Exhibit 10.21  
  
 CONFIDENTIAL TREATMENT REQUESTED  
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INFORMATION FOR WHICH CONFIDENTIAL TREATMENT HAS BEEN REQUESTED IS OMITTED AND  
IS IDENTIFIED BY THREE ASTERISKS, AS FOLLOWS "\* \* \*", AN UNREDACTED VERSION OF  
THIS DOCUMENT HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE  
COMMISSION.  
  
 MANUFACTURING AND SUPPLY AGREEMENT  
  
 This manufacturing and supply agreement is dated 12 May, 2003, and is  
between NEPHROS, INC., a Delaware corporation ("Nephros") and MEDICA s.r.l., an  
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Italian company ("Medica").  
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 Nephros sells systems it has developed for treating end-stage renal  
disease. One component of these systems is the MD 190 hemodiafiltration  
cartridge (the "Cartridge").  
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 Nephros and Medica wish for Medica to manufacture Cartridges for Nephros,  
using fiber provided by a supplier designated by Nephros, and ship them to  
purchasers designated by Nephros.  
  
 The parties therefore agree as follows:  
  
 Article 1  
 SALE AND PURCHASE  
  
 1.1 Supply of Cartridge. Subject to the terms of this agreement, Medica  
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shall manufacture, in such quantities as Nephros orders, the Cartridge.  
  
 1.2 Nephros Exclusive Purchaser. Medica may not without the prior written  
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consent of Nephros provide Cartridges to any Person other than Nephros.  
  
 1.3 Medica Exclusivity. Nephros shall purchase from Medica no less than  
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\* \* \* of the Cartridges directly marketed by Nephros in the first \* \* \*  
following regulatory approval of the Cartridge in Europe ("the approval"); no  
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less than \* \* \* of the Cartridges directly marketed by Nephros in \* \* \*  
following the approval; and no less than \* \* \* of the Cartridges directly  
marketed by Nephros in \* \* \* following the approval. Medica will also be given  
first consideration in good faith for the manufacture of Cartridges not directly  
marketed by Nephros. For purposes of this Section 1.3, Nephros will be deemed to  
have purchased from Medica any Cartridges that it purchases from any Person  
other than Medica to replace Cartridges ordered from Medica that constitute  
"Default Cartridges" under the terms of this agreement.  
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 Article 2  
 FORECASTS  
  
 2.1 Rolling Forecasts. (a) On or prior to the Forecast Initiation Date  
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("FID"), as specified in Schedule 3.1, Nephros shall deliver to Medica a  
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forecast of how many Cartridges it  
  
  
  
will purchase for delivery in each of the nine consecutive months beginning one  
month following the FID. On or prior to one month following the FID, Nephros  
shall deliver to Medica a forecast of how many Cartridges it will purchase for  
delivery in each of the nine consecutive months beginning two months following  
the FID. On or prior to the first day of each subsequent month, Nephros shall  
deliver to Medica an update to its previously submitted forecast of its expected  
purchases of Cartridges (each forecast delivered pursuant to this Section  
2.1(a), a "Rolling Forecast"). Each such update must consist of a repetition of  
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the eight later months of the immediately preceding Rolling Forecast along with  
a forecast for the month subsequent to the last month in the previous Rolling  
Forecast.  
  
 (b) Nephros may not revise in any subsequent Rolling Forecast the  
forecast for months 2 and 3 in any Rolling Forecast (month 1 being the earliest  
month in any Rolling Forecast). Nephros may revise in any subsequent Rolling  
Forecast the forecast for any other month in any Rolling Forecast.  
  
 (c) The forecast for any month specified in any Rolling Forecast  
may not be less than the total number of Cartridges for which Nephros, prior to  
delivery of that Rolling Forecast to Medics in accordance with Section 2.1(a),  
has submitted purchase orders in accordance with Section 3.2 specifying a  
delivery date in that month.  
  
 Article 3  
 ORDERS, SHIPMENT, AND PAYMENT  
  
 3.1 Price. The price paid by Nephros for any given shipment of Cartridges  
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is as stated in Schedule 3.1.  
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 3.2 Purchase Orders. (a) Each purchase order that Nephros places for  
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Cartridges must be in the form attached as Exhibit A and must specify (1) how  
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many Cartridges are desired, (2) the one or more places to which, and the manner  
and date by which, delivery is to be made, and (3) the applicable price per  
Cartridge. Nephros shall deliver all purchase orders by facsimile, or by one of  
the means specified in Section 14.8 for giving notice, to Medica at the  
following address and facsimile number or as otherwise instructed by Medics:  
  
 Medica s.r.l.  
 Xxx Xxxxx Xxxxxxxxx, 0  
 00000 Xxxxxxx (XX) Xxxxx  
 Attention: Daniele Giubertoni  
 MKTG & sales Manager  
 Facsimile: 00-0000-00000  
 E-mail: xxxxx@xxxxxx.xx  
  
 (b) Nephros shall order for delivery in any given month an  
aggregate number of Cartridges equal to at least 90% of the final amount  
forecast for that month in the Rolling Forecasts (that quantity, the "Final  
Forecast Quantity"). Nephros may order for delivery in any given Quarter an  
aggregate quantity of Cartridge not exceeding 110% of the Final Forecast  
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Quantity. Only with Medica's written consent may Nephros order for delivery in  
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any given Quarter an aggregate number of Cartridges exceeding 110% of the Final  
Forecast Quantity.  
  
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 (c) Nephros shall deliver each purchase order for quantities of the  
Cartridge at least 60 days in advance of the delivery date specified in that  
purchase order.  
  
 (d) If Nephros delivers any purchase order with less lead time than  
is required under Section 3.2(c), then Medica shall use commercially reasonable  
efforts to fill that purchase order but will not be liable to Nephros if despite  
those best efforts they fail to do so.  
  
 (e) Medica shall acknowledge and accept in writing (by fax, email,  
or other means of correspondence, tbd) on behalf of Medica any purchase order  
that Nephros places for Cartridges. Any such purchase order will be deemed  
accepted by Medica if Medica does not reject it by written notice to Nephros  
delivered within seven Business Days of Medica's receiving that purchase order.  
Medica may not reject any purchase order that complies with the provisions of  
this Article 3. If the terms of any purchase order are inconsistent with the  
terms of this agreement, the terms of this agreement will control.  
  
 (f) If it notifies Medica no later than 30 days prior to the date  
of delivery specified in any purchase order, Nephros may elect, with respect to  
some or all of the Cartridges ordered in that purchase order, to postpone that  
date of delivery to a date that is a number of days after the date of delivery  
specified in that purchase order equal to the number of days between the date  
that purchase order was delivered to Medica and the delivery date specified in  
that purchase order. Nephros may not further postpone delivery of any Cartridges  
the delivery of which was previously postponed. For purposes of determining  
Nephros's compliance with its obligations under Section 3.2(b), Nephros will be  
deemed to have purchased in the month of the original date of delivery any  
Cartridges the delivery of which was postponed in accordance with this Section  
3.2(f).  
  
 3.3 Delivery. Each shipment of Cartridges will be delivered by Medica FOB  
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the applicable Medica manufacturing facility or retained in Medica's warehouse  
facility, in accordance with Nephros instructions for each shipment. Subject to  
Section 3.2(f), Medica shall deliver by the delivery date specified in a  
purchase order all of the Cartridges specified in that purchase order. Nephros  
is only required to pay for Cartridges actually delivered. Medica shall make  
shipping arrangements with carriers designated in writing by Nephros from the  
FOB point to points specified by Nephros, under the agreements that Nephros has  
with those carriers.  
  
 3.3.1 Customer Delivery. For cartridges retained in the Medica  
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warehouse, Medica shall deliver these Cartridges, FOB the warehouse, in  
quantities and to addresses specified in writing (by fax, email, or other means  
of correspondence, tbd) by Nephros, in order to fulfill individual Nephros  
customer orders. Medica will confirm these orders for delivery in writing (by  
fax, email, or other means of correspondence, tbd), and will notify Nephros upon  
successful delivery of the Cartridges to the customer locations specified.  
  
