THE NAIROBI HOSPITAL

SOUTH AFRICA
GOODX
SAGTEWARE | SOFTWARE

DynamicNav Systems

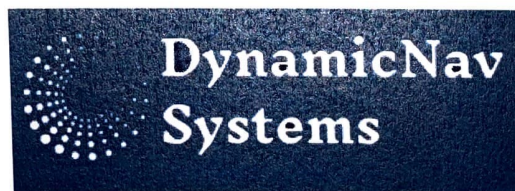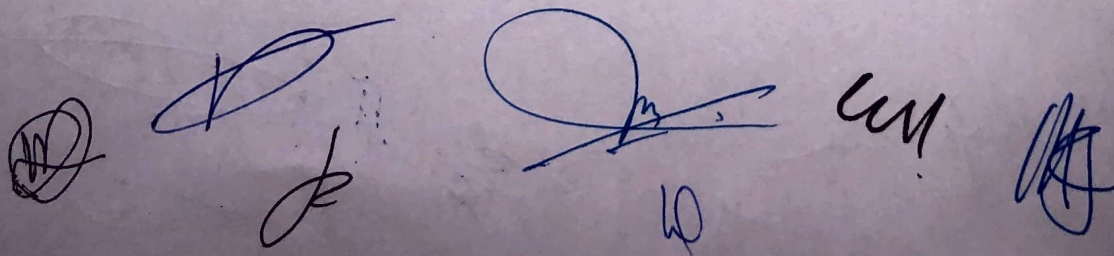## CONTRACT AGREEMENT

CONTRACT FOR THE SUPPLY, IMPLEMENTATION, MAINTENANCE, DEVELOPMENT AND SUPPORT OF
ENTERPRISE RESOURCE PLANNING (ERP)
AND
HOSPITAL MANAGEMENT INFORMATION SYSTEM (HMIS)

CONTRACT AGREEMENT

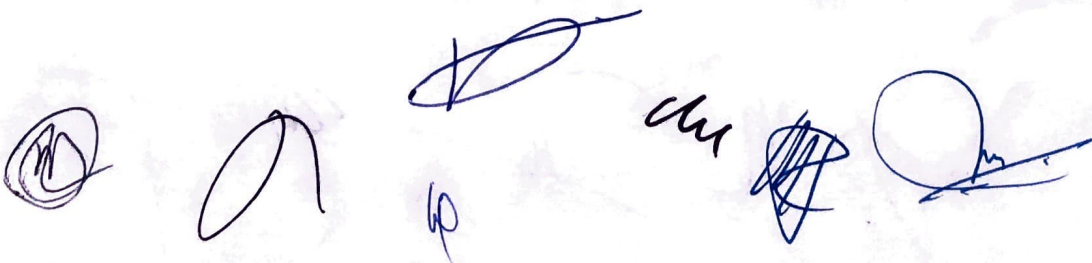THIS AGREEMENT is made on the 1st day of August 2023.

1. **The Parties**

    1.1. **'The Hospital'**: KENYA HOSPITAL ASSOCIATION, a company registered with limited liability (by guarantee) under the Companies Act, No 17 of 2015 Laws of Kenya, trading as THE NAIROBI HOSPITAL whose registered office is at Argwings Kodhek Road Post Office Box 30026 – 00100 Nairobi, Kenya (hereinafter called "the Hospital"), and

    1.2. **'The System Integrator'**: GOODX ENTERPRISES (PTY) LIMITED, a company incorporated with limited liability in the Republic of South Africa whose main place of business is at 31 Snyman Road, Brummeria, Pretoria, South Africa, referred to as "GoodX") and DYNAMICNAV SYSTEMS LIMITED, a company registered with limited liability under the Companies Act, No 17 of 2015 Laws of Kenya, whose registered office is at 45 Africa REIT, Karen Road Post Office Box 5482 – 00200 Nairobi, Kenya (hereinafter referred to as "DynamicNav").

2. **The Background**

    2.1. The Hospital, through an open tender REFERENCE NO: TNH/038/22/ICT, invited System Integrators to present their proposals for the supply, implementation, maintenance, and support of Enterprise Resource Planning (ERP) and The Hospital Management Information System (HMIS) (hereinafter referred to as "HMIS").

    2.2. Following a review and evaluation of the presented bids, the Hospital resolved to award GoodX and DynamicNav for the services through a letter referenced TNH/038/22/ICT dated 7th June 2023 and acknowledged that the tender in clause (a) above, the letter referenced herein, GoodX and DynamicNav's proposal and this contract will be the contractual documents to be relied upon in the provision of services forthwith.

    2.3. The System Integrator, having the know-how, expertise, capacity, and resources, is ready, willing and able to carry out such services and undertakes to use the latest technology and services techniques while providing the services herein as accepted in the award letter dated 7th June 2023.

