

## PURCHASE AGREEMENT

This Purchase Agreement ("Agreement") is made and entered into this \_\_\_\_\_, 2020, by and between Health Numeric, LLC. ("Health Numeric"), a Michigan corporation and \_\_\_\_\_, a \_\_\_\_\_ corporation ("Buyer").

WHEREAS, Health Numeric has certain Products and Services that the Buyer wishes to buy as specifically described in Addendum A attached (singularly a "Product" and collectively the "Products ");

WHEREAS, the Buyer desires to purchase Products from Health Numeric, and Health Numeric desires to sell the same to Buyer each in accordance with the provisions contained herein so that the Buyer can utilize the Products.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### 1. Buyer's Obligations

- 1.1. Forecasting: Buyer will provide Health Numeric with 12-month advanced forecasting representing quarterly unit ordering projections for the Product(s). Forecasts shall be updated each calendar quarter.
- 1.2. Market Feedback: Buyer will participate with Health Numeric to conduct annual business reviews with respect to the Equipment and its related market ("Market"). Buyer will provide access to a representative with expert knowledge of the Market to participate in the business review. The subject of such business reviews shall include tracings with respect to specific customer or customer groups, industry and geography, information regarding the function, use and acceptance of the Equipment and dynamics of the Market.
- 1.3. Promotion: Buyer will cooperate with Health Numeric to identify and develop effective sales and marketing tools and strategies and apply their best efforts to promote the Equipment with Health Numeric. Every effort will be made to present Health Numeric's image in the marketplace as a provider of quality and accurate technology.

## 2.0 Health Numeric's Obligations

- 2.1. Regulatory Support: Health Numeric shall provide Buyer with appropriate technical and regulatory files and data regarding the Products required by the Buyer to apply for and maintain registration and/or approvals required of the Products. All such materials will be in the English language and will remain the property of the Health Numeric.
- 2.2. Engineering Efforts: Health Numeric shall provide technical documentation and up to ten hours of technical support for the integration of the Products.

## 3.0 Pricing

- 3.1. The price to be charged to Buyer for the Product shall be in accordance with the pricing, quantities, and terms specified in Addendum B and referred to therein as the "Current Pricing".
- 3.2. Product pricing is exclusive of any foreign or domestic federal, state or local tax or duty that may be applicable to the sale of the Products to Buyer. Buyer shall pay all freight, insurance and other shipping expenses. Any additional costs shall be paid for by Buyer.
- 3.3. Any change in cost to Health Numeric of a component part or material used in the manufacture of the Products or any other cost related to the production of the Products could affect pricing to the Buyer. Health Numeric will provide to Buyer, in writing, the justification of any cost increases and both parties must agree to the new pricing at least 60 days prior to new pricing being enforced. In the event that both parties cannot agree on the price increase resulting from such increased costs to Health Numeric, then either party may terminate this Agreement upon written notice to the other party, and Health Numeric shall have no further obligations to deliver any Products not delivered prior to the date of such termination.

## 4.0 Orders, Shipping, and Payment

- 4.1. Product orders shall be initiated by Buyer through the delivery of written purchase orders submitted via fax, electronic mail or other medium accepted by Health Numeric (each, a "Purchase Order"). Purchase Orders will include the current date, a Purchase Order Number, Buyer's Bill-to and Ship-to Addresses, Product SKU, a list of the Products to be purchased, quantities, requested delivery date, the unit price (as provided pursuant to this Agreement), contact name and phone number (the "Basic Purchase Order Terms").