 3.4 Freight, Insurance, and Taxes. Nephros shall pay all freight,  
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insurance, duties, and other fees (except tax on income to Medica) incurred in  
connection with sale and shipment of Cartridges under this agreement.  
  
 3.4.1 Delivery to European Community customer. Nephros will create a  
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European business location holding a V.A.T. registration number ("Nephros  
Europe"). Medica  
  
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will invoice all deliveries for European customers to Nephros Europe, which will  
also provide the payment.  
  
 3.5 Delay in Delivery. If for any reason other than an Event of Force  
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Majeure Medica delivers any shipment of Cartridges later than the date of  
delivery set out in the Purchase Order, Nephros will be entitled to the  
following as an alternative, in its sole discretion, to its rights under Section  
3.6 and Section 13.2(a)(7):  
  
 (1) a 5% reduction in the price of each Cartridge in the shipment if the  
 shipment is delivered more than 14 days but less than 21 days late;  
  
 (2) a 10% reduction in the price of each Cartridge in the shipment if the  
 shipment is delivered more than 21 days late.  
  
 3.6 Delivery Default Rights. If more than 28 days have passed since the  
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delivery date for any Cartridges and Medica has, for any reason other than an  
Event of Force Majeure, failed to deliver those Cartridges, then, in addition to  
any other remedies it might have under this agreement or by law, Nephros may  
cancel that purchase order or the portion thereof relating to those cartridges,  
as applicable, and those Cartridges will constitute Default Cartridges for  
purposes of Section 1.3.  
  
 3.7 Invoices and Payment Terms. On delivery by Medica of a shipment of  
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Cartridges in accordance with Section 3.3, Medica shall issue to Nephros an  
invoice for that shipment stating a price consistent with the terms of this  
agreement. Nephros shall pay each such invoice in full within 45 Calendar Days  
from the date of invoice, unless Nephros has rejected the shipment in question  
in accordance with Section 4.2. If Nephros pays an invoice before Nephros  
examines the shipment as provided in Section 4.2 and thereafter determines that  
one or more Cartridges do not meet the Specifications, Medica shall reimburse  
Nephros, by wire transfer, the purchase price of the nonconforming Cartridges  
within 14 Calendar Days of Nephros notifying Medica of that nonconformity.  
  
 Article 4  
 QUALITY OF THE CARTRIDGE  
  
 4.1 Conformity with Specifications. Any Cartridges that Medica  
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manufactures under this agreement must (1) conform to the specifications in  
Schedule 4.1 (the "Specifications") and (2) be manufactured, labeled, packaged,  
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stored, and tested (while in the possession of, stored by, or under the control  
of Medica) in accordance with cGMP.  
  
 4.2 Conditions to Rejection. In order to be entitled to reject any  
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Cartridge, Nephros must notify Medica of any failure of the Cartridge to meet  
the Specifications or otherwise comply with this agreement.  
  
 4.3 Rejection. (a) Nephros may reject any Cartridge that does not meet  
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the Specifications or otherwise comply with this agreement (any such Cartridge,  
a "Nonconforming Cartridge"). If Medica accepts that Nephros was entitled to  
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reject that Cartridge, Medica shall within 14 Calendar Days after Medica  
receives notice under Section 4.2 replace the Nonconforming Cartridge at no  
additional cost to Nephros (if Nephros has paid for the  
  
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Nonconforming Cartridge and Medica has not reimbursed Nephros the purchase  
price) or for payment consistent with Section 3.7 (if Nephros has not paid for  
the Nonconforming Cartridge or if Medica has reimbursed Nephros the purchase  
price).  
  
 (b) If Medica does not agree that one or more Cartridges constitute  
Nonconforming Cartridges, the Joint Review Committee, consisting of Quality  
Assurance representatives from both companies, must consider the matter. If  
after consideration by the Joint Review Committee the parties are unable to  
reach agreement within 45 Calendar Days after the date Medica received notice  
from Nephros under Section 4.2, they shall submit the dispute to arbitration in  
accordance with Section 14.5.  
  
 4.4 Nonconformity Default Rights. If for any reason other than an Event  
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of Force Majeure Medica (1) fails to replace any Nonconforming Cartridge as  
required by Section 4.3 or (2) fails to replace any Nonconforming Cartridge  
within 10 Business Days after a dispute regarding whether any rejected quantity  
of Cartridge constitutes Nonconforming Cartridge is decided in Nephros's favor,  
then, in addition to any other remedies it might have under this agreement or by  
law, Nephros may cancel that purchase order or the portion thereof relating to  
those cartridges, as applicable, and those Cartridges will constitute Default  
Cartridges for purposes of Section 1.3.  
  
 4.5 Acceptance of Cartridges. If Nephros does not notify Medica that one  
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or more Cartridges do not meet the Specifications or otherwise fail to comply  
with this agreement, those Cartridges will be deemed to have been accepted by  
Nephros as being fully compliant with the Specifications and this agreement.  
  
 Article 5  
 PRODUCTION PROCESS  
  
 5.1 Joint Review Committee. The parties shall establish and hold meetings  
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of a Joint Review Committee annually.  
  
 5.2 Material Review Board (MRB): Activities and trending resulting from  
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materials, components and/or finished product manufactured for or under the  
auspices of Nephros shall be reported to Nephros Quality Assurance on a monthly  
basis. If such product and/or materials are involved in an external complaint or  
vigilance report this shall be reported to Nephros in a timely manner.  
  
 5.3 Yields: Medica product yields for Nephros Products shall be reported  
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to Nephros Quality Assurance and R&D on a quarterly basis.  
  
 5.4 Process Development. Medica shall use commercially reasonable efforts  
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to develop technical know-how that would permit them to manufacture the  
Cartridge less expensively and shall no less than semiannually furnish the Joint  
Review Committee with a detailed report as to their progress in this area.  
Nephros and Medica shall at the time of each report determine jointly the  
actions to be taken with respect to these findings.  
  
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 5.5 Fiber. (a) In manufacturing Cartridges, Medica shall use fiber  
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supplied by Membrana Gmbh, a German company ("Membrana"), or other fiber  
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suppliers as specified by Nephros.  
  
 (b) It is a condition of Medica's ability to timely deliver the  
Cartridges ordered in any purchase order that Nephros Europe causes Membrana, or  
another fiber supplier as specified by Nephros, to deliver to Medica, at  
Nephros' cost and no later than 60 days prior to the delivery date specified in  
the purchase order, a sufficient quantity of fiber conforming to the  
Specifications to permit Medica to manufacture those Cartridges.  
  
 (c) Medica shall store any fiber supplied by Membrana in accordance  
with guidelines supplied to Medica by Nephros or Membrana.  
  
 (d) If with respect to the Cartridges ordered in any given Year the  
fiber wastage (including without limitation as a result of use of fiber in  
Nonconforming Cartridges) exceeds 5%, then promptly after the end of that Year  
Medica shall reimburse Nephros half of the cost to Nephros (including any  
freight, insurance, and sales taxes and other duties, fees, and expenses) of the  
quantity of fiber represented by that excess wastage.  
  
 5.6 Equipment Supplied by Nephros. Nephros shall supply to Medica, for  
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use by Medica in performing its obligations under this agreement, the equipment  
listed in Schedule 5.6. Nephros will retain title to that equipment and any  
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other equipment that it supplies to Medica in the future for use by Medica in  
performing its obligations under this agreement.  
  
 5.7 Inventory of Raw Materials and Spare Parts. Medica shall at all times  
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manage their inventories of raw materials so as to enable Medica to meet  
Nephros's demand as specified in the Rolling Forecasts. Medica shall also  
maintain, consistent with the manufacturer's recommendations, an inventory of  
spare parts of all equipment they use to manufacture the Cartridge.  
  
