

**COMPLIANCE TO CONDITIONS OF CONTRACT (SCC5\_RFP\_Software\_Apr 08)**

Please indicate clearly below your compliance to each clause of the Conditions of Contract. Where you are not in agreement, you should give your counter-proposal in the "Remarks" Column or in a separate sheet to be attached to this form. Where you fail to indicate compliance against any clause, it shall be deemed that you comply and your offer(s) shall be evaluated accordingly.

S/N	Heading of Clause	Please tick if you comply	Please tick if you do not comply.	Remarks
1	Object			
2	Definition			
3	Hardware And Services			
4	Scope Of Contract			
5	Contract Price			
6	Import Quota			
7	Delivery			
8	Installation			
9	Documentation			
10	Training			
11	Testing			
12	Standards And codes of Practice			
13	Purchasing Hardware Elsewhere When Quantities Are Not Specified			
14	Indemnity			
15	<b>Reserved</b>			
16	Insurance			
17	Security Pass and Work Permit			
18	Adequacy Of Design			
19	Intellectual Property Rights			
20	Remedies for Infringement of intellectual Property Rights and Royalties			
21	Warranties			
22	Warranty Period			
23	Availability for use			
24	Spares and Consumables			
25	Electrical operating Requirements			
26	Power Cords			
27	Environment Requirements			

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S/N	Heading of Clause	Please tick if you comply	Please tick if you do not comply.	Remarks
28	Quality			
29	Title and Risk			
30	Payment			
31	Security Deposit or Banker's Guarantee			
32	<b>Reserved</b>			
33	<b>Reserved</b>			
34	Suspension or Termination			
35	Exit			
36	Gifts, Inducements and Rewards			
37	Force Majeure			
38	Confidentiality			
39	Variation of Contract			
40	Dispute Resolution			
41	Consortium			
42	Assignment and Subcontracting			
43	Waiver			
44	Reliance			
45	Insolvency			
46	Notices			
47	Entire Agreement			
48	Severability			
49	<b>Reserved</b>			
50	Reasonableness			
51	Language			
52	Survival Clause			
53	Independent Contractor / or partnership			
54	No Third Party Beneficiaries			
55	Use of Name			
56	Governing Law			
57	Execution in Counterparts			

Schedule 1  
Schedule 2  
Schedule 3

**GENERAL TERMS AND CONDITIONS  
FOR THE SUPPLY OF SOFTWARE AND/OR SERVICES**

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**1 OBJECT**

- 1.1 In consideration of the payment as hereinafter provided, the Contractor shall, upon the terms and conditions hereinafter set forth, supply, deliver, install, test and commission the Software and/or perform the Services to the Company.

**2 DEFINITION**

- 2.1 In the Contract, the following words and expressions shall have the meaning assigned hereunder except where the context otherwise requires:

**Affiliate** means an organisation/institution that is related to the Company (i) either by reason of the Company directly or indirectly controlling the organisation/institution; (ii) by reason of both the Company and organisation/institution being controlled by or under the common control of a third party; or (iii) by reason that the Company is obliged to provide support services to that organisation/institution for any reason. In the context of corporate entities, a person “controls” the entity if it owns and controls (i) more than fifty (50) percent of whose shares or other securities entitled to vote for election of directors (or other managing authority) in the entity, or (ii) more than fifty (50) percent of the equity interest in the entity, or (iii) is otherwise able to direct or cause the direction of the management and policies of such person or entity whether by contract or otherwise;

**Application Software** means the computer programs to be developed by the Contractor pursuant to this Contract, which computer programs shall be installed on the Company’s equipment and/or systems and working or operating in conjunction with the System Software, shall be capable of meeting or exceeding the Company’s requirements as stated in the Requirement Specifications;

**Company** means Alexandra Health Pte. Ltd;

**Contract** means this agreement (including all schedules and annexes attached) between the Company and the Contractor, with any authorised variations or amendments which would govern the supply of the Software and/or Services by the Contractor to the Company;

**Contract Price** means the total price payable to the Contractor under the Contract for the supply, delivery, installation, testing and commissioning of the Software and/or for the performance of the Services under the Contract;

**Contractor** means the party who or which has undertaken to supply the Software and/or perform the Services;

**Contractor Material** means the Software and related system documentation

that is proprietary to the Contractor;

Documentation	means both hard (printed) and soft (in computer readable format and permanently recorded onto storage media) copies of publicly available manuals, reports, applicable operational instructions, screen layouts, report formats, any additional specifications and program and system documentation relating to the Software and/or Services necessary for the use, maintenance and operation of the Software and/or Services and from time to time as such materials are developed or updated;
Integrated System	has the meaning ascribed to it in Schedule 3 (Professional Services);
Intellectual Property (IP)	means patents, trade marks, service marks, registered designs, applications for any of the foregoing, copyright (including without limitation, rights in computer software whether in compiled or source form), design rights, trade and business names, domain names and any other similar protected rights or assets in any country;
Intellectual Property Rights	means rights arising out of or in connection with Intellectual Property;
Licensee	means the Company or any Affiliate;
Premises	means the principal place of business of the Company as identified in the quotation or such other location as may be specified by the Company.
Performance and Reliability Standards	shall have the same meaning as ascribed to this term in Schedule 3 (Professional Services);
Requirement Specifications	means: <ul style="list-style-type: none"><li>(i) the specifications and descriptions issued by the Company to the Contractor for the purpose of inviting the Contractor to submit its proposal for the Software and/or Services;</li><li>(ii) those parts of the Contractor's response to the Company's specifications and descriptions which have been accepted by the Company; and</li><li>(iii) such other amendments or specification as may be mutually agreed in writing between the Parties;</li></ul>
Services	has the meaning ascribed to it in Schedule 3 (Professional Services);
Site	means the locations at the Premises where the various parts of the Software are to be installed or where the Services are to be performed as stated in the Requirement Specifications;

Software means all software (including any upgrades thereof) including but not limited to Application Software, System Software, and utility programs represented by the Contractor (in its response to the Requirement Specifications for installation in the Integrated System) as being capable of meeting or exceeding the Company's requirements as stated in the Requirement Specifications;

System Software means the operating software that is suitable for use on the Company's existing equipment and with the Application Software;

Work means and include all ideas, concepts, know-how, techniques, inventions, discoveries, improvements, specifications, designs, methods, devices, systems, reports, studies, object or source code, computer software, programming and other documentation, flow charts, diagrams and all other information or tangible material of any nature whatsoever (in any medium and in any stage of development or completion) relating to the subject matter of the Contract or the Software and/or Services, that are conceived, designed, practiced, prepared, produced or developed by the Contractor:

- (i) during the course of the Services;
- (ii) based upon knowledge or information learned or gained from the Company; or
- (iii) resulting from the use of the Company's facilities, personnel, or materials.

2.2 References in the Contract to words incorporating the masculine gender only shall where the context so admits include the feminine and/or neutral genders and vice versa and references in the Contract to words incorporating the singular meaning shall include the plural meaning and vice versa and words denoting natural persons shall include bodies corporate, incorporate, associated partnerships, firms, trusts, associations, joint ventures, governments, governmental agencies or departments or any other entity, and all such words shall be construed interchangeably in that manner.

2.3 The clauses, paragraph or clause headings and marginal notes in the Contract have been inserted for ease of reference and convenience only and shall not affect the construction or interpretation of the Contract.

2.4 References to clauses and schedules shall be references to Clauses of and the Schedules to the Contract. The Schedules are to have effect and be construed as an integral part of, and shall be deemed to be incorporated into the Contract.

2.5 References to statutory provisions shall be construed as references to those provisions as respectively amended, consolidated, extended or re-enacted from time to time and all statutory instruments or orders made pursuant to it.

- 2.6 Any reference to “day” shall mean a period of twenty-four (24) hours, ending at twelve (12) midnight.
- 2.7 If any period of time is specified from a given day, or the day of a given act or event, it is to be calculated exclusive of that day. Where expressed by reference to a person in Singapore, business day means any day other than a Saturday, a Sunday or a day on which licensed banks are authorised or required to be closed in Singapore and, where expressed by reference to the jurisdiction of a person other than Singapore, means any day other than a Saturday, a Sunday or a day on which licensed banks are authorised or required to be closed in the jurisdiction of that person, then that time is deemed to only expire on the next business day.
- 2.8 References in the Contract to anything which any Party is required to do or not to do shall include its acts, defaults and omissions, whether direct or indirect, on its own account, or for or through any other person and those which it permits or suffers to be done or not done by any other person.
- 2.9 For certain Software or Services sought to be procured by Company, additional terms and conditions may apply. These additional terms and conditions shall be contained in the Schedules attached to this Contract and shall be made a part of this Contract. In the event of a conflict between any of the terms of the Contract and the Schedules, the conflict will be resolved in the following order of priority: (1) the Schedules (including any annex, appendix or exhibit attached thereto); and (2) the clauses to this Contract. Without prejudice to the generality to the foregoing, the following Schedules are attached to this Contract:
- Schedule 1 – Form of Banker’s Guarantee
  - Schedule 2 – Pricing
  - Schedule 3 – Professional Services

**3 SUPPLY OF SOFTWARE AND SERVICES**

- 3.1 The Contractor shall supply the Software and perform the Services in accordance / compliance with the requirements and specifications as set out in the Requirement Specifications and/or in this Contract at the price(s) agreed upon and in accordance with the terms herein.
- 3.2 All Software supplied by the Contractor under the Contract shall be the most advanced version in the market at the time the Contract is concluded.
- 3.3 In the event that (i) a new, improved or upgraded version of the Software having substantially the same functions but with improvements or enhancements is introduced or (ii) the Software becomes obsolete or (iii) the Contractor is aware that vendor support for the Software is going to be discontinued, before delivery of the Software, the Contractor shall notify the Company and the Company shall have the option to require that the Contractor supply the new, improved or upgraded version of the Software to the Company at the same price or lower. Where the Company requires the Software as specified in the Contract to be supplied and the price of the Software has been lowered due to the introduction of the new, improved or upgraded version, the Contractor shall be obliged to supply the Software to the Company at the lower price. In the event of any disagreement, the Company shall at its sole discretion determine whether a new,

improved or upgraded version of the Software has been introduced and such determination shall be final and binding.

#### **4 SCOPE OF CONTRACT**

4.1 The Contractor shall:-

- (i) carry out and complete the supply and/or development of all Software and/or Services in accordance with the Contract and the Requirement Specifications in every respect; and
- (ii) install and test the Software in accordance with the Requirement Specifications.

4.2 In the event of any discrepancy, error or omission on the part of the Company in the Contract or the Requirement Specifications, the Company shall resolve the discrepancy, error or omission and such resolution shall be final and binding. The Company may permit an increase in price where such resolution resulted in additional Software and/or Services being furnished by Contractor. Where such resolution resulted in a decrease of Software and/or Services being supplied, Contractor shall reduce its price correspondingly.

4.3 In the event of any discrepancy, error or omission on the part of the Contractor in the fulfilment of the Requirement Specifications, the Contractor shall resolve the discrepancy, error or omission to the satisfaction of the Company and there shall be no increase in the price payable to the Contractor where additional Software and/or Services are furnished to the Company. Where such resolution resulted in a decrease of Software and/or Services being supplied, Contractor shall reduce its price correspondingly.

4.4 The Contractor acknowledges and agrees that whilst the Company is the contracting party to this Contract, the Software and/or Services may be delivered to or enjoyed by or performed for the benefit of the Company's Affiliates. Whilst the Company's Affiliates may place their request for Services directly with the Contractor and the Contractor shall perform the Services as though such request was made by the Company, no Affiliate shall have the power or authority to modify or change any aspect of this Contract.

4.5 The Contractor further acknowledges that the Company has entered into an agreement with IBM Singapore Pte. Ltd. pursuant to which its employees, contractors and agents (collectively, "IBM") will provide certain information technology and related services to the Company. The Contractor consents to and agrees that IBM may operate, manage and access the Software. In the event that the Contractor is not the party to which is able to give such consent or agreement, the Contractor represents and warrants to the Company that the Contractor shall obtain such consent and agreement from the appropriate party so as to enable IBM to operate, manage and access the Software.

