



## EXECUTIVE SUMMARY

**Pursuant to Broward College Policy 6Hx2-1.14 and Procedure A6Hx2-1.14, Broward College exercised the authority delegated by the Board to authorize a non-standard agreement with GlideScope (Verathon) for Health Science Respiratory students. Fiscal Impact: 8,166.00**

**Presenter(s):** Jamonica Rolle, Vice Provost, Academic Affairs

**What is the purpose of this contract and why is it needed?**

Health Sciences Respiratory program is purchasing a GS Go from Glidescope Verathon consisting of GlideScope Core™ 15 Premium Configuration with Smart Cable and GlideScope Quick Connect™ Cable. The GS Go is a portable, compact, and easy to use high-resolution video laryngoscopy system created for mobile care teams. This is to train our respiratory students to use the equipment currently utilized at affiliate sites, so they have hands-on lab training preparing them for hospital-based endotracheal intubation. Per quote # 00248967 during FY 2023-2024.

**What procurement process or bid waiver was used and why?** The procurement process category one (\$0.00 - \$10,000 dollar thresholds) will be used because no formal or informal competitive requirements for goods and services acquired by the College at this dollar threshold. Additionally, at least one quote was obtained, identifying the best value for the required commodity or service. This item was submitted for Legal review for terms and conditions.

**Is this a budgeted expenditure from the budget established at the last June Board of Trustees meeting?** Yes.

**What fund, cost center and line item(s) were used?** Budget Line GLC 70600:Minor Equipment - Non Capitalized Inventoried; Worktags:OP-23-000003 CC0087, BU020, FD100, PG000168.

**Has Broward College used this vendor before for these products or services?** No.

**Was the product or service acceptable in the past?** Not Applicable.

**Was there a return on investment anticipated when entering this contract?** The return on investment will be reflected in the knowledge the student gains by getting the opportunity to work with equipment that will be utilized once they graduate and are working in the community.

**Was that return on investment not met, met, or exceeded and how?** Not Applicable.

**Does this directly or indirectly feed one of the Social Enterprise tactics and how?** Yes, this non-standard agreement with Glidescope (Verathon) feeds the Social Enterprise tactic-Answer the Call for Healthcare Professionals and Actualize Employment tactics. Providing the equipment utilized by affiliate sites allows students to attain the knowledge, skills, and abilities expected of an entry-level respiratory therapist which helps ensure employability and meet community needs.

**Did the vendor amend Broward College's legal terms and conditions [to be answered by the Legal Office] if the College's standard contract was used and was this acceptable to the Legal Office?**

The General Counsel's office has reviewed the agreement and any deviation to the College's standard terms has been deemed acceptable.

**FISCAL IMPACT:**

Description: Estimated \$ 8,166.00 using the following worktags; Project #: OP-23-000003 CC0087. BU020, FD100. PG000168

09/26/23

CC0087 · Dean for Health Science

**(\$8,166.00)**

**Jeffrey Nasse**  
Jeffrey Nasse, Provost and SVP of Academic Affairs


























9/16/2023

APPROVAL PATH: 11433 GlideScope (Verathon)

 **Workflow**

 Edit View

 Add Work Item

Stage	Reviewer	Description	Due Date	Status	
1	Nora Powell	Dean Review		 Completed	
2	Jamonica Rolle	Vice Provost Review		 Completed	
3	Jeffrey Nasse	Provost and SVP of Academic Affair		 Completed	
4	Natalia Triana-Aristizabal	Contracts Coordinator		 Completed	
5	Zaida Riollano	Procurement Approval		 Completed	
6	Suzanne Whitney	Budget Departmental Review		 Completed	
7	Rabia Azhar	CFO Review		 Completed	
8	<b>Legal Services Review Group</b>	Review and Approval for Form and		 Completed	
9	<b>Electronic Signature(s)</b>	Signatures obtained via DocuSig 		 Completed	
10	Natalia Triana-Aristizabal	Contracts Coordinator		 Completed	
11	Board Clerk	Agenda Preparation		 Completed	
12	District Board of Trustees	Meeting	08/20/24 08:30 AM	 Pending	



To: Broward College  
 Attn: Accounts Payables 6400 NW 6th Way Fl 3  
 Fort Lauderdale, FL 33309 Name: Kim Krinsky  
 Phone: 9546495180

Account Number 1069279  
 Quote Number 00248967  
 Created Date 9/7/2023  
 Expiration Date 12/29/2023

Email: [kkrinsky@broward.edu](mailto:kkrinsky@broward.edu)

**To prevent delays, please do ensure the PO matches this quotation and includes the quotation number when ordering.**

Please Email or Fax Purchase Order to:

Enzo Armella  
[enzo.armella@verathon.com](mailto:enzo.armella@verathon.com)  
 Fax: (866) 878-7280

Quantity	Product	Product Code	Sales Price	Total Price
1.00	GS Go - Sim Center, Not for Patient Use	0270-1000	USD 1,289.00	USD 1,289.00
1.00	Sim Center (Not For Patient Use) - GlideScope Core™ 15 Premium Configuration with Smart Cable and GlideScope QuickConnect™ Cable	0270-1031	USD 6,600.00	USD 6,600.00

Subtotal	USD 7,889.00
Sales Price	USD 7,889.00
Service	FedEx Ground®
Shipping and Handling	USD 277.00
Shipping Discount	USD -200.00
<b>Grand Total</b>	<b>USD 8,166.00</b>



[www.Verathon.com](http://www.Verathon.com)

If applicable, taxes will be included on your invoice, Please do not pay from quote.

Verathon Medical Corporate Headquarters  
 20001 North Creek Parkway  
 Bothell WA, 98011

The Terms and Conditions attached hereto shall apply to all sales, offers, quotes, and/or contracts. In the event of a conflict with the Broward College Purchase Order Terms and Conditions and Verathon's Standard Terms and Conditions, Broward College Purchase Order Terms and Conditions shall govern.

**PURCHASE ORDER/SUPPLIER CONTRACT FOR COMMODITIES AND SERVICES  
TERMS AND CONDITIONS**

**The below terms and conditions are applicable to both Purchase Orders AND the College's ordering vehicle entitled "Supplier Contract". Any reference below to "Purchase Order" shall refer to and have the meaning "Supplier Contract" when these terms and conditions are incorporated by reference in a Supplier Contract.**

This Purchase Order along with its Exhibits constitutes a binding contract between the College and the Vendor named on the Purchase Order when accepted by the Vendor either by express acknowledgment or by commencement of work or shipment without reservations.

**1. STATEMENT OF GOOD OR SERVICE.** The College hereby engages the Vendor to provide the good or service as described in the attached proposal, quote, estimate, scope of work, statement of work, or statement of services, incorporated herein as Exhibit "A." Any inconsistency in this Purchase Order shall be resolved by giving precedence in the following order: (1) Purchase Order terms and conditions; (2) Exhibit "A.;" (3) all other documents, including, but not limited to, drawings, descriptions, and sample(s).