 5.8 Sample Storage. Medica shall store no less than two Nephros product  
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samples from each sterilization lot for the purpose of potential clinical or  
regulatory investigations. Samples are to be stored in a controlled  
(warehouse-condition-equivalent) environment for at least one (l) year beyond  
their labeled expiration date.  
  
 Article 6  
 QUALITY SYSTEM  
  
 6.1 General Quality Statement: Nephros product shall be manufactured,  
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assembled and tested in compliance with Medica's internal quality system,  
Nephros supplied specifications and documentation, and to relevant ISO, EN and  
FDA standards, guidelines, and regulations.  
  
 6.2 Quality System Changes: Any changes to the status of the Medica  
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Quality System shall be reported to Nephros Quality Assurance and Executive  
Management within 72 hours. Status changes may include, but not be limited to  
the following:  
  
 a) ISO Certifications or CE Marking status changes  
  
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 b) Process or material failures, including significant vendor  
 related failures or relevant vendor terminations due to quality  
 related issues  
  
 c) Direct manufacturing process or materials changes  
  
 d) Specification changes for supplemental manufacturing processes,  
 equipment, or materials  
  
 6.3 Vendor Quality: The quality ratings of vendors that supply materials  
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used in the manufacture/assembly and/or testing of Nephros product shall be  
reported to Nephros quality in a manner consistent with the Medica quality  
system. Any corrective actions, regulatory holds, suspensions, or terminations  
of vendors related to Nephros product shall be reported to Nephros Quality  
Assurance in a timely manner.  
  
 6.4 Vigilance System. Medica shall handle any and all international  
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product complaints and vigilance reporting that results from the use of Nephros  
product. A monthly trending report shall be issued to Nephros Quality Assurance  
detailing the aforementioned complaints and vigilance incidents and corrective  
action activities. The following statements outline the responsibilities for the  
handling and reporting of complaints and vigilance reportable incidents:  
  
 a) All vigilance reports shall be communicated to Nephros Quality  
 Assurance within 24 to 48 hours of evaluation and confirmation.  
  
 b) All individual complaints shall be communicated to Nephros for  
 evaluation and confirmation.  
  
 c) Complaints shall be evaluated for confirmation both by Medica  
 upon receipt and by Nephros following communication from  
 Medica.  
  
 d) Complaint investigations shall be a shared process between  
 Medica (QA, Manufacturing, and Engineering) and Nephros (QA and  
 R&D).  
  
 e) All investigation reports shall be issued jointly and in a  
 timely manner to satisfy the requirements for vigilance  
 reporting (when necessary).  
  
 f) Medica will serve as the Authorized Representative for  
 Complaint and Vigilance handling and reporting for Nephros  
  
 a. The Medica name shall appear in small print on the Nephros  
 product label as contact information regarding complaint  
 and vigilance reporting.  
  
 g) When a complaint is determined to be a vigilance reportable  
 event then Medica shall be responsible for administering and  
 reporting Nephros product related vigilance incidents to the  
 necessary competent authorities within 10 days or as outlined  
 in the Medica Quality System.  
  
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 h) Any vigilance reportable complaint shall be forwarded to Medica  
 for reporting to the appropriate Competent Authority.  
  
 i) Medica shall copy Nephros Quality Assurance within 24-48 hours  
 on all and any vigilance reporting, including health outcome,  
 relationship between the incidents, and timeliness of reporting  
 the vigilance incident to the Competent Authorities.  
  
 Article 7  
 OTHER OBLIGATIONS OF MEDICA  
  
 7.1 Debarment Certification. Medica may not knowingly, after due inquiry,  
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employ, contract with, or retain any Person directly or indirectly in connection  
with its manufacture of Cartridges if that Person has been debarred by the FDA  
under 21 U.S.C. 335a(k) (Section 306, Federal Food, Drug and Cosmetic Act). On  
written request from Nephros, Medica shall within 10 Business Days provide  
Nephros written confirmation that they have complied with the foregoing  
obligation.  
  
 7.2 Permits and Certifications. Medica currently has all Permits and  
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Certifications necessary to enable it to perform all its obligations under this  
agreement. At all times during the term of this agreement Medica shall maintain  
those Permits and secure any additional Permits that become necessary.  
  
 7.3 Manufacturing Problems. Medica shall promptly notify Nephros if it  
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experiences any significant problems in manufacturing Cartridges, shall use  
commercially reasonable efforts to resolve those problems, and shall keep  
Nephros informed of the status of those efforts.  
  
 7.4 Insurance. (a) Medica shall at its cost obtain and maintain one or  
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more insurance policies providing coverage of at least Euro 5,000,000 in the  
aggregate that cover Medica for fire, theft, fidelity, product liability, and  
any and all potential claims, suits, losses, expenses, or damages arising out of  
Medica's obligations under this agreement. At Nephros's request to Medica from  
time to time, Medica shall furnish Nephros with certification of insurance  
evidencing that insurance and shall provide at least 30 Business Days prior  
written notice to Nephros of any cancellation of or decrease in the dollar  
amount of coverage provided by any such policy.  
  
 (b) Nephros shall at its cost obtain and maintain product-liability  
insurance coverage in the amount of $5,000,000 in relation to the Cartridge. At  
the request of Medica from time to time, Nephros shall furnish Medica with  
certification of insurance evidencing that insurance and shall provide at least  
30 Business Days prior written notice to Medica of any cancellation of or  
decrease in the amount of coverage provided by any such policy.  
  
 Article 8  
 INSPECTIONS; RECORDS  
  
 8.1 Notification of Inquiries and Inspections. Medica shall notify  
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Nephros within seven Business Days of any written or oral inquiries,  
notifications, or inspection activity by any Governmental Authority in regard to  
Medica's manufacture of Cartridges. Medica shall permit  
  
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up to two individuals selected by Nephros to attend any such inspections and  
shall provide Nephros with an accurate and reasonably complete description of  
any such inquiries, notifications, or inspections. Medica shall also furnish to  
Nephros (1) within three Business Days after receipt any report or  
correspondence issued by any Governmental Authority in connection with any such  
inquiries, notifications, or inspections, and (2) not later than ten Business  
Days prior to the time Medica proposes to send it, a copy of any proposed  
response or explanation relating to any such inquiries, notifications, or  
inspections or any report or correspondence issued by any Governmental Authority  
in connection therewith (each, a "Proposed Response"), in each case redacted of  
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trade secrets or other confidential or proprietary information of Medica that  
are unrelated to Medica's obligations under this agreement or are unrelated to  
manufacture of Cartridges. Medica shall discuss with Nephros any Proposed  
Response and shall incorporate in that Proposed Response any reasonable comments  
provided by Nephros with respect to that Proposed Response. After filing a  
response with any Governmental Authority, Medica shall within 5 Business Days  
notify Nephros of any further contacts with that Governmental Authority with  
respect to that response.  
  
 8.2 Access to Medica Facilities and Records. Medica shall at Nephros's  
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request give Nephros and any designee of Nephros reasonable access to Medica's  
facilities, procedures, and books and records, including Medica's protocols,  
standard operating procedures (SOPs), equipment specifications, and  
manufacturing records, for purposes of (1) observing manufacturing operations  
and (2) auditing and inspecting Medica's facilities for compliance with  
applicable Laws and the terms of this agreement. Nephros acknowledges that it  
and its designee may be permitted only to review, rather than obtain copies of,  
certain proprietary documents of Medica; Medica shall at Nephros's request  
provide Nephros with a copy of any other document that Nephros requests.  
  
 8.3 Records. Medica shall maintain all records necessary to evidence  
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compliance with all applicable Laws and other requirements of applicable  
Governmental Authorities relating to the manufacture of the Cartridge. Medica  
shall also maintain records with respect to its costs, obligations, and  
performance under this agreement. All such records shall be maintained for a  
period of not less than two years from the date of expiration of each Cartridge  
batch to which those records pertain, or such longer period as may be required  
by Law or cGMPs.  
  