- 4.2. Any terms, requests or communications contained in any Purchase Order from the Buyer that are contrary to the terms of this Agreement will not modify the terms of this Agreement or be binding on the parties unless such terms have been fully approved in a signed writing by authorized representatives of both parties.
  - 4.3. Purchase Orders and shipping terms become binding only upon Health Numeric's written notification of acceptance to Buyer. At that time, Health Numeric agrees to ship and Buyer agrees to accept ownership of the Products according to the terms set forth in this Agreement.
  - 4.4. All products shipped shall be suitably packaged, marked for shipment to Buyer's designated address and delivered to its carrier agent or its agents' facilities at which time title to such Products and risk of loss shall pass to Buyer. Unless otherwise instructed in writing by Buyer, Health Numeric shall select the carrier.
  - 4.5. Health Numeric shall not be liable to Buyer for any damages caused by delays or failure to ship Products beyond Health Numeric's reasonable control.
  - 4.6. Pending credit approval, payment for the Products shall be due 30 days from invoice date. In the event any payments for deliveries of Products are not received within 60 days of invoice date, then the Buyer shall be deemed to be in default of this Agreement and Health Numeric may take any and all actions available to Health Numeric to enforce the terms of this Agreement and may terminate this Agreement upon written notice to Buyer and not deliver any Products remaining to be delivered as of the date of such termination.
  - 4.7. Payments will be made to Health Numeric at the Buyer's own cost and expense in US Dollars by wire transfer to an account or accounts designated by an authorized representative of Health Numeric or such other method designated by an authorized representative of Health Numeric.
  - 4.8. Health Numeric will not accept returns of Products that have been customized to the specifications of the Buyer, with the exception of issues dealing with Product warranty, quality, or shipping error. Any request for returns requires approval in advance and a Return Authorization Number issued by Health Numeric. Other than warranty claims, approved returns must be in their original, unopened packaging and returned to Health Numeric within 30 days of purchase. Approved returns may be subject to a 20% restocking fee.
5. Compliance, Regulation and Recall
- 5.1. Legal Compliance: Buyer shall comply with the conditions and requirements of all applicable legal and regulatory requirements affecting this Agreement and Buyer's performance hereunder including, without limitation, all laws, regulations and orders applicable to its operations as a distributor that incorporates the Products.
  - 5.2. Suitability: Buyer acknowledges and agrees that (i) Health Numeric's primary responsibilities hereunder are to deliver each Product in conformance with Health Numeric's written quality and technical specifications, (ii) Health Numeric has no responsibility for the suitability of its Product design, manufacture or function as used in or with the Buyer's equipment.

- 5.3. Registrations and Approvals: Unless otherwise agreed to in writing by Health Numeric, Buyer shall maintain and stay in legal compliance with the requirements of government registrations and approvals during the term of this Agreement.
- 5.4. Vigilance Reporting: Buyer shall immediately notify Health Numeric when Buyer becomes aware of an incident in which Health Numeric's Product and/or technology has or may have caused or contributed to a death, a serious injury, property damage or equipment malfunction. Buyer shall promptly notify Health Numeric of any complaints it receives or becomes aware of regarding the quality, performance, safety, effectiveness, durability or reliability of the Products.
- 5.5. Product Traceability: Buyer is responsible for documenting the destination of Health Numeric's Product/Technology that have been sold or otherwise distributed. In the event of a Product quality issue, regulatory matter, notification or product recall, Buyer shall make available for Health Numeric's inspection all relevant records related to the Products. Buyer must maintain such records for a period of 10 years from the termination of this Agreement, and make such records available to Health Numeric upon its request at any time upon 24-hour notice.
- 5.6. Change Notifications: Health Numeric shall make best efforts to provide Buyer with 90 days' prior written notice of any changes to any Product that affects its form, fit or function as well as any changes that would affect current registrations and/or approvals.
- 5.7. Recall: In the event that Health Numeric is required to recall or, on its own initiative, recalls any of the Products sold to Buyer, Buyer agrees to stop shipping equipment incorporating such recalled Product lots immediately. Buyer shall cooperate fully in any such recall, including any customer notice, restriction, change, corrective act or market action or any Product change requested or ordered by any governmental agency having jurisdiction over the Products. Buyer shall not initiate a recall of any Product without Health Numeric's prior written consent.
6. Intellectual Property
- 6.1. Buyer acknowledges and agrees that Health Numeric is not by this Agreement granting any right or license whatsoever, by implication, estoppel or otherwise, to Buyer to utilize any information, know-how, proprietary data, software, copyrights, trademarks or patent rights that Health Numeric partners may have or may secure in the future relating to any of the Products (collectively, "Health Numeric Property") beyond what is expressly authorized under this Agreement. Any drawings, data, designs, software programs or other information (collectively, the "Product Software") supplied by Health Numeric to Buyer in connection with the sale of the Products are not included in the sale of the Products, but shall remain Health Numeric's property. Buyer shall have a license to use the Product Software as it is integrated into or associated with the Products in the ordinary course of business and for the purpose and in the manner for which the Product Software was designed and produced subject to the terms of this Agreement. Buyer will not translate, modify, reverse engineer, disassemble, decompile, or create derivative works based on any of the Health Numeric Property, including the Product Software, or permit any third party to do so. The Product Software may not be copied or transferred to another party or made commercially available in any other device.

