

AGREEMENT

between:

[_____]

and

[_____]

order: [_____]

for the supply, installation, start-up and transfer
of medical equipment

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[_____]
referred to below as the “Principal”

*and
or*

[_____]
referred to below as the “Supplier”;

WHEREAS:

- the Principal wishes to purchase the medical equipment and related goods and services specified in this Agreement;
- the Supplier has issued a Quotation with reference _____;
- the Supplier is willing and able in accordance with the conditions presented below to sell and deliver to the Principal the medical equipment and related goods and services specified in this Agreement; and
- the Principal and the Supplier wish to record their agreements in this context in this Agreement;

HEREBY AGREE AS FOLLOWS:

Number of Appendices: [____]

Article 1. Definitions

1. The terms listed below, written with an initial capital, have the following meaning in this Agreement:

Acceptance:

the moment at which the Principal, on the basis of the Acceptance Procedure, accepts the fact that the Appliance and/or System/Subsystem in question supplied by the Supplier meets the agreed functional and operational requirements/Specifications, as apparent from this Agreement, and that its/their proper functioning has been demonstrated;

Acceptance Procedure:

the procedure to be followed by the Principal and to be recorded in writing, for the purpose of assessing whether the System/Subsystem supplied by the Supplier meets the functional and operational requirements/Specifications recorded in this Agreement and the modifications and/or expansions agreed on and recorded in the course of the Project;

Hardware/Appliance/Appliances:

the medical hardware to be supplied to the Principal by the Supplier, as described in Appendix I-A;

Appendix(ices):

a document/documents forming an integral part of this Agreement and initialled by both Parties;

Contract Date:

the date of commencement of this Agreement, being the date of signature by both Parties;

System/Subsystem:

a collection of similar Hardware and any mutual connections and any related Software that have been installed at one Location and whose independent functions can be tested on the basis of the agreed requirements, whether or not after implementation in a larger unit;

Direct Damage:

damage to property that is directly due to damage to or destruction of property. This does not include indirect damage, such as damage on the grounds of loss of profits, loss of income, loss of production, interruption or delay of production or operations, loss of information, including the costs of recollection of that information, lost savings, lost agreements, labour costs incurred in vain, increase of operational costs, additional cost of purchase elsewhere, and discounts or penalties payable to third parties;

Documentation:

all documentation related to the System or System/Subsystem as described in more detail in Article 7 of this Agreement;

Guarantee:

the guarantee given on the Hardware and related goods and services supplied by it;

Defect:

failure a System/Subsystem, Appliance and/or Software to function entirely in accordance with the Specifications, or the inability to use a System/Subsystem, Appliance and/or Software in a responsible manner;

Implementation:

the erection and installation ready for use of the Appliances and/or Systems/Subsystems;

Implementation Plan:

a detailed plan, to be adopted in close consultation between the Parties, of the actions and activities (including the relevant time schedule) to be performed by the Parties regarding the implementation of the System and the various Subsystems. The Implementation Plan will be drawn up on the basis of the principles described in this Agreement and its Appendices and will form part of the Project Plan after being approved in writing by the Principal;

Preparations for Installation:

the physical and logistical preparations of the Location(s) to be made by the Principal to enable the Supplier to supply and Implement the Systems/Subsystems (and/or Appliances). The Supplier will inform the Principal in detail in the Implementation and Installation Plan of what the preparations for installation involve. On the basis of the Installation and Implementation Plan, the Principal will, for its own account, prepare the Locations structurally, electrically and mechanically in such a way and in such time that Implementation, Acceptance and performance of Maintenance are possible in accordance with the Project Plan (Appendix II);

License:

the right to be granted to the Principal by the Supplier to use the Software in accordance with the provisions of this Agreement;

Location(s):

the place(s) where the System/Subsystem and/or Hardware must be delivered and Implemented by the Supplier, as indicated in Appendix 1-D;

Quotation:

the offer made to the Principal by the Supplier as recorded in Appendix 1 to this Agreement. In the event of conflict between the Quotation and this Agreement, this Agreement will prevail;

Maintenance:

all the activities to be performed by the Supplier or by a third party on behalf of the Supplier, as specified in the "Standard Maintenance Agreement" (Appendix IV) or as specified in a Maintenance Agreement signed by the Parties;

Agreement:

the Agreement recorded in this Deed, including the Appendices attached to it;

Takeover Protocol:

if the Hardware that has been put into operation has been delivered as a functioning unit in accordance with the agreed Specifications and functionality, the actual transfer will take place by means of signature of the Takeover Protocol, and the risk in the Hardware will pass from the Supplier to the Principal;

Parties

the Principal and the Supplier;

Software:

the computer programs that will be developed and/or supplied by the Supplier under this Agreement;

Project:

the activities as a whole aimed at the performances described and referred to in this Agreement;

Project Plan and Time Schedule:

a detailed plan to be drawn up in close consultation between the Parties regarding the actions and activities (including the relevant time schedule) to be performed by the Parties with a view to the realisation of the Project as a whole. The Implementation Plan will form part of the Project Plan. The Project Plan will be drawn up on the basis of the principles described in this Agreement and is worked out in more detail in Appendix II;

Releases:

functional Software changes on a major scale;

Specifications:

functional and operational requirements and functionalities that the System, Subsystem and/or Hardware must meet, as described in Appendices I-F, as well as any changes and/or expansions thereof agreed and recorded in writing during the course of the Project;

