

<u>NO</u>	<u>CONTENT</u>	<u>PAGE</u>
2	DEFINITION	2
3	ARTICLES AND SERVICES	3
4	SCOPE OF CONTRACT	3
5	CONTRACT PRICE	3
6	IMPORT QUOTA	4
7	DELIVERY	4
8	INSTALLATION	6
9	DOCUMENTATION	6
10	TRAINING	7
11	TESTING AND COMMISSIONING	7
12	STANDARDS AND CODES OF PRACTICE	8
13	PURCHASING ARTICLES ELSEWHERE WHEN QUANTITIES ARE NOT SPECIFIED.....	8
14	INDEMNITY	8
15	INDEMNITY OF THE COMPANY	8
16	INSURANCE.....	8
17	SECURITY PASS AND WORK PERMIT	9
18	ADEQUACY OF DESIGN	9
19	DESIGN RIGHTS	9
20	REMEDIES FOR INFRINGEMENT OF PATENT RIGHTS, INTELLECTUAL PROPERTY RIGHTS AND ROYALTIES.....	10
21	WARRANTY	10
22	WARRANTY PERIOD.....	11
23	AVAILABILITY FOR USE.....	11
24	SPARES AND CONSUMABLES	11
25	ELECTRICAL OPERATING REQUIREMENTS.....	11
26	POWER CORDS	11
27	ENVIRONMENT REQUIREMENTS	12
28	QUALITY	12
29	INSPECTION OF ARTICLES IF REQUIRED BY THE COMPANY	12
30	TITLE AND RISK	12
31	PAYMENT	12
32	SECURITY DEPOSIT OR BANKER'S GUARANTEE.....	13
33	ALTERATION OF SPECIFICATIONS, PLANS, DRAWINGS, PATTERNS AND SAMPLES.....	13
34	DAMAGED, DEFECTIVE AND REJECTED ARTICLES	13
35	SERVICE CONTRACT OPTION.....	13
36	SUSPENSION OR TERMINATION.....	13
37	FORCE MAJEURE	14
38	CONFIDENTIALITY	15
39	VARIATION OF CONTRACT	16
40	DISPUTE RESOLUTION	16
41	ASSIGNMENT AND SUBCONTRACTING.....	17
42	WAIVER.....	17
43	RELIANCE CLAUSE.....	17
44	INSOLVENCY.....	17
45	NOTICES.....	18
46	ENTIRE AGREEMENT	18
47	SEVERABILITY	18
48	REASONABLENESS	18
49	LANGUAGE.....	18
50	SURVIVAL CLAUSE	19
51	INDEPENDENT CONTRACTOR / NO PARTNERSHIP	19
52	NO THIRD (3 RD) PARTY BENEFICIARIES	19
53	INTELLECTUAL PROPERTY RIGHTS.....	19
54	USE OF NAME	19
55	GOVERNING LAW	19
56	EXECUTION IN COUNTERPARTS	19

1 OBJECT

- 1.1. In consideration of the payment as hereinafter provided, the Contractor shall, upon the terms and conditions hereinafter set forth, supply and deliver the Articles and/or Services to the Company.

2 DEFINITION

- 2.1 "Articles" mean all items that the Contractor is required to supply under this Contract, as specified in the Addenda.
- 2.2 "Company" means the National Healthcare Group ("NHG") or any of its subsidiaries, associated or affiliated companies, corporations, joint ventures and partnerships and any entity directly or indirectly controlling or controlled by or under common control with NHG, represented by the NHG Group Purchasing Office and includes any officer or other person authorized by the Company to act on its behalf.
- 2.3 "Contractor" means the party who or which has undertaken to supply the Articles and/or perform the Services.
- 2.4 "Contract" means this contract between the Company and the Contractor, with any authorized variations or formal agreement, if executed between the Company and the Contractor.
- 2.5 "Contract Price" means the total price payable to the Contractor under this Contract for the supply, delivery, installation, testing and commissioning of the Articles and/or Services, and for the performance of the Services under this Contract.
- 2.6 "Documentation" means copies of publicly available manuals, reports, applicable operational instructions, screen layouts, report formats, any additional specifications and program and system documentation relating to the Articles and/or Services necessary for the use, maintenance and operation of the Articles and/or Services and from time to time as such materials are developed or updated.
- 2.7 "Major Milestone" means any of the Contractor's obligations to deliver the Articles and/or perform the Services, as set out in the Statement of Work or time schedule in the Contract and which have been designated by the Company and the Contractor as such.
- 2.8 "Premises" means the place of business of the National Healthcare Group as identified in the quotation or any other location as may be specified by the Company.
- 2.9 "Project Manager" means the Contractor designated personnel that shall be primarily responsible for directing and coordinating the supply, delivery, and installation of the Articles and all works and Services which are to be executed or provided by the Contractor under the Contract and all other matters including contract administration, monitoring of progress, installation and testing of equipment, technical personnel training, logistic support, Documentation preparation, and operation start-up. The Project Manager shall be deemed to be the Contractor's agent in all dealings with the Company, and all actions of the Project Manager shall be binding on the Contractor.
- 2.10 "Requirement Specifications" mean:
- (a) the specifications issued by the Company to the Contractor for the purpose of inviting the Contractor to submit its Tender / Quotation for the Articles and/or Services.
 - (b) (where the Tender / Quotation has been accepted by the Company) the specifications for the supply, delivery, installation, and commissioning of a fully functioning Article (hereafter defined) to be delivered by the Contractor and accepted by the Company; and
 - (c) such amendments or specification as may be mutually agreed in writing between the Parties.
- 2.11 "Services" means the work that the Contractor is required to supply in accordance to the service levels or key performance indicators defined under this Contract, and more particularly set out in the Addendum to the Contract.
- 2.12 References in this Contract to words incorporating the masculine gender only shall where the context so admits include the feminine and/or neuter genders and vice versa and references in this Contract to words incorporating the singular meaning shall include the plural meaning and vice versa and words denoting natural persons shall include bodies corporate, incorporate, associated partnerships, firms, trusts, associations, joint ventures, governments, governmental agencies or departments or any other entity, and all such words shall be construed interchangeably in that manner.

- 2.13 The clauses, paragraph or clause headings and marginal notes in this Contract have been inserted for ease of reference and convenience only and shall not affect the construction or interpretation of this Contract.
- 2.14 References to clauses, schedules and addendums shall be references to Clauses of and the Schedules and Addendums to this Contract. The Schedules and Addendums are to have effect and be construed as an integral part of, and shall be deemed to be incorporated into this Contract.
- 2.15 References to statutory provisions shall be construed as references to those provisions as respectively amended, consolidated, extended or re-enacted from time to time and all statutory instruments or orders made pursuant to it.
- 2.16 Any reference to "day" shall mean a period of twenty-four (24) hours, ending at twelve (12) midnight.
- 2.17 If any period of time is specified from a given day, or the day of a given act or event, it is to be calculated exclusive of that day. Where expressed by reference to a person in Singapore, business day means any day other than a Saturday, a Sunday or a day on which licenses banks are authorised or required to be closed in Singapore and, where expressed by reference to the jurisdiction of a person other than Singapore, means any day other than a Saturday, a Sunday or a day on which licensed banks are authorised or required to be closed in the jurisdiction of that person, then that time is deemed to only expire on the next business day.
- 2.18 References in this Contract to anything which any Party is required to do or not to do shall include its acts, defaults and omissions, whether direct or indirect, on its own account, or for or through any other person and those which it permits or suffers to be done or not done by any other person.
- 2.19 In the event of a conflict between any of the terms of this Agreement, including its Schedules and Addendums, the conflict will be resolved in the following order or priority: (1) the Clauses of this Agreement; (2) the Schedules and Addendums.

3 ARTICLES AND SERVICES

- 3.1. The Contractor shall supply the Articles and perform the Services in accordance with the requirements and specifications as set out in the Tender or quotation and at the price(s) agreed upon.
- 3.2. In the event a new, improved or upgraded model having substantially the same functions but with improvements or enhancements is introduced before delivery of the Articles, the Contractor shall notify the Company and the Company shall have the option to require that the Contractor supply the new, improved or upgraded model of the Articles to the Company at the same price or lower. Where the Company requires the Articles as specified in the Contract to be supplied and the price of the Articles has been lowered due to the introduction of the new, improved or upgraded model, the Contractor shall be obliged to supply the Articles to the Company at the lower price. In the event of any disagreement, the Company shall at its sole discretion determine whether a new, improved or upgraded model of the Articles has been introduced and such determination shall be final and binding.