4.6 In relation to the Contractor Material, the Contractor hereby grants to the Licensee a non-exclusive, perpetual, irrevocable, fully paid-up right and licence with no geographical restrictions to use, execute, display, perform, possess, modify and create derivative works from the Contractor Material solely and exclusively for Licensee's internal purposes. For the avoidance of doubt, the Contractor agrees that the licence hereby granted shall continue and remain in

force notwithstanding any cessation of maintenance and support services for the Contractor Material. If the Licensee for any reason appoints a third party service provider to provide services that require the use of all or any part of the Contractor Material, the Licensee shall be entitled to assign or transfer to the Contractor or, upon written notice to the Contractor, to the third party service provider, as the case may be, any and all of the rights, interests or obligations under the licence granted under this Clause 4.6.

- 4.7 The Licensee may use the Contractor Material on unlimited information systems, including on computer servers and communication networks hosted on, operated by or controlled by Licensee's other service providers, provided always that such use shall only be Licensee's internal purposes. The Contractor shall not be permitted to audit the use and operation of the Contractor Material insofar as the use and operation of the Contractor Materials is confined to the internal use of the Licensee.
- 4.8 The Licensee may make a reasonable number of copies of the Contractor Material for development, testing, staging, roll-out, operational security, back-up and disaster recovery purposes.
- 4.9 All Contractor Material supplied and provided by the Contractor shall be in English.
- 4.10 In relation to any Software to be supplied by Contractor which is not Contractor Material, Contractor shall ensure that the licensing terms of such Software shall be on terms substantially similar to those in Clause 4.6 above (in particular the right to use the Software without having to contract for maintenance and support services for the Software) and shall also permit the Company, without any additional charge or fees to be paid to any party, to use the said Software on unlimited information systems, including on computer servers and communication networks hosted on, operated by or controlled by Licensee's other service providers, provided always that such use shall only be Licensee's internal purposes. Such rights conferred on the Licensee shall be in addition to the rights granted to the Company pursuant to Clause 4.5 above. If the Licensee for any reason appoints a third party service provider to provide services that require the use of all or any part of the said Software, the Licensee shall be entitled to assign or transfer to the Contractor or, upon written notice to the Contractor, to the third party service provider, as the case may be, any and all of the rights, interests or obligations under the licence granted hereunder.
- 4.11 In relation to the System Software that is not Contractor Material, the Contractor shall ensure that the Company and its Affiliates shall have the right and licence to use such System Software, such right and license possessing at least the following characteristics:-
- (i) perpetual and fully paid up;
  - (ii) transferable upon the transfer or sale of any of the Company's equipment upon on which the System Software has been installed; and
  - (iii) the Company is indemnified for any intellectual property infringement claim brought by any third party arising from the Company's possession, reproduction and/or use of the System Software.

## **5 CONTRACT PRICE**

- 5.1 The Contract Price quoted shall represent the total cost to the Company (excluding) Goods and Services Tax ("GST") for each and every item of Software and performance of Services proposed or quoted. This total price shall include:
- (i) all transport, lifting, packing, freight, handling, delivery, insurance, taxes, royalties, duties, etc., where applicable;
  - (ii) the cost of the Software inclusive of all accessories, whether explicitly or separately specified or not, and necessary:
    - (a) for providing the full capabilities asked for; and
    - (b) for the immediate operation of the Software;
  - (iii) all on-site / off-site labour for the preparation of the Site and installation;
  - (iv) all cabling, parts, hardware, wiring at site, etc., necessary for the complete installation;
  - (v) Documentation as specified in this Contract;
  - (vi) training as specified at Clause 10;
  - (vii) testing as specified at Clause 11;
  - (viii) warranties as specified at Clause 21;
  - (ix) provision of all Services under this Contract; and
  - (x) all licence fees payable for any Software supplied by or through the Contractor.
- 5.2 A Pricing Schedule shall be submitted by the Contractor and attached hereto as Schedule 2 and shall not be subject to change during the term of the Contract unless expressly agreed to in writing by the Company.
- 5.3 The Pricing Schedule shall be based on the Requirement Specifications and shall state the Contractor's price for the provision of the Software and Services.

## **6 IMPORT QUOTA**

- 6.1 Where an item of Software is subject to Import Quota, the Contractor shall state whether or not he has obtained the quota and, if so, whether it is adequate to cover the Contractor's proposed quantity.

## **7 DELIVERY**

- 7.1 Time of delivery and installation is of the essence in the Contract. The Contractor shall perform and complete the Services and deliver, install, and commission the Software to the Company in accordance with a delivery schedule agreed upon by both Parties. The Contractor shall deliver the Software to the Site as directed by the Company during normal working hours (excluding local and national holidays). If the Company requires delivery to be made outside such times, such delivery shall be mutually agreed upon by the parties. The Company shall prepare the area of delivery and installation for the Software and provide free access to the Site and to any services or facilities that may be required to deliver and install the Software.

- 7.2 The Company reserves the right, at its discretion, to vary the delivery date and/or commissioning of the Software and/or Services at no cost to the Company if notification is given two (2) months in advance by the Company to the Contractor, provided that the delivery date, commissioning of the Software and/or performance of the Services may be brought forward ahead of schedule only upon the mutual agreement of both the Company and the Contractor.
- 7.3 Delivery of the Software must be complete. The Contractor must ensure that the Software is installed on the day of delivery, failing which, the Company reserves the right to reject the Software.
- 7.4 Should any item of the Software be found incomplete, damaged, defective or in any way inferior to approved samples or not in accordance with the Contract during testing as set out at Clause 11 or upon delivery, the Contractor must make good the delivery of the short supplied items and/or replace all damaged, defective or inferior components within seven (7) days upon notification by the Company.
- 7.5 If the Contractor does not comply with Clause 7.4, the Contractor shall be required, when requested by the Company, to remove the item of Software from the Company's premises and to re-deliver the item at the Contractor's own expense complete with the previously short-supplied items and/or with all damage, defects or inferiority remedied, within the time as determined by the Company, failing which the Company shall have the right to purchase replacements elsewhere or make good any damage in any manner it deems fit and all costs incurred thereby shall be deducted from any monies due or which may become due to the Contractor under the Contract or shall be recoverable as a debt. A certificate by an officer of the Company as to the amount of damages caused and consequential losses suffered by the Company shall, save for manifest error, be final and conclusive. The Contractor shall be responsible for and shall make good any damage to any part of the Premises, inclusive of fixtures, fittings and furniture, caused by its servants, workmen or agents when removing or replacing the item of the Software.
- 7.6 In the event the Contractor fails to deliver, install or commission the Software or commence or complete (as the case may be) performance of the Services whether in whole or in part in accordance with the delivery schedule as specified in Clause 7.1 above or any re-delivery schedule as specified in Clause 7.4 (other than in the circumstances provided under Clause 37), the Company shall, in addition to any other remedies which it may have under the Contract or otherwise, have the right, but not obligation, in relation to each delay:-
- (i) to cancel all or any such items of the Software or Services without being liable therefore in damages and obtain the same from other source(s) and all increased costs incurred thereby shall be deducted from any monies due to or become due to the Contractor under the Contract or shall be recoverable as damages; or
  - (ii) to require the Contractor to pay or to deduct from the Contract Price, as and for liquidated damages (and not as a penalty) a sum to be calculated at the rate of one-half percent ( $1/2\%$ ) of the Contract Price for each day which may elapse between the date of delivery, installation or commissioning of the Software or commencement or completion of performance of Services specified in the Contract and the actual date of

delivery, installation or commissioning or commencement or completion of performance, subject to a minimum of S\$500 and a maximum of ten percent (10%) of the Contract Price ("Maximum LD for Delay"). For avoidance of doubt, the Maximum LD for Delay applies to each event of delay committed by the Contractor. The Contractor acknowledges that there is no limit on the total liquidated damages payable for repeated delays committed by the Contractor.

- 7.7 Notwithstanding Clause 7.6 above, in the event the Contractor fails to comply with its obligations under Clause 7.1 herein and the failure is not remedied within seven (7) days after being called to its attention by written notice from the Company, even after the Maximum LD for Delay has been paid or is payable by the Contractor to the Company, the Company shall have the right to terminate the Contract forthwith without compensation and without being liable therefore to the Contractor in damages and the Contractor shall indemnify the Company for any direct, indirect or consequential loss, expense or damage suffered or incurred by the Company in connection with such failure.
- 7.8 The Contractor shall obtain a receipt from the Company for the delivery of the Software PROVIDED that the issue of such receipt shall not be any representation on the part of the Company of complete delivery or of delivery in accordance with the Contract or delivery in good order and condition shall not relieve the Contractor from his responsibility to make good the delivery of short supplied items, to replace defective, discrepant or damaged Software.

## **8 INSTALLATION**

- 8.1 The Contractor warrants, on completion of the installation, that the installation is free from any defects and the Software is completely safe for operation.
- 8.2 The Contractor shall install the Software at the Site on the date specified in the Contract.

## **9 DOCUMENTATION**

- 9.1 Documentation, in the English Language, shall be supplied by the Contractor at no additional charge together with each item of the Software to be supplied to the Company. In particular, Contractor shall provide the following, in both hard and soft copy, in relation to the Software:
- (i) two (2) original sets of the comprehensive operating instructions including photographs, layouts, drawings, etc., which explain the operation, applications and care of the Software in detail;
  - (ii) abbreviated operating instructions;
  - (iii) two (2) original sets of the complete service manual published by the manufacturer inclusive of –
    - (a) detailed performance specifications and hardware requirements;
    - (b) detailed technical description / theory of operation with reference to block diagrams showing functional operation of the Software;
    - (c) detailed troubleshooting procedures including diagnostic software wherever applicable;

- (d) recommended preventive maintenance schedules including software debugging, code optimisation and updating schedules;
  - (e) calibration procedures and performance checkouts including specifications of suitable test and measuring equipment; and
  - (f) complete software list including manufacturer's and Original Equipment Manufacturer's (OEM's) item serial numbers and, if possible, a list of equivalent software;
- (iv) where applicable, two (2) sets of complete technical documentation in English pertaining to the installation of the Software; and
- (v) all other documentation that the Contractor is obliged to provide under the Requirement Specifications.
- 9.2 Failure to supply the above documentation shall be construed as incomplete delivery.
- 9.3 The Contractor shall supply at no additional charge service manual update information pertaining to every item of the Software supplied for as long as the software manufacturer issues such updates.

## **10 TRAINING**

- 10.1 The Contractor shall provide training to the Company's nominated personnel. The details of the training shall be specified in the Requirement Specifications or as may be agreed in writing by the parties.
- 10.2 All training shall be conducted in the English Language by the Contractor's qualified instructor(s). The training to be provided shall be to such a level that the Company's nominated personnel shall be able to:
- (i) apply or handle; and
  - (ii) install, repair, debug, calibrate, maintain or overhaul,
- all versions of Software purchased from the Contractor.
- 10.3 Upon the Company's request, the Contractor shall provide Service/Operator's training at no cost to the Company's nominated representative(s), regardless whether the Software is on a Service Contract or out of warranty.

## **11 TESTING**

- 11.1 It shall be the Contractor's responsibility to test the Software in Singapore and satisfy itself that the Software is safe, functional and performs in accordance with the manufacturer's specifications before delivery of the Software to the Company. Where appropriate, pre-delivery test results shall remain within relevant International Electro-technical Commission (IEC), and manufacturer's technical and safety specifications and shall be documented and submitted to the Company together with the delivery of the Software, failing which it shall be construed as incomplete delivery and appropriate action shall be taken in accordance with Clause 7 of the Contract.

11.2 The Contractor shall be responsible for the testing of the Software. For this purpose, the Contractor shall be represented by competent staff, suitably equipped with all necessary calibrated tests and measuring instruments, who shall test the Software in the presence of and to the satisfaction of the Company's authorised representatives. The Contractor shall perform any additional test(s) requested for by the Company during testing of the Software where the Contractor's recommended test(s) are, in the opinion of the Company, inadequate. The Contractor shall bear all costs associated with Clause 11.