- 6.2. Health Numeric shall have the right to use Buyer's trademarks, service marks, trade names, and logos ("Buyer Trademarks") only for the limited purpose of identifying Buyer in Health Numeric's marketing materials as a customer. Buyer shall be given the opportunity to review and approve the relevant portions of such marketing materials. At no time during or after the term of this Agreement shall Health Numeric challenge or assist others to challenge the Buyer Trademarks or the registration thereof or attempt to register any trademarks, marks or trade names confusingly similar to the Buyer Trademarks.
- 6.3. Buyer shall have the right to use Health Numeric's trademarks, service marks, trade names, and logos ("Health Numeric Trademarks") only as incorporated into Products purchased by Buyer hereunder, or in documentation, literature or labeling provided or approved by Health Numeric. Health Numeric will be given the opportunity to review and approve the relevant portions of any materials produced by or for Buyer (other than by Health Numeric) that include Health Numeric Trademarks. At no time during or after the term of this Agreement shall Buyer challenge or assist others to challenge the Health Numeric Trademarks or the registration thereof or attempt to register any trademarks, marks or trade names confusingly similar to the Health Numeric Trademarks.
- 6.4. Neither party shall have any rights in or to the other party's company name, trademarks or symbols other than the rights set forth herein or to suggest that one party is a division, affiliate, or subsidiary of the other party, or in any way which might endanger the other party's rights in or ownership of the trade names, trademarks or symbols.

## 7. Labeling

- 7.1. Buyer agrees to have labels on the Equipment, promotional literature, and/or User Manual indicating that Health Numeric technology is used in the Equipment.
- 7.2. Buyer shall not alter or remove any labeling as applied by Health Numeric to the Product including Health Numeric's Trademarks.

## 8. Confidentiality

- 8.1. Confidential Information: For purposes of this Agreement, "Confidential Information" means all information, regardless of form or the medium in which it exists, that is owned or lawfully controlled by a party, is not generally known to the public and is of a technical, business or other proprietary or confidential nature (including, without limitation, trade secrets, know-how, processes, methodologies, plans, formulae, designs, algorithms, code, specifications, product designs, customer lists, business plans and financial information). Confidential Information shall not include information that (i) is or becomes part of the public domain without violation of this Agreement by a party; (ii) is already in the possession of a party as of the Effective Date, free of any restriction on use or disclosure; (iii) becomes available to a party from a third party, provided such third party was free from restriction on disclosure of the information; or (iv) has been independently developed by a party without reliance on any Confidential Information of the other party, as evidenced by written documentation.
- 8.2. Prohibition Against Use or Disclosure: Each party shall, for all time and for all purposes, regard and keep all Confidential Information of the other party confidential, held in trust solely for the use and benefit of the other party. Each party shall not, during the term of this Agreement or at

any time thereafter, either directly or indirectly, use, duplicate, attempt to duplicate, divulge, make available or disclose any Confidential Information of the other party to any other person, entity, firm or corporation, now existing or hereafter formed, without prior written consent.

