

1. Definitions.

“Applicable Law” means any law, statute, ordinance, code, rule, regulation, published standard, permit, judgment, decree, writ, injunction, ruling, order, administrative guidance or other requirements of or promulgated by any Governmental Authority (defined below), whether existing at present or later enacted, applicable to the performance of this Purchase Order or in any manner affecting the Products or Services, including, without limitation, any laws relating to human health, occupational or process safety or the protection of the environment, the U.S. Foreign Corrupt Practices Act and the Federal Food, Drug and Cosmetic Act. The term “Applicable Law” also incorporates Cerapedics’ internal policies and procedures as may be amended from time to time.

“Buyer” means the Cerapedics Inc. or any other Cerapedics legal entity named in this Purchase Order.

“Deliverables” means any work product prepared by Supplier for delivery to Cerapedics under this Purchase Order.

“Governmental Authority” means any applicable federation, nation, state, sovereign or government, any federal, supranational, regional, state, local or municipal political subdivision, any governmental or administrative body, instrumentality, department, or agency or any court, administrative hearing body, arbitrator, commission, or other similar dispute resolving panel or body, and any other entity exercising executive, legislative, judicial, regulatory, taxing or administrative functions of a government with jurisdiction over the applicable matter.

“Products” means the goods, raw materials, equipment, parts, components, or other items covered by this Purchase Order, including any Deliverables delivered in connection with this Purchase Order.

“PO” means this Purchase Order issued by Buyer to Supplier.

“Services” will mean the services or work covered by this PO.

“Supplier” means the individual or entity providing the Products and/or Services covered by this PO.

2. Acceptance.

This PO constitutes an offer by Buyer to purchase the Products and/or Services from Supplier upon the terms and conditions stated herein and is not an acceptance of any offer by Supplier to sell. This PO is not binding on Buyer until it is accepted by Supplier. Supplier will be deemed to have accepted this PO when it: (i) indicates its written acceptance on the face hereof or other written confirmation, (ii) delivers any or all of the Products covered by this PO, or (iii) starts to perform the Services covered by this PO, whichever occurs first. Buyer may withdraw this PO at any time prior to acceptance by Supplier.

This PO, together with the documents attached hereto, incorporated herein by reference or referencing this PO, will constitute the final and complete agreement of the parties and may not be modified or rescinded unless agreed to in writing by Buyer’s authorized representative. No terms stated by Supplier in its proposal or in accepting or acknowledging this PO will be binding and Supplier is hereby notified of Buyer’s objection to and rejection of any additional or different terms in Supplier’s quotation, acknowledgement, invoice or other forms. Buyer’s PO expressly limits acceptance to the terms and conditions contained in this PO, and notice of objection to any different or additional terms in any response is hereby given. If this PO is construed as an acceptance of an offer, this acceptance is expressly conditioned upon the Buyer’s assent to any different or additional terms contained in this PO or any attachments or exhibits thereto. If this PO is construed as a confirmation of an existing non-written contract, the parties agree that this confirmation states the exclusive terms of such contract between the parties.

The parties further agree that this PO, when used by the parties to place orders for Products and/or Services in conjunction with or pursuant to a written contract, will be construed to supplement the terms of such written contract to the extent that the terms of this PO are not inconsistent with such written contract. Regardless of its construction, this PO incorporates by reference all terms of the Uniform Commercial Code providing any protection to Buyer, including, but not limited to, all warranty protection (express or implied) and all of Buyer’s remedies under the Uniform Commercial Code.

3. Product Uniformity.

Supplier will not make any changes in the Products that may alter properties, impurities, specifications, dimensions, or any other characteristic of the Products without prior written approval from Buyer and in accordance with this Section 3. Supplier is responsible for providing at least ninety (90) days notification to Buyer of any change in materials, design, processes, procedures, or facilities that may affect the ability of the Products to meet Buyer’s specified requirements. Upon written acceptance by Buyer and Supplier, Supplier may implement approved changes. Supplier agrees to provide at least six (6) months advance written notice to Buyer of an anticipated facility shutdown. In the event of a Supplier facility shutdown, Buyer may issue a final purchase order at a quantity of Product determined by Buyer.

4. Delivery.

Supplier’s performance will be in strict conformance with the delivery and other time provisions specified in this PO. Time is of the essence. Buyer’s production schedules and/or other operations are based upon Supplier’s assurance of completion of performance or delivery to Buyer by the date specified in this PO. If delivery and/or performance dates cannot be met, Supplier will inform Buyer in writing of Supplier’s best possible delivery and/or performance time. If Buyer has not approved the alternate delivery and/or performance dates, or Supplier does not deliver or perform on time, Buyer may cancel this PO and purchase the Products and/or Services elsewhere and hold Supplier liable for any costs or

damages incurred, both direct and indirect, resulting from Supplier's late, defective or unacceptable delivery or performance. Similarly, any losses as a result of a deviation from Buyer's routing instructions or specific instructions relating to performance will be charged to Supplier's account. Supplier will not ship any Products ahead of schedule unless authorized by Buyer in writing. Buyer may return, at its option, all unauthorized early Product shipments to Supplier at Supplier's expense. Payments for early Product shipments will be postponed until normal maturity after the scheduled delivery date. Supplier will maintain availability of the Products and/or Services purchased under this PO for at least two (2) years after the delivery of such Product and/or Service. If Supplier determines within this period that it will no longer be possible to ensure this availability, Supplier must inform Buyer without delay and, if Supplier is unable to offer Buyer any other reasonable possibility of supply, Supplier will provide Buyer with the opportunity of procuring an all-time requirements of Products and/Services twelve (12) months before production of such Product and/or Service is stopped. Supplier will forward notice of shipment of Products to Buyer within twenty-four hours, and such notice is an express condition to Buyer's duties under this PO. The original Bill of Lading must accompany the invoice and be mailed in accordance with the instructions on the face of this PO. Complete packing lists must accompany each Product shipment and each shipment must equal exact amounts ordered unless otherwise agreed to in writing. Separate invoices are required for each PO and for each Product shipment when partial deliveries are made and each invoice will reference the relevant PO number.

