

THE SCOTTCARE CORPORATION TERMS AND CONDITIONS OF SALE

1. Definitions: The *Buyer* means the person, firm, company or other organization who or which has ordered Products and/or Services from The ScottCare Corporation ("*Seller*").
 - a. The *Agreement* means the contract for the sale and purchase of Products and/or Services between Seller and the Buyer as may be further evidenced by Seller's final written offer, quotation or order acknowledgement and no prior proposals, statements, representations or conditions will be binding on either party;
 - b. The *Equipment* means all electronic equipment, hardware and other electronic or mechanical items agreed to be supplied by Seller, excluding any consumables and spare parts sold separately;
 - c. The *Goods* means all items agreed to be supplied by Seller other than the Equipment and Software;
 - d. The *Products* means any Goods, Equipment or Software agreed to be supplied by Seller; and
 - e. The *Services* means all advice given and services performed by Seller; and
 - f. The *Software* means any firmware, software or data compilations (i) identified in the Agreement or (ii) provided to Buyer by Seller in connection with installation or operation of the Equipment. For the avoidance of doubt, *Software* shall not include any "open source" firmware, software or data compilations, as any such "open source" firmware, software or data compilations will be subject to the terms and conditions set out in the relevant "open source" license.
2. Acceptance: The Seller's acceptance of any order is expressly subject to Buyer's assent to each and all of the terms and conditions set forth herein. Any additional or different terms and conditions submitted by Buyer shall be deemed objected to by Seller and shall be of no effect nor in any circumstances binding upon Seller unless accepted by Seller in writing. If Buyer objects to any of the terms and conditions, said objections must be specifically brought to the attention of Seller by Buyer by a written instrument separate from any purchase order or other printed form of Buyer. Said objections shall be deemed proposals for different terms and conditions and may be accepted only in writing by an authorized representative of Seller at its offices in Cleveland, Ohio, U.S.A.
3. Prices and Transportation: Seller's published or quoted prices, terms of payment, including discounts, and transportation terms in effect at date of shipment of goods shall apply.
4. Taxes: Liability for all present or future taxes, license fees or other fees imposed by or payable to any governmental authority based on the sale, lease, shipment and/or use of the Products or Services covered hereby shall be assumed and paid for by Buyer, and Buyer shall indemnify the Seller against any such liability.
5. Delivery: Delivery of the Products sold or licensed to buyer shall be made F.O.B. shipping point. Title and risk of loss of the Products shall pass to Buyer upon delivery to the common carrier, unless otherwise expressly indicated in writing signed by Seller. In all instances, shipping charges will be prepaid and added to invoice. Unless Buyer specifies in writing the desired method of transportation (air express, motor freight, etc.) within a reasonable period of time before the date scheduled for shipment, Seller will use its judgment in selecting the carrier and route. Delivery schedules are estimated, and Seller assumes no responsibility for delays. If Buyer delays delivery of any items, Seller may invoice Buyer for said items and hold them at Buyer's risk and expense pending instructions from Buyer. The Buyer shall notify Seller in writing within five (5) working days of delivery of any short delivery or defects reasonably discoverable on careful examination. Seller's sole obligation shall be, at its option, to replace or repair any defective Products or refund the purchase price of any undelivered Products.
6. Terms of Payment: Unless stated otherwise, invoicing will take place upon shipment of the Products sold to the buyer and invoices shall be due and payable within thirty (30) days of the invoice date. Payments not made within thirty (30) days of the agreed upon due date are subject to a finance charge of 1-1/2% of the outstanding balance each month, or part thereof, or the highest rate permitted by law, until paid.
7. Financial Responsibility of Buyer: If at any time before shipment the financial responsibility of Buyer becomes impaired, or unsatisfactory to the Seller, Seller may require in its sole discretion cash payment or any other payment method or security as Seller may deem satisfactory. Buyer will cooperate with the Seller in complying with any applicable conditional sale or secured creditor laws to perfect Seller's security interest and will furnish the Seller other assurances, including financing statements, as the Seller may reasonably request. If Buyer shall fail to make payments in accordance with the terms herein specified, Seller, in addition to any other rights and remedies, may at its option terminate shipment. In the event of bankruptcy or insolvency of Buyer, or in the event a proceeding is brought by or against Buyer under any bankruptcy or insolvency laws, the Seller may cancel any order then outstanding and shall receive reasonable cancellation charges.
8. Cancellations and Returns: Subject to the terms and conditions set forth herein and upon any applicable quotation form, Buyer may not cancel any order or part thereof without the prior written consent of the Seller. Buyer may not return any Products without the prior written consent of the Seller. Seller shall assess Buyer cancellation and restocking charges for any returned Product and/or cancelled equipment orders.
9. Installation: The Seller will install the Products, as is applicable, at the location indicated by the Buyer in accordance with the then current Seller installation and training policies. The Buyer must provide specified electrical service, computer equipment and individual business telephone or network lines, if applicable, for proper installation and complete operation of the Products. Buyer is solely responsible for any expenses incurred by Seller in resolving operating problems determined by Seller to be caused by installation of inappropriate electrical service, computer equipment or telephone or network lines. Buyer shall indemnify and hold Seller, Seller's agents, employees, and subcontractors harmless from any and all claims, causes of action, fees and expenses, including attorney fees, arising directly or indirectly from Buyer's acts or omissions, including negligence, during installation. The Buyer shall permit Seller to connect to the Products by remote access as may be beneficial to the performance of maintenance or repair activities in fulfillment of Seller's warranty obligations or as otherwise agreed to by the parties. This may include automatic software downloads and proactive monitoring and access to performance data related to the Products to gather and use Product and resource usage data for benchmarking and quality initiatives. Any data collected by Seller will be used in accordance with all applicable federal, state and local laws and regulations and in a manner that will maintain confidentiality.
10. Use: With respect to certain Products, use restrictions are a condition of the purchase which Buyer must satisfy by strictly abiding by the restriction as set forth in Seller's Product documentation. Buyer is solely liable to ensure compliance with any regulatory requirements related to the Buyer's use of the Products, including any clinical, medical or diagnostic use. Any warranty granted by Seller to the Buyer shall be deemed void if any Products covered by such warranty are used for any purpose not permitted hereunder.