**2. ASSIGNMENT/GUARANTOR.** The Vendor shall not assign, delegate or otherwise transfer its rights and obligations as set forth in this Purchase Order without the prior written consent of the College. Any attempted assignment in violation of this provision shall be null and void. The Vendor shall not pledge the College's credit or make the College a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. Pledging the College's credit shall also be construed to include the use of "factoring agents" or the practice of selling business accounts receivables to a third party at a discount for the purpose of obtaining funding which is also expressly prohibited.

**3. FORCE MAJEURE.** Notwithstanding any provisions of this Purchase Order to the contrary, the Parties shall not be held liable for any failure or delay in the performance of this Purchase Order that arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the Parties. Failure to perform shall be excused during the continuance of such circumstances, but this Purchase Order shall otherwise remain in effect.

**4. APPLICABLE LAW AND VENUE.** The laws of the State of Florida shall govern all aspects of the Purchase Order. In the event it is necessary for either Party to initiate legal action regarding the Purchase Order, venue for all claims shall be in Broward County, Florida.

**5. INDEMNIFICATION.** For value received, the Vendor shall indemnify and hold the College, its officers, directors, board of trustees, agents, assigns, and employees harmless from third party liabilities, direct damages, losses and costs, including, but not limited to reasonable attorneys' fees, to the extent caused by the gross negligence, recklessness or intentionally wrongful conduct of the Vendor and other persons employed or utilized by the Vendor in the performance of the Purchase Order. The Vendor further acknowledges that it is solely responsible for ensuring its compliance and the compliance of its subcontractors, suppliers, agents, assigns, invitees and employees with the terms of this Purchase Order. This paragraph shall survive the expiration or termination of this Purchase Order. **IN NO EVENT WILL VENDOR BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR OTHER INDIRECT DAMAGES OR LOSSES, INCLUDING WITHOUT LIMITATION LOSS OF DATA, HOWEVER CAUSED, WHETHER OR NOT FORESEEABLE, AND EVEN IF ADVISED OF THE POSSIBILITY THEREOF, AND VENDOR'S AGGREGATE LIABILITY IN DAMAGES OR OTHERWISE FOR ANY AND ALL CAUSES SHALL NOT EXCEED THE PRICE OF THE APPLICABLE GOODS OR SERVICES ON WHICH THE CLAIM IS BASED.**

**6. ENTIRE AGREEMENT.** This Purchase Order states the entire understanding and agreement between the Parties and no course or prior dealing, usage of the trade or extrinsic or parol evidence shall be relevant to supplement, vary or explain any term used with respect to this Purchase Order. The acceptance or acquiescence of any course of performance rendered under this Purchase Order shall not be construed as a waiver nor shall it be relevant to define or vary any term stated herein. This Purchase Order shall inure to the benefit of and shall be binding upon the Parties, their respective assigns and successors in interest.

**7. TERMINATION FOR DEFAULT.** A "material breach" of this Purchase Order is defined as any substantial, unexcused non-performance by failing to perform an act that is an important part of the transaction or performing an act inconsistent with the terms and conditions of the Purchase Order. If the Vendor materially fails to fulfill its obligations under this Purchase Order, the College will provide written notice of the deficiency by forwarding a Cure Notice citing

the specific nature of the material breach. The Vendor shall have thirty (30) days to cure the breach. If the Vendor fails to cure the breach within the thirty (30) day period, the College shall issue a Termination for Default Notice. The College may pursue whatever legal and/or equitable remedies it chooses regarding Vendor's breach of contract.

**8. TERMINATION FOR CONVENIENCE.** The College may terminate this Purchase Order with or without cause at any time for convenience upon thirty (30) calendar days' prior written notice to the Vendor. In the event of termination for convenience, the College shall compensate the Vendor for all authorized and accepted deliverables and/or services completed through the date of termination in accordance with Exhibit "A." The College shall be relieved of any and all future obligations hereunder including but not limited to, lost profits and consequential damages under this Purchase Order. The College may withhold all payments to the Vendor for such work until such time as the College determines the exact amount due to the Vendor.

**9. DISPUTES.** In the event a dispute arises which the Vendor and the College cannot resolve between themselves, the Parties shall have the option to submit to nonbinding mediation. The mediator or mediators shall be impartial, shall be selected by the Parties and the cost of the mediation shall be borne equally by the Parties. The mediation process shall be confidential to the extent permitted by law. Mediation shall not occur unless both Parties agree in writing.

**10. COMPLIANCE/LICENSES.** The Vendor, its employees, subcontractors or assigns shall obtain, at its own expense, all licenses, permits, and other authorizations necessary to comply with all applicable federal, state, and local laws and regulations relating to the performance of this Purchase Order. The Vendor is also responsible for compliance with all labor and employment laws as well as all Federal, State, and local discrimination laws. The Vendor is solely responsible for compliance with all labor and tax laws pertaining to its officers, agents, and Vendor employees and shall indemnify and hold the College harmless from any failure by Vendor to comply with such laws.

**11. PUBLIC RECORDS/REQUEST FOR CONTRACTOR RECORDS.** The Vendor shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should the Vendor assert any exemptions to the requirements of Chapter 119 and related statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the Vendor and Vendor shall bear all costs and fees related to the same.

If the Vendor meets the definition of "contractor" under Section 119.0701, Florida Statutes, in addition to other contract requirements provided by law, the Vendor must comply with public records laws, and shall:

- (a) Keep and maintain public records required by the College to perform the service.
- (b) Upon request from the College, provide the College with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Purchase Order term and following completion of the Purchase Order if the Vendor does not transfer the records to the College.
- (d) Upon completion of the Purchase Order, transfer, at no cost, to the College all public records in possession of the Vendor or keep and maintain public records required by the College to perform the service. If the Vendor transfers all public records to the College upon completion of the Purchase Order, the Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Vendor keeps and maintains public records upon completion of the Purchase Order, the Vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the College, upon request from the College's custodian of public records, in a format that is compatible with the information technology systems of the College.

(e) IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS PURCHASE ORDER, CONTACT THE COLLEGE AT (954) 201-7639, LEGALSERVICES@BROWARD.EDU, OR 111 EAST LAS OLAS BOULEVARD, #523, FORT LAUDERDALE, FL 33301.