8.3. Return of Materials: All Health Numeric trademarks, trade names, patents, copyrights, designs, drawings, formulas or data, photographs, samples, literature, sales aids, and all other intellectual property of every kind related to the Products shall remain the sole property of Health Numeric, including, without limitation, any enhancements and customization of the Products that occurred under this Agreement. Within 30 days after the termination of this Agreement, Buyer shall prepare all such items in its possession for shipment, as Health Numeric may direct at Health Numeric's expense. Buyer shall not make, use, dispose of or retain any copies of any confidential items or information, which may have been entrusted to it by Health Numeric. Effective upon the termination of this Agreement, Buyer shall cease to use all Health Numeric Trademarks, except as otherwise expressly provided herein.

8.4. Equitable Relief: Each party acknowledges and agrees that any breach of any of the covenants or agreements set forth in this Section will cause irreparable harm to the disclosing party for which there is no adequate remedy at law. In the event of such a breach or threatened breach, in addition to any remedies at law (including, without limitation, damages), each party hereby consents to the issuance of an injunction or other equitable relief in favor of the disclosing party, without posting any bond or other security, enjoining the breach of any such covenant or agreement by any court of competent jurisdiction. The covenants, agreements and remedies provided herein are in addition to and are not to be construed as replacements for or a limitation of rights and remedies otherwise available to the disclosing party.

## 9. Indemnification

9.1. Indemnification by Health Numeric: Health Numeric will defend and indemnify Buyer and hold Buyer harmless

against all liabilities, costs and expenses (including, reasonable attorneys' fees) incurred by Buyer related to any claim by a third party (i) regarding a defect in the Product covered by the applicable warranty herein, or (ii) that the Product or any part thereof infringes or violates any patent of such third party. Should the Product become, or in Health Numeric's opinion be likely to become, the subject of a claim of patent infringement, Buyer shall permit Health Numeric, at Health Numeric's option and expense, either to: (1) procure for Buyer the right to continue using the Product; or (2) replace or modify the same so that it becomes non-infringing, provided such modification does not materially diminish the Product's form, fit and functionality. If neither of these alternatives is available on terms reasonable to Health Numeric, then Health Numeric may terminate this Agreement upon notice to Buyer. In the event of a termination by Health Numeric under this Section 9.1, Buyer may return to Health Numeric any unused and undamaged Products that have not been removed from their original packaging and Health Numeric shall refund to Buyer the purchase price paid by Buyer for such Products. The foregoing shall constitute the sole liability of Health Numeric to Buyer for any patent infringement.

9.2. Indemnification by Buyer: The indemnification provided in Section 9.1 above shall not apply to any Product, or any part thereof, manufactured to Buyer's own detailed design for unique items of special physical or technical characteristics or to any Product that has been modified by or for Buyer in such a way as to cause it to become infringing (each a "Buyer Modified Product"). As to such Product(s) or part(s) thereof, Nonin assumes no liability, including, without limitation,

any liability for patent infringement or use of a Product past its shelf life date. Buyer shall defend and indemnify Health Numeric and hold Health Numeric harmless against all liabilities, costs and expenses (including, reasonable attorneys' fees) incurred by Health Numeric related to any claim by a third party with respect to (i) Buyer Modified Products, or (ii) Equipment generally, including, without limitation, patent infringement, product liability claims and damages, personal injury or death.

- 9.3. Procedures: An indemnified party shall notify the indemnifying party promptly in writing of any notice of a claim arising under this Section 9. An indemnified party shall cooperate with the indemnifying party in all reasonable respects in connection with the investigation and defense of any such claim. The indemnifying party shall have sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise, provided, however, that no settlement may be entered into by an indemnifying party that imposes any monetary obligation on, restricts the business operations of, or includes an admission of guilt or liability by an indemnified party without the prior written consent of the indemnified party.

## 10. Dispute Resolution

In the event of a dispute arising between the two parties hereto, out of or in relation to the terms of this Agreement, except as defined in Section 8.3, both parties agree to apply their best efforts to arrive at a mutual resolution in the normal course of business or by negotiation between individuals duly authorized by each party. If such efforts fail to resolve the dispute within 60 days, both parties will then agree to settle the dispute by mediation in Michigan under the then current model and rules of the Michigan General Rules of Practice. As a final attempt to resolve such dispute, both parties agree to arbitration conducted in Michigan in accordance with the American Arbitration Association Rules of Commercial Arbitration by three independent and impartial arbitrators. Each party to the alternative dispute resolution shall bear the fees of its own attorneys and other advisors, and equally share the expenses and fees of the mediators and arbitrators. Both parties agree to abide by the decisions and awards of the final resolution.

## 11. Warranty

- 11.1. Health Numeric warrants to Buyer that each Product shall be free of defects in materials and workmanship for the period from the delivery date as described in Addendum A such that each Product, when properly used, shall perform in accordance with the written specifications in Addendum A.
- 11.2. Health Numeric or partners shall repair or replace all Products found to be defective in accordance with this warranty, free of charge, for which Health Numeric has been notified by the Buyer by serial number that there is a defect, provided that said notification occurs within the applicable warranty period. Notwithstanding anything herein contained to the contrary, and as between the Buyer and Health Numeric, this warranty of repair and replacement shall be the sole and exclusive remedy available to the Buyer for any Products delivered hereunder which are found to be defective whether such remedies be in contract, tort or at law. Furthermore, Health Numeric shall not be liable for any incidental, consequential, special or punitive damages arising out of or in connection with this Agreement. The total cumulative liability of Nonin to Buyer for any claim of any kind shall not exceed the purchase price of the affected Products or the cost of services provided by Health Numeric on the same, as applicable. The foregoing limitations in this Section are essential terms of this Agreement and shall be effective on the failure of any remedy, exclusive or not.

11.3. HEALTH NUMERIC MAKES NO WARRANTIES OTHER THAN THE WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT. SUCH WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH WARRANTIES ARE EXPRESSLY DISCLAIMED.

11.4. This warranty shall not cover any shipping costs for returning the Products to Health Numeric but shall include any shipping costs for returning the repaired or replaced Products to Buyer.

11.5. The Products shall only be repaired by properly trained representatives of Health Numeric or partners. Buyer shall not perform any repair work on or to the Products.

11.6. In the event that Health Numeric, in its evaluation of any Product returned for warranty purposes, finds any evidence of accident, misuse, abuse, improper application, alteration or tampering with a Product, no warranty shall apply to such Product and all warranty remedies provided herein shall be void in their entirety. Buyer shall, prior to the return of any Product for any cause, notify Health Numeric of the intended return and mark such Products (or containers of Products) so returned with a return authorization number provided by Health Numeric and/or follow any instructions provided by the Health Numeric.

## 12. Term and Termination

12.1.1. Term: This Agreement shall be effective as of the date set forth above and shall continue until either performance hereunder is complete or, 5 years whichever is earlier.

12.1.2. Termination for Cause: If either party defaults in the performance of any provision of this Agreement, then the non-defaulting party may give written notice to the defaulting party that if the default is not cured within 30 days, this Agreement will be terminated. If the non-defaulting party gives such notice and the default is not cured during the 30-day period, then this Agreement shall automatically terminate at the end of that period. Either party may terminate this Agreement if (i) any governmental authority asserts that any of the terms or provisions of this Agreement are illegal or that the performance of this Agreement would subject such party to penalties, debarment or other adverse consequences, and (ii) the parties are unable, despite good faith negotiations, to mutually agree on modifications to this Agreement to prevent or avoid such results.

12.1.3. Termination for Insolvency: This Agreement shall terminate, without notice, (i) upon the institution by or against either party of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of either party's debts, (ii) upon either party's making an assignment for the benefit of creditors, or (iii) upon either party's dissolution or ceasing to do business.