System:

the Appliances, System/Subsystems, Software and Documentation as a whole as described in Appendix 1-B to be supplied and Implemented in an interoperable form by the Supplier;

System guarantee:

the guarantee that during an agreed period the Hardware or each System/Subsystem will function in accordance with the agreed functions, Specifications and characteristics;

Updates:

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 Principal's initials

changes or modifications to the System, related to both the software and the hardware, to ensure that they function technically in accordance with the agreed Specifications;

Upgrades:

changes or modifications to the System, related to both the software and the hardware, that simplify or expand its possible applications;

2. Order of precedence of the documents

The following documents form part of this Agreement between the Principal and the Supplier. Insofar as these documents conflict with each other, the following order of precedence applies, whereby an Appendix with a lower number will prevail over an Appendix with a higher number:

I-A	Appliances
I-B	System/Subsystems
I-C	Documentation
I-D	Location(s)
I-E	Software
I-F	Specifications
II	Project Plan and Time Schedule
III-A	Report on visual inspection of the Hardware Room (before Installation)
III-B	Report on visual inspection of the Hardware Room (after Installation)
III-C	Takeover Protocol
IV	Standard Maintenance Agreement
V-A	Additional agreements
V-B	Standard Change Sheet
VI	Special guarantee provisions
VII	Supplier's Quotation
VIII	Principal's request for a Quotation (specifications)
IX	Additional agreements for the provision of services and contracting of work
X	Health Care Sector purchase conditions do/do not* apply
XI	Supplier's general conditions do/do not* apply
XII	Conditions related to call for tenders do/do not* apply

* delete as appropriate.

3. In the event of any discrepancy between the Appendices named above and a provision of this Agreement, the provision of this Agreement will prevail.

Article 2. Subject of this Agreement

1. The Supplier will supply, Implement and transfer a System as described in Appendices I-A to I-F (with the exception of Software, for which only a right of use will be granted) and, if the Principal so desires, perform Maintenance as well as a number of services described in this Agreement, all of this as recorded in this Agreement and its Appendices.

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 Principal's initials

2. The Supplier is responsible for the technical design of the Hardware as a whole (including Software) as described in Appendix I, for the manufacture and for the correct functioning upon the transfer of the Hardware fully installed and put into operation. That responsibility also applies to parts supplied or manufactured or work performed by third parties at the Supplier's instructions.

The responsibility referred to in this paragraph does not pertain to the Preparations for Installation by the Principal and by third parties at its instructions.

3. The Supplier must ensure that the Hardware to be supplied and its Installation as well as the Maintenance (insofar as agreed) is entirely in accordance with the statutory requirements and other government regulations and with the requirements of the safety and quality standards used within the sector, all of this as they apply at the date at which the Hardware was transferred.

These include the *Arbeidsomstandighedenwet* (Working Conditions Act), the Safety Legislation, the NEN 10601 and NEN 1010-7/A3 standards, the Medical Appliances Directive, the Electromagnetic Compatibility Directive (EMC) and the CE Marking.

4. The Supplier must furthermore perform the following activities:
 - a. timely provision of the Documentation and related advice for the Locations in question that the Principal needs in order to take such structural, installation and other measures that the System to be supplied or relocated can be delivered, removed, installed and put into operation, and the subsequent Maintenance can be performed;
 - b. timely inspection at the Principal of the access roads to the Location(s), delivery of all the parts that form part of the System, their transport within the buildings to the rooms in which the System must be installed or stored, and the removal of the packaging material;
 - c. insofar as applicable instructing and training users and/or engineers of the Principal, as stipulated in more detail in Article 7 of this Agreement; and
 - d. the Maintenance during the guarantee period (see Article 11(1) of this Agreement).

Article 3. Price, invoicing and payment

1. The Supplier must provide the performances to be provided by it in the context of this Agreement at a total price of EUR [] (in words: [] euros). That total price does not include the payment for the performances under the Maintenance Agreement.
2. The invoicing of the amount specified in paragraph 1 will take place in accordance with the following schedule:
 - a. EUR []* by the Contract Date at the latest;
 - b. EUR []** after [] days;
 - c. EUR []** after signature of the Takeover Protocol.

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Supplier's initials
Principal's initials

- * Fill in the assignment amount or percentage of the contract sum
- ** Fill in the amount or percentage of the contract sum.

Unless otherwise agreed in Appendix V, payment of the amount specified in (a) or (b) will be made if so desired upon presentation of a bank or group guarantee for the amount described there, so that the risk for the Principal is sufficiently covered. The bank or group guarantee issued must be valid until signature of the Takeover Protocol and will be returned after signature by the Principal of the Takeover Protocol regarding the final System/Subsystem.