2.4. GoodX Software is provided as a Software as a Service (SaaS) application and has been developed as a Desktop-based Application and a Web-based Application. The TNH wishes only to use the Web-based Application and not a hybrid of the Desktop and Web Applications, and therefore, GoodX Software has committed to duplicating additional functionality into the Web-based Application. Therefore, it is specifically noted here that GoodX owns the source code, intellectual property rights, and copyright of GoodX Software, which will be licenced to the TNH

2.5. On behalf of both Parties, the signatories confirm that they are authorised to sign this Agreement.

IN WITNESS WHEREOF IT IS AGREED AS FOLLOWS:

3. Contract Documents (Appendices)
   3.1. The following documents attached to this Contract Agreement shall constitute the Contract between the Hospital and System Integrator, and each shall be read and be construed as an integral part of the Contract:
   3.1.1. This Contract Agreement.
   3.1.2. Appendix 1A: Special Conditions of Contract I: Contract for supply, implementation, maintenance, licence and technical support of Microsoft enterprise resource planning.
   3.1.3. Appendix 1B: Special Conditions of Contract II: GoodX Licence and Services.
   3.1.4. Appendix 1C: Special Conditions of Contract III: GoodX Software HMIS Development Agreement.
   3.1.5. Appendix 2: Agreed Fees & Payment Schedule.
   3.1.6. Appendix 3: Project Team & Personnel.
   3.1.7. Appendix 4: Deliverables as per tender (Workplan).
   3.1.8. Appendix 5: Development & Workaround Document.
   3.1.9. Appendix 6: Development Plan (to be attached upon completion of the fact-finding process).
   3.1.10. Appendix 7A: Minutes of Contract Negotiations drafted by TNH held on 3rd July 2023.
   3.1.11. Appendix 7B: Minutes of Contract Negotiations drafted by GoodX held on 3 July 2023.
   3.1.12. Appendix 8: Letter of Intent dated 7 June 2023 issued by the Hospital to System Integrator and the System Integrators' Signature of Acceptance.
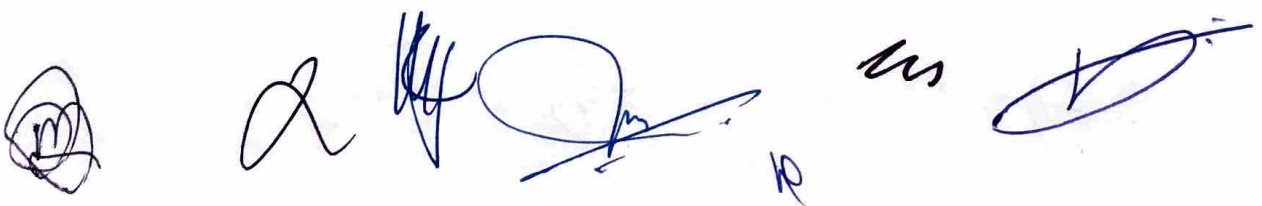
3.1.13. Appendix 9A: Deliverables: Request For Proposal (Rfp) For The Supply, Implementation, Maintenance, And Support Of Enterprise Resource Planning (Erp) And Hospital Management Information System (Hmis) (Volumes I, II and III of the RFP).

3.1.14. Appendix 9B: Expression Of Interest (EOI) For Implementation Of HMIS And ERP.

3.1.15. Appendix 10: Joint Venture Agreement between GoodX and DynamicNav.

3.1.16. Appendix 11: Bank letter to confirm the performance guarantee as per clause 6.1.2.

3.1.17. Appendix 12: Service Level Agreement on page 77 of Appendix 9 (to be attached upon completion of the fact-finding process).

3.2. Order of Precedence: The Contract Documents listed in clause 1 have not been listed in a particular order of precedence and shall be interpreted contextually and purposefully as a whole.

4. Definitions for words and phrases

Unless the contrary is clearly indicated, the following words and/or phrases shall have the following meaning:

4.1. "Acceptance or Accepted" shall mean in relation to the Deliverables (or any of them) successful completion of the Acceptance Tests or deemed an acceptance in accordance with this Agreement;

4.2. "Acceptance Date" shall mean the date upon which the relevant Deliverables are accepted by the Hospital in accordance with this Agreement;

4.3. "Acceptance Tests" shall mean the standard acceptable tests in accordance with this Agreement to assess whether the Deliverables conform with the Specification and other applicable requirements under this Agreement;

4.4. "Agreement" shall mean all the signed Contract Documents per clause 3 above and amended from time to time and all accepted quotations or amendments attached to it from time to time;

4.5. "API" shall mean the application program interface that gives Third Party Software access and the ability to import and/or export data into/from the GoodX Software and database;

4.6. "API Third Party Software" shall mean software with which the System Integrator is integrated via API;

4.7. "Authorised Contact" shall mean each authorised representative appointed by each of the Hospital and the System Integrator as their

respective account managers, whose details are set out in this Agreement or as otherwise notified to the other party in writing;

4.8. "Cloud" shall mean a private network of remote servers accessible via the internet to store, manage, and process data;

4.9. "Commencement Date" shall mean the date on which all the Conditions Precedent in clause 6 have been fulfilled;

4.10. "Confidential Information" shall mean any information of whatever nature, which has been or may be obtained by either of the Parties from the other relating to the GoodX Software, whether in writing or in electronic form or pursuant to discussions between the Parties, or which can be obtained by examination, visual inspection or analysis; as well as any dispute between the Parties resulting from this Agreement;

4.11. "Copyright" shall mean all rights of Copyright, whether existing now or in the future in and to GoodX Software and the ERP;

4.12. "Data" shall mean any data, including personal information as defined in the Kenya Data Protection Act, 2019, Kenya Information and Communications Act (Chapter 411A) of the Laws of Kenya and/or any equivalent legislation of the jurisdiction(s) where the obligations in terms of the Agreement are being provided and/or performed, supplied to the System Integrator by the Hospital or Processed on behalf of the Hospital by the System Integrator;

