

# Agreement No. 242.2020 (this "Agreement")

Entered and signed this \_\_\_\_\_ day of \_\_\_\_\_ 2020  
in Tel Aviv, Israel (the "Effective Date")

*between*

**Association of Friends of the Tel Aviv Sourasky Medical Center**  
6 Weizmann St.  
Tel Aviv

("ASSOCIATION")

**Of the First Part**

*and*

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

("Supplier")

**Of the Second Part**

Each of ASSOCIATION and the Supplier shall be referred to herein as a "**Party**" and collectively they shall be referred to as the "**Parties**."

**WHEREAS**, The Israeli Ministry of Health is interested in carrying out the project detailed in this Agreement and has nominated the Ministry of Health - Tel Aviv Sourasky Medical Center ("**Hospital**") to carry out the project on its behalf as a national project.

**WHEREAS**, Hospital has nominated the Association to execute this Agreement.

**WHEREAS**, ASSOCIATION published the Request For Proposal No. \_\_\_\_\_ for the Facility in accordance with the terms and conditions of this Agreement (the "**RFP**"), and the Supplier submitted a proposal in response to the RFP appended hereto as **Appendix A1** to this Agreement, which was selected by ASSOCIATION as the winning proposal; and

**WHEREAS**, the Supplier declares and certifies that it has the know-how, ability, expertise, facilities, financial and other resources, licenses, permits and all that is required and necessary in order to execute and supply all Works, as defined in this Agreement, , as well as to fulfill all of the Supplier's obligations set forth in this Agreement, including those set forth in the Technical Specifications attached as **Appendix A**; and

**WHEREAS**, the Parties desire to set forth a contractual framework to determine the Parties'

relationship and obligations with regard to all Works, all as detailed below.

**NOW, THEREFORE, IT IS DECLARED, COVENANTED AND AGREED BETWEEN THE PARTIES AS FOLLOWS:**

**1. PREAMBLE, APPENDICES AND HEADINGS**

- 1.1 The headings in this Agreement are for reference purposes only, are not a material part of and shall not be used in interpreting this Agreement.
- 1.2 The Agreement shall consist of the following documents each of which is attached hereto and is an integral and inseparable part hereof:
  - 1.2.1. Appendix A – Technical Specifications
  - 1.2.2. Appendix A1 – Supplier's Proposal in Response to the RFP
  - 1.2.3. Appendix B – Consideration Appendix
  - 1.2.4. Appendix C – Supplier's Bank Account Form
  - 1.2.5. Appendix D –Acceptance Certificate
  - 1.2.6. Appendix E - Hospital Works
  - 1.2.7. Appendix F – Spare Parts
  - 1.2.8. Appendix G – Down Payment
  - 1.2.9. Appendix H – Change Order Form
  - 1.2.10. Appendix I – Training Plan
  - 1.2.11. Appendix J – Detailed Design Plan ("**DDP**")
  - 1.2.12. Appendix K – Quality Assurance Plan ("**QAP**")
  - 1.2.15 Appendix L – ITP Inspection Test Plan
  - 1.2.17 Appendix M – Safety and Security Regulations.

**PRIORITY OF DOCUMENTS**

1.3 Order of Precedence.

In the event of any contradiction, discrepancy, conflict, inconsistency, ambiguity and/or uncertainty between the provisions of this Agreement, the attachments hereto and/or the RFP, the following order of precedence will apply:

- This Agreement, including the Consideration Appendix, but excluding the other attachments hereto;
- The other Appendices to this Agreement, including the Technical Specifications;
- The other RFP documents (excluding Appendix B to the RFP);
- Supplier's Proposal to the RFP.

- 1.4 In case of any discrepancy, conflict, inconsistency, ambiguity and/or uncertainty as to the interpretation of any provision contained in this Agreement and/or the order of precedence between the various provisions contained in this Agreement, which discrepancy, ambiguity, conflict, inconsistency or uncertainty is not resolved by applying the above order of precedence, those provisions that provide ASSOCIATION with the maximum rights and which best serve the interest of ASSOCIATION under the circumstances, as ASSOCIATION shall determine in its sole discretion, shall apply.
- 1.5 Except as otherwise specifically indicated, all references to Sections refer to Sections of this Agreement, and all references to Appendices refer to Appendices to this Agreement. Appendices to be attached hereto after the Effective Date shall be deemed an integral part of this Agreement. The words "herein," "hereof," "hereinafter," and similar words and phrases, shall refer to this Agreement as a whole and not to any particular Section. The word "**days**" shall mean a calendar day and the term "**Business Days**" shall have the meaning ascribed to it in Section 2. Whenever required by the context of this Agreement, the singular shall include the plural, the masculine shall include the feminine and vice versa.
- 1.6 In case of a "joint and several offer" as per Section 2A of the RFP, the term "**Supplier**" shall refer to both (jointly and severally) proposing entities, and Section 29.1 herein shall apply.

## 2. DEFINITIONS

The following terms used in this Agreement shall have the meaning set forth below:

- 2.1. "**Additional FACILITY**" – as defined in Section 8;
- 2.2. "**Agreement Period**" – as defined in Section 3;
- 2.3. "**Applicable Law**" – shall mean any Israeli statute, law, ordinance, rule, regulation, order, writ, injunction, judgment, decree, and all other requirement of any governmental entity existing as of the date hereof or at any time during the term of this Agreement and applicable to ASSOCIATION and/or the Supplier;
- 2.4. "**Business Days**" - any day of the week other than Saturday, and excluding official holidays and bank holidays in Israel;
- 2.5. "**DDP**" – Delivered Duty Paid" (DDP) (as that term is defined in Incoterms 2010, International Rules for the Interpretation of Trade, ICC Publication No. 715).
- 2.6. "**DDR**" – **Detailed Design review** as defined in Section 5.17;
- 2.7. "**Delivery Terms**" – as defined in Section 11;
- 2.8. "**Acceptance Certificate**" - shall mean Association's issuance of a signed Site Acceptance Certificate in the form attached hereto as Appendix E, following (i) delivery of the FACILITY to the Site in accordance with the Delivery Terms; (ii) the performance of all operations required to bring the FACILITY to full operational condition; (iii) the successful performance of the acceptance tests in accordance with the ITP; (iv) the

completion of the Training; and (v) the fulfillment of all required obligations pursuant to this Agreement;

- 2.9. "**Guarantees**" – as detailed in Section 20 below;
- 2.10. "**Hospital Works**" – all construction works to be carried out by ASSOCIATION and/or any third party on its behalf for the purpose of preparing the Site for the Facility that are further described in **Appendix E**;
- 2.11. "**HPM**" – Hospital's Project Manager for the Agreement, as set forth in Section 7.2 and as may be changed from time to time at Association's sole discretion by notification in writing to the Supplier;
- 2.12. "**Initial Maintenance Period**" – as detailed in Section 14 below;
- 2.13. "**ITP**" – the inspection and test plan as specified in Section 12.1 below;
- 2.14. "**Optional Maintenance Period**" – as detailed in Section 15 below;
- 2.15. "**POD**" – Purchase Order Date;
- 2.16. "**QAP**" – as defined in Section 5.17.2;
- 2.17. "**Resolution Time**" - the time from the report of a malfunction until it is rectified, and returned to full clinical operation;
- 2.18. "**Response Time**" - the time within which the Supplier begins to handle \_a reported malfunction;
- 2.19. "**Site**" – Tel Aviv Sourasky Medical Center;
- 2.20. "**SPM**" - Supplier's Project Manager for the Agreement, as set forth in Section 7.2;
- 2.21. "**Subcontractor**" – as defined in Section 25;
- 2.22. "**Training**" – as set forth in Section 5.7;
- 2.23. "**Warranty**" – as defined in Section 13 below.
- 2.24. "**Warranty Period**" – as defined in Section 13;
- 2.25. "**Works**" – shall mean all works described in the Technical Specifications including all, components, materials and equipment to be executed or supplied by the Supplier, directly or indirectly, in connection with the manufacture, supply, installation, assembling, tests and on site supervision of all Hospital Works, acceptance, Training, Warranty, Initial Maintenance and Optional Maintenance pursuant to this Agreement

including supply of all Spare Parts and Works on Site. Works shall include, but shall not be limited to, works to be implied therefrom or incidental thereto and including all temporary works of every kind required in or for carrying out and completion of the Works, provision of all labor, provision and use of software, materials, equipment, machinery, tools, spare parts, accessories, components and other elements of every kind and description (including Intellectual Property Rights), all in accordance with the Technical Specifications and this Agreement.

### 3. **AGREEMENT PERIOD**

- 3.1. This Agreement shall commence on the Effective Date and shall continue in full force and effect until the end of the Optional Maintenance Period for the FACILITY and/or the Additional FACILITY, whichever is longer (the "**Agreement Period**").
- 3.2. The Supplier hereby grants ASSOCIATION an option, to be executed in Association's sole discretion, to extend the term of this Agreement (i) for an additional period of up to ten (10) years; and/or (ii) until the end of the Optional Maintenance Period for the FACILITY and/or the Additional FACILITY, whichever is longer (the "**Option**") (the "**Option Period**").
- 3.3. The terms and conditions of this Agreement shall continue to apply *mutatis mutandis* to the Option Period. In the event that ASSOCIATION wishes to exercise this Option, it shall notify Supplier in writing at least sixty (60) days prior to the end of the Agreement Period.

### 4. **THE SUPPLIER'S DECLARATIONS AND REPRESENTATIONS**

The Supplier hereby declares, represents and warrants to ASSOCIATION as follows:

- 4.1. **Authority Relative to this Agreement.** The Supplier has all necessary corporate power and authority to execute and deliver this Agreement, to perform its obligations under this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary action of the Supplier, and no other corporate proceedings on the part of the Supplier are necessary to authorize this Agreement, or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by the Supplier and constitutes a valid, legal and binding agreement of the Supplier, enforceable against the Supplier in accordance with its terms.
- 4.2. **No Conflict.** No actual or potential conflict of interest or unfair competitive advantage exists with respect to the Supplier's actions hereunder, and the Supplier shall not engage in any contractual relationship that may cause such conflict of interest or unfair competitive advantage to exist.
- 4.3. **No Litigation or Impediment.** There is no (i) litigation that is currently in effect or threatened, against the Supplier, which would challenge the authority of the Supplier to enter into this Agreement or to carry out its obligations under this Agreement, or (ii) impediment, whether legal or stemming from a prior or simultaneous commitment made by the Supplier, or any other impediment of whatever nature, which might prevent the Supplier from entering into this Agreement or hinder the performance of any or all of its obligations hereunder.
- 4.4. **Supplier Examination and Evaluation.**

The Supplier hereby represents and warrants to ASSOCIATION that:

- 4.4.1. The Supplier has examined all documents pertaining to the RFP, this Agreement, in particular the Technical Specifications, as well as all other documents comprising this Agreement, and is satisfied with regard to the data, specifications, terms and conditions under which the FACILITY shall be designed, manufactured, assembled, integrated, tested, supplied and delivered to ASSOCIATION, the execution of the Works required for the provision of the FACILITY as well for the fulfillment for any and all obligations under this Agreement;
  - 4.4.2. The Supplier has evaluated (independent of, and without relying on, any information or data provided by ASSOCIATION) any and all other factors that may be deemed to affect the carrying out of its obligations under this Agreement, including but without limitation, technical risks and environmental influences, and any other risk involved therewith, and such other conditions that may be expected to affect the progress or completion of the Works in accordance with this Agreement, and has reasonable grounds to believe and does believe that such performance is feasible and practicable under the terms and conditions stated herein;
  - 4.4.3. The Supplier has examined and is fully satisfied with all of the information provided to it by ASSOCIATION, including Association's rules and procedures;
  - 4.4.4. The Supplier shall not be entitled to any payment or compensation other than as set forth herein and shall not make any claim for additional payment from ASSOCIATION on the grounds of any misunderstanding or misapprehension in respect of any matter which a reasonable and expert supplier of a FACILITY knew or should have known or on the grounds of any allegation or fact that incorrect information was given to Supplier by any person (subcontractors included), firm or any legal entity which it knew or should have known to be incorrect as a reasonable and expert supplier of a FACILITY, whether the person, firm or legal entity was employed by ASSOCIATION or not, or on the grounds of the failure on its part to obtain correct information with regard to the Works.
- 4.5. **Compliance with Applicable Law.** The Supplier is aware and has knowledge of all legal requirements prevailing in the State of Israel that must be followed for the execution of the Works. The Supplier shall abide by any applicable law, as shall be in effect from time to time, and shall perform and execute the Works in strict compliance therewith (including but without limitation in compliance with regulations and orders relating to the employment of its employees). Supplier shall be responsible at its cost and expense or receive all licenses and permits from any regulatory body for the performance of all its undertakings under this Agreement. Association shall provide Supplier with reasonable assistance, but it is Supplier's sole and absolute responsibility to achieve all such license and permits.
- 4.6. **Discrepancies and Omissions**
- 4.6.1. The Supplier represents that wherever there is a discrepancy between the Technical Specifications, the Supplier's proposal to the RFP (Appendix A1),

drawings or other documents constituting a part of this Agreement, its prices reflect the type of materials, construction, works or other relevant element, item or unit best suited for ASSOCIATION and consistent with the Technical Specifications and the Supplier's proposal to the RFP (Appendix AI). No inaccuracies, errors, misstatements, omissions, discrepancies, defective or incomplete descriptions, contradictions or ambiguities in or between any of the provisions of this Agreement, or any information or instructions communicated or given by ASSOCIATION to the Supplier from time to time, shall constitute grounds (i) for stoppage of the Works, (ii) for relieving or releasing the Supplier of any of its responsibilities, duties, obligations or liabilities pursuant to this Agreement, (iii) for cancellation or termination of this Agreement by the Supplier, or (iv) for withdrawal from the Works.

4.6.2. Should any works, matters or things required for the proper execution and completion of the Works be omitted from this Agreement by ASSOCIATION, the HPM shall – upon notice from the Supplier to that effect or on its own initiative – give necessary explanations and instructions and decide what works, matters or things are to be done by the Supplier and in what manner and order. The Supplier shall thereupon be bound to do such works, matters and things as instructed. In case any such instruction with regard to an omission involves matters of price or terms of payment or timetable, such matters shall be settled by mutual agreement in writing in accordance with the provisions of Section 19 herein (prices shall be based upon the prices specified in the Consideration Appendix or pursuant thereto) – without derogating from the Supplier's obligation to execute such Works as instructed by the HPM.

4.6.3. The Supplier shall advise ASSOCIATION in writing, immediately and in any case within no more than five (5) days, upon becoming aware of any suspected or actual contradiction or discrepancies between the provisions of, or any omission in, any of the various documents forming this Agreement.

4.7. **Review and Approval**. The Supplier confirms and agrees that it shall apply to receive Association's written consent, wherever Association's consent, explicitly or implied, is required according to this Agreement. This requirement and the provision of Association's consent, shall not derogate in any way from the Supplier's responsibilities and liabilities under this Agreement, and ASSOCIATION shall bear no responsibility or liability whatsoever in connection with the review (whether or not there are objections) and/or with any approval given to, or denied from, the Supplier, with respect to any matter and/or document, including but without limitation, drawings, designs (at all phases), plans, tests, or otherwise.

4.8. **Independent Contractor**. The Supplier is an independent contractor acting on its own risk and account and solely responsible for its own financial obligations, and nothing contained in this Agreement will be construed as creating a joint venture, partnership, or principal and agent relationship between the Parties nor will it be construed as creating any relationship whatsoever between ASSOCIATION and any employees, Subcontractors, representatives or agents of the Supplier. The Supplier will not have the authority nor will it represent that it has the authority to assume or create any obligation, express or implied, on behalf of ASSOCIATION.

