

Master Terms and Conditions of Hourly Billed Service New Zealand Law Version

1 AGREEMENT

- 1.1 These terms and conditions of hourly billed service ("**HBS Terms**") apply to support services provided by **GE Healthcare Limited** (Company Number 815483) of 8 Tangihua Street, Auckland, 1010, New Zealand, trading as GE Healthcare ("**GEHC**", "**we**", "**us**" and "**our**") to the customer ("**Customer**", "**you**" and "**your**"), regardless of whether those support services are described in a formal quotation ("**Quotation**") referencing these HBS Terms.
- 1.2 The Quotation (if annexed) together with any associated Additional Terms and Conditions and these HBS Terms constitute an "**Agreement**" between GEHC and you.
- 1.3 This Agreement will be effective on and from the date of signature of the Quotation by you or from the date GEHC commences hourly billed service ("**HBS**") on your Equipment (whichever is earlier). A Quotation for HBS is valid for the term specified in the Quotation. Any additional work beyond the scope of the Quotation performed by GEHC at your request will be charged according to GEHC's then prevailing hourly labour rates and list price for all equipment spare parts.

2 HBS Support

- 2.1 Hourly billed service support ("**HBS Support**") is support provided by us to you within the Regular Service Hours which either:
- (a) falls outside the scope of a maintenance service agreement ("**MSA**") between GEHC and you relating to the Equipment; or
 - (b) where this is no MSA in place between GEHC and you relating to the Equipment,
- and is provided on a time and material basis according to GEHC's then prevailing hourly labour rates and then applicable list price for all equipment spare parts. GEHC reserves the right to adjust the list prices of any of the spare parts without notice to you.
- 2.2 HBS Support is provided by GEHC only upon a formal request from you. Before GEHC can provide HBS Support, you must provide to GEHC an order number. You agree to pay GEHC upon receipt of an invoice, for all fees and charges associated with the requested HBS Support. In the event that you choose to insure your risks with a third party, you remain solely and unconditionally responsible for payment to us of the charges for work authorised by you, and performed by GEHC under these HBS Terms.
- 2.3 Subject to the availability of personnel, GEHC will provide, at Customer's request and additional charges and subject to these HBS Terms, service or other items not specified in the Quotation, including service outside Regular Service Hours.
- 2.4 The charge for such service or other items will be at GEHC's then prevailing normal hours or after hour rates then in effect for Hourly Billed Service customers with the applicable type of Equipment, including travel time. Customer will be charged for the actual number of hours and travel time or the minimum applicable call out fee, whichever is higher. For customers located within 50 km of a GEHC Service Centre the actual travel time will be deemed to be one (1) hour. Other travel expenses and overnight living expenses will be charged at actual cost.
- 2.5 When there is limitation on availability of resources, you acknowledge and understand that priority will be given to customers with a current comprehensive MSA in place with GEHC. GEHC does not make any commitment to response times for HBS Support, availability of any spare parts, nor any

commitment in regards to an Equipment's nor a system's "uptime".

- 2.6 You are solely responsible for scheduling preventative maintenance services for the Equipment and ensuring that it complies with GEHC's or the manufacturer's recommended frequencies for preventative maintenance services. You must issue a separate request to GEHC for each preventative maintenance service. Safety related updates are provided at no charge to GEHC customers. Non safety related updates may incur a charge.
- 2.7 GEHC's replacement parts will be supplied on an exchange or new basis. Title to spare parts replaced or removed will, from the time of removal or replacement (as the case may be), be transferred to GEHC.

