

SECTION 2

**MASTER TERMS AND CONDITIONS
FOR THE
SUPPLY OF SERVICES**

MASTER TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

1. DEFINITIONS

1.1. In this Master Contract, unless the context otherwise requires:

- (a) “**Affiliate**” means: (1) an entity which directly or indirectly controls the applicable Party; or (2) an entity which is directly or indirectly controlled by the applicable Party or by an entity described in **Clause 1.1(a)(1)** herein. For the purposes of this definition of “Affiliate”, “control” is defined as owning more than fifty percent (50%) of the voting equity of the applicable Party or entity (as applicable) or having otherwise the ability to control the management of the applicable Party or entity (as applicable), whether through the ownership of voting securities, by contract, resolution, regulation or otherwise.
- (b) “**Contract(s)**” or “**Master Contract**” means this contract entered into between NUHS as agent for the Institutions and the Contractor for the supply of the Services, and includes these Master Terms and Conditions which shall be applied and incorporated, *mutatis mutandis*, to all the Institution Contracts and any amendments and supplement to the same effected in accordance with the terms herein.
- (c) “**Contractor**” means the successful vendor who has been awarded this Master Contract (including the Institution Contract(s), if any) and who will supply the Services to the Institution(s) and includes the Contractor’s permitted assigns and/or successors-in-title.
- (d) “**Contract Period**” (where applicable) means the duration of the Master Contract as stated in **Section 1** unless otherwise stated in the Notification Letter, and unless earlier terminated pursuant to **Clause 15**.
- (e) “**Contract Price**” means the total awarded contract value (exclusive of GST) payable to the Contractor for the supply of Services to the Institution as stated in the Notification Letter or Orders (as the case may be).
- (f) “**Commencement Date**” means the date the Services for the Institution commences as specified in **Section 1** unless otherwise stated in the Notification Letter.
- (g) “**Effective Date**” means the date the Master Contract and/or Institution Contract(s) takes effect as specified in **Section 1** unless otherwise stated in the Notification Letter.
- (h) “**Force Majeure Event**” means any and all events or circumstances which are beyond the reasonable control of the relevant party and includes an act of God (floods, earthquakes, typhoons, hurricanes, tsunamis, etc.), riots, civil and political unrest, strikes, lockouts or other labour disturbances, fire, war, terrorism, sabotage, arson, nuclear disasters, chemical warfare, outbreak of an infectious disease and epidemics;
- (i) “**GST**” means the goods and services tax chargeable under the Goods and Services Tax Act (Cap. 117A).
- (j) “**Institution(s)**” means the institution(s) as defined in Section 1), acting through /their authorized representative(s). Where applicable, even where it is not expressly provided, references to “Institutions” in the Master Contract shall include Affiliates.
- (k) “**Institution Contract(s)**” means the respective and distinct contracts entered into between each Institution and the Contractor for the supply of the Services in accordance with the Master Contract.
- (l) “**Intellectual Property Rights**” includes but is not limited to any patent, copyright, design right, trade mark, service mark, trade name, goodwill, geographical indication, integrated circuit layout-design right, know-how, Confidential Information, trade secret, technical data, any application (whether pending, in process or issued) for any of the foregoing, and any other industrial, intellectual property or protected right similar to the foregoing (whether

MASTER TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

registered, registrable or unregistered) in any country and in any form, media, or technology now known or later developed.

- (m) “**Notification Letter**” has the meaning ascribed to it in the cover letter to the RFQ;
 - (n) “**Orders**” means the ordering and purchase of Services and/or Products by the Institution including by way of indent forms, purchase orders, emails and/or faxes, on the terms of the Contract;
 - (o) “**National University Health System Pte. Ltd.**” or “**NUHS**” is the agent authorised to act, and to execute the Master Contract and Institution Contract(s), on behalf of the Institutions listed in **Section 1** or future amendments or variations to the Master Contract and Institution Contract(s).
 - (p) “**Parties**” means the Contractor, NUHS and the Institution (each of whom shall be referred to individually as “**Party**”).
 - (q) “**Personal Data**” has the meaning defined in the Personal Data Protection Act 2012 (No. 26 of 2012) (the “**PDPA**”).
 - (r) “**Premises**” means the principal place of business of the Institution or such other location as may be specified by the Institution.
 - (s) “**Proposal**” means the proposal submitted by the Contractor (including any negotiations and amendments thereto) in response to the RFQ and accepted by the Institutions.
 - (t) “**Requirements**” means (i) the specifications and descriptions issued by the Institution to the Contractor for the purpose of inviting the Contractor to submit its Proposal for providing the Services; (ii) those parts of the Contractor’s response to the Institution’s specifications and descriptions which have been accepted by the Institution; and (iii) such other amendments or specification as may be mutually agreed in writing between the Parties.
 - (u) “**RFQ**” means Request for Quotation.
 - (v) “**Services**” means all services more particularly described in **Section 1**, which shall be provided by the Contractor to the Institutions pursuant to **Clause 3**, and all other services which may not have been expressly stipulated in the RFQ but which are to be necessarily implied for the satisfactory and timely performance of the Contract or which are customarily provided in accordance with generally accepted professional practice in Singapore for the provision of such services, to the extent that such services are not expressly stated in the Contract.
 - (w) “**Software**” means the computer programmes/applications/codes that the Contractor are to supply under the Contract to the Institutions, together with the legitimate license granted by the owners of the proprietary rights; and the media in which the programmes/applications/codes are stored in; with the accompanying documentation relating to the installation and usage of the Software.
 - (x) “**Workers**” means the representatives, agents, sub-contractors (if permitted) and employees appointed by the Contractor for the purposes of performing the Contract for the Institutions.
- 1.2. References in this Master 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 Master 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.