4 SCOPE OF CONTRACT

- 4.1 The Contractor shall carry out and complete the supply of all Articles and/or Services in accordance with the Contract, the tender conditions and the specifications in every respect.
- 4.2 In the event of any discrepancy, error or omission on the part of the Company in this Contract, the tender conditions or the specifications, the Company shall resolve the discrepancy, error or omission and such resolution shall be final and binding and there shall be no increase in the price payable to the Contractor.
- 4.3 In the event of any discrepancy, error or omission on the part of the Contractor in his tender, the Contractor shall resolve the discrepancy, error or omission to the satisfaction of the Company and there shall be no increase in the price payable to the Contractor.

5 CONTRACT PRICE

- 5.1 The total price quoted shall represent the total cost to the Company (excluding) Goods and Service Tax ("GST") for each and every Article tendered. This total price shall include:
- (a) all transport, lifting, packing, freight, handling, delivery, insurance, taxes, royalties, duties, etc., where applicable;
 - (b) the cost of the equipment inclusive of all accessories, whether explicitly or separately specified or not, and necessary:
 - (i) for providing the full capabilities asked for; and
 - (ii) for the immediate operation of the Articles;

- (c) all on-site / off-site labour for the preparation of site and installation;
- (d) all cabling, parts, hardware, wiring at site, etc., necessary for the complete installation;
- (e) making good and/or replacement of any damaged building structures, etc., damaged during the installation and any obvious work to which express reference has not been made;
- (f) documentation as specified at Clause 9;
- (g) training as specified at Clause 10;
- (h) testing and commissioning as specified at Clause 11; and
- (i) warranty as specified at Clause 21.

(Note: A GST-registered company is required to indicate the amount of GST payable separately.)

- 5.2 The Addendum Price for the Articles and Services shall not be subject to change during the term of each Addendum unless expressly provided for in this Contract.

6 IMPORT QUOTA

- 6.1 Where an Article is subject to Import Quota, the Contractor shall state whether or not he has obtained the quota and, if so, whether it is adequate to cover the tender quantity.

7 DELIVERY

- 7.1 Time of delivery is of the essence in this Contract. The Contractor shall deliver, install, and commission the Articles to the Company in accordance with a delivery schedule agreed upon by both Parties.
- 7.2 The Company reserves the right, at its discretion, to vary the delivery date and/or commissioning of Services at no cost to the Company if notification is given two (2) months in advance by the Company to the Contractor, provided that the delivery date and/or commissioning of Services may be brought forward ahead of schedule only upon the mutual agreement of both the Company and the Contractor.
- 7.3 Delivery of the Articles must be complete. Where an Article needs to be assembled, the Contractor must ensure that the Article is assembled on the day of delivery, failing which, the Company reserves the right to reject the Article. The Contractor warrants that all Articles supplied to the Company shall be of new manufacture (i.e. not second-hand, re-conditioned, refurbished, or used items.)
- 7.4 Should an Article be found incomplete during commissioning as set out at Clause 11, the Contractor must make good the delivery of the short supplied items seven (7) days upon notification by the Company, otherwise, the Contractor shall be required, when requested by the Company, to remove the Article from the Company's premises and to re-deliver the Article at his own expense complete with the previously short-supplied items within the time as determined by the Company.
- 7.5 The delivery of the Articles encompasses transporting the Articles from outside the Premises through various areas of the Premises (hereinafter called "the route") to the place where the Articles are to be installed. The scope of work of delivery includes all other work necessary for delivery such as but not restricted to and without additional cost to the Company :-
- (a) ensuring that the maximum structural loading limits of all floors along the route are not exceeded in the process of transporting the Articles from outside the Premises to the place where the Articles are to be installed;
 - (b) ensuring that the structural integrity of any buildings or structures within the Premises is not compromised, weakened or destroyed in the process;
 - (c) ensuring that no damage is done to any equipment, furniture, floors etc within the Premises;
 - (d) ensuring safe and proper operation of any powered lifting devices necessary to raise the Articles;
 - (e) widening of windows, doors, passages etc., along the route to create access for the Articles and subsequent restoration subject to the previous consent of the Company, which consent may be withheld by the Company without assigning any reasons;

- (f) other temporary modifications to the building and subsequent restoration subject to the previous consent of the Company, which consent may be withheld by the Company without assigning any reasons;
- (g) levelling and touching up of floors at site to conform with the Articles' manufacturer's specifications for levelness and flatness of floors;
- (h) obtaining all required permits from the relevant and competent authorities;
- (i) ensuring that all works are so carried out as to minimize disruption to the work of the Company;
- (j) ensuring that the safety and security of the Premises, contents, staff, employees, patients and visitors are not compromised in the process;
- (k) restitution of all damage whatsoever arising from the delivery process. All damaged Building structures, fittings, furniture, equipment etc. shall be restored to their original condition.

Failure to fulfil any of the obligations in this Clause shall be construed as non-delivery and appropriate action will be taken by the Company in accordance with Clause 7.6.

7.6 In the event the Contractor fails to deliver the Articles and/or Services in accordance with the Schedule as specified in Clause 7.1 above or any re-delivery schedule as specified in Clause 7.4 (other than in the circumstances provided under Force Majeure), the Company shall, in addition to any other remedies which it may have under this Contract or otherwise, have the right:

- (a) to cancel all or any such items of Articles or Services without being liable therefore in damages and obtain the same from other source(s) and all increased costs incurred thereby shall be deducted from any monies due to or become due to the Contractor under this Contract or shall be recoverable as damages; or
- (b) to require the Contractor to pay or to deduct, as and for liquidated damages (and not as a penalty)
 - (i) in relation to annually recurring Services/Managed Services to be provided under the relevant Addenda, a sum to be calculated at the rate of one-half per cent (1/2%) of the total price payable to the Contractor for all such Services currently provided by the Contractor under this Contract ("Total Managed Services Price"), for each day which may elapse between the date of delivery of the Articles and Services specified in the Contract and the actual date of delivery, subject to a minimum of \$500 and a maximum of ten per cent (10%) of the Total Managed Services Price; or
 - (ii) in relation to any one-time Service to be performed under the Contract, a sum to be calculated at the rate of one-half per cent (1/2%) of the total price payable by the Company for such Service ("One-time Service Price"), for each day which may elapse between the date of delivery of the Articles and Services specified in the Contract and the actual date of delivery, subject to a minimum of \$500 and a maximum of ten per cent (10%) of the One-time Service Price; or
 - (iii) in relation to the Articles to be delivered under the Contract, a sum to be calculated at the rate of one-half per cent (1/2%) of the Contract Price payable to the Contractor, for each day which may elapse between the date of delivery of the Articles specified in the Contract and the actual date of delivery, subject to a minimum of \$500 and a maximum of ten per cent (10%) of the Contract Price.

Provided that the total liquidated damages that may be imposed by the Company under this Contract shall not exceed ten per cent (10%) of the Contract Price.

7.7 Notwithstanding Clause 7.6 above, in the event the Contractor fails to comply with his obligations under Clause 7.5 herein and the failure remains unremedied for seven (7) days after being called to his attention by written notice from the Company, even after the maximum amount of total liquidated damages has been paid by the Contractor to the Company, the Company shall have the right to terminate this Contract forthwith without compensation and without being liable therefor to the Contractor in damages and the Contractor shall indemnify the Company for any loss, expense or damage suffered or incurred by the Company in accordance with Clauses 14 and 15 herein.

7.8 The Contractor shall obtain a receipt from the Company for the delivery of the Articles:

PROVIDED that the issue of such receipt shall not be any representation on the part of the Company of complete delivery or of delivery in accordance with this Contract or delivery in good order and condition shall not relieve the Contractor from his responsibility to make good the delivery of short supplied items, to replace defective, discrepant or damaged Articles.