3 CHARGES, PAYMENTS AND TAXES

- 3.1 GEHC will invoice you according to the payment periods specified in the Quotation, as well as for any other payments due under this Agreement. All amounts payable to GEHC under this Agreement are exclusive of all taxes. Should any taxes be levied on in respect of any support services by GEHC, these amounts will be to your account and will be additional to any other amounts paid or payable to GEHC by you.
- 3.2 Where any goods and services tax ("**GST**") is imposed on a supply made by GEHC to you, such GST is to be calculated by multiplying the prevailing GST rate by the consideration for the relevant supply payable, provided that GEHC issues you with a valid tax invoice.
- 3.3 The invoiced amount must be paid within 30 days of the date of the invoice being issued by GEHC. If any invoiced amount is not paid within 14 days of the due date, GEHC may: (a) charge you interest to the extent permitted by law, calculated on the portion of your account overdue at the rate published by GEHC's bankers as its monthly overdraft rate, which interest may be added to the balance due from you and calculated and compounded on a daily basis, as well as charge you all collection costs and legal fees incurred by GEHC in connection with the late payment; and/or (b) suspend or terminate the HBS Support if you have not complied with a written notice from GEHC requiring you to make the overdue payment within the period specified in the notice.
- 3.4 In addition to the charges specified in the Quotation, you will be responsible to pay for any additional labour and replacement parts supplied to Customer by GEHC at Customer's request ("**Additional Charges**"). Customer shall pay such Additional Charges within 30 days of the date of invoice issued by GEHC.

4 CUSTOMER'S RESPONSIBILITIES

During the term of this Agreement, you agree to do the following:

- 4.1 provide a suitable location for the Equipment and maintain the Site and environment (including temperature, clean air and humidity control, incoming power quality with no interference, and fire protection system) in a condition suitable for operation of and service to the Equipment;
- 4.2 ensure the Equipment is used solely in accordance with all applicable regulations and the requirements of all manuals relating to the Equipment and spare parts, including any operating, maintenance and other related services documentation; and by properly qualified and licensed personnel;



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- 4.3 make the Equipment, and necessary network cabling and communication equipment, where applicable, available without restriction for HBS Support in accordance with a mutually acceptable support appointment schedule;
- 4.4 facilitate GEHC's performance of remote diagnostic and repair HBS Support by providing remote access methods reasonably requested by GEHC, e.g., modem line, internet access;
- 4.5 designate a primary contact and alternate as GEHC's Support contact; your nominated contacts must have the necessary technical knowledge and expertise to reasonably assist GEHC in providing the HBS Support;
- 4.6 promptly notify us in writing of any change in your information specified in the Quotation, location of Equipment, or your ownership or management control;
- 4.7 when GEHC is required to perform any HBS Support outside of Regular Service Hours, ensure that you provide a second person on Site for safety reasons. If you cannot provide such a person, GEHC will do so at your cost and charge you accordingly;
- 4.8 be solely responsible for the day-to-day operation of the Equipment including the accuracy and adequacy of the data entered into the Equipment;
- 4.9 be solely responsible for back-up and disaster recovery plans and procedures. HBS Support will not include re-entry of lost data;
- 4.10 be solely responsible for protecting data and images stored or transmitted by Equipment, including by providing and maintaining secure network and network security components as necessary, including, without limitation, any firewalls or security-related hardware or software. GEHC will reasonably consult with Customer regarding security issues and procedures related to the Equipment.

5 EXCUSABLE DELAYS AND PERFORMANCE ISSUES

Neither party is liable for delays or failures in performance of any obligations under the Agreement, other than payment obligations, due to a cause beyond its reasonable control. In the event of such delay, the time for performance will be extended as reasonably necessary to enable performance.

6 DEFAULT AND TERMINATION

If Customer defaults under the Agreement and the default is not cured within 20 days after written notice of it, GEHC may at its option, in addition to any other right under the Agreement: (a) withhold performance under the Agreement until a reasonable time after all defaults have been cured; (b) declare all sums due and to become due under the Agreement to be immediately due and payable; and/or (c) recover possession of any GEHC materials in Customer's possession or control.