4.13. "Data Protection Laws" means the data protection or privacy laws of The Republic of Kenya;

4.14. "Employee" means any employee of the System Integrator;

4.15. "Entity" means a business unit or healthcare service provider embedded within an Install and which is usually associated with a practice number;

4.16. "ERP" shall mean the Microsoft Enterprise Resource Planning (ERP) software consisting of Microsoft Dynamics, MS Finance and Operations 365;

4.17. "Force Majeure" shall mean an event or sequence of events beyond a Party's reasonable control (which could not reasonably have been anticipated and avoided by a Party) preventing or delaying it from performing its obligations hereunder, including war, revolution, terrorism, riot or civil commotion; strikes, lock outs or other industrial action, whether of the affected Party's own employees or others; blockage or embargo; acts of or restrictions imposed by government or public authority; explosion, fire; flood, natural disaster, or adverse weather conditions. Force Majeure does not include, without limitation, inability to pay, mechanical difficulties, shortage or increase of price of raw materials,

over-commitment or market or other circumstances which may make the terms of this Agreement unattractive to a Party;

4.18. "Good Industry Practice" shall mean the exercise of that degree of care, diligence and skill which would reasonably and ordinarily be expected from a skilled, professional and experienced person engaged in the same type of undertaking under the same or similar circumstances;

4.19. "GoodX Software" shall mean HMIS software that has been developed by GoodX, including, without limiting the generality of the foregoing, GoodX modules and GoodX sub-applications, like the Patient Portal, developed as part of the GoodX Software suite and presently available and future Updates, Modifications and Upgrades to it and any documentation associated with the Software, including user manuals and other training material documented on the GoodX Learning Centre and GoodX Courses Platform, whether incorporated in humanly intelligible media or not, in contrast to "New custom sub-applications";

4.20. "Hospital Information" shall mean all information of the Hospital contained in this agreement and all other information which is necessary for the System Integrator to be able to install and maintain the software successfully for the Hospital and information which the System Integrator will have sight of;

4.21. "Imported Business Information" shall mean all information of the Hospital's business that is captured by the Hospital in either GoodX Software, the ERP or the API Third Party Software and imported via API into the other;

4.22. "Install" means the software components copied to and configured on a computer(s), the cloud or website to make possible the setup and use of at least one Entity or multiple Entities through workstations, cloud servers, on-site servers or the web;

4.23. "Intellectual Property Rights" shall mean any know-how (not in the public domain) invention (whether patented or not), design, trademark (whether or not registered), or copyright material (whether or not registered), processes, process methodology (whether patented or not), and all other identical or similar Intellectual Property as may exist anywhere in the world which is not in the public domain and any applications for registration of such Intellectual Property and all present and future rights in the Software and other rights which may in the future be based thereon, including but not limited to copyright;

4.24. "Licence" shall mean a limited, non-transferable and non-exclusive right granted to the Hospital to use the ERP or the GoodX Software and any other software of which GoodX is a distributor;

4.25. "Modifications" shall mean changes, improvements or customisation of or to the ERP or the GoodX Software, which may be required to adapt the software to the requirements of the Hospital;

4.26. "New custom sub-applications" shall mean new custom sub-applications developed specifically at the request of the Hospital that is not part of or integrated into the source code of GoodX Software and not part of the roadmap of the development of GoodX Software and that can stand alone, not dependent on GoodX Software.

4.27. "Parties" shall mean both the System Integrator and the Hospital;

4.28. "The Patient Portal" shall mean the electronic patient portal that connects the healthcare service provider's software with patients for sharing information and other functionalities;

4.29. "Process" shall have the meaning ascribed to it in the Kenya Data Protection Act, 2019 as amended and "Processing" shall have a corresponding meaning.

4.30. "Services" shall mean the services to be provided by the System Integrator to the Hospital in terms of this Agreement as more fully set out under Appendix 2, 4 and 5 of the Agreement and as may be accepted by Hospital, or services that Hospital may accept under separate quotations that may be provided at the Hospital's request after the Commencement Date;

4.31. "Software" shall mean ERP & HMIS software that has been supplied by the System Integrator, including, without limiting the generality of the foregoing, Microsoft modules and GoodX Software;

4.32. "Test Data" shall mean test data suitable to assess whether the Deliverables operate in accordance with the Project Requirements or other applicable standards agreed by the parties;

4.33. "Test Period" shall mean the period of thirty (30) days from delivery of the Deliverables to the Hospital or such longer period as may be agreed;

4.34. "Updates" shall mean minor changes or improvements to the GoodX Software which relate to or affect the operating performance of the GoodX Software or an aspect of the GoodX Software, but which do not change the basic operation or functioning of the GoodX Software.

4.35. "Upgrades" shall mean significant changes to the ERP or the GoodX Software resulting in the addition of a feature or capability not present in the software before the introduction of the changes as well as any

changes to the software designed to permit the use of the software on hardware and/or in conjunction with Operating System Software other than that for which the software was initially designed.