5. Risk of Loss.

Risk of loss or damage will be borne by Supplier until Product shipment reaches the destination indicated on the face of this PO irrespective of when title passes to Buyer.

6. Rejection and Revocation of Acceptance.

Buyer will have a reasonable opportunity to inspect Products and/or Services and reject them if they fail to conform to the requirements of this PO, and to revoke its acceptance of them when appropriate. With regard to Products that are rejected or for which acceptance has been revoked, Buyer, at its option and at the expense and risk of Supplier, may return such Products to Supplier or store them until Supplier provides instructions for disposal. Rejected Products and/or Services are not to be replaced without written authorization from Buyer, and Supplier will reimburse Buyer for any payment made by Buyer with respect to such rejected Products and/or Services. Supplier will permit Buyer and its representatives to enter Supplier's facilities at reasonable times to inspect such facilities and any goods, inventories, work-in-process, materials, machinery, equipment, tooling, fixtures, gauges and other items and processes related to Supplier performance of this PO in relation the Products and/or Services. No such inspection by Buyer will constitute acceptance by Buyer of any work-in-process or finished Products and/or Services or otherwise affect the Buyer's rights under this PO. Payment for Products and/or Services without reasonable opportunity to inspect the same will not constitute acceptance.

7. Changes.

Buyer may direct Supplier to make changes in the Products and/or Services ordered including, without limitation, reasonable changes to quantities, method of shipping or packing, place of delivery or delivery dates, or changes in the requirements of the drawings, specifications or instructions. Supplier will promptly review such changes and within five (5) days inform Buyer of any change in Supplier's cost of performance or delay in delivery. Upon mutual agreement as to any price or delivery change, Buyer will issue a written change order. If the parties are unable to agree upon the amount to the adjustment, acting reasonably and in good faith and in accordance with Section 17.4 of these PO terms and conditions, Buyer may without any liability terminate this PO as to all affected Products and/or Services. In the event Supplier will fail to comply with this procedure, Supplier will be deemed to have waived all claims for increased cost or extension of time of performance.

8. Pricing and Payment Terms

Supplier's prices will not be higher than last quoted or charged to Buyer or stated on this PO unless otherwise agreed to in writing. No charges by Supplier will be allowed for transportation, boxing, crating, or other packaging unless agreed to herein.

Standard payment terms are net forty-five (45) days after Buyer's receipt of an undisputed invoice from Supplier, unless otherwise stated on the PO. All invoices should be submitted monthly to CerapedicsAccounts@cerapedics.com. All payments hereunder must be in U.S. dollars. Time for payment and the period for any discount privilege will not begin to run until both Supplier's invoice and Products and/or Services have been received. Buyer will not be obliged to pay for Products upon their delivery, but will have the right to make payment for Products delivered in the normal course of its business and any payment made for Products delivered or Services performed will be without prejudice in the event of any defect in the Products and/or Services or breach of contract, whether known before or after payment. Buyer will also have the option to withhold payment for Products and/or Services found upon inspection to be defective or for Supplier's breach of contract.

9. Set-Off.

All claims for monies due or to become due from Buyer under this PO, including claims of assignees, will be subject to the deduction by Buyer of any set-off or counterclaim arising out of this or any other of Buyer's POs with Supplier, whether such set-off or counterclaim arose before or after such assignment.

10. Taxes.

The price quoted in this PO includes an allowance for all federal, state and local taxes levied by any Governmental Authority which Supplier is required to collect and pay with respect to production, sale, or shipment of the Products and/or performance of the Services. In case of new taxes or the reduction of tax rates, Buyer should be informed of such changes, and this PO price will be adjusted accordingly.

Supplier agrees to comply with all Applicable Law with respect to compensation paid to its employees and also with respect to its performance of this PO, and assumes exclusive liability for filing reports and making payment of all taxes or contributions as required by such Applicable Law.

11. Reimbursable Expenses.

Buyer shall be entitled to reimbursement for all pre-approved expenses, Supplier will only be entitled to reimbursement for reasonable out-of-pocket expenses incurred by Supplier in the course of performing Services, including round trip economy airfare (or round trip business class airfare for intercontinental travel), auto rental, meals, lodging and long distance telephone charges, will be reimbursed to Supplier by Buyer at cost as set forth, and up to the amount (if any) specified in this PO; provided, however, that all travel, meal and lodging expenses will be reimbursed only if plans for same are approved by Buyer in advance. Receipts will be submitted with the invoices for all expense reimbursement. Mileage will be reimbursed at the IRS standard rate.

12. Representations and Warranties.

12.1 *General.* With respect to all Products to be delivered under this PO, Supplier represents and warrants that all Products sold hereunder will: (i) be free and clear of all liens, encumbrances and/or colorable claims, (ii) be of merchantable quality, free from defects in material, design and workmanship and fit for the particular purposes intended, (iii) conform to all requirements of this PO, including without limitation, all specifications, samples, drawings and plans, if any, (iv) not constitute articles, which cannot be legally transported or sold under the provisions of any Applicable Law and are not misbranded within the meaning of any federal, state or local law, when bearing labels affixed by Supplier, and (v) not infringe or misappropriate the intellectual property, proprietary or other property right of any third party. With respect to Services to be performed under this PO, Supplier represents and warrants that (i) the Services will be performed in conformity with the highest industry standards practiced by professional firms in performing work of a similar nature at the time the Services herein are performed and in the same place as the services hereunder are provided, (ii) Supplier will use its best efforts in the performance of the Services and its other obligations hereunder, (iii) the Services will not infringe or misappropriate the intellectual property, proprietary or other property right of any third party and (iv) any Deliverables will be free from any lien, encumbrance or third party claim. The warranties in this paragraph will survive any inspection, delivery, acceptance, payment or use by Buyer or its customers of the Products or Services and will run to Buyer, its successors, assigns, customers and users. If a defect is discovered after further processing, use or delivery of Products and/or Services despite compliance with the provisions above, Supplier will be obliged to bear all costs in connection with the return, exchange or correction of such defective Products and/or Services. The costs include the costs of inspection, transportation, labor and material.