IN ADDITION, THE VENDOR ACKNOWLEDGES THAT THE COLLEGE CANNOT AND WILL NOT PROVIDE LEGAL ADVICE OR BUSINESS ADVICE TO THE VENDOR WITH RESPECT TO ITS OBLIGATIONS PURSUANT TO THIS SECTION RELATED TO PUBLIC RECORDS. THE VENDOR FURTHER ACKNOWLEDGES THAT IT WILL NOT RELY ON THE COLLEGE OR ITS COUNSEL TO PROVIDE SUCH BUSINESS OR LEGAL ADVICE, AND THAT THE VENDOR IS HEREBY ADVISED TO SEEK BUSINESS/LEGAL ADVICE WITH REGARD TO PUBLIC RECORDS MATTERS ADDRESSED BY THIS PURCHASE ORDER. THE VENDOR ACKNOWLEDGES THAT ITS FAILURE TO COMPLY WITH FLORIDA LAW AND THIS PURCHASE ORDER WITH RESPECT TO PUBLIC RECORDS SHALL CONSTITUTE A MATERIAL BREACH OF THIS PURCHASE ORDER AND GROUNDS FOR TERMINATION PURSUANT TO PARAGRAPH 6.

**12. AUDIT.** The Vendor shall maintain all records, books and documents pertinent to the performance of this Purchase Order in accordance with generally accepted accounting principles consistently applied. The College shall have inspection and audit rights to such records for a period of 3 years from final payment under this Purchase Order. Records relating to any legal disputes arising from performance under this Purchase Order shall be made available until final disposition of the legal dispute. If the audit reveals that the Vendor owes the College any funds, Vendor shall pay for the audit and return all funds to the College immediately.

**13. COLLEGE'S TAX EXEMPTION.** The Vendor shall not utilize the College's tax exemption certificate number issued pursuant to Sales and Use Tax Law, Chapter 212, Florida Statutes, when purchasing materials used to fulfill its contractual obligations with the College. The Vendor shall be responsible and liable for the payment of all applicable FICA/Social Security and other taxes resulting from this Purchase Order.

**14. INVOICES AND PAYMENTS.** All invoices submitted by the Vendor shall contain the Purchase Order number, or the Vendor will not get paid. Invoices should include an itemization of the date, hours expended, and description of the deliverable. Invoices may be submitted via email, facsimile or U.S. mail. The time at which payment will be due from the College will be 30 days from the date of an undisputed invoice, acceptance of deliverables, and upon satisfaction of the College conditions that are detailed herein.

**15. VENDOR NOT TO LIMIT WARRANTY.** The Vendor shall not limit or exclude any express or implied warranties and any attempt to do so shall render this Purchase Order void, at the option of the College. The Vendor warrants that the goods and services furnished will conform to the specifications, drawings and descriptions listed in the offering document or to the sample(s) furnished, or in the Statement of Work.

**16. NONDISCRIMINATION.** The Vendor hereby assures that no person shall be excluded on the grounds of race, color, religion, national origin, disability, age, gender, marital status, sexual orientation or any other basis prohibited by law, from participation in, denied the benefits of, or otherwise be subjected to discrimination in any activity hereunder. The Vendor shall take all measures necessary to effectuate these assurances.

**17. AMENDMENTS.** This Purchase Order may be amended only when reduced to writing and signed by both Parties.

**18. PUBLIC ENTITY CRIMES/SDN LIST.** The Vendor, by its execution of this Purchase Order, acknowledges and attests that neither it, nor any of its suppliers, subcontractors, affiliates or consultants who shall perform services which is intended to benefit the College, is a State of Florida convicted vendor or is included on the State of Florida's discriminatory vendor list. The Vendor further understands and accepts that this Purchase Order shall be either void or subject to immediate termination by the College, in the event there is any misrepresentation or lack of compliance with the laws and the mandates of Section 287.133, Section 287.134, or Section 287.135, respectively, Florida Statutes. The College, in the event of such termination, shall not incur any liability to the Vendor for any work or materials furnished.

**19. TERMS/PROVISIONS.** Should any term or provision of this Purchase Order be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this Purchase Order and the Purchase Order shall remain operable, enforceable and in full force and effect to the extent permitted by law.

**20. NO WAIVER OF SOVEREIGN IMMUNITY.** Nothing contained herein shall be construed or interpreted as: (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida or the United States; (2) the consent of the State of Florida or their respective officers, employees, servants, agents, agencies, or public bodies corporate to be sued; or (3) a waiver of sovereign immunity of the State of Florida or the United States by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Florida Statutes Section 768.28 or beyond that provided by applicable law. This section shall survive the termination of all performance or obligations under this Purchase Order and shall be fully binding until such time as any proceeding brought on account of this Purchase Order is barred by any applicable statute of limitations.

**21. CONFLICT OF INTEREST.** This Purchase Order is subject to the provisions of Chapter 112, Florida Statutes, as currently enacted or as amended from time to time. By accepting this Purchase Order, Vendor certifies there is no conflict of interest as described in the statute. Prior to execution of this Purchase Order, prospective Vendor's must disclose, the name of any officer, partner, director, proprietor, or affiliated person (including but not limited to consultant, lobbyist, advisor, subcontractor, etc.) of your firm who is also an employee of the College or an immediate family member (spouse, domestic partner, child, in-law, etc.) of an employee of the College and has a material interest in the Prospective Vendor's firm. The prospective Vendor must also disclose gifts exceeding the statutory limits provided to a College employee, or an immediate family member in the last twelve (12) months.

**22. CONFIDENTIALITY.** To the extent that information about the College's employees or students is contained in records created, maintained or accessed by the Vendor and that this information is confidential and protected by the Family Educational Rights and Privacy Act of 1974 (FERPA) (20 U.S.C. 1232g), and/or any federal or state laws protecting personal information ("Protected Information"). Vendor agrees that: (i) it shall keep and maintain all "Protected Information" obtained during the performance of this Purchase Order, in strict confidence, using such degree of care as is appropriate to avoid unauthorized access, use or disclosure; (ii) will use and disclose Protected Information solely and exclusively for the purposes for which the Protected Information, or access to it, is obtained or provided, to perform the requested services in accordance with the terms and conditions of this Purchase Order, and not to use, sell, rent, transfer, distribute, or otherwise disclose or make available Protected Information for Vendor's own purpose or for the benefit of anyone other than the student, in each case, without student's prior written consent; and (iii) not directly or indirectly, disclose Protected Information to any person other than authorized College employees, or as may be requested by government authorities in the lawful performance of their duties.

The Vendor shall also perform and comply with clause 40 herein entitled "Background Checks."

At the request of the College, Vendor agrees to provide the College with a written statement of the procedures Vendor uses to safeguard Protected Information. Any breach of the requirements of this Confidentiality clause on the part of the awarded Vendor and its representatives may constitute grounds for immediate termination of contract.