 Article 9  
 CARTRIDGE RECALLS  
  
 9.1 Cartridge Recalls. If any Governmental Authority withdraws its  
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approval to sell the Cartridge in any country or issues a directive or request  
that some or all Cartridges be recalled for safety reasons relating to the  
Cartridge or Nephros reasonably determines that some or all Cartridges should be  
recalled, and if that recall is due to any reason other than Medica having  
manufactured Cartridge that fails to conform to the Specifications or that was  
not manufactured in accordance with any applicable Laws, Nephros shall pay all  
costs, including Medica's reasonable out-of-pocket expenses, associated with  
that recall.  
  
 9.2 Notice of Events that May Lead to Cartridge Recall. Medica, on the  
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one hand, and Nephros, on the other hand, shall keep each other fully and  
promptly informed of any notification, event, or other information, whether  
received directly or indirectly, that might affect  
  
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the marketability, safety or effectiveness of the Cartridge or might result in a  
recall of any Cartridges by any Governmental Authority.  
  
 9.3 Recall Due to Breach By Medica. If there occurs any Cartridge recall  
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that is due to Medica having manufactured one or more Cartridges that fail to  
conform to the Specifications or that were not manufactured in accordance with  
any applicable Laws, Medica will be responsible for the costs of that recall,  
Medica shall promptly, at the election of Nephros, compensate Nephros for the  
Cartridge so recalled by either replacing without charge Cartridges recalled or  
refunding Nephros the price paid by Nephros to Medica for the Cartridges  
recalled, plus freight, insurance, sales taxes, and other duties, fees, and  
expenses paid by Nephros.  
  
 9.4 Definition of Recall. For purposes of this Article 8, "recall" means  
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any action by Nephros or any of its Affiliates, or either Medica or any of its  
Affiliates, to recover title or possession or halt distribution or use of any  
Cartridges sold or shipped to any other Persons. The term "recall" also applies  
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to Cartridge that would have been subject to recall if it had been sold or  
shipped.  
  
 Article 10  
 PUBLICITY; CONFIDENTIALITY; INTELLECTUAL PROPERTY  
  
 10.1 Publicity. (a) Except as required by Law or the standards of any  
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securities or regulatory authority, including without limitation the National  
Association of Securities Dealers, Medica and Nephros may not make any official  
press release, announcement, or other formal publicity relating to the  
transactions that are the subject of this agreement without first obtaining in  
each case the prior written consent of Nephros and Medica, respectively (which  
consent may not be unreasonably withheld). If any party is required to file this  
agreement with the Securities and Exchange Commission or another applicable  
securities regulatory authority, that party must seek confidential treatment for  
any provisions of this agreement that either party believes would disclose trade  
secrets, confidential commercial, or financial information and thereby impair  
the value of the contractual rights represented by this agreement or provide  
detailed commercial and financial information to competitors or other Persons.  
Except as required by Law or the standards of any securities regulatory  
authority, Medica and Nephros may not use the name Nephros and Medica,  
respectively, or any director, officer or employee thereof or any adaptation  
thereof without the prior written approval of Nephros and Medica, respectively.  
  
 (b) Medica shall send to Nephros for its approval at least 30  
Business Days before it is filed or submitted any publication, abstract, or  
patent application resulting from this agreement. The authorship on any  
publication or abstract will be determined by agreement of the parties or as  
deemed scientifically appropriate. Any publication resulting from this agreement  
will be delayed or prohibited if, in Nephros' reasonable opinion, delay or  
prohibition is required in order to file or procure patent application or rights  
protection in respect of any invention or discovery arising from this agreement.  
Publication by Medica of any information relating to the Cartridge is subject to  
the provisions of Section 10.2.  
  
 10.2 Confidentiality. (a) It is contemplated that Medica may from time to  
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time disclose Confidential Information to Nephros, or vice versa. Medica shall  
take all reasonable steps to prevent disclosure of Nephros  
  
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Confidential Information and not to use any Nephros Confidential Information,  
and Nephros shall take all reasonable steps to prevent disclosure of Medica  
Confidential Information and not to use any Medica Confidential Information, in  
either case except for the limited purposes set forth in this agreement.  
  
 (b) A party receiving Confidential Information may disclose it to  
those of its Representatives who need to review that Confidential Information in  
connection with that party's performance of its obligations and evaluation of  
its rights under this agreement. Any party who so discloses any Confidential  
Information pursuant to this Section 10.2(b) shall (1) inform those Persons of  
the confidential nature of that Confidential Information, and (2) direct those  
Persons to keep that Confidential Information confidential.  
  
 (c) The provisions of this Section 10.2 will survive termination or  
expiration of this agreement and will continue for a period of 5 years from the  
date of that termination or expiration.  
  
 10.3 Pre-existing and Independently Developed Intellectual Property.  
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Nothing in this agreement affects the ownership by any party of any Intellectual  
Property owned or in the possession of that party on the date of this agreement  
or Intellectual Property developed independently of this agreement or without  
reference to any of the Confidential Information or Intellectual Property of  
Medica (in the case of Nephros) or Nephros (in the case of Medica).  
  
 10.4 Ownership. (a) Except as specified elsewhere in Section 10.4, all  
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rights in patents, inventions, processes, discoveries, and other research  
materials and any other novel or valuable information reflected in any medium  
that arise or are created during the course of this agreement are the property  
of the creating party.  
  
 (b) Intellectual Property, whether or not patentable, that arises  
in connection with this agreement and is made solely by an employee or agent of  
Nephros and without reference to any Confidential Information or Intellectual  
Property disclosed by Medica will be owned by Nephros (that Intellectual  
Property, "Nephros Inventions").  
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 (c) Intellectual Property, whether or not patentable, that arises  
in connection with this agreement and is made solely by an employee or agent of  
a party with reference to Confidential Information or Intellectual Property of  
Medica (in the case of Nephros) or Nephros (in the case of Medica) or is made  
jointly by employees or agents of Nephros and Medica will be jointly owned (that  
Intellectual Property, "Joint Inventions").  
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 (d) Intellectual Property, whether or not patentable, that arises  
under this agreement and is made solely by an employee or agent of Medica and  
without reference to any Confidential Information or Intellectual Property  
disclosed by Nephros will be owned by Medica (that Intellectual Property,  
"Medica Inventions").  
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 (e) Inventorship will be determined according to applicable patent  
law.  
  
 (f) Medica and Nephros shall promptly disclose to each other in  
writing each invention and discovery conceived or reduced to practice in  
connection with this agreement.  
  
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 (g) Intellectual Property arising in connection with this agreement  
and in the possession of a party other than the party that owns that  
Intellectual Property will be treated as having been disclosed to that party by  
the party that owns that Intellectual Property and will constitute Confidential  
Information of the party that owns that Intellectual Property.  
  
 (h) Neither joint owner of any Joint Invention may sublicense that  
Joint Invention without the written consent of the other joint owner, which no  
joint owner may unreasonably withhold or delay.  
  
 10.5 Limited License. Medica and Nephros each grants the other a limited,  
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non-exclusive, royalty-free license to its Intellectual Property (whether  
pre-existing or arising in connection with this agreement) to the extent  
necessary to permit it to carry out its obligations under this agreement. Any  
such license will expire upon termination of this agreement and will not be  
transferable or sublicensable.  
  
 10.6 Maintenance of Patents. (a) Nephros shall file, prosecute and  
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maintain patent applications and resulting patents, if any, on Nephros  
Inventions and on any Joint Inventions insofar as they do not relate to  
manufacture of the Cartridge.  
  
 (b) Medica shall file, prosecute and maintain patent applications  
and resulting patents, if any, on Medica Inventions or on any Joint Inventions  
relating to manufacture of the Cartridge.  
  
 (c) Medica, on the one hand, and Nephros, on the other hand, shall  
share equally reasonable patent expenses for any Joint Invention, and shall  
promptly reimburse the filing party upon presentation of an invoice by the  
filing party.  
  
