

CONDITIONS OF CONTRACT

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CONDITIONS OF CONTRACT

1 DEFINITIONS

1.1 For the purposes of this Contract (defined below), the following words and phrases shall have the following meanings unless the context otherwise requires:

- (a) **"NKF"** means The National Kidney Foundation and includes any officer or other person authorized by NKF to act on its behalf.
- (b) **"Conditions of Proposal"** means the terms and conditions of a valid proposal issued by NKF to the Contractor for the purpose of inviting the Contractor to submit its proposal for the Services.
- (c) **"Contractor"** means the successful Vendor who has been awarded this Contract by NKF to provide the Services.
- (d) **"Contract"** means this contract between NKF and the Contractor for the provision of the Services in accordance with these Conditions of Contract, Requirement Specifications, Conditions of Proposal, Price Schedule, Letter of Acceptance and all documents referred to therein together with the Contractor's formal acceptance thereof, or where a separate formal agreement is entered into, such agreement between NKF and the Contractor, with any authorized variations if executed between NKF and the Contractor.
- (e) **"Contract Price"** means the total price payable to the Contractor under this Contract for the provision of Services.
- (f) **"Deliverables"** means the work product, output or other items developed in the course of the Services, as specified in the Requirement Specifications as items to be delivered to NKF.
- (g) **"Letter of Acceptance"** means the letter in a form prescribed by NKF executed by the Contractor upon being offered the Contract.
- (h) **"Price Schedule"** means the form setting out the agreed price(s) of the Services.
- (i) **"Requirement Specifications"** means the specifications issued by NKF to the Contractor for the purpose of inviting the Contractor to submit its RFP for the Services, with any authorized variations, if executed between NKF and the Contractor.
- (j) **"Services"** means all work which the Contractor is required to carry out under this Contract.
- (k) **"Vendor"** means a party who or which has offered to provide the Services in accordance with the terms of the Contract.

1.2 In this Contract:

- (a) References to words incorporating the masculine gender only shall where the context so admits include the feminine and/or neuter genders and vice versa and references in this Contract to words incorporating the singular meaning shall include the plural meaning and vice versa and words denoting natural persons shall include bodies corporate, incorporate, associated partnerships, firms, trusts, associations, joint ventures, governments, governmental agencies or departments or any other entity, and all such words shall be construed interchangeably in that manner.
- (b) The clauses, paragraph or clause headings and marginal notes in this Contract have been inserted for ease of reference and convenience only and shall not affect the construction or interpretation of this Contract.
- (c) References to clauses and schedules shall be references to Clauses of and the Schedule(s) to this Contract. The Schedule(s) are to have effect and be construed as an integral part of, and shall be deemed to be incorporated into this Contract.

- (d) References to statutory provisions shall be construed as references to those provisions as respectively amended, consolidated, extended or re-enacted from time to time and all statutory instruments or orders made pursuant to it.
- (e) In the event of a conflict between any of the terms of this Contract, including its Schedule(s), the conflict will be resolved in the following order or priority:
 - (1) these Conditions of Contract;
 - (2) the additional terms and conditions set out in the Schedule(s) hereto;
 - (3) the Requirement Specifications
 - (4) the Price Schedule;
 - (5) the Letter of Acceptance; and
 - (6) the Conditions of Proposal.

2 SCOPE OF CONTRACT

- 2.1 In consideration of Contract Price, the Contractor shall perform the Services and provide the Deliverables (if any) in a professional and timely manner in accordance with this Contract.
- 2.2 The Contractor shall comply with all instructions of NKF, its officers, agents, suppliers and contractors, and obey all rules and regulations governing the use of and access to any goods, services or premises in the course of performing its obligations under this Contract.
- 2.3 In the event of any discrepancy, error or omission on the part of NKF in this Contract, the parties shall meet to resolve the discrepancy, error or omission and such resolution shall be final and binding .
- 2.4 In the event of any discrepancy, error or omission on the part of the Contractor in its proposal, the Contractor shall resolve the discrepancy, error or omission to the satisfaction of NKF and there shall be no increase in the price payable to the Contractor.

3 PROVISION OF SERVICES

- 3.1 The Contractor shall perform the Services and provide the Deliverables on the dates, at the place(s) and in the manner and according to the requirements specified in this Contract. The Contractor shall obtain a receipt from NKF of the Services and/or Deliverables PROVIDED that the issue of such receipt shall not be any representation on the part of NKF that the Services or Deliverables have been provided in accordance with this Contract and shall not relieve the Contractor from its responsibility to re-perform any deficient Services or re-deliver and deficient Deliverables.
- 3.2 The Contractor shall, when so required by NKF, re-perform any Services or re-deliver any Deliverables if such Services or Deliverables have been found to be deficient, defective or in any way not in accordance with the Contract, failing which NKF shall have the right, in addition to any other remedies which it may have under this Contract or otherwise, to appoint carry out such work or to appoint any other third parties to carry out such work as NKF shall deem fit to rectify any deficiencies, defects or non-conformance to this Contract and all costs incurred thereby shall be deducted from any monies due or which may become due to the Contractor under this Contract or shall be recoverable as a debt. A certificate by an officer of NKF as to the amount of damages caused and losses suffered by NKF shall, save for manifest error, be final and conclusive, provided always that the amount of damage caused and losses suffered by NKF shall be supported by the relevant evidentiary documentation.