11.3 The testing shall include:

- (i) complete and thorough performance and safety checks in accordance with the manufacturer's guidelines for acceptance testing and commissioning of the Software so as to verify safe and satisfactory operation in conformance with the manufacturer's specifications for each item of the Software and to the satisfaction of the Company; and
- (ii) complete and thorough testing in accordance with all relevant codes of practice and regulations by relevant authorities so as to verify safe and satisfactory operation.

## **12 STANDARDS AND CODES OF PRACTICE**

12.1 It shall be the responsibility of the Contractor to ensure and furnish evidence that all Software to be supplied by him conform to all relevant, Singapore laws, International Standards and Code of Practice currently in force.

## **13 WHERE QUANTITIES ARE ESTIMATED OR NOT SPECIFIED**

13.1 If the total quantities of any of the Software or Services or the frequency and extent of any Services to be supplied by the Contractor during the period of the Contract are not specified in the Contract or stated to be merely estimated, the Company shall be under no obligation to complete the transaction by paying for such Software or Services, whether the purpose is for licensing of software, or otherwise. Any statement of the estimated quantities of Software or the estimated frequency and extent of the Services required during the period of the Contract which may have been given to the Contractor in the course of inviting proposals shall be deemed to be approximate only and merely for the information of the Contractor.

## **14 INDEMNITY**

14.1 The Contractor shall indemnify, defend and hold harmless the Company, its servants and agents against all or any liability, claim, expenses (including court costs and fees of solicitors (on a full indemnity basis) and other professionals) or loss in respect of damage to any property or personal injury to or death of any person due to the negligence or wilful default of the Contractor, its servants or agents arising out of or in the course of the performance of the Contract PROVIDED THAT the Company promptly notifies the Contractor in writing of any such claim. The Contractor may not enter into any settlement, agreement, arrangement or compromise that would have a material or adverse effect on the Company without the Company's prior consent. The Company shall co-operate

with the Contractor, at the Contractor's expense, in defending or settling such claim(s) and the Company may join in defence with counsel of its own choice at its own cost or expense.

14.2 The Contractor shall indemnify the Company, its servants, agents, employees, officers and departments against any claims by any workmen, employee or agent or subcontractor or any workmen, employee or agent of such subcontractor of the Contractor for any personal injury and/or death suffered in connection with the performance of the Contract including but not limited to payment under the Workmen's Compensation Act (Cap. 354) and for any costs, charges or expenses incurred in respect thereof.

14.3 The Contractor shall indemnify the Company, its servants, agents, employees, officers and departments against any claims, costs, charges and expenses whatsoever incurred by the Company, its servants, agents, employees, officers and departments in respect of any claims by any person(s) whatsoever (including but not limited to any patient or visitor) arising out of or connected to or contributed to by the breach or non-performance of the Contract by the Contractor or by the malfunction of the Software and/or Services supplied by the Contractor.

## **15 SOFTWARE ESCROW**

15.1 In the event that the Contractor or the licensor of any Software to be supplied to the Company under this Contract has already entered into a software escrow agreement with an escrow agent, then upon the Company's request, the Contractor shall permit the Company to participate in or procure for the Company the right to participate in, at the Contractor's expense, in the escrow arrangements ("Escrow Agreement").

15.2 Where the Contractor has not, prior to the execution of this Contract, executed an Escrow Agreement with any other escrow agents, then upon the entry into force of the Contract and upon the Company's request, the Contractor shall together with the Company enter into an escrow agreement pertaining to the Contractor Material with an escrow agent located in Singapore on terms which are mutually acceptable to the parties.

15.3 In the event that software source codes are released pursuant to the Escrow Agreement, the Contractor hereby grants Licensee the right and license to use the software source code solely for internal support and maintenance purposes of Contractor Material licensed from the Contractor prior to the release of such source code. Notwithstanding anything to the contrary in this Agreement, Licensee agrees that the source codes for the Contractor Material is Confidential Information of the Contractor. Further, Licensee agrees (i) to use the source codes under controlled conditions; (ii) to limit access to the source codes to those employees and contractors (who have signed confidentiality agreements with Licensee) of Licensee who have a need to know; (iii) to notify the Contractor of each installed location; and, (iv) all work created by Licensee using the source codes shall be the property of the Company.

**16 INSURANCE**

- 16.1 The Contractor shall take out at his own expense with an insurance company to be approved by the Company, a policy or policies of insurance in terms to be approved by the Company, indemnifying the Contractor and the Company from all liabilities
- (i) arising out of claims by any and every workman or employee whether such liability arises from the Workmen's Compensation Act or otherwise and from all costs and expenses incidental or consequential thereto; and
  - (ii) in respect of personal injury or death or loss or damage to property and against loss or damage suffered or incurred by the Company by fire and such other perils (including product liability) as the Company may require.
- 16.2 A copy of any policy or policies taken out by the Contractor in compliance with this Clause shall be deposited with the Company if required by the Company and the Contractor shall maintain such policy or policies in full force and effect by the payment of all premiums from time to time on the first day on which the same ought to be paid until completion of the Contract and shall, if the Company so directs, deposit with the Company copies of the receipts in respect of the payment of such premiums.
- 16.3 If any default is made by the Contractor in complying with the terms of this Clause, the Company may, without prejudice to any other remedy available to the Company for breach of any terms of the Contract:
- (i) withhold all payments which would otherwise be due to the Contractor under the Contract and out of such money so withheld satisfy any claim by workmen or employees that would have been borne by an insurance company had the Contractor not made default in maintaining a policy of insurance, and/or
  - (ii) pay such premiums as may have become due and remain unpaid and deduct the amount of such premiums from any money due or becoming due to the Contractor.
- 16.4 Nothing in this Clause shall be construed to take away or to waive or in any manner to modify the right of the Company to be indemnified by the Contractor in respect of all claims, costs and other expenses whatsoever which, by reason of the Contractor's default or otherwise, may become payable by the Company.

**17 SECURITY PASS AND WORK PERMIT**

- 17.1 All employees deployed by the Contractor to carry out works in the Premises or any other location as may be required by the Company whether or not such other location belongs to the Company (collectively referred to as the "Locations") including contract workers, supervisors etc. must obtain and display the relevant security pass while in at the Locations. In the event foreign workers are deployed, it shall be the Contractor's responsibility to ensure that such foreign workers have valid permits or passes issued by the Government of Singapore and the Contractor is to provide the Company with a comprehensive list of these workers and copies of their recent photographs and permits / passes. This list shall be forthwith updated in the event of changes in the deployment of foreign workers.

17.2 The Contractor shall indemnify the Company, its servants, agents, employees, officers and departments against any monetary penalty, claim, costs, charges and expenses incurred or imposed by any Court arising out of any breach of Clause 17.1 above or any contravention of any applicable law, regulation or guidelines.

**18 ADEQUACY OF DESIGN**

18.1 Notwithstanding any approval (whether verbally or in writing) given by the Company to any of the Contractor's proposals, designs and technical specifications relating to the performance, supply and/or development of the Software and/or Services, the Contractor agrees and declares that it shall remain solely responsible for the adequacy of the design, performance function, reliability and construction of the Software and/or Services and for compliance with the Requirement Specifications.

18.2 The Contractor shall utilise optimum and cost effective methods in the design of how the various components of the Software interoperates or interacts with each other, development and/or supply of the Software.

18.3 In the event of any inadequacy in the design referred to in Clause 18.2 above, the Contractor shall, whenever it occurs, rectify immediately such inadequacy at the Contractor's own expense.

18.4 In the event the Contractor's design referred to in Clause 18.2 above is inadequate and cannot be rectified in the opinion of the Company, the Company shall, in addition to any other remedies which it may have under the contract or otherwise, have the right to cancel all or any such items of the Software and/or Services without being liable therefore in damages and obtain the same from other source(s) and all increased costs incurred thereby and/or any other consequential losses suffered by the Company shall be deducted from any monies due to or become due to the Contractor under the Contract or shall be recoverable as a debt. A certificate by an officer of the Company as to amounts of damages caused and consequential losses suffered by the Company shall, save for manifest error, be final and conclusive.

**19 INTELLECTUAL PROPERTY RIGHTS**

19.1 Where as a result of carrying out its obligations under the Contract in respect of work designed by the Contractor for which the Contractor is to be paid by the Company, the Contractor generates proprietary technical data or any Intellectual Property, then such data, know-how and other information and all Intellectual Property Rights so generated or comprising in the aforementioned shall vest in and be owned by the Company as and when such is generated. The Contractor hereby assigns to the Company by way of assignment of future copyright all legal and beneficial right, title and interest in Works created by the Contractor pursuant to this Contract.

19.2 The Contractor shall not use any such proprietary data, know-how and other information compiled during such program for a third party without the authorisation of the Company even in the event of termination of the Contract pursuant to the Company's right to suspend or terminate the Contract.

19.3 Each party shall do anything necessary (including executing agreements and documents) to give full effect to the provisions of this Clause.

19.4 For the avoidance of doubt, nothing in this Contract shall affect the either party's right to own any IPR created prior to or independently of this Contract and incorporated by mutual consent of the Parties into or with the Software.

**20 REMEDIES FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS AND ROYALTIES**

20.1 All royalties and fees whatsoever claimable by or payable to any person, firm, corporation or government for or in connection with any invention or patent or patent rights, copyrights and trade marks used or required to be used in respect of the Software or any part or unit thereof supplied under the Contract shall deemed to be included in the Contract Price.

20.2 The Contractor shall fully indemnify and keep indemnified the Company and its staff against all claims and costs, charges and expenses in respect thereof, by any third party for any alleged infringement of any Intellectual Property Rights which arises or would arise as a result of the Company's acceptance, possession, purchase, use or distribution of the Software or any part or unit thereof or the Company's acceptance or use of the Services performed by the Contractor or any Works delivered by the Contractor to the Company.

20.3 In the event that any such infringement or threatened infringement occurs or may occur, the Contractor shall at his own expense:

- (i) procure for the Company the right to continue accepting, possessing, purchasing, distributing or using the Software or Works;
- (ii) modify or amend the Software or Works or infringing part thereof so that the same becomes non-infringing without affecting the capacity and performance of the Software or Works;
- (iii) replace the Software or Works or any infringing part thereof with other non-infringing Software or Works of identical capability and performance; or
- (iv) do all things necessary or expedient to permit the Contractor to continue performing the Services; or
- (v) if none of the options listed above can be accomplished within a reasonable time or are otherwise not commercially reasonable, refund to the Company the price for the Software; or terminate the performance of the affected Service and assist the Company to obtain such replacement service and Works at the Contractor's sole cost and expense, without prejudice to any other rights of the Company.

20.4 The Contractor agrees to give the Company prompt written notice of any threat, warning, or notice of any such claim or action against the Contractor or any other user or any supplier of components utilised in the Software supplied by the Contractor to the Company, which could have an adverse impact on the Company's use of the Software or portion thereof.

20.5 In addition to any other right that the Company might have, in the event that any claim is made or is threatened to be made against the Company that the

Software or any part thereof and/or the Company's storage, use and/or distribution of the Software infringe the intellectual property or other rights of any third party, or where the Company is informed that the Software may infringe the intellectual property or other rights of any third party, the Company shall have the right to suspend this Contract and not take delivery of the Software or any part thereof until the Contractor procures the right for the Company to store, use and distribute such Software or the Contractor replaces or modifies the Software or that part thereof so that they become non-infringing to the satisfaction of the Company and the relevant third party, within such timeline specified by the Company. If the foregoing is not possible or if the Software has already been delivered to the Company, the Company shall be entitled but not obliged to return the Software or that part thereof and obtain a full refund of any monies paid, and the Contract will terminate with immediate effect.