12.2 *Compliance with Applicable Laws.* Supplier at all times will comply with all Applicable Law in the performance of this PO. Without limiting the foregoing, Supplier specifically acknowledges applicability of the additional specific representations and warranties set forth in **Exhibit A** to this PO.

12.3 *Compliance with the Code of Conduct.* Supplier will comply with the principles described in the Cerapedics Supplier Code of Conduct, which can be accessed at www.cerapedics.com ("**Supplier Code of Conduct**"), as it may be revised, from time to time by Buyer. Supplier represents and warrants that it is in compliance with the Supplier Code of Conduct as of the date of this PO, and covenants that it will remain in compliance with the Supplier Code of Conduct throughout the term of this PO as the Supplier Code of Conduct may be in effect from time to time. Any violation by Supplier of the Supplier Code of Conduct will be grounds for "Termination for Cause" (as defined below), except that the cure period will not apply and Cerapedics may immediately terminate this PO in its sole discretion.

12.4 *Licenses and Permits.* Supplier will secure and maintain any and all required permits, consents and authorizations required to provide Products and/or Services under this PO.

12.5 *Ingredients Disclosure.* If any of the items under this PO constitute or contain "hazardous or toxic chemicals", or "hazardous substances", or "chemical products" as defined by any applicable Federal, State or local law, rule or regulation, Supplier shall provide at the time of delivery, all required notices and information about said substance, including without limitation, notices and information for OSHA, MSHA and Material Safety Data Sheets. Supplier agrees to provide Buyer any amended, altered, or revised information on a timely basis. Supplier warrants that the goods supplied under this PO do not contain any substance the use of which is prohibited under Federal, State, or local law, including, but not limited to the Clean Air Act, the Toxic Substance Control Act, or the Federal Insecticide Fungicide and Rodenticide Act.

13. Adulteration and Misbranding.

Supplier agrees that no material constituting, or being part of, any shipment or other delivery now or hereafter made to Buyer will at the time of such shipment or delivery, be adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act (FDCA), as amended or within the meaning of any Applicable Law in which the definition of adulteration and misbranding are substantially the same as those contained in the FDCA, as amended, as the FDCA and such laws are constituted and effective at the time of such shipment or delivery, or be a material which may not, under the provisions of Section 404 or 505 of the FDCA, be introduced into interstate commerce. Supplier hereby agrees to permit inspections by any Governmental Authority, including without limitation the Food and Drug Administration, of the manufacturing facilities and records relative to the Products or Services supplied hereunder.

14. Confidentiality.

All information or data furnished by Buyer or its affiliates to Supplier, orally, electronically or in writing, including but not limited to drawings, plans, specifications or other documents, data or information (collectively, Confidential Information), will be treated as confidential by Supplier. Supplier will not make any use of Confidential Information except in performance of this PO. The only persons from Supplier who are authorized to access Confidential Information will be the persons who need to know such Confidential Information in order to provide the Products and/or Services to Buyer and who are bound by obligations of confidentiality substantially similar to those under this PO. Supplier will not disclose the Confidential Information to anyone before or after performance of this PO without the written consent of Buyer. All Confidential Information will

be returned to Buyer or destroyed upon Buyer's request. Supplier will immediately notify Buyer of any unauthorized disclosure of Confidential Information. Supplier will comply with all Applicable Law in regard to privacy, protection and confidentiality of Confidential Information, including without limitation, the Standards for Individually Identifiable Health Information, 45 C.F.R. §§160 and 164 (the "HIPAA Privacy Regulation") promulgated pursuant the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as currently in effect. If Supplier deems it necessary in the performance of its duties under this PO to disclose any "Protected Health Information" (PHI) (as such term is used in the HIPAA Privacy Regulation), then, in advance of any such disclosure, Supplier will obtain a written authorization for the use and disclosure of such PHI in accordance with the HIPAA Privacy Regulation. In the event that Supplier breaches this Section, damages may not provide an adequate remedy for Buyer. Therefore, Supplier agrees that, in the event of a breach or threat of breach of this Section, Buyer may seek injunctive relief, in addition to any other relief available at law or in equity.

15. Indemnity and Limitation of Liability.

15.1 *Scope of Indemnity.* Supplier will, at its own expense, defend, indemnify and hold harmless Buyer, its successors and assigns, and its and their affiliates, employees, officers, directors and customers, against any and all claims, losses, demands, damages, costs, expenses or money judgments (including reasonable attorneys' fees), injuries (including sickness, disease or death), liabilities and legal proceedings, arising out of or in connection with (i) the Products supplied and/or Services performed hereunder, (ii) the acts or omissions of Supplier or any of its officers, directors, managers, agents, employees, representatives, supervisors, successors, assigns, subcontractors or anyone acting on any of their behalf, arising from or related to the performance or non-performance of Supplier's obligations under this PO, (iii) any representation or warranty made or given by Supplier, (iv) any claim by any party that the Products or Services furnished by Supplier infringe any third party's intellectual property rights, (v) any assertion that Buyer should be deemed the "employer" or "joint employer" of any individual performing under this PO, and (vi) any claim by a taxing entity that Buyer and/or its affiliates are responsible for Supplier's tax obligations except to the extent all claims, losses, demands, damages, costs, expenses, actions or liabilities incurred by the Supplier have resulted from the negligence, fraud or willful misconduct of the Buyer. Buyer will notify Supplier promptly of the institution of any such claim or suit and Supplier may conduct the defense of it or settlement negotiations, provided that no settlement will be agreed to without Buyer's prior written consent, unless the sole relief is monetary damages and there is no admission of liability attributable to Buyer. Buyer reserves the right to compromise or settle its own liability any time upon releasing Supplier from its obligations under this paragraph. If Buyer is enjoined from using equipment it leased or purchased, Supplier agrees, at Buyer's election, but without expense to Buyer, to remove said equipment and immediately terminate the lease or purchase it from Buyer at the original purchase price. Supplier's obligation to defend Buyer and to hold it harmless will survive any resale of equipment or termination of lease of equipment under this paragraph.