 (d) The non-filing party is entitled to review and comment in a  
timely manner on any such patent filings (applications and response to office  
actions) prior to submission to the relevant patent offices. Each party is  
responsible for filing, prosecuting, and maintaining patent applications and  
resulting patents on any invention owned solely by it.  
  
 10.7 Reservation of All Other Rights. Except as expressly set forth in  
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this agreement, nothing contained herein may be construed as doing the  
following:  
  
 (1) giving Medica any rights to any Intellectual Property of Nephros or  
 any other proprietary technology of Nephros (whether pre-existing  
 Intellectual Property or Intellectual Property arising in connection  
 with this agreement), including without limitation any of Nephros'  
 patent rights relating to the design, development, testing, use, and  
 sale of the Cartridge; or  
  
 (2) giving Nephros any rights to any Intellectual Property of Medica or  
 any other proprietary technology of Medica (whether pre-existing  
 Intellectual Property or Intellectual Property arising in connection  
 with this agreement).  
  
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 Article 11  
 REPRESENTATIONS  
  
 11.1 Representations of Medica. Medica represents to Nephros as follows:  
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 (a) Medica is a corporation validly existing under the laws of its  
jurisdiction of organization with the power to own all of its properties and  
assets and to carry on its business as it is currently being conducted.  
  
 (b) Medica has the power to execute and deliver this agreement and  
to perform its obligations under this agreement.  
  
 (c) Medica's Chief Executive Officer, or Amministratore Unico (AU),  
has duly authorized Medica to execute and deliver this agreement and perform its  
obligations under this agreement, and no other corporate proceedings of Medica  
are necessary with respect thereto.  
  
 (d) This agreement constitutes its valid and binding obligation,  
enforceable in accordance with its terms, except as enforceability is limited by  
(A) any applicable bankruptcy, insolvency, reorganization, moratorium or similar  
law affecting creditors' rights generally, or (B) general principles of equity,  
whether considered in a proceeding in equity or at law.  
  
 (e) Medica is not required to obtain the Consent of any Person,  
including the Consent of any party to any Contract to which it is a party, in  
connection with execution and delivery of this agreement and performance of its  
obligations under this agreement.  
  
 (f) Medica is the rightful owner or licensee of any Intellectual  
Property that it may use in performing its obligations under this agreement.  
  
 (g) Medica's execution and delivery of this agreement and  
performance of its obligations under this agreement do not (A) violate any  
provision of its articles of incorporation or by-laws, as applicable, as  
currently in effect, (B) conflict with, result in a breach of, constitute a  
default under (or an event which, with notice or lapse of time or both, would  
constitute a default under), accelerate the performance required by, result in  
the creation of any Lien upon any of its properties or assets under, or create  
in any party the right to accelerate, terminate, modify, or cancel, or require  
any notice under, any Contract to which it is a party or by which any of its  
properties or assets are bound, or (C) violate any Law or Order currently in  
effect to which it is subject.  
  
 11.2 Representations of Nephros. Nephros represents to Medica as follows:  
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 (a) Nephros is a corporation validly existing and in good standing  
under the law of the State of Delaware with the power to own all of its  
properties and assets and to carry on its business as it is currently being  
conducted.  
  
 (b) Nephros has the power to execute and deliver this agreement and  
to perform its obligations under this agreement.  
  
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 (c) Nephros' board of directors has duly authorized Nephros to  
execute and deliver this agreement and perform its obligations under this  
agreement, and no other corporate proceedings of Nephros are necessary with  
respect thereto.  
  
 (d) This agreement constitutes the valid and binding obligation of  
Nephros, enforceable in accordance with its terms, except as enforceability is  
limited by (A) any applicable bankruptcy, insolvency, reorganization, moratorium  
or similar law affecting creditors' rights generally, or (B) general principles  
of equity, whether considered in a proceeding in equity or at law.  
  
 (e) Nephros' execution and delivery of this agreement and performance  
of its obligations under this agreement do not (A) violate any provision of  
Nephros' articles of incorporation or by-laws as currently in effect, or (B)  
violate any Law or Order currently in effect to which Nephros is subject.  
  
 Article 12  
 INDEMNIFICATION  
  
 12.1 Indemnification. (a) Medica shall indemnify Nephros, each Affiliate  
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of Nephros, each Representative of Nephros, and the heirs, executors,  
successors, and assigns of any of the foregoing, against the following  
Indemnifiable Losses:  
  
 (1) Indemnifiable Losses arising out of breach by Medica of any of its  
 obligations under this agreement;  
  
 (2) Indemnifiable Losses arising out of any inaccuracy in any  
 representations of Medica contained in this agreement;  
  
 (3) Indemnifiable Losses arising out of any claim that any Intellectual  
 Property of Medica employed by Medica under this agreement conflicts  
 with the Intellectual Property Rights of any other Person; and  
  
 (4) Indemnifiable Losses arising out of any Cartridges that have been  
 manufactured by Medica under this agreement, on condition that those  
 Indemnifiable Losses are due to breach by Medica of any of its  
 obligations under this agreement or the negligence or willful  
 misconduct of Medica or any of its agents or Representatives.  
  
 (b) Nephros shall indemnify each Medica Entity, each Affiliate of  
each Medica Entity, each Representative of each Medica Entity, and the heirs,  
executors, successors, and assigns of any of the foregoing, against the  
following Indemnifiable Losses:  
  
 (1) Indemnifiable Losses arising out of breach by Nephros of any of its  
 obligations under this agreement;  
  
 (2) Indemnifiable Losses arising out of any inaccuracy in any  
 representations of Nephros contained in this agreement;  
  
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 (3) Indemnifiable Losses arising out of any claim that any Intellectual  
 Property of Nephros required to manufacture the Cartridge conflicts  
 with the Intellectual Property Rights of any other Person; and  
  
 (4) Indemnifiable Losses arising out of any Cartridges that have been  
 manufactured by Medica under this agreement, unless those  
 Indemnifiable Losses are due to breach by Medica of any of its  
 obligations under this agreement or the negligence or willful  
 misconduct of Medica or its agents or Representatives.  
  
 12.2 Procedures Relating to Indemnification. (a) In order to be entitled  
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to indemnification under this Article 11 in connection with a claim made by any  
Person against any other Person with respect to which that other Person (an  
"Indemnified Party") is entitled to indemnification pursuant to this Article 11  
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(any such claim, a "Third Party Claim"), that Indemnified Party must do the  
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following:  
  
 (1) notify the Person or Persons obligated to indemnify it (the  
 "Indemnifying Party") in writing, and in reasonable detail, of that  
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 Third Party Claim as soon as possible but in any event within 10  
 Business Days after receipt of notice of that Third Party Claim,  
 except that any failure to give any such notification will only  
 affect the Indemnifying Party's obligation to indemnify the  
 Indemnified Party if the Indemnifying Party has been prejudiced as a  
 result of that failure; and  
  
 (2) deliver to the Indemnifying Party as soon as possible but in any  
 event within 10 Business Days after the Indemnified Party receives a  
 copy of all notices and documents (including court papers) delivered  
 to that Indemnified Party relating to that Third Party Claim.  
  