20.6 A reference to the "Company" in this Clause includes a reference to Licensee.

## **21 WARRANTIES**

21.1 The Contractor warrants that:

- (i) the Company shall acquire good and clear title to the Software and/or Works, free and clear of all liens, claims, encumbrances and other restrictions whatsoever;
- (ii) all Software, Works and material used in the provision of the Services and any other materials or Services provided hereunder do not infringe upon any patent, copyright or similar proprietary right (including, but not limited to, misappropriation of trade secrets) of any third party;
- (iii) the Documentation provided by the Contractor hereunder will faithfully and accurately reflect the functionality of the applicable Software and will allow the Company or a reasonably skilled programmer to understand how the Works function and/or to maintain the Works;
- (iv) the Company shall quietly and peacefully possess all Software and other materials provided hereunder;
- (v) components of the Software provided pursuant to the Contract will be in good working order when installed, ready for use and free from any defects, and the Contractor will make all adjustments, repairs and replacements necessary to correct such defects;
- (vi) Software provided pursuant to the Contract shall be fit for the ordinary purposes for which such Software is used and shall perform in accordance with the Documentation;
- (vii) the use or operation of any part of the Software shall not at anytime be restricted or interfered with in any manner whatsoever by any means or devices which would require the services of the Contractor or a third party to restore the Software to full use and operation;
- (viii) any modification, enhancement or adaptation of the Software supplied by the Contractor shall not require as a condition precedent to the supply of the modification, enhancement or adaptation the acceptance by the Company of licence terms that derogate from the provisions of this Contract;
- (ix) all Software delivered by the Contractor does not contain any unauthorised code, virus, Trojan horse, worm or other software code routine or any other components designed to permit unauthorised

- access, disable, erase, or otherwise harm, impede Licensee's use of the Software;
  - (x) all installation, technical support, maintenance, training and other Services provided by the Contractor hereunder will be performed in a professional manner by qualified personnel trained and skilled in the performance of the specific Services involved;
  - (xi) for a minimum period of five (5) years from the applicable installation and commissioning date it will make available maintenance and repair services for the Software;
  - (xii) all Software provided hereunder shall be designed, produced, installed, furnished and in all respects provided, certified and maintained in conformance with all codes, ordinances, regulations and laws, and administrative and regulatory requirements that were in effect at the time of such design, production, installation or furnishing;
  - (xiii) all Software provided hereunder shall conform or otherwise satisfy all applicable requirements in the Requirement Specifications; and
  - (xiv) the performance and reliability of the Software when working together with any software, hardware and/or third party products that the Company may use shall conform with the Performance and Reliability Standards.
- 21.2 The Contractor acknowledges that the Company is reliant on the Contractor's skill, expertise and professional judgment in the specification, sizing, selection, procurement, installation, configuration and customisation of the Software.
- 21.3 Each claim of the Company under any warranty given by the Contractor shall be sent in writing to the Contractor specifying the Software concerned and nature of the defect. Upon receipt of such written notice, the Contractor shall test or inspect the Software at the Company's premises, or if necessary, the Software will be returned to the Contractor or such other address as may be notified to the Company. All costs incurred as a result of the breach of any warranty under this Clause shall be borne by the Contractor.
- 21.4 The Parties each represents and warrants that the following facts and circumstances are and at all times shall be, true and correct:-
- (i) it has the requisite corporate power and authority to enter into the Contract and that the Contract does not conflict with any other agreement or obligation by which the respective Party is bound;
  - (ii) that there is no material suit, action, arbitration or legal, administrative or other proceeding or governmental investigation pending or to its best knowledge or belief, threatened against it or affecting its ability to perform its obligations under the Contract; and
  - (iii) that the signatories for and on behalf of that Party are authorised and fully empowered to execute the Contract on that Party's behalf.

## **22 WARRANTY PERIOD**

- 22.1 The Contractor shall provide a [ ] warranty period, commencing from the day immediately following the cessation of the post-implementation support to be provided by the Contractor pursuant to the Requirement Specifications, during which warranty period the Contractor shall provide the Integrated System Maintenance Services (as described in Schedule 3) at the Contractor's own cost.

22.2 The Contractor shall submit detailed service reports on all repairs and modifications done to the Software during the warranty period and all Software repaired or modified in any fashion during the warranty period.

22.3 The Contractor shall also provide regular preventive maintenance as specified in the manufacturer's latest technical manuals during the warranty period at no cost to the Company.

22.4 The warranty period shall be extended accordingly by the period during which any item of the Software is out of service which shall be computed from the date of notification by the Company to the Contractor. The Software shall not be treated as out of service if the Contractor provides a back-up item of the Software while the said item of the Software is undergoing repair.

**23 AVAILABILITY FOR USE**

23.1 The Contractor guarantees that the Software shall be available for use during the warranty period in accordance with the service levels as set out in the Requirement Specifications.

**24 [ Reserved ]**

**25 [ Reserved ]**

**26 [ Reserved ]**

**27 [ Reserved ]**

**28 QUALITY**

28.1 The Software supplied shall conform in all respects to the specifications, plans, drawings, pattern or samples, as appropriate, forming part of the Contract. The Software supplied shall be in good condition and fit for their purpose. The Contractor hereby acknowledges that he/she knows the purpose the Software is intended for.

**29 TITLE AND RISK**

29.1 Title in all tools to be used exclusively in connection with the Integrated System shall pass to the Company as soon as they are allocated by the Contractor to the Contract and in all documents of any kind including drawings, designs, test certificates of quality, parts lists and manuals as soon as they are prepared or obtained by the Contractor. The Contractor shall clearly mark and store all such items so that they can be identified as the property of the Company, make them available for inspection by the Company at any time and comply with all instructions of the Company with regard to them.

29.2 Notwithstanding the earlier passing of title, risk in the Software shall not pass to the Company until the Software and/or Services are delivered and successfully commissioned in accordance with Clauses 7 and 11 of the Contract, and the Contractor shall be responsible for any loss or damage to the Software howsoever arising prior to risk passing.

### **30 PAYMENT**

30.1 Subject to the provisions of the Contract, the Company shall pay the Contractor the Contract Price in accordance with the provisions of Schedule 2 (Pricing Schedule). The Contract Price for the Software and/or Services shall not be subject to change during the term of the Contract unless expressly provided for in the Contract or the relevant Schedule. Invoices shall be submitted by the Contractor at the agreed milestone and shall be due and payable by the Company within sixty (60) days from receipt of the invoice by the Company. PROVIDED ALWAYS that such payment shall not affect the Company's right to reject any of the Software or the Contractor's responsibility to replace defective or damaged Software, and such payment shall also not amount to a waiver of any accrued rights and remedies of the Company against the Contractor.

30.2 Without limiting any of the Company's right under this Contract, the amount of any payment or debt owed by the Contractor to the Company under this Contract may be deducted by the Company from any monies payable by the Company to the Contractor pursuant to this Contract.

30.3 The Contractor agrees that if any invoice is not submitted to the Company within six (6) months upon delivery, acceptance and/or successful commissioning of the Software or performance of the Services, the Company shall be released and discharged from any liability to make any payment of the debt in relation to such invoice.

30.4 The Contractor shall submit such invoices or other documents as the Company may require for the purpose of making payment.

30.5 The Company shall not pay for expenses or cost of whatever nature other than those expressly set forth in the Contract.

30.6 The Company may, upon notice to the Contractor, withhold payment for Software and/or Services that fail to meet the minimum performance standards set forth in the Contract and/or question any items invoiced to the Company. Such non-payment shall not constitute a default or breach of the Contract. In the event of any dispute between the Company and the Contractor with respect to the invoiced Software and/or Services and/or other related matters, the Company shall pay the undisputed amount and the Company and the Contractor shall promptly seek to resolve the disputed matters in accordance with Clause 40 (Dispute Resolution) of the Contract.

### **31 SECURITY DEPOSIT OR BANKER'S GUARANTEE**

31.1 For the due and faithful performance of the Contract and the fulfilment of the obligations hereunder, the Contractor will be required, upon signing of the Contract, to lodge with the Company a Security Deposit in the form of an on

demand Banker's Guarantee (the form of which is attached hereto as Schedule 1) equivalent to ten percent (10%) of the Contract Price.

31.2 The Company shall be entitled to utilise and make payments out of or deductions from the Security Deposit in accordance with the conditions of Contract.

31.3 In the event that the Security Deposit provided for in Clause 31.1 is inadequate to fully indemnify or compensate the Company for any loss, liability, cost, expenses or damage incurred or suffered by the Company as aforesaid, the Contractor shall, forthwith on demand by or on behalf of the Company, pay to the Company all losses, liabilities, costs, expenses (including without limitation, legal fees on a solicitor and own client basis) and/or damages as may be incurred or suffered by the Company to the extent to which the Security Deposit proves inadequate.

31.4 If, at any time, by virtue of the deduction by the Company in accordance with Clause 31.2, the Security Deposit falls below the amount stipulated in Clause 31.1, the Contractor shall, forthwith on demand by or on behalf of the Company, top up the Security Deposit by paying the amount of the shortfall or furnishing an on demand Banker's Guarantee on terms acceptable to the Company for the same.

31.5 The Contractor shall maintain a valid Banker's Guarantee at all times for the duration of the Contract. If a Banker's Guarantee furnished under this Clause 31 shall for any reason expire or be cancelled prior to the date of expiry or termination of the Contract, the Contractor shall, within three (3) months of the expiry date or cancellation thereof, procure at its own expense and furnish to the Company a fresh on demand Banker's Guarantee on terms identical or substantially similar to that of the earlier Banker's Guarantee. The fresh Banker's Guarantee shall be binding and effective from the date of expiry of earlier Banker's Guarantee and shall be for the sum stipulated in Clause 31.1. The provisions of Clause 31 shall apply to all Banker's Guarantee procured pursuant to this Clause 31.5.

31.6 The Banker's Guarantee shall be refunded to the Contractor with the remaining value as provided in Clause 31.2, and only upon the Contractor's compliance with Clauses 9 to 11, 21, and 23, and after the Contract has been terminated.

**32 [ Reserved ]**

**33 [ Reserved ]**

**34 SUSPENSION OR TERMINATION**

34.1 This Contract shall commence from the date the Company receives the Contractor's acknowledgement of the Letter of Acceptance and shall continue for [ ] years after the Commissioning Date, as defined in Schedule 3 (Professional Services) unless terminated prematurely in accordance with the terms of the Contract.

- 34.2 The Company may, without prejudice to any other rights it may have, by written notice terminate the Contract or the relevant Schedule or suspend the Contractor's performance of all or any of its obligations under it immediately and without liability of the Company for compensation or damages if:
- (i) the Contractor, its servants, employees or agents, fail to comply with its express obligation of confidentiality under Clause 38 of the Contract;
  - (ii) the Contractor delivers the Software and/or performs the Services which are defective or does not conform with the Company's specifications or which design is inadequate and fails to rectify such defect, non-conformity or inadequacy within thirty (30) days after being given notice by the Company to do so;
  - (iii) the Software and/or Services or part thereof supplied or to be supplied by the Contractor is declared or advised to be unsafe for use by any competent authority or by any notice, regulation or requirement of any competent authority;
  - (iv) the Contractor fails to comply in any material respects with the Contract and shall fail to remedy such breach (if capable of remedy) within thirty (30) days after being given notice by the Company so to do;
  - (v) the Contractor repeatedly breaches the terms of this Contract whether or not such breaches were in respect of the same or different obligation and regardless of whether the Contractor has or has been able to cure such breaches each time they occur;
  - (vi) any circumstances arise which give reasonable grounds in the Company's opinion for its belief that the Contractor has or may become incapable of performing any of its obligations under the Contract;
  - (vii) the Contractor, its servants, employees or agents, fail to comply with its express obligation under Clause 7.6 of the Contract.
- 34.3 In the event of termination under Clause 34.2 above, the Contractor shall refund and repay to the Company any advance payment received from the Company without prejudice to the Company's right to claim compensation for increased costs in obtaining the Software and/or Services from other sources, and for any loss, expense or damage suffered or incurred by the Company.
- 34.4 During the notice period, the Contractor shall only provide Software, and the Company will only pay for such Software, in accordance with the unrevoked instructions of the Company pursuant to the Contract and/or the relevant Schedule. The Contractor shall, at the Company's discretion, provide Software ordered during the notice period in accordance with the terms and conditions of the Contract and/or the relevant Schedule.
- 34.5 Where required in the Requirements Specifications or upon the expiration or termination of this Contract (for any reason), unless it is not required by the Company, the Contractor shall provide to the Company the staff and transition services necessary for the Company to effect an orderly transition to the Company or to a Company selected third party, of the Services at no additional cost to the Company for up to the period stated in the Requirement

Specifications or six (6) months, whichever period is longer ("Transition Out Period").