MASTER TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

- 1.3. If any inconsistencies or conflicts arise between the separate documents forming the Contract, to the extent of inconsistency or conflict, the following order of precedence shall apply in order of priority: (i) any Addendum amending the Master Contract (ii) Orders, (iii) the Notification Letter (where applicable), (iv) Section 1, (v) Section 2, (vi) the other documents forming the Contract.
- 1.4. The paragraph or clause headings in this Master Contract have been inserted for ease of reference and convenience only and shall not affect the construction or interpretation of this Master Contract. Unless otherwise expressly provided, any reference in this Master Contract to a "Clause", "Appendix", "Annex" or a "Schedule" is a reference to the relevant clause or appendix of, or annex or schedule to, the Contract. The Appendices, Annexes and Schedules are to have effect and be construed as an integral part of, and shall be deemed to be incorporated into this Master Contract.
- 1.5. 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 regulations, rules and statutory instruments (however described) issued under it.
- 1.6. Any reference to "day" shall mean a period of twenty-four (24) hours, ending at twelve (12) midnight.
- 1.7. 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. "Business day" means any day other than a Saturday, a Sunday or a gazetted public holiday in Singapore.
- 1.8. A reference to the whole includes any part thereof and a reference to the word "include" or "including" shall not be construed as having any limiting effect.
- 1.9. Any reference in the Contract to **Section 1**, **Section 2** or **Section 3** is a reference to the Sections of the RFQ unless otherwise stated.

2. INSTITUTION CONTRACTS, CONTRACTS' PERIOD & OPTION TO RENEW

- 2.1. The Contractor agrees separately with each of the Institutions to supply the Services as specified in Section 1 during the Contract Period, on the terms of this Master Contract.
- 2.2. The Master Contract and the Institution Contracts shall commence on the date as stated in **Section 1** (unless otherwise stated in the Notification Letter) and shall expire on the date as stated in Section 1 with an option for NUHS as agent for the Institutions to extend the Master Contract and Institution Contracts for a further period, as stated in Section 1, from its expiry on the terms and conditions herein, including Contract Price, save for this option. The Contractor shall, at its own cost and expense, take all necessary steps to correct any deficiency and take all necessary steps to ensure that the Services are supplied within the timeline specified by the Institution.

3. TERMS OF SALE

- 3.1. The Contractor acknowledges and agrees that each of the Institutions as the contracting party may issue Orders to the Contractor for the purchase of services from time to time during the Contract Period directly with the Contractor. Each Institution's Order may be in the form of indent form, email or fax and shall constitute an agreement for sale by the Contractor and the purchase by the Institution of the Services on the terms of this Master Agreement. All Orders for Services are entered into and made by the parties in reliance on the fact that this Master Agreement and all Institutions Contracts form a single agreement between the parties (collectively referred to as the "Agreement") and the parties would not otherwise enter into any sale and purchase of the Services.
- 3.2. The Contractor shall perform the services in accordance with the requirements as set out in detail in Section 1 and as instructed and directed by the Institutions from time to time to the reasonable satisfaction of the Institutions and in compliance with any relevant industry standards and all applicable legal and regulatory requirements, and without undue disruption to the business and operations of the Institutions.

- 3.3 If the exact quantity, frequency and extent of the Services to be supplied by the Contractor during the period of the Contract are not specified in the Contract, the Institution shall be under no obligation to purchase any or all of such Services. Any statement of 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 quotations shall be deemed to be approximate only and merely for the information of the Contractor.

4. PERFORMANCE OF SERVICES

Quality and standards

The Contractor shall perform the Services to the Institutions in accordance with the Requirements as set out in detail in **Section 1** (or otherwise provided in the Notification Letter) and as instructed and directed by the Institutions from time to time to the reasonable satisfaction of the Institutions and in a prudent, reasonable, and efficient manner and in accordance with (i) Requirements (ii) Master Contract (iii) all applicable operating manuals, (iv) applicable warranties provided herein (v) laws and regulations, (vi) the requirements of any system software, and (vii) all insurance policies specified in **Clause 13** of this Master Contract. The Contractor hereby acknowledges that it knows the standards of the Services required and the purposes of the performance of the Services.

- 4.2 The Contractor shall ensure that the manpower, equipment, materials and any other necessary resources required to provide the Services, comply with all mandatory legal and/or safety requirements if any, and all reasonable requirements of the Institution as notified to the Contractor from time to time.

Performance monitoring

- 4.3 The effectiveness of the Contractor in providing each of the Services shall be monitored by key performance indicators (“KPIs”) as set out in Section 1.
- 4.4 In any given month, if the Contractor fails to meet the KPIs for any of the Services, the Institution shall have the right to require from the Contractor liquidated damages in accordance with **Clause 5**.
- 4.5 Time for the performance and/or delivery and completion of the Services under the Contract is of the essence. The Contractor shall perform the Services in accordance with the Contract and timelines as agreed between the Parties.

Electronic deliveries

- 4.6 Where any delivery of Services is made electronically or in electronic format, the Contractor understands and accepts that:
- (a) risk of non-delivery, mis-delivery, incomplete or late delivery to the Institution is entirely on the Contractor;
 - (b) where the Institution certifies that any deliverable received by the Institution is unusable, inaccurate or is otherwise corrupted, then it shall be deemed that no delivery took place and the Contractor shall be obliged to re-deliver the deliverable to the Institution within the time frame specified by the Institution; and
 - (c) the Contractor shall be under a duty to transmit the deliverables to the Institution only in encrypted form and that the Contractor shall provide to the Institution all means necessary to decrypt the so transmitted deliverables.