3. The Supplier must draw up all the invoices related to the payments referred to in paragraph 2 in duplicate originals. At the Principal's request the invoice must also be made available digitally.
4. All the amounts specified in this Agreement will be increased by the VAT due and other charges imposed by the authorities, as they apply at the due date in question of the invoice.
5. Price adjustment will be possible only if changes as referred to in Article 12(3) are implemented.
6. Payments must always be made without any discount or settlement, no later than 30 (thirty) days after the invoice date, unless different agreements have been made on this point. Any different agreements must be recorded in writing and must be signed by both Parties. Contrary to the aforesaid period of 30 (thirty) days, advance invoices must always have been paid within eight (8) days.
7. If the Supplier has not received the payments in time, the Supplier will give the Principal notice of default. If the Principal has not made payment within fourteen (14) days after the notice of default, the Principal will be in default. The Supplier will have the right as from the moment at which the Principal is in default to charge the Principal all the costs incurred by the Supplier in collecting amounts due to it and in safeguarding its rights, as well as the costs incurred by it in e.g. paperwork, storage and legal advice. The Supplier will be entitled to charge the statutory interest on the amount due as from the moment of default.

Article 4. Delivery and implementation

1. The Supplier will send the System/Subsystem to the Location(s) specified by the Principal, Delivery Duty Paid (DDP), in consultation with the Principal, after which the System/Subsystem will be installed in the room(s) intended for that purpose and made suitable by the Principal beforehand, and will be presented for Acceptance. The Supplier will draw up a detailed time schedule for that purpose in consultation with the Principal, which time schedule will be recorded in Appendix II.
2. The Principal will prepare the Location(s) at its expense in consultation with the Supplier structurally, electrically and mechanically in such a way and in such time that the installation, putting into operation and completion of the System (and each

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Subsystem) by the Supplier is possible in accordance with the time schedule (Appendix II).

3. The Supplier will draw up a detailed Installation and Implementation Plan in consultation with the Principal and with due observance of the provisions of Articles 6 and 7 of this Agreement, which, after being signed for approval by the Principal, will be recorded in Appendix II.
4. If so provided in an Installation and Implementation Plan, delivery and implementation will take place after the Principal has performed the Preparations for Installation in accordance with the Installation and Implementation Plan. The Principal will inform the Supplier in writing that it has completed the Preparations for Installation.
5. Before the Supplier commences the implementation of a System/Subsystem and – if that has been regulated in the Installation and Implementation Plan – after the Principal has completed the Preparations for Installation, a visual inspection (before Implementation) of the Location will be performed. The findings will be recorded in the Report on Visual Inspection of the Location (before Implementation) in accordance with Appendix III-A. That report will be signed for approval by both of the Parties. That Report on Visual Inspection of the Location (before Implementation) must state at least the following:
 - a. the degree to which the Principal has fulfilled its obligations regarding the Preparations for Installation;
 - b. what measures must be taken if any deviations are found.If the measures to be taken will lead to any change in the date specified in Appendix II or to other insurmountable changes in the performance of this Agreement, the Supplier may suspend the performance in question until a solution has been reached in consultation. The Supplier will record that also in the aforesaid Report on Visual Inspection of the Location (before Implementation).
6. The Principal must arrange for adequate access roads to the place of installation and for a suitable and lockable room in which the Supplier can store the Hardware or each System/Subsystem, the Installation Material and the tools during the Installation Work if necessary.

Article 5. Acceptance and completion

The Acceptance Procedure consists of the following phases:

1. Visual inspection of the Hardware Room (before Installation)
Immediately before the mechanical assembly of the Hardware by the Supplier, the Principal will perform a visual inspection of the Hardware Room together with the Supplier. The findings will be recorded in the Report on Visual Inspection of the Hardware Room (before Installation) in accordance with Appendix III-A. That report will be signed for approval by both of the Parties if they are in agreement.
2. Visual Inspection of the Hardware Room (after Installation)
Immediately after the Installation (mechanical and/or electrical) of the Hardware by the

Supplier has been completed, the Principal will perform a visual inspection together with the Supplier after visual inspection of the Hardware Room. That will be purely an inspection for the presence of any damage and not an inspection of the functionality. The findings of that inspection will be recorded in the Report on Visual Inspection of the Hardware Room (after Installation) in accordance with Appendix III-B. That report will be signed for approval by both of the Parties if they are in agreement.

3. Acceptance Test

The moment at which the assembly of the System and the Hardware has been fully completed or, if useful, during assembly, the Supplier will test the Installation in the Principal's presence in respect of the Specifications and safety.

The physical values actually measured must then be in accordance with the normal values as recorded in the Specifications (with the relevant deviations). This Acceptance Test will take a maximum of three days and must commence immediately after signature of the Report on Visual Inspection (after Installation) (Appendix III-B).

4. Takeover Protocol

The moment the Acceptance Test has been approved by both of the Parties, the Supplier will present the Takeover Protocol (Appendix III-C) to the Principal. Unless other agreements have been made, the Principal will have ten (10) working days as from that date in which to inspect whether the Hardware/System put into operation has been completed as a functioning unit in accordance with the agreed Specifications and functionality. If it is established during that period that the completed Hardware/System does not meet the agreed Specifications and functionality, the Principal will make its objections known to the Supplier immediately and in writing.

Minor imperfections that do not affect the essence of the performance may not stand in the way of the takeover, provided that the Supplier guarantees in writing that it will remedy those imperfections in the short term, yet to be agreed on.

If at the end of that period the Principal has no further objections, both of the Parties will approve the actual completion by signing the Takeover Protocol. The date of signature of the Takeover Protocol by both of the parties will also be the date on which the risk in the Hardware passes from the Supplier to the Principal. It will also be the date on which the Guarantee Period and the Maintenance Agreement commence, insofar as a Maintenance Agreement has been concluded.