4 DELAY IN DELIVERY OR PERFORMANCE

- 4.1 If the Contractor fails to perform the Services or provide any Deliverables by the date(s) specified in this Contract or otherwise in accordance with the requirements of this Contract, NKF shall, in addition to any other remedies which it may have under this Contract or otherwise, have the right to:
 - (a) cancel all or any such items of Services from this Contract without being liable therefore in damages, obtain them from other sources and deduct all increased costs thereby incurred from

any moneys due or to become due to the Contractor or recover such increased costs from the Contractor as damages; or

- (b) deduct from any moneys due or to become due to the Contractor or require the Contractor to pay, as and for liquidated damages a sum to be calculated at the rate of one-half percent (1/2%) of the Contract Price in relation to such Services or Deliverables that are delayed for each day (including Sundays and Public Holidays) which may elapse between the due date of performance of such Services or delivery of such Deliverables as specified in this Contract and the actual date of performance or delivery, provided that the maximum liquidated damages payable by the Contractor in respect of all incidents of delay or failure described in this Clause shall not exceed fifteen percent (15%) of the Contract Price. The Contractor agrees that the amount of payable under this Clause 4.1(b) is a genuine pre-estimate of the loss suffered or incurred by NKF and not a penalty.

- 4.2 Notwithstanding Clause 4.1 above, in the event the Contractor fails to comply with its obligations under Clause 3 and the failure remains unremedied for thirty (30) days after being called to its attention by written notice from NKF, even after the maximum amount of total liquidated damages has been paid by the Contractor to NKF, NKF shall have the right to terminate this Contract forthwith without compensation and without being liable therefore to the Contractor in damages and the Contractor shall indemnify NKF for any loss, expense or damage suffered or incurred by NKF in accordance with Clause 13.

5 ALTERATION OF SPECIFICATIONS

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

6 TITLE TO DELIVERABLES

- 6.1 The entire right, title and interest in and to all intellectual property rights and in particular the copyright in the Deliverables (if any) and any registrations and copyright applications relating thereto and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the Deliverables shall by way of present assignment of future intellectual property vest exclusively in NKF, its successors and assigns. The Contractor shall do all such things and sign and execute all such documents as may reasonably be required in order to perfect, protect or enforce any of the intellectual property assigned and granted to NKF hereunder.
- 6.2 The Contractor agrees that NKF is entitled to make any changes, have the changes made or require the Contractor to make any changes to the Deliverables (material or otherwise) which NKF in its sole discretion considers necessary or desirable, including amendments to ensure that the Deliverables conform to NKF's requirements and is updated and accurate.
- 6.3 The Contractor agrees that NKF is entitled exercise all intellectual property rights in the Deliverables, whether changes have been made to it or not, in any context and with or without other material.
- 6.4 The Contractor hereby represents, warrants and undertakes that:
 - (a) the Contractor is the sole and beneficial owner of all intellectual property rights in the Deliverables, and has obtained, or will obtain prior to submitting the Deliverables to NKF, all necessary assignments of intellectual property rights subsisting in contributions to the Deliverables by any of its employees, permitted sub-contractors and any other third party;

- (b) the Contractor has obtained or will obtain prior to submitting the Deliverables to NKF all written consents, waivers, licences and permissions in favour of the Contractor and NKF from any and all persons and entities for the collection, use and disclosure of personal information in the Deliverables;
- (c) the Contractor are original works and do not incorporate any adaptation or reproduction of a substantial part of material in which copyright subsists and in which copyright is owned by a person other than the Contractor;
- (d) NKF will not infringe any intellectual property rights or moral rights held by any person or entity by exercising any intellectual property rights in the Deliverables, whether changes have been made to it or not, in any context and with or without other material, including by publishing, distributing or otherwise making available the Deliverables anywhere in the world in any and all media by any manner or means now known or invented in future;
- (e) the Contractor has not granted, and will not grant, any rights or enter into any agreements that will prevent or limit the rights of NKF under the Contract;
- (f) to the best of the Contractor's knowledge, the Deliverables are error-free, accurate, up to date as at the date of completion of the Project and fit for NKF's purposes as set out in the Requirement Specifications; and
- (g) the Deliverables do not contain any content, depiction of or reference to any person or entity that shall infringe upon or violate any rights of any person or entity, and shall not contravene any data protection, privacy or other laws, domestic or foreign, or be otherwise improper, or subject NKF to any action, proceedings or demands from any persons or entities, or damage or bring into disrepute the name or reputation of NKF.

6.5 The Contractor shall notify NKF as soon as practicable if the Contractor becomes aware:

- (a) of any infringement or suspected infringement of the intellectual property rights or moral rights of any third party arising from the Deliverables or the publication, distribution and making available of the Deliverables by NKF; or
- (b) of any infringement or suspected infringement by any third party of the intellectual property rights in the Deliverables.

6.6 The Contractor agrees to provide NKF with all reasonable assistance in relation to the conduct or defence of any legal proceedings which may be commenced by or against NKF in relation to an infringement of intellectual property rights or moral rights in, or arising from, the Deliverables.