8 INSTALLATION

- 8.1 The Contractor guarantees, on completion of the installation, that the installation is free from any defects and is completely safe for operation.
- 8.2 The final installation, insofar as it pertains to the Building structure and/or Services, and which may have direct or indirect impact on the structural integrity of the Building and/or on Building Services, shall be approved by a Professional Engineer (Civil) engaged by the Contractor. In addition, the Contractor shall submit a certification from a Profession Engineer Unit that :-
- (a) the plans/or drawings of the proposed installation and;
 - (b) the actual installation at site
- are both safe, sound and operational.
- 8.3 The Contractor shall be responsible for and shall make good any damage to any Building or any part thereof, inclusive of fixtures, fittings and furniture, caused by its servants, workmen or agents and shall leave the same in as good a state of repair as it was when the work commenced.
- 8.4 The Contractor shall be required to conform to the following:
- a) House Rules for the Contractors
 - b) Conditions and Requirements for Contractors' Works
- (A copy of the House Rules for the Contractors and Conditions & Requirements for Contractors' Works can be downloaded from the TTSH's Tender Website (http://www.ttsh.com.sg/tender/quota_main.htm))
- 8.5 The Contractor shall install the Articles at the Site on the date specified in the Contract.

9 DOCUMENTATION

- 9.1 The following documentation, in the English Language, shall be supplied by the Contractor at no additional charge together with each Article to be supplied to the Company:
- (a) two (2) original sets of the comprehensive operating instructions including photographs, layouts, drawings, etc., which explain the operation, applications and care of the equipment in detail;
 - (b) abbreviated operating instructions either on the Article or on a laminated card not larger than A4 size, attached directly to the Article;
 - (c) two (2) original sets of the complete Service Manual published by the manufacturer inclusive of:
 - (i) detailed performance specifications, environmental requirements, power requirements, power consumption, dimensions and weight;
 - (ii) installation instructions;
 - (iii) detailed technical description / theory of operation with reference to block diagrams showing functional operation of the Article and circuit schematics;
 - (iv) detailed troubleshooting procedures including diagnostic software wherever applicable;
 - (v) recommended preventive maintenance schedules including parts replacement schedules;
 - (vi) calibration procedures and performance checkouts including specifications of suitable test and measuring equipment;
 - (vii) exploded-view, layout, wiring and inter-connection diagrams;
 - (viii) circuit schematics identifying components in the same terms as the parts list, wherever applicable; and
 - (ix) complete parts list including manufacturer's and original Equipment Manufacturer's (OEM's) part numbers and, if possible, a list of equivalent parts;

- (d) where applicable, two (2) sets of complete technical documentation in English pertaining to the installation inclusive of precise, dimensioned drawings of all wall, ceiling and floor mounts and detailed wiring and interconnection diagrams of the installation.
- 9.2 Failure to supply the above documentation shall be construed as incomplete delivery and appropriate action will be taken by the Company in accordance with Clause 7 of this Contract.
- 9.3 The Contractor shall supply at no additional charge Service Manual update information pertaining to every item supplied for as long as the equipment manufacturer issues such updates.
- 10 TRAINING**
- 10.1 The Contractor shall provide training to the Company's nominated personnel. The details of the Training shall be specified in an Annex to the Contract.
- 10.2 The training shall be conducted in the English Language by the Contractor's qualified instructor(s). The training to be provided shall be to such a level that the Company's nominated personnel shall be able to:
- (a) apply or handle; and
 - (b) install, repair, calibrate, maintain or overhaul
- all models of the Articles purchased from the Contractor.
- 10.3 Upon the Company's request, the Contractor shall provide Service/Operator's training at no cost to the Company's nominated representative(s), regardless whether the Article is on a Service Contract or out of warranty.
- 11 TESTING AND COMMISSIONING**
- 11.1 It shall be the Contractor's responsibility to test the Articles in Singapore and satisfy himself that they are safe, functional and perform in accordance with the manufacturer's specifications before delivery of the Articles to the Company. Such pre-delivery test results shall remain within relevant International Electro-technical Commission (IEC) standards and manufacturer's technical and safety specifications and shall be documented and submitted to the Company together with the delivery of the Articles, failing which it shall be construed as incomplete delivery and appropriate action shall be taken in accordance with Clause 7 of this Contract.
- 11.2 The Contractor shall be responsible for the testing and commissioning of the Articles. For this purpose, the Contractor shall be represented by competent staff, suitably equipped with all necessary calibrated test and measuring instruments, who shall test and commission the Articles in the presence of and to the satisfaction of the Company's authorized representatives. The Contractor shall perform any additional test(s) requested for by the Company during commissioning of the Articles where the Contractor's recommended test(s) are, in the opinion of the Company, inadequate. The Contractor shall bear all costs associated with Clause 11.
- 11.3 The testing and commissioning shall include:
- (a) visual inspection of the Article(s) for damage, corrosion, short supply, wrong supply etc.;
 - (b) visual inspection of installations for soundness, safety and neatness;
 - (c) complete and thorough performance and safety checks in accordance with the manufacturer's guidelines for acceptance testing and commissioning of the Article(s) so as to verify safe and satisfactory operation in conformance with the manufacturer's specifications for each item of the Article(s) and to the satisfaction of the Company;
 - (d) complete and thorough testing in accordance with all relevant codes of practice, regulations by relevant authorities for acceptance of the building, mechanical and electrical work, so as to verify safe and satisfactory operation; and
- 11.4 For the purpose of this Clause, successful commissioning of the Article encompasses:
- (a) complete delivery of the Article(s) including:
 - (i) two (2) original copies of Service Manual referred to in Clause 9.1;
 - (ii) two (2) original copies of Operation Manual referred to in Clause 9.1; and
 - (iii) parts list with price valid for two (2) years after expiry of the warranty period as set out at Clause 24 of this Contract.
 - (b) submission of:

- (i) manufacturer's QA and performance tests results;
 - (ii) pre-delivery test results referred to in Clause 11.1; and
 - (iii) testing certificate(s) from internationally recognized testing body attesting to compliance with recognized standards and test results specific to the delivered Article(s); and
 - (c) commissioning certificate duly endorsed by the Company's authorized representative.
- 11.5 Notwithstanding the endorsement of the Commissioning Certificate by the Company's representative the Contractor shall remain fully liable and responsible for the fact that the Article fully complies with the Contract.
- 12 STANDARDS AND CODES OF PRACTICE**
- 12.1 It shall be the responsibility of the Contractor to ensure and furnish evidence that all Articles and/or parts thereof to be supplied by him conform to all relevant, Singapore laws, International Standards and Code of Practice currently in force. The Contractor shall ensure that all Ionising and Non-ionising Radiation equipment and site comply with the Radiation Protection Inspectorate Regulation. The Contractor shall bear all costs associated with the testing of the Articles for this purpose by the relevant Authorities.
- 13 PURCHASING ARTICLES ELSEWHERE WHEN QUANTITIES ARE NOT SPECIFIED**
- 13.1 If the total quantities of any of the Articles or Services or the frequency and extent of any Services to be supplied by the Contractor during the period of the Contract are not specified in the Contract or stated to be merely estimated, the Company shall be under no obligation to purchase any such Articles or Services. Any statement of the estimated quantities of Articles or the estimated frequency and extent of the Services required during the period of the Contract which may have been given to the Contractor in the course of inviting tenders / quotations shall be deemed to be approximate only and merely for the information of the Contractor.
- 14 INDEMNITY**
- 14.1 The Contractor shall indemnify, defend and hold harmless the Company, its servants and agents against all or any liability, claim, expenses [including court costs and fees of solicitors (on a full indemnity basis) and that of other professionals] or loss in respect of damage to any property or personal injury to or death of any person due to the **act, default, omission or negligence** of the Contractor, its servants or agents arising out of or in the course of the performance of this Agreement PROVIDED THAT the Company promptly notifies the Contractor in writing of any such claim AND PROVIDED THAT the Contractor may not enter into any settlement, agreement, arrangement or compromise that would have a material adverse effect on the Company. The Company shall co-operate with the Contractor, at the Contractor's expense, in defending or settling such claim(s) and the Company may join in defense with counsel of its own choice at its own cost or expense.
- 15 INDEMNITY OF THE COMPANY**
- 15.1 The Contractor shall indemnify the Company, its servants, agents, employees, officers and departments against any claims by any workmen, employee or agent or subcontractor or any workmen, employee or agent of such subcontractor of the Contractor for any personal injury and/or death suffered in connection with the performance of this Contract including but not limited to payment under the Workmen's Compensation Act (Cap. 354) and for any costs, charges or expenses incurred in respect thereof.
- 15.2 The Contractor shall indemnify the Company, its servants, agents, employees, officers and departments against any claims, costs, charges and expenses whatsoever incurred by the Company, its servants, agents, employees, officers and departments in respect of any claims by any person(s) whatsoever (including but not limited to any patient or visitor) arising out of or connected to or contributed to by the breach or non-performance of this Contract by the Contractor.
- 16 INSURANCE**
- 16.1 Where required by the Company as a condition precedent to the commencement of any work under this Contract, the Contractor shall take out at his own expense with an insurance company to be approved by the Company, a policy or policies of insurance in terms to be approved by the Company, indemnifying the Contractor and the Company from all liabilities arising out of claims by any and every workman or employee whether such liability arises from the Workmen's Compensation Act or otherwise and from all costs and expenses incidental or consequential thereto.
- 16.2 Where required by the Company as a condition precedent to the commencement of any work under this Contract, the Contractor shall take out at his own expense with an insurance company to be approved by the Company, a policy or policies of insurance in terms to be approved by the Company, indemnifying the Contractor and the Company for their liability in respect of personal injury or death or loss or damage to