If the Supplier has not received a Takeover Protocol signed by the Principal or a report on refusal of the Acceptance, stating the reasons, within 15 (fifteen) working days after performance of the Acceptance Tests, the Hardware/System installed will be deemed to have been accepted and transferred by the Principal.

The Hardware/System installed will also be deemed to have been accepted and transferred if the Principal has already started to use the Hardware/System.

5. Upon signature of the Takeover Protocol referred to in Article 5 of this Agreement by the Principal the risk in the System/Subsystem in question will pass to the Principal.

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 Supplier's initials
 Principal's initials

The ownership of the system (including all the Hardware) will pass to the Principal, to the extent possible, as soon as all the amounts that the Principal owes the Supplier for the order has been paid to the Supplier.

Article 6. Installation work

1. To ensure that the installation work is properly fitted into the performance of the building activities and to limit to the extent possible any disruption in the Principal's work in or near the Location, the period within which the Hardware or each System/Subsystem will be installed will be recorded in writing in consultation with the Principal, albeit with due observance of the provisions of Article 3 of this Agreement. In recording the period referred to in this paragraph, the Principal must bear in mind that the Supplier, during its normal working hours between 8 a.m. and 6 p.m., is given sufficient time to perform the work to the extent possible continuously and in accordance with good professional standards. The time schedule recorded in Appendix II will be observed in doing so.
2. In the context of drawing up the Installation and Implementation Plan, the Supplier will arrange for timely provision of the Documentation to be drawn up in consultation with the Principal, which the Principal will need in order to take the correct structural and other measures in a timely manner.

The measures to be taken by the Principal as referred to here also include the provision of the necessary facilities, including electricity and telephone facilities, during the performance of the Implementation.

3. Insofar as that has not yet been done, the Supplier will visit the Principal immediately after the conclusion of this Agreement and will inspect all the rooms in which the Hardware or each System/Subsystem to be supplied under this Agreement must be installed, for the purpose of:
 - a. arriving at a sound coordination of the Installation and optimal delivery and Implementation;
 - b. determining what Documentation must be provided under paragraph 2 of this Article;
 - c. indicating in consultation with the Principal what facilities and auxiliary materials are needed to ensure that the transport of the Hardware takes place correctly; and
 - d. recording all matters that both of the Parties consider necessary to ensure that the Project progresses well.

The findings of that inspection will be recorded in the Report on Visual Inspection of the Hardware Room (before Installation) in accordance with Appendix III-A. That report will be signed for approval by both of the Parties.

4. Unless this Agreement expressly provides otherwise (in the Installation and Implementation plan or elsewhere), hacking, breaking, bricklaying, painting and excavation work is excluded from the Implementation work.
5. The hoisting and tackle work required for the delivery and Implementation can be

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performed by the Supplier. The costs involved, insofar as they are not included in the price referred to in Article 3(1), will be charged after being approved by the Principal beforehand.

All hoisting and tackle work required for the Implementation will take place under the Supplier's responsibility.

6. Upon completion of the measures to be taken by the Principal, the Supplier undertakes again to inspect the Location(s), whereby it will be established whether the aforesaid work has been correctly performed. A report must be drawn up and signed by the Parties involved also in respect of that follow-up inspection, in the manner referred to below. That report must state at least the following:
 - a. the degree to which the Principal has fulfilled its obligations regarding the taking of the measures referred to in paragraph 2; and
 - b. the measures that must be taken if any deviations/shortcomings are established.

If the measures that have to be taken after all lead to any change in the dates referred to in Appendix II or any change in the Hardware deliveries, and if the Principal does not to give permission in a timely manner for the measures to be taken, the Supplier may suspend the performance of this Agreement until a solution has been reached in consultation.

7. After completion of the installation of the Hardware/System or the System/Subsystem in question, the Takeover Protocol will be drawn up in accordance with Appendix III-C.

Article 7. Documentation, Training and Software

1. The Supplier must provide the following Documentation no later than upon delivery:
 - a. documentation, drawings, etc, required for the performance of the Preparations for Installation; and
 - b. full Documentation of the entire System as an inextricable part of the order.

That Documentation must include the following:

1. instructions for use in the Dutch language, unless a statutory exemption has been granted;
 2. If the Dutch-language texts are a translation, the documents must also be provided in the original language on request;
 3. Maintenance Documentation from which it is apparent how often Maintenance and calibrations must be performed;
 4. technical documentation: if the Principal will itself be performing the management and Maintenance, the following are required: technical documentation, consisting of diagrams, units lists, exploded views and listings of the Software. That Documentation should preferably be provided in the Dutch language. If the information is confidential, that must be clearly stated.
2. All measurements, weights and other units must be expressed as SI units.
 3. If a Maintenance Agreement has been concluded, the Documentation will be kept up to date by the Supplier.