15.2 *Personal Injury or Death.*

THIS INDEMNITY PROVISION INCLUDES, BUT IS NOT LIMITED TO, CLAIMS FOR, ON ACCOUNT OF, OR ARISING FROM PERSONAL INJURIES OR DEATH ACTUALLY OR ALLEGEDLY SUSTAINED BY EMPLOYEES OF SUPPLIER OR ITS SUBCONTRACTORS OR OTHER ENTITIES ACTING ON SUPPLIER'S BEHALF. SUPPLIER HEREBY EXPRESSLY WAIVES, FOR PURPOSES OF THIS INDEMNITY PROVISION, ANY IMMUNITY IT MAY HAVE UNDER ANY WORKER'S COMPENSATION OR SIMILAR LAWS FROM LIABILITY FOR SUCH PERSONAL INJURY CLAIMS BROUGHT BY BUYER PURSUANT TO THIS INDEMNITY; PROVIDED HOWEVER THAT SUCH WAIVER WILL NOT APPLY TO CLAIMS ASSERTED BY SUPPLIER'S EMPLOYEES AGAINST SUPPLIER. SUPPLIER WILL REQUIRE ALL OF ITS SUBCONTRACTORS AND OTHER ENTITIES ACTING ON ITS BEHALF IN CONNECTION WITH, ARISING FROM OR RELATED TO THE PERFORMANCE OF OBLIGATIONS UNDER THIS PO, TO ENTER INTO A VALID AGREEMENT TO SIMILARLY WAIVE ANY IMMUNITY EACH OF THEM MAY HAVE UNDER ANY WORKER'S COMPENSATION OR SIMILAR LAWS FROM LIABILITY FOR SUCH PERSONAL INJURY OR DEATH CLAIMS BROUGHT BY BUYER PURSUANT TO THIS INDEMNITY.

15.3 *Limitation of Liability.* Buyer's liability for breach of this PO will not exceed the difference between the resale price of any materials or work in process, sold in good faith and in a commercially reasonable manner and the price paid by Buyer for such materials or work in process, less expenses and costs saved in consequence of Buyer's breach. Buyer will not be liable for any indirect, incidental, special or consequential damages, including but not limited to, Supplier's loss of actual or anticipated profits arising out of, or arising from, this PO or from the performance, suspension, termination or breach hereof. Supplier's remedies contained herein are not optional, but will be Supplier's exclusive remedies. Nothing in this PO will exclude or limit (a) Supplier's liability under Sections 12, 14, 15, 17 hereof, or (b) Supplier's liability for fraud, personal injury, or death caused by its negligence or willful misconduct.

16. Insurance.

The work to be performed under this PO will be performed entirely at Supplier's risk, and Supplier assumes all responsibility for the condition of tools and equipment used in the performance of this PO. During the term of the PO and for six (6) months thereafter, Supplier will, at its own expense, maintain and carry insurance in full force and effect insurance of the following types: Commercial General Liability, on an occurrence coverage form basis, including coverage for Products/Completed Operations, Blanket Contractual, and Broad Form Property Damage; Automobile Liability covering all owned, non-owned and hired vehicles; Workers Compensation as required by Applicable Law; and, if handling any Personal Data (defined below) pursuant to this PO, Cyber Liability. Employers Liability Deductible amounts under the foregoing policies will be paid by Supplier.

Except where prohibited by law, Supplier will require its insurer to waive all rights of subrogation against Buyer's insurers and Buyer. Upon Buyer's request, Supplier will provide Buyer with a certificate of insurance from Supplier's insurer evidencing the insurance coverage specified in this PO and naming Buyer as an additional insured. Supplier will provide Buyer with 60 days' advance written notice in the event of a

cancellation or material change in Supplier's insurance policy. It is expressly understood that Buyer does not, in any way, represent that the amount of insurance obtained by Supplier is sufficient or adequate to protect Supplier's interests or liability.

17. Suspension or Termination.

17.1 *Termination for Cause.* Buyer may suspend or terminate this PO, in whole or in part, immediately if Products or Services furnished hereunder do not strictly conform to specifications or instructions of Buyer, or if Supplier is in material breach of any of the terms hereof, including without limitation, its representations and warranties.

17.2 *Termination for Convenience.* Buyer, for its convenience, will have the right to suspend or terminate Supplier's work hereunder, or any part thereof, including delivery, upon notice to Supplier. Supplier will promptly comply with Buyer's instructions to minimize any cost to Buyer.

17.3 *Bankruptcy or Insolvency.* Buyer may cancel this PO without any further liability to Supplier, its successors or assigns, if Supplier becomes insolvent, is adjudicated bankrupt or has a voluntary or involuntary petition of bankruptcy filed against it.