5. LIQUIDATED DAMAGES

- 5.1 In addition to any other remedies which the Institution may have under the Contract or otherwise – where the Institution has the right to require from the Contractor liquidated damages under the Contract, the Institution shall have the right to claim from the Contractor or to deduct from the Contract Price, as liquidated damages (and not as a penalty), a sum to be calculated at (i) the rates specified in Section 1 or (ii) in the absence of such specified rates in Section 1, at the rate of 0.5% per cent (½%) of the Contract Price for the late delivery of any part of the Services, for each late day or part thereof up to a maximum of ten per cent (10%) of the Contract Price.
- 5.2 The Contractor acknowledges and agrees that the sum stipulated above constitutes a genuine pre-estimate by the Contractor and the Institution of the potential loss that would be suffered by the Institution resulting from or in connection with the Contractor's failure to meet the KPIs under the Contract, taking into account all relevant considerations, including without limitation the disruptions caused to the Institution's operations and the possible costs in sourcing for substitute sources. For the avoidance of doubt, the Liquidated Damages relate solely to the occurrence of the specific event of the non-compliance of the KPIs. The Contractor expressly agrees that the Liquidated Damages do not cover any other damage to property, personal injury to or death of any person, as expressly set out in Clause 12 of the Master Contract.
- 5.3 Notwithstanding Clause 5.1, if NUHS and/or the Institutions determines in its sole and absolute discretion that there is non-performance of any of the Contractor's obligations under the Contract which is not due to a Force Majeure Event stated in Clause 16, NUHS and the Institutions reserves the right to terminate the Contract and to be indemnified by the Contractor against all losses, damages, claims or demands suffered or incurred by the Institutions or to which the Institution may be liable as a result of the Contractor's delay.

6. CONTRACT PRICE

- 6.1 The Contract Price for the Services provided by the Contractor to the Institution pursuant to the Contract is set out in Section 1 or Orders (as the case may be), and shall represent the total cost to the Institution (excluding GST) for the Services provided, which shall include the cost of all necessary manpower, materials, and or equipment that may be required by the Contractor to provide the Services, inclusive of all accessories, whether explicitly or separately specified or not, and the necessary for providing full capabilities asked for.
- 6.2 The Contract Price for the Services shall not be subject to change during the Contract Period unless expressly provided for in the Contract.

7. PAYMENT

- 7.1 The Contractor shall be paid the Contract Price upon the completion and acceptance by the Institution of the Services in accordance with the Contract.
- 7.2 Invoices shall be due and payable by the Institution, within sixty (60) days from the date of receipt of Invoice by the Institution PROVIDED that such payment shall not affect the Institution's right to reject any of the Services, or the Contractor's responsibility re-perform the Services, and such payment shall also not amount to a waiver of any accrued rights and remedies of the Institution against the Contractor.
- 7.3 The Institution may, upon provided written notice to the Contractor within thirty (30) days after receipt of an Invoice, withhold payment for Services and question any items invoiced to the Institution. Such non-payment shall not constitute a default or breach of the Contract. In the event of any dispute between the Institution and the Contractor with respect to the content of the Invoice, the Institution shall pay the undisputed amount and the Institution and the Contractor shall promptly seek to resolve the disputed matters in accordance with **Clause 19** (Dispute Resolution) of the Contract.

8. CONTRACTOR'S GENERAL OBLIGATIONS

Adequacy of Contractor's Proposals

- 8.1 Notwithstanding any approval (whether verbally or in writing) given by the Institution to any of the Contractor's Proposals, concepts, methodology, implementation plans, design, planning and technical specifications relating to the performance of the Services, and/or for compliance with the Requirements, the Contractor shall utilise optimum and cost effective methods with respect to the performance of the Services.
- 8.2 In the event of any inadequacy in the Contractor's Proposals, concepts, methodology, implementation plans, design, planning and technical specifications of the Services, the Contractor shall, at its own cost and expense, rectify immediately such inadequacy so as to achieve the satisfactory and timely performance of the Services.

Contractor's Workers

- 8.3 The Contractor shall provide all labour and professional, supervisory and managerial personnel required to perform the Services that are suitably qualified and have the requisite experience and expertise to undertake the Services to the standards required by the Institution and meet any requirements for Services under the Contract. The Contractor consents to further security checks by the Institution if deemed necessary by the Institution.
- 8.4 The Contractor shall comply with all labour and employment laws regarding the engagement of all Workers and ensure that no illegal immigrant shall be employed by him or any sub-contractor in the execution of any part of the Services. If any illegal immigrant is found to be so employed, the Contractor shall cease such employment immediately. The Contractor shall be solely liable for and shall indemnify the Institution against any breach of this **Clause 8** and any damage, expense, liability, loss, claim or proceedings as a result of any illegal immigrants or unsafe workers found to be employed by the Contractor and the Institution reserves the right to impose such other measures as de-registration or debarment of the Contractor. An "illegal immigrant" means any person who has entered into Singapore in contravention of the Immigration Act (Cap. 133) or any statutory modification or re-enactment thereof.
- 8.5 Where so required by the Institution, all Workers deployed by the Contractor to carry out the Services in the Premises must obtain and display at all times the Institution's security pass while on the Premises. Where requested by the Institution, the Contractor shall provide the Institution with a comprehensive list of 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. In the event foreign workers are deployed, it shall be the Contractor's responsibility to ensure that such foreign workers have valid work permits. The Contractor shall be deemed to have obtained the necessary consents from their Workers in compliance with the PDPA.
- 8.6 The Contractor shall replace any of the Worker(s) within fourteen (14) days from the date of written notice issued by the Institution that the said Worker is either:
- (a) technically incompetent or negligent in carrying out the Services or whose continued presence is undesirable or unacceptable and all efforts by the Contractor have failed to resolve the issue within the said period; or
 - (b) conduct of the said Worker is found to be detrimental, whether in relation to the Services or at large.

If the Institution so instructs the Contractor to replace the Worker under this sub-clause, the said Worker shall be removed from or cease to be involved in the performance of Services under the Contract with immediate effect from the date of the written notice.

- 8.7 All individuals employed or contracted by Contractor to perform the Services, their working hours, rates of compensation and all other matters relating to their employment or engagement shall be

MASTER TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

determined solely by Contractor. With respect to employment matters, hiring personnel, and employment policies, the Contractor shall comply with all applicable laws.

- 8.8 The Contractor shall act in a reasonable manner that is consistent with the intent and purpose of the Contract and with the Institution's acknowledgment (hereby given) that Contractor (including the Workers) has no authority to enter into any contracts on behalf of the Institution with respect to any matter that purports to bind or otherwise obligate the Institution in any manner whatsoever.

Compliance with IT Requirements

- 8.9 In addition, the Contractor shall ensure that, where applicable, the Contractor and Services comply with the Institution's IT requirements and any relevant requirements in relation to cybersecurity risks if the Services require connection to any of the Institution's electronic medical records, any of the Institution's systems and/or connection with the internet, that is/are made known to the Contractor.