34.6 During the Transition Out Period, the Contractor shall continue to provide the Services without any degradation of service. The Contractor's obligations under this Clause shall consist, at a minimum, of the following:

- (i) provide the Company with the rights set forth in Clause 35;
- (ii) promptly provide the Company with available detailed specifications and documentation in respect of any hardware, software or other equipment that the Company may require to properly perform, or have performed, the Services following the Transition Out Period;
- (iii) at the Company's request, train the Company's personnel who will be assuming responsibility for the Services and related operations following the Transition Out Period; and
- (iv) assist in the migration and transfer of all Data and information obtained by the Contractor from the Company, or stored with or processed by the Contractor pursuant to the Services, or collected, created or generated by the Contractor or any third party for the Company pursuant to this Agreement, and all relevant software and equipment.

34.7 Each Party shall remain responsible for its obligations with respect to actions and events prior to the termination of the Contract or the relevant Schedule.

## **35 EXIT**

35.1 Prior to or upon the termination of the Contract or the Transition Out Period (whichever event is the last to occur) ("Exit Date");

- (i) the Contractor shall deliver to the Company a copy of the any IP that does not belong to the Company in the form in use as of the Exit Date and any licence granted to the Company in respect of (a) Intellectual Property that may belong to the Contractor, (b) the Contractor's confidential information and (c) all proprietary rights in respect of the foregoing shall continue to be in force;
- (ii) in connection with Intellectual Property which does not belong to the Contractor but was used by the Contractor to provide the Services as of the Exit Date, the Contractor shall use its best endeavours to transfer, assign, or sublicense such third party Intellectual Property to the Company and its designee(s) at no additional cost or at cost and on terms reasonably acceptable to the Company;
- (iii) with respect to any third party equipment used by the Contractor to provide the Services as of the Exit Date, the Contractor shall use its best endeavours to transfer or assign such leases, agreements or right to use such equipment to the Company or its designee(s) at no additional cost or at cost and on terms reasonably acceptable to the Company; and

- (iv) the Contractor shall if required by the Company transfer, assign or sell to the Company or its designee(s) the Contractor equipment being used by the Contractor to perform the Services as of the Exit Date in accordance with the following terms:
  - (a) the Contractor equipment shall be free and clear of all liens, security interests, or other encumbrances;
  - (b) the sale price shall be the Contractor equipment's Net Book Value or at fair market value, whichever is the lower. For the purposes of this clause, "Net Book Value" of the Contractor equipment shall be the price paid by the Contractor for the Contractor equipment less the depreciation costs of the Contractor equipment, which depreciation shall be based on a straight line depreciation over a five (5) year period, which period commences from the date of the purchase of the equipment; and
  - (c) parties shall enter into a sale & purchase agreement on the Company's terms to effect the sale.

35.2 The Company shall have the unfettered right to contract directly with any party whom may have provided goods or services to the Contractor in connection with the Contractor's provision of the Software or Services to the Company.

35.3 Upon termination of the Contract (whether in whole or in part), the Contractor shall not terminate, reassign or otherwise re-designate any member of the Contractor's personnel who were directly involved in the provision of the Software and/or Services to the Company until and unless the Company indicates to the Contractor that the Company has no intention of hiring those personnel or recommend the hire of those personnel to the Company's intended new service provider or supplier of goods. Where the Company intends to hire such Contractor's personnel or make a recommendation to the Company's intended new service provider or supplier of goods, the Contractor shall:

- (i) provide the Company, subject to any limitation imposed by law, all available information that the Contractor has with respect to the personnel concerned;
- (ii) permit the Company or the intended new service provider or supplier of goods access to the personnel concerned; and
- (iii) allow the Company or the intended new service provider or supplier of goods to hire such personnel and in that regard, the Contractor hereby waives any and all restriction (whether between itself and the personnel concerned or between itself and the Company or between itself and the intended new service provider) which may operate to prevent, frustrate or otherwise thwart the Company's or the intended new service provider's attempt to hire such personnel.

35.4 The Contractor shall inform the Company of any agreements or arrangements that it has with any third party which are necessary or useful for the Company or the intended new service provider to perform the Services or intended new supplier of goods to provide the Software. Where required by the Company, the Contractor shall arrange for an assignment of such agreements or arrangements

with the third parties either to the Company or the Company's or the intended new service provider or supplier of goods.

**36 GIFTS, INDUCEMENTS AND REWARDS**

36.1 The Company shall be entitled to terminate this Contract immediately and to recover from the Contractor the amount of any loss resulting from such termination if the Contractor shall have offered or given or agreed to give to any person (including employees of the Company) any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forbearing to do any action in relation to the obtaining or execution of this Contract with the Company or for showing or forbearing to show favour to any person in relation to any contract with the Company or if the like acts shall have been done by any person employed by the Contractor or acting on his behalf (whether with or without the knowledge of the Contractor) or if in relation to any contract with the Company the Contractor or any other person employed by him or acting on his behalf shall have committed an offence under the Penal Code (Cap. 224) or the Prevention of Corruption Act (Cap. 241) or any other statutory modification or re-enactment thereof for the time being in force in Singapore or shall have abetted or attempted to commit such offence or shall have given any fee or reward the receipt of which is an offence under the Penal Code (Cap. 224) or the Prevention of Corruption Act (Cap. 241) as the case may be or any statutory modification or re-enactment thereof for the time being in force in Singapore.

**37 FORCE MAJEURE**

- 37.1 Neither Party shall be liable for any loss, damage or penalty resulting from delays or failures in performance of their obligations under the Contract if the delay or failure results from events beyond the reasonable control of either Party (a "Force Majeure Event").
- 37.2 For the purposes of the Contract, Force Majeure Events shall include, but are not limited to, acts of God, war, hostility, invasion, act of foreign enemies, rebellion, revolution, riots, civil war, disturbances, requisitioning or other acts of civil or military authority, laws, regulations, acts or orders of any governmental authority, body, agency or official, fires, inclement weather, rain or floods (however caused), strikes, lock-outs or other labour disputes, epidemics, outbreaks, embargoes or other catastrophes affecting the availability of materials or labour necessary for the performance of the Contract.
- 37.3 For the avoidance of doubt, the failure to obtain the approval or the withdrawal of approval from the relevant government authorities or other governing bodies shall not be considered a Force Majeure Event and the provisions of this clause shall not apply to such an event.
- 37.4 The Contractor shall prepare and submit to the Company within two (2) weeks from the date of signing of this Contract, the Contractor's plans, strategies and steps the Contractor would take in order to continue to provide the Company with the Services in a Force Majeure Event or the outbreak of infectious disease affecting humans. Such plan, strategies and steps shall state whether the Services would be provided at the same service level or at some other service

level. If the Services are to be provided at some other service level, the Contractor shall identify those other service levels. The Contractor shall not put any such plan, strategy or steps in place until and unless the Contractor has obtained the Company's approval of the same.

- 37.5 The Parties hereto agree to notify the other Party promptly of any such circumstances delaying its performance and to resume performance as soon thereafter as is reasonably practicable.
- 37.6 If any Force Majeure Event shall continue for a period exceeding one hundred and twenty (120) days, then either Party may at any time thereafter, upon giving written notice to the other, elect to terminate the Contract.
- 37.7 In any of the events mentioned in Clause 37.2, the Parties shall for the duration of such event be relieved of any obligation under the Contract as is affected by the event except that the provisions of the Contract shall remain in force with regard to all other obligations under the Contract which are not affected by the event. The Parties agree that the Company shall not be under any obligation to pay for any Software or Service which it did not receive from the Contractor during the continuation of the Force Majeure Event.
- 37.8 Notwithstanding any of the foregoing provisions in this Clause 37, the parties acknowledge and agree that the Severe Acute Respiratory Syndrome and any outbreak of flu pandemic (including any outbreak of avian flu) ("Pandemic" and each a "Pandemic Illness") is not a Force Majeure Event. However, the parties acknowledge that any Pandemic may impact on the performance of each party's employees, subcontractors or agents assigned to this Contract ("Staff") and solely for this purpose the parties agree to the following:
- (i) each party will extend safeguards and measures adopted to reduce the risk of its Staff transmitting any Pandemic Illness to the other party's Staff in the course of their performance of this Contract;
  - (ii) each party agrees that if it would not reasonably require its Staff to attend at any premises due to risk of contracting a Pandemic Illness, it would not require the other party's Staff to attend at such premises as well;
  - (iii) each party agrees to respect any quarantine orders issued to the other party's Staff under the Infectious Disease Act or under the other party's general corporate policy concerning such Pandemics;
  - (iv) each party will bear its own costs or expenses of adopting its own safeguards and measures under its general corporate policy concerning Pandemic Illnesses;
  - (v) the parties agree to consider and implement workarounds to reduce the risk of their Staff contracting any Pandemic Illnesses, including the use of telephone conferencing and where the Services to be performed are non-location specific, to perform such Services at alternative locations; where the Services are required to be performed on-site, the Company shall supply, at no charge to the Contractor, agreed facilities for the Contractor's Staff to perform the Services;
  - (vi) the parties may mutually agree to reasonable adjustments in the Contract Price, implementation plan, timescales and other relevant obligations of the parties under this Contract;
  - (vii) if the Pandemic situation in Singapore worsens materially after the Effective Date, to the extent that the Pandemic situation directly causes the unavailability of either party's Staff so as to materially delay the

- completion of a major milestone (“Project Delay”), each party shall be entitled to make justifiable adjustments to the implementation plan and timescales strictly to compensate for Project Delay only, provided always that (i) any postponement of any events in the implementation plan and timescales cannot exceed 45 days in aggregate; (ii) the written notice must be given the other party promptly and in any case within 30 days of such Project Delay occurring; and (iii) the written notice must identify the party’s Staff who were unavailable and specify the time period in which such Staff were unavailable; and
- (viii) notwithstanding Clause 5.6 (Non-replacement of staff) of Schedule 3 (Professional Services), the Contractor may replace its Staff who are performing the Services with staff of equivalent or better competence and qualification if and only if the Contractor certifies to the Company in writing that such Staff has on his own accord refused to continue participation in the performance of Services due to his concerns of contracting a Pandemic Illness and not for other reasons and FURTHER PROVIDED that the replacement shall have undergone, prior to assuming his duties, a suitable period of familiarisation with his or her predecessor and there shall be no disruption to the provision of any services by the Contractor prior, during and after the handing over between the out-going and incoming staff member.

## **38 CONFIDENTIALITY**

- 38.1 The Contractor hereto agrees to treat as confidential all information received from the Company where the Company has indicated in writing or labelled to be “Confidential”, “Proprietary Information” or where the circumstances of disclosure indicates that the information so disclosed is confidential or proprietary, which the Contractor may acquire in relation to the Company, including but without any limitation whatsoever, all business information, strategic and development plans, medical records and any other matter concerning the Company, its affairs, business, shareholders, directors, officers, business associates, clients, patients (including their identity) or any other person or entity having dealings with the Company; information relating to the financial condition of the Company, its accounts, audited or otherwise, notes, memoranda, documents and/or records in any form whatsoever whether electronic or otherwise, and all records indicative of the financial health and status of the Company; technical information in any form whatsoever whether electronic or otherwise; information in any form whether electronic or otherwise, relating to methods, processes, formulae, compositions, systems, techniques, inventions, machines, computer programs, software, development codes and research projects; business plans, co-developer/collaborator identities, data, business records of every nature, customer lists and client database, pricing data, project records, market reports, sources of supply, employee lists, business manuals, policies and procedures, information relating to technologies or theory and all other information which may be disclosed by the Company to the Contractor or which the Contractor may be provided access by the Company whether stored electronically or otherwise; all information which is deemed by the Company to be confidential information or which is generated as a result of or in connection with the business of the Company and which is not generally available to the public; and all copies, reproductions and extracts thereof, in any format or manner of storage, whether in whole or in part (“Confidential Information”), together with any other property of the Company made or acquired by the Contractor or coming into their

possession or control in any manner whatsoever shall be and remain the sole property of the Company and shall be returned to the Company forthwith on demand at any time or without demand upon the termination of the Contractor's services. The Contractor shall ensure that none of the patients of the Company can be identified in any reports, submissions and publications of the Company.