**23. MARKETING.** Vendor may use the College's name in marketing materials for the purpose of publicizing contract awards; however, Vendor is prohibited from obtaining affirmations from College staff regarding its products or services. Affirmations include any kind of testimonials or endorsements of the Vendor as well as the products and/or services offered by the Vendor. The College, as a government entity, must fairly and equitably compete for goods and services, and therefore the endorsement of any particular firm, product, or service is strictly prohibited. Vendor is strictly prohibited from releasing any statements to the media regarding work performed under this Purchase Order without the review, and the express prior written approval of the College. The College's approval is at its sole discretion; however, such approval will not be unreasonably withheld.

**24. NO CONSTRUCTION AGAINST DRAFTER.** Each Party has participated in negotiating and drafting this Purchase Order, so if an ambiguity or a question of intent or interpretation arises, this Purchase Order is to be construed as if the Parties had drafted it jointly, as opposed to being construed against a Party because it was responsible for drafting one or more provisions of this Purchase Order.

**ADDITIONAL TERMS AND CONDITIONS FOR COMMODITIES:**

**25. COLLEGE'S TITLE TO MATERIALS, DOCUMENTS & PACKAGING.** All materials, drawings or other items provided by the College to the Vendor remain the property of the College and will be returned to the College upon demand. All containers, reels or pallets shipped with goods by the Vendor are to remain the property of the College unless otherwise agreed to in writing.

**26. SHIPMENT UNDER RESERVATION PROHIBITED.** Vendor is not authorized to ship the goods with any reservations and no tender of a bill of lading will substitute as a tender of the goods.

**27. DELIVERY TERMS & TRANSPORTATION CHARGES.** Delivery is "F.O.B. Origin" unless delivery terms are otherwise specified in the Purchase Order. If the College agrees in writing to reimburse the Vendor for transportation costs, the College shall have the right to designate the method of shipment. In either case, the title shall transfer to the College when the goods are delivered to the freight carrier, and all risk of loss of the goods shall remain with the Vendor until the goods are received and accepted by the College. Rejected materials will be returned to the Vendor at the Vendor's risk and expense.

**28. MATERIAL SAFETY.** In accordance with Title 29, C.F.R., Chapter XVII, and Chapter 442, Florida Statutes, it is the Vendor's duty to advise if a product is a toxic substance and to provide a Material Safety Data Sheet at the time of delivery.

**29. VENDOR TO PACKAGE GOODS.** Vendor will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows: (1) Vendor's name and address; (2) consignee's name, address and Purchase Order or Purchase Release number; (3) container number and total number of containers, e.g., box 1 of 4 boxes; and (4) the number of the container bearing the packing slip. Vendor shall bear the cost of packaging unless otherwise specified in the Purchase Order.

**30. COLLEGE'S RIGHT TO CANCEL.** The College reserves the right to cancel all or part of this Purchase Order, without obligation, if acceptance is not expressed by the Vendor either through written notice or by delivery of items ordered, within the specified time(s) and date(s). The College may return goods for full refund at any time during the first thirty (30) days following the date of invoice, subject to a 15% restocking fee. Returned goods must be unused, in the same condition as when shipped by Vendor, and in the original packaging. No goods may be returned if the seal or package integrity has been compromised or if the College has failed to handle or store the goods in accordance with all accompanying instructions and documentation. The goods will be returned freight prepaid to the address below and must reference a return authorization (RMA) number issued by Vendor. After 30 days, all sales are final.

**31. UNIFORM COMMERCIAL CODE.** In addition to all other Florida laws that are applicable to this Purchase Order, provisions of the Uniform Commercial Code, Chapters 671-679, Florida Statutes shall apply to commodities.

**ADDITIONAL TERMS AND CONDITIONS FOR SERVICES:**

**32. STATEMENT OF SERVICES.** The Vendor shall, to the satisfaction of the College, fully and timely perform all work items described in the Exhibit "A." As part of the services to be provided by the Vendor under this Purchase Order, the Vendor shall substantiate, in whatever form reasonably requested by the College, the methodology, lab analyses, scientific theories, data, reference materials and research notes to formulate its opinions. This requirement shall survive the expiration or termination of this Purchase Order. The Parties agree that time is of the essence in the performance of each and every obligation hereunder. It is the Vendor's responsibility to advise its employees or hired workers of the nature of the project, as described in this Purchase Order and Exhibit "A" attached hereto. The Vendor shall determine the method, details and means of performing the services, within the parameters established by Exhibit "A." The College may provide additional guidance and instructions to the Vendor's employees or hired workers where necessary or appropriate as determined by the College. The Vendor agrees to abide by any and all additional guidance and instructions.

**33. COMPENSATION/CONSIDERATION.** The total consideration for all work required by the College pursuant to this Purchase Order shall not exceed the amount indicated in Exhibit "A." Should the Vendor incur any travel expenses, payment for such travel will be in accordance with Section 112.061, Florida Statutes. The Vendor shall supply the College with receipts and supporting documentation for all reimbursable travel expenses. The Vendor, by executing this Purchase Order, certifies to truth-in-negotiation, specifically, that

wage rates and other factual unit costs supporting the consideration are accurate, complete and current at the time of contracting. If the total consideration for this Purchase Order is subject to multi-year funding allocations, funding for each applicable fiscal year of this Purchase Order will be subject to College Board of Trustees budgetary appropriation. In the event the College does not approve funding for any subsequent fiscal year, this Purchase Order shall terminate upon expenditure of the current funding, notwithstanding other provisions in this Purchase Order to the contrary. The College will notify the Vendor in writing after the adoption of the final College budget for each subsequent fiscal year if funding is not approved for this Purchase Order.

**34. INSURANCE.** The Vendor shall carry at a minimum the following: Commercial General Liability insurance with limits of at least \$1,000,000 per occurrence for bodily injury, death and property damage and shall protect it from claims which may arise whether such claims may arise out of the operations of the vendor or by anyone directly or indirectly employed by the Vendor. Automobile Liability insurance on all vehicles used to carry out the Purchase Order against bodily injury and property damage in the amount of at least \$1,000,000 per occurrence. If the Vendor will have access to College networks, systems, access to student or employee data, then Vendor shall carry Cyber Liability or a similar insurance to cover any network security or data breach with limits of at least \$1,000,000. Vendor shall carry Worker's Compensation insurance as required by Chapter 440, Florida Statutes. If the Vendor is exempt from carrying Worker's Compensation, they may provide the exemption certificate or a signed letter on company letterhead indicating the basis of the exemption. If any of the required policies provide coverage on a "claims-made" basis then insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract work. If coverage is cancelled or non-renewed and not replaced with another "claims-made" policy form with a Retroactive Date prior to the contract effective date, the Vendor must purchase "extended reporting" coverage for a minimum of three (3) years after the completion of contract work. The College may require Professional Liability insurance where applicable. All insurance policies shall be issued by companies qualified to do business in the state of Florida and grant the College thirty (30) days advanced written notice of cancellation, expiration or any material change in the specified coverage. The insurance companies must be rated at least A-VII by A.M. Best. The Vendor must provide a Certificate of Insurance (COI) completed in full, indicating the producer, insured, carrier's name, policy numbers and effective and expiration dates of each type of coverage required. The COI shall be signed by an authorized representative and shall identify the College as the Certificate Holder and as an additional insured with respect to General Liability policies. No work is authorized until such time as the College has received a COI in compliance with the above requirements. The College's Chief Risk Officer may revise or waive, at his/her discretion, the requirements stated above. The College will notify the Vendor if the insurance requirements will differ from those stated above.