 (b) In the event of a Third Party Claim against one or more  
Indemnified Parties, the Indemnifying Party may participate in the defense of  
that Third Party Claim and, if it so chooses, assume at its expense the defense  
of that Third Party Claim with counsel selected by the Indemnifying Party and  
reasonably satisfactory to the Indemnified Party. If the Indemnifying Party so  
elects to assume the defense of a Third Party Claim, the Indemnifying Party will  
not be liable to the Indemnified Party for any legal expenses subsequently  
incurred by the Indemnified Party in connection with the defense of that Third  
Party Claim, except that if, under applicable standards of professional conduct,  
there exists a conflict on any significant issue between the Indemnified Party  
and the Indemnifying Party in connection with that Third Party Claim, the  
Indemnifying Party shall pay the reasonable fees and expenses of one additional  
counsel to act with respect to that issue to the extent necessary to resolve  
that conflict. If the Indemnifying Party assumes defense of any Third Party  
Claim, the Indemnified Party will be entitled to participate in the defense of  
that Third Party Claim and to employ counsel, at its own expense, separate from  
counsel employed by the Indemnifying Party, it being understood that the  
Indemnifying Party will be entitled to control that defense. The Indemnifying  
Party will be liable for the fees and expenses of counsel employed by the  
Indemnified Party for any period during which the Indemnifying Party did not  
assume the defense of any Third Party Claim (other than during any period in  
which the Indemnified Party failed to give notice of the Third Party Claim as  
provided above and a reasonable period after such notice). If the Indemnifying  
Party chooses to defend or prosecute a Third Party Claim, all the parties shall  
cooperate in the defense  
  
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or prosecution of that Third Party Claim, including by retaining and providing  
to the Indemnifying Party records and information reasonably relevant to that  
Third Party Claim, and making employees available on a reasonably convenient  
basis. If the Indemnifying Party chooses to defend or prosecute any Third Party  
Claim, the Indemnified Party will agree to any settlement, compromise or  
discharge of that Third Party Claim that the Indemnifying Party recommends,  
except that the Indemnifying Party may not without the Indemnified Party's prior  
written consent agree to entry of any judgment or enter into any settlement that  
provides for injunctive or other non-monetary relief affecting the Indemnified  
Party or that does not include as an unconditional term that each claimant or  
plaintiff give to the Indemnified Party a release from all liability with  
respect to that Third Party Claim. Whether or not the Indemnifying Party has  
assumed the defense of a Third Party Claim, the Indemnified Party shall not  
admit any liability with respect to, or settle, compromise or discharge, that  
Third Party Claim without the Indemnifying Party's prior written consent.  
  
 (c) In order for any Indemnified Party to be entitled to any  
indemnification under this agreement in respect of a claim that does not involve  
a Third Party Claim (a "Claim"), the Indemnified Party must reasonably promptly  
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notify the Indemnifying Party of that Claim, and describe in reasonable detail  
the basis for that Claim, except that any failure to give any such notification  
will only affect the Indemnifying Party's obligation to indemnify the  
Indemnified Party if the Indemnifying Party has been prejudiced as a result of  
that failure. If the Indemnifying Party does not dispute that the Indemnified  
Party is entitled to indemnification with respect to that Claim by notice to the  
Indemnified Party prior to the expiration of a 30-Business-Day period following  
receipt by the Indemnifying Party of notice of that Claim from the Indemnified  
Party, that Claim will be conclusively deemed a liability of the Indemnifying  
Party and the Indemnifying Party shall pay the amount of that liability to the  
Indemnified Party on demand or, in the case of any notice in which the amount of  
the Claim (or any portion thereof) is estimated, on such later date as the  
amount of the Claim (or any portion thereof) becomes finally determined. If the  
Indemnifying Party has timely disputed its liability with respect to the Claim,  
the Indemnifying Party and the Indemnified Party shall proceed in good faith to  
negotiate a resolution of the Claim and, if the Claim is not resolved through  
negotiations within 60 Business Days following receipt by the Indemnifying Party  
of notice of that Claim from the Indemnified Party, the Indemnified Party may  
take the dispute to arbitration pursuant to Section 14.5.  
  
 12.3 No Liability for Consequential Damages. No party will be liable to  
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any other for any indirect, consequential, or special damages or for loss of  
profits. This limitation does not, however, apply to any obligation of either  
party to indemnify the other in connection with any Third Party Claim. This  
Section 12.3 does not apply to any liability of a party in respect of death or  
personal injury arising out of the negligence or willful misconduct of that  
party or its agents or Representatives.  
  
 12.4 Limitation on Indemnification. (a) Each party's exclusive remedy with  
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respect to any Claims will be under the indemnification provisions of this  
Article 12.  
  
 (a) The liability of Medica, on the one hand, and Nephros, on the  
other hand, under this Article 12 will not exceed the purchase value of any  
quantities of the Cartridge that are the subject of any Claim or Third Party  
Claim.  
  
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 Article 13  
 TERM AND TERMINATION  
  
 13.1 Term. The term of this agreement is three years from and including  
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the date of this agreement, with automatic renewal for additional successive  
one-year terms unless no later than 90 days prior to the end of the initial term  
or any one-year renewal term either party notifies the other that it wishes to  
terminate this Agreement effective the end of the initial term or that one-year  
renewal term, as applicable.  
  
 13.2 Termination. (a) This agreement may be terminated as follows:  
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 (1) by Nephros upon 10 Business Days' written notice to Medica if any  
 representation made in this agreement by Medica was materially  
 inaccurate when made and either (1) that inaccuracy has contributed  
 to Nephros's incurring Indemnifiable Losses or (2) Medica fails to  
 take action to render the inaccurate representation accurate as if it  
 were made on the day Nephros would otherwise be entitled to terminate  
 this agreement under this Section 13.2(a)(l);  
  
 (2) by Medica upon 10 Business Days' written notice to Nephros if any  
 representation made in this agreement by Nephros was materially  
 inaccurate when made and either (1) that inaccuracy has contributed  
 to either or both Medica Entities' incurring Indemnifiable Losses or  
 (2) Nephros fails to take action to render the inaccurate  
 representation accurate as if it were made on the day Medica would  
 otherwise be entitled to terminate this agreement pursuant to this  
 Section 13.2(a)(2);  
  
 (3) by Nephros immediately if Medica has breached any of its material  
 obligations under this agreement and, if it is curable, has not cured  
 that breach prior to expiration of a 45-Business-Day period from the  
 date of breach;  
  
 (4) by Medica immediately if Nephros has breached any of its material  
 obligations under this agreement and, if it is curable, has not cured  
 that breach prior to expiration of a 45-Business-Day period from the  
 date of breach;  
  
 (5) by Nephros immediately if there occurs an Event of Insolvency with  
 respect to Medica;  
  
 (6) by Medica immediately if there occurs an Event of Insolvency with  
 respect to Nephros;  
  
 (7) by Nephros, if for any reason other than an Event of Force Majeure  
 Medica fails to deliver within 40 days after the required delivery  
 date, or on more than two occasions in any 90-day period fails to  
 deliver within 20 Business Days after the required delivery day, any  
 shipment of Cartridge it is required to deliver pursuant to Section  
 3.2, Section 4.2, or Section 9.3;  
  
 (8) by Medica or Nephros on 15 Business Days' prior written notice to  
 Nephros or Medica, respectively, if due to an Event of Force Majeure  
 (A) Nephros or  
  
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 (B) Medica or both of them, respectively, is prevented from  
 performing an obligation under this agreement for more than 60 days,  
 unless prior to the end of the 15-Business-Day period the Event of  
 Force Majeure ceases to exist and the party prevented from performing  
 resumes performance under this agreement and notifies the party  
 giving the notice of termination;  
  
 (b) The parties may terminate this agreement at any time by written  
agreement.  
  
 13.3 Effect of Termination. (a) Expiration of the term of this agreement  
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and termination under 13.2 will have one or more of the following consequences  
according to the table set out below:  
  
A. Nephros shall pay to Medica, and Medica shall pay to Nephros, all amounts  
 payable up to the date of termination but not yet paid.  
  
B. Nephros shall purchase and Medica shall manufacture and deliver to Nephros  
 consistent with the terms of this agreement all Cartridges ordered by  
 Nephros but not yet delivered to Nephros.  
  
C. Nephros shall pay Medica an amount equal to the purchase price of any  
 Cartridges manufactured in connection with purchase orders that remain open  
 on the date of termination of this agreement and Medica shall deliver to  
 Nephros pursuant to Section 3.2 those Cartridges.  
  