property and against loss or damage suffered or incurred by the Company by fire and such other perils as the Company may require.

- 16.3 (a) Any policy or policies taken out by the Contractor in compliance with Clauses 16.1 or 16.2 hereof shall be deposited with the Company or with such department as the Company shall determine and the Contractor shall maintain such policy or policies in full force and effect by the payment of all premiums from time to time on the first day on which the same ought to be paid until completion of the Contract and shall, if the Company so directs, deposit with the Company the receipts in respect of the payment of such premiums.
- (b) If any default is made by the Contractor in complying with the terms of Clauses 16.1 or 16.2 and of this Clause, the Company may, without prejudice to any other remedy available to the Company for breach of any terms of the Contract:
- (i) withhold all payments which would otherwise be due to the Contractor under the Contract and out of such money so withheld satisfy any claim by workmen or employees that would have been borne by an insurance company had the Contractor not made default in maintaining a policy of insurance, and/or
 - (ii) pay such premiums as may have become due and remain unpaid and deduct the amount of such premiums from any money due or becoming due to the Contractor.
- (c) Nothing in this Clause shall be construed to take away or to waive or in any manner to modify the right of the Company to be indemnified by the Contractor in respect of all claims, costs and other expenses whatsoever which, by reason of the Contractor's default or otherwise, may become payable by the Company.

17 SECURITY PASS AND WORK PERMIT

- 17.1 All employees deployed by the Contractor to carry out works in the Premises including contract workers, supervisors etc. must obtain and display the Company's security pass while in the Premises. In the event foreign workers are deployed, it shall be the Contractor's responsibility to ensure that such foreign workers have valid work permits and the Contractor is to provide the Company with a comprehensive list of these workers and copies of their recent photographs and valid work permits. This list shall be forthwith updated in the event of changes in the deployment of foreign workers.
- 17.2 The Contractor shall indemnify the Company, its servants, agents, employees, officers and departments against any monetary penalty, claim, costs, charges and expenses incurred or imposed by any Court arising out of any breach of Clause 17.1 above or any contravention of the provisions of the Employment of Foreign Workers Act and any regulations made thereunder.

18 ADEQUACY OF DESIGN

- 18.1 Notwithstanding any approval (whether verbally or in writing) given by the Company to any of the Contractor's proposals, designs and technical specifications relating to the performance and construction of the Articles and Services, the Contractor agrees and declares that it shall remain solely responsible for the adequacy of the design, performance function, reliability and construction of the Articles and Services and for compliance with the specifications.
- 18.2 The Contractor shall utilize optimum and cost effective methods in the design and supply of the Articles.
- 18.3 In the event of any inadequacy in the design of the Articles, the Contractor shall, whenever it occurs, rectify immediately such inadequacy at the Contractor's own expense.
- 18.4 In the event the Contractor's design of the Articles is inadequate and cannot be rectified in the opinion of the Company, the Company shall, in addition to any other remedies which it may have under the contract or otherwise, have the right to cancel all or any such items of Articles or Services without being liable therefor in damages and obtain the same from other source(s) and all increased costs incurred thereby and/or any other consequential losses suffered by the Company shall be deducted from any monies due to or become due to the Contractor under the Contract or shall be recoverable as a debt. A certificate by an officer of the Company as to amounts of damages caused and consequential losses suffered by the Company shall, save for manifest error, be final and conclusive.

19 DESIGN RIGHTS

- 19.1 Where as a result of carrying out its obligations under the Contract in respect of work designed by the Contractor for which the Contractor is to be paid by the Company, the Contractor generates proprietary technical data, then such data, know-how and other information shall become the property of the Company as and when such is generated.

- 19.2 The Contractor shall not use any such proprietary data, know-how and other information compiled during such program for a third (3rd) party without the authorization of the Company even in the event of termination of the Contract pursuant to the Company's right to suspend or terminate the Contract.

20 REMEDIES FOR INFRINGEMENT OF PATENT RIGHTS, INTELLECTUAL PROPERTY RIGHTS AND ROYALTIES

- 20.1 All royalties and fees whatsoever claimable by or payable to any person, firm, corporation or government for or in connection with any invention or patent or patent rights, copyrights and trade marks used or required to be used in respect of the Articles or any part or unit thereof supplied under this Contract shall be deemed to be included in the Contract Price.

- 20.2 In the event of any claim against the Company (including for this purpose, every staff of the Company thereof), or the Company being held liable for damages arising out of any claim at the time on account of patent rights and/or intellectual property rights which may be payable by virtue of the Company's acceptance, possession, purchase, use or distribution of the Articles or any part or unit thereof under this Contract, the Contractor shall indemnify the Company and its staff against all such claims and costs, charges and expenses in respect thereof.

- 20.3 In the event that any such infringement occurs or may occur, the Contractor shall at his own expense:

- (a) procure for the Company the right to continue accepting, possessing, purchasing, distributing or using the Articles, or
- (b) modify or amend the Articles or infringing part thereof so that the same becomes non-infringing without affecting the capacity and performance of the Articles, or
- (c) replace the Articles or infringing part thereof with other non-infringing Articles or part thereof of identical capability and performance.
- (d) if none of the options listed above can be accomplished within a reasonable time or are otherwise not commercially reasonable, refund to the Company the Contract Price for the Articles as applicable which gives rise to the infringement, without prejudice to any other rights of the Company.

21 WARRANTY

- 21.1 The Contractor warrants that:

- (a) subject to Clause 53.1, the Company shall acquire good and clear title to the Articles, free and clear of all liens, claims, encumbrances and other restrictions whatsoever;
- (b) the Article, Specifications, Documentation and any other materials or Services provided hereunder do not infringe upon any patent, copyright or similar proprietary right (including, but not limited to, misappropriation of trade secrets) of any third (3rd) party;
- (c) the Documentation provided by the Contractor hereunder will faithfully and accurately reflect the functionality of the Articles.
- (d) the Company shall quietly and peacefully possess the Article and other materials provided hereunder subject to and in accordance with the provisions of this Contract and any Addendum;
- (e) each Article provided pursuant to this Contract will be in good working order when installed, ready for use and free from any defects in material and workmanship, and the Contractor will make all adjustments, repairs and replacements necessary to correct such defects;
- (f) that all Articles provided hereunder shall be designed, produced, installed, furnished and in all respects provided, certified and maintained in conformance with all codes, ordinances, regulations and laws.

21.2 ADDITIONAL WARRANTIES

The Parties each represents and warrants that the following facts and circumstances are and at all times shall be, true and correct:-

- (a) it has the requisite corporate power and authority to enter into this Contract and that this Contract does not conflict with any other agreement or obligation by which the respective Party is bound;
- (c) that there is no material suit, action, arbitration or legal, administrative or other proceeding or governmental investigation pending or to its best knowledge or belief, threatened against it or affecting its ability to perform its obligations under this Contract; and

- (c) that the signatories for an on behalf of that Party are authorized and fully empowered to execute this Agreement on that Party's behalf.