38.2 The Contractor shall not, without the prior written consent of the Company, disclose any Confidential Information or any information relating to the Contract or any of the contents hereof whether directly or indirectly to any other party.

38.3 The restrictions on disclosure of Confidential Information described in above do not extend to any information that:

- (i) already exists in the public domain at the time of its disclosure;
- (ii) is already in the Contractors' possession;
- (iii) is independently developed by the Contractor outside the scope of the Contract; or
- (iv) is rightfully obtained by the Contractor from third (3<sup>rd</sup>) parties.

38.4 The Contractor hereby agrees that it shall:

- (i) take all steps to limit access to Confidential Information of the other Party to those principals, directors, officers, agents, employees, representatives, consultants, independent contractors and professional advisors who are directly concerned with the purposes contemplated by the Contract and are made aware of its confidential status, to the extent reasonably required for the performance of the Contract, and ensure that they do not disclose or make public or authorise any disclosure or publication of any Confidential Information in violation of the Contract;
- (ii) not use any Confidential Information for any purpose other than the purposes for which it is intended, pursuant to and in accordance with the terms of the Contract;
- (iii) upon the Company's request, procure the Contractor's employees, servants or agents or any employee, servant or agent of the Contractor's sub-contractor, to sign individual Non-Disclosure Agreements with the Company on such form that the Company may dictate.

38.5 The Contractor must promptly inform the Company about any unauthorised disclosure of the Company's Confidential Information.

38.6 Subject to the foregoing, the Contractor's confidentiality obligations under this Clause shall survive the expiry or termination of the Contract.

## **39 VARIATION OF CONTRACT**

39.1 The provisions of the Contract shall not be varied, except by agreement in writing signed by the duly authorised representatives of both Parties.

39.2 If either Party wishes to vary the Contract, the proposing Party shall submit a copy of the proposed variations to the other Party ("the Receiving Party"), specifying a reasonable period in which the Receiving Party is to provide written notice of acceptance or rejection of the proposal.

39.3 If the Receiving Party accepts the variations, the Contract shall be deemed to be so amended from the date of acceptance. If the Receiving Party rejects the proposed variations, each Party shall perform the Contract in accordance with the unvaried terms.

#### **40 DISPUTE RESOLUTION**

40.1 In the event of any dispute or difference arising out of or in connection with or in relation to the Contract, including any question regarding the existence, validity, termination, application or interpretation of the Contract or any of its provisions, both Parties shall use their best endeavours to settle the dispute informally by agreement between the Parties. Both Parties shall always act in good faith and co-operate with each other to resolve any disputes.

40.2 Notwithstanding anything in the Contract, if the dispute is not settled in accordance with Clause 40.1 above, the dispute shall be resolved by arbitration.

40.3 Arbitration shall be conducted in Singapore in the English language in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference into this Clause, except in so far as such Rules conflict with the provisions of this Clause, in which event the provisions of this Clause will prevail.

40.4 The arbitration tribunal shall consist of one (1) arbitrator to be appointed by mutual agreement between the Parties. Either Party may propose to the other the name or names of one (1) or more persons to serve as the arbitrator. If no agreement is reached within thirty (30) days after receipt by one (1) Party of such a proposal from the other, the arbitrator shall be appointed by the Appointing Authority.

40.5 The Appointing Authority shall be the Chairman of the SIAC.

40.6 The arbitrator must not be a present or former employee or agent of, or consultant or counsel to, either Party or any related corporation as defined in Section 6 of the Companies Act (Cap. 50) of either Party.

40.7 Any decision or award of an arbitration tribunal appointed pursuant to this Clause will be final and binding on the Parties.

40.8 Interest at the annual rate of six per cent (6%) per annum will be due and payable to the Party in receipt of an arbitration award from such date as the arbitration tribunal may decide until the date of payment to such Party.

40.9 The Parties hereto undertake to keep the arbitration proceedings and all information, pleadings, documents, evidence and all matters relating thereto confidential.

40.10 For the avoidance of doubt, it is agreed that nothing in this Clause shall prevent a Party from seeking urgent equitable relief before any appropriate court and the commencement of any dispute resolution proceedings shall in no way affect the continual performance of the Parties' obligations under the Contract.

**41 CONSORTIUM**

41.1 The following shall apply if a response to the Requirement Specifications is submitted by a consortium:

- (i) each member of the consortium shall be a business organisation duly organised, existing and registered under the laws of its country of domicile;
- (ii) no consortium shall include a member who has been debarred from Government tenders;
- (iii) after the submission of the response to the RFP, any introduction of, or changes to, consortium membership must be approved in writing by the Company;
- (iv) the following documents must be submitted with the said response:
  - (a) a certified copy of the consortium or partnership agreement, signed by all members of the consortium; and
  - (b) the response is to be submitted by a member of the consortium (the "Lead Member"). Documentary proof must be provided that the Lead Member is authorised by all members of the consortium to submit, sign the response, receive instructions, give any information, accept any contract and act for and on behalf of all the members of the consortium. The documentary proof could be in the form of:
    - (1) relevant provision(s) in the certified copy of the consortium or partnership agreement; or
    - (2) certified copies of powers of attorney from each member of the consortium;
- (v) information must be submitted with respect to:
  - (a) the legal relationship among the members of the consortium,
  - (b) the role and responsibilities of each member of the consortium, and
  - (c) the address of the consortium to which the Company may send any notice, request, clarification or correspondence; and

(Where provided for in the Guidelines for RFP, the above information may be submitted in the form(s) stipulated in the Guidelines for RFP.)

- (vi) if the Company awards the Contract to a consortium:
  - (a) the Letter of Acceptance may be handed to or posted to the address of the Lead Member of the consortium given in the response;
  - (b) the issue by the Company of a Letter of Acceptance shall create a binding Contract on all the members of the consortium;
  - (c) each member of the consortium shall be jointly and severally responsible to the Company for the due performance of the Contract;
  - (d) as and when requested by the Company, all members of the consortium shall be required to sign a formal written agreement in the appropriate form with the Company. Until the said formal

agreement is prepared and executed, the consortium's response together with the Company's Letter of Acceptance, shall constitute a binding Contract on all the members of the consortium; and

- (e) in the event that any member of the consortium withdraws from the consortium or is adjudicated a bankrupt by a duly constituted judicial tribunal, or goes into liquidation in accordance with the laws of the country of incorporation, then the surviving member(s) of the consortium shall be obliged to carry out and complete the Contract.

## **42 ASSIGNMENT AND SUBCONTRACTING**

42.1 Subject to the other provisions of the Contract, all the terms and conditions of the Contract shall be binding upon and enure to the benefit of the parties and their respective heirs, permitted assigns and successors-in-title except that:-

- (i) the Contractor shall not transfer or assign all or any of its rights, obligations or benefits hereunder in whole or in part to any third (3rd) party without the prior written consent of the Company, which consent shall not be unreasonably withheld;
- (ii) Notwithstanding the above, the Company shall have the right to transfer or assign all or any of its rights, obligations or benefits hereunder in whole or in part to any third (3rd) party upon written notice to the Contractor. In the event that such transfer is by way of a novation, the Contractor shall execute any such novation agreement prepared by the Company and presented by to the Contractor so as to give effect to the provisions of this clause;
- (iii) any permitted assignee or transferee shall agree in writing to comply with all terms and conditions of the Contract; and
- (iv) any assignment shall not exceed the existing scope of the Contract.

42.2 In particular, the Contractor may not subcontract the performance of any Services hereunder, without the prior written consent of the Company. In connection with such consent, the Company may require the execution by such subcontractor(s) of an agreement to be prepared by the Company. The Contractor shall remain fully responsible for any its obligations subcontracted, as permitted hereunder, and the Contractor shall be solely responsible for payment due to such subcontractors.

42.3 Approval of any subcontractor by the Company shall not constitute a superseding event or waiver of any right of the Company to reject work that is not in conformance with the standards set forth in the Contract, and does not constitute nor imply authorisation of expenses in excess of the Contract Price.

## **43 WAIVER**

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

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

**44 RELIANCE**

44.1 The Contractor accepts that the Company, *inter alia*, relies on the skill and judgment of the Contractor in the description and manufacturing quality of the Software to be provided and on the judgment and skills of the Contractor for any and all of the Services to be performed.

**45 INSOLVENCY**

45.1 The Company may at any time by notice in writing summarily determine the Contract or any unperformed balance or the Contract without compensation to the Contractor in any of the following events:

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

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

45.2 Any termination under Clause 45.1 above shall discharge the Parties from any liability for further performance of the Contract and the Company shall have the right to be repaid forthwith any sums previously paid under the Contract (whether paid by way of a deposit or otherwise) and to recover from the Contractor the amount of any loss or damage sustained or incurred by the Company as a consequence of such termination.

**46 NOTICES**

46.1 Except as otherwise provided in the Contract, notices which are required to be given in or under the Contract shall be in writing (unless expressly stated otherwise). Notices may be sent by hand or by AR Registered post or certified mail, return receipt requested, postage prepaid and properly addressed to the

offices of the Parties as specified below or to such other address as the Party may later specify.

*If to Company:*

Alexandra Health Pte Ltd  
Materials Management Department  
378 Alexandra Road  
Singapore 159964

*If to Contractor:*

<Contractor Name>  
Attention : < name / designation >  
<Contractor Address>

- 46.2 Every notice or communication so sent shall be deemed to have been properly served and validly made, if by hand when delivered to the recipient's address and if sent by AR Registered post, two (2) days after posting if posted to an address within Singapore and eight (8) days after posting, if posted to an address outside Singapore, notwithstanding the fact that the letter may be returned by the Post Office undelivered.

#### **47 ENTIRE AGREEMENT**

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

#### **48 SEVERABILITY**

- 48.1 In the event that any term, condition or provision of the Contract or the application of any such term, condition or provision shall, to any extent, be held by a court of competent jurisdiction to be wholly or partly illegal, invalid, unenforceable or a violation of any applicable law, statute or regulation of any jurisdiction, the same shall be deemed to be deleted from the Contract and shall be of no force and effect; whereas the remaining terms and provisions of the Contract shall remain in full force and effect as if such term, condition and provision had not originally been contained in the Contract, unless the severed provisions render the continuing performance of the Contract impossible, or materially change either Party's rights or obligations under the Contract; in which event, such Party may give written notice of its intent to terminate the Contract to the other Party.

48.2 Notwithstanding the aforesaid, in the event of such deletion, the Parties hereto shall negotiate in good faith in order to agree to terms of mutually acceptable and satisfactory alternative provisions in place of the provision(s) so deleted.

**49 [Reserved ]**

**50 REASONABLENESS**

50.1 Both Parties agree that the clauses in the Contract are reasonable. In construing the clauses herein, the clauses shall not be construed *contra proferentum* against the Company.

**51 LANGUAGE**

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

**52 SURVIVAL CLAUSE**

52.1 All clauses of the Contract (including the Schedules) so intended to survive after the termination or expiration of the Contract shall survive such termination or expiration.

**53 INDEPENDENT CONTRACTOR / NO PARTNERSHIP**

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

**54 NO THIRD PARTY BENEFICIARIES**

54.1 Nothing contained in the Contract is intended to confer upon any person (other than the Parties hereto) any rights, benefits or remedies of any kind or character whatsoever or any right to enforce the terms of the Contract under the Contracts (Rights of Third Parties) Act 2001, and no person shall be deemed to be a third (3<sup>rd</sup>) party beneficiary under or by reason of the Contract.