17.4 *Effect of Termination.* Buyer will notify Supplier of the termination of the PO and Supplier will immediately stop all work on the PO. Buyer may provide a verbal notice to terminate which may be immediately confirmed in writing. In the event of termination or suspension, Supplier will be entitled to recover only its uncompensated actual direct costs incurred prior to the date of Buyer's termination, plus those actual direct costs arising from Buyer's termination, so long as Supplier furnishes to Buyer a complete termination cost analysis substantiating all costs claimed owing and in no event will the total price paid by the Buyer exceed the price(s) specified in this PO with respect to the portion of the Products and/or Services that are relevant to the claim. Any cost claimed by Supplier under this Section will be subject to the audit and approval of Buyer. Upon termination, any partially completed Products or Deliverables will become the property of Buyer in their then state of completion. In the event that any of Services are not fully performed by Supplier, whether as a result of termination or otherwise, Supplier will only be compensated for those Services actually performed. Buyer's payments upon suspension or termination under this paragraph will be in full satisfaction of all claims that Supplier may have against Buyer.

18. Intellectual Property.

Except as provided below, upon full and final payment to Supplier under this PO, any Deliverables will become the property of Buyer, and to the extent necessary, Supplier thereby assigns all right, title and interest in and to the Deliverables to Buyer. Supplier agrees to execute and deliver any and all papers necessary to reflect Buyer's interest in the Deliverables. To the extent that any intellectual property right owned by Supplier relates to or is incorporated in any of the Deliverables, Supplier hereby grants Buyer, upon full and final payment to Supplier, a worldwide, perpetual, royalty-free, fully paid-up, non-exclusive license to use such intellectual property right for its business purposes. Supplier further agrees that any invention or discovery, whether patentable or not, made or conceived by its employees or contractors assigned to provide services hereunder, which relates to the business of Buyer, will be the property of Buyer, as will any invention made or conceived by any employee or contractor of Supplier which is at least partially based on Buyer Confidential Information, as that term is defined in this PO. All materials developed by Supplier, its employees or contractors pursuant to this PO, in any form, will be considered works for hire and all rights to such materials, including the copyright, will belong to Buyer, survive inspection, delivery, acceptance, payment or use and will remain property of Buyer, its successors and/or assignors.

19. Responsibility for Buyer Property.

All material, including tools or machines, furnished or specifically paid for by Buyer, will be (i) the property of Buyer, (ii) subject to removal at all times without additional cost upon demand by Buyer, (iii) used only in filling orders from Buyer, (iv) kept separate from other materials or tools, (v) clearly identified as the property of Buyer, (vi) insured by Supplier with loss payable to Buyer, (vii) kept confidential, and (viii) at the discretion of Buyer, returned to Buyer at the termination of this PO. Supplier assumes liability for all loss or damage, excepting normal wear and tear, to such materials and agrees to supply detailed statements on the material as requested by Buyer.

20. Country of Origin; Certificates.

All Products will be marked conspicuously, legibly, and permanently in English with the country of origin of the Products and components, as such is determined and required by Applicable Law. Improper or incomplete markings will cause all expenses and penalties (including legal fees) incurred by Buyer to be charged back to the Supplier and/or offset against other amounts owed to Supplier. Repetitive failure to properly mark Products will constitute a breach hereof and may result in Buyer issuing immediate termination of this PO.

Supplier agrees to provide a valid NAFTA Certificate (including product name, country of origin and harmonized tariff system number), or, in the alternative, a statement that the product does not qualify for NAFTA. In the case of imported Products, and if applicable, Supplier agrees to provide a Certificate of Delivery.

21. Miscellaneous.

21.1 *Force Majeure.* No liability will result from delay in performance, or non-performance, caused by circumstances beyond the reasonable control and without the fault or negligence of the party affected, including, but not limited to, Acts of God, fire, flood, war, government action, terrorist act, accident, labor trouble or shortage, inability to obtain material, equipment or transportation. The curing of any delay in performance or non-performance as a result of the causes described in the foregoing sentence will be prosecuted with due diligence by the affected party and will include reasonable updates as to the status of such condition and its expected impact on the ability to perform under this

PO. At Buyer's option, quantities so affected by the causes described in the first sentence of this paragraph may be eliminated from this PO without liability, but this PO will remain otherwise unaffected.

21.2 *Notices.* All communications relating to the PO, to be effective, must be addressed, if from Supplier to Buyer, to the Buyer's representative, and if from Buyer to Supplier, to the Supplier's representative, identified in the PO or as otherwise provided to the other party in writing. Any communications transmitted electronically (e.g., via the Internet (including but not limited to EDI, cXML, e-mail)) (a) shall be considered a "writing" or "in writing," (b) will be deemed "signed" if a signature is affixed that is valid in accordance with applicable law (including a valid electronic signature) and (c) will constitute an "original" when printed. Communications introduced as evidence on paper will be admissible to the same extent and under the same conditions as other business records originated and maintained in documentary form and admissibility shall not be contested on the basis that the communication was not originated or maintained in documentary form.

21.3 *Relationship of Parties.* Supplier is an independent contractor for all purposes, without express or implied authority to bind to bind Buyer by contract or otherwise. Neither Supplier nor its employees, agents or subcontractors are employees or agents of Buyer, and are therefore not entitled to any employee benefits of Buyer, including but not limited to, any type of insurance.

21.4 *Safety and Site Requirements.* Supplier or its subcontractors, employees, agents and guests of any of them will at all times comply with all safety and security regulations in effect from time to time at Buyer's site or as applicable away from Buyer's site.

21.5 *Assignment; Subcontracting.* This PO will not be assigned by Supplier without Buyer's prior written consent. Supplier will not subcontract all or any part of its performance of this PO to any other party without Buyer's prior written consent. No assignment or subcontracting by Supplier, with or without Buyer's consent, will relieve Supplier of any obligations under this PO.

21.6 *Publicity.* Neither party will use in any manner, directly or indirectly, or refer to the other party's name, including any proprietary logos, in any advertisements, sales promotions, press releases or releases to professional or trade publications, without the other party's prior express written approval.