5. Interpretation

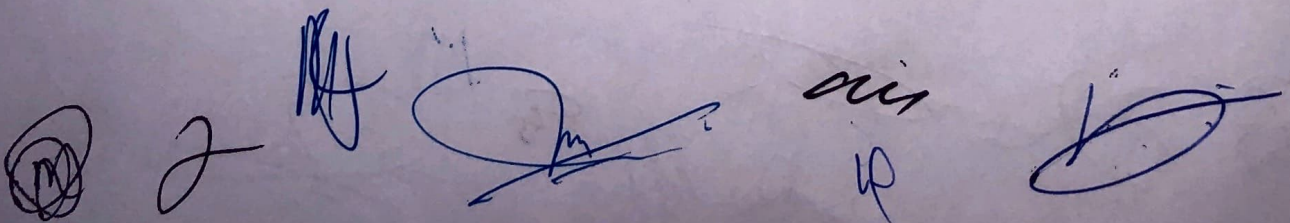   5.1. In this Agreement, unless the context otherwise requires:

        5.1.1. the singular includes the plural and vice versa;

        5.1.2. references to sub-clauses, clauses, Schedules or Appendices are to sub-clauses, clauses, Schedules or Appendices of this Agreement;

        5.1.3. references to persons include individuals, trusts, partnerships, unincorporated bodies, government entities, companies and/or corporations (in each case whether or not having separate legal personality);

        5.1.4. including' (or similar words) means including without limitation;

        5.1.5. clause headings do not affect their interpretation; and

        5.1.6. references to legislation (including any subsidiary legislation) include any modification or re-enactment thereof.

6. Contract Price and Terms of Payment

    6.1. In consideration of the performance by the System Integrator's obligations under the Special Conditions of Contract, the Contract Price shall be the aggregate of USD 5,643,340.00 (Five Million, Six Hundred and Forty-Three Thousand, and Three Hundred and Forty US dollars only), as specified in the Payment Schedule (Appendix 2).

    6.2. The Fees in respect of the Services shall be payable as follows and includes fees as more fully set out under Appendix 2 and any additional quotations:

        6.2.1. A fixed fee, as per Appendix 2, is payable according to the timeframe described and will be paid to the System Integrator as the System Integrator in the account provided in writing by the System Integrator.

        6.2.2. All source code of the New custom sub-applications will be provided to the Hospital upon full payment of all fees due and payable.

        6.2.3. If the System Integrator successfully meets the agreed-upon timelines as per the agreed development plan described in Appendix 6, the amount retained by the client shall become immediately due and payable as further described in the development plan.

        6.2.4. However, if the System Integrator fails to meet the agreed-upon timelines, the client is entitled to withhold the payment, subject to

the condition that the delay is not caused by the Hospital's fault. The System Integrator shall grant a period of 4 weeks for the Hospital to rectify any default.

6.2.5. The Contract Price shall be understood to reflect the terms and conditions used in the specification of prices in the detailed price schedules.

6.3. The Hospital hereby undertakes to settle any fees or payment which shall become due under the Contract.

7. Conditions Precedent

7.1. This contract shall commence once the following conditions are met:

7.1.1. This Contract Agreement and all the annexed Conditions of Contract are duly executed for and on behalf of the Hospital and the System Integrator.

7.1.2. The System Integrator has submitted a performance guarantee equivalent to five per cent (5%) of the total contract sum to the Hospital.

7.1.3. A certified copy of the Joint Venture Agreement between GOODX ENTERPRISES (PTY) LIMITED and DYNAMICNAV SYSTEMS LIMITED must be attached to this Contract Agreement as Appendix 11.

7.2. Each party shall use its best efforts to fulfil the above conditions for which it is responsible as soon as practicable.

8. Facilities to be provided by the Hospital

8.1. The Hospital undertakes to provide the System Integrator with the following facilities for the execution of the contract:

8.1.1. Infrastructure for system deployment.

8.1.2. Internal and external systems for integration.

8.1.3. Office space for the system integrator.

8.1.4. Internal and external stakeholders for training and change management.

8.1.5. Project Management Team.

8.1.6. On-premise project office with equipment.

8.1.7. A dedicated training facility fully fitted with training equipment, such as but not limited to, Audio visual equipment, desktop computers, internet connection, white boards.

8.1.8. Ten parking bays.

8.1.9. Open and honest communication channels.

9. Confidentiality

9.1. Each Party shall maintain the confidentiality of the other Party's Confidential Information and shall not without the prior written consent of the other use, disclose, copy or modify the other Party's Confidential Information (or permit others to do so) other than as necessary for the performance of its rights and obligations under this Agreement.

9.2. Each Party undertakes to:

9.2.1. disclose the other party's Confidential Information only to those of its officers, employees, agents and contractors (including the System Integrator personnel) to whom and to the extent to which such disclosure is necessary for the purposes contemplated under this Agreement; and

9.2.2. to procure that such persons are made aware of and agree in writing to observe the obligations in this clause.