7 CONTRACT PRICE

7.1 The Contract Price shall represent the total cost to NKF and the Contractor shall not be entitled to any additional payment of any costs and expenses it may incur in the discharge of its obligations under this Contract. For the avoidance of doubt, the Contract Price shall be inclusive, where applicable, of all transport, lifting, packing, freight, handling, delivery, insurance, customs clearances, import and export duties, Services and Services Tax (GST) and other taxes that may be levied by any government or other authority from time to time.

7.2 In the event that the Contract Price or any other monies payable under this Agreement are subject to withholding taxes or other deductions as may be required by the relevant authorities, NKF shall be entitled to withhold or implement the deduction, as required.

7.3 The Contractor warrants that the terms (including pricing) of this Contract are comparable to or better than the terms (including pricing) offered by the Contractor to any of its similarly situated commercial customers of equal or lesser size for comparable Services and Deliverables. If the Contractor offers more favourable terms (including pricing) to any such commercial customers during the term of this Contract, such terms shall also be made available to NKF within thirty (30) days from the date of such offer. This Contract shall be deemed amended to incorporate such lower prices upon notification to NKF from the Contractor.

8 PAYMENT

- 8.1 Unless otherwise specifically provided in this Contract or otherwise agreed between the parties, NKF's obligation to pay is conditional upon its receiving an invoice from the Contractor for the amount payable, giving NKF no less than thirty (30) days from receipt of such invoice to make payment.
- 8.2 If any invoice is not submitted to NKF within six (6) months upon completion of the Services, NKF shall be released and discharged from any liability to make any payment of the debt in relation to such invoice.
- 8.3 Payment by NKF of any invoices shall not affect NKF's right to reject any of the Services or Deliverables or the Contractor's responsibility to re-perform any Services or re-deliver any Deliverables that do not conform to this Contract. NKF shall have no obligation to pay for any such Services or Deliverables which have not been re-performed or re-delivered by the Contractor in accordance with Clause 3.2. Such non-payment shall not constitute a default or breach of this Contract by NKF. In the event of any dispute between NKF and the Contractor with respect to the invoiced Services and/or other related matters, NKF shall pay the undisputed amount and NKF and the Contractor shall promptly seek to resolve the disputed matters in accordance with Clause 22 of this Contract.
- 8.4 The Contractor shall submit such invoices or other documents as NKF may require for the purpose of making payment.
- 8.5 NKF shall not pay for expenses or cost of whatever nature other than those expressly set forth in this Contract.
- 8.6 Without prejudice to any other rights and remedies of NKF, the amount of any payment or debt owed by the Contractor to NKF under this Contract may be deducted by NKF from any monies payable by NKF to the Contractor under this Contract.
- 8.7 There will be no late payment service charge of any kind.

9 SECURITY DEPOSIT

- 9.1 Where required by NKF as a condition precedent to the commencement of any work under this Contract, the Contractor shall, upon signing of this Contract and at its own expense, to lodge with NKF a security deposit in the form of Banker's Guarantee or Performance Bond / Performance Guarantee (from an institution acceptable to NKF) equivalent to **five percent (5%)** of the Contract Price in form and substance similar to the specimen attached hereto issued by a bank or insurance company registered with the Monetary Authority of Singapore.
- 9.2 In the event of any default or breach of any of the obligations by the Contractor under the Contract, NKF may at its sole discretion draw on the security deposit to satisfy any liquidated or other damages as may become due to NKF under the Contract.
- 9.3 In the event that the security deposit provided for in Clause 9.1 is inadequate to fully indemnify or compensate NKF for any loss, liability, cost, expenses or damage incurred or suffered by NKF as aforesaid, the Contractor shall, forthwith on demand by or on behalf of NKF, pay to NKF all losses, liabilities, costs, expenses (including without limitation, legal fees on a solicitor and own client basis) and/or damages as may be incurred or suffered by NKF to the extent to which the security deposit proves inadequate.
- 9.4 The provisions of this Clause shall not affect the rights and remedies expressly reserved by NKF or bar NKF from claiming losses, expenses, costs or damages incurred or sustained or likely to be incurred or sustained by NKF as a result of any default breach of this Contract by the Contractor.
- 9.5 The security deposit shall be refunded to the Contractor with the remaining value as provided in Clause 9.2, only upon the termination/expiry of this Contract or applicable warranty period, subject to the Contractor's compliance with the terms of this Contract.

10 COMPLIANCE WITH LAW, RULES AND REGULATIONS

- 10.1 The Contractor shall, at its own cost and expense, obtain and maintain all licences, authorisations, permits and other certifications required without any restrictions or qualifications whatsoever so as to enable the Contractor to fulfil all its obligations under this Contract.

11 OBTAINING SERVICES ELSEWHERE WHEN FREQUENCY IS NOT SPECIFIED

- 11.1 If the total frequency and extent of any Services are not specified in the Contract or stated to be merely estimated, NKF shall be under no obligation to obtain the Services from the Contractor. Any statement of the estimated frequencies and quantities of Services required which may have been given to the Contractor in the course of inviting request for proposal shall be deemed to be approximate only and merely for the information of the Contractor.