4. The Principal's employees who will be working with the System and/or the Subsystems will be instructed as follows:
 - a. the users to be designated by the Principal, who must have sufficient relevant knowledge, can be trained on location during and/or after completion of the Implementation. The training period will be determined in the Project Plan. If that application training proves to be insufficient, the Supplier will provide additional training;
 - b. the engineers to be designated by the Principal (see Article 2(4)) can be instructed, if applicable, before completion of the Installation at the Supplier or at the Principal in order to perform repairs and calibrations, etc, in such a way that the Principal will be able to complete the work to be performed by it with due observance of the Maintenance Agreement;
 - c. if applicable, the acceptance plan will include a time schedule for the instruction of engineers who will be involved in the acceptance test on behalf of the Principal; and
 - d. the costs involved in Article 7.4(a), (b), and (c) are included in the total price and apply for the maximum number of employees specified in the Quotation.
5. By signing this Agreement the Supplier declares that it has sufficient capabilities and know-how and that it has been sufficiently informed (by the Principal) regarding the requirements, systems already in use, Hardware, techniques and Locations of the Principal in order to perform this Agreement.
6. Both of the parties reserve all rights, including intellectual and industrial property rights, regarding information that they make available to the other Party in the context of the performance of an Agreement, for instance in the form of drawings, diagrams, designs or Software. The information may be used only in the context of the conclusion and performance of this Agreement. The Party responsible will be liable for any loss resulting from infringement of those rights.

The Principal may not in any way change the Software without the Supplier's prior written consent, unless mandatory rules of law so provide.
7. The Supplier guarantees that the Software is in conformity with the Specifications and is suitable for the purpose for which it is intended under this Agreement. The Supplier furthermore guarantees that it is entitled to supply the Software (and the right of use of the Software) to the Principal. The Supplier indemnifies the Principal against any and all third-party claims on the grounds of whether or not alleged infringement of rights of those third parties as a result of the use of the Software by the Principal.
8. The source code of the software will not be made available to the Principal unless otherwise expressly agreed. If the Supplier's licenses so provide, the Principal and the Supplier may enter into an Escrow Agreement. In that case the Supplier will ensure that the full version of the source code that is relevant to be Principal, including interfaces and custom-made work, Documentation and resources, is placed in escrow. The source code placed in escrow will be made available to the Principal if for any reason the Supplier or its successor is no longer able or willing to fulfil the obligations arising from this Agreement or if the Supplier or its Licensors is/are declared bankrupt.

The costs of that Escrow Agreement will be payable by the Principal, unless otherwise agreed. The conditions of the Escrow Agreement will be recorded in Appendix V – Additional Agreements.

9. The Principal undertakes to use the Software in accordance with the guidelines and/or manuals to be provided by the Supplier.
10. Third-party Software will be governed exclusively by the conditions of those third parties.
11. The Principal will have the right to make a copy of the Software for security and back-up purposes. The Principal undertakes not to grant use of the Software or to make it available to any third party, unless the Supplier has given its express prior written consent.
12. The goods delivered or work performed by the Supplier may be governed by export regulations, including those of the EU or the USA. The Principal is required to observe the regulations that apply to it and indemnifies the Supplier against any and all third-party claims related to violation of those export regulations.
13. Both of the parties warrant that they themselves, but also their employees or the employees of any companies engaged, will observe confidentiality towards third parties in respect of all company information and/or patient information originating at the Principal or the Supplier that has come to or has been brought to its knowledge in any way whatsoever. Neither the Supplier nor the Principal will make information regarding the goods and/or services that it has provided to the institution available to third parties, unless the Principal or the Supplier has given its prior written consent or a statutory obligation applies. If the Supplier may not use the Principal as a reference, the Principal must expressly inform it accordingly.
14. All Quotations, drawings, diagrams, designs, lists of materials and other Documentation provided by the Supplier (see Article 7.1) may not be copied in whole or in part without the Supplier's prior written consent otherwise than for internal use at the Principal. Without the Supplier's prior written consent they may also not be shown or made available to any third party or otherwise disclosed, and may not be used or made available by the Principal otherwise than for the purpose for which they were provided by the Supplier.

Article 8. Subsequent delivery of parts

1. The Supplier accepts the obligation to make subsequent deliveries for a minimum period of **fill in number of years** (see the term agreed on in the Quotation) after transfer of the System/Subsystem, at the Principal's request and – insofar as applicable – within the agreements recorded in the Standard Maintenance Agreement, of the original parts or equivalent alternative parts for the System/Subsystem supplied. They will be supplied at competitive prices for similar parts at the moment of delivery.

2. The Supplier undertakes in the event of imminent interruption of the possibility to make subsequent delivery of original parts or equivalent alternatives of the Hardware supplied immediately to inform the Principal accordingly so that it is able to take measures, without prejudice to the provisions of paragraph 1.

Article 9. System guarantee

1. During the period specified in Appendix V, commencing twelve (12) months after the date of takeover (after the Guarantee referred to in Article 10 of this Agreement, insofar as applicable), the Supplier guarantees the functioning of the Hardware/System or each System/Subsystem in accordance with the functions, Specifications and characteristics (including the Software) published by it, supplemented by those agreed on, provided that:
 - the Supplier is given the opportunity during the Guarantee Period specified in Article 10 to properly perform the Guarantee and Maintenance Activities; and
 - a Maintenance Agreement with the Supplier as referred to in Article 11 continuously applies.

The System Guaranty also applies if the Maintenance will be performed by the Principal itself, all of this insofar as it is keeping with the Supplier's Maintenance Standards and has been approved as such by the Supplier beforehand, and the cooperation required for that purpose between the Principal and the Supplier has been recorded in a cooperation agreement for that purpose.