9.3. Each Party shall give notice to the other of any unauthorised misuse, disclosure, theft or loss of the other Party's Confidential Information immediately upon becoming aware of the same:

9.3.1. The provisions of this clause shall not apply to information which:

9.3.1.1. is or comes into the public domain through no fault of the recipient, its officers, employees, agents or contractors;

9.3.1.2. is lawfully received by the recipient from a third party free of any obligation of confidence at the time of its disclosure;

9.3.1.3. is independently developed by the recipient, without access to or use of such information; or

9.3.1.4. is required by law, by court or governmental or regulatory order to be disclosed provided that the relevant party, where possible, notifies the other party at the earliest opportunity before making any disclosure.
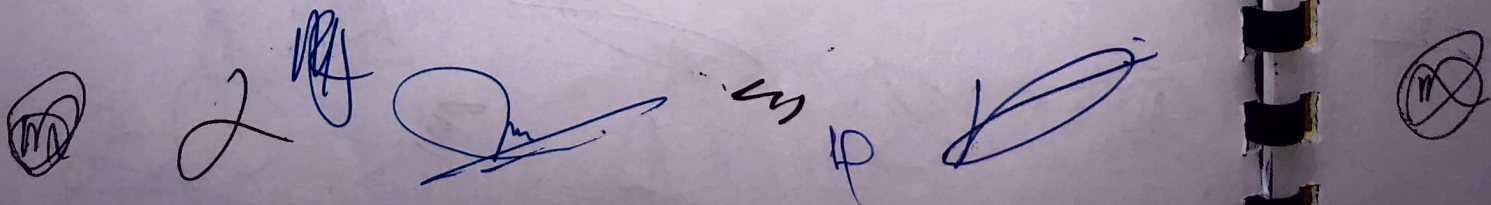
9.4. The obligations under this clause shall survive the variation, expiry or termination of this Agreement for a period of five (5) years thereafter.

10. Data Protection

10.1. In this Agreement, 'personal data', 'data', 'data subject' and 'processing' have the meanings given to them in theData Protection Act, No 24 of 2019 unless otherwise stated.
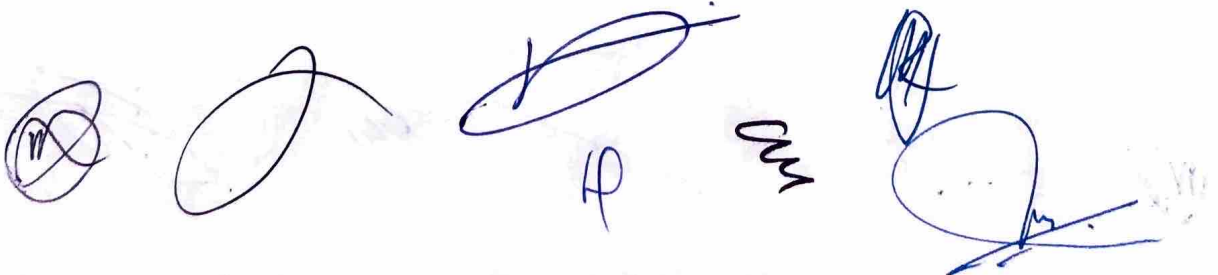
10.2. Each Party must comply with all Data Protection Laws that apply to it in relation to any personal data processed in connection with this Agreement ('Protected Data').

10.3. Without prejudice to the generality of the above clause, in respect of Protected Data disclosed to the System Integrator in connection with this
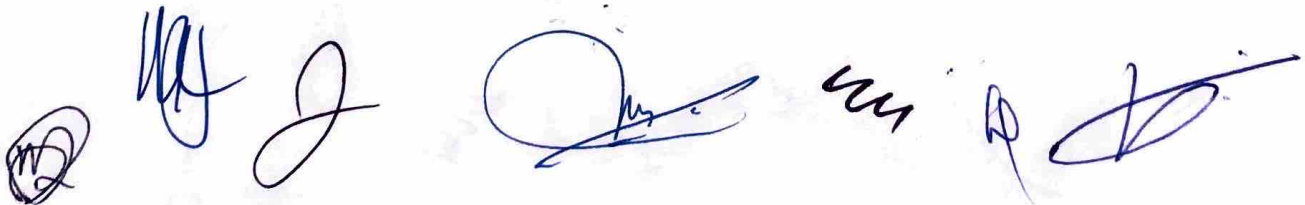
Agreement (and whether disclosed by the Hospital, data subjects or otherwise), the System Integrator must ensure that, where it processes such Protected Data on behalf of the Hospital, the data processor (and without limitation to any other confidentiality or other restrictions on its use of information), it:

10.3.1. only processes the Protected Data for purposes notified to it by the Hospital consistent with the terms of this Agreement and/or the relevant data subjects; and

10.3.2. maintains appropriate technical and organisational measures (including appropriate policies communicated to employees, management and review of ongoing compliance and effective security measures):

10.3.2.1. to prevent any unauthorised or unlawful processing of the Protected Data; and

10.3.2.2. to guard against accidental loss or destruction of, or damage to, the Protected Data.

10.4. The Hospital hereby undertakes to provide the System Integrator with the latest copy of its Data Privacy Policy.

10.5. The Hospital as a data controller shall be responsible for ensuring that personal data is processed fairly and lawfully and in accordance with the principles of the Kenya Data Protection Act.

10.6. The Hospital as a data controller must secure the integrity and confidentiality of the personal data in its possession or under its control by taking appropriate, reasonable technical and organisational measures to prevent:

10.6.1. loss of, damage to or unauthorised destruction of personal information; and

10.6.2. unlawful access to or processing of personal information.

10.7. The Hospital as a data controller must further take reasonable measures to:

10.7.1. identify all reasonably foreseeable internal and external risks to personal information in its possession or under its control;

10.7.2. establish and maintain appropriate safeguards against the risks identified;

10.7.3. regularly verify that the safeguards are effectively implemented; and

10.7.4. ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.