12 WORKS ORDERS

- 12.1 Where the Contractor is appointed by NKF under this Contract to provide the Services as and when required by NKF, orders for any Services shall be given by NKF from time to time in writing in such form as NKF shall deem appropriate (each hereinafter referred to as a "**Works Order**"). Where the Contractor receives, during the period of time specified in the Contract, any Works Order for the Services, the Contractor shall proceed to provide the Services in accordance with the Contract. NKF shall be under no obligation to purchase the Services specified in this Contract except to the extent of the Works Order for those Services issued by NKF.

13 INDEMNITY

- 13.1 The Contractor shall indemnify, defend and hold harmless NKF, its servants, agents, employees, officers and departments from and against all or any liability, claims, expenses, including court costs and fees of solicitors (on a full indemnity basis) and other professionals in respect of any loss or damage (including special and consequential loss or damage) suffered by any person(s) whatsoever (including but not limited to any patient or visitor) to any property or personal injury to or death of any person arising out of or in connection with or contributed to by a breach of any term or warranty of this Contract by the Contractor, its servants or agents or the negligence or wilful default of the Contractor, its servants or agents PROVIDED THAT the Contractor may not enter into any settlement, agreement, arrangement or compromise that would have a material adverse effect on NKF.
- 13.2 The Contractor shall indemnify, defend and hold harmless NKF, its servants, agents, employees, officers and departments against any claims by any workmen, employee or agent or subcontractor or any workmen, employee or agent of such subcontractor of the Contractor for any personal injury and/or death suffered in connection with the performance of this Contract including but not limited to payment under the Workmen's Compensation Act (Cap. 354) and for any costs, charges or expenses incurred in respect thereof.

14 REMEDIES FOR INTELLECTUAL PROPERTY INFRINGEMENT

- 14.1 In the event of any claim against NKF (including for this purpose, every staff of NKF thereof), or NKF being held liable for damages arising out of any claim at the time on account of patent rights and/or intellectual property rights which may be payable by virtue of NKF's acceptance, possession, purchase, use or distribution of the Deliverables or any part or unit thereof under this Contract, the Contractor shall indemnify NKF and its staff against all such claims and costs, charges and expenses in respect thereof.
- 14.2 In the event that any such infringement occurs or may occur, the Contractor shall at its own expense:
- (a) procure for NKF the right to continue accepting, possessing, purchasing, distributing or using the Deliverables for the purposes of this Agreement, or

- (b) modify or amend the Deliverables or infringing part thereof so that the same becomes non-infringing without affecting the capacity, performance and/or fitness for purpose of the Deliverables, or
 - (c) replace the Deliverables or infringing part thereof with other non-infringing Deliverables or part thereof of identical capability and performance.
 - (d) if none of the options listed above can be accomplished within a reasonable time or are otherwise not commercially reasonable, refund to NKF this Contract Price for the Services or Deliverables as applicable which gives rise to the infringement, without prejudice to any other rights of NKF.
- 14.3 The Contractor agrees to give NKF prompt written notice of any threat, warning, or notice of any such claim or action against the Contractor or any user or any supplier of components utilised in any Deliverables or any other materials furnished hereunder by the Contractor, which could have an adverse impact on NKF's use of the Deliverables, or portion thereof, or such materials.

15 INSURANCE

- 15.1 Where required by NKF as a condition precedent to the commencement of any work under this Contract, the Contractor shall take out at its own expense with an insurance company approved by NKF, such policy or policies of insurance in terms to be approved by NKF, indemnifying the Contractor and NKF from all liabilities arising out of claims by any and every workman or employee whether such liability arises from the Workmen's Compensation Act (Cap 354) or otherwise and from all costs and expenses incidental or consequential thereto.
- 15.2 Where required by NKF as a condition precedent to the commencement of any work under this Contract, the Contractor shall take out at its own expense with an insurance company to be approved by NKF, a policy or policies of insurance in terms to be approved by NKF, indemnifying the Contractor and NKF for their liability in respect of personal injury or death or loss or damage to property and against loss or damage suffered or incurred by NKF by fire and such other perils as NKF may specify.
- 15.3 Any policy or policies taken out by the Contractor in compliance with Clauses 15.1 or 15.2 hereof shall be deposited with NKF or with such department as NKF shall determine and the Contractor shall maintain such policy or policies in full force and effect by the payment of all premiums from time to time on the first day on which the same ought to be paid until completion of this Contract and shall, if NKF so directs, deposit with NKF the receipts in respect of the payment of such premiums.
- 15.4 If any default is made by the Contractor in complying with the terms of Clauses 15.1 or 15.2 and of this Clause, NKF may, without prejudice to any other remedy available to NKF for breach of any terms of the Contract:
- (a) withhold all payments which would otherwise be due to the Contractor under this Contract and out of such money so withheld satisfy any claim by workmen or employees that would have been borne by an insurance company had the Contractor not made default in maintaining a policy of insurance, and/or
 - (b) pay such premiums as may have become due and remain unpaid and deduct the amount of such premiums from any money due or becoming due to the Contractor.
- 15.5 Nothing in this Clause 15 shall be construed to take away or to waive or in any manner to modify the right of NKF to be indemnified by the Contractor in respect of all claims, costs and other expenses whatsoever which, by reason of the Contractor's default or otherwise, may become payable by NKF.