In addition, the Buyer shall indemnify Seller and hold Seller harmless from and against any and all claims, damages, losses, costs, expenses and other liability of whatever nature that Seller suffers or incurs by reason of any such unintended use.

11. **Warranty:** This Section shall apply in the event no other specific warranty has been agreed to otherwise, and accepted by the Seller in writing.

11.1a. Goods – Seller warrants that its Goods meet Seller's specifications at the time of delivery. All warranty claims on Goods must be made in writing within ninety (90) days of receipt of the Goods. Seller's sole liability and Buyer's exclusive remedy for a breach of this warranty is limited to repair, replacement or refund at the sole option of Seller.

b. Equipment – Seller's Equipment of its own manufacture is warranted from date of delivery to be free of defects in workmanship or materials under normal usage for a minimum period of one (1) year and any claim shall be submitted in writing within such period. Seller's sole liability and Buyer's exclusive remedy for a breach of this warranty is limited to repair, replacement or refund at the sole option of Seller. Such repairs or replacement will not extend the warranty period.

c. Software – Seller warrants, for a period of ninety (90) days from the date of Buyer's receipt, that the Software substantially conforms to its published specifications and the media on which the Software resides will be free from defects in materials and workmanship under normal use. Seller does not warrant that the Software is error free or that Buyer will be able to operate the Software without problems or interruptions. Seller's sole liability and Buyer's exclusive remedy in the event of breach of this warranty is limited to repair, replacement or refund, at the sole option of Seller.

d. Services – Seller warrants that such Services will be carried out with reasonable care and skill. Seller's sole liability for breach of this warranty shall be at its option to give credit for or re-perform the Services in question. This warranty shall only extend for a period of ninety (90) days after the completion of the Services.

11.2 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SELLER HEREBY EXPRESSLY DISCLAIMS, AND BUYER HEREBY EXPRESSLY WAIVES, ANY WARRANTY REGARDING RESULTS OBTAINED THROUGH THE USE OF THE PRODUCTS INCLUDING, WITHOUT LIMITATION, ANY CLAIM OF INACCURATE, INVALID, OR INCOMPLETE RESULTS. ALL OTHER WARRANTIES, REPRESENTATIONS, TERMS AND CONDITIONS (STATUTORY, EXPRESS, IMPLIED OR OTHERWISE) AS TO QUALITY, CONDITION, DESCRIPTION, MERCHANTABILITY, FITNESS FOR PURPOSE OR NON-INFRINGEMENT ARE HEREBY EXPRESSLY EXCLUDED.

11.3 All claims under this Warranty must be made known to the Seller prior to the expiration of the appropriate time period from the date of acceptance from the factory or be barred. Upon notification of a timely claim, the Seller shall promptly investigate and/or examine the item or items claimed to be defective, and Seller shall, at its option, modify, repair or replace, free of charge, any item or items which the Seller determines to have been defective at the time of shipment from the factory, excluding normal wear and tear. For the warranty to apply, Seller must be able to reproduce the defect. At Seller's option, inspection may be performed at the Seller's plant and, in such event, freight for returning defective items shall be paid by Seller.