22 WARRANTY PERIOD

- 22.1 The Contractor shall provide a twenty-four (24)-month warranty period, commencing from the date of successful completion of commissioning, in accordance with Clause 11 of this Contract, during which period the Contractor shall within forty-eight (48) hours or such times as stipulated in the Contract after notification, replace with original parts and/or repair free of charge the Article or any part(s) thereof (including accessories) found defective by reason of design, materials and/or workmanship.
- 22.2 The Contractor shall submit detailed Service reports on all Articles repaired or modified in any fashion during the warranty period.
- 22.3 The Contractor shall also provide regular preventive maintenance as specified in the manufacturer's latest technical manuals during the warranty period at no cost to the Company.
- 22.4 The warranty period shall be extended accordingly by the period during which the Article is out of service which shall be computed from the date of notification by the Company to the Contractor. The Article shall not be treated as out of service if the whole or part of the Article is replaced with original parts or if the Contractor provides a back-up Article while the Article is undergoing repair.

23 AVAILABILITY FOR USE

- 23.1 The Contractor guarantees that the Articles shall be available for use during the warranty period in accordance with the service levels as set out in the Contract.
- 23.2 The Contractor shall be subject to liquidated damages calculated in accordance with Clause 7.6 in the event of any breach of Clause 23.1 above.
- 23.3 Notwithstanding the Contractor paying liquidated damages to the Company under this Clause, the Company shall have, without prejudice to any other rights of the Company, the right to terminate this Contract forthwith without compensation and without being liable therefor in damages.

24 SPARES AND CONSUMABLES

- 24.1 The Contractor guarantees that the spare parts and consumables for the Articles will be available for a period of at least seven (7) years from the date of discontinuation of the Article and shall further undertake to locally supply or make available these parts/consumables for the said period.
- 24.2 The unit prices of the spare parts and consumables listed in an Annex to this Contract shall be firm and fixed for a period of two (2) years after expiry of the warranty period referred to in Clause 22.

25 ELECTRICAL OPERATING REQUIREMENTS

- 25.1 Unless otherwise stated, all electrically operated equipment shall be directly operable from 415/230V (\pm) 6%, 50 (\pm) 2 Hz three/single phase AC supply.
- 25.2 All Articles shall be assumed to be able to operate directly from the Company's power outlets. Should the Articles to be supplied require special power conditions, such conditions shall be clearly specified by the Contractor. All work/installation necessary to achieve such conditions shall be the responsibility of the Contractor and all costs involved shall be included in the Contract Price.
- 25.3 All configurations of modules with mainframes, mobile carts or consoles, and displays or recorders, intended or to be used as a single system at the bedside, central station, on mobile carts or consoles as indicated in these specifications, shall be so interconnected that the complete system may be energized via a single 13A, 3-pin mains power plug.
- 25.4 All electrically operated Articles shall fully comply with IEC 601-1 / BS 5724: Part 1 and preferably ISO 9001 / BS 5750: Part 1.

26 POWER CORDS

- 26.1 All mains operated electrical Articles shall be supplied complete with suitably insulated and sheathed three-core (two-core for IEC Class II equipment) hospital-grade flexible power cords of voltage and current ratings appropriate to the Articles. Articles for operating theatre use shall be supplied with flexible power cords, each of not less than 5.5m in length, although the exact length shall be negotiable later. The flexible power cord shall be fitted with a three-pin, high impact, unbreakable nylon body electrical plug meeting BS 1363/A

requirement. The plug shall be of good quality consistent with hospital safety and shall be equivalent in quality to "Volex V.1370W" or "BICC 3583-07", 13A nylon plugs.

26.2 The plug shall be wired to conform to sub-clause 6.5 of IEC 601-1.

27 ENVIRONMENT REQUIREMENTS

27.1 All Articles shall be acclimatized and capable of continuous, trouble-free operating in the local ambient non-air-conditioned environment.

27.2 Should the Articles to be supplied require special environmental conditions, such conditions shall be clearly specified by the Contractor. All work/installation necessary to achieve such environmental conditions shall be the responsibility of the Contractor and all costs involved shall be included in the Contract Price.

27.3 The Contractor shall ensure that the operation of the Articles shall not cause any electro-magnetic interference with the Company's other equipment and/or be affected by any electro-magnetic emissions by other equipment. In the event of any damage caused to any of the Company's equipment due to the operation of the Articles, the Contractor shall, at his own cost and expense, undertake to rectify such damage incurred.

28 QUALITY

28.1 The Articles supplied shall conform in all respects to the specifications, plans, drawings, pattern or samples, as appropriate, forming part of the Contract. The Articles supplied shall be in good condition and fit for their purpose. The Contractor hereby acknowledges that he/she knows the purpose the Articles are intended for.

29 INSPECTION OF ARTICLES IF REQUIRED BY THE COMPANY

29.1 Where inspection of any of the Articles, whether completed or in the course of production, is required by the Company, the Contractor shall give the Company full and free access to his works as and when required for that purpose and shall provide the use of reasonable facilities as may be required therefor.

30 TITLE AND RISK

30.1 Subject to Clause 53.1, title in all components and materials for the Articles and tools to be used exclusively in connection with the Articles shall pass to the Company as soon as they are allocated by the Contractor to the Contract and in all documents of any kind including drawings, designs, test certificates of quality, parts lists and manuals as soon as they are prepared or obtained by the Contractor. The Contractor shall clearly mark and store all such items so that they can be identified as the property of the Company, make them available for inspection by the Company at any time and comply with all instructions of the Company with regard to them.

30.2 Notwithstanding the earlier passing of title, risk in the Articles shall not pass to the Company until the Articles and Services are delivered and successfully commissioned in accordance with Clauses 7 and 11 of this Contract, and the Contractor shall be responsible for any loss or damage to the Articles howsoever arising prior to risk passing.

31 PAYMENT

31.1 Subject to the provisions of this Contract, the Company shall pay the Contractor the Contract Price. The Contract Price for the Articles and/or Services shall not be subject to change during the term of this Contract unless expressly provided for in this Contract or the relevant Addendum. Invoices shall be submitted by the Contractor on a monthly basis upon the delivery, acceptance and/or successful commissioning of the Articles or the performance of the Services; and shall be due and payable by the Company within sixty (60) days from receipt of the invoice by the Company.

31.2 PROVIDED that such payment shall not affect the Company's right to reject any of the Articles or the Contractor's responsibility to replace defective or damaged Articles.

31.3 The Contractor agrees that if any invoice is not submitted to the Company within six (6) months upon delivery, acceptance and/or successful commissioning of the Articles or performance of the Services, the Company shall be released and discharged from any liability to make any payment of the debt in relation to such invoice.

31.4 The Contractor shall submit such invoices or other documents as the Company may require for the purpose of making payment.

31.5 The Company shall not pay for expenses or cost of whatever nature other than those expressly set forth in this Contract.

31.6 There will be no late payment Service charge of any kind. The Company may, upon notice to the Contractor, withhold payment for Articles and/or Services that fail to meet the minimum performance standards set forth

in this Contract and/or question any items invoiced to the Company. Such non-payment shall not constitute a default or breach of this Contract. In the event of any dispute between the Company and the Contractor with respect to the invoiced Articles and/or Services and/or other related matters, the Company shall pay the undisputed amount and the Company and the Contractor shall promptly seek to resolve the disputed matters in accordance with Clause 40 of this Contract.