**55 USE OF NAME**

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

**56 GOVERNING LAW**

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

56.2 The Parties hereby agree to submit irrevocably to the non-exclusive jurisdiction of the Courts of the Republic of Singapore to settle any and all disputes in connection with the Contract.

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

**57 EXECUTION IN COUNTERPARTS**

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

**SCHEDULE 1**

**FORM OF BANKER'S GUARANTEE**

**TO:**

Alexandra Health Pte Ltd  
378 Alexandra Road  
Singapore 159964

Dear Sirs,

**OUR PERFORMANCE GUARANTEE NO. :** \_\_\_\_\_  
**FOR THE SUM OF SGD** \_\_\_\_\_

Whereas on the << DATE >>, an agreement hereinafter called the "Contract") was made between << NAME OF CONTRACTOR >> of << CONTRACTOR ADDRESS >> (hereinafter called "the Contractor") of the one part and Alexandra Health Pte Ltd (hereinafter called "AHPL") of the other part whereby the Contractor agreed to the supply of << BRIEF DESCRIPTION OF CONTRACT >> to Alexandra Health Pte Ltd for the sum of Singapore Dollars << AMOUNT IN WORDS >> (S\$ << AMOUNT IN FIGURES >>).

And whereas the Contractor is required under the Contract to pay Singapore Dollars << AMOUNT IN WORDS >> (S\$ << AMOUNT IN FIGURES >>) as a security deposit for the due performance and observance of all the conditions, obligations and stipulations contained in the Contract.

Now in consideration of AHPL agreeing at our request to accept a Banker's Guarantee in lieu of Cash Deposit of Singapore Dollars << AMOUNT IN WORDS >> (S\$ << AMOUNT IN FIGURES >>), we << NAME OF BANK >> of << BANK ADDRESS >> (hereinafter called "the Guarantor") hereby undertake as follows;

1. In the event of the Contractor failing to fulfil any of the terms and conditions of the said Contract, we shall indemnify AHPL against all losses, damages, costs, expenses or otherwise sustained by AHPL thereby up to the sum of Singapore Dollars << GUARANTEE AMOUNT IN WORDS >> (S\$ << GUARANTEE AMOUNT IN FIGURES >>).
2. The Guarantee contained herein shall not be discharged or otherwise affected by our *loss of capacity*, by any change in our name or by our objects, capital structure or constitution or by the sale of our business or part thereof, or on account of our amalgamation and shall continue to apply to all the Contractor's liabilities hereto in respect of the resulting entity after such sale or our amalgamation.
3. For the purpose of this Guarantee, we expressly waive any right we may have under any law to require that you proceed against the Contractor or any other person or to take any other procedure or steps other than as specified herein prior to proceedings against us under this Guarantee.

4. We shall not be discharged or released from this Bond by any arrangement made between the Contractor and AHPL with or without our assent or by an alteration to the obligations undertaken by the Contractor or by any forbearance whether as to payment, time, performance or otherwise.
  
5. This Guarantee represents the entire agreement between the Parties in respect of the Guarantee and none of the Parties shall be bound by any representation or promise made by any party non contained in this Guarantee. This Guarantee shall be binding and effective from the date of << INSERT START DATE >> and shall remain in full force and effect till:-
  - (a) << INSERT DATE >>;
  - (b) the date the Guaranteed Sum is automatically reduced to zero hereunder;
  - (c) the date we receive the original of this Guarantee for cancellation; or
  - (d) the date AHPL expressly discharges us from our obligations hereunder in writing;

whichever date is the earliest (“the Expiry Date”).

PROVIDED ALWAYS that we may at any time without being required to do so pay to you the undrawn portion of the Guaranteed Sum in full, whereupon our liability hereunder shall immediately cease and determine.

6. This Guarantee is conditional upon claim(s) being made by AHPL by notice in writing to us and such claim(s) hereunder must be made within three (3) months from the Expiry Date of this Guarantee, after which our liability under this Guarantee shall automatically cease and be discharged and your rights under this Guarantee shall be extinguished and this Guarantee shall be null and void and no claim for payment shall be permitted or entertained by us notwithstanding that this Guarantee may not have been returned to us for cancellation. Any claims(s) made shall be payable immediately, and solely at << NAME OF BANK >>, Singapore, and the amount stated in the notice as being due to AHPL under this Guarantee shall be final and conclusive evidence in the absence of manifest error that such amount is in fact due and payable.
  
7. AHPL’s right under this Guarantee are cumulative and AHPL may make more than one claim on this Guarantee so long as the claims are made within three (3) months from the Expiry Date of this Guarantee and the total claims do not exceed the Guaranteed Sum PROVIDED ALWAYS that the Guaranteed Sum shall be automatically reduced by the amount of any sum or sums paid hereunder, and our total liability hereunder shall in no circumstance exceed the aggregate of the Guaranteed Sum.
  
8. The benefit of this Guarantee is not assignable by the Contractor without the prior written consent of the Guarantor/Bank. Any claim by an assignee approved by the Guarantor/Bank must be accompanied by the original copy of the Guarantee.
  
9. In the event that any term, condition or provision of this Guarantee or the application of any such term, condition or provision shall to any extent, be held by a court of competent jurisdiction to be illegal, invalid, unenforceable or a violation of any applicable law, statute or regulation of any jurisdiction, the same shall be deemed to be deleted from this Guarantee and shall be of no force and

effect; whereas the remaining terms and provisions of this Guarantee shall remain in full force and effect as if such term, condition and provision had not originally been contained in this Guarantee unless the severed provisions render the continuing performance of this Guarantee impossible, or materially change either party's rights or obligations under this Guarantee; in which event, such party may give written notice of its intent to terminate this Guarantee to the other party. Notwithstanding the aforesaid in the event of such deletion, the parties hereto shall negotiate in good faith in order to agree to terms of mutually acceptable and satisfactory alternative provisions in place of the provision(s) so deleted.

10. This Guarantee shall be subject to, governed by and construed in all respects in accordance with the laws of the Republic of Singapore. By accepting this Guarantee, we hereby irrevocably submit to the non-exclusive jurisdiction of the Courts of the Republic of Singapore to settle any and all disputes in connection with this Agreement.

**SCHEDULE 2**

**PRICING**

[to be inserted]

**SCHEDULE 3**

**PROFESSIONAL SERVICES**

**1 DEFINITIONS**

1.1 In this Professional Services Schedule, unless the context otherwise requires, the following words and expressions shall have the meaning assigned hereunder:

Acceptance Criteria	means in relation to the Integrated System the test criteria for the Integrated System's compliance with the Requirement Specifications and Performance and Reliability Standards carried out in accordance with Clause 8 herein and the Acceptance Test Procedures;
Acceptance Date	means the date on which the Company accepts the Integrated System or is deemed to have accepted the Integrated System under Clause 8 herein;
Acceptance Test Procedures	means in relation to the Integrated System the procedures for testing the Integrated System's compliance with the Requirement Specifications and Performance and Reliability Standards, developed in accordance with Clause 8 herein, including the test procedures set out in Clause 11 of the General Terms and Conditions for the supply of the Software and/or Services;
Certificate of Acceptance	means the certificate issued by the Company to the Contractor in accordance with Clause 8.3(ii) herein;
Commissioning Date	means the date of expiry of the Commissioning Period which shall not be earlier than 3 months from the Acceptance Date as defined in Clause 8.4 herein;
Commissioning Period	means the period commencing immediately after the issue of the Certificate of Acceptance as defined in Clause 8.4 herein;
Commissioning	means putting the Integrated System into operation in its production environment with "live" data after the issue of the Certificate of Acceptance as more fully described in Clause 8.4 herein;
Client Executive	means the Contractor's employee who shall be the primary point of contact for the Contractor in respect of the day to day matters relating to the performance of Integrated System and the Integrated System Maintenance Services;
Data	means all data, directory structures, applications, access security, sharing permissions and/or other user rights;
Emergency Maintenance of	means on-call remedial maintenance including rectification of all reported software errors or bugs;

Software

Implementation Plan means the plan to be submitted by the Contractor showing the time schedules and sequence of events necessary for the implementation and Commissioning of the Integrated System;

Integrated System means the Software integrated with the Company's other equipment and/or systems;

Integrated System Maintenance Services means the carrying out of any and all operations and procedures necessary to maintain the performance of the Integrated System in accordance with the standards set out in the Performance and Reliability Standards and shall include, without limitation :-

- (i) Standard Services
- (ii) Preventive Maintenance of Software
- (iii) Emergency Maintenance of Software;

ISO Document means the International Organization for Standardization ("ISO") standards documentation for project management including ISO 10006 on "Quality Management Guideline to Quality in Project Management";

Key Personnel means collectively the Contractor Project Manager and any workman of the Contractor (whether or not an employee of the Contractor) named in Annex 1 of this Schedule or as so designated in any other document of the Contract;

Monthly Service Charge means the fixed monthly charges payable for the Integrated System Maintenance Services as specified in Annex 3 of this Schedule;

Operating Hours means the normal operating hours of the Integrated System which will be 24 hours daily, including Sundays and public holidays;

Performance and Reliability Standards means those standards of performance and reliability to be achieved by the Contractor in performing the services hereunder, as set out in the Requirement Specifications;

Preventive Maintenance of Software means maintenance which includes, but is not limited to:  

- (i) optimisation and/or restructuring of Software code;
- (ii) updating of Documentation; and
- (iii) installation, testing and the implementation of Software upgrades;

Preventive Maintenance Schedule means the schedule showing the frequency that preventive maintenance should be carried out on the Software, based upon the needs of the particular item of the Software as determined by the Company and as specified in Annex 4 of this Schedule;

Service Level Standards	means those standards of performance to be achieved by the Contractor in performing the Services, as set out in the Requirement Specifications;
Services	means all services that the Contractor is required to provide to the Company under this Schedule, including, but not limited to, Integrated System Maintenance Services, Transition Services and Implementation Services;
Standard Services	means the services to be supplied by the Contractor to the Company as set out in Annex 2 of this Schedule;
Statement of Work	means a specific agreed statement of requirements, tasks and deliverable products and services;
Timescales	means the plan and schedule of deliverables set out in the Statement of Work;
Transition Services	means those services and processes more particularly described in the Requirement Specifications which are necessary or desirable to accomplish any transfer, migration or preparation in order to enable the Company to use the Integrated System and/or to upload data into the Integrated System with minimal disruption of the Company's operations and capabilities or without causing an adverse effect on or degradation of the quality or continuity of any service or system which the Company is currently using;
Warranty Period	shall have the meaning ascribed to it in Clause 22 of the General Terms and Conditions;

- 1.2 Capitalised expressions used without definition in this Services Schedule shall have the meanings assigned to them in the General Terms and Conditions or any of the other Schedules to the General Terms and Conditions. Other technical expressions relating to computers systems, software and hardware shall have the meanings commonly attributed to them in the information technology and information services businesses.
- 1.3 All references herein to clauses, unless otherwise expressly stated, are references to clauses numbered in the Services Schedule and not to those in any other document forming part of the Contract. Where a clause number is quoted, then reference is being made to that clause bearing that clause number and to all the sub-clauses if any, under that same clause number (e.g. a reference to Clause 3 refers to Clause 3.1 to 3.2 inclusive of all their respective sub-clauses if any).
- 1.4 Where the provision number is stated without a description of any document then it refers to the provision so numbered in the document where the reference appears.

## **PART 1 – IMPLEMENTATION**

### **2 SCOPE OF SERVICES & SUPPLY**

- 2.1 The Contractor shall upon the terms and conditions of this Contract:
- (i) act as consultant to the Company in relation to the Contract;
  - (ii) design and develop in consultation with the Company, the necessary interfaces and the integration of the Software with the Company's existing equipment;
  - (iii) provide the Software fully integrated into the Company's existing equipment, tested and accepted by the Company by the cutover date as specified in the Timescales;
  - (iv) provide the Documentation and training; and
  - (v) provide such other services as the Contractor may be required to provide under the Contract and/or the Requirement Specifications.
- 2.2 The cost of providing the services described in Part 1 of this Schedule shall be included in the Contract Price and no additional payment shall be due to the Contractor for the provision of such services.