9. REPRESENTATIONS & WARRANTIES

- 9.1 The Contractor hereby represents and warrants that:

- (a) the Services or any part thereof do not and will not infringe the intellectual property rights of any person and the Contractor shall, where applicable, obtain for and grant to the Institution, free of any additional charge, a worldwide, perpetual, non-exclusive licence to use all intellectual property owned by or licensed to the Contractor that are necessary for the provision of the Services;
- (b) the documentation provided by the Contractor hereunder will faithfully and accurately reflect the functionality of the Services;
- (c) the Services shall in all respects (including the design, manufacture, processing, storage and testing thereof) comply with all legal, regulatory and health and safety requirements, and meet all relevant industry standards;
- (d) where applicable, any Software and, or system software installed by the Contractor do not contain any unauthorised code, virus, Trojan horse, worm or other software code, routine or software components designed to permit unauthorised access, disable, erase, or otherwise harm, impede Institution's use of the Products or any other of the Institution's systems;
- (e) it has the requisite manpower, equipment, materials, skill and expertise, for the satisfactory provision of the Services in accordance with the Contract, and acknowledges that the Institution relies upon this warranty and representation;
- (f) it has full power and authority to enter into and perform the Contract, and the Contract constitute a valid and binding obligation on the Contractor and does not conflict with any other agreement or obligation by which the Contractor is bound;
- (g) in entering the Contract it has not committed any fraud;
- (h) at the commencement of the Contract, all information contained in its Proposal in response to the RFQ remains true and accurate;
- (i) the execution of the Contract and delivery of the Services and the performance of its obligations under the Contract will not result in a breach of any order, judgment or decree of any court, governmental agency or regulatory body by which it is bound;
- (j) no proceedings or other steps have been taken for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;

MASTER TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

- (k) 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 the Contract; and
- (l) the signatories for and on behalf of the Contractor are authorized and fully empowered to execute the Contract on the Contractor's behalf.

10. SECURITY DEPOSIT / BANKER'S GUARANTEE

- 10.1. The Institution and/or NUHS shall have the option to require the Contractor, for the due and faithful performance of the Contract and the fulfilment of the Contractor's obligations hereunder, to lodge with the Institution and/or NUHS a Security Deposit in the form of an on-demand Banker's Guarantee or other forms of security (in such form as prescribed by the Institution and/or NUHS) equivalent to ten percent (10%) of the Contract Price.
- 10.2. The Institution and/or NUHS shall be entitled to utilise and make payments out of or deductions from the Security Deposit in accordance with the Contract.
- 10.3. In the event that the Security Deposit provided for in **Clause 10.1** is inadequate to fully indemnify or compensate the Institution and/or NUHS for any loss, liability, cost, expenses or damage incurred or suffered by the Institution and/or NUHS as aforesaid, the Contractor shall, forthwith on demand by or on behalf of the Institution and/or NUHS, pay to the Institution and/or NUHS 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 Institution and/or NUHS to the extent to which the Security Deposit proves inadequate.
- 10.4. If, at any time, by virtue of the deduction by the Institution and/or NUHS in accordance with **Clause 10.2**, the Security Deposit falls below the amount stipulated in **Clause 10.1**, the Contractor shall, forthwith on demand by the Institution and/or NUHS, top up the Security Deposit by paying the amount of the shortfall or furnishing an on demand Banker's Guarantee on terms acceptable to and determined by the Institution and/or NUHS for the same.
- 10.5. The Security Deposit shall be refunded without interest to the Contractor with the remaining value after any payments and/or deductions as provided in **Clause 10.2**, after the Master Contract has expired or has been terminated PROVIDED ALWAYS that the Contractor has performed the Contract to the satisfaction of the Institution and/or NUHS.

11. DEED OF GUARANTEE AND INDEMNITY FROM CONTRACTOR'S PARENT COMPANY

- 11.1. The Institution and/or NUHS shall have the option to require the Contractor, for the due and faithful performance of the Contract and the fulfilment of the Contractor's obligations hereunder, to obtain the Contractor's parent company's execution of a Deed of Guarantee and Indemnity in favour of the Institution and/or NUHS, in a form to be determined at the discretion of the Institution and/or NUHS.
- 11.2. If the Contractor's parent company is registered overseas, the Institution and/or NUHS shall have the option to require the Contractor to procure, upon written request and at the Contractor's own cost and expense, a legal opinion from a reputable law firm determined by the Institution and/or NUHS, confirming the enforceability of the Deed of Guarantee and Indemnity against the Contractor's parent company in the country which it is registered.

12. INDEMNITY

- 12.1. The Contractor shall indemnify, defend and hold harmless the Institution and the Institution's servants, agents, employees, officers and departments against all liabilities, claims, expenses (including court costs and fees of solicitors (on a full indemnity basis) and that of other professionals) and losses in respect of damage to any property or breach of statutory duty or fraud or fraudulent misrepresentation or criminal acts or personal injury to or death of any person:
 - (a) due to any act, default, omission or negligence of the Contractor, the Contractor's servants or agents arising out of or in the course of the performance of the Contract; and/or

MASTER TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

(b) due to any breach of the terms of the Contract by the Contractor; and/or

including but not limited to:

- (i) 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 the Contract including but not limited to payment under the Workmen's Compensation Act (Cap. 354); and
- (ii) 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 the Contract by the Contractor.

12.2. For the avoidance of doubt, references to "Institution" in this **Clause 12** shall include NUHS.

13. INSURANCE

13.1 The Contractor shall maintain all necessary insurance policies at its own expense with a reputable insurance company, with adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, and from all liabilities arising under the Contract. Such insurance shall include public liability insurance.

13.2 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy liabilities under the Contract unless otherwise specified in Section 1.

13.3 Without prejudice to **Clause 13.1**, the Contractor shall take out at its own expense with a reputable insurance company, the policy or policies specified in **Section 1**.