10.8. The Hospital as a data controller shall not instruct the System Integrator to process personal data where a datacontroller itself would not have a legitimate purpose or basis in law to Process such Personal Data.

10.9. The Hospital must obtain the requisite consent from data subjects for the processing of their personal data as envisaged under this Agreement.

10.10. The Hospital, as the data controller, shall be entitled, during the term of this Agreement, to require the System Integrator, as the data processor, to provide reasonable assurance that the technical and organisational security measures adequately protect the personal data it is required to process including to audit the System Integrator's premises, systems, procedures, documents, policies and employees as may be desirable or necessary to ensure compliance with its obligations as a data controller under Data Protection Laws.

10.11. The Hospital shall host all software and data on the Hospital's local hardware and shall manage all access by the System Integrator to perform any services on its infrastructure.

10.12. The System Integrator shall perform any automated updates on the locally installed software until an update request has been logged by the Hospital with the necessary access made available to the System Integrator for purposes of the updates.

10.13. The Hospital shall monitor data backups or the viability thereof and the System Integrator shall assist in training of the Hospital's IT team should it be necessary.

10.14. Data services and technical work, including tests on the Hospital's data, will be done within the Hospital's network.

10.15. The Hospital shall continue hosting all data on its hardware and manage all access by the System Integrator to perform any data services on the Hospital's infrastructure.

10.16. The Hospital shall manage the System Integrator user access, and each System Integrator user shall be assigned a unique VPN username and password to enable logs to capture user activity.

10.17. VPN access not utilised within 60 days shall automatically be terminated or disabled.

10.18. Where the circumstances of service shall require the System Integrator to perform or assume the role of a data processor, the System Integrator shall assume the following responsibilities:

10.18.1. cooperate, as far as reasonably possible, with the Hospital to enable the Hospital to comply with its obligations as a data controller under Data Protection Laws;

10.18.2. only process personal data with the authorisation and knowledge of the Hospital and treat personal data confidential and only disclose the same when required by law or in the course of the proper performance of its obligations under this Agreement.

10.19. Breach and Incident Reporting in so far as personal data is concerned shall be treated as follows:

10.19.1. The System Integrator shall put measures and procedures in place to monitor access and to identify and prevent the loss, damage, unauthorised destruction of and unlawful access to and use of personal data.

10.19.2. The System Integrator shall immediately notify the Hospital where there are reasonable grounds to believe that the personal data of a data subject has been accessed or acquired by any unauthorised person and undertakes to fully cooperate with the Hospital's incident investigation and reporting requirements.

10.19.3. The Hospital shall ensure that the incident is reported in accordance with the Data Protection Laws and procedures and to inform the relevant data subjects as appropriate.

10.19.4. Liability for breach shall be subjected to the applicable laws.

10.20. Each of the System Integrator and the Hospital (the 'Indemnifier') hereby indemnify the other from and against all losses, costs, awards, liabilities and expenses which the other of them may incur or suffer as a result of or arising from any breach by the Indemnifier of its obligations under this clause.

10.21. Each party will establish and maintain adequate security measures to safeguard the information and data of the other party in its possession from unauthorised access and copying.

11. Force majeure

11.1. Neither party hereto shall be liable for any breach of itsobligations hereunder resulting from causes beyond its reasonable control including but not limited to fires strikes (of its own or other employees) insurrection or riots embargoes container shortages wrecks or delays in transportation inability to obtain supplies and raw materials requirements or regulations of any civil or military authority (an 'Event of Force Majeure').

11.2. Each of the parties hereto agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure such notice to contain details of the circumstances giving rise to the Event of Force Majeure.

11.3. If a default due to an Event of Force Majeure shall continue for more than eight (8) weeks then the party not in default shall be entitled to terminate

this agreement. Neither party shall have any liability to the other in respect of the termination of this agreement as a result of an Event of Force Majeure.

12. **Waiver**

12.1. The waiver by either party of a breach or default of any of the provisions of this agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

13. **Notices**

13.1. Any notice request instruction or other document to be given hereunder shall be delivered or by electronic mail (email) tothe address of the other party set out in this agreement (or such other address or numbers as may have been notified) and any such notice or other document shall be deemed to have been served (if delivered) at the time of delivery (if sent by post) upon the expiration of 48 hours after posting and (if sent by email upon receipt of a delivery confirmation.

13.2. Notices to the Hospital:

13.2.1. For the attention of: The Chief Executive Officer: James Nyamongo, Email address: hosp@nbihosp.org

13.2.2. Notices to the System Integrator: For the attention of: The Chief Executive Officer: Kobus Wolvaardt; Copy: Managing Director of DynamicNav Systems Limited: Mr. David Dianga | Email address: ddianga@dynamicnav.com

14. **Invalidity and severability**

14.1. If any provision of this agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

15. **Successors**

15.1. This agreement shall be binding upon and inure for the benefit of the successors in title of the parties hereto.

16. **Costs**

16.1. Each party shall be responsible for the fees of its legal advisers in connection with this Agreement.

17. Amendments

17.1. No amendment or variation to this Agreement shall be effectual or binding on the parties unless it is in writing and duly executed by or on behalf of the parties.

17.2. Provisions which by their terms or intent are to survive termination of this Agreement will do so.

17.3. The Parties are independent businesses and not partners, principal and agent, or employer and employee, or in any other relationship of trust to each other.