12.1.4. Fulfillment of Orders upon Termination: Upon termination of this Agreement for other than Buyer's breach, Health Numeric shall continue to fulfill, subject to the terms hereof, all purchase orders accepted by Health Numeric prior to the date of date of termination.

12.1.5. Survival of Certain Terms: All provisions which are continuing in nature, including but not limited to those involving confidential information, will survive termination of this



Agreement. All other rights and obligations of the parties shall cease upon termination of this Agreement.

13. General Provisions

- 13.1. Force Majeure: Neither party shall be liable for non-performance or any delay in the performance of its obligations pursuant to this Agreement to the extent such non-performance or delay is caused, directly or indirectly, by fire, flood, earthquake, elements of nature or acts of God, acts of war, strike, terrorism, riots, civil disorders, rebellions or revolutions, interruption in access to raw materials or components or any other similar cause beyond the reasonable control of such party.
- 13.2. Non-assignability and Binding Effect: Buyer agrees that its rights and obligations under this Agreement may not be transferred or assigned directly or indirectly (whether by merger, sale of assets, reorganization, change of control or otherwise) without the prior written consent of Health Numeric. Subject to the foregoing sentence, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.
- 13.3. Notices: All communications provided for hereunder shall be in writing and shall be deemed to have been given when delivered in person, deposited in the United States mail, first class, registered or certified, return receipt requested, with proper postage paid, or by courier and,

If to Health Numeric's, addressed to:

Health Numeric , LLC  
2843 E. Grand River Ave Suite 272  
East Lansing 48823  
(833) 832-4767

If to Buyer, addressed to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

- 13.4. Non waiver of Default: Failure of any party, at any time, or from time to time, to enforce and require the strict performance of any of the terms and conditions of this Agreement shall not constitute a waiver of any such terms or conditions at any future time and shall not prevent such party from insisting on the strict performance of such terms and conditions at any later time.
- 13.5. Entire Agreement: This Agreement constitutes the entire understanding between the parties relating to the subject matter hereof, and supersedes and replaces all previous negotiations, representations, understandings, or agreements relating to that subject matter. This Agreement may not be modified in any respect except by a written instrument signed by both parties. No waiver of any term of this Agreement, whether by conduct or otherwise, in any

single instance or in repeated instances, shall be deemed to be a further or continuing waiver of the same or any other term of this Agreement.

- 13.6. Applicable Law: This Agreement shall be construed, interpreted, and applied in accordance with the laws of the State of Michigan and the United States of America, without regard to conflict of laws provisions thereof.

- 13.7. Headings: The section and paragraph headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning of or interpretation of this Agreement.

- 13.8. No Violation or Breach: Each party, as to such party, warrants and represents to the other party that its performance of this Agreement does not violate any federal, state, or local law, statute, ordinance, or regulation, or any agreement, court or administrative order or ruling to which such party may be bound.

- 13.9. Severability: In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable, and if for any reason, a court finds that any provision of this Agreement is invalid, illegal or unenforceable, as written, but that by limiting such provision it would become valid, legal and enforceable, then such provision shall be deemed to be written and shall be construed and enforced as so limited.

- 13.10. Relationship of the Parties: The relationship between Health Numeric and Buyer is solely that of vendor and vendee, and they are independent contracting parties. Nothing in this Agreement creates any agency, joint venture, partnership or other form of joint enterprise, employment or fiduciary relationship between the parties. Neither party has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement or undertaking with any third party.

*(Signature Page Follows)*



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first set forth above.

Buyer: \_\_\_\_\_

HEALTH NUMERIC LLC \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

2843 E. Grand River Ave Suite 272 East Lansing 48823

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**PRICING SCHEDULE\***

**Additional Terms**

**DROP SHIPMENTS:** Drop shipments will incur a \$25.00 special handling fee.

**C.O.D. SHIPMENTS:** C.O.D. deliveries will incur a \$25.00 special handling fee. C.O.D. is available for US customers only.

**MINIMUM ORDER:** US \$50.00 excluding freight and/or special handling fees. Some products have special minimum quantities that must be met.