7 WARRANTIES

- 7.1 GEHC will perform HBS Support in a workmanlike manner with reasonable care and skill. Parts for which you pay a separate charge are supplied with 90 days warranty against defective material and workmanship, commencing on the date of installation. All other parts and items are provided AS IS. The warranty period for any replacement parts furnished to you as a warranty remedy will be the remaining portion of the 90 days warranty period.

- 7.2 Except as provided in clause 7.1 and to the extent permitted by law, no express or implied warranties, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, system integration or data accuracy will apply to any HBS Support or parts provided by us to you.
- 7.3 You acknowledge and agree that the warranty in clause 7.1 do not cover any defect or deficiency caused by: (a) any improper storage, handling, installation, use or maintenance of the Equipment or parts by anyone other than by GEHC; (b) failure of anyone other than GEHC to comply with GEHC's written instructions or recommendations; (c) a design, specification or instruction provided by you or your representative; (d) you combining the parts with any item of other equipment or with any incompatible equipment of GEHC; (e) any cause external to the Equipment or parts as furnished by GEHC or any cause beyond GEHC's reasonable control, including, but not limited to, power failure, storms, failure to keep your site clean and free of dust, and other particles or debris.
- 7.4 If you promptly notify GEHC of your warranty claim (within the warranty period) and makes the parts and/or equipment available for service, GEHC will at GEHC's option, either repair or replace (with new or refurbished parts) the non-conforming parts. Warranty service will be performed without charge during Regular Service Hours, and outside these hours at GEHC's then prevailing service rates and subject to the availability of personnel.

8 LIMITATIONS OF LIABILITY

- 8.1 If GEHC breaches any term or condition that is implied by law and which is not capable of being excluded, the parties agree that GEHC's liability will be limited to, at GEHC's discretion: (i) resupply of the relevant non-conforming HBS Support services; or (ii) paying the cost of such resupply; or (iii) refund to you the fees paid for the relevant non-conforming HBS Support services.
- 8.2 Subject to this clause 8 and to the maximum extent permitted by law: (a) the total liability of GEHC and your exclusive remedy for any and all claims arising out of or related to your use of each HBS Support are limited to the price actually paid by you to GEHC for the relevant HBS Support; and (b) we will under no circumstances be liable to you for any loss of profit, loss of revenue, loss of data, loss of goodwill or business interruption or any indirect, consequential or punitive damages.

9 OWNERSHIP RIGHTS; RESERVATION OF RIGHTS

You acknowledges that any and all of the copyright, trade-marks, trade names, patents and other intellectual property rights created, developed, subsisting or used in or in connection with the Support or the Equipment are and will remain the sole property of GEHC. If you or your Personnel acquire any such right or interest by operation of law, you hereby irrevocably assigns all such right and interest to GEHC.

10 SUPPORT MATERIAL AND DATA ACCESS

- 10.1 In connection with the installation, configuration, maintenance, repair, and/or de-installation of the Equipment, GEHC might deliver to the Site, along with the Equipment or separately, and store at the Site, attach to or install on the Equipment, and use, materials that have not been purchased by or licensed to you. You hereby consents to: (a) this delivery, storage, attachment, installation, and use; (b) GEHC's removal of all or any part of this property at any reasonable time, all without charge to GEHC. The presence of this property within the Site will not give you any right or title to this property.



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10.2 Customer agrees to permit GEHC to connect to the Equipment, or to otherwise access data related to the Equipment or the HBS Support provided, to allow GEHC to gather, aggregate, compile, and use Equipment and resource usage data in various ways, including quality initiatives, benchmarking, and reporting services. The data collected by GEHC will be used, during and after the term of the Agreement, in a manner that will maintain patient and customer level confidentiality.

11 INDEPENDENT CONTRACTOR

GEHC provides HBS Support under the Agreement as an independent contractor. GEHC employees are under GEHC's exclusive direction and control, contractors' employees are under their exclusive direction and control, and Customer's employees are under Customer's exclusive direction and control. The provision of HBS Support under the Agreement will not result in any partnership, joint venture, trust, or employment relationship between GEHC or its contractors and Customer.