13.4 The Institution shall have the option to require the Contractor at any time to provide to the Institution a copy of any policy taken out by the Contractor in compliance with the Clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place.

13.5 For the avoidance of doubt, references to "Institution" in this **Clause 13** shall include NUHS.

14. AUDIT

14.1. If required by NUHS and/or the Institution and where appropriate, the Contractor shall allow NUHS and/or the Institution to conduct periodic audits at all locations and premises in which the Contractor (and its sub-contractor(s) (if applicable)) performs its obligations under the Contract to ensure that there are proper controls and compliance with the Contract and to monitor the performance of the Contractor's obligations under the Contract, to satisfy itself as to the status and quality of the Services. Audits may be conducted by NUHS and/or the Institution or by a third party appointed by NUHS and/or the Institution ("**Audit Representative**"). The Contractor (and its sub-contractor(s) (if applicable)) shall cooperate with and provide support, information and assistance to NUHS and/or the Institution and/or its Audit Representative for the purpose of such audits. The Contractor (and its sub-sontractor (if applicable)) shall provide all support necessary for the conduct of the audits at no additional cost to NUHS and/or the Institution.

14.2. Without prejudice to the foregoing, NUHS and/or the Institution may conduct surprise spot checks on any locations and premises in which the Contractor (and its sub-contractor(s) (if applicable)) is performing or has performed obligations under the Contract for the purpose of such audits.

14.3. Notwithstanding Clause 22, should NUHS and/or the Institution consent in writing for the Contractor to sub-contract its rights and obligations, then the Contractor shall ensure its sub-contractor(s) comply with Clause 14.1 and 14.2 above and cooperate with NUHS and/or the Institution at all times. The Contractor shall include a clause in its contract with its sub-contractor(s) to allow the audits and spot checks on the sub-contractor(s) by the NUHS and/or the Institution.

15. TERMINATION

15.1. NUHS as agent for the Institutions may terminate the Contract forthwith by written notice to the Contractor with immediate effect in the event that:

- (a) the Contractor commits a breach and fails to remedy that breach within the time stipulated in the notice given by NUHS to remedy the breach;
- (b) it is a material breach or a breach that is not in the sole and absolute opinion of the Institution capable of remedy;
- (c) there is a delay in the delivery of the Services by the Contractor and the delay is not due to a Force Majeure event;
- (d) an order should be made or an effective resolution passed for the winding up of the Contractor or in the course of a voluntary liquidation for the purpose of reconstruction or amalgamation;
- (e) the Contractor becomes insolvent;
- (f) the Contractor makes an assignment for the benefit of its creditors or a liquidator, receiver, trustee, judicial manager or similar official is appointed over all or a substantial part of its assets; or
- (g) the Contractor fails to meet its obligations under the Contract.

15.2. In the event of termination under **Clause 15.1** above:

- (a) the purchase of any Services which have not been performed/delivered in accordance with **Clause 4**, shall be deemed cancelled, and the Contractor shall have no claim whatsoever against the Institution in respect of these undelivered;
- (b) the Contractor shall refund and repay to the Institution any advance payment received from the Institution without prejudice to the Institution's other rights to claim compensation and damages under the Contract, including without limitation to compensation for increased costs in obtaining the Services from other sources; and
- (c) the Contractor shall provide to the Institution the staff and transition services necessary for the Institution to effect an orderly transition to the Institution or to the Institution's selected third party of the Services, at no additional cost to the Institution for up to the period stated in the Requirements or six (6) months, whichever period is longer.

15.3. NUHS as agent for the Institutions can terminated any one or more of the Institutions' Contracts or reduce the scope of the Institutions' Contracts at any time without cause by giving the Contractor not less than six (6) weeks prior written notice. No compensation, monetary or otherwise shall be payable to the Contractor in such event. Upon termination of its Institution Contract by the Institution in accordance with this **Clause 15**, the Contractor shall:

- (a) be entitled to payment for all Services delivered and accepted up to and including the final day of the six (6) weeks' notice period, provided always that all terms and conditions of the Contract have in the opinion of the Institution been duly and faithfully observed by the Contractor; and
- (b) forthwith deliver to the Institution all Services prepared in connection with the Contract (if any) which have been agreed upon prior thereto up to and including the final day of the six (6) weeks' notice period.

15.4. For avoidance of doubt, termination of one Institution Contract would not impact the Institution Contract(s) of the other Institutions and/or the Master Contract.

MASTER TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

- 15.5. NUHS as agent for the Institutions may also terminate the Master Contract at any time without cause by giving the Contractor not less than six (6) months prior written notice resulting in the termination of all the Institution Contracts.
- 15.6. Any termination of the Contract and/or Institution Contract shall be without prejudice to any rights or obligations the Institution may have accrued under the Contract and/or Institution Contract on or before termination, including in respect of an antecedent breach.

16. FORCE MAJEURE

- 16.1. A Party shall not be liable for any failure or delay to comply with its obligations under the Contract where such failure is caused solely and directly by a Force Majeure Event provided that the Party relying on the Force Majeure Event ("**Notifying Party**") shall notify the other Party within twenty-one (21) days from the commencement of the event relied upon by the Notifying Party for its failure to comply with its obligations.
- 16.2. The Notifying Party shall, subject to its obligations herein set out, for the duration of such Force Majeure Event, be relieved of any obligation under the Contract but only to the extent that the same is directly prevented or delayed by such Force Majeure Event. The provisions of the Contract shall remain in force with regard to all other obligations under the Contract which are not affected by such Force Majeure Event. Where the Notifying Party is the Contractor, the Contractor shall use its best endeavours at all times to satisfy its obligations to the Institution whether in whole or in part, notwithstanding the occurrence and/or continuation of any Force Majeure event.
- 16.3. If such Force Majeure Event persists for more than six (6) weeks, NUHS as agent for the Institutions may terminate the Master Contract and, or the Institution Contract(s) by serving a one (1) week's notice in writing. Upon termination of the Master Contract and, or the Institution Contract by the Institution, neither Party shall be liable to the other save that the Institution shall pay the Contractor the price of the Services supplied and accepted by the Institution up to and including the date of termination.
- 16.4. The Institution(s) shall not be liable for any loss or inconvenience suffered by the Contractor arising from any Force Majeure Event or the termination of the Institution Contract(s) as a result of such Force Majeure Event.