## 5. GENERAL OBLIGATIONS

- 5.1. **Purchase and Sale**. The Supplier hereby agrees to execute any and all Works required for the supply and installation of the FACILITY in accordance with the terms and the conditions of this Agreement, including, *inter alia*, (but not limited to) the supply, installation, acceptance, Training, , Warranty, Initial Maintenance, Optional Maintenance Warranty, as well as the fulfillment of Supplier's obligations in accordance with the Technical Specifications and the Supplier's proposal to the RFP and in compliance with the guidelines and procedures set out in this Agreement. In the event of any conflict or inconsistency between the instructions or any data contained in the Technical Specifications and the Supplier's proposal to the RFP, the terms and conditions more favorable to ASSOCIATION shall take priority. In case of disagreement between the Parties in this regard, ASSOCIATION shall have the final decision what is favorable to ASSOCIATION.
- 5.2. **"Turn Key Basis"**. The FACILITY shall be supplied on a "turn-key" basis such that the Supplier shall perform. at its own expense and risk, any and all Works in accordance with the provisions of this Agreement. Without limiting the generality of the foregoing, the Supplier shall be solely responsible, at its own expense and risk, to carry out any and all Works, import and supply and installation of any and all components, equipment and materials, perform any and all activities and pay and bear all costs and expenses pertaining to the performance of the Works and supply and installation of the FACILITY; this shall include, without limitation, the Training, testing, running in, demonstration and acceptance of the FACILITY and any other tasks or duties relating to the above – all as shall be required in order to timely deliver an operable, safe, efficient and reliable FACILITY, and putting same into full operation in accordance with all of the requirements of this Agreement, while applying state-of-the-art technology.
- 5.3. **Conformity of the FACILITY**. The provision of the FACILITY and the execution of the Works shall be made in strict conformity with the terms and conditions of this Agreement. Any deviation from the terms and the conditions of this Agreement must be approved in writing, in advance, by ASSOCIATION.
- 5.4. **Standards**. The Works and the FACILITY shall meet the standards set forth by ASSOCIATION in this Agreement, and if no standard is expressly mentioned, the Supplier shall comply with the standards which shall ensure the highest quality of workmanship, material and equipment required by the applicable law and/or as instructed by ASSOCIATION in accordance with Association's sole discretion. All calculations, designs, integration and drawings related to the FACILITY or any part thereof shall assure the reliability, efficiency, competency as well as the functionality of the FACILITY to Association's full satisfaction.
- 5.5. **No Lock**. The FACILITY and/or any part thereof shall not incorporate any lock, clock, timer, counter, copy protection feature, CPU serial number reference, or any other device which is intended to (i) disable or erase all or any part or software of the FACILITY; (ii) prevent ASSOCIATION from fully utilizing all or any part or software of the FACILITY; or (iii) require action or intervention by the Supplier or any other person or entity to allow ASSOCIATION to utilize all or any part of the FACILITY.



- 5.6. **Permits.** The Supplier shall, at its sole expense, obtain, maintain, comply with and keep in effect all approvals, permits and licenses required for the execution of this Agreement, the supply and installation of the FACILITY and the provision of all ancillary services, pursuant to this Agreement.
- 5.7. **Training.** No later than 30 days after POD, the Supplier shall provide ASSOCIATION with a detailed proposed training plan for approval by ASSOCIATION (including Association's Training department) which shall be added as an Appendix to this Agreement as **Appendix I** (the "**Training Plan**"). The Training Plan shall ensure the highest level of operation and maintenance of the FACILITY and/or any part thereof by ASSOCIATION. The Training Plan should include all aids, technical documents, instructions and manuals etc. to be delivered by the Supplier to ASSOCIATION.
- 5.7.1. The Training will include both theoretical and practical aspects.
- 5.7.2. Practical Training shall be done after installation of the FACILITY at Site. For the avoidance of any doubt, the Supplier shall not be entitled to receive the Acceptance Certificate unless the Training shall be completed to the full satisfaction of ASSOCIATION.
- 5.7.3. All costs, related to the training according to the Training Plan, are included in the FACILITY Price (including, but not limited to, travel, accommodation and lodging expenses), and the Supplier shall not be entitled to any additional consideration for the provision of any Training specified herein.
- 5.7.4. Without derogating from any other right conferred to ASSOCIATION, ASSOCIATION shall be entitled to copy and/or record (including by video camera or other digital means) the Training sessions and/or any part of the Training program and to use such recordings for Association's study, operation and maintenance purposes.
- 5.8. **Safety.** All Works of the Supplier and any Subcontractor shall be performed in strict compliance with Association's safety regulations as detailed in **Appendix M** (as shall be updated from time to time in Association's sole discretion) and any other applicable law pertaining to safety at work, as may be in force from time to time. The Supplier shall immediately report to the HPM the occurrence of any accident in connection with the execution of the Works. The Supplier shall also report any such accident to the relevant competent authority whenever such report is required, and in any case, register same in the Works' log.
- 5.9. **Cooperation.** The Supplier undertakes to reasonably cooperate with any other supplier and/or contractor and/or consultant engaged by ASSOCIATION and to furnish ASSOCIATION with all relevant information reasonably required for the interface between the FACILITY and any other equipment and/or infrastructure of ASSOCIATION.
- 5.10. **Hospital Works.** The Supplier undertakes to supervise all of Hospital Works. Supplier shall inform ASSOCIATION and/or Hospital in writing in real time of any

defect and/or fault in Hospital Works. Supplier waives any demand and/or claim against ASSOCIATION and/or Hospital and/or any third party on its behalf with regard to any defect and/or fault not reported by Supplier to ASSOCIATION regarding Hospital Works.

5.11. **Personnel**. The Supplier shall employ trained skilled employees and consultants as shall be necessary or appropriate to enable the Supplier to supply the FACILITY and the execution of the Works ("**Supplier's Personnel**").

5.11.1. The Supplier shall provide sufficient personnel appropriate to the size, nature and type of Works to be carried out under this Agreement. If at any time the Supplier or ASSOCIATION deems the personnel not being sufficient for the timely performance of the Works, the Supplier shall forthwith increase the appropriate number of competent employees.

5.11.2. The Supplier shall be solely responsible to obtain any permits and authorizations required under Applicable Law with respect to the Supplier's Personnel including but without limitation work permits for foreign personnel (including but without limitation permits by the immigration authorities) and security clearances as may be required by ASSOCIATION. The above shall apply to permits to work on Shabbat and Jewish and Israeli national holidays pursuant to the Hours of Services and Rest Law, 5711–1951.

5.11.3. For the removal of doubt, in the event that such permits or any of them shall not be obtained: (i) the Supplier shall not be entitled to any delay in the Works, and (ii) the Supplier shall not be released from any of its obligations, and shall employ personnel for the purpose of obtaining of such permits subject to Applicable Law and Works for which such permits are not required. The Supplier is aware that receiving such permits may take some time and shall perform all activities in order to ensure that such permits shall be granted on time.

5.11.4. Without derogating from the above and in addition thereto, the Supplier's Personnel shall ensure that any additional personnel shall be available at any time as required by the ASSOCIATION, in order to provide the Works and provide ongoing response to malfunctions, bugs, defects and/or discrepancies.

5.11.5. The Supplier shall (i) at all times retain full responsibility for the due performance of its obligations by the Supplier's Personnel and for the satisfactory completion of the Works; and (ii) be liable for any act and/or omission of any of the Supplier's Personnel not in accordance with the terms of this Agreement (whether such Supplier's Personnel are employees of the Supplier and/or are otherwise engaged by the Supplier).

5.11.6. The Supplier warrants that all of the Supplier's Personnel shall follow all safety and security regulations detailed in **Appendix M**, as shall be updated by ASSOCIATION from time to time.

5.11.7. The Supplier shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of any of the Supplier's Personnel.

5.11.8. No later than 30 days after POD, the Supplier shall submit to ASSOCIATION a list of all of the Supplier's key Personnel that shall be working at Site, including ID/Passport numbers and such other details as shall be reasonably requested by ASSOCIATION, prior to any involvement of such personnel working on the FACILITY.

5.11.9. Without derogating from the above, the Supplier shall nominate a SPM to manage the Works carried out by Supplier on Site including all Hospital Works.

5.11.9.1 The SPM shall participate in working and meeting at Site, as required by Association and/or according to Association's request in case necessary.

5.11.9.2 The SPM shall submit to ASSOCIATION monthly reports (prepared in consultation with ASSOCIATION) of:

- The status of the Works and/or Hospital Works;
- Intervention list including date, detailed description of faults and repairs relating to the Works and/or Hospital Works;
- Consumption of spare parts for preventive maintenance and breakdown maintenance;
- Equipment malfunctions;
- Required time for repair and maintenance.

5.11.9.3 The identity of the SPM shall be subject to Association's approval and discretion.

5.11.9.4 The Supplier undertakes that the SPM shall have the experience as detailed above and, in any event, shall be qualified, experienced and have the required capabilities in order to execute the Works.

5.11.9.5 Without derogating from the above, the SPM will be available for the Works and during all Hospital Works at any time and whenever it is necessary.

5.11.9.6 Subject to the above, all provisions relating to the Supplier's Personnel shall apply to the SPM.

5.11.10. The Supplier's Personnel shall not be deemed, under any circumstances whatsoever, to be the employees of ASSOCIATION, and the Supplier shall indemnify and defend ASSOCIATION from and against all claims made by the Supplier's Personnel against ASSOCIATION. The foregoing indemnity shall survive the expiration or termination of this Agreement. All matters pertaining to the employment, training, conduct, supervision, compensation, promotion and discharge of the Supplier's Personnel shall be the sole and exclusive

responsibility of the Supplier and the Supplier shall comply with all applicable laws and regulations relating to worker's compensation, social security, unemployment insurance, hours of labor, wages, working conditions and safety and similar matters with respect to such Supplier's Personnel. The Supplier acknowledges and agrees that the Supplier is obligated to report as income all compensation received by the Supplier pursuant to this Agreement, and the Supplier agrees to and acknowledges the obligation to pay all self-employment and other taxes thereon. The Supplier agrees to indemnify and hold harmless ASSOCIATION and its directors, officers, and employees from and against all taxes, losses, damages, liabilities, costs and expenses, including attorney's fees and other legal expenses, arising directly or indirectly from (i) any negligent, reckless or intentionally wrongful act of the Supplier's Personnel (ii) a determination by a court or agency that the Supplier and/or any of the Supplier's Personnel is not an independent contractor, or (iii) any breach by the personnel of any of the covenants contained in this Agreement.

5.11.11. Without derogating from the above, the Supplier shall bear any cost and/or expense relating to the Supplier's Personnel (including but not limited to travel, accommodation and lodging expenses). The Supplier shall be responsible and bear all expenses associated to visas, work permits etc. associated to any service to be provided by the Supplier through personnel in Israel.

5.11.12. ASSOCIATION shall be entitled to request the replacement of any of the Supplier's Personnel in Israel at any time, and the Supplier undertakes to appoint or to instruct any Subcontractors to appoint, as the case may be, a skilled employee in his/her stead within thirty (30) days of Association's request. For the avoidance of doubt, and without anything herein to the contrary, the Supplier shall be responsible for any labor costs arising in connection with the replacement of any of its personnel pursuant to this Agreement.

5.12. **Access to proprietary information:** ASSOCIATION requires access to proprietary information contained in the oncology information system (OIS), treatment planning system (TPS), accelerator, beam transport system, and accelerator control system.. This information includes hardware schematics, data storage structures, flowcharts, etc. ASSOCIATION requires this information in order to ensure, for example, that in-house software can be developed to enable the workarounds necessary for workflow optimization, as well as to extend ASSOCIATION 's existing in-house software to the PBT system.

5.13. **Latest release at the time of Acceptance :** All hardware and software must be the latest release at the time of the commencement of commissioning.

5.14. **Hardware and software modifications:** In the event of manufacturing changes or modifications which occur in the equipment hardware and/or software prior to its shipment, Supplier must notify ASSOCIATION of these changes in full for review by ASSOCIATION. ASSOCIATION reserves the right to cancel the order and require a rebate in full of any payment made previously if, in the opinion of ASSOCIATION personnel, the changes or modifications are not acceptable.

5.15. **Environmental Standards.** The FACILITY and/or the Works shall meet the applicable environmental standards in accordance with Israeli law and regulations and, in the absence of an applicable Israeli law, the relevant EU standard shall apply. However, in the event of any discrepancy between the provisions of the Israeli law and any EU standard, the provisions of the Israeli law shall prevail.

5.16 **Quality Management System.** The Supplier hereby undertakes, warrants and confirms to remain certified in accordance with ISO 9001:2008 standards or equivalent, and the Supplier shall at all times during the term of this Agreement be willing and able to prove such certification. In any event, the Supplier must notify ASSOCIATION, in writing, if the said qualification is suspended and/or canceled and/or not continued. For the avoidance of doubt, the aforementioned in this Section shall apply to the Supplier and/or any of its Subcontractors.

5.17 **Detailed Design**

5.17.1. Without derogating from the Technical Specifications, within 30 (thirty) days from the POD, the Supplier shall prepare and submit to ASSOCIATION, for approval, a proposed Detailed Design Plan defining the main activities to take place during the performance of this Agreement.

The proposed Detailed Design Plan shall consist of such activities as development and design, manufacture, assembly, integration, inspection, QA, Project Control Plan, testing, acceptance of the FACILITY, detailed design, delivery schedule of training and technical documents and any other obligation in accordance with the terms and the conditions of this Agreement and/or the Technical Specifications. Without derogating from the above, the proposed Detailed Design Plan shall include a Ready for Operation Plan defining the operation of the FACILITY going forward. The proposed Detailed Design Plan shall be based on the requirements of the Technical Specifications and the relevant obligations set forth in this Agreement. In order to approve the proposed Detailed Design Plan by ASSOCIATION, the SPM and his relevant deputies shall meet at the Supplier's site with the HPM within 45 Business Days after the Supplier submitted the proposed Detailed Design Plan to ASSOCIATION for approval, for a session which will include the following ("**DDR**"):

- An "On Site" review at a site where system prototype is operating;
- "On Site" review of all quality assurance processes;
- Review and presentation of all relevant issues regarding the Detailed Design Plan, including risks, mitigations and impacts on schedule and scope;

(hereinafter, the "**DDR Products**")

DDR will take place for at least 5 Business Days.

The Supplier shall bear all expenses related to the DDR (including preparing all DDR Products) except the travel expenses of Association's representatives which shall be borne by ASSOCIATION.

In the event that ASSOCIATION shall approve the Detailed Design Plan and all DDR Products in writing, the Detailed Design Plan approved in writing by ASSOCIATION shall be Appendixed as Appendix J to this Agreement.

5.17.2. Without derogating from the Technical Specifications, within 30 (thirty) days from the POD, the Supplier shall prepare and submit to ASSOCIATION, for its approval, a Quality Assurance Plan ("QAP") covering all quality assurance activities to be performed under this Agreement and/or the Technical Specifications, including a time schedule for each activity. The QAP shall be based, inter alia, on the requirements of the Technical Specifications. Such list, after approval in writing by ASSOCIATION, shall be Appendixed as Appendix K to this Agreement.

Without derogating from the above, QAP should clearly show how the organization and methods guarantee compliance with quality control standards and assure proper performance with regard to, inter alia, the following:

- engineering;
- purchasing;
- inspection of handling, storage and delivery;
- receiving inspection;
- in-process inspection;
- supervision of all Hospital Works;
- final and shipping inspection.

5.18 **Reports & Documentation**. Without derogating from the Technical Specifications, the Supplier shall submit to the HPM in accordance with the Detailed Design Plan, monthly progress reports (for the planning, construction, assembly, final adjustments, testing and maintenance of the Works, or as specifically set out in this Agreement and shall detail at least the following:

5.18.1. An updated schedule detailing the specific deviations from the initial planned schedule as set out in the Detailed Design Plan and an explanation for such deviation. The report shall include the anticipated impact of any delay and a mitigation plan for returning to the initial schedule. All changes to the schedule since the last report shall be identified;

5.18.2. A summary of the activities performed by the Supplier and/or its Subcontractors since the previous report;

5.18.3. Monitoring and supervision of all Hospital Works;

5.18.4. An updated register of the Supplier and ASSOCIATION action items and open issues, with their status;

- 5.18.5. A description of current and anticipated project risks, and the steps that have to be taken in order to mitigate each one;
- 5.18.6. Copies of quality assurance documents, test results and certificates of materials and systems, answers to deviation reports, intended to form or forming part of the Works.
- 5.18.7. The reports shall be based on the requirements of the Technical Specifications.
- 5.18.8. All documentation described in the Technical Specifications.
- 5.18.9. The Supplier shall submit to the HPM's review existing drawings, summaries, special studies and reports as may be requested by the HPM from time to time, as well as access to detailed drawings and calculations.
- 5.18.10. The Supplier shall provide all assembly and other drawings, technical documentation and catalogues necessary to perform proper maintenance operations.
- 5.18.11. The Supplier shall immediately upon Suppliers' request any and all documents required in the Technical Specifications and as specified therein.
- 5.18.12. The Supplier shall submit all documentation, reports, designs, drawings and other documents specified in the Technical Specifications for Association's approval. In addition, ASSOCIATION shall be entitled to require the Supplier to submit to ASSOCIATION any other drawings including all dimensions in softcopy 3D files or AutoCAD files and/or documents and/or design in connection with the Works reasonably required by ASSOCIATION; such documents and drawings shall be for ASSOCIATION internal use only and shall be kept confidential.
- 5.18.13. Software – 3 Master Copies of the most updated Software version of each program used in the FACILITY should be delivered to ASSOCIATION. An ongoing supply of 3 master copies should be delivered with the release of each new Software version (installations only, no source code required).
- 5.18.14. For the removal of doubt, the Supplier shall not be entitled to any compensation or payment from ASSOCIATION and/or from any third party with respect to any documentation and/or drawings and/or reports and/or code to be provided to ASSOCIATION under this Agreement;
- 5.18.15. In the event of any discrepancy, conflict, ambiguity, uncertainty and/or inconsistency between any of the above documentation and the provisions of this Agreement, including its Appendixes, the provisions of this Agreement shall prevail. The Supplier hereby undertakes to specifically notify the ASSOCIATION in writing in the event of such uncertainty.
- 5.18.16. ASSOCIATION, at its sole discretion, may record or copy any information, provided by the Supplier under this Agreement, regardless of form or media.

