

Bondfide
 Price
 Guarantee
 majeur
 Due Liability
 Confidential
 Conditions
 and
 Parties
 Performance
 Bargain
 Stipulation diligence
 Acceptance Service
 Arrangement conditions
 Termination
 Legal
 Warranty
 Pact
GOOD
Terms
 Commitment
 Term
 Obligation
BAD
 Penalty
 Pledge
 Breach
 Force
 Implied
 Offer
 facto
UGLY
 Commission
 Consideration
 Transaction
 Rights



Patrick K. Lynch

Chief Do-Gooder
Global Medical Imaging

Linda Comisar

National Purchasing Manager
Catholic Healthcare Initiatives (CHI)





Who am I?



- CBET, CCE, CPHIMS, CHTS-PW, fACCE
- 40 years in Biomed
- Managed large In-house, ISO and corporate Biomed
- **Active in certification of BMETs and CEs**
- 1st Pres of NCBA (North Carolina branch) - 1980
- President, HTMA-SC
- Treasurer – HTMA-GA
- Member of all Biomed Associations (honorary NC, KY, Utah)
- Board Member – META, SC, GA
- Advisor – OH, KY, TN, UT, VA, NC, Texas
- Writes monthly for TechNation and BI&T (AAMI)
- **Currently, works for GMI is sales development, who sponsors my activities**

Disclaimer

- The materials available in this presentation are for informational purposes only and not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to any particular issue or problem. **I am not an attorney.**

****I'm not a lawyer****

Simplest Service Contract

- **Extended Warranty**
- Offered at Checkout
- Explained to you by a cashier
- You accept it when you sign for your purchase
- It is a legally binding contract
- Simple and easy – Right?
- Wrong

Extended Warranties

Advice From Consumer Reports, Dec 2014

- Do not buy.
- Over 50% store profit.
- May be covered by warranty.
- Products seldom break during service plan window.
- Repairs aren't that costly.
- Mfgs sometimes cover out-of-warranty items.
- You may have other rights.
- Insurance may cover you.
- The plan may let you down.
- You can't afford to protect everything.

Extended Warranties

From Consumer Reports, December 2014

- Alternatives to Extended Warranties:
 - Self-Insure.
 - Buy reliable products.
 - Read the manufacturer's warranty before buying.
 - Examine the retailer's return policy.

What we will cover

1. What is a contract?
2. Financial Aspects of a Contract.
3. Risk Aspects of a Contract.
4. Workflow Aspects of a Contract.
5. Future Freedom Aspects of a Contract.
6. Legal aspects of a Contract.
 1. Standard Clauses
 2. Negotiable Clauses
7. Negotiation of a contract



What is a contract?

- An agreement creating obligations enforceable by law.



What is a contract?

- When crafting a contract, the parties are creating a **special law**, applicable only to the signing parties, which they intend for a court to enforce as law.

Why do people sign contracts?

- **Protection.** Afraid of the alternative.
- Admin thinks that the manufacturer is the Cadillac service and the safest bet.
- They are spending hospital money, not their own.
- Contracts are less work.
- Nobody ever lost their job because they signed a contract with the manufacturer.