17. NOTICES

- 17.1. Except as otherwise provided in the Master Contract, notices which are required to be given in or under the Master Contract shall be in writing (unless expressly stated otherwise). Notices may be sent by electronic mail to the electronic mail address as the Party to be served may have notified the other Party of, or by hand or pre-paid AR Registered post to the address of the Parties as specified below or to such other address as the Party may later specify.

If to NUHS:

Address as stated in the cover letter of the
RFQ

If to Institution:

Address as stated in the cover letter of the
RFQ

If to Contractor:

Address as stated in the Proposal

Provided that where the notice involves a termination or alleged breach of the Master Contract, then such notice shall be sent by hand or by AR Registered Post and properly addressed to the addresses of the Parties as set out above, and also communicated by telephone as promptly as possible.

- 17.2. 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,

MASTER TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

two (2) business days after posting if posted to an address within Singapore, notwithstanding the fact that the notice may be returned by the Post Office undelivered; and if sent by electronic mail, shall be deemed received at the same time when it is dispatched, provided no error message is generated by the transmitting device.

18. GOVERNING LAW

The Master Contract shall be governed by and construed in accordance with the laws of Singapore.

19. DISPUTE RESOLUTION

- 19.1. In the event of any dispute between the Parties in connection with the Contract, any Party may request in writing to the other Party to meet within fourteen (14) days to resolve the dispute, within thirty (30) days of the first meeting or such other time as may be agreed between the Parties, in good faith without recourse to legal proceedings.
- 19.2. If the dispute, claim, question, disagreement or difference is not settled in accordance with **Clause 19.1** above, Parties shall use reasonable efforts to resolve the same through mediation at the Singapore Mediation Centre and its rules and procedures shall apply accordingly. Either Party can serve a notice for mediation to the other and the Party who receives a notice for mediation shall consent and participate in the mediation process as aforementioned. Failure to comply with this **Clause 19** shall be deemed a breach of Contract.
- 19.3. If no agreement is reached between the Parties thereafter within thirty (30) days from the commencement date of mediation process, the Parties hereby agree that the disputes shall be referred to and finally resolved by exclusive jurisdiction of the Courts of the Republic of Singapore.
- 19.4. For the avoidance of doubt, it is agreed that nothing in this **Clause 19** shall prevent a Party from seeking urgent equitable relief that is necessary to protect the rights or property of that Party from an appropriate Court having jurisdiction without waiving any other remedies under the Contract prior to the commencement of any dispute resolution proceedings hereunder.
- 19.5. The commencement of any mediation or litigation proceedings shall in no way affect the continual performance of the obligations of the Contractor under the Contract, except in so far as such obligations relate to the subject matter of such proceedings.
- 19.6. Parties shall keep the dispute resolution proceedings and all information, documents, evidence and all matters relating thereto confidential in accordance with **Clause 24**.

20. STATUTORY OBLIGATIONS, COMPLIANCE WITH LAW, AND REQUIREMENTS OF WORKERS

- 20.1. The Contractor shall comply with all laws applicable to the performance of the Services. The Contractor shall apply for and obtain at their cost in applying for and obtaining, all necessary permits, licenses and approvals (and renewals of the same) required to allow Contractor to perform the Services.
- 20.2. Save for NUHS' and the Institution's Affiliates, any person who is not a party to the Contract shall have no right whatsoever under the Contracts (Rights of Third Parties) Act (Cap. 53B) to enforce the Contract or any of its terms.
- 20.3. The Contractor shall not offer or give, or agree to give, to NUHS and/or the Institution or any other public body or any person employed by or on behalf of NUHS and/or the Institution any gift or consideration of any kind or any favour as an inducement or reward in relation to the obtaining or execution of the Contract. NUHS and/or the Institution may terminate the Contract immediately and recover from the Contractor the amount of any loss resulting from such termination if so.
- 20.4. The Contractor shall ensure that it complies at all times with all legal and regulatory requirements and obtains all licences, consents, permits and authorisations, including any government

MASTER TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

authorisation or certification required, as may be necessary for the supply and delivery of the Services from time to time. In the event of a change in legal or regulatory requirements during the course of the supply of the Services under the Contract, the Contractor undertakes to take all necessary actions for complying with the same, at its own expense.

- 20.5. The Contractor undertakes that all the employees, servants or subcontractors (or agents of the subcontractors) of the Contractor (if any) shall, in performing their duties in relation to the Contract (whether on the Institution's Premises or otherwise), observe the security and safety requirements of the Institution and comply with such instructions or rules and regulations as may be issued by the Institution from time to time.

21. AMENDMENTS

- 21.1. No amendment, change or modification of the Master Contract shall be valid unless it is in writing and signed by the relevant parties as described in **Clauses 21.2** and **21.3**.
- 21.2. Future amendments or variations to the Master Contract shall be executed directly by NUHS as agent for the Institutions with the Contractor by entering of an addendum by the authorized representative of NUHS and the Contractor.
- 21.3. **Clauses 21.2** and **21.3** impose no obligation on NUHS or the relevant Institution or the Contractor to verify if the other's representative is duly authorised to agree to any amendments or variations to the Master Contract.

22. NO SUB-CONTRACTING AND ASSIGNMENT

- 22.1. The rights and obligations arising out of the Master Contract shall not be assignable or transferable by the Contractor or sub-contracted to any third party without the prior written consent of NUHS and/or the Institution.
- 22.2. Notwithstanding that any obligation is sub-contracted, the Contractor shall remain solely and personally responsible at all times for the due observance by such sub-contractors of all the terms and conditions of the Master Contract, and shall be liable for any act or omission by any sub-contractor that constitutes or may constitute a breach, repudiation, default or failure to comply with any of the terms and conditions of the Master Contract whether total or partial. The Contractor shall indemnify the Institution against all and any losses, expenses, costs (including legal costs), damages, liabilities, proceedings or claims arising therefrom.