21.7 *Dispute Resolution.*

EACH PARTY HEREBY WAIVES ITS RIGHT TO A TRIAL BY JURY FOR DISPUTES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION COUNTERCLAIMS REGARDING SUCH DISPUTES, CLAIMS RELATED TO THE PARTIES' NEGOTIATIONS AND INDUCEMENTS TO ENTER INTO THIS AGREEMENT, AND OTHER CHALLENGES TO THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT. THE WAIVER IN THE PRECEDING SENTENCE APPLIES REGARDLESS OF THE TYPE OF DISPUTE, WHETHER PROCEEDING UNDER CLAIMS OF CONTRACT OR TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE) OR ANY OTHER THEORY. NOTWITHSTANDING ANY OTHER PROVISION CONTAINED IN THESE TERMS AND EXCEPT IN RESPECT OF DEATH OR PERSONAL INJURY CAUSED BY BUYER'S NEGLIGENCE, FRAUDULENT REPRESENTATION OR WHERE BUYER ACTS AS A CONSUMER, BUYER WILL NOT BE LIABLE FOR ANY CLAIM BY BUYER FOR ANY LOSS OR DAMAGE WHATSOEVER AND HOWSOEVER ARISING, UNLESS SUCH CLAIM HAS BEEN ISSUED IN A COURT OF COMPETENT JURISDICTION WITHIN TWELVE (12) MONTHS FROM THE DATE ON WHICH THE BUYER HAS FIRST BECOME AWARE OR OUGHT TO HAVE REASONABLY BECOME AWARE (WHICHEVER OCCURS EARLIER) OF THE CIRCUMSTANCES GIVING RISE TO SUCH CLAIM, FAILING WHICH ANY SUCH CLAIM SHALL BECOME TIME BARRED IN ITS ENTIRETY.

21.8 *Governing Law.* The validity, interpretation, and performance of this PO will be governed by the Applicable Law of the State of Delaware without regard to its conflicts of laws principles and Supplier agrees to the exclusive jurisdiction of the state courts located in Wilmington, Delaware, or the federal district court for the District of Delaware located in Wilmington, Delaware.

21.9 *Waiver.* Buyer's waiver of any breach by Supplier of any of the provisions of this PO will not constitute a waiver of any other breach of the same or any other provision. Buyer's rights and remedies under any provision of this PO will be in addition to, and not in substitution or limitation of, any other rights or remedies available to Buyer under Applicable Law.

21.10 *Headings and Severability.* Any headings are inserted solely for convenience of reference, will not constitute a part of this PO and will not otherwise affect the meanings, content, effect or construction of this PO. In the event that any provision contained herein is held to be invalid or unlawful, such provision will be severable from the remaining provisions of this PO, which will remain in full force and effect.

PURCHASE ORDER STANDARD TERMS AND CONDITIONS

COMPLIANCE WITH LAWS — ADDITIONAL REPRESENTATIONS AND WARRANTIES OF SUPPLIER

Supplier at all times will comply with all Applicable Law in the performance of this PO, including without limitation those related to antitrust, anti-corruption, privacy, discrimination, disabilities, fair labor standards, payment of wages, international trade, intellectual property, fraud and abuse, false claims, sampling, and prohibition of kickbacks and unlawful self-referrals. Additionally, Supplier at all times will comply with the following specific requirements as applicable to the Products and/or Services:

1. Interactions with Healthcare Suppliers and Professionals.

1.1 *Interaction with Healthcare Professionals.*

The parties acknowledge that Buyer conducts its relationships with healthcare professionals in compliance with applicable laws, including without limitation 42 C.F.R. §1001.952(d), the “safe harbor” to the U.S. Anti-Kickback Statute, 42 U.S.C. §1320a-7(b), with respect to personal services, the PhRMA Code on Interactions with Healthcare Professionals (the “PhRMA Code”) promulgated by the Pharmaceutical Research and Manufacturers of America (PhRMA), the AdvaMed Code of Ethics on Interactions with Healthcare Professionals, as amended, promulgated by the Advanced Medical Technology Association (“AdvaMed”) and Section 6002 of the Patient Protection and Affordable Care Act (the “Physician Payment Sunshine Act”) and its applicable implementing regulations (42 C.F.R. §403.904). Supplier, in the performance of this PO, will conduct its relationships with healthcare professionals (and, to the extent applicable, will cause its employees and subcontractors to conduct their relationships with healthcare professionals) in accordance with all applicable laws, the PhRMA Code and AdvaMed.

1.2 *Debarment.*

Supplier further represents and warrants that it has not and has never been, nor has any of its employees, agents, or subcontractors (or subcontractor agents or employees) been (i) convicted of a crime for which a person or entity can be debarred under Section 306(a) or 306(b) of the United States Food, Drug and Cosmetic Act (21 U.S.C. Section 335(a) and (b)) or under 42 U.S.C. Section 1320a-7 or (ii) sanctioned by, suspended, excluded, or otherwise deemed ineligible to participate in any federal health benefit program, including Medicare and Medicaid, or any other federal procurement or non-procurement programs. Supplier further warrants that it will immediately notify Buyer if Supplier or any of its employees, agents or subcontractors (or subcontractor agents or employees) hereafter is or becomes the subject of any investigation or proceeding which may result in a conviction or sanction as described in (i) or (ii) above.

1.3 *Bona fide Services.*

All Services requested by, and to be performed for, Buyer represent bona fide services and under no circumstances is the requisition of such Services, or the remuneration therefore, meant to serve as an obligation, express or implied, to purchase, prescribe or otherwise support Buyer’s products.