Certificate Holder and Additional Insured shall read:

The District Board of Trustees of Broward College, Florida  
Attn: Risk Management  
6400 NW 6th Street  
Ft. Lauderdale, FL 33309

**35. OWNERSHIP.** The College shall retain exclusive title, copyright and other proprietary rights in all work items, including, but not limited to, all documents, technical reports, research notes, scientific data, computer programs, including the source and object code, which are developed, created or otherwise originated hereunder by the Vendor under this Purchase Order. The Vendor shall grant to the College a perpetual, non-transferable, exclusive right to use any proprietary software, if any. Any equipment purchased by the Vendor with College funding shall be returned and title transferred from the Vendor to the College upon expiration or termination of this Purchase Order.

**36. INDEPENDENT CONTRACTOR.** The Vendor shall be considered an independent contractor and nothing in this Purchase Order shall be interpreted to establish any relationship other than that of an independent contractor between the Parties and their respective employees, agents, subcontractors or assigns, during or after the term of this Purchase Order. Both Parties are free to enter into contracts with other Parties for similar services. The College assumes no duty with regard to the supervision of the Vendor and the Vendor shall remain solely responsible for compliance with all safety requirements and for the safety of all persons and property at the site of performance under this Purchase Order. In the event the Vendor is a sole proprietor, the Vendor is responsible for submitting legally required tax returns to the Federal Government.



**37. IMMIGRATION.** The Vendor shall be responsible for verifying employee authorization to work in the U.S. and make a good faith effort to properly identify employees by timely reviewing and completing appropriate documentation, including but not limited to, USCIS Form I-9. Written verification shall be kept by the Vendor and made available for inspection on demand by the College. The hourly rate of pay for each employee shall comply with State law and industry standards for similar work performed under this Purchase Order. The Vendor shall maintain records verifying the rate of pay for each employee working on this Purchase Order and make such records available for inspection on demand by the College. Failure to comply with these provisions shall be a material breach of this Purchase Order and cause for termination of the Vendor.

**38. CHANGE IN PERSONNEL.** The College may at any time and at its sole discretion request that the Vendor replace any Vendor personnel provided by the Vendor to work on this Purchase Order if the College believes that it is in the best interest of the College to do so. The College may, but will not be required to, provide a reason for requesting the replacement of personnel. Such change in personnel shall be made immediately upon the College's written request for a change of personnel. The Vendor shall place the above language in any contract that it has with subcontractors. The Vendor will enforce the replacement of subcontractor personnel upon a request by the College.

**39. BACKGROUND CHECKS.** *This clause applies to long term Vendors working on site, including, but not limited to, Childcare services, Janitorial Services, Food Services and Security or to the extent that HIPPA/FERPA Protected Information, as defined in clause 22 herein entitled "Confidentiality", about the College's employees or students is contained in records created, maintained or accessed by the Vendor. Vendor shall conduct thorough background checks for all of the Vendor's employees or hired workers who will be working on any College site or have access to FERPA or HIPPA Protected Information.* The background checks shall consist of education verification, a national criminal check for state and federal felonies and misdemeanors, and a check on immigration status in accordance with the above provision titled "IMMIGRATION." After reviewing the results of the background check, the Vendor shall determine whether the Vendor's employee and/or hired worker meets the necessary criteria for the position sought to be filled by the College. The College will rely on the Vendor's assessment of its employees' or hired workers' suitability to be hired for the position(s) sought to be filled by the College, based on the background check conducted by the Vendor. Prior to allowing any employees or hired workers to work on-site at College facilities, the Vendor will provide written verification to the College that a complete background check, as described above, was conducted for any such employee or hired worker. The Vendor will place the above language in any contract that it has with its subcontractors and is responsible for enforcement of this provision.

*Vendor who has long term onsite workers performing work at College facilities, agrees to be bound by the College policies and standards of conduct listed in the "Contractor Policy Code Acknowledgement Form," which is attached hereto and incorporated herein as Exhibit "B."*

**40. EMPLOYMENT BENEFITS.** Vendor expressly understands and agrees that Vendor, its officers, agents, and employees, are not entitled to any employment benefits from the College.

**41. STOP WORK ORDER.** The College may order that all or part of the work stop if circumstances dictate that this action is in the College's best interest. Such circumstances may include, but are not limited to, unexpected technical developments, direction given by the College's Board of Trustees, a condition of immediate danger to the College, the Vendor or the public, or the possibility of damage to equipment or property. This provision shall not shift responsibility for loss or damage, including but not limited to, lost profits or consequential damages sustained as a result of such delay, from the Vendor to the College. If this provision is invoked, the College shall notify the Vendor in writing to stop work as of a certain date and specify the reasons for the action, which shall not be arbitrary or capricious. The Vendor shall then be obligated to suspend all work efforts as of the effective date of the notice and until further written direction from the College is received. If deemed appropriate by the College and in the event work is resumed, the College may amend this Purchase Order to reflect any changes to Exhibit "A" and/or the project schedule.

## Verathon Standard Terms And Conditions Of Sale

**VERATHON INC.** ("Verathon") or its representatives offers and sells the products and services ("Products") to its customer, distributor, end-user, or other purchaser ("Buyer") only under the terms and conditions described below (collectively, "Terms"). These Terms shall prevail over any conditions issued by Buyer, unless and to the extent expressly stated otherwise in Verathon's quotation. Buyer agrees and accepts these Terms, together with Verathon's written quotation, order acknowledgment, and invoice, as the entire agreement between Verathon and Buyer ("Agreement"), superseding all other communications and documentation.

1. **PRICES; TAXES:** All orders, whether or not arising from Verathon's quotation is valid within the period stated therein and is subject to change or withdrawal at any time prior to written acceptance. Clerical or typographical errors on a quotation are subject to correction. The purchase price stated in the quotation exclude sales, use, excise, other tax, or government surcharges in effect or later levied. Buyer shall provide Verathon with the appropriate exemption certificate within a reasonable timeframe in advance of the date the Product is available for delivery, otherwise, Verathon shall invoice Buyer for those taxes and Buyer shall pay those taxes in accordance with the terms of the invoice. Buyer acknowledges its responsibility for reporting the dollar value of any discounts or price reductions in any costs claimed or charges made to Medicare, Medicaid, and other U.S. or foreign federal, state, or local program providing reimbursement to Buyer.
2. **ORDERS; ACCEPTANCE:** Orders must be submitted to Verathon in writing and will be considered accepted only by written acknowledgment or by shipment of the Products. Verathon may specify an alternate delivery schedule if orders exceed its inventory or ability to deliver. Buyer warrants that the person placing orders on its behalf is authorized to do so and accept these Terms.
3. **CHANGE; CANCELLATION:** Changes requested by Buyer after an order has been accepted is subject to written acceptance by Verathon, and the agreed price may be equitably adjusted to reflect such change. Buyer may cancel or suspend performance of an order for Verathon-standard Products for convenience. Any change or cancellation of an order may be subject to a 15% restocking fee.
4. **SHIPMENT, INSPECTION, AND RISK OF LOSS:** Verathon shall deliver the Products promptly within the dates indicated in the acknowledgement. It is understood that dates indicated for delivery or performance represent best current estimates only, and Verathon will have no liability for failure to perform within such dates. Unless otherwise agreed in Verathon's written quotation or order acknowledgement, all domestic shipments will be FCA origin and International orders will be EX Works (in each case per Incoterms 2010). Title and risk of loss will pass to Buyer when Products are delivered to carrier and, if not previously accepted, receipt of delivery by or on behalf of Buyer will constitute acceptance of these Terms. Buyer is responsible for all freight, shipping, handling, and insurance costs, and any such amounts prepaid by Verathon will be invoiced to and paid by Buyer. Buyer must inspect all Products upon arrival and provide written notice, within five (5) business days of any claim for shortage or nonconformance. If Buyer fails to give timely notice, all Products will be deemed to conform to the order and considered accepted. Use or resale of Products in any manner by Buyer or any of its employees, officers, directors, agents, representatives, contractors, licensees, or affiliates ("Representatives") after delivery without Verathon's express written consent will also constitute acceptance. Any claim for loss or damage in transit should be made directly to the delivering freight carrier or insurance provider and will not affect Buyer's responsibility to pay Verathon the full invoice price.
5. **PAYMENT:** For customers without approved payment terms, all orders require payment prior to shipment by COD, GHX E-Pay, ACH, wire transfer, credit card, letter of credit, or other payment method approved by Verathon, unless specified in Verathon's written quotation or acknowledgement.
  - 5.1 **Purchases by Credit Cards:** Buyer may prepay orders at point-of-sale (POS) via credit card (Visa, MasterCard, Discover and American Express). Except where Verathon is contractually obligated, credit card payments made after POS shall be subject to a 3% surcharge (where permitted by law).
  - 5.2 **Purchases with Approved Credit Terms:** Buyer may request credit terms by submitting a credit application prior to, or along with, Verathon's receipt of Buyer's initial Purchase Order. Acceptance of any credit terms are at Verathon's sole discretion. Where Verathon has extended credit to Buyer, terms of payment shall be net thirty (30) days from the date of invoice, without offset or deduction unless otherwise noted. Orders are subject to Verathon's ongoing credit review and approval. If Buyer is delinquent in any payment due, Verathon, in its discretion, may exercise any and all available remedies herein or at law, including set off, and may institute credit hold procedures on all open orders. Future orders will not be confirmed until Buyer's account is brought current, including any outstanding interest charges. Unpaid amounts will accrue interest at a rate equal to the lesser of 1.5% per month or the maximum rate permitted by applicable law, from the applicable due date until paid, plus Verathon's reasonable costs of collection. The foregoing terms will remain intact irrespective of any delay in delivery, installation, or acceptance. Verathon retains a purchase money security interest under applicable law in the Products and any proceeds arising therefrom, until payment in full is received. In the event of default, Verathon shall have the rights and remedies of a secured creditor, and all debt collection charges including legal fees shall be at the expense of Buyer.
- 5.3 **Partial Shipments:** Verathon may make partial or early shipments when necessary and will provide Buyer with an invoice for each partial shipment. Deposits or stage payments, if any, are non-refundable; no discount for early payment applies unless authorized in writing by Verathon.
6. **THIRTY (30) DAY RETURN POLICY:** Buyer may return the Products for a full refund at any time during the first thirty (30) days following the date of invoice, subject to a 15% restocking fee. Returned Products must be unused, in the same condition as when shipped by Verathon, and in their original packaging. No Product may be returned if the seal or package integrity has been compromised or if Buyer has failed to handle or store the Product in accordance with all accompanying instructions and documentation. The Products will be returned freight prepaid to the address below and must reference a return authorization (RMA) number issued by Verathon. The RMA number is valid for 30 days from issuance and must appear on all shipping documents and related correspondence. After 30 days, all sales are final. Return to: **Customer Care Department, Verathon Inc., 20001 North Creek Parkway, Bothell, WA 98011 USA; Tel: 1.800.331.2313.** Verathon will inspect returned Products and issue any applicable credits based on the condition of the Products and the terms of this policy.
7. **LIMITED WARRANTY:** The Products are warranted in accordance with the applicable limited warranty outlined below ("Warranty"). The Warranty is effective only upon payment in full for the Products, extends only to Buyer, and may not be transferred to third parties by operation of law or otherwise. No employee, agent, dealer, reseller, or other person is authorized to modify, vary, or extend the Warranty or to assume for Verathon any other liability for its Products.
  - 7.1 **Verathon Products:** Verathon warrants that the Products are free from defects in materials and workmanship under normal use and service and conform with all applicable specifications. The warranty period is controlled by the documents supplied with each Product and begins on the date of shipment. This Warranty does not cover consumables.
  - 7.2 **Verathon Software:** Verathon warrants that the media on which all Verathon software is provided is free from defects in materials and workmanship and the Software, when properly installed, will conform to its specifications at time of sale, in each case under normal use in accordance with Product instructions, for one (1) year from the date of invoice. Verathon does not warrant that the operation of the Software will be

uninterrupted or error free. Buyer is responsible for providing and maintaining current back-ups and industry standard, updated, virus protection and firewall programs for its systems and data.