23. INDEPENDENT CONTRACTOR / NO PARTNERSHIP

- 23.1. The Parties are independent contractors. Save as expressly provided in the Master Contract or by express agreement in writing between the Parties, nothing in the Master 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 the Master Contract.

24. CONFIDENTIALITY

- 24.1. The Contractor shall keep confidential and not disclose to any third party any information in respect of, arising from or in connection with the terms, conditions and provisions of the Contract or arising from its performance of the Contract and all correspondence and discussions between the Parties in relation to the Contract (the "**Confidential Information**") unless the disclosure is required by law, regulation or directive of the law enforcement organisations or made with the prior written consent of the Institution.

MASTER TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

24.2. The Contractor hereby agrees that it shall:

- (a) 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 the Contract;
- (b) procure the compliance of the Workers with the confidentiality obligations herein; and
- (c) ensure that any employee, servant or agent of the Contractor's subcontractor (if any) comply with the confidentiality obligations herein.

24.3. The Contractor shall not publish or release, nor shall it allow or suffer the publication or release of, any news item, article, publication, advertisement, prepared speech or any other information or material pertaining to NUHS, the Institution, the Contract, or any part of the obligations to be performed under the Contract in any media without the prior written consent of the Institution.

24.4. The Contractor's confidentiality obligations under this **Clause 24** shall survive the expiry or termination of the Contract for a period of five (5) years, save for the obligations in relation to Personal Data (where applicable), including but not limited to patient information, which shall remain confidential for the duration contemplated by the PDPA.

24.5. The Contractor agrees that the contents of the Contract may be shared by the NUHS and/or Institution(s) with any of its Affiliates and their internal or external professional advisors and auditors, and with any regulatory bodies and government agencies.

24.6. For the avoidance of doubt, references to the Institution in this **Clause 24** includes a reference to the NUHS and the Institution's Affiliates.

25. USE OF NAME

25.1. Except as may be necessary for either Party to carry out its obligations under the Master Contract, neither Party shall under any circumstances whatsoever use the other Party's name, trade names, trademarks, 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.

26. PERSONAL DATA

26.1. Where the Contractor receives any Personal Data from the Institution, it shall ensure that it fully complies with the provisions of the PDPA and only deals with the Personal Data to fulfill its obligations under the Master Contract. The Contractor shall indemnify the Institution for any breach of the PDPA, which renders the Institution liable for any fines, costs, claims or expenses.

26.2. The Contractor shall in relation to Personal Data:

- (a) ensure that it has, in relation to all Personal Data obtained and/or collected by it under the Master Contract in connection with its obligations under said Master Contract, fully complied with all requirements of the PDPA;
- (b) process Personal Data only in accordance with the written instructions given by the Institution and to such extent necessary and appropriate for the purposes of the Master Contract or such other purposes approved by the Institution in writing;
- (c) promptly deal with any enquiry from the Institution relating to the Contractor's processing of Personal Data;
- (d) not transfer or allow the Personal Data to be transferred, outside of Singapore, unless expressly instructed or authorised by the Institution; and

MASTER TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

- (e) provide all necessary co-operation and assistance (whether to the Institution or otherwise) to allow access and/or correction of Personal Data in accordance with the PDPA.

26.3. Specifically, the Contractor shall also take all reasonable measures to ensure:

- (a) that any Personal Data belonging to the Institution which is held by the Contractor pursuant to the Master Contract is protected against loss, unauthorised access, use, modification, disclosure or other misuse, and that only authorised personnel have access to that Personal Data;
- (b) that, to the extent that the Personal Data is no longer required by the Contractor for legal or business purposes, that Personal Data is destroyed or re-delivered to the Institution;
- (c) that the Institution is immediately alerted in writing (with full particulars) of any unauthorised access, disclosure or other breach of this **Clause 26** and the Contractor undertakes, as soon as reasonably practicable, all steps to prevent further unauthorised access, disclosure or other breach of this **Clause 26** (including providing the Institution with such reports or information concerning such steps as and when requested by the Institution); and
- (d) it keeps itself apprised of any and all notices and circulars which the Institution may from time to time notify to the Contractor, including without limitation any policies, guidelines, circulars or notices relating to Personal Data ("**PDPA Documentation**"), and to perform its duties or discharge its liabilities pursuant to the Master Contract in a manner which is consistent with the PDPA Documentation, and will not cause the Institution to be in breach of the same.

26.4. Notwithstanding and further to anything stated elsewhere in the Master Contract, the Institution reserves the right and the Contractor agrees that the Institution may conduct (or appoint a qualified, independent third party to conduct) an audit and/or assessment of the standard of compliance or non-compliance by the Contractor with the obligations under this **Clause 26**.

26.5. To the extent that Contractor sub-contracts its obligations under the Master Contract to a sub-contractor, the Contractor agrees and acknowledges that it shall ensure that this **Clause 26** is incorporated into the sub-contractor's contract.

26.6. A reference to the Institution in this **Clause 26** includes a reference to the Institution's Affiliates and NUHS.

27. EUROPEAN UNION GENERAL DATA PROTECTION REGULATION

27.1. The Contractor shall be bound by the obligations of the GDPR and must take appropriate measures to comply with the GDPR if any one or more of the circumstances stated below are applicable to the Contractor:

- (a) If the Contractor has an establishment in the Union and is processing personal data of data subjects received or accessed from the Institution either in the Union or elsewhere.
- (b) If the Contractor is providing processing services to data controllers in the Union regardless of whether the processing takes place in the Union or not.
- (c) If the Contractor is offering goods or services to data subjects in the Union or monitors the behaviour of data subjects within the Union.

For the purpose of this **Clause 27**, the following words and expressions shall have the meaning assigned hereunder and will only be applicable to the interpretation of this **Clause 27** of this General Terms and Conditions:

"data controller" means any person or entity which determines the purposes and means of processing personal data in its control or possession.

MASTER TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

“data subject” means the individual to whom personal data relates.

“establishment” is the place where the processing activities takes place.