16 WARRANTY

- 16.1 The Contractor warrants that:
- (a) The Services shall be provided using reasonable care and skill and in accordance with the Requirement Specifications and the terms of this Contract.

- (b) Where the Contractor supplies in connection with the provision of any Services any goods (including the Deliverables) supplied by a third party, the Contractor shall assign to NKF the benefit of any warranty, guarantee or indemnity given by the third party supplier to the Contractor.
- (c) NKF shall acquire good and clear title to the Deliverables, free and clear of all liens, claims, encumbrances and other restrictions whatsoever;
- (d) The Deliverables provided pursuant to this Contract do not infringe upon any patent, copyright or similar proprietary right (including, but not limited to, misappropriation of trade secrets) of any third party;
- (e) NKF shall quietly and peacefully possess all Deliverables provided pursuant to this Contract subject to and in accordance with the provisions of this Contract;
- (f) The Deliverables provided pursuant to this Contract will be in good condition, good working order, ready for use and free from any defects in material and workmanship, and the Contractor will make all adjustments, repairs and replacements necessary to correct such defects;
- (g) The Services and Deliverables provided pursuant to this Contract shall be fit for the ordinary purposes for which such Services and Deliverables are used and shall be provided or developed in accordance with the Requirement Specifications and such other descriptions, warranties and performance criteria for such Services and Deliverables as are set forth in this Contract up to the expiry of the applicable warranty period (if any). The Contractor hereby acknowledges that it knows the purpose for which the Services are intended; and
- (h) All Services and Deliverables provided pursuant to this Contract shall be designed, produced, installed, furnished and in all respects provided, certified and maintained in conformance with all codes, ordinances, regulations and laws, and administrative and regulatory requirements that were in effect at the time of such design, production, installation or furnishing.

16.2 The Contractor further warrants that the following facts and circumstances are and at all times shall be, true and correct:

- (a) The Contractor has the requisite corporate power and authority to enter into this Contract and that this Contract does not conflict with any other agreement or obligation by which the Contractor is bound;
- (b) There is no material suit, action, arbitration or legal, administrative or other proceeding or governmental investigation pending or to its best knowledge or belief, threatened against it or affecting its ability to perform its obligations under this Contract; and
- (c) The signatories for and on behalf of the Contractor are authorized and fully empowered to execute this Contract on behalf of the Contractor.

17 ADDITIONAL TERMS AND CONDITIONS

17.1 The Contractor accepts the additional terms and conditions set out in the Schedule(s) (if any) to these Conditions of Contract.

18 SUSPENSION OR TERMINATION

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

- (a) the Contractor fails to comply with this Contract and shall fail to remedy such breach (if capable of remedy) within thirty (30) days after being given notice by NKF so to do; or

- (b) without prejudice to sub-section (a) above, the Contractor is consistently in breach of this Contract regardless of the fact that the Contractor may have for each such breach, remedied that breach within any time period stipulated in this Contract; or
 - (c) any item of Services, Deliverables or part thereof provided or to be provided by the Contractor is declared or advised to be unsafe for use by any competent authority or by any notice, regulation or requirement of any competent authority; or
 - (d) any circumstances arise which give reasonable grounds in NKF's opinion for its belief that the Contractor has or may become incapable of performing any of its obligations under this Contract; or
 - (e) any circumstances arise which give reasonable grounds in NKF's opinion for its belief that the Contractor has obtained any unfair advantage or used any improper/unfair/unethical/unscrupulous/fraudulent acts or conduct in obtaining its Contract with NKF; or
 - (f) any circumstances arise which give reasonable grounds in NKF's opinion for its belief that the Contractor has acted in a manner incompatible/inconsistent/prejudicial to the image of NKF.
- 18.2 In the event of termination under Clause 18.1 above, the Contractor shall refund and repay to NKF any advance payments received from NKF without prejudice to NKF's right to claim compensation for increased costs in obtaining the Services from other sources, and for any loss, expense or damage suffered or incurred by NKF.
- 18.3 During the notice period, the Contractor shall only provide Services, and NKF will only pay for Services, in accordance with the unrevoked instructions of NKF pursuant to this Contract. The Contractor shall, at NKF's discretion, provide any Services ordered during the notice period in accordance with the terms and conditions of this Contract. Each Party shall remain responsible for its obligations with respect to actions and events prior to the termination of this Contract.
- 18.4 Commencing upon notice to the Contractor of expiration or termination of this Contract and continuing through the effective date of expiration or termination, the Contractor will provide to NKF reasonable termination assistance requested by NKF to allow the use of Services without interruption or adverse effect and to facilitate the orderly transfer of the subject matter of this Contract as desired by NKF. If requested by NKF, the Contractor will reasonably cooperate with a third (3rd) party contractor in connection with the preparation and implementation of a transition plan by such third (3rd) party or NKF upon the termination or expiration of this Contract.
- 19 FORCE MAJEURE**
- 19.1 Neither Party shall be liable for any loss, damage or penalty resulting from delays or failures in performance of their obligations under this Contract if the delay or failure results from events beyond the reasonable control of either Party (each a "**Force Majeure Event**").
- 19.2 For the purposes of this Contract, force majeure events include, but are not limited to, acts of God, war, hostility, invasion, act of foreign enemies, rebellion, revolution, riots, civil war, disturbances, requisitioning or other acts of civil or military authority, laws, regulations, acts or orders of any governmental authority, body, agency or official, fires, inclement weather, rain or floods (however caused), strikes, lock-outs or other labour disputes, epidemics, outbreaks, embargoes or other catastrophes affecting the availability of materials or labour necessary for the performance of this Contract.
- 19.3 For the avoidance of doubt, the failure to obtain the approval or the withdrawal of approval from the relevant government authorities or other governing bodies shall not be considered a Force Majeure Event and the provisions of this clause shall not apply to such an event.
- 19.4 The Parties hereto agree to notify the other Party promptly of any such circumstances delaying its performance and to resume performance as soon thereafter as is reasonably practicable.

- 19.5 If any Force Majeure Event shall continue for a period exceeding one hundred and twenty (120) days, then either Party may at any time thereafter, upon giving notice to the other, elect to terminate this Contract.
- 19.6 The Parties shall for the duration of a Force Majeure Event be relieved of any obligation under this Contract as is affected by the event except that the provisions of this Contract shall remain in force with regard to all other obligations under this Contract which are not affected by the event.

20 CONFIDENTIALITY

- 20.1 The Contractor agree to treat as confidential all information received from NKF where NKF has indicated in writing or labelled to be “Confidential”, “Proprietary Information” or with any other comparable legend to similar effect, at the time of disclosure (or if disclosed orally, confirmed in writing by NKF as such within fifteen (15) days after its disclosure), which it may acquire in relation to NKF, including but without any limitation whatsoever, all business information, strategic and development plans, any matter concerning NKF, its affairs, business, shareholders, directors, officers, business associates, clients, patients or any other person or entity having dealings with NKF; information relating to the financial condition of NKF, its accounts, audited or otherwise, notes, memoranda, documents and/or records in any form whatsoever whether electronic or otherwise, and all records indicative of the financial health and status of NKF; technical information in any form whatsoever whether electronic or otherwise; information in any form whether electronic or otherwise, relating to methods, processes, formulae, compositions, systems, techniques, inventions, machines, computer programs, software, development codes and research projects; business plans, co-developer/collaborator identities, data, business records of every nature, customer lists and client or patient database, pricing data, project records, market reports, sources of supply, employee lists, business manuals, policies and procedures, information relating to technologies or theory and all other information which may be disclosed by NKF to the Contractor which the Contractor may be provided access by NKF whether stored electronically or otherwise; all information which is deemed by NKF to be confidential or which is generated as a result of or in connection with the business of NKF and which is not generally available to the public; and all copies, reproductions and extracts thereof, in any format or manner of storage, whether in whole or in part, together with any other property of NKF made or acquired by the Contractor or coming into their possession or control in any manner whatsoever (the “**Confidential Information**”), which shall be and remain the sole property of NKF and shall be returned to NKF forthwith on demand at any time or without demand upon the termination of this Contract.
- 20.2 The Contractor shall use all reasonable steps to ensure that any information marked as confidential or proprietary to NKF shall not be disclosed to third (3rd) parties.
- 20.3 The Contractor shall not, without the prior written consent of NKF, disclose any Confidential Information relating to this Contract or any of the contents hereof whether directly or indirectly to any third (3rd) party, which consent shall not be unreasonably withheld, except:-
- (a) for the purpose contemplated in this Contract;
 - (b) with the consent of the other Party and then only to the extent specified in such consent;
 - (c) in accordance with the order of a court of competent jurisdiction; or
 - (d) to the extent as may be required by law, regulation, effective government policy or by any regulatory authority arising out of this Contract or relating to or in connection with the Contractor provided that the Contractor so required must give NKF prompt written notice and make a reasonable effort to obtain a protective order.
- 20.4 The restrictions on disclosure of Confidential Information described in this Clause 20 do not extend to any information that (i) already exists in the public domain at the time of its disclosure; (ii) is already in the Contractors’ possession without restriction on disclosure, as evidenced by written records; (iii) is independently developed by the Contractor outside the scope of this Contract; or (iv) is rightfully obtained from third (3rd) parties.

- 20.5 The Contractor hereby agrees that it shall :
- (a) take all reasonably necessary steps to limit access to Confidential Information of the other Party to those principals, directors, officers, agents, employees, representatives, consultants, independent contractors and professional advisors who are directly concerned with the purposes contemplated by this Contract and are made aware of its confidential status, to the extent reasonably required for the performance of this Contract, and ensure that they do not disclose or make public or authorise any disclosure or publication of any Confidential Information in violation of this Contract; and
 - (b) not use any Confidential Information for any purpose other than the purposes for which it is intended, pursuant to and in accordance with the terms of this Contract.
- 20.6 The Contractor must promptly inform NKF about any unauthorised disclosure of NKF's Confidential Information.

21 VARIATION OF CONTRACT

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

22 DISPUTE RESOLUTION

- 22.1 In the event of any dispute or difference arising out of or in connection with or in relation to this Contract, including any question regarding the existence, validity, termination, application or interpretation of this Contract or any of its provisions, both Parties shall use their best endeavours to settle the dispute informally by agreement between the Parties. Both Parties shall always act in good faith and co-operate with each other to resolve any disputes.
- 22.2 Notwithstanding anything in this Contract, if the dispute is not settled in accordance with Clause 22.1 above, no Party shall proceed to litigation or any other form of dispute resolution unless the Parties have made reasonable efforts to resolve the same through mediation in accordance with the mediation rules of the Singapore Mediation Centre. A Party who receives a notice for mediation from the other Party shall consent and participate in the mediation process in accordance with this clause. Failure to comply with this clause shall be deemed to be a breach of this Contract.
- 22.3 In the event that mediation is unsuccessful, the dispute shall be resolved either by reference to arbitration or by court proceedings as elected by either Party by way of a written notice to the other Party, which shall state the specific dispute to be resolved and the nature of such dispute.
- 22.4 Any reference to arbitration in Singapore shall be a submission to arbitration within the meaning of the Arbitration Act (Cap.10) for the time being in force in Singapore. Such arbitration shall be conducted in the English language in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("**SIAC Rules**") for the time being in force, which rules are deemed to be incorporated by reference into this clause, except in so far as such Rules conflict with the provisions of this clause, in which event the provisions of this clause will prevail.
- 22.5 The arbitration tribunal shall consist of one (1) arbitrator to be appointed by mutual agreement between the Parties. Either Party may propose to the other the name or names of one (1) or more persons, one (1) of whom would serve as the arbitrator. If no agreement is reached within thirty (30) days after receipt

by one (1) Party of such a proposal from the other, the arbitrator shall be appointed by the Appointing Authority.

- 22.6 The Appointing Authority shall be the Chairman of the SIAC.
- 22.7 The arbitrator must not be a present or former employee or agent of, or consultant or counsel to, either Party or any related corporation (as defined in Section 6 of the Companies Act (Cap. 50)) of either Party.
- 22.8 Any decision or award of an arbitration tribunal appointed pursuant to this clause will be final and binding on the Parties.
- 22.9 Interest at the annual rate of six per cent (6%) per annum will be due and payable to the Party in receipt of an arbitration award from such date as the arbitration tribunal may decide until the date of payment to such Party.
- 22.10 The Parties hereto undertake to keep the arbitration proceedings and all information, pleadings, documents, evidence and all matters relating thereto confidential.
- 22.11 The application of Part II of the International Arbitration Act (Cap. 143A), and the Model Law referred to therein, to this Contract is hereby excluded.
- 22.12 For the avoidance of doubt, it is agreed that nothing in this clause shall prevent a Party from seeking urgent equitable relief before any appropriate court and the commencement of any dispute resolution proceedings shall in no way affect the continual performance of the Parties' obligations under this Contract.

23 ASSIGNMENT AND SUBCONTRACTING

- 23.1 Subject to the other provisions of this Contract, all the terms and conditions of this Contract shall be binding upon and inure to the benefit of the parties and their respective heirs, permitted assigns and successors-in-title except that:-
- (a) neither party shall transfer or assign all or any of its rights, obligations or benefits hereunder in whole or in part to any third (3rd) party without the prior written consent of the other party, which consent shall not be unreasonably withheld;
 - (b) any permitted assignee or transferee shall agree in writing to comply with all terms and conditions of this Contract; and
 - (c) any assignment shall not exceed the existing scope of this Contract.
- 23.2 The Contractor shall not sub-contractors all or any part of this Contract to third parties without the express prior written consent of NKF. In connection with such consent, NKF may require the execution by such subcontractor(s) of an agreement to be prepared by NKF. The Contractor shall remain fully responsible for any its obligations subcontracted, as permitted hereunder, and the Contractor shall be solely responsible for payment due to such subcontractors.
- 23.3 The approval of any subcontractor by NKF shall not constitute a superseding event or waiver of any right of NKF to reject work that is not in conformance with the standards set forth in this Contract, and does not constitute nor imply authorisation of expenses in excess of the Contract Price.

24 EMPLOYEES OF CONTRACTOR

- 24.1 All employees deployed by the Contractor to carry out work pursuant to this Contract in the premises of NKF, including contract workers, supervisors etc. must obtain and display such security pass as NKF shall require while in NKF's premises. In the event foreign workers are deployed, it shall be the Contractor's responsibility to ensure that such foreign workers have valid work permits.

24.2 The Contractor shall replace any of its employees within fourteen (14) days from the date of written notice from NKF that such employee is technically incompetent in carrying out the Services or developing the Deliverables and all efforts by the Contractor have failed to resolve the issue within the said period.

25 WAIVER

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

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

26 RELIANCE CLAUSE

26.1 The Contractor accepts that NKF relies solely on the skill and judgment of the Contractor in carrying out the Services and providing the Deliverables.

27 INSOLVENCY

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

- (a) if the Contractor, being an individual or, where the Contractor is a firm, any partner in that firm shall at any time become bankrupt, or shall have a receiving order or administration order made against him over any part of its assets or undertaking on behalf of its debenture holders or creditors, or shall make any composition or arrangement with or for the benefit of its creditors, or shall make any conveyance or assignment for the benefit of its creditors, or
- (b) if the Contractor, being a company, shall pass a resolution, or the Court shall make an order that NKF shall be wound up (otherwise than for the purposes of amalgamation or bona fide reconstruction), or if a receiver or manager on behalf of a creditor shall be appointed, or if circumstances shall arise which entitle the Court or a creditor to appoint a judicial manager, receiver or manager or which entitle the Court to make a winding-up or judicial management order.

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

27.2 Any termination under Clause 27.1 above shall discharge the Parties from any liability for further performance of this Contract and NKF shall have the right to be repaid forthwith any sums previously paid under this Contract (whether paid by way of a deposit or otherwise) and to recover from the Contractor the amount of any loss or damage sustained or incurred by NKF as a consequence of such termination.

28 NOTICES

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

28.2 Every notice or communication so sent shall be deemed to have been properly served and validly made, if by hand when delivered to the recipient's address and if sent by AR Registered post, two (2) days after posting if posted to an address within Singapore and eight (8) days after posting, if posted to an

address outside Singapore, notwithstanding the fact that the letter may be returned by the Post Office undelivered.

29 ENTIRE AGREEMENT

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

30 SEVERABILITY

- 30.1 In the event that any term, condition or provision of this Contract or the application of any such term, condition or provision shall, to any extent, be held by a court of competent jurisdiction to be wholly or partly illegal, invalid, unenforceable or a violation of any applicable law, statute or regulation of any jurisdiction, the same shall be deemed to be deleted from this Contract and shall be of no force and effect; whereas the remaining terms and provisions of this Contract shall remain in full force and effect as if such term, condition and provision had not originally been contained in this Contract, unless the severed provisions render the continuing performance of this Contract impossible, or materially change either Party's rights or obligations under this Contract; in which event, such Party may give written notice of its intent to terminate this Contract to the other Party.
- 30.2 Notwithstanding the aforesaid, in the event of such deletion, the Parties hereto shall negotiate in good faith in order to agree to terms of mutually acceptable and satisfactory alternative provisions in place of the provision(s) so deleted.

31 REASONABLENESS

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

32 LANGUAGE

- 32.1 All business relating to this Contract, both written and verbal, shall be conducted in the English language.

33 SURVIVAL CLAUSE

- 33.1 Clauses 6 (Title/Risk), 9 (Security Deposit), 13 (Indemnity), 14 (Remedies for Intellectual Property Infringement), 16 (Warranty), 20 (Confidentiality), 22 (Dispute Resolution), 38 (Governing Law) and all other clauses of this Contract so intended to survive after the termination or expiration of this Contract shall survive such termination or expiration.

34 INDEPENDENT CONTRACTOR / NO PARTNERSHIP

- 34.1 The Parties are independent contractors. Save as expressly provided in this Contract or by express agreement in writing between the Parties, nothing in this Contract shall be deemed to constitute a partnership between the Parties or constitute any Party the employee, agent, partner or legal representative of the other Party for any purpose or otherwise entitle either Party to have any right, power or authority to create any obligation or responsibility of any kind, express or implied on behalf of the other. Further, the Parties agree that neither Party has the right to bind or commit the other Party for any purpose in any way whatsoever or control any activity of the other Party outside the terms of this Contract.

35 JOINT AND SEVERABLE LIABILITY

35.1 If the Contractor is a joint venture or joint venture partnership, the individual companies or partners comprising the Contractor shall be deemed jointly and severally liable to NKF under this Contract.

36 NO THIRD PARTY BENEFICIARIES

36.1 Nothing contained in this Contract is intended to confer upon any person (other than the Parties hereto) any rights, benefits or remedies of any kind or character whatsoever or any right to enforce the terms of this Contract under the Contracts (Rights of Third Parties) Act (Cap 53B), and no person shall be deemed to be a third party beneficiary under or by reason of this Contract.

37 USE OF NAME

37.1 Except as may be necessary for either Party to carry out its obligations under this Contract, neither Party shall under any circumstances whatsoever use the other Party's name, trade names, trade marks, service marks, logos, or other symbols or other source identifying devices, or combinations or variations thereof, or the name of any employee of either Party, in any public announcement, news release, advertising, or promotional literature, without first obtaining the written consent and approval of the other Party.

38 GOVERNING LAW

38.1 This Contract shall be deemed to be made in Singapore and subject to, governed by and construed in all respects in accordance with the laws of the Republic of Singapore for every intent and purpose.

38.2 Subject to Clause 22 above, the Parties hereby agree to submit irrevocably to the non-exclusive jurisdiction of the Courts of the Republic of Singapore to settle any and all disputes in connection with this Contract.

38.3 The application of the United Nations Convention on Contracts for the International Sale of Services 1980 to this Contract is hereby expressly excluded.

39 EXECUTION IN COUNTERPARTS

39.1 This Contract may be executed in one (1) or more counterparts by the duly authorised representatives of the Parties, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one (1) and the same agreement PROVIDED ALWAYS THAT this Contract shall be of no force and effect until the counterparts are exchanged.

Accepted By:

Authorised Signature : _____

Signatory's name: _____ Signatory's title : _____

Vendor's name: _____ Vendor's stamp : _____