12 SUBCONTRACTS AND ASSIGNMENTS

12.1 The rights and benefits of GEHC (in whole or in part) under and in connection with the Agreement may be assigned by GEHC to any party with the Customer's prior written consent (which consent must not be unreasonably withheld or delayed).

12.2 The Customer may not assign the rights or benefits under the Agreement without the prior written consent of GEHC. GEHC can hire a subcontractor or use our related bodies corporate to perform work under the Agreement. No such subcontract will release GEHC from those obligations to you.

13 CONFIDENTIAL INFORMATION AND PRIVACY

13.1 GEHC and its contractors will treat patient information as confidential. In addition, each party (the "**receiving party**") will treat the other party's written, proprietary business information as confidential for a period of 3 years from the date of receipt by the receiving party as long as it is marked as confidential and/or proprietary prior to its disclosure and is not otherwise available to the receiving party from a lawful source. Notwithstanding the foregoing, either party may disclose the other party's Confidential Information to the extent required by law, in which case such party will so notify the other party as soon as practicable and in any event prior to such party making such required disclosure.

13.2 Each party must comply, and must ensure that their respective Personnel comply, with all applicable Privacy Law as they apply to that party.

13.3 If any Personal Information is provided or otherwise made available to GEHC or its Personnel by the Customer or its Personnel, the Customer represents and warrants to GEHC that the Customer has procured and obtained all necessary individual consents (as required by all applicable Privacy Law) to enable and permit GEHC and its Personnel to collect, store, use, disclose or otherwise deal with the Personal Information for the sole purpose of providing the HBS Support to the Customer as anticipated under the Agreement.

13.4 The parties acknowledge and agree that breach of clause 13.1 may cause irreparable harm to the other. The parties agree that in the event of any breach of this provision, a party will be entitled to seek injunctive relief in addition to seeking any other remedy provided in the Agreement or available at law.

14 GENERAL PROVISIONS

14.1 The Agreement is the complete and exclusive statement of the terms of the arrangement between you and GEHC regarding its subject matter. No prior proposals, statements, course of dealing, or usage of the trade will form a part of Agreement. Any terms and conditions stated or attached to your purchase order are hereby expressly excluded.

14.2 Clauses 3, 7, 8, 13 and 14 of these HBS Terms will continue in full force and effect after the expiration or earlier termination of the Agreement.

14.3 Any clause or part of any clause in the Agreement is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from the Agreement without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

14.4 A right created by the Agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party operate as a subsequent waiver of the same or of any other right of that party.

14.5 The Agreement will be governed by and construed in accordance with the laws of the New Zealand and the parties submit to the exclusive jurisdiction of the courts of New Zealand.

15 DEFINITIONS AND INTERPRETATION

15.1 In these HBS Terms, unless the context otherwise requires:

"Equipment" means the equipment covered under the Agreement as specified on the Quotation.

"Personal Information" means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a patient of the Customer whose identity is apparent, or can reasonably be ascertained, from the information or opinion. For the avoidance of doubt, Personal Information includes health information of a patient of the Customer.

"Personnel" means, in respect of each party, all employees, agents and sub-contractors of that party.

Privacy Laws means any privacy legislation which binds a party including the Health Information Privacy Code 1994 and the Privacy Act 1993 and any and all other relevant privacy law and regulations.

"Regular Service Hours" means 8.30 am to 5.00 pm Monday to Friday local site time but excluding public holidays.

"Site" means the address of the premises or the specific vehicle in which the Equipment is located, as specified in the Quotation.

15.2 In these HBS Terms, unless the context clearly indicates otherwise:

(a) monetary amounts are expressed in New Zealand dollars;

(b) neither the Agreement nor any part of it is to be construed against a party on the basis that the party or its representatives were responsible for its drafting.