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 Grounds for Termination Consequences  
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 Expiration under 13.1 A  
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 13.2(a)(1) A and, at Nephros' option, either B or C  
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 13.2(a)(2) A and, at Nephros' option, either B or C  
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 13.2(a)(3) A and, at Nephros' option, either B or C  
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 13.2(a)(4) A and, at Nephros' option, either B or C  
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 13.2(a)(5) A and, at Nephros' option, either B or C  
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 13.2(a)(6) A and, at Nephros' option, either B or C  
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 13.2(a)(7) A and, at Nephros' option, either B or C  
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 13.2(a)(8) AB  
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 13.2(b) A  
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 (b) Upon any termination (including expiration) of this agreement,  
each party shall return to the other party all documents and other tangible  
items it or its employees or agents have received or created pursuant to this  
agreement pertaining, referring, or relating to Confidential Information of the  
other party.  
  
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 (c) Termination of this agreement will not affect rights and  
obligations of either party that may have accrued prior to the date of  
termination or any obligation contained in Sections 10.1 and 10.2, Article 122,  
Article 133, and Sections 14.3, 14.4, and 14.5.  
  
 Article 14  
 MISCELLANEOUS  
  
 14.1 Definitions. When used in this agreement, the following terms have the  
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following meanings:  
  
 "Affiliate" means, with respect to any given Person, any other Person at  
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the time directly or indirectly controlling, controlled by or under common  
control with that Person, or (2) any director, officer or employee of that  
Person. For purposes of this Agreement, "control" means the possession, directly  
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or indirectly, of the power to direct or cause the direction of the management  
and policies of a Person, whether through ownership of voting securities, by  
contract or otherwise.  
  
 "Business Day" means any Monday, Tuesday, Wednesday, Thursday, or Friday  
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that is not a day on which banking institutions in the State of New York are  
authorized by law, regulation or executive order to close.  
  
 "cGMPs" means current Good Manufacturing Practices (as provided for,  
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respectively, in the Rules Governing Medicinal Products in the European  
Community Volume 4 (Guide to Good Manufacturing Practice for Medicinal Products)  
and by the FDA as set out in 21 C.F.R. 210 and 21 C.F.R. 211, as amended from  
time to time).  
  
 "Confidential Information" means all data, specifications, training, and  
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any other know-how related to the design, development, manufacture, or  
performance of the Cartridge, as well as all other information and data provided  
by either party to the other party pursuant to this agreement in written or  
other tangible medium and marked as confidential, or if disclosed orally or  
displayed, confirmed in writing within 30 Business Days after disclosure and  
marked as confidential, except that the term "Confidential Information" does not  
include the following:  
  
 (1) information that is or becomes generally available to the public other  
 than as a result of a breach of this agreement by the receiving party  
 or its Representatives;  
  
 (2) information that was within the receiving party's possession or  
 knowledge prior to its being furnished to the receiving party by or on  
 behalf of the disclosing party, on condition that the source of that  
 information was not bound by a confidentiality agreement with or other  
 contractual, legal or fiduciary obligation of confidentiality to the  
 disclosing party or any other Person with respect to that information;  
  
 (3) information that is or becomes available to the receiving party on a  
 non-confidential basis from a source other than the disclosing party  
 or any of its Representatives, on condition that that source was not  
 bound by a confidentiality agreement with or other contractual, legal  
 or fiduciary obligation of  
  
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 confidentiality to the disclosing party or any other Person with  
 respect to that information; or  
  
 (4) information that is independently developed by the receiving party  
 without use of Confidential Information and otherwise in a manner not  
 inconsistent with this letter agreement.  
  
 "Consent" means any approval, consent, ratification, filing, declaration,  
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registration, waiver, or other authorization.  
  
 "Contract" means any oral or written agreement, contract, obligation,  
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promise, arrangement, or undertaking that is legally binding.  
  
 "Event of Insolvency" with respect to any Person means any of the  
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following:  
  
 (1) the institution by that Person of proceedings under the United States  
 Bankruptcy Code, or any other applicable U.S. federal or state Law or  
 any applicable foreign Law seeking an order for relief;  
  
 (2) the consent of that Person to the institution of bankruptcy or  
 insolvency proceedings against that Person;  
  
 (3) the filing by that Person of a petition seeking reorganization or  
 release under the Federal Bankruptcy Reform Act or any other  
 applicable U.S. federal or state Law or applicable foreign Law, or the  
 consent by that Person to the filing of any such petition or to the  
 appointment of a receiver, liquidator, assignee, trustee, sequestrator  
 (or other similar official) of that Person or of any substantial part  
 of the property of that Person;  
  
 (4) the making by that Person of an assignment for the benefit of  
 creditors;  
  
 (5) admission by that Person of its inability to pay its debts generally  
 as they become due;  
  
 (6) the entry of a decree or order by a court having jurisdiction  
 adjudging that Person bankrupt or insolvent, or approving as properly  
 filed a petition seeking reorganization, arrangement, adjustment or  
 composition of or in respect of that Person under the U.S. Bankruptcy  
 Code or any other applicable U.S. federal or state Law or any  
 applicable foreign Law, or appointing a receiver, liquidator,  
 assignee, trustee, sequestrator (or other similar official) of that  
 Person, or of any substantial part of the property of that Person, or  
 ordering the winding up or liquidation of the affairs of that Person,  
 and (A) that Person consents to that decree or order or (B) that  
 decree or order remains unstayed and in effect for more than 60  
 consecutive days.  
  
 "FDA" means the U.S. Food and Drug Administration.  
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 "FOB" means "Free on Board," as that term is defined in INCOTERMS 2000.  
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 "Governmental Authority" means any (1) nation, state, county, city, town,  
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village, district, or other jurisdiction of any nature, (2) federal, state,  
local, municipal, or other government, whether U.S. of foreign, (3) governmental  
or quasi-governmental authority of any nature (including any governmental  
agency, branch, department, official, or entity and any court or other tribunal,  
including an arbitral tribunal), (4) multi-national organization or body  
including the EU and notified bodies, or (5) body exercising, or entitled to  
exercise, any administrative, executive, judicial, legislative, police,  
regulatory, or taxing power of any nature.  
  
 "Indemnifiable Losses" means all losses, liabilities, taxes, damages,  
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deficiencies, obligations, fines, expenses, claims, demands, actions, suits,  
proceedings, judgments or settlements, whether or not resulting from Third Party  
Claims, incurred or suffered by an Indemnified Party, including interest and  
penalties with respect thereto and out-of-pocket expenses and reasonable  
attorneys' and accountants' and experts' fees and expenses incurred in the  
investigation or defense of any of the same or in asserting, preserving or  
enforcing any of the Indemnified Party's rights hereunder, net of any amounts  
recovered or recoverable under any insurance policy.  
  
 "Intellectual Property" means, with respect to any Person, all trademarks,  
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patents, copyrights, and any applications for registration thereof, and trade  
secrets of that Person, whether owned, used, or licensed by that Person as  
licensee or licensor.  
  
 "Law" means any federal, state, local, municipal, foreign, international,  
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multinational, or other administrative order, constitution, law, ordinance,  
principle of common law, regulation, statute, or treaty.  
  
 "Lien" means any charge, claim, community property interest, condition,  
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equitable interest, lien, option, pledge, security interest, right of first  
refusal, or restriction of any kind, including any restriction on use, voting,  
transfer, receipt of income, or exercise of any other attribute of ownership.  
  
 "Month" means any of the twelve months of a year.  
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 "Order" means any award, decision, injunction, judgment, order, ruling,  
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subpoena, or verdict of any court, arbitral tribunal, administrative agency, or  
other Governmental Authority.  
  
 "Person" means any individual, corporation (including any non-profit  
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corporation), general or limited partnership, limited liability company, joint  
venture, estate, trust, association, organization, labor union, Governmental  
Authority or other entity.  
  
 "Representative" means, with respect to a particular Person, any director,  
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officer, employee, agent, consultant, advisor, or other representative of that  
Person, including legal counsel, accountants, and financial advisors.  
  