2. Federal Acquisition Regulations.

In the event any Products or Services being furnished by Supplier are in furtherance of or fulfilling, in whole or in part, Buyer’s obligations with respect to a federal agency procurement award or contract, Supplier agrees to comply with all applicable Federal Acquisition Regulations and applicable laws and regulations of the U.S. Small Business Administration, including without limitation the Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals clause of Section 8(d) of the Small Business Act. Supplier further agrees to comply with all Applicable Law including without limitation the Fair Labor Standards Act and all other Applicable Law related to discrimination. **Buyer and Supplier will abide by the requirements of 41 CFR §§ 60-1.4(a) or (b) (as applicable), 60- 300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.** Supplier agrees, to the extent applicable, to comply with the employee notice requirements set forth in 29 CFR Part 471, Appendix A to Subpart A, which are hereby incorporated by reference into this PO. Without limiting the foregoing, Supplier agrees, to the extent applicable: (a) to comply with the equal employment opportunity and affirmative action provision of: (1)

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Executive Order 11246, as amended and U.S. Dept. of Labor regulations issued pursuant thereto (41 CFR 60); (2) Section 503 of the Rehabilitation Act of 1973 (29 U.S.C. 793), as amended; and U.S. Dept. of Labor regulation issued pursuant thereto (41 CFR 60-741), in contracts for \$2500 or more; and (3) Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 (38 U.S.C. 2012), and U.S. Dept. of Labor regulations pursuant thereto (41 CFR 60-250), in contracts for \$10,000 or more; Title VII of Civil Rights of 1964, 78 Stat. 253, as amended, and regulations issued pursuant thereto; (b) to comply with the requirement of the certification of non-segregated facilities as ordered by the Secretary of Labor (32 F.R. 7439) and as required by 41 CFR 60-1; (c) to comply with Executive Order 11141 which proscribes discrimination because of age by government contractors and subcontractors; (d) to comply with the provisions of the Executive Order 12092, as amended, and any federal procurement regulations adopted pursuant thereto or to any other Executive Orders issued under Section 206 of the Economic Stabilizations Act of 1970 (PL 91-379), as amended; (e) in domestic, non-personal contracts over \$10,000, to comply with the Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals clause of Section 8(d) of the Small Business Act as amended (15 USC 631), and to provide subcontracting plans pursuant thereto; with Federal Acquisition Regulation 52.219-8 (if this contract is less than \$550,000), and with Federal Acquisition Regulation 52.219-9 (if this contract is more than \$550,000), with the same force and effect as if Supplier were the prime contractor under a government contract containing these regulations; (f) to comply with the regulations regarding Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) as specified in Federal Acquisition Regulation 52.222-35; (g) in domestic, non-personal contracts over \$10,000, to comply with the regulations for Affirmative Action for Workers With Disabilities as specified in Federal Acquisition Regulation 52.222-36; (h) to comply with the regulations for Combating Trafficking in Persons as specified in Federal Acquisition Regulation 52.222-50; (i) to comply with the regulations applicable to the Preference for Privately-Owned U.S. Flag Commercial Vessels as specified in Federal Acquisition Regulation 52.247-64; (j) to comply with regulations, rules and orders promulgated by federal agencies pursuant to Executive Order 12138 regarding the promotion of women's owned businesses where applicable; and (k) until three years after payment under the order, to afford the Comptroller General of the United States or any of his duly authorized representatives, access to, and the right to examine any pertinent books, papers and records of Supplier involving transactions relating to this PO. Supplier agrees to comply with all applicable laws, ordinances or regulations pertaining to nondiscrimination toward employees; nondiscrimination in hiring practices, and the elimination of segregated facilities.

3. Trade Compliance.

3.1 Importer of Record.

Supplier will be the importer of record on all imports into the United States. Supplier represents and warrants that it will comply with all Applicable Law relating to exports and import of goods and will supply all necessary information relevant to import of Products by the recipient. Supplier also will supply to Buyer such other information related to the export or import of Products as Buyer may from time to time request.

3.2 Supply Chain Security.

With respect to any imports into the United States, Supplier will use reasonable efforts to bring its supply chain security capabilities into substantial compliance with the security guidelines set forth in U.S. Customs and Border Protection's Customs-Trade Partnership Against Terrorism program and to complete a supply chain security questionnaire as provided by Buyer. 'Reasonable Efforts' means, with respect to a given goal, the efforts that a reasonable person in the position of the Supplier would use so as to achieve that goal as expeditiously as possible. When Supplier is responsible for selecting carriers, they must be C-TPAT members or if C-TPAT membership is not available to such carriers in general, have been screened by Supplier and determined by Supplier to meet C-TPAT requirements. Supplier must immediately notify Buyer of any container seal discrepancy or breakage (for any reason).

3.3 Human Rights.

No Products sold under this PO will be manufactured by use of prohibited labor including convict, forced, child or indentured labor.

3.4 Controlled Technology or Technical Data.

In the event any Products or Services being furnished by Supplier potentially relate to technology or technical data that is subject to export control laws and regulations, Confidential Information or other information obtained in connection with its performance of this PO may be considered technology or technical data that is subject the export control laws and regulations of the United States or other countries, and hereby agrees to comply with any such Applicable Law. To the

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extent applicable, Supplier agrees to cooperate with Buyer to ensure compliance with United States import and export laws and regulations, including without limitation by ensuring that its employees abide by deemed export laws and adhere to the compliance processes for import and export laws and regulations of Buyer or any of its affiliates. If requested by Buyer, Supplier agrees to implement a verification process to validate (and be able to demonstrate to Buyer) that Supplier and its employees, agents, subcontractors and subcontractor agents and employees have complied with all applicable import and export control laws including without limitation U.S. deemed export regulations. Supplier further agrees that it will not assign to perform work with regards to Products or Services being provided to Buyer any person or subcontractor or subcontractor agent or employee who is not a US Person (defined below) unless Supplier has (a) provided Buyer with all information necessary for it to determine whether disclosure of information during the course of such person's or subcontractor's or subcontractor agent's or employee's assignment could require an export license; and (b) has received from Buyer written permission to assign such person, subcontractor or subcontractor agent or employee to Buyer work. For the purposes of this section, a "US Person," means any person who is: (i) a Citizen of the United States, (ii) lawfully permitted for permanent residence in the United States, or (iii) a protected individual under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)).