Contracts

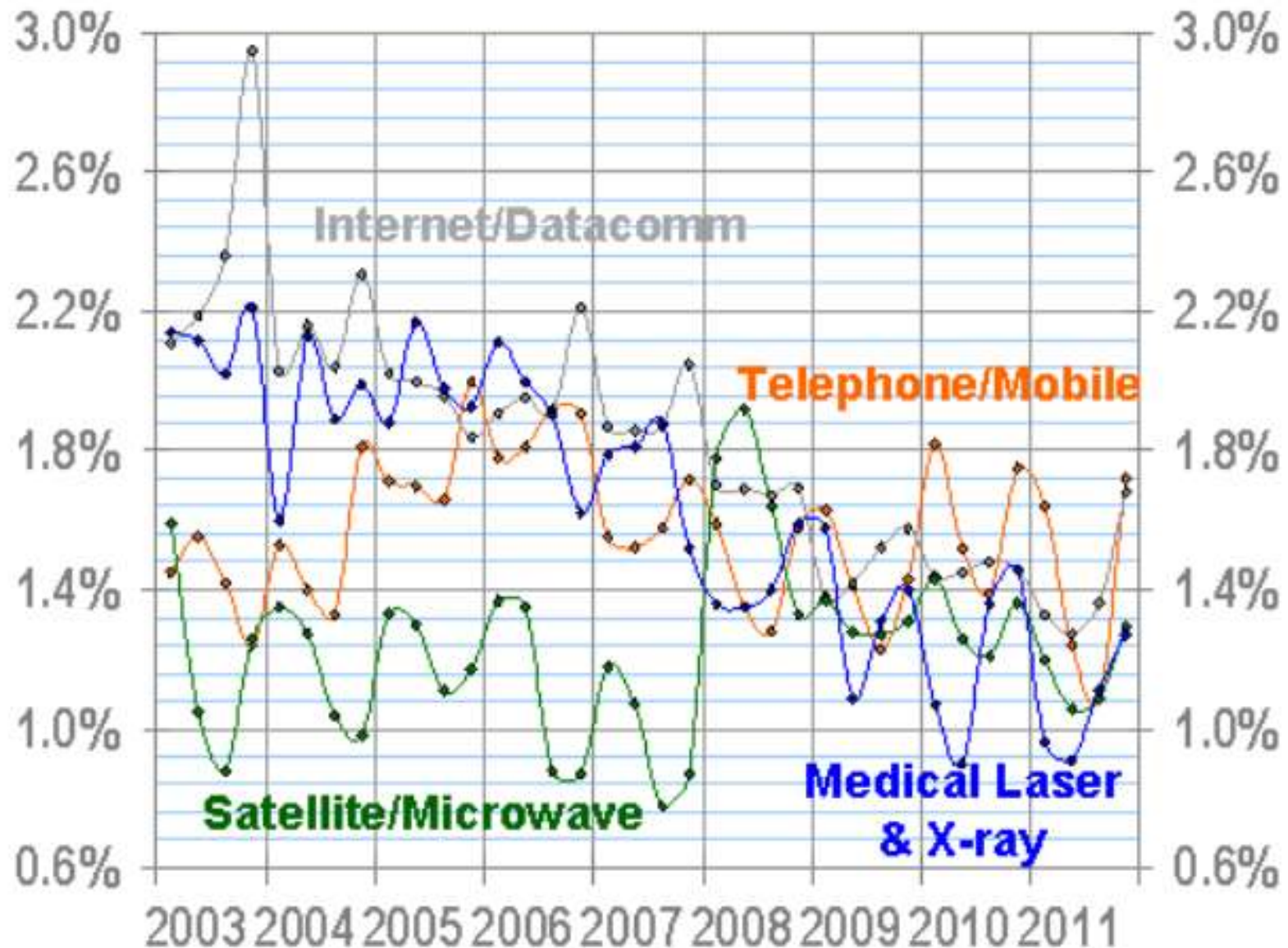
MAINTENANCE CONTRACTS			
	BRONZE	SILVER	GOLD
Preventative maintenance visits	✓	✓	✓
Comprehensive engineers report	✓	✓	✓
Fully qualified personnel	✓	✓	✓
Free technical advice	✓	✓	✓
Priority response to emergencies	✓	✓	✓
No labour charges for emergency call outs	✓	✓	✓
24hrs per day 365 days per year	✗	✓	✓
No parts charge	✗	✗	✓

Financial Aspects



- Warranty Week
- COSR
- Parfait Slide

Warranty Accrual Rates, 2003-2011 (as a % of product sales)



Actual Cost of Maintenance and Repair



- Cost during 1st year warranty should be about the same as every year afterwards?
- Cost to service a 1 year warranty on all types of products averages 1% to 2% of the sales price.
- Therefore, the cost of a service year should be the same – about 1 to 2% per year.



- Cost to service a 1 year warranty on all types of products averages 1% to 2% of the sales price.
- Therefore, the cost of a service year should be the same – about 1 to 2% per year.
- What does a Service Contract Sell for (as a percentage of the equipment price)?

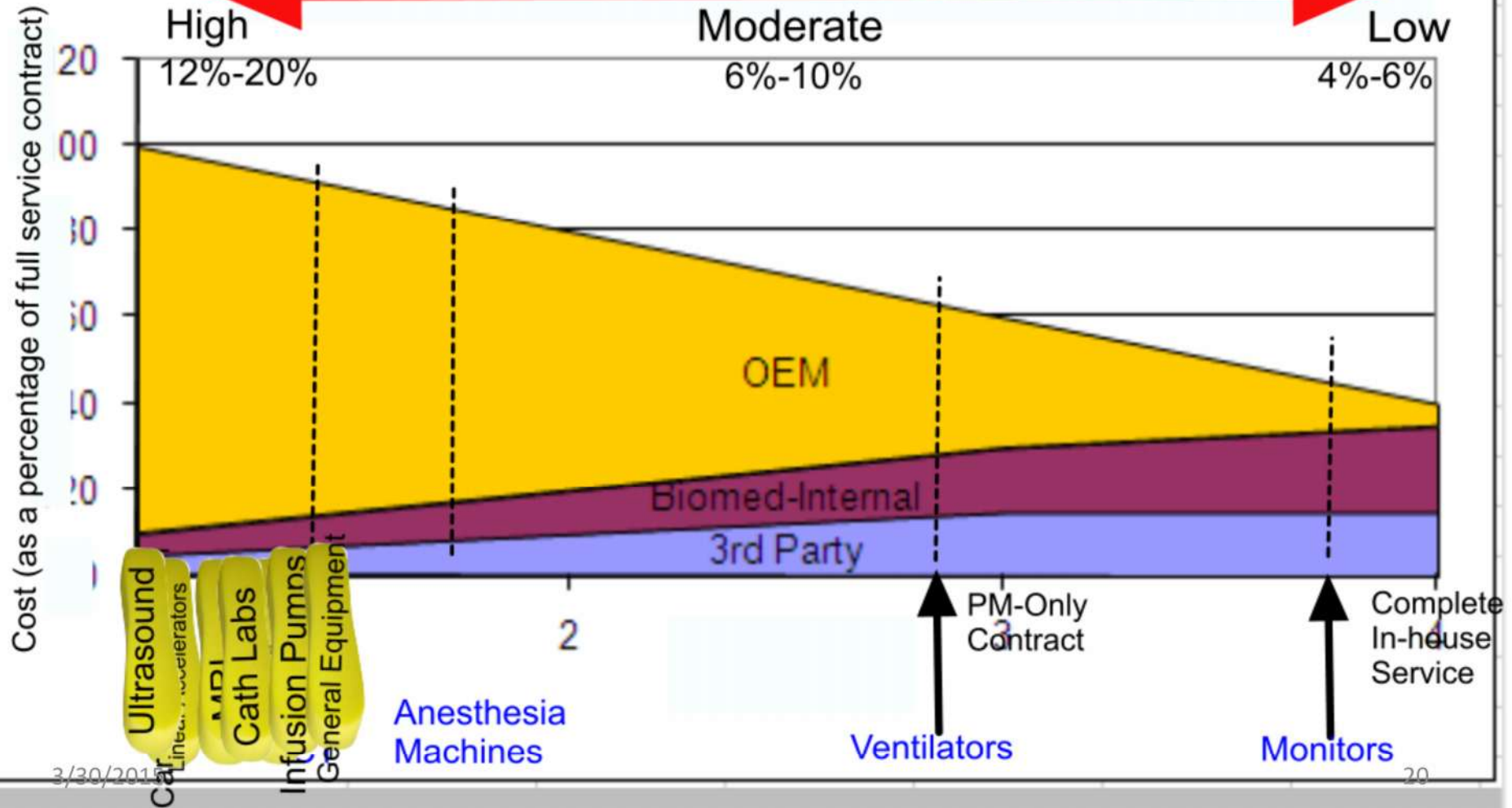
Cost of Service Ratio



Graph 2

Annual Spend on Medical Equipment Service

Cost of Service Ratio - COSR



[illegible]

- 3/30/2015

Future Freedom Aspects

- Almost no freedom to change terms, conditions, coverages, etc. regardless of satisfaction with service, response, cost, etc.
- If reimbursements or volumes change, the contract does not.

The fine print

- How to breakdown a contract into its individual parts.
- Which clauses are important.
- Essential clauses to have
- How to change the offered terms and conditions.

Assignment/Subcontracting:

- Neither party shall have the right to assign or subcontract any part of its obligations under this agreement.
- Neither party shall have the right to assign or subcontract any of its obligations or duties under this agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

Entire Agreement

- This agreement sets forth and constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof. This agreement supersedes any and all prior agreements, negotiations, correspondence, undertakings, promises, covenants, arrangements, communications, representations, and warranties, whether oral or written, of any party to this agreement.
- This means that the contract containing this provision is the only agreement that a court will examine to determine what the "deal" or agreement between the parties was. No other written documents or verbal statements can be used as evidence in a dispute over the agreement.

Hold Harmless Clause

- A Hold Harmless Agreement is a document wherein one party agrees to hold another party harmless that would normally be legally liable for damages incurred.



Force Majeure

- Neither party shall be held responsible for any delay or failure in performance of any part of this agreement to the extent such delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil or military authority, act of God, or other similar causes beyond its control and without the fault or negligence of the delayed or non-performing party.

Limit of Liability

- This provision means that an injured party cannot recover the costs of indirect damages resulting from an injury. It has no effect on either company's liability for direct damages. Indirect or consequential damages can be huge, so disclaiming them is a way of reducing risk in the contract.
- Lost revenues from not being able to use a machine.

Notices

- All notices shall be in writing and shall be delivered personally, by United States **certified or registered mail**, postage prepaid, return receipt requested, or by a recognized overnight delivery service.
- Contracts typically require one party to provide notice to the other party in the event one party thinks the contract was breached, when termination of the contract is desired, or in other instances specific to each contract. This provision sets out the requirements for how and when a notice must be made to be legally valid.

Written Modification

- This provision means that only a written signed agreement will be enforceable to amend or modify the agreement.

Exclusions

3. ITEMS **EXCLUDED**. The following items are excluded from this Agreement unless otherwise indicated on the face of this document.

- a. Customer operation instructions.
- b. Adding or removing accessories, attachments, or other devices, and remedial services necessary to repair accessories.
- c. Services connected with Equipment movement or relocation.
- d. Problems caused by external sources, including the incoming power supply.
- e. Increase in service time resulting from operator neglect or failure to follow operation instructions.
- f. Repair or damage from accident or any cause other than ordinary use.
- g. Rigging and handling, removal, modification or reconstruction of a wall, partition, ceiling or any other portion of the facility arising from repair, replacement or substitution of Equipment or parts of it.
- h. Chiller maintenance or repair.
- i. Expendable materials or accessories (for example, straps, foam cushions, and other similar items).
- j. Problems caused by modifications, maintenance or repairs of the equipment or software not performed by Toshiba.
- k. Storage facilities for spare parts, tools and supplies.

Performance of services not included in this Agreement will be charged in accordance with Toshiba's prices in effect at the time such services are provided to Customer.

***Refer to attachments for further details on Agreement Types.**

Excluded Parts differ depending on specific product **Specific list will be provided on request**
reagent cups, racks, tray, cuvettes & reservoirs; lamps; electrodes; membranes; printer ribbons
Conditioners.

Slices Provision

GLASSWARE

CTTUBE.C.150K.010 (ROTATION COUNT: UP TO
150,000 USAGE FEE: \$1.00) QTY 1

Circumstances

18. CIRCUMSTANCES BEYOND CONTROL. Toshiba will not be liable for non-performance or delay in performance resulting directly or indirectly from any occurrences beyond Toshiba's control, including without limitation, strikes or other labor actions, Acts of God, war, accidents, fires, floods, other catastrophes, inclement weather, transportation, delays caused by Toshiba's suppliers, inability to obtain replacement parts, or laws, regulations, or acts of any governmental agency. The foregoing provision will apply even though such cause may occur after performance of the obligations of Toshiba under this Agreement has been delayed for other causes.

19. DISCLAIMER OF WARRANTIES. TOSHIBA MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, OR WARRANTY OF FITNESS FOR PARTICULAR PURPOSE WITH RESPECT TO ANY OF THE SERVICES AND PARTS FURNISHED UNDER THIS AGREEMENT.

Cost with a Contract

billing rates for Non-Standard hours service for Customers with a Varian Service Level Agreement (SLA) is \$300/hour for a Customer Support Representative and \$450 per hour for a Product Support Engineer/Product Specialist.

All rates are subject to change without prior notification.

Cost to Customer

Labor Rates

	Standard Hours	Non-Standard Hours
Customer Support Representative* (2-hour minimum)	\$375/hour	\$565/hour
Product Support Engineer/Product Specialist* (2-hour minimum)	\$565/hour	\$850/hour
Applications & Clinical Help Desk Support* (30-minute minimum)	\$375/hour	\$565/hour
On-Site Applications Support (2-day minimum, includes travel)	\$5,000/day	\$10,000/day

*On-site, remote (off-site) support or travel

Daytime PMs

COSTS INCLUDED: The prices in this Agreement include the cost of labor, travel, and parts, provided that the service is performed during the hours covered in the service plan purchased, e.g., Business Hours Service plan. All on- site service, regardless of the service plan purchased, is provided during regular business hours, unless otherwise agreed by BCI and subject to availability of BCI service personnel. In order to obtain on- site service on the same day as requested, subject to availability of BCI service personnel, customer must submit its request for service before 3 p.m. local time. All on- site service requests submitted after 3 p.m. local time will require a purchase order from customer unless Total 24x7 Service plan is purchased.

Uptime Guarantee

h. Uptime Guarantee as specified on the face of this document. Uptime guarantees are measured based on covered hours, excluding Toshiba's recognized holidays. Uptime will be calculated using the following formula:

$$\text{Uptime} = (\text{Base Time} - \text{Downtime}) / \text{Base Time}$$

Definitions: Base Time: Total covered hours. Downtime: Time when the specified imaging equipment is unavailable for scanning or diagnosing images due to Equipment malfunction, and is immediately available for service repairs. Downtime will be calculated during the Covered Hours and commence when the Customer's call is logged into the InTouch™ Center. Downtime concludes once repairs are completed and the imaging system is available for clinical use. Downtime does not include time spent for preventive maintenance, routine part replacements or repair of any malfunction caused by operator error, accidents or other elements outside the control of Toshiba, such as accidents, fires, floods, and Acts of God. The Uptime Guarantee will be voided if Toshiba is not given access to the Equipment for preventive maintenance or other types of service required during the term of this Agreement.

Uptime statistics will be measured over a 12-month period. If the Equipment fails to achieve the specified uptime percentage, the following year's services contract will be reduced by the uptime discount specified under the specific Services Agreement plan, up to a maximum of 15%.

Uptime Calculation Formula

3. Uptime will be calculated using the following formula:

$$\text{UPTIME} = \frac{\text{BASIS} - \text{DOWNTIME}}{\text{BASIS}} \times 100$$

BASIS HOURS is all-Important

Downtime ends once repairs are completed and the Oncology system is again available for clinical use. *Hours that are outside of the window established by the BASIS defined above are excluded from calculation of downtime.*

Downtime BASIS Hours

DOWNTIME - The period of time in hours (calculated to the nearest 15 minutes) during which the Oncology system is inoperable to the point that it cannot be used for clinical purposes.

Downtime will be calculated based on the Varian dispatch reports and a review of service activity as described in the required Electronic Field Service Reports. Downtime will commence when the customer notifies Varian's Customer Service Center that the system is inoperable and available for service.

Limited Basis Hours

Total treatment hours definition:

- Correspond to the standard office hours of the local Varian office
- Maximum 9 hours per day and 5 working days per week

Effect of BASIS Hours

%	Downtime	
	Hours	Weeks
	20.8	0.12
99		
98	41.6	0.25
97	62.4	0.37
96	83.2	0.50
95	104.0	0.62

9-5 M-F

%	Downtime	
	Hours	wk
99.9	8.8	5.21
99	87.6	0.52
98	175.2	1.04
97	262.8	1.56
96	350.4	2.09
95	438.0	2.61

24 x 7

Termination Clause

- provides the parties to a contract different options for ending their contractual agreement. General termination clauses often allow the parties to end a contract at the end of specified time, after a specific event or project or for no reason at all. If a termination clause allows for unilateral termination without cause, it is often called a rescission clause.
- Typical contract termination clauses anticipate specific events, such as insolvency, sale of a [company](#) or bankruptcy. Depending on the nature of the contract, the parties may wish to include a clause that allows termination when it would become overly burdensome to continue operations.

Termination for Cause

- If either party breaches any provision of this agreement and if such breach is not cured within thirty (30) days after receiving written notice from the other party specifying such breach in reasonable detail, the non-breaching party shall have the right to terminate this agreement by giving written notice thereof to the party in breach, which termination shall go into effect immediately on receipt.

Termination for Convenience

- Many contracts include a clause that allows the owner to terminate the contractor's remaining work at the owner's convenience. Such a termination is not due to any fault on the part of the contractor.

Terms and Terminations

TERMS AND TERMINATIONS: Once accepted by BCI ("Acceptance Date"), this Agreement shall remain in force for the period recorded on the face hereof. Either party may terminate this Agreement upon thirty (30) days' written notice to the other party. Any service performed prior to the Acceptance Date of this Agreement or performed subsequent to the expiration or termination of this Agreement will be billed at the then current time and materials rate.

Termination

8. TERMINATION. This Agreement will terminate upon the expiration date specified on the face of this document. Customer may not terminate this Agreement before its expiration unless (a) Customer sells, discards or otherwise completely discontinues using the Equipment, or (b) Customer exchanges the Equipment for another new Toshiba Equipment, or (c) Toshiba substantially fails to perform any of its material obligations specified in this Agreement. In the case of termination for the reasons stated in (a) or (b) above, the termination will be effective 90 days from the date of Customer's written notice to Toshiba of termination. If Customer elects to terminate for the reasons stated in (c) above, before such termination, customer must notify Toshiba in writing of the breach and of its intent to terminate this Agreement if such breach is not corrected within thirty (30) days from Toshiba's receipt of the notice of breach. If Customer elects to terminate this Agreement before its expiration for any reason other than the reasons set forth in (a) through (c) above, or if Toshiba terminates this Agreement due to Customer's default pursuant to Section 16, Customer must pay Toshiba, as liquidated damages, an amount equal to 25% of the total service amounts payable under this Agreement for the term remaining as of the date of termination.

Cancel without Penalty

¶

1. TERMS. This contract is cancellable with 60 days written notice in the event that customer sells covered equipment or permanently takes covered equipment out of service. Either party may cancel this agreement without cause and without penalty with a 60 day written notice prior to the anniversary date of this agreement ¶

Convert Full Service to In-House

Converting from a Full Service Agreement to a Partnership or In-House Support Agreement

1) The Customer providing a written request at least 60 days prior to the end of either a) the 12 month system warranty or b) each anniversary date of the existing Service Maintenance Agreement to:

Toshiba America Medical Systems
Service – Manager, Service Contracts Administration
2441 Michelle Dr., Tustin, CA 92780

2) A new Partnership Agreement or In-House Support Agreement must have a term equal to the remaining term of the Full Service Maintenance Agreement and must be executed by both the Customer and Toshiba America Medical Systems to be in force and effect.

3) Customer is required to have by the Partnership Agreement or In-House Support Agreement start date and at all times through out the term of this Agreement, a Customer Employee skilled and knowledgeable in the service and maintenance of the Toshiba Equipment. Such Employee must be fully and exclusively employed by the Customer. The Customer's designated Employee must complete such training before the end of Equipment warranty or the effective date of the Partnership Agreement. If such training is not completed by such time or should the Customer no longer have in their employment during the term of this Agreement an Employee who has met the training requirements, Toshiba reserves the right to terminate the Partnership Agreement or In-House Support Agreement with 10 days prior written notice to Customer. In the event of such termination, no refund will be offered to Customer for any sums previously paid by Customer, including any amount paid for training. Tuition for one service engineer will be provided at NO CHARGE with the purchase of any Partnership Agreement. Tuition for retraining or for a 2nd or 3rd service engineer will be provided at \$10,000 per class. Training must be completed prior to the activation of or conversion to a Partnership contract. This tuition rate is subject to change based on current pricing.

Thank You

- Questions?

Patrick Lynch
plynch@gmi3.com
704-941-0116

www.htma-sc.org