 "Year" means (1) the period commencing with the date of this agreement and  
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ending on December 31, 2003, (2) any subsequent 12-month period commencing on  
January 1st and ending on December 31st, and (3) the period beginning January  
1st of the year in which this agreement expires or is terminated and ending on  
the date this agreement expires or is terminated.  
  
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 14.2 Further Assurances. At any time or from time to time from the date of  
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this agreement, Medica, on the one hand, and Nephros, on the other hand, shall  
at the request, and at the expense, of the other do the following:  
  
 (1) to the extent consistent with this agreement deliver to the other  
 such records, data, or other documents requested by the other; and  
  
 (2) take or cause to be taken all such other actions as are reasonably  
 necessary or desirable in order to permit the other to obtain the  
 full benefits of this agreement.  
  
 14.3 Governing Law. This agreement is governed by the laws of the State of  
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New York without giving effect to principles of conflict of laws.  
  
 14.4 Dispute Resolution. The parties shall attempt in good faith to  
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resolve any controversy or claim that may arise concerning their respective  
rights and obligations under this agreement. If they are unable to do so within  
30 Business Days from the date that controversy or claim arose, they shall refer  
the controversy or claim to the AU of Medica and the CEO of Nephros, who shall  
meet in person or telephonically within 20 Business Days of being requested to  
do so and shall in good faith attempt to resolve the dispute. If the controversy  
or claim cannot then be resolved, the parties hereby agree first to try in good  
faith to settle the dispute by mediation administered by the American  
Arbitration Association at its New York City offices before resorting to  
arbitration.  
  
 14.5 Arbitration. Any controversy or claim arising out of or relating to  
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this agreement or the applicability of this Section 14.5 that is not resolved  
pursuant to Section 14.4 will be determined by arbitration in accordance with  
the International Arbitration Rules of the American Arbitration Association.  
Unless the parties agree otherwise the number of arbitrators will be three, each  
of whom will be appointed by the American Arbitration Association. One  
arbitrator must be a lawyer, the second must be an expert in financial matters,  
and the third must have expertise in the manufacture of hemodialysis products.  
The place of arbitration will be New York, New York, U.S.A. The language of the  
arbitration will be English. Prior to the commencement of hearings, each of the  
arbitrators appointed must provide an oath or undertaking of impartiality.  
Judgment upon the award rendered by the arbitrators may be entered by any court  
having jurisdiction thereof. The cost of any such arbitration will be divided  
equally between Nephros, on the one hand, and Medica, on the other hand, with  
each party bearing its own attorneys' fees and costs.  
  
 14.6 Force Majeure. (a) No party will be responsible to the other under  
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this agreement for failure or delay in performing any obligations under this  
agreement, other than payment obligations, due to factors beyond its control,  
including without limitation any war, fire, earthquake, or other natural  
catastrophe, or any act of God, but excluding labor disputes involving all or  
any part of the work force of that party (each such factor, an "Event of Force  
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Majeure"). Upon the occurrence of an Event of Force Majeure, the party failing  
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or delaying performance shall promptly notify the other party in writing,  
setting forth the nature of the occurrence, its expected duration, and how that  
party's performance is affected. Any party subject to an Event of Force Majeure  
shall use commercially reasonable efforts to resume performing its obligations  
under this agreement as soon as practicable. Except as provided in  
  
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Section 14.6(b), if an Event of Force Majeure occurs, the affected party will be  
excused from performing and the time for performance will be extended as long as  
that party is unable to perform as result of the Event of Force Majeure.  
  
 (b) If any Event of Force Majeure prevents Medica from delivering  
any shipment of Cartridges for more than 30 Business Days beyond the scheduled  
delivery date, then Nephros may cancel its order without incurring any liability  
to Medica with respect thereto and those Cartridges will constitute Default  
Cartridges for purposes of Section 1.3.  
  
 14.7 Assignment. This agreement inures to the benefit of and is binding  
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upon the successors and assignees of the parties. Neither party may assign any  
of its rights or obligations under this agreement without the prior written  
consent of the other, which the other party may not unreasonably withhold,  
except that Nephros may upon giving written notice to Medica assign or transfer  
its rights and obligations under this agreement to an Affiliate of Nephros or a  
successor to all or substantially all of its assets or business relating to this  
agreement, whether by sale, merger, operation of law, or otherwise.  
  
 14.8 Notices. (a) Every notice or other communication required or  
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contemplated by this agreement must be in writing and sent by one of the  
following methods:  
  
 (1) personal delivery, in which case delivery will be deemed to occur the  
 day of delivery;  
  
 (2) by a recognized overnight delivery service such as Federal Express or  
 DHL Worldwide Express, in which case delivery will be deemed to occur  
 the day of delivery.  
  
 (b) In each case, a notice or other communication sent to a party  
must be directed to the address for that party set forth below, or to another  
address designated by that party by written notice. All notices to be given by a  
Medica Entity may be given on its behalf by the other Medica Entity following  
consultation between Medica.  
  
 if to Nephros:  
 Nephros, Inc.  
 0000 Xxxxxxxx  
 Xxx Xxxx, XX 00000  
 Attention: Xxxxxx Xxxxx  
  
 with a copy to:  
 Xxxxxx Xxxxx Xxxxxxxx & Xxxxxxx LLP  
 000 Xxxxx Xxxxxx  
 Xxx Xxxx, XX 00000-0000  
 Attention: Xxxxxxx Xxxxxx, Esq.  
  
 23  
  
  
  
 if to Medica:  
 Medica s.r.l.  
 Xxx Xxxxx Xxxxxxxxx, 0  
 00000 Xxxxxxx (XX) Xxxxx  
 Attention: Luciano Fecondini  
  
 14.9 Severability. If any provision of this agreement is held  
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unenforceable by any court of competent jurisdiction, all other provisions of  
this agreement will remain effective. If any provision of this agreement is held  
to be unenforceable only in part or degree, it will remain effective to the  
extent not held unenforceable.  
  
 14.10 Entire Agreement. This agreement constitutes the entire agreement of  
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the parties pertaining to the subject matter of this agreement. It supersedes  
all prior agreements of the parties, whether oral or written, pertaining to the  
subject matter of this agreement.  
  
 14.11 Amendment. This agreement may not be amended except by an instrument  
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in writing signed on behalf of both parties.  
  
 14.12 Independent Contractor. Nothing in this agreement creates, or will be  
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deemed to create, a partnership or the relationship of principal and agent or  
employer and employee between the parties. Each party agrees to perform under  
this agreement solely as an independent contractor.  
  
 14.13 Counterparts. This agreement may be executed in counterparts, each of  
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which is an original and all of which together constitute one and the same  
instrument.  
  
 The undersigned are executing this agreement on the date stated in the  
introductory clause.  
  
 NEPHROS, INC.  
  
  
 By: /s/ Xxxxxx X. Xxxxx  
 ----------------------------------  
 Name: Xxxxxx X. Xxxxx  
 Title: Chief Executive Officer  
  
 MEDICA s.r.l.  
  
  
 By: /s/ Luciano Fecondini  
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 Name: Luciano Fecondini  
 Title: Amministratore Unico  
  
 24  
  
  
  
 Manufacturing and Supply Agreement: Nephros/Medica  
  
 Schedule 3.1: Forecast Initiation Date and Price Schedule  
  
Forecast Initiation Date: July 1, 2003  
  
Price Schedule: in EURO (Euro)  
  
 \* \* \*  
  
 25  
  
  
  
 Exhibit A: Purchase Order Form  
  
 26  
  
  
  
 Schedule 4.1: Filter Specifications  
  
The MD 190 filter is to be produced in accordance with Medica procedure M12.301  
as per Medica Bill of Material M.07492.  
  
 Schedule 5.6: Nephros-Supplied Equipment  
  
Equipment Pack A: \* \* \*  
  
Equipment Pack B: \* \* \*  
  
Equipment Pack C: \* \* \*  
  
Equipment Pack D: \* \* \*  
  
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