17.4. No Party may assign, subcontract or encumber any right or obligation under this Agreement, in whole or in part, without the other's prior written consent or except as expressly permitted in this Agreement.

17.5. Unless otherwise expressly agreed, no delay, act or omission by either Party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.Each Party will, at its own cost, do all further acts and execute all further documents necessary to give effect to this Agreement.

18. Governing Law and Dispute Resolution

18.1. This agreement shall be governed by and construed in accordance with the laws of the Republic of Kenya.

18.2. Any dispute, controversy or claim arising out of or relating to this Agreement or a termination hereof (including without prejudice to the generality of the foregoing, whether in its interpretation, application or implementation) ("a Dispute"), shall be resolved by way of consultation held in good faith between the parties. Such consultation shall begin immediately after one Party has delivered to the other a written request for such consultation.

18.3. If within ten (10) Business Days of the date on which such notice is given the dispute cannot be resolved, the dispute, controversy or claim shall be submitted to arbitration in accordance with the provisions of clause 15.4.

18.4. Any Dispute which cannot be settled amicably as referred to in clause 17.3 shall be referred to and finally resolved by arbitration in accordance with the Arbitration Act, 1995 (Laws of Kenya) as amended by the Arbitration (Amendment) Act, 2009 (Act No.11 of 2009) or other Act or Acts for the time being in force in Kenya in relation to arbitration. The arbitration shall be undertaken by a single arbitrator to be agreed upon between the parties or, failing such agreement within seven (7) Business Days of the Dispute

being referred to arbitration, an arbitrator shall be appointed by the Chairman for the time being of the Chartered Institute of Arbitrators, Kenya Branch upon the written request of either party.

18.5.   The appointment of the arbitrator shall be final and binding on the parties and the arbitration shall take place in Nairobi. The language of the arbitration shall be English. The costs of arbitration (including fees and expenses of the arbitrators) shall be shared equally between the parties unless the award provides otherwise. The decision of the arbitrator shall be final, binding and enforceable in any court of competent jurisdiction.

18.6.   Notwithstanding the foregoing provisions of this clause 16, a party is entitled to seek preliminary injunctive relief or interim or conservatory measures from any court of competent jurisdiction pending the final decision or award of the arbitrator or prior to any process of good faith consultation.

19.   Counterparts

19.1.   This Agreement may be signed in any number of counterparts and by the parties on separate counterparts, each of which when executed and delivered shall be an original, and such counterparts taken together shall constitute one and the same agreement. This Agreement shall not be effective until each Party has signed one counterpart.Entire Agreement

19.2.   This Agreement together with the Schedules constitutes the whole agreement between the parties relating to its subject matter and supersedes any prior agreements, representations or understandings between them unless expressly incorporated by reference in this Agreement.

19.3.   Each party acknowledges that it has not relied on, and shall have no remedy in respect of, any representation (whether innocent or negligent) made but not expressly embodied in this Agreement. Nothing in this clause limits or excludes any liability for fraud or fraudulent misrepresentation.

20.   Hospital Obligations

20.1.   The Hospital shall provide or procure for the System Integrator and/or the System Integrator personnel:

20.1.1.   reasonable access to premises and facilities at the locations for delivery and installation of the System and for the provision of the Services;

20.1.2.   reasonable access to the Hospital software, systems and data to the extent necessary for the System Integrator to carry out its obligations under this Agreement;

20.1.3. reasonable access to and cooperation by the Hospital personnel and those of its third party representatives (if any);

20.1.4. that reasonable precautions shall be in place to protect the health and safety of the System Integrator personnel while on the Hospital's premises,

20.1.5. in each case as reasonably necessary for the System Integrator to perform its obligations under this Agreement.

20.2. The System is to be provided at the Hospital's request and the Hospital is responsible for verifying that the System is suitable for its own needs.

20.3. The Hospital, based on specifications to be provided by the System Integrator, shall prepare the installation location and provide proper environmental and operational conditions for the System prior to delivery.

20.4. The Hospital shall settle the System Integrator's fees as and when they fall due under this Agreement.

21. Duration

21.1. This Agreement shall continue from the Commencement Date for five (5) years at which point it will determine unless terminated in accordance with clause 17 (Termination) of this Agreement.

22. Termination and Consequences of Termination

22.1. Either party may, without prejudice to its other rights and remedies, by notice in writing to the other party immediately terminate this Agreement if the other:

22.1.1. is in material or persistent breach of any of its obligations under this Agreement and if that breach is capable of remedy and the other has failed to remedy that breach within thirty (30) days after receiving written notice requiring it to remedy that breach; or

22.1.2. is unable to pay its debts (within the meaning of Section 384 of the Insolvency Act, No 18 of 2015 or becomes insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of the other (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of the assets of the other or the other enters into or proposes any composition or arrangement with its creditors generally or any analogous event occurs in any applicable jurisdiction.

22.2. The Hospital may without prejudice to its other rights and remedies by notice in writing to the System Integrator immediately terminate this Agreement if the System Integrator ceases or threatens to cease carrying
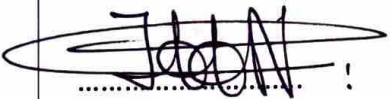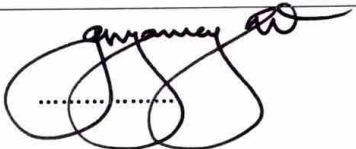
on business, or if the System Integrator undergo a change of Control that is in the Hospital's reasonable opinion likely to have an adverse effect on the Hospital or the provision of the Services.