32 SECURITY DEPOSIT OR BANKER'S GUARANTEE

- 32.1 For the due and faithful performance of this Contract and the fulfilment of the obligations hereunder, the Contractor will be required, upon signing of this Contract, lodge with the Company a Security Deposit in the form of Banker's Guarantee ranges from five to ten per cent (5% to 10%) of the Contract Price. The Company reserves the right to denote the % of the Security Deposit to be lodged with the Company depending on the nature of the Articles purchase and such decision by the Company shall be final and binding.
- 32.2 The Company shall be entitled to utilize and make payments out of or deductions from the Security Deposit in accordance with the conditions of Contract.
- 32.3 In the event that the Security Deposit provided for in Clause 32.1 is inadequate to fully indemnify or compensate the Company for any loss, liability, cost, expenses or damage incurred or suffered by the Company as aforesaid, the Contractor shall, forthwith on demand by or on behalf of the Company, pay to the Company all losses, liabilities, costs, expenses (including without limitation, legal fees on a solicitor and own client basis) and/or damages as may be incurred or suffered by the Company to the extent to which the Security Deposit proves inadequate.
- 32.4 If, at any time, by virtue of the deduction by the Company in accordance with Clause 32.2, the Security Deposit falls below ten per cent (10%) of the Contract Price, the Contractor shall, forthwith on demand by or on behalf of the Company, top up the Security Deposit by paying the amount of the shortfall or furnishing an on demand Banker's Guarantee on terms acceptable to the Company for the same.
- 32.5 The Banker's Guarantee shall be refunded to the Contractor with the remaining value as provided in Clause 32.2, and only upon the Contractor's compliance with Clauses 9 to 11, 21, and 23, and after the Contract has been terminated.

33 ALTERATION OF SPECIFICATIONS, PLANS, DRAWINGS, PATTERNS AND SAMPLES

- 33.1 The Contractor shall not alter any part of the specifications, plans, drawings, patterns and samples relating to the Articles unless directed by the Company but the Company reserves the right to alter the same from time to time and as from the date of such alteration, the Articles shall be in accordance with the altered specifications, plans, drawings, patterns and samples specified. In the event that such alteration results in a change in the cost of the Articles and/or in the period required for delivery, such change in the cost of the Articles and/or in the period required for delivery as shall be agreed to in writing between the duly authorised representatives of the Parties to the Contract, shall be made in relation to the Articles which are subject to the alteration. In all other respects the Contract shall remain unaltered.

34 DAMAGED, DEFECTIVE AND REJECTED ARTICLES

- 34.1 The Contractor shall, when so required by the Company, remove and replace within seven (7) days and at his own expense, any of the Articles which are found on delivery to be damaged, defective or in any way inferior to approved samples or not in accordance with the Contract, failing which the Company shall have the right to purchase replacements elsewhere or make good any damage in any manner it deems fit and all costs incurred thereby shall be deducted from any monies due or which may become due to the Contractor under the Contract or shall be recoverable as a debt. A certificate by an officer of the Company as to the amount of damages caused and consequential losses suffered by the Company shall, save for manifest error, be final and conclusive.
- 34.2 The condition as specified under Clause 8.3 shall apply in the removal and/or replacement of the Articles.

35 SERVICE CONTRACT OPTION

- 35.1 The Company shall have the right to exercise the option for maintenance services after the expiry of the warranty period as specified at Clause 22, in accordance with the terms set out in the Contract.

36 SUSPENSION OR TERMINATION

- 36.1 The Company may, without prejudice to any other rights it may have, by written notice terminate this Contract or the relevant Addendum or suspend the Contractor's performance of all or any of its obligations under it immediately and without liability of the Company for compensation or damages if:

- (a) the Contractor, its servants, employees or agents, fail to comply with its express obligation of confidentiality under Clause 38 of this Contract;

- (b) the Contractor delivers any Article and/or Service which is defective or does not conform with the Company's specifications or which design is inadequate and fails to rectify such defect, non-conformity or inadequacy within thirty (30) days after being given notice by the Company to do so;
 - (c) any Article and/or Service or part thereof supplied or to be supplied by the Contractor is declared or advised to be unsafe for use by any competent authority or by any notice, regulation or requirement of any competent authority;
 - (d) the Contractor fails to comply in any material respects with this Contract and shall fail to remedy such breach (if capable of remedy) within thirty (30) days after being given notice by the Company so to do;
 - (e) any circumstances arise which give reasonable grounds in the Company's opinion for its belief that the Contractor has or may become incapable of performing any of its obligations under this Contract;
 - (f) the Contractor, its servants, employees or agents, fail to comply with its express obligation under Clause 7.6 of this Contract.
- 36.2 The Company may, without prejudice to any other rights it may have, by written notice terminate this Contract or the relevant Addendum or suspend the Contractor's performance of all or any of its obligations under it without cause by giving 2 month's notice. The liability due to the Company shall be limited to the 2 months' committed stock that the Contractor had kept at their premises by contractual obligations of the Company.
- 36.3 In the event of termination under Clause 36.1 above, the Contractor shall refund and repay to the Company any advance payment received from the Company without prejudice to the Company's right to claim compensation for increased costs in obtaining the Articles and/or Services from other sources, and for any loss, expense or damage suffered or incurred by the Company.
- 36.4 During the notice period, the Contractor shall only provide Articles and/or Services, and the Company will only pay for Articles and/or Services, in accordance with the unrevoked instructions of the Company pursuant to this Contract and/or the relevant Addendum. The Contractor shall, at the Company's discretion, provide any Articles and/or Services ordered during the notice period in accordance with the terms and conditions of this Contract and/or the relevant Addendum. Each Party shall remain responsible for its obligations with respect to actions and events prior to the termination of this Contract or the relevant Addendum.
- 36.5 Commencing upon notice to the Contractor of expiration or termination of this Contract or the relevant Addendum and continuing through the effective date of expiration or termination, the Contractor will provide to the Company reasonable termination assistance requested by the Company to allow the use of Articles and/or Services without interruption or adverse effect and to facilitate the orderly transfer of the subject matter of this Contract as desired by the Company. If requested by the Company, the Contractor will reasonably cooperate with a third (3rd) party contractor in connection with the preparation and implementation of a transition plan by such third (3rd) party or the Company upon the termination or expiration of this Contract or the relevant Addendum.

37 FORCE MAJEURE

- 37.1 Neither Party shall be liable for any loss, damage or penalty resulting from delays or failures in performance of their obligations under this Agreement if the delay or failure results from events beyond the reasonable control of either Party.
- 37.2 For the purposes of this Agreement, such events shall include, but are not limited to, acts of God, war, hostility, invasion, act of foreign enemies, rebellion, revolution, riots, civil war, disturbances, requisitioning or other acts of civil or military authority, laws, regulations, acts or orders of any governmental authority, body, agency or official, fires, inclement weather, rain or floods (however caused), strikes, lock-outs or other labour disputes, epidemics, outbreaks, embargoes or other catastrophes affecting the availability of materials or labour necessary for the performance of this Agreement.
- 37.3 For the avoidance of doubt, the failure to obtain the approval or the withdrawal of approval from the relevant government authorities or other governing bodies shall not be considered a force majeure event and the provisions of this clause shall not apply to such an event.
- 37.4 The Parties hereto agree to notify the other Party promptly of any such circumstances delaying its performance and to resume performance as soon thereafter as is reasonably practicable.

37.5 If any force majeure event shall continue for a period exceeding sixty (60) days, then either Party may at any time thereafter, upon giving notice to the other, elect to terminate this Agreement.

37.6 In any of the events mentioned in Clause 37.2, the Parties shall for the duration of such event be relieved of any obligation under this Agreement as is affected by the event except that the provisions of this Agreement shall remain in force with regard to all other obligations under this Agreement which are not affected by the event.

38 CONFIDENTIALITY

38.1 Both Parties hereto agree to treat as confidential all information received from the other Party which the other Party has indicated in writing or labelled to be "Confidential", "Proprietary Information" or with any other comparable legend to similar effect, at the time of disclosure [or if disclosed orally, confirmed in writing by the disclosing Party as such within fifteen (15) days after its disclosure], which it may acquire in relation to the other Party, including but without any limitation whatsoever, all business information, strategic and development plans, any matter concerning the Company, its affairs, business, shareholders, directors, officers, business associates, clients or any other person or entity having dealings with the Company; information relating to the financial condition of the Company, its accounts, audited or otherwise, notes, memoranda, documents and/or records in any form whatsoever whether electronic or otherwise, and all records indicative of the financial health and status of the Company; technical information in any form whatsoever whether electronic or otherwise; information in any form whether electronic or otherwise, relating to methods, processes, formulae, compositions, systems, techniques, inventions, machines, computer programs, software, development codes and research projects; business plans, co-developer/collaborator identities, data, business records of every nature, customer lists and client database, pricing data, project records, market reports, sources of supply, employee lists, business manuals, policies and procedures, information relating to technologies or theory and all other information which may be disclosed by the Company to the other Party which the other Party may be provided access by the Company whether stored electronically or otherwise; all information which is deemed by the Company to be Confidential Information or which is generated as a result of or in connection with the business of the Company and which is not generally available to the public; and all copies, reproductions and extracts thereof, in any format or manner of storage, whether in whole or in part, together with any other property of the Company made or acquired by the other Party or coming into their possession or control in any manner whatsoever shall be and remain the sole property of the Company and shall be returned to the Company forthwith on demand at any time or without demand upon the termination of the other Party's services. The Contractor shall ensure that none of the patients of the Company can be identified in any reports, submissions and publications of the Company, which shall be deemed to be Confidential information of the Company within the meaning of this clause.

38.2 Both Parties shall use all reasonable steps to ensure that any information marked as confidential or proprietary to the Company and/or the Contractor shall not be disclosed to third (3rd) parties.

38.3 Neither of the Parties hereto shall, without the prior written consent of the other Party, disclose any "Confidential Information" relating to the Agreement or any of the contents hereof whether directly or indirectly to any third (3rd) party, which consent shall not be unreasonably withheld, except:-

- (a) for the purpose contemplated in this Agreement;
- (b) with the consent of the other Party and then only to the extent specified in such consent;
- (c) in accordance with the order of a court of competent jurisdiction; or
- (d) to the extent as may be required by law, regulation, effective government policy or by any regulatory authority arising out of this Agreement or relating to or in connection with the other Party provided that the Party so required must give the other Party prompt written notice and make a reasonable effort to obtain a protective order.

38.4 The restrictions on disclosure of Confidential Information described in Clauses 38.1 to 38.3 and 38.5 do not extend to any information that (i) already exists in the public domain at the time of its disclosure; (ii) is already in the Contractors' or the Company's possession; (iii) is independently developed by the Contractor or the Company outside the scope of this Agreement; or (iv) is rightfully obtained from third (3rd) parties.

38.5 Each Party hereby agrees that it shall :

- (a) take all reasonably necessary steps to limit access to Confidential Information of the other Party to those principals, directors, officers, agents, employees, representatives, consultants, independent contractors and professional advisors who are directly concerned with the purposes contemplated by this Agreement and are made aware of its confidential status, to the extent reasonably required for

the performance of this Agreement, and ensure that they do not disclose or make public or authorise any disclosure or publication of any Confidential Information in violation of this Agreement; and

- (b) not use any Confidential Information for any purpose other than the purposes for which it is intended, pursuant to and in accordance with the terms of this Agreement.
- 38.6 Each Party must promptly inform the other Party about any unauthorised disclosure of such other Party's Confidential Information.
- 38.7 Subject to the foregoing, each Party's confidentiality obligations under this clause shall survive the expiry or termination of this Agreement.

39 VARIATION OF CONTRACT

- 39.1 The provisions of this Contract shall not be varied, except by agreement in writing signed by the duly authorised representatives of both Parties.
- 39.2 If either Party wishes to vary the Contract, the proposing Party shall submit a copy of the proposed variations to the other Party ("the Receiving Party"), specifying a reasonable period in which the Receiving Party is to provide written notice of acceptance or rejection of the proposal.
- 39.3 If the Receiving Party accepts the variations, the Contract shall be deemed to be so amended from the date of acceptance.
- 39.4 If the Receiving Party rejects the proposed variations, each Party shall perform the Contract in accordance with the unvaried terms.

40 DISPUTE RESOLUTION

- 40.1 In the event of any dispute or difference arising out of or in connection with or in relation to this Contract, including any question regarding the existence, validity, termination, application or interpretation of this Contract or any of its provisions, both Parties shall use their best endeavours to settle the dispute informally by agreement between the Parties. Both Parties shall always act in good faith and co-operate with each other to resolve any disputes.
- 40.2 Notwithstanding anything in this Contract, if the dispute is not settled in accordance with Clause 40.1 above, no Party shall proceed to litigation or any other form of dispute resolution unless the Parties have made reasonable efforts to resolve the same through mediation in accordance with the mediation rules of the Singapore Mediation Centre. A Party who receives a notice for mediation from the other Party shall consent and participate in the mediation process in accordance with this clause. Failure to comply with this clause shall be deemed to be a breach of this Contract.
- 40.3 In the event that mediation is unsuccessful, the dispute shall be resolved either by reference to arbitration or by court proceedings as elected by either Party by way of a written notice to the other Party, which shall state the specific dispute to be resolved and the nature of such dispute.
- 40.4 Any reference to arbitration in Singapore shall be a submission to arbitration within the meaning of the Arbitration Act (Cap.10) for the time being in force in Singapore. Such arbitration shall be conducted in the English language in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference into this clause, except in so far as such Rules conflict with the provisions of this clause, in which event the provisions of this clause will prevail.
- 40.5 The arbitration tribunal shall consist of one (1) arbitrator to be appointed by mutual agreement between the Parties. Either Party may propose to the other the name or names of one (1) or more persons, one (1) of whom would serve as the arbitrator. If no agreement is reached within thirty (30) days after receipt by one (1) Party of such a proposal from the other, the arbitrator shall be appointed by the Appointing Authority.
- 40.6 The Appointing Authority shall be the Chairman of the SIAC.
- 40.7 The arbitrator must not be a present or former employee or agent of, or consultant or counsel to, either Party or any related corporation [as defined in Section 6 of the Companies Act (Cap. 50)] of either Party.
- 40.8 Any decision or award of an arbitration tribunal appointed pursuant to this clause will be final and binding on the Parties.

- 40.9 Interest at the annual rate of six per cent (6%) per annum will be due and payable to the Party in receipt of an arbitration award from such date as the arbitration tribunal may decide until the date of payment to such Party.
- 40.10 The Parties hereto undertake to keep the arbitration proceedings and all information, pleadings, documents, evidence and all matters relating thereto confidential.
- 40.11 The application of Part II of the International Arbitration Act (Cap. 143A), and the Model Law referred to therein, to this Contract is hereby excluded.
- 40.12 For the avoidance of doubt, it is agreed that nothing in this clause shall prevent a Party from seeking urgent equitable relief before any appropriate court and the commencement of any dispute resolution proceedings shall in no way affect the continual performance of the Parties' obligations under this Contract.

41 ASSIGNMENT AND SUBCONTRACTING

41.1 Subject to the other provisions of this Agreement, all the terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, permitted assigns and successors-in-title except that:-

- (a) neither party shall transfer or assign all or any of its rights, obligations or benefits hereunder in whole or in part to any third (3rd) party without the prior written consent of the other party, which consent shall not be unreasonably withheld;
- (b) any permitted assignee or transferee shall agree in writing to comply with all terms and conditions of this Agreement; and
- (c) any assignment shall not exceed the existing scope of this Agreement.

41.2 In particular, the Contractor may not subcontract the performance of any Services hereunder, without the prior written consent of the Company. In connection with such consent, the Company may require the execution by such subcontractor(s) of an agreement to be prepared by the Company. The Contractor shall remain fully responsible for any its obligations subcontracted, as permitted hereunder, and the Contractor shall be solely responsible for payment due to such subcontractors.

41.3 Approval of any subcontractor by the Company shall not constitute a superseding event or waiver of any right of the Company to reject work that is not in conformance with the standards set forth in this Contract, and does not constitute nor imply authorisation of expenses in excess of the Contract Price.

42 WAIVER

42.1 No waiver of any breach of any covenant, condition, stipulation, obligation or provision contained or implied in this Agreement shall operate or be interpreted as a waiver of another breach of the same or of any covenant, condition, stipulation, obligation or provision of this Agreement.

42.2 Any time or other indulgence granted by the Company under this Agreement shall be without prejudice to and shall not be taken as a waiver of any of the Company's rights under this Agreement nor shall it prejudice or in any way limit or affect any statutory rights or powers from time to time vested in or exercisable by the Company.

43 RELIANCE CLAUSE

43.1 The Contractor accepts that the Company, inter-alia, relies on the skill and judgment of the Contractor in the description and manufacturing quality of the Articles to be provided and on the judgment and skills of the Contractor for any and all of the Services to be performed.

44 INSOLVENCY

44.1 The Company may at any time by notice in writing summarily determine this Contract or any unperformed balance or this Contract without compensation to the Contractor in any of the following events:

- (a) if the Contractor, being an individual or, where the Contractor is a firm, any partner in that firm shall at any time become bankrupt, or shall have a receiving order or administration order made against him over any part of his assets or undertaking on behalf of his debenture holders or creditors, or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or
- (b) if the Contractor, being a company, shall pass a resolution, or the Court shall make an order that the company shall be wound up (otherwise than for the purposes of amalgamation or bona fide

reconstruction), or if a receiver or manager on behalf of a creditor shall be appointed, or if circumstances shall arise which entitle the Court or a creditor to appoint a judicial manager, receiver or manager or which entitle the Court to make a winding-up or judicial management order.

PROVIDED ALWAYS THAT such determination shall not prejudice or affect any right of action or remedy, which shall have accrued or shall accrue thereafter to the Company.

44.2 Any termination under Clause 44.1 above shall discharge the Parties from any liability for further performance of the Contract and the Company shall have the right to be repaid forthwith any sums previously paid under this Contract (whether paid by way of a deposit or otherwise) and to recover from the Contractor the amount of any loss or damage sustained or incurred by the Company as a consequence of such termination.

45 NOTICES

45.1 Except as otherwise provided in this Contract, notices which are required to be given in or under this Contract shall be in writing (unless expressly stated otherwise) and sent to the address of the recipient set out in this Agreement. All notices may be sent by hand or by AR Registered post or certified mail, return receipt requested, postage prepaid and properly addressed to the offices of the Parties as specified in this Agreement or to such other address as the Party may later specify.

45.2 Every notice or communication so sent shall be deemed to have been properly served and validly made, if by hand when delivered to the recipient's address and if sent by AR Registered post, two (2) days after posting if posted to an address within Singapore and eight (8) days after posting, if posted to an address outside Singapore, notwithstanding the fact that the letter may be returned by the Post Office undelivered.

National Healthcare Group

6 Commonwealth Lane
Level 6 GMTI Building
Singapore 149547
Telephone : 6471-5898/6471-5899
Fax : 6471-2129

PROVIDED THAT either Party may at any time alter its address or any other communication particulars by serving written notice on the other Party.

46 ENTIRE AGREEMENT

46.1 The Parties expressly acknowledge that they have read this Agreement and understood its provisions. The Parties agree that this Agreement and all Schedules annexed to the same constitute the entire agreement between them with respect to the subject matter of this Agreement and that it supersedes all prior or contemporaneous proposals, agreements, negotiations, representations, warranties, understandings, correspondence and all other communications (whether written or oral, express or implied) or arrangements entered into between the Parties prior to this Agreement in respect of the matters dealt with in it. No promise, inducement, representation or agreement other than as expressly set forth in this Agreement has been made to or by the Parties.

47 SEVERABILITY

47.1 In the event that any term, condition or provision of this Agreement or the application of any such term, condition or provision shall, to any extent, be held by a court of competent jurisdiction to be wholly or partly illegal, invalid, unenforceable or a violation of any applicable law, statute or regulation of any jurisdiction, the same shall be deemed to be deleted from this Agreement and shall be of no force and effect; whereas the remaining terms and provisions of this Agreement shall remain in full force and effect as if such term, condition and provision had not originally been contained in this Agreement, unless the severed provisions render the continuing performance of this Agreement impossible, or materially change either Party's rights or obligations under this Agreement; in which event, such Party may give written notice of its intent to terminate this Agreement to the other Party.

47.2 Notwithstanding the aforesaid, in the event of such deletion, the Parties hereto shall negotiate in good faith in order to agree to terms of mutually acceptable and satisfactory alternative provisions in place of the provision(s) so deleted.

48 REASONABLENESS

48.1 Both Parties agree that the clauses in this Contract are reasonable. In construing the clauses herein, the clauses shall not be construed contra proferentum against the Company.

49 LANGUAGE

- 49.1 All business relating to this Contract, both written and verbal, shall be conducted in the English language.
- 50 SURVIVAL CLAUSE**
- 50.1 All clauses of this Contract so intended to survive after the termination or expiration of the Contract shall survive such termination or expiration.
- 51 INDEPENDENT CONTRACTOR / NO PARTNERSHIP**
- 51.1 The Contracting Parties are independent contractors. Save as expressly provided in this Contract or by express agreement in writing between the Parties, nothing in this Contract shall be deemed to constitute a partnership between the Parties or constitute any Party the employee, agent, partner or legal representative of the other Party for any purpose or otherwise entitle either Party to have any right, power or authority to create any obligation or responsibility of any kind, express or implied on behalf of the other. Further, the Parties agree that neither Party has the right to bind or commit the other Party for any purpose in any way whatsoever or control any activity of the other Party outside the terms of this Contract.
- 52 NO THIRD (3RD) PARTY BENEFICIARIES**
- 52.1 Nothing contained in this Contract is intended to confer upon any person (other than the Parties hereto) any rights, benefits or remedies of any kind or character whatsoever or any right to enforce the terms of this Contract under the Contracts (Rights of Third Parties) Act 2001, and no person shall be deemed to be a third (3rd) party beneficiary under or by reason of this Contract.
- 53 INTELLECTUAL PROPERTY RIGHTS**
- 53.1 As between the Company and the Contractor, the Contractor is and shall remain the sole owner of all right, title, and interest in and to the Licensed Software, including all Upgrades, Updates, and Error Corrections, and to all intellectual property rights embodied therein or related thereto. No rights thereto are granted (whether by implied license or otherwise), to the Company. If the Company or its personnel acquire any right, title, or interest therein, the Company hereby assigns all such right, title and interest to the Contractor. The Contractor hereby reserves any and all rights in and to the Licensed Software that are not expressly granted or otherwise transferred to the Company in this Contract. For the purpose of this Contract, Licensed Software refers to any software pre-existing at the date of the commencement of works under this Contract or created other than through performance of this Contract and shall include third (3rd) party software licensed to the Company under this Contract.
- 53.2 Except as otherwise specifically provided in Clause 53.1 above, to the fullest extent permitted under law, all Work Product shall be the property of the Company and shall be deemed as "Work Made For Hire". To the extent any Work Product is determined not to be "Work Made For Hire", and subject to the other provisions of this Clause 53, the Contractor hereby irrevocably and exclusively assigns, transfers and conveys to the Company all rights, title and interest of any kind, in and to any and all Work Product; and the Contractor acknowledges that it shall not retain any proprietary right or interest in the Work Product.
- 53.3 The Contractor acknowledges that all or part of the Work Product (except Licensed Software) may be copyrighted, trademarked, or patented solely by the Customer. The Contractor shall execute any documents reasonably requested by the Customer for the registration of patent and/or copyrights or any other statutory protection in such Work Product.
- 54 USE OF NAME**
- 54.1 Except as may be necessary for either Party to carry out its obligations under this Contract, neither Party shall under any circumstances whatsoever use the other Party's name, trade names, trade marks, service marks, logos, or other symbols or other source identifying devices, or combinations or variations thereof, or the name of any employee of either Party, in any public announcement, news release, advertising, or promotional literature, without first obtaining the written consent and approval of the other Party.
- 55 GOVERNING LAW**
- 55.1 This Contract shall be deemed to be made in Singapore and subject to, governed by and construed in all respects in accordance with the laws of the Republic of Singapore for every intent and purpose.
- 55.2 The Parties hereby agree to submit irrevocably to the non-exclusive jurisdiction of the Courts of the Republic of Singapore to settle any and all disputes in connection with this Contract.
- 56 EXECUTION IN COUNTERPARTS**
- 56.1 This Contract may be executed in one (1) or more counterparts by the duly authorised representatives of the Parties, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one (1) and the same agreement PROVIDED ALWAYS THAT this Contract shall be of no force and effect until the counterparts are exchanged.