2. A different System Guarantee period may be agreed on and recorded in Appendix V – Additional Agreements for certain Hardware or components, including but not limited to monitors, computers and servers.
3. If during the period described in Appendix V the System Guarantee described in paragraph 1 is not complied with or is not complied with in full, the Supplier will make changes without any costs for the Principal. Those changes will be made in such a way that the possible applications of the Hardware or the System/Subsystem in question are not affected and will take place in consultation between the Principal and the Supplier.
4. No later than six months before the expiry of the period described in Appendix V it will be established whether and, if so, what measures must be taken in the context of the major maintenance/revision in order to safeguard a System Guarantee for a period yet to be agreed. The Principal and the Supplier will consult in a timely manner for that purpose on the measures and the related fees. A written report of those consultations will be drawn up in which the conclusions and decisions are recorded.

Article 10. Guarantee

1. The Guarantee Period for the Hardware or each System/Subsystem will commence on the day of signature of the Takeover Protocol in question (Article 5) and will be valid for a period of twelve (12) months, unless otherwise agreed in Appendix VI.

2. During the Guarantee Period the Supplier will be responsible for the proper functioning of the Hardware or each System/Subsystem. As part of the Guarantee the Supplier will repair or cause the repair of any design, material, manufacturing, assembly and installation errors at its expense or will, if necessary, replace the goods, parts or Software in question.
3. The response time is the time that passes between the moment at which the breakdown has been reported to the Supplier and the moment at which the Supplier commences the repair work.

The agreed response period is [] hours.

The Supplier will have a best efforts obligation to repair the Hardware as soon as reasonably possible.

In this Agreement “breakdown” means: failure to comply with the technical Specifications given by the Supplier, caused by a defect or system anomaly that is not due to negligence or injudicious use by the Principal, as a result of which responsible use of the System is impossible. It is at the Principal discretion whether reasonable use is impossible.

Article 11. Maintenance

1. During the Guarantee Period specified in Article 10(1) the System will be maintained by the Supplier (insofar as applicable). That Maintenance will take place in accordance with the Standard Service Agreement recorded in Appendix IV. This Agreement may comprise preventive and corrective Maintenance, hardware and software modifications and the materials required for that purpose, all of this as described in Appendix IV – Standard Service Agreement. Any related maintenance costs will be agreed on in Appendix V, on the basis of a term of use of [] hours per working day and [] days per year.
2. At the end of the Guarantee Period referred to in Article 10, the Supplier will be required during the term agreed on in Appendix V to be able to maintain the System or Subsystems (Appendix I) in accordance with Appendix IV and the relevant amendments and changes agreed on between the parties, if instructions are given to do so.

Article 12. Amendments

1. Any amendments to this Agreement, including its Appendices, may be agreed on only in writing. Oral agreements, irrespective of their nature and by whom or when they were made, will have no validity whatsoever without such written confirmation. Amendments must be recorded in a change sheet signed by both of the Parties in accordance with Appendix VII.
2. The Principal will not unreasonably withhold its approval of necessary amendments

proposed by the Supplier, provided that such amendments do not affect the agreed price, the operating costs, the delivery date, the performance of the work, the quality and the electrical or mechanical properties of the System/Subsystem and its performance in accordance with the agreed Specifications. Such amendments must be proposed to the Principal in a timely manner.

3. If the Principal wishes to make an amendment, the Supplier will take all reasonable measures to comply with the new requirements. Such an amendment and any resulting price increase or reduction, or any effect on the payment terms, must be confirmed by the Principal in writing, must be recorded in a change sheet signed by both of the Parties and will subsequently form part of this Agreement.

Article 13. Penalty

If the Supplier exceeds the agreed term for completion of the order for reasons for which it is to blame and fails to fulfil its obligations after all after written notice of default within a period that must be considered reasonable in the context of the order and the Principal's interest, the Supplier will be in default and the Principal will have the right to claim a penalty. For each full month by which the term further determined in that manner has been exceeded, that penalty will amount to one (1) percent but to a total of no more than five (5) percent of the price of the Hardware and/or System/Subsystems to be supplied, insofar as they cannot be put to use in a timely manner as a result of that exceeding of the term. If the Principal claims the penalty and does not dissolve this Agreement and the Supplier – despite the exceeding of the term – has fulfilled its obligations under this Agreement after all, the penalty will be deemed to be full reimbursement of the loss. If the Principal dissolves this Agreement in accordance with Article 16 of this Agreement, the penalty will be deducted from the loss to be claimed by the Principal.

Article 14. Liability

1. The Supplier warrants that the Documentation, drawings, specifications, etc. provided by it and referred to in Article 2(4), Article 6(2) and Article 7 of this Agreement are correct and sufficient. The Supplier will be liable only for the Direct Damage incurred by the Principal as a result of the incorrect or otherwise inadequate Documentation, drawings, Specifications, etc. provided by the Supplier.