11.4 THIS WARRANTY DOES NOT COVER CONSUMABLE OR EXPENDABLE ITEMS SUCH AS BATTERIES, ELECTRODES, PATIENT CABLES, OR OTHER CABLES. Seller shall have no responsibility if the Products have been improperly stored, installed, operated, maintained, modified and/or repaired by an organization other than the Seller. Adjustments for items of equipment and material not manufactured by Seller shall be made to the extent of any warranty of the manufacturer or supplier thereof. Modifications made to the Products after the date of shipment are not the responsibility of the Seller and warranty service will be provided on Products modified by the Buyer only to the extent it can be determined that the item or items claimed to be defective were the responsibility of the Seller based on the condition of the Products as a whole at the time of shipment from the factory, and not a result of modifications made to the Products subsequent to the date of shipment. Buyer acknowledges that Seller is not responsible for any future change in the radio frequency spectrum or interference caused by a third party. However, Seller will make every effort to rectify such interference at Buyer's cost.

12. **Disclaimer and Limit of Damages:** Seller shall have no liability under the warranties contained in Section 12 with respect to any defect in the Products arising from: (i) specifications or materials supplied by the Buyer; (ii) fair wear and tear; (iii) wilful damage or negligence of the Buyer or its employees or agents; (iv) abnormal working conditions at the Buyer's premises; (v) failure to follow Seller's use restrictions or instructions (whether oral or in writing); (vi) misuse or alteration or repair of the Products without Seller's approval; or (vii) if the Buyer is in breach of its payment obligations under this Contract. NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT, IN NO EVENT SHALL THE SELLER OR ITS AGENTS, EMPLOYEES, REPRESENTATIVES, LICENSORS, SUBCONTRACTORS OR SUPPLIERS BE LIABLE, WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, TO BUYER OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE ARISING AT ANY TIME OR FROM ANY CAUSE WHATSOEVER RELATED TO THE USE OR INABILITY TO USE THE PRODUCT OR ANY INFORMATION CONTAINED WITHIN THE SOFTWARE (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF USE, LOST PROFITS, LOSS OR CORRUPTION OF DATA, OR COMPUTER FAILURE OR MALFUNCTION), REGARDLESS OF THE FORM OF ACTION AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL LIABILITY OF SELLER ARISING UNDER OR IN CONNECTION WITH THE AGREEMENT, INCLUDING FOR ANY BREACH OF CONTRACTUAL OBLIGATIONS AND/OR ANY MISREPRESENTATION, MISSTATEMENT OR TORTIOUS ACT OR OMISSION (INCLUDING WITHOUT LIMITATION, NEGLIGENCE AND LIABILITY FOR INFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS) SHALL BE LIMITED TO DAMAGES IN AN AMOUNT EQUAL TO THE AMOUNT PAID TO SELLER UNDER THE AGREEMENT WITHIN THE 12 MONTHS PRIOR TO WHEN THE LIABILITY IS IMPOSED. THE FOREGOING LIMITATIONS AND EXCLUSIONS APPLY TO THE EXTENT PERMITTED BY APPLICABLE LAW IN BUYER'S JURISDICTION.

13. **Intellectual Property:** All intellectual property rights in the Products and/or Services shall at all times remain vested in Seller or its licensors. The Buyer shall not (i) use the Products for purposes other than those for which they were designed; (ii) use the Products in connection with other manufacturers' products unless such connectivity is authorized in the Product documentation; (iii) grant, assign, transfer, or otherwise make available to third parties any right whatsoever in the Products; (iv) disclose to third parties any information contained in the Products; (v) copy or reproduce the Software (except for one copy for back-up purposes or as may otherwise be permitted by applicable law); (vi) alter or modify the Software, including any of the copyright and other proprietary notices that appear on or in the Software; (vii) duplicate, modify, translate, reverse engineer, disassemble, decompile or create derivative works of the Software, in whole or in part; or (viii) except as expressly permitted in this Agreement, you may not sell, rent, lease or sublicense the Software or any portion of either.

14. Software License (where applicable):

14.1 Seller and its licensors grant to Buyer a nonexclusive and nontransferable license to use the Software in object code form: (i) embedded in equipment provided by Seller, or (ii) installed in a single location on a hard disk or other storage device of up to the number of computers owned or leased by Buyer, or installed on a hard disk or other storage device of one or more computers for access by the number of concurrent users, for which Buyer has paid a license fee (the "Permitted Number of Computers or Concurrent Users"); or (iii) installed on a single file server for use on a single local area network for use of the Software over such network, provided the number of concurrent users or computers connected to the server does not exceed the Permitted Number of Computers or Concurrent Users. Unless otherwise stated in Seller's sales quotation, the license shall be a single CPU license. Buyer may only use the programs contained in the Software for which Buyer has paid a license fee.

14.2 Buyer grants to Seller or its representatives the right to examine and photocopy its books, records and accounts during Buyer's normal business hours to verify compliance with the above provisions. In the event such audit discloses that the Permitted Number of Computers or Concurrent Users is exceeded, Buyer shall promptly pay to Seller the appropriate licensee fee for the additional computers or users.

15. HIPAA:

15.1 To the extent Seller's provision of Equipment, Software or Services to Buyer involves the receipt, disclosure, creation of, or access to, certain Protected Health Information (or "PHI"), as that term is defined in the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, as amended by Pub. L. 111-5, Division A, Title XIII ("HIPAA"), then this Section 15 shall apply. References in this Section to PHI mean the PHI disclosed to, or obtained, created or maintained by, Seller from or on behalf of Buyer, for purposes of performing the Agreement.

b. Unless otherwise defined in these General Terms and Conditions, capitalized terms in this Section have the same meaning as set forth in HIPAA and its implementing regulations.

c. Buyer will obtain any consent or Authorization that may be required by HIPAA, or applicable state law, prior to allowing Seller to receive, disclose, create or access PHI pursuant to the Agreement.

d. If Buyer is a Covered Entity and Seller is a Business Associate, then the parties will execute a commercially reasonable Business Associate Agreement, a version of which Seller may provide to Buyer for Buyer's review, approval and execution. Upon execution by both parties, a Business Associate Agreement shall be deemed incorporated herein. In the event of an unavoidable conflict, the terms in such Business Associate Agreement shall prevail over the terms in these Terms and Conditions of Sale.

16. Provisions Applicable to Software Licenses (where applicable):

16.1 Title to, ownership of and all proprietary rights in and to the Software are reserved to and will at all times remain with Seller and its licensors. All copies of all or part of the Software are the sole property of Seller and its licensors. Buyer shall have only those limited license rights in the Software expressly granted herein. All rights not expressly granted herein are reserved to Seller and its licensors. Buyer agrees that aspects of the licensed materials, including the specific design and structure of individual programs, constitute trade secrets and/or copyrighted material of Seller. Buyer agrees not to disclose, provide, or otherwise make available such material in any form to any third party without the prior written consent of Seller. Buyer agrees to implement reasonable security measures to protect such material. Title to Software and any related documentation shall remain solely with Seller or its licensors, as applicable.

16.2 Buyer acknowledges that the Seller may use third-party tools, software, platforms or services ("Third Party Services") as part of the Software and/or to provide the Services. For the Software licensed hereunder and any applicable Services, Buyer's or its end users' use of Third Party Services is governed by the respective third party's applicable terms, which may include a license agreement, terms and conditions or privacy policies, which are included in Third Party Software (or other medium) and not by this Agreement. Buyer and its end users are solely responsible for reviewing, understanding, and complying with such third-party terms and policies. The Seller shall not be liable for any issues arising from Buyer or end users' use of Third-Party Services, including but not limited to data handling, service availability, or functionality, unless expressly provided in the Agreement. Continued use of the Products constitutes acceptance of any required third-party agreements as may be updated from time to time. If no third party license agreement is provided, then Buyer's use of the Third Party Services product is governed by this Agreement.

16.3 Any license or right of Access will automatically terminate upon Buyer's failure to comply with any of the terms and conditions set forth herein. At Seller's option, Seller may terminate any license or right of Access and the Agreement for Buyer's failure to pay the required license fee. Upon any such termination, Buyer must cease using the Software and destroy all copies of the Software, in whatever form, then in Buyer's possession. Upon the request of Seller, Buyer shall certify that Buyer has complied with this provision.

17. Export: Buyer agrees to comply with all relevant export laws and regulations of the United States ("Export Laws") to assure that the Software or the direct product of either is not (i) exported, directly or indirectly, in violation of Export Laws, or (ii) used for any purposes prohibited by Export Laws.

18. U.S. Government End-Users: Any portion of the Software which constitutes computer software is a "commercial item," as that term is defined in 48 C.F.R. 2.101 (Oct. 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Sept. 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995), all U.S. Government End Users acquire the Software with only those rights set forth herein.

19. Assignment: Neither Seller nor Buyer shall have the right to assign any right or interest in any contract between Seller and Buyer unless such assignment is in connection with the transfer of all or substantially all of the assignor's business, or upon written consent of the other party.

20. Tender: In the event of failure or refusal of Buyer to accept delivery, no physical tender of the Products by the Seller shall be necessary, but written notice of the Seller's readiness and willingness to deliver any quantity of the Products at any time specified shall be equivalent to physical tender thereof.

21. Proprietary Data: Unless otherwise specifically agreed in writing signed by an authorized officer of the Seller, neither Buyer nor any representative of Buyer, nor any other person, shall be entitled to, or have control over, any engineering or production prints, drawings, or technical data which the Seller, in its sole discretion, may consider to be, in whole or in part, proprietary. Any such prints, drawings, data and other information transmitted to Buyer in connection with any order are the property of Seller and are disclosed in confidence on the condition that they are not to be disclosed, reproduced, copied or used for any purpose detrimental to the interest of Seller. Buyer

specifically acknowledges that computer programs needed to operate equipment sold to Buyer are proprietary data and remain the property of Seller subject to a non-exclusive paid-up perpetual license to use the Software on the Equipment but for no other use.

22. Assistance: Seller may, but shall have no obligation to, furnish Buyer with recommendations, engineering and technical information and advice and other assistance. All assistance is furnished without charge solely as an accommodation to Buyer and Seller shall have no liability for inaccurate, incomplete or faulty recommendations, information, advice and assistance.
23. Labor Standards: The Seller represents and warrants that all Products and Services will be manufactured or furnished by the Seller in accordance with all applicable standards, provisions and stipulations of the Fair Labor Standards Act of 1938, the Walsh-Healy Act, and the Work Hours Act.
24. Force Majeure: The Seller shall not be liable for any expense, loss or damage resulting from delay or prevention of performance caused by fires, floods, acts of God, strikes, labor disputes, labor shortages, lack of or reasonable inability to obtain materials, fuel, supplies, or other equipment, riots, thefts, accidents, transportation delays, acts or failure to act of government or Buyer, delay in obtaining licenses or required permits, unusually severe weather, or any other cause whatsoever, whether similar or dissimilar to those enumerated above, beyond the reasonable control of the Seller. In the event of any delay arising by reason of the foregoing, the time for performance shall be extended by a period of time equal to the time lost by reason of such delay.
25. Non-Waiver: No failure of Seller to insist upon strict compliance of Buyer to any of these terms and conditions, or to promptly exercise any right accruing from any default of Buyer, shall impair Seller's rights in case Buyer's default continues, or in case of any subsequent default by Buyer.
26. Fraud and Abuse. The parties shall comply with applicable state and federal laws in the performance of the Agreement, including, without limitation, the federal False Claims Act (31 U.S.C. §§ 3729 et seq.), the AKS (42 U.S.C. § 1320a-7b(b)), and any regulations implementing such laws, as well as all comparable state and local laws and regulations. The Parties shall further comply with any applicable "exceptions" or "safe harbors" under the AKS, such as the Discount Exception, 42 U.S.C. § 1320a-7b(b)(3), and the Discount Safe Harbor, 42 C.F.R. § 1001.952(h), with respect to the Agreement, and any state laws comparable to the AKS.
27. Discount Safe Harbor: The discounts, prices, premiums, credits, or other value which Buyer may receive from Seller under the Agreement relating to the Products constitute a discount or reduction in price for purposes of the AKS Discount Exception and AKS Discount Safe Harbor. Buyer shall fully and accurately disclose and report all such discounts, prices, premiums, credits, or other value under this Agreement to Federal health care programs, including, but not limited to, Medicare and Medicaid. In addition, upon request, Buyer shall provide copies of the Agreement and any other documentation related to the Agreement, including invoices and annual statements provided by Seller, to the Secretary of the Department of Health and Human Services and any state agency. If Buyer is an entity that reports its costs on a cost report required by any Federal health care program, Buyer shall claim the benefit of any discounts in the fiscal year in which the discount is earned or the following year.
28. Governing Law: Rights and obligations of Seller and Buyer, with respect to any contract between Seller and Buyer, shall be governed by the laws of the State of Ohio without regard to its conflict of law provisions. All disputes arising out of or related to any Agreement will be subject to the exclusive jurisdiction and venue of the state and federal courts located in Cuyahoga County, Ohio, and the parties hereby consent to such jurisdiction and venue. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.