- 7.3 **Third Party Products:** Third party Products and Software are warranted only by the original manufacturer and only if and to the extent set forth in the original manufacturer's warranty. Verathon will not be liable for damage or loss of any nature with respect to such third party products or failure of such supplier to perform under its warranty.
- 7.4 **Limited Remedy:** Any breach of the foregoing warranties must be reported prior to expiration of the applicable warranty period, and Buyer's exclusive remedy and Verathon's entire liability for breach of the foregoing warranties will be repair or replacement, at Verathon's option, of the non-conforming Product or part or, if neither is in Verathon's opinion commercially feasible, refund of an amortized portion of the purchase price paid for the Product. Any replacement of Products or Software may be made by substitution of similar or upgraded Products having the same or substantially similar functionality. To obtain warranty service, Buyer must obtain from Verathon a return authorization number and send the Product with a description of the issue to Verathon at the following address: **Customer Care Department, Verathon Inc., 20001 North Creek Parkway, Bothell, WA 98011 USA; Tel: 1.800.331.2313.** For repairs covered by Warranty, the Product will be returned to Buyer at Verathon's expense. For Verathon Software, Verathon will provide software support, updates and upgrades for the duration of the Warranty period during normal working hours or at an additional charge, outside normal working hours. Verathon will not provide support or upgrades for Software not representing the then-current or most recent upgrade for the Product to be serviced. If Verathon determines that an exclusion from coverage applies (see **Exclusions** below), or for service after expiration of the Warranty period, Verathon will provide an estimate of repair costs and obtain authorization from Buyer before commencing the work. Following non-warranty repair, the Product will be returned to the Buyer, and Buyer will be billed for the repair and return transportation charges.
- 7.5 **Exclusions:** Verathon's Warranty does not cover problems caused by Buyer's acts (or failure to act), the acts of others, or events beyond Verathon's reasonable control, including (1) accident, theft, misuse, abuse, extraordinary wear and tear, improper storage, handling, or maintenance; (2) misapplication, improper use, or other failure to follow Verathon's Product instructions, storage specifications and safety precautions, or in a manner not authorized in the applicable Product documentation; (3) use of Products in conjunction with, physically installed on, or as a component of non-Verathon equipment, hardware, software, components, services, accessories, attachments, interfaces, or consumables, other than those supplied or specified by Verathon; (4) Products that have been repaired or maintained by anyone other than a Verathon authorized service provider; (5) computer viruses, electrical power failure or surges, and other changes to the operating system or environment that adversely affect the Product, including without limitation acts of God or other external causes; or (6) latent defects discovered after expiration of the applicable Warranty period. Modification, disassembly, rewiring, re-engineering, recalibration, and reprogramming of any Products other than as specifically authorized by Verathon in writing is prohibited and will void all warranties.

Under the Scan Point® Total Reliability Plan and the GlideScope® Premium Total Customer Care Warranty, a Buyer-owned BladderScan® Volume Instrument (6000 Series) or GlideScope® Instruments will be replaced if it is rendered inoperable because of an accidental drop or mishandling after payment by Buyer of the current deductible as determined by Verathon. Please refer to your Scan Point® license agreement for additional terms and conditions for the Scan Point® product. The deductible charge will be applied on each Warranty request and may be applied an unlimited number of times per instrument. Devices dropped multiple times are included. This Warranty does not apply if damage to the Product results from, service or modification by

anyone other than an authorized Verathon service center. Verathon will not replace an instrument that has been accidentally dropped or mishandled without payment of the deductible by Buyer.

- 7.6 **Certain Legal Limitations:** The foregoing warranties give customers specific legal rights which may vary based on local law. When, under applicable law, implied warranties are not allowed to be excluded in their entirety, such warranties will be limited to the duration of the applicable written warranty and, for European customers, any terms herein limiting Verathon's liability shall not apply insofar as they conflict with mandatory statutory provisions of the Product Liability Act.
- 8. TO THE FULL EXTENT ALLOWED BY LAW, THE FOREGOING LIMITED WARRANTIES AND REMEDIES ARE EXCLUSIVE AND EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, REPRESENTATIONS, TERMS, OR CONDITIONS, WRITTEN OR ORAL, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES, TERMS OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, CORRESPONDENCE WITH DESCRIPTION, AND NON-INFRINGEMENT, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED.**
- 9. PRODUCT SPECIFICATIONS AND VALIDATION:** All Products, when delivered by Verathon, will conform to published specifications. However, Buyer is responsible for (1) validation of each specific Product application; and (2) any use of Products as a component of, physically installed on, or in conjunction with any products not provided by Verathon for such purpose, including all necessary testing and qualification. Buyer will implement commercially reasonable protections to ensure that any failure or defect relating to Products will not result in any other or further liability, damage, or safety issues. Any description, sample, or model is for identification or illustrative purposes only and does not constitute a warranty of any sort. Verathon's responsibility shall not include any liability for or arising out of any non-Verathon products in which or with which Verathon's Products may be installed, combined, or used. Verathon may, at its sole discretion, discontinue or change the design or specifications of its Products at any time, and will use commercially reasonable efforts to notify Buyer of any decision to discontinue Products or any material change in specifications affecting form, fit or function.
- 10. USE RESTRICTIONS & REQUIREMENTS:** Buyer shall comply with all applicable laws, rules, and regulations pertaining to the purchase, installation, operation, and use of the Products or its subsequent sale, shipment, transfer, or disposition, including any use or sale with or as a component of non-Verathon products. All international orders are contingent upon approval of export licenses required by the United States Government. Buyer may not, or permit any third party to (1) modify, alter, disassemble, or make any changes to the Products or items provided by Verathon, including but not limited to Software, firmware, packaging, labels, and instructions for use, without Verathon's prior written consent; (2) import, export, sell, transfer, service, store, handle, distribute, or use any Product, or item supplied hereunder in any manner prohibited by applicable laws and regulations, including all applicable export control laws, restrictions and regulations, or contrary to any written warning or instruction given by Verathon herein, in the Product documentation, on Verathon's website, or otherwise; or (3) make any representations or warranties on behalf of Verathon as to the quality, merchantability, fitness for a particular use, or other features of the Products. Buyer is responsible for calibration of all radiation producing equipment by a qualified radiological physicist prior to use of any Verathon Product for patient treatment and retains full responsibility for the accurate calibration and safe transmission of radiation to any third party, with or without Verathon's Product in place. Unless prohibited by applicable law, Buyer agrees to hold Verathon harmless from all liabilities, claims, losses, damages, and expenses (including without limitation reasonable attorneys' fees and expenses) arising out of Buyer's breach of these Terms.
- 11. PROPRIETARY INFORMATION:** Buyer acknowledges that the Products are based upon and embody various confidential and proprietary technology, processes, methods, information, and trade secrets of Verathon and its suppliers and licensors. Verathon and its

suppliers or licensors (as applicable) shall exclusively own all inventions, technology, know-how, trade secrets, and other proprietary information of any kind used or embodied in the products, documentation, drawings, designs, specifications, Software, and other items supplied by Verathon, all intellectual property rights with respect thereto, and all reproductions or derivatives thereof in any form ("Proprietary Information"). Buyer shall neither acquire nor claim any right, title, or interest in, and shall exercise reasonable care to maintain the confidentiality of, Verathon's Proprietary Information and shall use the same solely as required for its authorized use of the Products. Buyer may not directly or indirectly (1) copy, adapt, develop, disassemble, reverse engineer, recast, compile, decompile, translate, or create derivative works from any products, instructions, manuals, schematics, or other items provided by or on behalf of Verathon, or permit any third party to do so, (2) remove, alter, or obscure any copyright, trademark, patent, logo, government restricted rights, or other notices or legends attached to the Products, or (3) disclose or use Proprietary Information for commercial purposes or in a manner detrimental to Verathon. Disclosures of Proprietary Information may be permitted only to Buyer's Representatives having a specific need to know and a written obligation to protect such information no less restrictive than the restrictions in this Section, and Buyer will be responsible for any breach by its Representatives. Buyer agrees that any breach of this Section may cause Verathon irreparable harm for which recovery of damages may be inadequate, and that seeking immediate injunctive or other equitable relief may be sought to prevent any violation, threatened or actual, in addition to other remedies and without proof of actual damage.