5.19. Most Advanced. Supplier hereby warrants and undertakes that on the date of the Final Acceptance Certificate, the Facility installed at Site shall be the most advanced Facility of the Supplier and shall contain all most advanced software and hardware of the Supplier including third parties' software and hardware. For the avoidance of any doubt and without derogating from Association rights under this Agreement and/or any other law, Supplier shall be entitled to receive an Acceptance Certificate if the Facility does meet the above criteria. Without derogating from the above, during 12 months from Acceptance Certificate, Supplier shall updates and upgrade all software and hardware installed in the Facility with all software and hardware released by Supplier during such time to the market so that the Facility shall be equipped with the all most advanced software and hardware of the Supplier including third parties software and hardware released during 12 months from Acceptance Certificate. The above shall be performed without any cost to Association as part of the Facility Price.

## 6. SUPERVISION; ACCESS TO PLACES OF PRODUCTION; INSPECTIONS

6.1 **Supervision by ASSOCIATION.** ASSOCIATION shall be entitled (but not obligated) to monitor and supervise the performance of the Works in regard to providing the FACILITY and Warranty, by itself or by any third party in Israel and/or abroad on Association's behalf, and the Supplier undertakes to cooperate as required with respect thereto including submitting all information required by ASSOCIATION and/or any third party on its behalf. Such supervision, if applicable, shall not derogate from any provision of this Agreement and/or from the Supplier's liability and responsibility to perform the Works in accordance with the provisions of this Agreement and to supply and install the FACILITY and/or fulfill the obligations set out in this Agreement, nor shall it impose any responsibility on ASSOCIATION which is not otherwise expressly set forth in this Agreement.

6.2 **Association's Access.** Without derogating from the generality of Section 6.1, ASSOCIATION, by means of any person acting for or on its behalf, shall at all times have free access to all places of production, including but without limitation the factories, sites, offices, workshops, and other places where the Works (including any material or component being part of the Works) are being produced, assembled completed or inspected, either in Israel or abroad. Such right to free access shall include, without limitation, the right to inspect the Works (including any material or component being part of the Works) at any stage of design, production, assembly, testing and commissioning. In the event of a request to inspect the Works at times other than normal working hours, the Parties shall mutually agree as to the time(s) at which such inspection shall be carried out and shall be granted free access to any information required by ASSOCIATION and/or any third party on its behalf. Nothing herein shall be construed as restricting or limiting in any manner Association's access to the Supplier sites where the Works are being performed, and ASSOCIATION shall at all times have free and unrestricted access to such sites.

6.3 **Assistance by the Supplier.** Without derogating from the above, the Supplier shall provide, free of charge, any assistance and access reasonably requested by Association's inspectors and duly authorized representatives in order to enable them to carry out inspection, checking and tests in connection with this Agreement and provide them with



any information requested.

- 6.4 **Access to Subcontractors Locations.** Without derogating from the above, if work for or in connection with the Works is being carried out at a Subcontractor's premises, the Supplier shall, by a term in the Subcontractor agreement, secure similar rights of access by ASSOCIATION or by means of any person acting for or on its behalf as set out in this Section, and shall take all action necessary to make such rights effective.
- 6.5 **Rejection of the Works, Materials and Components.** If any of the Works, materials or components, whether completed or in process, is rejected on inspection, the same shall be marked in a manner satisfactory to the HPM, so as to ensure its subsequent identification as a rejected article. If no other solution is provided by the Supplier that is acceptable by ASSOCIATION, the Supplier shall within seven (7) days or within such other reasonable time, pull down, take out, separate and sort out any such marked Works, materials or components so rejected. Materials or components of the Works or the entire Works rejected under this Section shall not be considered as having been delivered under this Agreement and the Supplier shall, without delay, replace and deliver satisfactory materials, components or Works at the Supplier's sole cost and expense. No such rejection shall give grounds to any delay or extension in the timetables set forth in the Delivery Schedule.
- 6.6 **Inspection not to Relieve Supplier's Obligations.** Inspection, examination, rejection or approval with no objections by ASSOCIATION of finished or unfinished Works or of materials or components shall neither relieve nor derogate from the Supplier's obligation to execute and complete the Works in strict accordance with the requirements of this Agreement, or impose any liability or responsibility on ASSOCIATION.

## 7. ORDER PROCEDURE

- 7.1. Within 60 (sixty) days of the Effective Date, ASSOCIATION may issue a Purchase Order for the FACILITY and forward such Purchase Order to the Supplier via email to the contact person of the Supplier, a copy of which shall be sent via air mail. For the removal of any doubt, ASSOCIATION may decide to postpone the issuance of the Initial Purchase Order for any reason, including without limitation for lack of budget (including lack of budgetary funding from the Israeli Ministry of Health), administrative reasons or for any other reason including without cause. Supplier waives and fully releases, exempts, and discharges Association and/or the Hospital and/or any third party on their behalf (including any of their employees, directors, officers, agents etc.) from any claim and/or liability and/or demand for any loss and/or damage (including damage to reputation) and/or expense and/or loss of profits and/or income etc. caused to Supplier and/or any third party.

Upon receipt of a Purchase Order by email, the Supplier shall confirm via email receipt of the Purchase Order by Association's contact person. An original document of such confirmation shall be sent to ASSOCIATION via air mail.

7.2. The Parties' contact persons are as follows, or any replacement contact persons as notified in writing by one Party to the other:

For ASSOCIATION:            Mr. \_\_\_\_\_  
   Address:  
   Telephone:  
   E-mail:  
("HPM")

For the Supplier: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
("SPM")

Each Party shall, in writing without undue delay, notify the other Party of changes in contact persons, addresses and/or e-mail, if any.

7.3. The Supplier will endeavor to furnish a secured electronic mail service or other equivalent means, in accordance with ASSOCIATION safety requirements, which will be used by both Parties for the purpose of ordering procedure, requests, queries, reports, etc.

**8. Optional FACILITY**

8.1. Within Ten (10) years from the Effective Date, ASSOCIATION shall have the right, in its sole discretion, to purchase Optional FACILITY (the "**Optional FACILITY**"). All terms and conditions of this Agreement shall apply, *mutatis mutandis*, to the Optional FACILITY except as detailed herein:

8.1.1. Delivery Time of the Optional FACILITY shall be as dictated by ASSOCIATION in the relevant POD. All terms and conditions relevant to the installation and testing of the FACILITY shall apply to installation and testing of the Optional FACILITY, *mutatis mutandis*.

8.1.2. Unless decided otherwise by ASSOCIATION, upon its sole discretion, the Supplier shall not have to submit new documentation including without limitation new DDP, ITP, QAP and the documents submitted with regards to the first delivery shall apply, *mutatis mutandis*, to such Optional FACILITY.

8.1.3. Section 13 shall apply, *mutatis mutandis*, on Optional FACILITY subject to the following provision:

8.1.4. Warranty Period for each Optional FACILITY shall be for 36 months from Acceptance Certificate for such Optional FACILITY.

- 8.1.4 Section 14 shall apply, *mutatis mutandis*, for each Optional FACILITY. Initial Maintenance Period for each Optional FACILITY shall commence at the end of the Warranty Period for the relevant Optional FACILITY. However, the Initial Maintenance Period for each Optional FACILITY shall end when the Initial Maintenance Period of the FACILITY shall end.
- 8.1.5 Section 15 shall apply, *mutatis mutandis*, for each Optional FACILITY. Optional Maintenance Period for each Optional FACILITY shall commence at the end of the Initial Maintenance Period for the relevant Optional FACILITY. However, the Optional Maintenance Period for each Optional FACILITY shall end when the Optional Maintenance Period of the FACILITY shall end. Without derogating from the above, ASSOCIATION shall have the option to terminate the Optional Maintenance Period for any Optional FACILITY for any reason by 90 days prior written notice.
- 8.1.6 The Optional FACILITY Price shall be as detailed in **Appendix B** and the provisions of Section 9 below shall apply, *mutatis mutandis*.
- 8.1.7 Terms of payment for the Optional FACILITY Price shall be as detailed in Section 1010 below.
- 8.1.8 The Initial Maintenance Price for each Optional FACILITY and/or Optional Maintenance Price for each Optional FACILITY shall be as detailed in **Appendix B**.
- 8.1.9 Terms of payment for Initial Maintenance Price for the FACILITY shall apply, *mutatis mutandis*, for the terms of payment for each Optional FACILITY.
- 8.1.10 Terms of payment for Optional Maintenance Price for the FACILITY shall apply, *mutatis mutandis*, for the terms for of payment for each Optional FACILITY.

## 9. CONSIDERATION

- 9.1. The consideration payable for the Works including supply, installation, Training, Warranty (including all Operation Services), support, testing and examination of the FACILITY as well as for all ancillary services and materials, equipment, licenses to software, hardware, spare parts and all undertakings of the Supplier required for the execution and completion of the Works and for the fulfillment of all of the Supplier's obligations in accordance with the terms and conditions of this Agreement, to be paid by ASSOCIATION to the Supplier, shall be the consideration set forth in **Appendix B** (the "**FACILITY Price**").
- 9.2. The consideration payable for the Optional FACILITY (including all Works relating to the Optional FACILITY and including supply, installation, Warranty (including all Operation Services), support, testing and examination of the Optional FACILITY as well as for all ancillary services and materials, equipment, licenses to software, hardware, spare parts and all undertakings of the Supplier required for the execution and completion

of the Works and for the fulfillment of all of the Supplier's obligations in accordance with the terms and conditions of this Agreement, to be paid by ASSOCIATION to the Supplier, shall be the consideration set forth in Appendix B (the "**Optional FACILITY Price**").

- 9.3. ASSOCIATION shall be entitled to deduct from any and all sums payable pursuant to this Agreement the amounts ASSOCIATION is legally required to withhold at source, unless an appropriate exemption has been provided by the Supplier prior to the date of such payment, and any amount so deducted shall be deemed for any and all purpose to have been paid in full by ASSOCIATION under this Agreement. The Supplier shall be responsible to obtain any appropriate exemption.
- 9.4. The FACILITY Price shall be the final, complete and inclusive price for the performance of all the Works and ancillary services related thereto including Training. Consideration Appendix (Appendix B), and shall not be linked to any linkage mechanism. For the avoidance of any doubt, no additional payment shall be made to the Consideration as a result of taxes, increase of taxes or be linked to any linkage mechanism.
- 9.5. The Optional FACILITY Price shall be the final, complete and inclusive price for the supply and installation of the Optional FACILITY and for the performance of the Works and ancillary services related thereto. There will be no adjustment whatsoever for the Optional FACILITY Price specified in the Consideration Appendix (Appendix B).
- 9.6. To preclude any doubt, it is hereby clarified that all taxes, fees, duties, licenses, costs or other payments that are to be paid in connection with the exportation, supply and installation of the MSRS, including but not limited to all types of importation and custom duties and services, such as transportation costs, customs agents' fees, purchase tax (in Hebrew "Mas Kniya" or "מס קניה" ), wharfage fees (in Hebrew "Dmei Ratzif" or "דמי רציף" ), cleaning of the containers, unstuffing and unloading at the Site, Israeli customs duties, port handling fees (in Hebrew "Dmei Nitul" or "דמי ניטול" ), port infrastructure fees (in Hebrew "Dmei Tashtit" or "דמי תשתית"), cam locks for discharging the Facility at port, supervision while discharging at port, discharging terms at port, etc. shall be considered as part of the Facility Price and shall be borne solely by the Supplier.
- 9.7. Notwithstanding the above, Prices do not include VAT and VAT shall be added in required by applicable law.

## 10. TERMS OF PAYMENT

- 10.1. Payment by ASSOCIATION to Supplier of the FACILITY Price shall be made as follows:
- 10.1.1. A down payment of ten percent (10%) of the FACILITY Price ("**Down Payment**") shall be paid to the Supplier within sixty (60) calendar days following POD, provided that the Supplier has provided ASSOCIATION at least forty five (45) calendar days prior to the payment with all the following:
- 10.1.1.1 an invoice in the amount of the Down Payment;
  - 10.1.1.2 a Down Payment Guarantee issued in accordance with the terms and condition set out in Section 20 below;
  - 10.1.1.3 The Detailed Design Plan, ITP, QAP and Training Plan.

10.1.2. A second payment of thirty percent (30%) of the FACILITY Price shall be paid to the Supplier within sixty (60) calendar days following the providing of the certification on the proper Form of Acceptance Certificate (the "**Second Payment**"), provided, however that the Supplier has provided ASSOCIATION at least forty five (45) calendar days prior to the payment with all of the following:

10.1.2.1. an invoice in the amount of the second Payment;

10.1.2.2.a Form of Acceptance Certificate, issued and signed by the Supplier in the form attached hereto as Appendix E and countersigned by HPM to be sent to the Supplier within 14 calendar days after receipt of said Certificate.

10.1.3. The remaining balance of sixty percent (60%) of the FACILITY Price shall be paid within sixty (60) calendar days in six equal installments (10% each) at the end of each year of following Final Acceptance, provided that the Supplier has provided ASSOCIATION at least fortyfive (45) calendar days prior to the payment with an invoice in the amount of the Balance Payment; and

10.2. Terms of payment for FACILITY shall apply, *mutatis mutandis*, on the Optional Facility.

10.3. Payments under this Agreement shall be made to the Supplier by means of bank transfer to the Supplier's bank account as specified in the form attached hereto as Appendix C.

**11. DELIVERY TERMS AND DELIVERY TIME**

11.1. The terms of supply and delivery of the FACILITY shall be DDP at Site and subject to the terms and conditions defined herein in this Agreement (the "**Delivery Terms**").

11.2. The delivery time of the FACILITY shall be as follows:

Milestone	TIME
Agreement signed by Association	Effective Date
Footprint and preliminary design drawing completed	Up to 3 months from Effective Date
Footprint and final design drawing completed	9 months from Effective Date
Start of Construction	12 months from Effective Date
Final Acceptance for the Facility	36 months from Effective Date

("Delivery Time")

The delivery time of the Additional FACILITY shall be as detailed in Section 8 above.

11.3. It is hereby stated by the Supplier and mutually understood by the Parties, that, notwithstanding the Delivery Time, the Supplier shall make its best efforts in order to shorten the Delivery Time, as much as possible.

11.4. **Passage of Title**

11.4.1. The ownership and title to the FACILITY and any part thereof shall fully pass to Hospital free and clear of all security interests, liens, attachment, encumbrances and any other rights or claims of any kind of any third party, upon the date of issuance by Hospital of the Final Acceptance Certificate. The passing of title to Hospital and vesting of ownership rights shall be without prejudice to any right that may accrue to Hospital under this Agreement.

11.4.2. ASSOCIATION shall bear no responsibility for any Works performed or materials, components or equipment used by the Supplier or deposited with any Subcontractor, including such materials, equipment or Works being stored or that have been placed at any site and which are lost, stolen, damaged, destroyed or otherwise fail prior to Site Final Acceptance Certificate. The Supplier shall be solely responsible to protect completely and preserve entirely the FACILITY and any related Works, components, material and equipment until the Final Acceptance thereof and shall bear all risks and liability for any damage and/or loss to the Facility for any reason.

**12. TESTING AND ACCEPTANCE TESTS**

12.1. Within thirty (30) days following the POD, the Supplier shall submit to ASSOCIATION, for its approval, an Inspection and Test Plan for the FACILITY (the "ITP"). The ITP shall be based, *inter alia*, on the requirements of the Technical Specifications. The ITP shall include a description of all inspections and tests to be carried out during the production, assembly and installation of the FACILITY or parts thereof and all inspections and tests to be carried out prior to and during the actual acceptance tests (both foreign acceptance tests and on Site) and their respective minimum acceptance criteria. ITP shall further include all tests, inspections, checks, examinations, etc. required by pertinent and internationally accepted standards, rules or codes.

The approved ITP shall be attached to the Agreement as **Appendix L**.

12.2. Before DDP of the FACILITY or any part thereof to the Site, the Supplier shall perform all Works required to bring the FACILITY to a full operational condition in accordance with the applicable terms and conditions defined herein in this Agreement and the Technical Specifications.

12.3. The acceptance tests shall be conducted by the Supplier with the participation of representatives on behalf of Hospital.

- 12.4. The acceptance tests shall be conducted in accordance with the ITP.
- 12.5. The Facility shall be deemed to have successfully passed the acceptance test if it meets all of the criteria specified therefor in the Technical Specifications and/or in the ITP including but not limited to 98% up time of the Facility.
- 12.6. Upon the completion of the Works, including all the acceptance tests specified in the ITP upon to Association's full satisfaction and subject to Section **Error! Reference source not found.** below, the Supplier shall complete and sign a FACILITY Acceptance Certificate, in the form Attached hereto as Appendix E, declaring that the Supplier has fulfilled any and all of its obligations in accordance with this Agreement with regard to the installation for such Site and that the FACILITY and/or any part thereof installed at such Site complies to the standards, requirements and specifications set out in this Agreement. ASSOCIATION shall complete and sign a Final Acceptance Certificate declaring that the FACILITY is fully operational in such Site (the "**Acceptance Certificate**").
- 12.7. Without derogating from the above, the Supplier shall not be entitled to receive the Final Acceptance Certificate, unless, in addition to the above, (1) the Supplier has completed all Training under the Training Plan to Association's satisfaction; (2) has submitted all documents detailed under this Agreement and the Technical Specifications; and (3) provides to the Association a written declaration that on the date of declaration the Facility installed at Site is the most advanced Facility of the Supplier and contains all of the most advanced software and hardware of the Supplier including third parties' software and hardware.
- 12.8. For the avoidance of doubt, it is hereby clarified that nothing provided in this section derogates from the obligation of the Supplier to meet the schedule and the aforesaid approval shall not be deemed the approval of ASSOCIATION to any deviation from the schedule. The repairs that shall be performed shall be taken into account at the time of checking whether the schedules were met.
- 12.9. It is clarified that the approval and/or lack of approval of ASSOCIATION shall not reduce the liability of the Supplier whatsoever, and the Supplier shall be fully responsible for the fitness of the Facility checked and its compliance with all of the requirements detailed in the Technical Specifications and this Agreement, and it waives any claim and/or demand that any defect whatsoever was not discovered by ASSOCIATION and/or anyone on its behalf.
- 12.10. If the Facility did not receive an Acceptance Certificate and/or the Supplier did not meet the schedule and/or ASSOCIATION determines that the progress of the Supplier is not satisfactory and ASSOCIATION has doubt as to whether the Supplier will meet its obligations, then, without derogating from the right of ASSOCIATION pursuant to law and/or this Agreement, including its right to claim damages from the Supplier in respect of the damages caused to it, ASSOCIATION shall have the sole discretion to act in one (and/or more) of the following manners, all in the sole and absolute discretion of ASSOCIATION and subject to the provision of 7 days prior notice in writing to the Supplier:
- 12.11. To cancel the award of the RFP to the Supplier and to declare the next alternate offeror as the winner of the RFP.
- 12.12. To exercise 50% of the Down Payment Guarantee provided by the Supplier pursuant

to this Agreement.

- 12.13. To issue a letter from ASSOCIATION and/or anyone on its behalf providing that the installation of the facility at the Site failed and/or the progress of the Supplier is not satisfactory to ASSOCIATION, and ASSOCIATION has doubt as to whether the Supplier will meet its obligations and/or that the Supplier did not meet the criteria detailed in the Specifications to perform the installation of the Facility shall constitute absolute proof thereof.

### 13. WARRANTY

- 13.1. The Supplier shall provide comprehensive and complete (full warranty) Warranty Services commencing from the provision of the Acceptance Certificate for the Facility and for 36 months thereafter (hereinafter: the "**Warranty Period**").

- 13.2. During the Warranty Period, the Supplier shall provide maintenance and support services specified at the level of full warranty and all for no additional consideration beyond the consideration for the Facility and shall ensure the continuous and proper operation of the Facility pursuant to the parameters provided in the Technical Specifications and this Agreement (including but not limited to 98% up time). Without derogating from the aforesaid and the provisions of the Technical Specifications, during the Warranty Period the Supplier shall (i) fix every fault, bug, defect or deficiency in the FACILITY; (ii) repair and/or replace equipment and/or materials as needed; (iii) perform preventative maintenance and and/or corrective and/or breakdown maintenance as required and/or, (iv) as required, supply all spare parts in a continuous manner and install them including as detailed in Section 17 below. The determination of ASSOCIATION that a component of equipment, hardware and/or material is defective shall constitute absolute proof thereof and shall be replaced for no consideration and without delay. Without derogating from the aforesaid, the Warranty Services shall also include (i) maintenance of the environs of the FACILITY including performance of any treatment and/or repair of a fault that affects the environs of the FACILITY; and/or (ii) operation of the environs of the FACILITY; and (iii) treatment and/or operation of the FACILITY; and (iv) treatment and/or repair of the fault that does not affect the operation of the FACILITY and/or the Site but is likely to develop into a fault or to reflect neglect of the Site or of the equipment located at it.

In the event of damage, loss or injury, due to any reason whatsoever to the FACILITY or to any part thereof, the Supplier shall repair same and return the situation to its previous state at its expense, such that at the time of completion and delivery all of the Works and the equipment will be in a fit condition and will comply in all respects with the requirements of this Agreement.

Without derogating from the above and as an integral part of the Warranty, the Supplier shall provide comprehensive and complete operation services ("**Operation Services**"). The Operation Services shall include all of the activities required in order that Facility shall fully operate in accordance with the provisions of the Technical Specifications and this Agreement including at least 98% up time. The Operation Services shall be performed by expert personnel on behalf of the Supplier that underwent the appropriate qualification and shall be performed on Site. Operation Services shall not include commissioning that shall be performed by Hospital.

(Hereinafter as: the "**Warranty**").



- 13.3. The Warranty Services shall be performed by expert personnel of the Supplier that underwent appropriate qualification.
- 13.4. As an integral part of the Warranty during the Warranty Period, the Supplier shall notify Association in writing of any updates and/or upgrades to any software and/or hardware and/or application applicable to the Facility where purchased by Association or not ("**Notification**"). Notification shall apply to all updates and/or upgrades to any software and/or hardware and/or application whether distributed by Supplier and/or any third party. Notification of updates and upgrades shall be made as soon as such updates and upgrades are released.
- 13.5. As an integral part of the Warranty, Supplier shall supply and install updates of all softwares installed in the Facility. Installing any such update shall be subject to prior written approval of the ASSOCIATION. The Supplier shall notify ASSOCIATION of the existence of any update or new version release, and will detail the implications of the installation and hardware and software requirements associated with it, if at all. For the avoidance of doubt, it is hereby clarified that the aforesaid shall not require ASSOCIATION to order the updates from the Supplier, and ASSOCIATION shall have the sole discretion whether to install the same. The Supplier will provide the full documentation and training required and acceptable for the changes and for the updated editions and versions, so that ASSOCIATION is in possession of documentation compatible with the latest updates made to the system at any given time. The Supplier shall be responsible for any fault and/or defect associated and/or resulting from any updates and/or upgrades of all software and of the changes detailed above.
- 13.6. Notice and reports of maintenance: Field service engineer(s) and equipment operators(s) employed by Supplier must report to Hospital prior to performing any warranty maintenance or preventative maintenance functions and provide ASSOCIATION (with notice of completion upon completion of their work at the completion of each working day.
- 13.7. Overtime during warranty period: No additional payment(s) for overtime costs for repairs and/or service during the Warranty Period will be provided by ASSOCIATION.
- 13.8. System checkout: Within three (3) weeks prior to the end of the Warranty Period, Supplier must arrange a mutually agreed upon time with ASSOCIATION, and, with the assistance of the ASSOCIATION, perform a complete system checkout to ensure that the system is performing at its optimum level and meets or exceeds the specifications and parameters agreed upon herein. Failure of the Supplier to arrange and perform this system checkout and perform any required corrective action at the conclusion of the specified warranty period will automatically extend the warranty period until the system check is completed. Failure of the system to meet the specifications and parameters agreed upon herein will automatically extend the warranty period of the total system until the system is compliant with all the specified specifications and parameters.
- 13.9. Service and Maintenance Plan

- 13.9.1. "**Service**" will refer to both scheduled maintenance and acute repair activities. "**Maintenance**" will refer to scheduled maintenance activities and repairs that are performed in a planned and scheduled fashion to maximize uptime, and may involve replacement and replenishment of components and consumables and repair actions that occur in conjunction with, or as the result of maintenance inspections. "**Acute Repair**" will refer to non-scheduled repair activities and unexpected breakdowns and failures.
- 13.9.2. Definition of Unscheduled Downtime: Start of downtime is when the unresolved issue or discrepancy is reported. End of downtime is the time when the system is ready to be used for patient treatments, as determined by ASSOCIATION physicists. ASSOCIATION defines unscheduled downtime as time for which a delivery-validated treatment plan cannot be delivered at the scheduled time as a result of an unscheduled hardware- or software-related treatment disruption. An unscheduled hardware- or software-related treatment disruption is an event involving the hardware and/or software of the PBT system that prevents or compromises the safety and/or accuracy of the radiation delivery and requires over five (5) minutes to resolve. Examples of unscheduled hardware- or software-related treatment disruptions include (a) failure of the image guidance system to acquire images, (b) an unexplained interlock that cannot be successfully cleared by the clinical staff, or (c) a malfunction in the gantry angle display prevents the staff from knowing the gantry angle to within the required specification.
- 13.9.3. Uptime guarantee: Uptime is defined as time during the Facility usage time in which there is no unscheduled downtime. The uptime of the Facility must be at least 98%.
- 13.9.4. Penalty for failure to meet uptime once each and every six months following the expiration of the guarantee warranty will be based upon the calculation of the actual uptime percentage for the previous year. If the actual uptime percentage is less than the guaranteed uptime percentage, then the uptime percentage detriment is calculated as the absolute percentage difference between the actual and guaranteed uptime percentages. Supplier must pay ASSOCIATION a cash amount of 2 times the value of the 12 months of the Initial Maintenance Service, multiplied by the uptime percentage detriment. Without derogating from its rights under the Agreement and/or any law, ASSOCIATION may deduct such sums from any payment to Supplier and/or collect it from Supplier's Guarantees
- 13.10. Phone consultation: Phone consultation to ASSOCIATION staff must be available from Selected Vendor's local field service office from 6:00 a.m. to 10:00 p.m. Sunday through Thursday and 8:00 am - 12:00 pm on Fridays. All times are Israel Standard Time (IS).
- 13.11. Average response times: The average response time, defined at any point in time as the average of all response times over the previous 30 business days, must be 5 minutes or less and the maximum response time must be 10 minutes or less. The response time is defined as the time required from the sending of a page to the moment when an engineer physically arrives at the site where the page was sent.
- 13.12. Without derogating from any rights or remedies available to ASSOCIATION according to this Agreement and/or under Applicable Law, upon receipt by the Supplier of a written notice from ASSOCIATION claiming that the Warranty has been breached, in any way whatsoever, the Supplier shall, at its sole cost and expense and within the time set out in the Technical Specifications and in accordance with the severity of such breach, shall: (i) promptly investigate and examine the FACILITY or any part thereof; and (ii) remedy, cure, repair, replace (including the supply and installation of the new components), fix and take any action necessary to remedy any defect, deficiency, damage

or loss, due to any failure, fault, shortcoming or non-conformity, such as faulty or negligent design (including errors and omissions in design), workmanship, materials or components, assembly or software, of the Supplier or of any and all of the Subcontractors or any third party acting on the Supplier's behalf.

13.13. Without derogating from its other obligations in this Section, the Supplier further certifies and confirms that during the Warranty Period it shall provide ASSOCIATION, without any additional charge or cost:

13.13.1. Malfunction report service 24 hours a day 7 days per week whether through human staffed stations or through automatic recording.

13.13.2. Continuous treatment of any malfunction until the solution is found, i.e. until the malfunction is repaired or until a reasonable way is found to circumvent it. A solution which is circumvented shall not absolve the Supplier of its duty to repair the malfunction or be considered a solution to the malfunction in any respect.

13.13.3. For the removal of doubt, the liquidated damages detailed below in Section 18 shall not derogate from any other rights or remedies available to ASSOCIATION under any Applicable Law or under this Agreement.

13.13.4. For the removal of doubt, ASSOCIATION may recover any sums due to ASSOCIATION with regard to such liquidated damages from the Guarantees provided by the Supplier or by set off from any consideration under this Agreement.

13.14. For the avoidance of doubt, the Warranty requirements specified herein are irrespective of whether the defect, deficiency or deviation from this Agreement was already present upon the issuance by ASSOCIATION of any Acceptance Certificate.

13.15. For the avoidance of doubt, it is hereby clarified that the Supplier shall not be entitled, directly or indirectly, to receive any additional reimbursement, consideration, cost, fee and/or payment for the provision of the Warranty (including the operating services) and the FACILITY Price is deemed as the final, complete and inclusive price for the provision of the Warranty and all obligations and undertakings pertaining thereto as well as for all ancillary services and Works required for the provision of the Warranty, including the Service Support Visit.

13.16. Nothing herein shall be construed as if ASSOCIATION grants the Supplier exclusivity in providing the Warranty. ASSOCIATION may elect, at its sole and absolute discretion, to receive Warranty, or any part thereof, from any third party, in which case the Supplier shall provide ASSOCIATION and such third party with all the necessary assistance (including but not limited to providing all maintenance related documentation, such as reports, drawings and so forth), so that the Warranty shall be transferred to such third party uninterruptedly and in the most efficient manner. Such retention of Warranty from a third party shall not relieve the Supplier from any of its obligations under this Agreement, including with respect to the Warranty during the Warranty Period.

## **14. INITIAL MAINTENANCE PERIOD**

As of the end of the Warranty Period and for a period of up to eighty four (84) months thereafter, Supplier shall provide (provided that Supplier shall fulfill all its obligations) with Maintenance Services for the FACILITY (the "**Initial Maintenance Period**").

- 14.1. During the Initial Maintenance Period, the Supplier shall provide ASSOCIATION with all services required so that the FACILITY and any part thereof shall operate and perform to the maximum extent of its capabilities and in all respects in strict accordance with the terms and conditions of this Agreement, including the Technical Specifications, and be free of any faults, defects and/or deficiencies, including but not limited to any faults, defects and/or deficiencies in design, material, workmanship, dismantling for sea and land conveyance, assembly, materials, components, software, hardware, etc.
- 14.2. All of the Supplier's undertakings under Section 13 above shall apply during the Initial Maintenance Period (including but not limited to the operating services).
- 14.3. In consideration for the provision of the Initial Maintenance services, as detailed in this Section, during the Initial Maintenance Period, the Supplier shall be entitled to receive the consideration for the Maintenance Services set forth in the Consideration Appendix ("**Initial Maintenance Services Price**").
- 14.4. For the avoidance of doubt, the Parties hereby expressly confirm and warrant that the Initial Maintenance Services Price shall be the final, complete and inclusive price that will be paid to the Supplier by ASSOCIATION for the provision of the Maintenance Services, as detailed in this Section.
- 14.5. The Maintenance Services Price shall be paid in quarterly installments, at the end of each quarter, for the Maintenance Services actually provided by the Supplier during the previous quarter. The Supplier shall submit, no later than thirty (30) days from the end of each quarter, an original invoice for the current quarter that is being completed. Terms of payment shall be within sixty (60) days from issuance of a tax invoice provided such tax invoice was issued at the end of each quarter.

## **15. OPTIONAL MAINTENANCE PERIOD**

- 15.1. As of the end of the Initial Maintenance Period, ASSOCIATION shall have an option, exercisable in its sole discretion, to require the Supplier to provide Maintenance Services for the FACILITY for a period of up to one hundred and twenty (120) months and Supplier shall provide ASSOCIATION with Maintenance Services for the FACILITY (the "**Optional Maintenance Period**"). ASSOCIATION shall notify the Supplier in writing of its intention to exercise its rights pursuant to this Section no later than ninety (90) calendar days prior to the end of the Initial Maintenance Period. ASSOCIATION may terminate the Optional Maintenance Period for any reason, including without any cause, during such Optional Maintenance Period by providing Suppliers with a written notice thirty (30) days in advance.
- 15.2. During the Optional Maintenance Period, the Supplier shall provide ASSOCIATION all services required so that the FACILITY and any part thereof shall operate and perform to the maximum extent of its capabilities and in all respects in strict accordance with the terms and conditions of this Agreement, including the Technical Specifications, and be

free of any faults, defects and/or deficiencies, including but not limited to any faults, defects and/or deficiencies in design, material, workmanship, dismantling for sea and land conveyance, assembly, materials, components, software, hardware, etc.

- 15.3. All of the Supplier's undertakings under Section 13 above shall apply during the Optional Maintenance Period (including but not limited to the operating services).
- 15.4. In consideration for the provision of the Optional Maintenance services, as detailed in this Section, during the Optional Maintenance Period, the Supplier shall be entitled to receive the consideration for the Optional Maintenance Services set forth in the Consideration Appendix ("**Optional Maintenance Services Price**").
- 15.5. For the avoidance of doubt, the Parties hereby expressly confirm and warrant that the Optional Maintenance Services Price shall be the final, complete and inclusive price that will be paid to the Supplier by ASSOCIATION for the provision of the Maintenance Services, as detailed in this Section.
- 15.6. The Optional Maintenance Services Price shall be paid in quarterly installments, at the end of each quarter, for the Optional Maintenance Services provided by the Supplier during the previous quarter. The Supplier shall submit, no later than thirty (30) days from the end of each quarter, an original invoice for the current quarter that is being completed. Terms of payment shall be within 60 days from issuance of a tax invoice provided such tax invoice was issued at the end of each quarter.

## 16. WORKS ON SITE

Without derogating from the Supplier's obligations pursuant to this Agreement, the Supplier declares and undertakes as follows with regard to any of the Works performed by the Supplier on Site (including installation of the FACILITY on Site and/or any Operation and/or any of the Warranty and/or Maintenance Works) ( the "**Works on Site**"):

- 16.1. The Supplier shall be responsible for the performance of all of the Works on Site.
- 16.2. The Supplier declares that the performance of the Works on Site shall be executed by a subcontractor on behalf of the Supplier who is lawfully registered in the Contractors Registrar, pursuant to the Contractor Registration Regulations for Engineering Construction Projects Law, 1969, in the correct and appropriate sector pursuant to the aforesaid law in respect of all of the building works and their financial scope (the "**Supplier's Infrastructure Subcontractor**"). The Supplier undertakes to deliver to the Supplier all of the appropriate approvals to support this representation.
- 16.3. Without derogating from the aforesaid, in the performance of the infrastructure Works at the Site, the Supplier shall employ a head works manager certified as required by the Work Safety Regulations (Construction Works), 1988 ("**Safety Regulations**"), who shall be present at the Site at all times in which the Supplier shall perform the

Works on Site. The Supplier undertakes accordance with Clause 6(d) of the Safety Regulations the overall responsibility as primary supplier for the performance of the provisions of the Safety Regulations. The Supplier undertakes to notify ASSOCIATION of the appointment of the aforesaid head work manager as required under Clause 6(d) of the Safety Regulations.

- 16.4. Without derogating from the generality of the aforesaid and the below, the Supplier undertakes to fulfill all of the obligations imposed on a "**prime contractor**" as defined in any law, including under the Planning and Building Law, 1965, The Planning and Building Regulations (Application for a Permit, its Conditions and Fees), 1970, the Planning and Building Regulations (Overall Supervision of Construction), 1992, Work Safety Regulations, 1988, and Regulations of the Organization of Work Supervisors (Safety Officers), 1996.
- 16.5. For the avoidance of doubt, it is clarified that nothing in this Section regarding the responsibility of the Supplier as a "**prime contractor**" shall entitle the Supplier to additional compensation, of any kind whatsoever, in respect of its responsibility and/or activities and/or the services that it shall render under this Section.
- 16.6. Supplier shall follow al Hospital's rules and regulation relating on works carried in the Hospital and shall sign all documents requested that it has read and received such guidelines including all modifications and changes to such guidelines.
- 16.7. Supplier shal prepare and submitt to Hospital's approval a comprehensive risk program with regards to all risks in performing the Works.
- 16.8. The Supplier shall be responsible for any act and/or omission of the Supplier's Infrastructure Subcontractor and/or any of its employees and/or its representatives, and in everything relating to ASSOCIATION, for any act and/or omission of any of its representatives.
- 16.9. The Supplier declares that it received all of the information related to the performance of the Works on Site and that there is no impediment and/or limitation to its performance of the infrastructure Works on the dates as specified in this Agreement and of excellent quality.
- 16.10. The Supplier declares that it shall perform the Works on Site that are the subject of this Agreement at (i) a high level, and (ii) excellent andbest quality, and (iii) in strict compliance with the provisions of all Applicable Laws, including, but without derogating from the provisions regarding work safety, including certification for the performance of works at heights. The Supplier hereby declares and confirms that it is aware that the level, quality and nature of the Works pursuant to this Agreement are the essence, basis and foundation of this Agreement, and that ASSOCIATION would not have entered into this Agreement with the Supplier if it were not for the Supplier's undertakings set forth above.
- 16.11. The Supplier shall issue to ASSOCIATION all of the approvals of any kind whatsoever relating to the performance of the Works on Sites in accordance with the requirements under any Applicable Law.

- 16.12. The Supplier declares that it shall take all measures required in order to prevent excessive noise and/or dirt and/or dust and/or pollution and damage to the environment and/or disturbances and/or damage to ASSOCIATION that continues during its ongoing operations, to perform its services in full cooperation and coordination with ASSOCIATION and/or its representatives and/or other contractors working nearby and/or in parallel to the Supplier.
- 16.13. The Supplier declares and undertakes that it will perform the Works on Site in a complete manner, in coordination with subcontractors working on its behalf at the Site, if any and any other third party working at Site.
- 16.14. The Supplier declares and undertakes that it will connect to all necessary utilities infrastructure such as electricity, communication etc., only after it shall have received an appropriate approval from ASSOCIATION. The Supplier shall be deemed to have checked the location of the infrastructures of the necessary utilities. ASSOCIATION shall provide, in its sole discretion, the supply of electricity and communication from the electricity and communication networks of ASSOCIATION. Subject to the Supplier connecting, at its own cost, to the points of supply to be identified by ASSOCIATION. It is clarified that a shortage of electricity and/or communication shall not constitute grounds and/or justification for the Supplier extending the date for completion of the Works on Site and/or for any deviation from the schedule and/or for slowing down the performance of the Works on Site.
- 16.15. The Supplier declares that it is familiar with and knows the work safety laws, including all of the regulations relating to work safety and it undertakes to properly abide by them. The Supplier further declares that it is aware that it will be necessary to perform the Works on Site near and/or in connection with an operating hospital and that this involves specific risks and dangers which the Supplier shall take into consideration during the performance of the Works on Site and take all measures necessary to prevent any interruption to the operation of the Hospital and/or personal injury and/or property damage to the employees of the Hospital and/or patients and/or visitors and/or any third party.
- 16.16. In the performance of the Works on Site, the Supplier hereby undertakes as follows:
  - 16.16.1. There shall not be any harm to the comfort and/or safety of the public and there shall not be a disruption to the operations of ASSOCIATION and/or and/or the Hospital and/or third parties who will work and/or be close to and/or near the Site during the time of performance of the Works on Site.
  - 16.16.2. It shall avoid performing any works that cause noise during specific hours to be prescribed by Hospital from time to time.
  - 16.16.3. To install lighting, scaffolding, barriers, fences, warning signs and warning tapes according to the procedures of ASSOCIATION and/or as it shall be instructed by the ASSOCIATION from time to time in order to sufficiently protect the public and the employees located on or nearby the Site.
  - 16.16.4. To find a suitable place to store materials in Israel (in terms of physical conditions, and locations in Israel enabling meeting SLAs), tools and

equipment in coordination with ASSOCIATION. Any damage and/or loss (including theft), that shall be caused to such materials, tools and/or equipment shall be the sole responsibility of the Supplier.

- 16.16.5. To regularly vacate excess materials and waste from the Site, at the expense of the Supplier and in accordance with the instructions of ASSOCIATION and/or the provisions of Applicable Law.
- 16.16.6. To strictly comply with Association's procedures as shall be provided to it in advance, and/or instructions of ASSOCIATION and/or its representatives.
- 16.16.7. To comply with the guarding and/or security procedures in relation to the Works on Site as directed from time to time by ASSOCIATION and/or Applicable Law.
- 16.16.8. In any case of damage, loss or injury due to any cause whatsoever (including security circumstances), to the Works or any part thereof and/or to equipment and/or hardware and/or materials – the Supplier shall repair and return the items to their prior condition at its expense, such that at the time of their completion and delivery, all of the Works will be in a proper condition and will comply in all respects with the requirements of this Agreement.

16.17. The Supplier's Obligations in Performing the Works on Site

Without derogating from the other obligations of the Supplier under this Agreement, the Supplier declares and undertakes as follows:

- 16.17.1. The Supplier undertakes to perform all of the Works in compliance with all Applicable Law.
- 16.17.2. Without derogating from the generality of the foregoing, the Supplier undertakes to obtain, at its own expense, any approval and/or permit, and to comply with the requirements of any law and/or legislation and/or standard applicable to the type of Works being performed by it pursuant to this Agreement.
- 16.17.3. The Supplier shall be responsible for all deductions that apply to it under Applicable Law, and to transfer them and/or pay them to the governments and/or authorities and/or competent institutions, as the case may be, and in accordance with the provisions deriving from this Agreement and/or the provisions of any Applicable Law.
- 16.17.4. The Supplier undertakes to perform the Works on Site in accordance with the terms of this Agreement, in accordance with safety rules and preserving them, and in accordance with the instructions of ASSOCIATION and/or its representatives. Supplier shall strictly fulfill all of the regulations and instructions of the competent authorities and in accordance with the provisions of Applicable Law, including the provisions of the Work Safety Ordinance and provisions of the Work Supervision Organization Law, 1954,



and the Torts Ordinance and the regulations and orders promulgated thereunder, and to supply all required protective equipment.

- 16.17.5. The Supplier undertakes to take precautions to prevent fire and its spread, including at the time of or as a result of the use of Works that create heat or flames or sparks, such as, but not limited to, grinding, soldering, welding and cutting.
- 16.17.6. The Supplier shall provide certified training to its employees regarding safety while working. Furthermore, the Supplier shall have its employees sign a confirmation to the fact that they received and understood what was said in the training, as well as the obligation imposed on them to use personal protective equipment. In addition to the aforesaid, and without derogating from it, on every occasion that the Supplier shall arrive to maintain and/or repair its Works on Site, the Supplier shall, before starting the Works, provide a refresher training regarding the procedures instructions and work safety rules, shall ensure that the employees understand what is required of them under such procedures, instructions and rules and undertakes to perform the Works according to them and the Supplier will have them sign a document in which they confirm to this. Such training shall involve all data and risks in performing the Works including in a hospital environment. Supplier shall participate in any training provided by the Hospital to contractors at Supplier's cost and expense. For the avoidance of doubt, it is hereby clarified that the performance of the aforesaid in this Section does not in any way release the Supplier from its liability pursuant to law for the safety of its workers, the work environment and of those located on or near it and/or impose liability of any kind on ASSOCIATION and/or its representatives.
- 16.17.7. During the provision of the Works on Site, and in accordance with the instructions of ASSOCIATION, from time to time, the Supplier shall (i) remove from the Site and from any area that shall be instructed by ASSOCIATION, all waste, garbage and other materials that will not be used, to a proper and approved removal site; and (ii) at the time of completion of the Works on Site, the Supplier shall remove from the Site all equipment and building materials, surplus materials, dirt, and any kind of temporary structure, and leave the Site in a clean and tidy condition to the satisfaction of ASSOCIATION.
- 16.17.8. If the Supplier did not evacuate the work Site as aforesaid, then ASSOCIATION will perform the evacuation itself and/or by others at the expense of the Supplier, and deduct such expenses in any manner available to it.

## **17. SPARE PARTS**

- 17.1. Without derogating from the Supplier's undertaking to provide the Warranty, the Supplier undertakes that, commencing on the date of issuance of the Final Acceptance Certificate and until the end of the Optional Maintenance Period, it will supply ASSOCIATION, at no additional cost, with all spare parts and tools and updates necessary and recommended pursuant to (i) the Technical Specifications, (ii) the applicable manufacturer

specifications, and (iii) the best professional practice, required for operation and maintenance and for the repair of the FACILITY or any part thereof, while assuring that the FACILITY and all systems of the FACILITY therein shall operate and perform to the maximum extent of its capabilities and in all respects in strict accordance with the terms and the conditions of this Agreement, including the Technical Specifications. The above shall be an integral of the Warranty and/or Intimal Maintenance Services and/or Optional Maintenance Services, as applicable.

- 17.2. Without derogating from the generality of Section 17.1, the Supplier shall furnish a detailed Spare Parts List of all necessary and recommended Spare Parts and their prices, in the form attached hereto as ***Appendix F*** within the Effective Date (the "**General Spare Parts List and Prices**"). The General Spare Parts List and Prices shall be in English or Hebrew and shall quote the delivery time, description, original manufacturer's name, part number of original manufacturer and the prices DDP Site for each Spare Part, and subject to the terms specified in Section 11.
- 17.3. If the Supplier foresees that it will be unable to manufacture and/or supply any or all Spare Parts, for any reason whatsoever, it shall notify ASSOCIATION in writing six (6) months in advance and shall procure all actions, at its cost and expense under its responsibility so that ASSOCIATION shall be fully able to make any arrangements necessary to obtain alternate spare parts.

## **18. LIQUIDATED DAMAGES**

- 18.1. Without prejudice to any other relief or remedy available to ASSOCIATION under this Agreement (including Sections 12 and 13.13) or under law, in the event that the delivery of any of the FACILITY or any part thereof is delayed beyond the specified Delivery Time, the Supplier shall pay ASSOCIATION liquidated damages in the sum equal to one-half percent (0.5%) of the value of the FACILITY Price for each calendar week of delay, or any part thereof. The liquidated damages shall not exceed a total of seven and half percent (7.5%) of the value of the consideration specified in this Agreement (the "**Liquidated Damages**").
- 18.2. The liquidated damages in this Agreement have been determined after due consideration of the damages the Parties anticipate that ASSOCIATION will suffer under the specific circumstances to which each specific type of liquidated damages apply, and therefore they shall not be regarded as a penalty. Payment of the Liquidated Damages shall not be conditioned on ASSOCIATION having to present evidence of any loss.
- 18.3. For the removal of doubt, the Liquidated Damages detailed above shall not derogate from any other rights or remedies available to ASSOCIATION under any Applicable Law or under this Agreement.
- 18.4. For the removal of doubt, ASSOCIATION may recover any sums due to ASSOCIATION with regard to such Liquidated Damages from the Guarantees provided by the Supplier or by set off from any consideration under this Agreement.

## 19. ALTERATION OF TECHNICAL SPECIFICATIONS

- 19.1. ASSOCIATION reserves the right to alter the Technical Specifications ("**Changes**"). The Supplier shall be notified of the alterations in writing by the HPM ("**Change Order**") in a Change Order Form (attached hereto as Appendix H). Any Change Order shall specify a date following which the FACILITY and/or any part thereof shall be designed, manufactured and supplied in accordance with the amended specifications.
- 19.2. Within ten (10) Business Days following the receipt of a Change Order, the Supplier shall provide ASSOCIATION with a written confirmation and if applicable, shall state on the Change Order Form requested changes to the FACILITY and/or any part thereof, FACILITY Price, Delivery Time, and any other terms relevant to the provision thereof.
- 19.3. The price for any Changes included in the Change Order which is a supplement or addition of parts or systems used elsewhere in the FACILITY and/or any part thereof or which are included in the Spare Parts List, shall be no higher than the price applied to such systems or parts therein.
- 19.4. Following receipt of the Supplier's request for changes as detailed above, the Parties shall, in good faith, review the changes and any changes to the FACILITY Price and Delivery Time requested by the Supplier.
- 19.5. The Changes will be incorporated in the FACILITY, only after and to the extent that the Parties are agreed as to their impact on the FACILITY Price and Delivery Time. Such agreement shall be set out in writing in the Change Order Form and shall be signed by both Parties. For the avoidance of doubt, ASSOCIATION maintains sole discretion regarding the Changes themselves.
- 19.6. In the event that the Supplier objects to any Change Order or any part thereof, on the grounds that it may affect safety or structural soundness of the FACILITY, the Supplier shall have a right not to proceed with the Change Order and the Parties shall discuss said objections and shall seek a solution to Association's request for the Changes.
- 19.7. Should the Supplier find at any time during the design or manufacture of the FACILITY that, in its judgment, existing conditions demand or make desirable or beneficial a modification in the requirements covering any particular item, it shall promptly report in writing, any such matter to ASSOCIATION for its' decision and instruction.

## 20. GUARANTEES

- 20.1. To secure the punctual, complete and entire performance of all of the Supplier's obligations under this Agreement, including any Works to be performed by any Subcontractor, the Supplier will furnish the Down Payment Guarantee and Payment Guarantee (collectively, the "**Guarantees**"), all as specified in this Section below. All Guarantees shall be issued by a first-class bank approved in advance by ASSOCIATION.
- 20.2. Down Payment Guarantee. Before payment by ASSOCIATION of the Down Payment specified in Section 10 above, and as a condition thereto, the Supplier shall furnish ASSOCIATION with an irrevocable autonomous bank guarantee in the full amount of

such Down Payment in the form attached hereto as Appendix G (the "**Down Payment Guarantee**").

- 20.3. The Supplier shall produce and furnish ASSOCIATION with all Guarantees under this Agreement at the relevant time for furnishing such Guarantees as stipulated in this Section.
- 20.4. Guarantee shall be be denominated in Euros only. All such Guarantees shall be unconditional and irrevocable bank guarantees, issued by a first-class bank acceptable to ASSOCIATION in its sole and absolute discretion (which acceptance must be recorded in advance and in writing), to be paid upon first written demand without the need to prove or substantiate the demand.
- 20.5. Except as otherwise specified in this Agreement, the timely submission of any and all Guarantees to be furnished by Supplier to ASSOCIATION under this Agreement is considered pre-requisites for Association's execution of any payment due to the Supplier under this Agreement.
- 20.6. The Supplier shall maintain the Guarantees valid through their respective times as stipulated in this Section. If sixty (60) days prior to the expiration of any Guarantee the Supplier has not completed all of the respective obligations to be performed during the time period secured by such Guarantee, or if such period has been extended, the Supplier shall provide, at its own expense, a substitute Guarantee meeting the requirements of this Section, or extend the term of the relevant Guarantee and notify ASSOCIATION of such extension, failing which ASSOCIATION shall be entitled, without derogating from any other remedy that may be available to it under the circumstances, to collect from any of the Guarantees the amount of that Guarantee.
- 20.7. Collection on a Guarantee or any part thereof by ASSOCIATION shall not derogate from the right of ASSOCIATION to terminate this Agreement, nor from its right to any remedy that may be available to it under any Applicable Law and/or agreement or relieve the Supplier of any of its liabilities and undertakings under this Agreement, including its liability to indemnify ASSOCIATION.

## 21. INSURANCE

- 21.1. Without derogating from Supplier's liability pursuant to this Agreement or any applicable law, and without thereby assuming any liability towards the Supplier, The ASSOCIATION declares that during the Works performed according to this Agreement, it shall effect Construction All Risk Insurance ("**CAR**") protecting its interest in the Project. The CAR policy shall include two sections:

section 1 - Property Damage;  
section 2 - Third party liability.

- 21.2. The Supplier undertakes to pay the ASSOCIATION, a sum equal to 1% of the consideration paid under this Agreement, in consideration of which the name of the insured under the CAR shall be extended to include the Supplier and/or his sub-contractors as additional insured. In any case, the amount of the offset will not be lower than the actual cost of the policy.

The ASSOCIATION reserves the right to change clause 21.1 and 21.2 so that the responsibility for drafting the CAR policy rests with the supplier and at his expense.

In such a case, its terms will be approved by the ASSOCIATION and will be subject to comments in accordance with what is customary in relation to works of the same scope.

It is hereby clarified that the Insurance proceedings made by the insurer to the ASSOCIATION and /or to the Supplier under Section A (property) of the CAR policy will be in New Israeli Shekel or Euro.

- 21.3. The Supplier undertakes to observe and comply with all the conditions of the CAR (including but not limited to fire prevention measures procedure).
- 21.4. The Supplier declares and acknowledges that neither the ASSOCIATION and Ministry of Health – The Tel Aviv Sourasky Medical Center or any one acting on its behalf, shall bear any liability towards the Supplier with regard to the extent of the coverage (or lack thereof) and the limits of liability afforded under the CAR and the Supplier shall be estopped from raising any demand or claim whatsoever in respect thereof.
- 21.5. Supplier hereby declares and confirms that it shall bear the amounts of the deductibles indicated in the CAR Insurance, for any loss or damage related to the Works and/or which the Supplier is liable for under this Agreement or at law.
- 21.6. The procurement of the requisite insurance policies does not derogate from any of the Supplier liabilities provided hereunder or by any applicable law.
- 21.7. Without derogating from the Supplier's liability under this Agreement or under any applicable law, The Supplier undertakes to procure, through a reputable insurance , at its sole expense, during the term of the Agreement and until final completion, handing-over and acceptance of the Works, the insurance policies mentioned below (the "**Supplier's Insurances**"). With respect to Product and Professional Liability insurances as set forth in clauses 21.7.8 and 21.7.9 below, the Supplier shall procure and maintain the said policies insurance for an additional period of 7 years after the termination of its obligation under this Agreement:
  - 21.7.1. Travel Insurance Policy including rescue and evacuation coverage for anyone engaged by it in the Works, with customary limits of liability.
  - 21.7.2. Any applicable National Insurance Law and/or Workmen's Compensation Insurance pursuant to any applicable law, regulations and orders thereunder so as to ensure that all personnel involved under this Agreement, shall be entitled to the full benefits under such applicable law.
  - 21.7.3. In respect of any motor vehicle - compulsory insurance covering liability which is required to be insured under the requirements of any applicable law and comprehensive motor insurance covering all motor vehicles (including mobile equipment) utilized for the performance of the Works whilst at or in the vicinity of the Site. Coverage shall include all requirements in accordance with the local

law of Israel

- 21.7.4. all insurance policies required under any applicable local law.
- 21.7.5. any additional and/or supplementary insurance as the Supplier may deem necessary.
- 21.7.6. Property all risk insurance covering unforeseen physical loss or damage to all plant, tools and equipment brought to the Site by or on behalf of the Supplier and/or Subcontractors for the performance of the Works, including heavy equipment whilst located on or about the Site, at full replacement value.
- 21.7.7. Employer's liability insurance covering the Supplier's liability towards its employees for bodily injury or occupational disease, which might be caused to any of them during and as a result of their employment in performing the Works, subject to a limit of liability of USD 5,000,000 per plaintiff, per event and in the aggregate. The policy is extended to indemnify the ASSOCIATION and Ministry of Health – The Tel Aviv Sourasky Medical Center should a claim be made that, with respect to the occurrence of any work accident or occupational disease, they bear any employer's duties towards any of Supplier's employees.
- 21.7.8. Products Liability Insurance covering the Supplier's legal liability in respect of any claim or demand first made during the period of insurance deriving from any bodily injury and/or property damage caused by anything sold, manufactured, supplied, repaired, installed, erected, altered or treated by the Supplier and/or anyone acting on its behalf expressly including the Works (hereinafter: the "**Products**") or from any defect or fault therein. Without thereby derogating from coverage of liability of the Supplier towards the ASSOCIATION, and Ministry of Health – The Tel Aviv Sourasky Medical Center the insurance shall be extended to indemnify ASSOCIATION and Ministry of Health – The Tel Aviv Sourasky Medical Center in respect of any liability which may devolve upon them due to any bodily injury and/or property damage aforesaid, subject to a Cross Liability clause. The Policy is subject to a limit of liability of USD 5,000,000 any one occurrence and in aggregate. The Policy applies retroactively from the commencement date of Works, even if began prior to the signing of the agreement between the parties. The Policy includes a 12 months extended reporting period.
- 21.7.9. Professional Liability Insurance covering the Supplier's legal liability in respect of any claim or demand first made during the period of insurance deriving from any negligent act, error or omission of the Supplier and/or anyone acting on its behalf in the performance of the Works.

Without thereby derogating from coverage of liability of the Supplier towards the ASSOCIATION the insurance shall be extended to indemnify the ASSOCIATION and Ministry of Health – The Tel Aviv Sourasky Medical Center in respect of any liability which may devolve upon them due to any negligent act, error or omission as aforesaid. The Policy is subject to a limit of liability of USD 5,000,000 any one occurrence and in aggregate. The Policy applies retroactively from the commencement date of Works, even if began prior to the signing of the agreement between the parties. The Policy includes a 12

months extended reporting period.

- 21.8. All Risks" Marine Cargo Insurance Covering equipment, components, systems, parts and any other property imported for the Project at full replacement value, against all risks of physical loss or damage as per Marine Institute Cargo Clauses A including War and Terror clauses. Settlement of claims will be made at 110% of the FACILITY and the Spare Parts DDP value, irrespective of the term of sale or purchase. The insurance benefits in respect of loss or damage to the FACILITY shall be paid to ASSOCIATION exclusively, which shall be added as an additional insured under the policy. The policy shall include a waiver of subrogation towards ASSOCIATION and Ministry of Health – The Tel Aviv Sourasky Medical Center and/or the Israeli Government and/or the HPM and/or anyone acting on their behalf, provided that the waiver of subrogation does not apply in favor of a person who has maliciously caused the damage.
- 21.9. For the avoidance of doubt, it is hereby clarified that the limits of liability required by the Supplier's insurances are the minimum requirements imposed upon the Supplier. The Supplier hereby declares that it will be barred from rising any claim or demand towards the ASSOCIATION and Ministry of Health – The Tel Aviv Sourasky Medical Center and any one acting on its behalf in connection with the limits of liability stated above.
- 21.10. It is agreed that the Supplier's Insurances shall expressly include the following general terms and conditions:
- (a) The insurances are subject to a waiver of subrogation against the ASSOCIATION and Ministry of Health – The Tel Aviv Sourasky Medical Center and any one acting on its behalf, as well as in favor of any person or entity that the ASSOCIATION obliged to include a waiver of subrogation in its favor, however, such waiver shall not apply in favor of any person who caused a malicious loss or damage.
  - (b) The insurances are deemed primary to any insurance maintained by the ASSOCIATION and Ministry of Health – The Tel Aviv Sourasky Medical Center and the insurer waives any demand and/or claim regarding participation of the ASSOCIATION's and Ministry of Health – The Tel Aviv Sourasky Medical Center's insurance policies.
  - (c) The insurances shall neither be cancelled nor materially amended unless at least 60 days prior written notice thereof sent by registered mail to the ASSOCIATION.
  - (d) We also confirm that failure by the Supplier and/or a person acting on its behalf to uphold the conditions of the policies in good faith shall not derogate from the ASSOCIATION's right to receive indemnification under the policies.
  - (e) The ASSOCIATION and Ministry of Health – The Tel Aviv Sourasky Medical Center shall not be responsible for the payment of any premium due in respect of the insurances nor for the payment of any deductible applicable thereunder.
  - (f) The insurances shall be effective in Israel and shall contain worldwide territorial limits and jurisdiction.
  - (g) The ASSOCIATION may examine the Insurance Certificate and the Contractor undertakes to make any change or amendment that will be required in order to make it conform to the Contractor's undertakings.
- 21.11. Neither the ASSOCIATION and Ministry of Health – The Tel Aviv Sourasky Medical Center and/or anyone acting on its behalf shall be liable for any loss or damage, for any reason whatsoever, to any equipment, tools, materials, test gear, mechanical engineering equipment and/or other property of the Supplier or any of its sub-

contractors or anyone acting on their behalf (including any equipment which is brought to Site), and all such liability is hereby expressly waived by the Supplier and its sub-contractors, provided however

- 21.12. The Supplier undertakes to indemnify ASSOCIATION for any amount incurred by ASSOCIATION as a result of a violation of this Section.

As a condition precedent to the first payment under this Agreement, the Supplier shall furnish a certificate from its insurers stating "The insurance required by Agreement No \_\_\_\_\_ between ASSOCIATION and Supplier is in full force and effect".

- 21.13. Without derogating from the duty to provide the insurance certificate as detailed above, the Supplier undertakes to provide ASSOCIATION with a copy of all of its insurance policies, within fourteen (14) days of Association's first request.

## 22. INTELLECTUAL PROPERTY RIGHTS

- 22.1. Intellectual Property Rights Warranty. The Supplier represents and warrants that it is the owner of all rights and title (including but without limitation Intellectual Property Rights, as defined below) in and to the FACILITY as well as in any Works and any component thereof (including, without limitation, systems, parts, software incorporated in the FACILITY or integrated with them), and documentation provided to ASSOCIATION under this Agreement and the Technical Specifications and/or Software, and/or that it has obtained sufficient rights and is authorized to give rights to ASSOCIATION as contemplated under this Agreement in any such FACILITY, Works or documentation and/or any part thereof and/or Software, by the relevant third parties who developed and/or own and/or hold the Intellectual Property Rights thereof, and that ASSOCIATION may use any part of said FACILITY, Works and documentation and/or Software in accordance with the terms and conditions of this Agreement, including the operation and maintenance of the FACILITY and for the purpose of interface with other ASSOCIATION equipment (whether existing now or in the future).

- 22.2. Non Infringement Warranty. The Supplier warrants that the FACILITY, Works and/or Software and documentation, and their use by ASSOCIATION in accordance with this Agreement (i) do not and will not infringe any patents, copyrights, whether or not registered, trade names, registered and unregistered trademarks, service marks, trade dress, domain name registrations and other source indicators; computer software, including databases; trade secrets, commercial secrets, inventions (whether or not patentable and whether or not reduced to practice), know-how, methodologies, or other intellectual property right of any person ("**Intellectual Property Rights**"), and (ii) no claim, action or suit for the misappropriation or infringement of any Intellectual Property Right has been brought or is pending or, to the best of its knowledge, threatened against the Supplier and/or any third party from which the Supplier has obtained such Intellectual Property Rights in connection with the FACILITY, Works or documentation provided under this Agreement.

- 22.3. Responsibility of the Supplier. The Supplier shall be solely and fully liable and responsible for the use of, and shall fully and timely pay all royalties, fees and other payments with respect to, all Intellectual Property Rights, licenses and rights of whatever type, manufactured, used, implemented or employed in the design,



production, completion, use or operation of the FACILITY and Works and/or Software by the Supplier or ASSOCIATION.

22.4. Ownership of Designs, Drawings etc.

22.4.1. The title in and to the designs, drawings, documentation and other technical documents that may and/or shall be submitted by the Supplier to ASSOCIATION according to this Agreement shall pass to ASSOCIATION. The Intellectual Property rights shall be deemed to be the sole and exclusive property of the Supplier. ASSOCIATION has the royalty free, non-exclusive right to use these drawing, documentation and other documents to the extent necessary for the use and maintenance of the FACILITY according to this Agreement.

22.4.2. All right and title in and to the designs, drawings and other technical documents and information provided by ASSOCIATION or on its behalf to the Supplier as well as all of the documents comprising this Agreement and the contents thereof, shall be deemed to be the sole and exclusive property of ASSOCIATION.

22.5. Grant of License. The Supplier hereby grants to ASSOCIATION a perpetual, royalty-free license and right to install, use, have used, reproduce and have reproduced and copy (including for backup archival purposes) all software provided in connection with this Agreement, and all supporting documentation, as necessary solely to support the use of such software on any hardware for the purpose of operation of the FACILITY (including maintenance thereof).

The foregoing license and right is provided at no extra charge to ASSOCIATION and is included in the FACILITY Price, and shall remain in full force and effect after the termination and/or cancellation and/or expiration of this Agreement for any reason whatsoever.

22.6. Rights to Use upon Enjoinment. In case any part of the Works is held to constitute an infringement of any Intellectual Property Right of any third party or its use is enjoined, the Supplier shall, within a reasonable time and at its sole cost and expense, and without derogating from any other right or remedy available to ASSOCIATION under such circumstances, either:

22.6.1. Secure for ASSOCIATION the perpetual right to continue the use of such part of the Works by procuring for ASSOCIATION a royalty-free license or such other free permission as will enable the Supplier to secure the removal of any injunction or other relief that was granted; or

22.6.2. Replace such part of the Works with an adequate non-infringing part or modify it so that it becomes non-infringing, without affecting the performance and other qualities of the part in question, all to the HPM's satisfaction.

## 23. TERMINATION

- 23.1. This Agreement may be terminated by ASSOCIATION in its sole and absolute discretion at any time, whether before or after commencement of the Works, by giving the Supplier prior written notice of at least fourteen (14) days, if any of the following occurs:
- 23.1.1. If requested by the Ministry of Health.
  - 23.1.2. The Supplier transfers the whole or any part of its undertakings pursuant to this Agreement or substantial properties or assets, by a single transaction or by a number of transactions, without obtaining prior written approval of ASSOCIATION.
  - 23.1.3. The Supplier becomes bankrupt, insolvent, or does not pay its debts as they become due, or admits in writing its inability to pay its debts or makes assignment for the benefit of creditors, or liquidation, receiverships, or reorganization proceedings (whether temporary or not) have been commenced against the Supplier and have not been removed within twenty-one (21) days.
  - 23.1.4. An attachment order has been imposed and/or any other execution process has been taken with respect to all or a material part of the Supplier's assets, or a part thereof which is material for the performance of any of its obligations hereunder and has not been removed within thirty (30) days.
  - 23.1.5. The Supplier has stopped managing its business (or substantial portion thereof) or execution of the Works, for a consecutive period of thirty (30) days.
  - 23.1.6. Any representation or warranty made by the Supplier in this Agreement and/or any certificate, schedule or other document delivered by the Supplier pursuant to this Agreement has been false or materially misleading when made.
  - 23.1.7. The Supplier breaches any material provision of this Agreement, and fails to cure such breach within twenty (20) days from the date of Association's notice.
  - 23.1.8. The Supplier breaches any provision of this Agreement and fails to cure such breach within thirty (30) days from the date of Association's notice.
- 23.2. Restitution of Payments. Without prejudice to any other remedies available to ASSOCIATION under any agreement and/or under any Applicable Law, in the event that ASSOCIATION exercises its right to terminate this Agreement for any of the reasons set forth in Section 23.1, then within thirty (30) days from notification by ASSOCIATION that it has rescinded or terminated this Agreement, prior to the issuance of Final Acceptance Certificate, the Supplier shall return to ASSOCIATION all payments it has received from ASSOCIATION in respect of all terminated Works.
- 23.3. Termination for Convenience. In addition to, and without derogating from any other

right that ASSOCIATION may have to terminate this Agreement, including, but without limitation pursuant to any other provision of this Section and/or to any Applicable Law, ASSOCIATION shall have the right to terminate this Agreement at will, without cause and at Association's sole and absolute discretion by providing Supplier with a forty-five (45) days prior written notice.

23.4. The Supplier hereby waives the right to termination under this Agreement and/or under Applicable Law, for any reason. The sole and only remedy available to the Supplier under this Agreement is compensation for breach subject to the terms of this Agreement.

23.5. Effect of Termination

23.5.1. Subject to Sections 23.5.4 and 23.5.5 below, termination of this Agreement will not limit either Party from pursuing any other remedies available to it under any agreement and/or Applicable Law, and termination or expiration of this Agreement, from whatever cause arising, shall be without prejudice to the rights of the Parties accrued under this Agreement up to the time of termination.

23.5.2. The provisions of this Agreement which expressly or by their nature are required to survive termination of this Agreement (including but without limitation provisions regarding Warranty, Intellectual Property and Liability) shall survive the expiration or termination of this Agreement.

23.5.3. Upon receipt of any termination notice, the Supplier shall take all required steps and actions to:

23.5.3.1. Cease all Works according to the HPM's instructions; and

23.5.3.2. Transfer to ASSOCIATION all its rights under all warranties extended by its supplier.

23.5.4. Payment to the Supplier (if and to the extent that the Supplier shall be entitled thereto) shall constitute the sole and exclusive remedy (monetary or otherwise) to the Supplier in connection with this Agreement and/or the cancellation and/or the termination thereof, and the Supplier shall not be entitled to any other payment or recourse for loss of profits or to any other remedy that might be available to it under Applicable Law and/or agreement (including but without limitation specific performance and/or injunctive relief) in the event of termination of this Agreement pursuant to this Section.

23.5.5. No damages or other recourses whatsoever (including but without limitation enforcement of this Agreement) shall be due to the Supplier, by reason of any termination of this Agreement in accordance with its terms. In particular, but without limitation, the Supplier shall not be entitled to any compensation, reimbursement or damage of any kind for any unjust enrichment or tort claim, if any, resulting from the termination of this Agreement as aforesaid and/or on account of loss of prospective profits or investments and/or loss of goodwill or any other causes.

## 24. RISKS AND LIABILITIES

- 24.1. General. The Supplier shall be solely responsible for, and shall defend, indemnify, and hold ASSOCIATION, including its shareholders, officers, directors, employees and consultants harmless from and against any and all claims, liabilities, demands, suits, proceedings (whether civil or criminal, other than criminal acts of ASSOCIATION), orders, judgments, penalties, settlements, fines and all associated costs, losses and expenses (including reasonable attorneys' and other professionals' fees) or any other damages (collectively, "**Damages**"), which ASSOCIATION and/or any of the above persons and entities may incur arising out of, incidental to, or connected with any of the following (all without derogating from any other remedy that ASSOCIATION and/or any of the above persons and entities may be entitled to under the circumstances, pursuant to this Agreement or under any Applicable Law):
- 24.1.1. the Works, including but without limitation, their design, assembly, integration, adjustment, tests and trials of the FACILITY (and/or any part thereof), as well as the Warranty;
  - 24.1.2. the use of the FACILITY and/or any part thereof, when the Damages arise from faulty design (including errors and omissions in design) or workmanship;
  - 24.1.3. any damage to property, death or injury to persons, arising out of, or in connection with, the FACILITY or the Works;
  - 24.1.4. the Supplier's breach of any term or provision of this Agreement or any Applicable Law;
  - 24.1.5. any claims against ASSOCIATION made by any Subcontractor arising from, or in connection with, the Works to be performed by the Subcontractor, including but without limitation any payments related to the Works or any part thereof to any Subcontractor;
  - 24.1.6. any negligent or willful act, error or omission by the Supplier, its employees, agents, representatives and Subcontractors, in the performance of this Agreement (including, for the removal of doubt, the execution of the Works);
  - 24.1.7. any actual or alleged infringement of Intellectual Property Rights of whatever type arising out of, in connection with, or otherwise resulting from the use of the Works by the Supplier, its Subcontractors or ASSOCIATION.
- 24.2. Payment of Indemnification Amounts. Any amount for which ASSOCIATION claims for indemnification hereunder shall be paid to it within the time specified in the notice requiring indemnification.
- 24.3. Defense against Proceedings. If any legal action or any other proceeding (collectively "**Proceedings**") are commenced against ASSOCIATION, in respect of which the Supplier may be liable to indemnify ASSOCIATION under this Section, then the following provisions shall apply:

- 24.3.1. Notice of such Proceedings shall be promptly given to the Supplier.
- 24.3.2. The Supplier shall, at its sole cost and expense, defend any litigation that may arise from such Proceedings and conduct all negotiations for the settlement of same, provided that any settlement of such Proceedings will be subject to Association's prior written consent and provided further that the Supplier shall not, in connection with such defense and/or settlement, (i) injure Association's reputation; (ii) purport to take any action expressly or implicitly on behalf of ASSOCIATION; or (iii) purport to make any representation and/or admission regarding and/or concerning ASSOCIATION or Association's activities. Association's written consent shall not be unreasonably withheld.
- 24.3.3. At the request and expense of the Supplier, ASSOCIATION shall afford reasonable assistance to the Supplier in the defense of such Proceedings.
- 24.3.4. So long as the Supplier timely takes over and properly conducts the negotiations or litigation, the Supplier shall not be required to reimburse ASSOCIATION the fees for services of attorneys retained by ASSOCIATION (if and to the extent so retained). If ASSOCIATION finds, however, that the Supplier is not coordinating its defense with ASSOCIATION in a proper manner or fails to defend ASSOCIATION diligently or if ASSOCIATION determines, at its sole and absolute discretion, that representation should be led by ASSOCIATION, then ASSOCIATION may retain the services of attorneys on its behalf and at the Supplier's expense, which attorneys will represent ASSOCIATION in the said Proceedings and may settle such Proceedings, provided that the Supplier gives its consent to such settlement in advance and in writing (which consent shall not be unreasonably withheld). For the removal of doubt, the settling of such Proceedings by ASSOCIATION shall not relieve the Supplier of the obligation to indemnify ASSOCIATION as provided in this Agreement (including without limitation, for reasonable legal fees and expenses incurred by ASSOCIATION in connection with the enforcement of the Supplier's indemnification obligations hereunder).
- 24.3.5. In addition to the above, if ASSOCIATION is a defendant in any Proceedings, ASSOCIATION may at its sole discretion participate and retain the services of attorneys on its behalf at its own expense.
- 24.4. Exclusions. Subject to the provisions of Section 24.5 below, in no event shall either Party be liable towards the other for any and all indirect or consequential Damages, including but not limited to loss of profit, loss of revenue, loss of goodwill, etc. with respect to this Agreement (including the Works to be performed hereunder), whether in an action based on contract, tort (including negligence) or any other cause of action.
- 24.5. Exceptions. The provisions of Section 24.4 above shall not apply with respect to claims of ASSOCIATION against Supplier as a result of:
  - 24.5.1. Any Damages to ASSOCIATION incurred in connection with endemic failures, including but without limitation such damages to ASSOCIATION as: replacement of components, publication of advertisements and/or

manpower specifically assigned to rectification of such faults and damages;

24.5.2. Alleged or actual infringement of Intellectual Property Rights by the Works or any part thereof;

24.5.3. Death or injury to caused by Supplier and/or any third party on its behalf.

24.6. Withholding of Payments and Collection on Guarantees. Without derogating from any other rights of ASSOCIATION under any Applicable Law and/or agreement, in the event that any claim is made against ASSOCIATION, or any lien or attachment is affixed against any of its properties, which claim, lien or attachment relates to or is based on circumstances and/or events which fall within the responsibilities and/or indemnification obligations of the Supplier as per Section 24.1 above, then unless the Supplier provides adequate security, to Association's satisfaction that the claim will be covered, ASSOCIATION may (i) withhold all payments then due or thereafter becoming due to the Supplier, until such claim is satisfied and such liens or attachments released, and (ii) settle the matter by paying any such claim or removing such lien or attachment, and recover any amounts required in order to do so by collecting upon any of the applicable Guarantees.

24.7. Without derogating from the above, Supplier hereby fully releases, exempts, discharges and shall indemnify and hold harmless the Association and/or any of its employees and/or managers and/or any of its members and/or board members and/or Hospital and/or the Israeli Ministry of Health and/or any one on their behalf from any claim and/or demand and/or liability (including for liabilities that may exist under any law and/or this Agreement) for any loss and/or damage and/or expense suffered by Supplier and/or any third party and/or to Supplier and/or any third party as a direct or indirect result of the Works and/or any of the undertakings of Supplier and/or any third party on its behalf and/or the execution of this Agreement by Supplier and/or any third party

## 25. SUBCONTRACTORS

25.1. The Supplier shall not engage any subcontractor ("**Subcontractor**") for the performance of any of its obligations under this Agreement without Association's prior written approval. Any such retention, if approved, shall be subject to the terms and conditions set forth herein below.

25.1.1. The Subcontractor has read the terms and the conditions of this Agreement and confirms, and warrants that the terms and the conditions of this Agreement, including its Appendixes are reasonable and agreeable to it. Furthermore, the Subcontractor shall abide by all applicable obligations under this Agreement which are required by it for the fulfillment of this Agreement, such as, but not limited to, obligations with regards to the Declarations and Representations, General Obligations, Intellectual Property, Spare Parts, Warranty Period, Optional Warranty, Risks and Liabilities, Delivery Terms, Termination, etc.

25.1.2. In the event that the Subcontractor shall fail to comply with this Agreement, ASSOCIATION shall have the right to rescind its approval (with respect to the Subcontractor) and/or or to instruct the Supplier to perform the relevant Works by itself or through another approved Subcontractor, whereupon the

Supplier shall immediately stop employing the non-complying Subcontractor, in accordance with the separation plan, approved in advance by ASSOCIATION.

25.1.3. The approval, non-rejection, recommendation, instructions, directives or determinations made by ASSOCIATION with regard to the employment of, and/or to the placement of orders for components and/or equipment with the Subcontractors, shall not relieve the Supplier of its responsibility to ASSOCIATION in connection with the execution of the Works, the supply of the FACILITY and the fulfillment of the obligations under this Agreement or from any liability assumed by or imposed upon the Supplier under this Agreement and under Applicable Law, nor shall it impose any liability or responsibility upon ASSOCIATION in connection with the Subcontractor, including, but without limitation, for any acts and omissions done and/or works executed by Subcontractors, and the Supplier shall be fully responsible towards ASSOCIATION for the acts and omissions of the Subcontractors.

25.1.4. The agreement entered into between the Supplier and the Subcontractors which relates to the performance of the Supplier's obligations under this Agreement shall include all of the following provisions:

25.1.4.1. Subcontractor is aware of and agrees to all provisions of this Agreement and their consequences as they relate or apply (expressly or implicitly) to such Subcontractor agreement and/or to the Works to be performed and/or to the equipment and/or components and/or materials to be supplied under such Subcontractor agreement and undertakes to comply with such provisions.

25.1.4.2. Subcontractor shall have no legal recourse against ASSOCIATION in any matter arising out of or connected with the Works. Without derogating from the generality of the above, Subcontractor shall waive any Retention Right against Supplier and ASSOCIATION, and will confirm that the payments to be made by Supplier to Subcontractors contain ample financial provisions concerning such waiver by Subcontractor of all Retention Rights.

25.1.4.3. Subcontractors shall abide by any order of ASSOCIATION regarding the removal of any specific employee, at Association's sole discretion.

25.1.4.4. Subcontractor shall agree to any purchases of Spare Parts and/or services by ASSOCIATION directly from Subcontractor or its subcontractors or suppliers.

## **26. FORCE MAJEURE**

- 26.1. Neither Party shall be liable for any delay in the performance of the Agreement, if such delay is, directly or indirectly, caused by, or arises from, an impediment beyond the control and without fault or negligence of the party effected, including the following occurrences fires, floods, accidents, civil unrest, acts of God, war, governmental interference or embargoes, strikes, labor difficulties or transportation delays of the FACILITY (collectively, "**Force Majeure**").
- 26.2. A Party affected by an event of Force Majeure shall (a) promptly notify the other Party in writing of any such event, the expected duration thereof, and its anticipated effect on the Party affected in terms of the performance required hereunder; and (b) make reasonable efforts to promptly remedy any such event of Force Majeure. Any supply delayed due to an event of Force Majeure shall be extended for such time as the event shall continue.

## **27. LANGUAGE**

This Agreement and any correspondence with regard to this Agreement shall be in English. All correspondence, orders, documentation, drawings, specifications, instructions, manuals etc. made by the Parties in performance of this Agreement will be in English.

## **28. APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

- 28.1. This Agreement shall, in all respects, be governed by and construed in accordance with the laws in force from time to time in the State of Israel.
- 28.2. The Uniform Law on International Sales (1964) and the United Nations (Vienna) Convention Contracts for the International Sale of Goods of April 11, 1980 shall not be applicable to this Agreement.
- 28.3. Any dispute in connection with this Agreement, including its validity or interpretation, shall be settled between the Parties. This also applies to other legal matters arising out of or in connection with this Agreement. The negotiations shall be conducted by at least two persons chosen by each Party for this purpose. The timeframe for the settlements of disputes between the Parties shall not exceed a period of three (3) months.
- 28.4. All matters in dispute, following failure of negotiations as outlined above, shall be referred to the competent court located in Tel Aviv, Israel and the competent Israeli courts shall have exclusive jurisdiction in all matters arising therefrom unless otherwise mutually and expressly agreed, in writing, by the Parties.
- 28.5. Dispute not Affecting Delivery. The Supplier agrees and undertakes that no Dispute shall entitle the Supplier to delay or withhold (i) the continuation of the Works so as to meet the Delivery Schedule or any other schedules agreed between the Parties, and/or (ii) the performance of the Warranty, subject to ASSOCIATION paying to the Supplier any undisputed amounts, and the Dispute shall be resolved pursuant to the Dispute resolution process specified in Section 28.3 above.



## 29. JOINT AND SEVERAL

- 29.1. In the event that the Supplier has submitted the proposal under the option of the "**Joint and Several Offer**" provided in the RFP, the following conditions shall apply:
- 29.1.1. All terms and conditions of this Agreement shall apply to both entities comprising the Supplier, jointly and severally- without derogating from the special provisions applicable to the Authorized Representative of the Joint and Several Offer, as detailed in Attachment H of the RFP.
  - 29.1.2. The SPM shall be an employee of the Bidder complying with the Pre-requisite in Section 1 of the General Terms and Conditions
  - 29.1.3. The Gurantees shall be produced by the Bidder complying with the Pre-requisite in Section 1 of the General Terms and Conditions
  - 29.1.4. Both entities comprising the Supplier undertake to fully cooperate one with the other in the fulfillment of the Supplier's undertakings herein and to this end, shall transfer one to the other relevant knowledge, intellectual property rights, and any other information and rights as shall be necessary to carry out Supplier's undertakings herein.
  - 29.1.5. ASSOCIATION shall have the right, at its sole discretion, to notify the Supplier that only one of the two entities in the Joint and Several Offer may continue to carry out the Supplier's undertakings herein and this shall not constitute a breach on ASSOCIATION's part. In this event, the remaining entity shall within 5 days of ASSOCIATION'S notice solely assume all of Supplier's undertakings herein and the other entity shall be obligated to transfer to the remaining entity any knowledge, rights, IP rights, documents, means, etc. as shall be necessary in order for the remaining entity to complete Supplier's undertakings in this Agreement, without cost and without delay and in any event no later than 5 days from ASSOCIATION'S written request.
  - 29.1.6. Without derogating from the above, both entities agree that ASSOCIATION shall be entitled to obtain from any court or tribunal, anywhere in the world any temporary or permanent injunction relief, necessary to obtain such knowledge, rights, IP rights, documents, means, etc, and hereby renounces to file and/or submit any and all objections to any request by ASSOCIATION, relating to such temporary or permanent injunction.

## 30. MISCELLANEOUS

- 30.1. All ASSOCIATION's undertakings under this Agreement shall not be binding upon ASSOCIATION and/or Hospital until this Agreement is dully signed by ASSOCIATION in accordance with its signatory rights. Supplier hereby fully releases, exempts, discharges and shall indemnify and hold harmless the ASSOCIATION and/or any of its employees and/or managers and/or any of its members and/or board members and/or Hospital and/or the Israeli Ministry of Health and/or any one on their behalf from any claim and/or demand and/or liability (including for liabilities that may exist under any law and/or this Agreement) for any loss and/or damage and/or expense caused to Supplier in the event that ASSOCIATION shall cancel and/or terminate this Agreement for any reason.
- 30.2. Waiver of Lien by the Supplier. The Supplier hereby waives from the moment of Final Acceptance any possessory lien, mechanic's lien or similar possessory or retention

right (in Hebrew: "זכות עיכבון") and preservation of ownership (in Hebrew: "שימור בעלות") (collectively, "**Retention Rights**") against ASSOCIATION with regard to the FACILITY, including, but not limited to, the items of the FACILITY that are in the possession of the Supplier in the Supplier's workshops or which are in the possession of Subcontractors. The Supplier represents and warrants that the consideration to be paid by ASSOCIATION under this Agreement includes ample financial provisions concerning the waiver by the Supplier of all Retention Rights with regard to the Works, and the payments to be made by the Supplier to its Subcontractors contain ample financial provisions for the insertion of a clause requiring a similar waiver by said Subcontractor in connection with the Works.

- 30.3. Association's Set-Off Right. Without derogating from any right of set-off conferred upon ASSOCIATION elsewhere in this Agreement or under Applicable Law, ASSOCIATION shall have the right to set-off against any amounts that may be owed to the Supplier (or to any Subcontractor, as the case may be) pursuant to this Agreement and/or to any other agreement between ASSOCIATION and the Supplier, any amount, debt or payment owed by the Supplier (or by any Subcontractor) to ASSOCIATION pursuant to this Agreement (including but without limitation in the form of indemnification or compensation for damages, regardless if their sum is liquidated or not).
- 30.4. Exercise or Non-Exercise of Rights by the Parties. Consent by a Party to deviate from any of the provisions of this Agreement in a particular case shall not constitute a precedent, and no inference by analogy shall be drawn from it in respect of any other case. If a Party does not exercise any of the rights conferred upon it by this Agreement or any Guarantee arising hereunder in a particular instance, such fact shall not be regarded as a waiver of those rights in any other instance and shall not be considered as implying or indicating a waiver of any right under this Agreement.
- 30.5. Entire Agreement; Amendments. This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof, superseding all prior and contemporaneous drafts (including drafts of the agreement that formed part of the RFP), proposals, negotiations, communications, documents, understandings and agreements, written or oral, with respect to the subject matter of this Agreement, unless specifically incorporated herein by reference. Any such superseded documents shall not be used in any manner for the interpretation of this Agreement and shall not constitute admissible evidence in any proceedings between the Parties. This Agreement may only be amended by a written document signed by both Parties.
- 30.6. No Third Party Beneficiaries. All rights and obligations of the Parties hereunder are personal to them. This Agreement is not intended to benefit, nor shall it be deemed to give rise to, any rights to any third party (including, without limitation any Subcontractor) except that the Hospital and/or the Israeli Ministry of Health shall be considered a third party beneficiary and may replace ASSOCIATION upon their absolute discretion in any claim and enforce any claim of ASSOCIATION under this Agreement and/or Applicable Law, and Supplier waives any demand and/or claim for such replacement.
- 30.7. Assignment. This Agreement, including the rights and obligations herein, may not be transferred by the Supplier to any third Party without receiving Association's prior written consent, which shall not be unreasonably withheld. ASSOCIATION may at

any time, upon its absolute discretion, assign and/or transfer any and/or all of its rights (including its right to sue for damages) and/or obligations (including the obligation to pay the consideration under this Agreement) under this Agreement to the Hospital and/or any other entity controlled and/or affiliated to the Hospital and/or Israeli Ministry of Health by providing written notice to Supplier ("**Notice of Assignment**"). Upon receipt of Notice of Assignment by the Supplier, the assignment and/or the transfer shall be binding and the Supplier may not object to such assignment and/or transfer and shall fulfill any and all obligations resulting from such assignment and/or transfer as directed by ASSOCIATION and/or Hospital. Upon Assignment, ASSOCIATION shall be exempted and forever released from any of its obligations and/or undertakings under this Agreement and Supplier discharges ASSOCIATION and/or any other party on its behalf from any liability. The Supplier hereby waives any and all claims and/or demand against ASSOCIATION and/or Hospital resulting from the implementation of this Section by ASSOCIATION and/or the Hospital.

30.8. Severability. If any provision of this Agreement is held or made invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect the remainder of this Agreement, and the invalid or unenforceable provisions shall be replaced by a mutually acceptable provision, which, being valid, legal and enforceable, comes closest to the original intentions of the Parties hereto and has like economic effect.

30.9. Notices. All notices, unless otherwise expressly provided in this Agreement, shall be in writing and shall be sent by either of the Parties to the other Party by registered mail or personal delivery to the addresses set forth at the head of this Agreement, and shall be deemed to have been given seven (7) Business Days after the date on which the notice was posted, or in the case of notice by fax, twenty four (24) hours after dispatch by fax, or in the case of personal delivery, at the time of delivery.

**IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT BY THEIR DULY AUTHORIZED REPRESENTATIVES AS OF THE EFFECTIVE DATE.**

**Association**

\_\_\_\_\_

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

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

Title: \_\_\_\_\_

\_\_\_\_\_

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

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

Draft for discussions

Title: \_\_\_\_\_

**Supplier**

\_\_\_\_\_

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

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

Title: \_\_\_\_\_

\_\_\_\_\_

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

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

Title: \_\_\_\_\_

We, the undersigned, Tel Aviv Sourasky Medical Center ("**Hospital**"), hereby confirm our consent to the provisions of the above Agreement, and without limitation to the above, in particular those related directly to us, to the Hospital Works (as defined in the above agreement) and the Hospital Project Manager (HPM) on our behalf.

\_\_\_\_\_

**Appendix A**

**Technical Specifications**

**Appendix A1**  
**Supplier's proposal to the RFP**

**Appendix B**

**Consideration Appendix**

As detailed in Appendix B of the RFP– Bidder's Proposal Form

**Appendix C**  
**Supplier's Bank Account Information**

**PART A – Supplier's Bank Details**

*[to be completed by the Supplier's authorized signatories]:*

On behalf of the Supplier, \_\_\_\_\_-[Supplier name], we the undersigned, \_\_\_\_\_[authorized signatories on behalf of the Supplier] hereby request that all payments to be paid to the Supplier by Association Of Friends of the Tel Aviv Sourasky Medical Center under this Agreement shall be made by means of bank transfer to the Supplier's bank account according to the following details:

**Bank Account No.:** \_\_\_\_\_  
**Swift Code:** \_\_\_\_\_  
**EBAN Code** (applicable to European Accounts): \_\_\_\_\_  
**Branch Number:** \_\_\_\_\_  
**Bank Name:** \_\_\_\_\_  
**Bank Address:** \_\_\_\_\_

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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**PART B - Certificate of Authorization**

*[to be completed by an ADVOCATE / C.P.A]:*

I, \_\_\_\_\_ [Advocate/C.P.A] of \_\_\_\_\_, hereby certify that \_\_\_\_\_ and \_\_\_\_\_ are fully empowered by \_\_\_\_\_ [Supplier] (the "Supplier") to sign the Bank Account Form, and hereby certify that their signatures upon the Bank Account Form are fully binding upon the Supplier in accordance with the Supplier's Articles of Association.

Signature and stamp: \_\_\_\_\_  
\_\_\_\_\_

**Bank Account Form**

**PART B - Certificate of Authorization**

*[alternative authorization: to be completed by the SUPPLIER'S BANK]:*

We, the undersigned \_\_\_\_\_ [Bank] hereby declare that as of \_\_\_\_\_ [date of Supplier's signature on Part A above] the \_\_\_\_\_ [Supplier] is the registered owner of the above mentioned account and certify that Part A above has been signed by the Supplier's authorized signatories. We undertake to promptly inform Association Of Friends of the Tel Aviv Sourasky Medical Center regarding any change in the ownership of the account or the authorized signatories.

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Stamp: \_\_\_\_\_





**Appendix E**

**Appendix F**

**General Spare Parts Price List and Delivery Terms**

**Appendix G**  
**Form of Down Payment/Payment Guarantee**

To: Association Of Friends of the Tel Aviv Sourasky Medical Center ("**ASSOCIATION**")  
6 Weizmann St.  
Tel Aviv

**Down Payment/Payment [*delete as applicable*] Guarantee**

Whereas, ASSOCIATION and \_\_\_\_\_ ("**Supplier**") entered into Agreement No. \_\_\_\_\_ on \_\_\_\_\_ (the "**Agreement**");

Now, we Bank \_\_\_\_\_ hereby irrevocably guarantee to ASSOCIATION to be responsible and indemnify ASSOCIATION for repayment by Supplier to ASSOCIATION of the sum of \_\_\_\_\_ € (in words) \_\_\_\_\_ EURO, all in accordance with the provisions therein (the "**Guarantee**").

This Guarantee is unconditional and shall not be revocable by notice or otherwise and our liability hereunder shall not be impaired or discharged by any extensions of time or variation or alterations made, given, conceded or agreed (with or without our knowledge or consent) under the said Agreement.

This Guarantee shall remain in force and effect until and including the [day] of [month] [year] and after such date it shall expire.

In order to collect any amount under this Guarantee, ASSOCIATION shall not have to refer first to Supplier, nor shall it have to produce any judgment or any other judicial document, nor shall it have to prove any breach, failure or non-compliance on the part of Supplier or on the part of any person acting for it or on its behalf or in its name or any other person, and a written demand or fax by the Deputy General Manager, Economics & Finance of ASSOCIATION or by a person nominated in writing by him, substantially in the following form, shall be sufficient for all purposes of this Guarantee, and specifically shall be sufficient to collect any sums under this Guarantee from us, and we shall pay such sums immediately upon such first demand by ASSOCIATION:

"Pursuant to the Guarantee issued by you on \_\_\_\_\_, you are hereby instructed to pay immediately to Association Of Friends of the Tel Aviv Sourasky Medical Center the sum of \_\_\_\_\_ to Account Number \_\_\_\_\_ at \_\_\_\_\_ (Name of Bank) \_\_\_\_\_

\_\_\_\_\_  
General Manager  
Association Of Friends of the Tel Aviv Sourasky Medical Center

This Guarantee, and our obligations hereunder, shall be governed by and constructed solely in accordance with the substantive laws of the State of Israel (irrespective of its choice of law principles) and the competent courts in Tel Aviv, Israel, shall have sole and exclusive jurisdiction over every dispute arising from, or in connection with, this Guarantee.

\_\_\_\_\_  
**Date**

**Appendix H**  
**Change Order Form**

**Part 1**

**FROM:** \_\_\_\_\_

**CHANGE ORDER NUMBER:** \_\_\_\_\_

**ASSOCIATION Project Manager**

**DATE OF CHANGE ORDER:** \_\_\_\_\_

**TO:** \_\_\_\_\_

**Supplier**

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IN ACCORDANCE WITH OUR AGREEMENT MADE EFFECTIVE AS OF \_\_\_\_\_, 20\_\_, YOU ARE HEREBY NOTIFIED OF THE FOLLOWING ALTERATIONS TO THE TECHNICAL SPECIFICATIONS, DETAILED BELOW. AS OF \_\_\_\_\_, 20\_\_, THE FACILITY SHALL EFFECTIVELY BE CONSTRUCTED IN ACCORDANCE WITH THE AMENDED TECHNICAL SPECIFICATIONS.

WITHIN TEN (10) BUSINESS DAYS FROM YOUR RECEIPT OF THIS CHANGE ORDER, YOU SHALL PROVIDE US WITH A WRITTEN CONFIRMATION AND, IF APPLICABLE, SHALL STATE REQUESTED CHANGES TO THE FACILITY AND/OR ANY PART THEREOF, FACILITY PRICE, DELIVERY TIME, AND ANY OTHER TERMS RELEVANT TO THE PROVISION THEREOF. SUCH REQUESTED CHANGES, IF ANY, SHALL BE TREATED IN ACCORDANCE WITH THE AGREEMENT.

*(attach additional documentation if necessary)*

Description of Alteration to Technical Specifications: \_\_\_\_\_

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

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Signature: \_\_\_\_\_

HPM, on behalf of ASSOCIATION

Date:

**Part 2**

Supplier's requests for changes

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Signature: \_\_\_\_\_

SPM, on behalf of the Supplier

Date:

**Part 3**

Final decision regarding the Changes, and agreements between the Parties regarding impact of the Changes on the FACILITY Price and Delivery Time

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Signature: \_\_\_\_\_

HPM, on behalf of ASSOCIATION

Date:

Signature: \_\_\_\_\_

SPM, on behalf of the Supplier

Date:

**Appendix I**

**Training plan**



**Appendix J**

**Detailed Design Plan ("DDP")**

**Appendix K**  
**Quality Assurance Plan ("QAP")**

**Appendix L**  
**Inspection Test Plan ("ITP")**

**Appendix M**

**Safety and Security Regulations**