“GDPR” means the European Union General Data Protection Regulation.

“personal data” means any information relating to an identified or identifiable natural person (data subject); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

“processing” means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

“Union” means the European Union, the European Economic Area and their member states.

27.2. NUHS and the Institution(s) reserves the right to procure from the Contractor further undertakings or implement separate data processing or data transfer agreements with respect to the compliance of the GDPR if necessary, and the Contractor shall fully comply with the NUHS and Institution(s) for the procurement of such undertakings or agreements.

27.3. The Contractor shall solely be responsible for any non-compliance or breaches of the GDPR and shall fully indemnify NUHS and the Institution(s) (including the Institution’s servants, agents, employees, officers and departments) against any fines, losses, damages, actions, proceedings, liabilities costs, claims and expenses (including legal costs) suffered by NUHS and the Institution(s).

28. SEVERANCE

28.1. The illegality, invalidity, unenforceability of any provision of the Master shall not affect the legality, validity and enforceability of any other provisions.

29. SURVIVAL

29.1. The provisions of the Master Contract that are contemplated to be enforceable after the termination or expiry of the Master Contract shall survive the termination or expiry of the Master Contract.

30. WAIVER

30.1. The failure or delay by either Party at any time to enforce any provision of the Master Contract shall not be construed as a waiver of such provision or any other provision hereof. A waiver shall not be effective unless it is in writing.

31. RELIANCE

31.1. The Contractor accepts that NUHS and the Institution, inter-alia, relies on the judgment and skills of the Contractor for any and all of the Services to be performed.

32. REASONABLENESS

32.1. Parties agree that the clauses in each of the Master Contract are reasonable. In construing the clauses herein, the clauses shall not be construed contra proferentum against NUHS and/or the Institution.

33. LANGUAGE

- 33.1. All business relating to the Master Contract, both written and verbal, shall be conducted in the English Language.

34. ENTIRE AGREEMENT & COUNTERPARTS

- 34.1. The Master Contract may be executed in one (1) or more counterparts by the duly authorized 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 and the same Master Contract provided that the Master Contract shall be of no force and effect until the counterparts are exchanged.
- 34.2. The Master Contract and any counterparts may be executed and delivered electronically by emailed portable document format (**PDF**) document (or other mutually agreeable document format) and such electronic version shall be treated as an original.
- 34.3. The Parties expressly acknowledge that they have read the Master Contract and understood the provisions therein. Parties agree that the Master Contract constitutes the entire agreement between them with respect to the subject matter of the Master Contract and that it supersedes all prior or contemporaneous proposals, agreements, negotiations, understandings, correspondence and all other communications (whether written or oral, express or implied) or arrangements entered into between the Parties prior to this Master Contract in respect of the matters dealt within it.

35. RIGHT OF SET-OFF

- 35.1 Whenever under the Master Contract any sum of money (including any damages) shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under the Master Contract, including from any Security Deposit (where applicable).

36. PARAMOUNT OBLIGATION

- 36.1 The Contractor acknowledges that NUHS and the Institution has a paramount obligation to comply with the directives of the relevant authorities, to discharge NUHS and/or the Institution's duties with regard to public healthcare and to act at all times in the interest and welfare of the NUHS and/ or Institution's patients. NUHS and the Institution shall not be required or obliged under the Master Contract to act in any manner contrary to such paramount obligation.

37. INTELLECTUAL PROPERTY

- 37.1 Where as a result of carrying out its obligations under the Master Contract in respect of work designed by the Contractor for which the Contractor is to be paid by the Institution, the Contractor generates proprietary technical data, know-how and other information, these shall become the property of the Institution as and when such is generated.
- 37.2 The Contractor shall not use any such technical data, know-how and other information compiled for a third party without the authorisation of the Institution, even in the event of termination of the Master Contract pursuant to NUHS' and/or the Institution's right to suspend or terminate the Master Contract.
- 37.3 All royalties and fees whatsoever claimable by or payable to any person, firm, corporation or government for or in connection with any Intellectual Property Rights used in respect of the Services, or any part or unit thereof supplied under the Master Contract, shall be deemed to be included in the Contract Price.
- 37.4 In the event of the Institution (including for this purpose, every staff of the Institution thereof), being held liable for damages arising out of any claim at the time of account of patent rights and/or intellectual property rights which may be payable by virtue of the Institution's acceptance,

MASTER TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

possession, purchase, use or distribution of the Services or any part or unit thereof under the Master Contract, or in the event of any actions being contemplated or instituted against the Institution for alleged infringement of patents, design, copyright or other statutory or common law rights, the Contractor shall, without prejudice to (I) the Institution's right to defend a claim alleging such infringement, (II) the Institution's right of action or remedy against the Contractor, and (III) all or any of the Institution's rights as contained in the Master Contract:

- (a) indemnify the Institution and its staff against all such claims and costs, charges and expenses in respect thereof; and
- (b) at its own expense:
 - (i) defend such claim if so requested by the Institution. The Contractor shall observe the Institution's directions relating to the defence or negotiation for settlement of the claim and shall provide all reasonable assistance to the Institution in such defence or negotiation; and
 - (ii) procure for the Institution the right to continue accepting, possessing, purchasing, distributing or using the Services; and/or
 - (iii) modify or amend the Services or infringing part thereof so that the same becomes non-infringing without affecting the capacity and performance of the Services; and/or
 - (iv) replace the Services or infringing part thereof by other Services or part thereof of identical capability and performance; and
- (a) provided always that actions by the Contractor under **Clause 37.4(b)** are subject always to the Institution's right to:
 - (i) cancel immediately the Contract for delivery/supply of the Services or parts thereof yet to be delivered/supplied to the Institution; and/or
 - (ii) return the Services or parts thereof already delivered; and/or
 - (iii) cancel the Services to be provided; and/or
 - (iv) purchase or otherwise obtain the Services or parts thereof from alternative source(s); and
- (b) compensate the Institution with the Contract Price already paid to the Contractor.

37.5 The Contractor shall do all things necessary (including executing agreement and documents) to give full effect to the provisions of this **Clause 37**.