4. Data Privacy and Security.

In the event any Supplier obtains access to Personal Data in connection with its provision of Products or Services under this PO, this Data Privacy and Security section will apply. "Personal Data" means any information that identifies or can be used to identify an individual, including, without limitation, information related to Buyer's and its affiliates' personnel (e.g., employees, temporary workers and independent contractors), customers, suppliers and invitees, that is provided to, or obtained, used, accessed, maintained, or otherwise handled by, Supplier in connection with providing Products or Services under this PO. Supplier will treat Personal Data as Confidential Information. Supplier certifies that it will (and any third-parties to which it grants access to Personal Data will), at all times, comply with and treat Personal Data in accordance with: (i) this Privacy and Security section; and (ii) applicable Data Protection Requirements. "Data Protection Requirements" means all Applicable Law relating to the collection, use, disclosure and protection of Personal Data in a jurisdiction in or from which Buyer or Supplier collects, transmits, stores, uses, discloses or otherwise processes (collectively, "Process" or "Processing") Personal Data. Without limiting the foregoing, Supplier agrees that:

4.1 Data privacy.

Supplier will only Process Personal Data to provide Products or Services under this PO and for no other purpose unless authorized in advance in writing by Buyer. In no event may Supplier: (i) Process Personal Data to market its services or those of an affiliate or third party; or (ii) sell, rent, disclose or otherwise provide access to Personal Data to its affiliates or third parties (except as agreed by Buyer in writing or as strictly necessary to provide the Products or Services or to comply with Applicable Law). Supplier will remain accountable and responsible for all actions by, and omissions of, third parties to which it discloses or provides access to Personal Data with respect to such Personal Data. With each third party to which Supplier discloses or provides access to Personal Data, Supplier will execute a written agreement that includes provisions that are no less protective of Personal Data than the level of protection required of Supplier. Upon request from Buyer, Supplier will provide all reasonable cooperation and assistance in responding to any request, inquiry or other communication from individuals or any regulatory or law enforcement authorities pertaining to Personal Data Processed under this PO.

4.2 Information Security.

Supplier will maintain and monitor a comprehensive, written information security program that contains administrative, technical, and physical safeguards to protect the security, confidentiality and integrity of Personal Data, including, but not limited to, measures to protect against unauthorized access to or alteration, disclosure, destruction or loss of Personal Data. Supplier certifies that its information security program is consistent with: (i) Buyer's information security practices and requirements as may be issued to Supplier by Buyer from time to time, and (ii) the Data Protection Requirements. Supplier will notify Buyer in writing immediately (and in any event within twenty-four (24) hours) to support@cerapedics.com and via telephone to Supplier's primary business contact whenever Supplier reasonably believes there has been either: (a) an actual unauthorized acquisition, destruction, modification, use, disclosure of, or access to, Personal Data; or (b) a possible unauthorized acquisition, destruction, modification, use, disclosure of, or access to, Personal Data that triggers a legal obligation (e.g., notification) pursuant to the Data Protection Requirements (an "Information Security Breach"). Unless required by Applicable Law, Supplier will not notify any individual or any third party other than law enforcement of any potential Information Security Breach involving Personal Data without first consulting with, and obtaining the permission of, Buyer. If Buyer directs Supplier to correspond with or notify individuals of the Information Security Breach, Supplier will be responsible, at Supplier's sole cost and expense, for filing all notices and making all notifications required by applicable law and will provide Buyer with sufficient documentation to support that all legal obligations have been

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satisfied. Except to the extent the Information Security Breach was caused by an act or omission by Buyer, Supplier will (a) reimburse Buyer for all losses suffered or incurred by Buyer in connection with the Information Security Breach, including without limitation losses that result from, occur in connection with or arise out of any of filing notices and/or notifying individuals regarding the Information Security Breach, and consulting outside advisors (e.g., attorneys, consultants) to determine and/or address Buyer's legal obligations resulting from the Information Security Breach; and (b) provide, at Supplier's sole cost, reasonable assistance and cooperation requested by Buyer in the furtherance of any correction or remediation of the Information Security Breach and/or the mitigation of any damage, including without limitation one year of identity theft protection and credit monitoring services to any individual whose Personal Data was included in the Information Security Breach. Supplier will indemnify, defend and hold harmless Buyer from and against any and all losses arising from, in connection with, or based upon any third-party claim against any of them that results from, occurs in connection with or arises out of any Information Security Breach, a violation of the requirements of this Data Privacy and Security section or the Data Protection Requirements, and any negligence or willful misconduct of Supplier, its personnel, or any third party to whom Supplier provides access to Personal Data, with respect to security or confidentiality of such Personal Data.

4.3 Obligations on Termination.

Upon termination or expiration of the Agreement, or for any reason upon Buyer's request, Supplier will: (a) immediately cease handling Buyer's Personal Data and will, as directed by Buyer, return or dispose of any or all such Personal Data; and (b) direct any relevant third-parties to return or dispose of any or all Personal Data in their possession, power or control. Supplier will certify to Buyer that all forms of the requested Personal Data have been either returned or destroyed. Notwithstanding the foregoing, Supplier may retain copies of Personal Data to the extent required by Applicable Law or as permitted under this Agreement. If Supplier disposes of any paper, electronic or other record containing Personal Data, Supplier will do so by taking all reasonable steps to destroy the information by: (a) shredding; (b) permanently erasing and deleting; (c) degaussing; or (d) otherwise modifying the Personal Data to make it unreadable, unreconstructable and indecipherable. Supplier's obligations under this Data Privacy and Security section will continue for so long as Supplier continues to have access to, is in possession of or acquires Personal Data, even if all agreements between Supplier and Buyer have expired or terminated.