2. The Supplier accepts liability for Direct Damage to the Hardware in question, property of the Principal and the other systems used at the Principal insofar as such damage:
 - a. was caused by work on the Hardware, such as installation, maintenance or repair work, and can be imputed to the Supplier; and/or
 - b. is directly due to a demonstrable Defect in the Hardware, Systems/Subsystems or Software produced and/or supplied by the Supplier.
3. Exclusively in respect of the situations referred to in paragraphs 1 and 2 of this Article the Supplier also accepts liability for personal injuries.
4. Exclusively in respect of the situations referred to in paragraphs 1 and 2(a) and/or (b) and paragraph 3 the Supplier also accepts liability towards the Principal for damage to properties of third parties and for personal injuries incurred by third parties. However, the Supplier will reimburse loss as referred to here to the Principal only if the Principal has reimbursed the loss to that third party.
5. The Supplier's liability under this Agreement for the loss described in paragraphs 1, 2 and 3 of this Article amounts to a maximum of EUR 1,500,000 (for all events jointly). That amount does not include possible damage to Hardware as described in paragraph 2. That maximum amount of loss will not detract from the Principal's rights referred to in Article 10 (Guarantee) of this Agreement.
6. The risks of damage, destruction or loss of each System/Subsystem as described in Appendix 1 before the date of the Acceptance will be for the Supplier's account. However, if and insofar as the Principal or persons for which it is liable towards third parties has/have failed to observe due care in respect of the management or security of Hardware present at the delivery address, the Principal will be liable towards the Supplier for the resulting loss. Absent an Acceptance Procedure, the risk will pass to the Principal ten (10) days after actual Delivery.
7. The Supplier accepts no liability other than that expressly accepted in this Agreement.
8. Without prejudice to the provisions of this Article, the Supplier and the Principal will be required to do any and all things to avoid damage, loss, personal injuries, etc. or to minimise the consequences if they occur.
9. The Supplier must take out adequate insurance against the liability referred to in Article 14(5). If applicable, the Supplier can also use a self insurance policy that adequately covers the liability referred to in Article 14(5). The Supplier will provide the institution on its request with proof of insurance and will enable it to inspect the self insurance policy.
10. The provisions of Article 14 will be without prejudice to the Parties' liability towards third parties that cannot be excluded or limited by law and will not apply in the event of intent or gross negligence.

Article 15. Safety and the environment

1. The Hardware must be adequately packed and must be marked in accordance with statutory instructions, decrees and any other additional regulations of the Principal, to ensure that they reach their destination in good condition. All packaging and/or packaging material will be taken back by the Supplier upon delivery or, insofar as applicable, upon Installation, or insofar as otherwise agreed in Appendix V – Additional Agreements.
2. If the Principal wishes to be rid of the Hardware, the Supplier will be required to take it back in accordance with the AEEA Directive and to process it or cause it to be processed. The processing of the discarded electrical and electronic Hardware taken back must take place using the best available techniques.
3. If the Principal wishes to sell the Hardware or to give it to a third party, the Principal must inform the Supplier accordingly in writing and immediately. Also, if applicable, the Principal may not pass on the Software to any third party without the Supplier's prior written consent.

Article 16. Suspension and dissolution

1. In the event of failure of one of the two Parties to perform this Agreement for which the party in question cannot be blamed (force majeure), the performance of the part of this Agreement in question will be suspended. An event of force majeure will be involved if the party in question cannot be blamed, either by law, legal act or generally accepted standard. The parties must inform each other as soon as possible of such a circumstance. If the suspension has lasted four (4) months or as soon as it has been established that it will last at least four (4) months, either of the Parties may dissolve this Agreement with immediate effect in whole or in part without the Parties being required to pay each other any damages.
2. This Agreement may furthermore be dissolved in whole or in part:
 - a. by one of the Parties without any further notice of default if the other party is declared bankrupt or has been granted a suspension of payment;
 - b. by one of the Parties if the other party, after being given written notice of default, fails to fulfil any obligation arising from this Agreement within a reasonable period, insofar as the dissolving Party cannot reasonably be required to maintain this Agreement;
 - c. by the Principal if, otherwise than due to an event of force majeure on the part of the Supplier and otherwise than due to circumstances for which the Principal is to blame, the deadlines for turnkey delivery as agreed have been exceeded to such an extent that the Principal cannot reasonably be required to continue this Agreement; or
 - d. by one of the Parties if the other Party is taken over and the dissolving Party cannot reasonably be required to continue this Agreement.

3. Dissolution must take place by registered letter sent to the other Party.
4. In the event of dissolution on the grounds of paragraph 2 of this Article, the Party dissolving this Agreement will be entitled to damages with due observance of the provisions of Articles 13 and 14 of this Agreement.
5. In the event of dissolution as referred to in paragraph 2(b), (c) and (d) both of the Parties will be required to reverse the performance already received by them in the performance of this Agreement within one month after the date of the letter referred to in paragraph 3.

Article 17. Other provisions

1. If applicable, the following Appendices form an integral part of this Agreement:

I	Description of the Hardware configuration and the System/Subsystems
II	Time schedule
III-A	Report on Visual Inspection of the Hardware Room (before Installation)
III-B	Report on Visual Inspection of the Hardware Room (after Installation)
III-C	Takeover Protocol
IV	Standard Service Agreement
V	Additional Agreements
VI	Special Guarantee Provisions

Article 18. Disputes

1. This Agreement and all resulting Agreements are governed by Dutch law, to the exclusion of the Vienna Sales Convention.
2. Any and all disputes related to the conclusion, interpretation or performance of this Agreement and any other dispute regarding or related to this Agreement, either legal or factual, with no exception, will at all times be settled by the ordinary court in the district in which the Principal has its registered office.
3. With both Parties' permission an attempt can be made to settle a dispute as referred to in paragraph 1 in an alternative manner, such as by means of arbitration in accordance with an arbitration agreement yet to be drawn up, binding advice proceedings or mediation.
4. A dispute will exist if one of the Parties so argues and informs the other party in writing (by registered letter).