12. **SOFTWARE & FIRMWARE:** If software is included in the scope of providing services in support of Products, Buyer shall be granted a non-exclusive and non-transferable right to use such software for the purpose of installing or upgrading the internal system code, firmware, or operating system software ("Software"). If Software is included in a Product, the rights of Buyer shall be limited exclusively to use on the Product. If separate software is included for installation or use on the Product, Buyer shall enter into an end user license agreement with Verathon. Title to the software remains with Verathon or its suppliers, and rights not expressly granted to Buyer are expressly reserved. Buyer may not copy or duplicate the Software, in whole or in part (other than one back-up copy, bearing all original copyright notices, for archival purposes), or transfer, sublicense, distribute, sell, lease, rent, or provide or disclose any such Software, or any portion thereof, to any third party, including without limitation any use over the internet or through an application service provider model, except that Buyer may sublicense the software along with the transfer of the product to another party. Buyer may not circumvent any usage or other restrictions imposed by any license manager, or modify, adapt, copy, recast, alter, compile, decompile, translate, or create any derivative work based on the Software, or use the same for application development purposes. The license granted to Buyer will terminate if Buyer discloses or transfers the Software to others without Verathon's consent or discontinues use of the Product for which such Software is provided.
13. **LIMITATION OF LIABILITY:** No claims, regardless of form, arising out of the Products or transactions to which these Terms apply may be brought by Buyer more than 2 years after the cause of action arises or performance is completed or terminated, whichever is earlier. With respect to bodily injury liability to third parties, each party will be responsible in such proportion as reflects its relative fault for damages arising from or related to the use or operation of the Products; provided, however, that Verathon will have no responsibility whatsoever and, unless prohibited by applicable law, Buyer will defend and hold harmless Verathon from and against, any losses, liabilities, damages or injuries arising out of (1) the handling, storage, installation, operation, service, or use of any Products in violation of these Terms, (2) any non-Verathon or custom design, manufacture, or installation of products pursuant to Buyer's requirements, specifications or designs. This Section states each party's entire liability for bodily injury. **IN NO EVENT WILL VERATHON BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR OTHER INDIRECT DAMAGES OR LOSSES, INCLUDING WITHOUT LIMITATION LOSS OF**

**DATA, HOWEVER CAUSED, WHETHER OR NOT FORESEEABLE, AND EVEN IF ADVISED OF THE POSSIBILITY THEREOF, AND VERATHON'S AGGREGATE LIABILITY IN DAMAGES OR OTHERWISE FOR ANY AND ALL CAUSES SHALL BE LIMITED TO THE PURCHASE PRICE PAID OR PAYABLE FOR THE APPLICABLE PURCHASE ORDER. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. FOR EUROPEAN CUSTOMERS, THE FOREGOING SHALL BE MODIFIED SOLELY AS REQUIRED UNDER THE PRODUCT LIABILITY ACT, IT BEING AGREED THAT CLAIMS OVER AND ABOVE THOSE UNDER THE PRODUCT LIABILITY ACT WILL NOT BE MADE BY BUYER AGAINST VERATHON, AS MANUFACTURER, UNDER ANY THEORY OF LIABILITY, INCLUDING BY MEANS OF INDEMNIFICATION OBLIGATIONS.**

The Parties acknowledges that these limitations of liability are a material part of the bargain between the parties and are reflected in product pricing, which would be higher without these limitations.

14. **MANUALS:** User and maintenance manuals will be provided with each Product. Service manuals or schematics are not generally available and will not be provided to Buyer.
15. **EXCUSABLE DELAY/FORCE MAJEURE:** Verathon will not be liable nor in breach or default of its obligations to the extent its performance of such obligations is delayed, hindered, or prevented, in whole or in part, directly or indirectly, due to causes beyond its reasonable control, including without limitation fires, floods, accidents, terrorism, war, plagues, epidemics, pandemics, quarantines, or other public health risks, governmental action or embargoes, strikes, or shortages of materials or labor, or other causes beyond its control. Upon occurrence of a force majeure, Verathon's performance or delivery date shall extend for a period equal to the duration of the force majeure event, plus such additional time as may be reasonably necessary to overcome the effect of the delay.
16. **ASSIGNMENT:** This Agreement is not assignable without Verathon's prior written consent. This Agreement is binding upon and enforceable against any successor or permitted assignee.
17. **GOVERNING LAW:** Except where expressly prohibited by statutory law, all transactions, and any disputes arising out of the Products supplied hereunder will be governed by the laws of the state of Washington and the United States of America, excluding any conflict of law provisions thereof. The United Nations Convention on Contracts for The International Sale of Goods, the Uniform Law on the Formation of Contracts for the International Sale of Goods, and any applicable international discovery and service of process conventions will be inapplicable.
18. **WAIVER, SEVERABILITY:** The failure of a Party to enforce any provision of this Agreement will not constitute a waiver of that provision. If any provision of this Agreement is held to be invalid, illegal, or unenforceable, then that provision will be amended to achieve as nearly as possible the same economic and practical effect as the original provision and the remaining provisions of this Agreement will not be affected.
19. **CREDIT REPORT AUTHORIZATION:** Buyer consents to Verathon's use of a consumer credit report to evaluate the credit worthiness of Buyer for the extension of credit as contemplated by this Agreement.
20. **HIPAA AND OTHER FEDERAL AND STATE PRIVACY AND SECURITY:** Verathon does not require or otherwise process patient protected health information ("PHI"), as defined by the Health Insurance Portability and Accountability Act of 1996 and the Health Information Technology for Economic and Clinical Health, in the course of providing the Warranty services to Buyer hereunder. Buyer hereby represents and warrants that any and all PHI that may be stored on the Products are purged and permanently deleted prior to returning such Products to Verathon for Warranty or any other service. In the event Buyer fails to remove electronic PHI, Verathon will delete such information from the Products without liability. In the event purchases made under this Agreement become subject to HIPAA, Verathon will execute a business associate agreement prior to obtaining access to Buyer's PHI.