22.3. The System Integrator may without prejudice to its other rights and remedies by notice in writing to the Hospital immediately terminate this Agreement if the Hospital fails to pay any sum due under the terms of this Agreement and such sum remains unpaid for thirty (30) days after written notice from the System Integrator that such sum has not been paid.

22.4. In the event of termination of this Agreement for any reason, each party shall within fourteen (14) days return or destroy (at the other party's option) all Confidential Information of the other party's in its possession or under its control and all copies of such information.

22.5. Upon termination of this Agreement, for whatever reason, the Hospital shall retain the right to use the software, subject to payment of the licence fees thereon.

22.6. The Hospital is at any time entitled to do data extraction from the system in Excel or a similar open-source format, which data can be extracted by drawing the reports in GoodX, e.g. the Debtor/Patient Report writer, Age Analysis, Debtor Drilldown report, Accounting and Stock reports available in the software. GoodX can export clinical information at the request of the Hospital before the end of this Agreement.

22.7. Termination or expiration of this Agreement shall not discharge the System Integrator from its confidentiality obligations.

23. Limitation of liability

23.1. The liability of the System Integrator for faulty execution of the ERP or GoodX Software or GoodX Switch, the Support Services rendered in terms of the Agreement or the use of the Cloud by the Hospital as well as all damages suffered by the Hospital, whether direct or indirect, as a result of the malfunctioning of such Software, Switch or the Cloud or caused by GoodX as a result of faulty execution of the Support Services, will be limited to GoodX rectifying the malfunction or any Software or Switch errors or the Cloud or Support services, within a reasonable time and free of charge.

23.2. This liability is completely excluded if the Hospital attempts to correct or allows third parties to correct or attempt to correct the Software or Switch or such faulty execution of the Support Services or any damage arising therefrom without the prior written approval of GoodX.

23.3. the System Integrator shall not be held liable for any fault in the computer hardware or other software, nor does GoodX warrant the integrity of any

third-party data or electronic information, including but not limited to converted data.

23.4.   the System Integrator shall not be liable, whether, in contract, delict or otherwise, for any direct, indirect, special or consequential loss or damage or any loss of profit suffered or sustained by the Hospital as a result of or in connection with the use of or reliance on incorrect data provided by the Medical Scheme or Administrator or the Hospital's omission to inform GoodX of any change in the Hospital's details.

23.5.   Any other liability on the part of the System Integrator not specified herein is specifically excluded. Without limiting the generality of the aforegoing, GoodX shall not be liable for any delay, failure, breakdown or damage caused by:

23.5.1.   software, programs and support services supplied by or obtained by the Hospital without the consent or knowledge of the System Integrator; or

23.5.2.   software or programs modified by the Hospital or any third party not authorised to do so in terms of the Agreement; or

23.5.3.   the actions or requirements of any telecommunications authority or a supplier of telecommunications services or software.

23.6.   In no event shall the System Integrator be liable to the Hospital for loss of profits or for incidental, special or consequential damages arising out of or in connection with the Software or Support Services rendered by the System Integrator in terms of the Agreement or the delivery, installation, servicing, performance or use of it in combination with other computer software.

23.7.   the System Integrator or its accredited Agent shall, in particular, not be liable for any consequential loss which the Hospital may suffer as a result of any fault in the software and its aggregate liability arising from breach of this Agreement by GoodX will, in any event, not exceed the Fees kept in the escrow account as per Appendix 2.

23.8.   The System Integrator cannot be held liable for any damages arising from third-party software and/or Licences.

IN WITNESS, this Agreement has been duly executed by or on behalf of the parties and entered into on the date stated at the beginning of it.

SIGNED at Nairobi by the authorised representative of of the Hospital, **KENYA HOSPITAL ASSOCIATION**

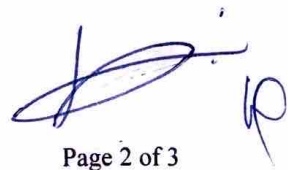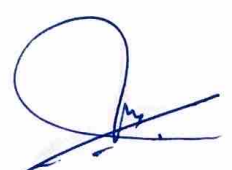|	
Authorised signature	
Signatory Name	**Mr. James Nyamongo**
Email address	jamesnyamongo@nbihosp.org
Date:	
in the presence of: Company Secretary Gilbert Nyamweya	
SEALED with the Common Seal of Kenya Hospital Association Chairman/Director: Name: DR IRUNGU NDIRANGU Signature: Director: Hon. Bor. chris m.u. Bidwage Name: Signature:	

SIGNED at Nairobi	
By the authorised representative of **GOODX ENTERPRISES (PTY) LIMITED**	
Date:	
Authorised signature	
Signatory name	Morne Timms
Email address	Morne@goodx.co.za

Witness :

Micha Klopper

SIGNED at Nairobi	
By the authorised representative of **DYNAMICNAV SYSTEMS LIMITED**	
Date:	
Authorised signature	
Signatory name	David Dianga
Email address	ddianga @dynamicnav.com

Witness

Nicholay Oyalo Akalo