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Date:
Supplier's initials
Principal's initials

Signature

Agreed and drawn up and signed in duplicate originals on **fill in date**,

fill in Principal's name
having its registered office in
fill in place of registered office

fill in Supplier's name
having its registered office in
fill in place of registered office

fill in name

fill in name

.....

.....

Appendix I Hardware configuration and System/Subsystems

HARDWARE SPECIFICATIONS

fill in: specifications

Number of appendices: fill in number

Signed in duplicate originals in fill in place

fill in Principal's name
having its registered office in
fill in place of registered office

fill in Supplier's name
having its registered office in
fill in place of registered office

Date:

Appendix II Time schedule

fill in: time schedule

Number of appendices: fill in number

Signed in duplicate originals in fill in place

having its registered office in
fill in place of registered office

having its registered office in
fill in place of registered office

Date:

Date:
Supplier's initials
Principal's initials

Appendix III-A Model Report on Visual Inspection of Hardware Room (before Installation)

The Parties:

the Principal: fill in Principal's name
having its registered office in: fill in place of registered office

the Supplier: fill in Supplier's name
having its registered office in: fill in place of registered office

Statement:

The Principal and the Supplier hereby declare that the following irregularities were established in a visual inspection of the Hardware Room **before** Installation of the Hardware:

- 1)
- 2)
- 3)

If the measures to be taken lead to any shift in the dates specified in Appendix II or to any change in the Hardware deliveries, and absent timely consent from the Principal, the Supplier may suspend the performance of this Agreement until a solution has been reached in consultation.

Number of appendices: fill in number

Signed in duplicate originals in fill in place

fill in Principal's name
having its registered office in
fill in place of registered office

fill in Supplier's name
having its registered office in
fill in place of registered office

Date:

Appendix III-B Model Report on Visual Inspection of the Hardware Room (after Installation)

The Parties:

the Principal: fill in Principal's name
having its registered office in: fill in place of registered office

the Supplier: fill in Supplier's name
having its registered office in: fill in place of registered office

Statement:

The Principal and the Supplier hereby declare that the following irregularities were established in a visual inspection of the Hardware Room **after** Installation of the Hardware:

- 1)
- 2)
- 3)

Number of appendices: fill in number

Signed in duplicate originals in fill in place

fill in Principal's name
having its registered office in
fill in place of registered office

fill in Supplier's name
having its registered office in
fill in place of registered office

Date: fill in date

Appendix III-C Model Takeover Protocol

Date:
Supplier's initials
Principal's initials

The undersigned:

fill in Supplier's name, having its registered office in fill in place of registered office, referred to below as the "Supplier",

and

fill in Principal's name, having its registered office in fill in place of registered office, referred to below as the "Principal",

hereby declare in accordance with the relevant provisions of the order to have transferred and taken over, respectively, on fill in date – with the exception of Software, in which respect only the right of use is transferred – the goods and/or systems or the following partial deliveries or the following System/Subsystem, to be supplied by the Supplier pursuant to the aforesaid order and the relevant additional orders:

fill in system

Insofar as any Defects were established at the moment of takeover, they do not form any essential impediments to the use of the goods and/or Systems. If the above applies, the remaining actions are stated in the report attached to this protocol and will have been remedied by the Supplier by the date specified there.

Both the Guarantee Period and the service agreement will commence on the date of takeover.

Number of appendices: fill in number

Signed in duplicate originals in place

fill in Principal's name
having its registered office in
fill in place of registered office

fill in Suppliers name
having its registered office in
fill in place of registered office

Date:

Appendix IV Standard Service Agreement

See Standard Service Agreement:

<http://www.fhi.nl/downloads/mt/sso.pdf>

or

<http://www.wibaz.nl/bestanden/SSOvervie2.pdf>

or

http://www.nvilg.nl/links_algemeen/index.cfm

Number of appendices:

Signed in duplicate originals in

fill in Principal's name
having its registered office in

fill in place of registered office

fill in Supplier's name
having its registered office in

fill in place of registered office

Date:

Appendix V Additional agreements

Article 3.2 Any different payment schedule agreed on

Article 7.5 Any conditions of the Escrow Agreement:

.....

Article 9.2 Duration of the agreed System Guarantee in years:

.....

Article 11.2 Any costs of maintenance during the Guarantee Period

.....

Article 15.1 Any differing agreements made on taking back packaging material

.....

fill in: other additional agreements

Number of appendices: fill in number

Signed in duplicate originals in fill in place

fill in Principal's name
having its registered office in
fill in place of registered office

fill in Supplier's name
having its registered office in
fill in place of registered office

Date:

Appendix VI Special guarantee provisions

fill in: special guarantee provisions

Number of appendices: fill in number

Signed in duplicate originals in fill in place

fill in Principal's name
having its registered office in
fill in place of registered office

fill in Supplier's name
having its registered office in
fill in place of registered office

Date:

Appendix VII Change sheet

fill in: changes

Date:
Supplier's initials
Principal's initials

Signed in duplicate originals in **fill in place**

fill in Principal's name
having its registered office in
fill in place of registered office

fill in Supplier's name
having its registered office in
fill in place of registered office

Date: