAL LOSS OR BUSINESS INTERRUPTION, OR COSTS OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR INDIRECT DAMAGES, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT, WARRANTY, PURSUANT TO ANY STATUTE, OR ON ANY OTHER BASIS) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND/OR THE SALE OF PRODUCTS OR PERFORMANCE OF SERVICES, WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT SELLER IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. Nothing in this Agreement shall operate so as to exclude or limit the liability of Seller, its licensors, suppliers or representatives for any liability which cannot be excluded or limited by law.

## **10. INDEMNITY AND INSURANCE**

**10.1 Indemnification of Buyer.** Subject to Sections 10.2 and 10.3 below, Seller agrees to defend Buyer against any third-party claim, proceeding or action ("**Claim**") to the extent the Claim alleges that any Product sold to Buyer hereunder, as delivered to Buyer by Seller, directly infringes or misappropriates, as applicable, any patent, copyright, or other intellectual property right. Seller will pay all damages awarded in a final non-appealable judgment, and settlements approved in writing by an authorized representative of Seller, in connection therewith, provided that (i) Buyer provides to Seller written notice of the Claim within thirty (30) days of receipt by Buyer of such Claim, or such earlier time as required to avoid prejudice to Seller or its ability to defend such Claim, (ii) Buyer allows Seller to control the defense and settlement of the Claim, and (iii) Buyer provides to Seller reasonable assistance in connection therewith, at no charge to Seller. Buyer may employ counsel at its own expense to assist it with respect to any such Claim, provided that this shall not obligate Seller or its counsel to consult with or advise such Buyer counsel, nor affect Seller's control of the defense and settlement of the Claim.

**10.2 Exceptions.** Seller shall have no liability or obligation pursuant to this Section 10 with respect to Claims resulting from (i) modification of the Product other than by Seller or its authorized service provider, (ii) combination of the Product with any item or method not supplied or specifically recommended in writing by Seller, (iii) use of the Product other than in accordance with the Documentation and this Agreement (including, without limitation, use for diagnostic or other non-research uses), or (iv) compliance with Buyer's instructions, specifications or design to the extent such instructions, specifications or design materially differ from comparable Products that Seller makes generally available to its customers (collectively, (i)-(iv), "**Excluded Causes**").

**10.3 Remedy.** In the event there is a Claim, or Seller believes a Claim is likely, alleging intellectual property infringement or misappropriation, as applicable, with respect to any Product sold to Buyer hereunder, Seller shall be entitled, without obligation to do so, at its option and expense, to (i) modify the Product so that it is no longer infringing, (ii) obtain a license with respect to the applicable intellectual property rights, or (iii) accept the return of each such Product purchased by Buyer hereunder (except for contaminated Products that, in Seller's discretion, cannot be safely returned to Seller) and in Buyer's possession and control, and provide to Buyer a refund of the price paid by Buyer to Seller therefore, subject to reasonable deductions for damage and amortized on a straight line basis over three (3) years from the date of original delivery to Buyer. Seller will have no liability or obligation with respect to any alleged infringement occurring after the date Seller makes any such remedy available to Buyer.

**10.4 Exclusive Obligation.** Notwithstanding any other provision, the foregoing Sections 10.1 to 10.3 state Seller's sole liability and obligation, and Buyer's exclusive remedy, arising out of any actual or alleged intellectual property infringement or misappropriation of any kind, as applicable, or any actual or alleged breach of any representation or warranty (statutory, express or implied) that the Products or Services do not infringe or misappropriate, as applicable, any third party intellectual property anywhere in the world.

**10.5 Indemnification of Seller.** Buyer agrees to defend Seller against any Claim (i) to the extent the Claim alleges infringement or misappropriation, as applicable, of any patent, copyright, or other intellectual property right as a result of any Excluded Cause, or (ii) that arises in connection with Buyer's use of Products (a) for any clinical purpose or application, (b) in violation of any applicable law or regulation, or (c) in the provision of services under any 'fee for service' agreement or other arrangement. Buyer will pay all damages awarded, and all settlements approved by Buyer, in connection therewith, provided that (x) Seller provides to Buyer written notice of the Claim within thirty (30) days of receipt by Seller of such Claim, or such earlier time as required to avoid prejudice to Buyer or its ability to defend such Claim, (y) Seller allows Buyer to control the defense and settlement of the Claim, and (z) Seller provides to Buyer reasonable assistance in connection therewith, at no charge to Buyer. Seller may employ counsel at its own expense to assist it with respect to any such Claim, provided that this shall not obligate Buyer or its counsel to consult with or advise such Seller counsel, nor affect Buyer's control of the defense and settlement of the Claim. If Buyer is a U.S. state, city, town or other municipality, or a public university, college or other not-for-profit institution chartered under the laws of a U.S. state, this section shall only apply to the extent permitted by applicable law.

**11. INTELLECTUAL PROPERTY.** Except to the extent prohibited by applicable law, Seller shall retain all ownership of its intellectual property rights with respect to the Products and Documentation. All rights, title and interest, including, without limitation, all intellectual property rights in and to all Software and all documentation for such software, including on-line read-me or help files (collectively "**Software Documentation**"). The content of all training provided by Seller representatives on Products is and shall remain the property of Seller, its licensors and suppliers. All Software and related Software Documentation and training provided by Seller are protected by copyright under 17 U.S.C. § 101 et seq. and other intellectual property rights, and their international equivalents and by international treaties. No license or other rights, either express or implied, are granted by Seller to Buyer under this Agreement with respect to any such intellectual property rights. For more information about Seller's patent portfolio, see [www.908devices.com/patents](http://www.908devices.com/patents).

## **12. MISCELLANEOUS**

**12.1 Notices.** All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by first class mail, postage prepaid, or otherwise delivered by hand, commercial courier service, messenger or transmitted electronically by e-mail PDF (with a copy to [legal@908devices.com](mailto:legal@908devices.com) for any notice or communication in connection with a Claim or a Dispute (as defined below)), addressed to the addresses listed in the Sales Quote (or to Buyer's address listed in its Purchase Order) or at such other address furnished with a notice in the manner set forth herein. All notices shall be in English.

**12.2 Governing Law and Venue.** This Agreement and any disputes arising out of or relating to this Agreement (including its formation or termination) or Seller's goods, software or related services (collectively, "**Disputes**") shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts, U.S.A., (provided, however, that if Buyer is a U.S. state, city, town or other municipality, or a public university, college or other not-for-profit institution chartered under the laws of a U.S. state, the law of such state shall govern), excluding in all cases choice of law provisions. The United Nations Convention on Contracts for the International Sale of Goods will not apply. SELLER AND BUYER EACH HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

**12.5 Export Controls.** Buyer understands that exports and re-exports of Products and any related software, service, technical assistance, training and related technical data, and any media in which any of the foregoing is contained (the "**Items**") are subject to U.S. and foreign trade controls, customs, anti-boycott and economic sanctions laws, regulations, rules and orders (the "**Export Laws**"). In addition to any other remedy it may have, Seller may suspend or cancel the export, delivery,

installation, or any maintenance or repair service of any Item if (a) Seller has not received all export-related documentation requested by Seller, including end-user and/or end-use certificates, (b) Seller has not received the governmental approvals that Seller deems to be required, or (c) Seller believes that such activity may violate any Export Laws or Seller's own compliance policies. Buyer shall not export, re-export or otherwise transfer or provide any Item in contravention of any Export Laws or any end-user certificate provided by Buyer, including to an embargoed or otherwise sanctioned country, to anyone listed on any prohibited persons list published by the U.S., the UN, the EU or the OSCE, or for a prohibited end-use (such as research on or development of chemical, biological, or nuclear weapons, unmanned air vehicles or missiles, or nuclear explosive or fuel cycle activities). Seller will not be liable to Buyer for any loss or expense if Buyer fails to comply with any Export Laws. Buyer will cooperate fully with Seller in any official or unofficial audit or inspection related to applicable Export Laws, and Buyer will indemnify, defend and hold harmless Seller from all claims, damages, fines, penalties, liability losses, costs and expenses made against or incurred by Seller arising from Buyer's breach of Export Laws.

12.6 Modifications. This Agreement may only be amended or supplemented upon the mutual written agreement of both parties.

12.7 Waivers. The waiver by either party of a term or provision of this Agreement, or of the other party's breach of this Agreement, shall not be effective unless such waiver is in writing and signed by such party. No waiver by a party of a breach by the other party of this Agreement shall constitute a waiver of any other or subsequent breach by the other party.

12.8 Severability. If any section, paragraph, provision or clause or any portion thereof in this Agreement shall be found or be held to be invalid or unenforceable in any jurisdiction in which this Agreement is being performed, the remainder of this Agreement shall be valid and enforceable and the parties shall negotiate, in good faith, a substitute, valid and enforceable provision which most nearly effects the parties' intent in entering into this Agreement.

12.9 Force Majeure. Except for the payment of money, neither party shall be liable to the other party for any failure or delay in the performance of any of its obligations under this Agreement for the period and to the extent such failure or delay is caused by civil unrest, threat of or actual acts of terrorism or war, embargoes, governmental actions, acts of God, earthquakes, floods, storms, fires, supplier delay, accidents, explosions, epidemics, quarantine restrictions, or other such contingencies beyond the reasonable control of the applicable party ("**Force Majeure**"). The party affected shall notify the other party as soon as practicable of any anticipated delay due to Force Majeure.

12.10 No Third-Party Beneficiaries. This Agreement has been made and is made solely for the benefit of Seller and Buyer and their respective wholly owned subsidiaries and permitted successors and assigns. Nothing in this Agreement is intended to (i) confer any rights or remedies under or by reason of this Agreement on any persons or entity other than the parties to this Agreement and their respective permitted successors and assigns; or (ii) relieve or discharge the obligation or liability of any third persons or entities to any party to this Agreement.

12.11 General. The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The English language shall govern the meaning and interpretation of this Agreement. This Agreement embodies the final and complete understanding of the parties with respect to the subject matter hereof, superseding all prior oral or written communications. Neither party has entered into this Agreement in reliance on any statement or representation not expressly set out herein. No oral explanation or oral information by either party shall alter the meaning or interpretation of this Agreement.

12.12 Assignment. Buyer shall not assign, by operation of law or otherwise, this Agreement, or any of its rights, or delegate any of its obligations under this Agreement, to any third party without the prior express written consent of Seller. Any attempted assignment in violation of this section shall be void.

12.13 Equitable Relief. A breach by Buyer of this Agreement related to any Product or of confidentiality will cause irreparable damage to Seller for which money damages is not an adequate remedy, and Seller shall be entitled to obtain equitable relief, in any court or forum, including, but not limited to, seeking injunctive relief, as well as monetary damages and any other appropriate relief, without obligation to post bond.