### **3 IMPLEMENTATION SERVICES**

- 3.1 The Contractor will provide the Company with implementation services ("Implementation Services") including without limitation (i) design and development of the interfaces, (ii) integrate the Software with the Company's existing equipment, (iii) study, design, manage and control any system and process harmonisation efforts, business process re-engineering efforts and change management efforts; and (iv) perform such other duties in relation to the Contract as the Company may require in the Requirement Specifications.
- 3.2 While the Contract's method of work is its own, the Contractor shall comply with the reasonable instructions of the Company and shall use its reasonable endeavours to promote the interests of the Company in relation to the Contract.
- 3.3 The Contractor warrants that:
- (i) the Contractor's employees, agents or subcontractors assigned to perform the Implementation Services have the necessary skill, expertise and experience;
  - (ii) the Implementation Services will be performed in a timely and professional manner and in accordance with the time schedule set out in the Timescales or otherwise as agreed by the parties;
  - (iii) the Implementation Services will conform to the quality standards generally observed in the industry for similar services (including any standard prescribed in the relevant sections of the ISO Document) and will be provided with all reasonable skill and care;

- (iv) while the Contractor's employees, agents or subcontractors are on the premises of the Company, its Affiliates or the Company's other service providers, they will conform to such health regulations, confidentiality regulations, security regulations and other policies and procedures generally applicable to the Company's or the Affiliates' own employees;
  - (v) the Contractor's employees, agents or subcontractors assigned to perform the Implementation Services will exercise at least reasonable care in the Software's use, safety and storage and shall leave the Sites in a clean, tidy and safe condition;
  - (vi) except where they are based on materials provided by the Company, the deliverables to the Company will be original works of the Contractor's authorship and the use, possession or ownership of such deliverables (as the case may be) shall not render the Company liable for any claim of infringement or violation of any Intellectual Property Rights of any third party, such occurrence shall be dealt with in accordance with the provisions of the General Terms and Conditions;
  - (vii) all deliverables supplied and provided by the Contractor under this Contract shall be in English; and
  - (viii) on completion of the Implementation Services, the Integrated System will provide the facilities and functions set out in the Requirement Specifications and comply with the requirements of the Performance and Reliability Standards.
- 3.4 Save for the duties to be performed specifically by the Company as listed in the Statement of Work, the Company may, in connection with the implementation of the Integrated System and in their absolute discretion, provide the Contractor with such other assistance, information or resources including but not limited to seconding its staff to the Contractor in order to enable the Contractor to implement the Integrated System. For the avoidance of doubt, such assistance, information or resources from the Company do not in any way relieve or lessen the obligations to be undertaken by the Contractor under this Contract.

#### **4 EXECUTIVE COMMITTEE**

- 4.1 The parties agree to constitute a committee with 2 representatives from each party to this Contract ("Executive Committee") for the purposes of making project management and human resource decisions. The Executive Committee may appoint additional persons to assist the Executive Committee in its duties but such persons shall not have the power to vote in any deliberations of the Executive Committee.
- 4.2 The chairperson of the Executive Committee shall be appointed by the Company. In a situation of deadlock, the Executive Committee shall refer the matter to the chief executive officers (or equivalent officer) of both parties for resolution. The other powers and duties of the Executive Committee shall be governed by the regulations to be agreed upon by the parties.

- 4.3 Where any regulations made under this Clause by the Executive Committee conflict with the provisions of this Contract, the provisions of the Contract shall prevail.

## **5 PROJECT MANAGEMENT**

- 5.1 The Contractor shall appoint a Contractor Project Manager who shall be primarily responsible for directing and coordinating the implementation of the Software and all work and services which are to be performed or provided by the Contractor under this Contract. The Company shall appoint a Company Project Manager who shall be primarily responsible for the co-ordination of all matters relating to the Company's obligations under the Contract. Unless otherwise agreed, all communications, documentation and materials relating to this Schedule shall be sent as appropriate by the Company to the Contractor Project Manager or from the Contractor to the Company Project Manager.

- 5.2 The Contractor Project Manager and the Company Project Manager shall meet at least once every month during the first week of that month to review the Contractor's performance during the previous month, make plans for the coming month and to discuss any other matters pertaining to the implementation of the Software. All meetings shall be held at a location selected by the Company.

- 5.3 It is the intention of the parties to endeavour to settle amicably all disagreements and differences of opinion on matters of procedure and management arising out of this Schedule by conference and negotiations. In the event that the parties are unable to resolve such disagreement or difference of opinion, the matter shall be disposed of as follows:

- (i) the Contractor Project Manager and the Company Project Manager shall meet to attempt resolution. Should they not meet within 7 days of the date on which either party convenes a meeting to resolve the matter or should they not be able to resolve the matter within 7 days of meeting, then
- (ii) the Executive Committee shall meet to attempt resolution. Should the Executive Committee not meet within 7 days of the date on which either party convenes a meeting to resolve the matter or should the Executive Committee not be able to resolve the matter within 7 days of meeting, then
- (iii) the matter shall promptly be referred jointly to the chief executive officers (or equivalent officer) of both parties. Should an unanimous decision not be reached within 14 days of the matter being so referred, then
- (iv) the matter shall be dealt with as set out in Clause 40 (Dispute Resolution) of the General Terms and Conditions.

- 5.4 All actions of the Company Project Manager shall be binding on the Company. All actions of the Contractor Project Manager shall be binding on the Contractor.

- 5.5 The Company reserves the right to request, on reasonable grounds, the replacement of any person involved in the Contract and the Contractor shall so accede to such request.

- 5.6 The Contractor agrees to make available the Key Personnel to perform the duties of the Contractor in relation to the Contract. The Contractor agrees that it shall not change its Key Personnel without the prior written approval of the Company (such approval not to be unreasonably withheld) and any replacement shall have undergone, prior to assuming his duties, a suitable period of familiarisation with his or her predecessor so far as reasonably practicable. If the Company objects to the change of any Key Personnel, the Contractor may escalate this matter to the Executive Committee for determination. In the event that any Key Personnel is on leave or is temporarily absent from work for whatever reasons, the Contractor shall immediately designate another of its employee of at least equal competence and familiarity with the Software to perform all the duties and functions of the Key Personnel during his absence.
- 5.7 The Contractor Project Manager or his replacement shall be contactable by the Company Project Manager during the Company normal business hours ("Business Hours"). For the purposes of allowing the Company Project Manager to contact the Contractor Project Manager outside of the Business Hours or during any emergency which might require the Contractor Project Manager's attention, the Contractor shall provide the Company with a telephone number to facilitate such contact.
- 5.8 The Company may nominate its staff or staff of the Affiliates ("Company Personnel"), excluding the Company Project Manager, to participate in the implementation of the Software to a sufficient extent such that an in-depth understanding of the deliverables of the Software and associated licensed products is obtained. The Company agree to bear all costs of the participation of the Company's Personnel. The Contractor acknowledges that the participation of the Company's Personnel shall not in any way release or relieve the Contractor of its due performance of its obligations under this Contract, or of the warranties that the Contractor has given in connection with the Software, or require the Company to pay the Contractor to enable the Company's Personnel to so participate in the development of the Software.

## **6 IMPLEMENTATION PLAN**

- 6.1 The Contractor shall produce and maintain an Implementation Plan, conforming to the Timescales, and a Timescales showing the time schedule and sequence of events necessary for the completion of the implementation of the Software.
- 6.2 The Implementation Plan shall be updated weekly showing the expected and actual events and completion dates. The Implementation Plan shall be made available to the Company Project Manager for review after each update.
- 6.3 The Contractor shall deliver to the Company Project Manager written weekly and monthly progress and status reports in the format specified in the Requirement Specifications or if not so specified as prescribed by the Company. The acceptance of these reports by the Company shall not constitute any waiver of its rights or variation of this Contract and shall not in any way prejudice any rights or remedies of the Company under this Contract.
- 6.4 The Contractor shall notify the Company Project Manager of any expected delay in any activity undertaken by the Contractor pursuant to this Contract. The Contractor shall refer immediately to the Company Project Manager any matter likely to

impede the progress of the supply, delivery, installation and implementation of the Software.

## **7 CHANGE CONTROL AND EXTENSIONS**

7.1 If any party in the course of this Contract finds that there is a need to change the Requirement Specifications, Performance and Reliability Standards or any other aspect of the Software, then:

- (i) the party requesting the change shall submit a written change request to the other party which shall include the project/task identification, name and title of the officer requesting the change, the date of the request, a description of the proposed change and the reasons for the proposed change (“Change Request”);
- (ii) the party requesting the change shall categorise the Change Request as Priority 1 (urgent), Priority 2 (ordinary) or Priority 3 (post acceptance);
- (iii) if the Contractor is requesting the change, the Change Request shall also be accompanied by a statement by the Contractor detailing the impact on the Implementation Plan, Software, Timescales, Integrated System and other relevant obligations under this Contract resulting from the proposed change;
- (iv) if the Company is requesting the change, the Contractor shall within 3 working days of receiving the Change Request advise the Company if the changes can be made and, subject to Clause 7.2 below, the impact on the Contract Price, Implementation Plan, Software, Timescales, Integrated System and other relevant obligations under this Contract; alternatively, the Contractor shall within 3 working days of receiving the Change Request advise the Company that a study into the impact of the change proposed is required (“Impact Study”), accompanied by a statement detailing the estimated time, resources required by and costs of the Impact Study; and
- (v) within 14 days of receiving the Contractor’s Change Request, the Contractor’s response to a Change Request or the results of the Contractor’s Impact Study, as the case may be, the Company shall make known their decision whether or not to proceed with the changes.

7.2 There shall not be any increase in the Contract Price if the Change Request:

- (i) merely results in the refinement of the Requirement Specifications;
- (ii) does not result in any major changes to the detailed design of the Software; or
- (iii) is made by the Contractor.

7.3 Pending written agreement to implement the changes, the parties shall proceed only in accordance with the then current terms and conditions of this Contract.

- 7.4 The parties agree to set out periods (prior to each scheduled delivery of the deliverables) in the Implementation Plan during which actions on Change Requests concerning the Requirement Specifications will be suspended. Any such Change Request will be dealt with after the Company's acceptance of the scheduled delivery.
- 7.5 Any Change Request or change in the Requirement Specifications or in the Performance and Reliability Standards or any other aspect in the development of the Software must be endorsed and agreed to in writing by the Company Project Manager.
- 7.6 Where the Contractor requires the Company's input or the Company to perform their obligations in order that the Contractor may perform its obligations, the Contractor shall:
- (i) advise the Company as to the input which the Contractor requires or the obligation which the Contractor requires the Company to fulfil; and
  - (ii) indicate to the Company when the Contractor expects the Company to so respond to the Contractor's request, provided always that the Contractor allows the Company a reasonable period during which to respond to the Contractor's request.

Provided that the above have been compiled with, if there is a delay beyond a reasonable period for reasons solely attributable to the Company, the Company Project Manager shall upon the application by the Contractor, grant reasonable extensions of time and reimbursements as to additional expenses incurred and the Timescales and payment schedule shall be amended or adjusted accordingly.

## **8 ACCEPTANCE AND COMMISSIONING**

- 8.1 Interim acceptance and review of the deliverables shall be carried out by the parties throughout the implementation process of the Integrated System in the following manner to ensure that Integrated System has been implemented and performs in accordance with the Requirement Specifications:
- (i) within 30 days after each delivery, the parties shall test and review the delivery in conjunction with the Software and the Contractor shall provide the Company with the test results in writing;
  - (ii) the Company shall provide a written statement identifying in reasonable detail all defects in the deliverables;
  - (iii) the Contractor shall correct all defects reported under Clause 8.1(ii) above by the subsequent phase release of the Integrated System, failing which the Company shall be entitled to withhold payment for the subsequent phase release of the Integrated System until such defects are corrected.
- 8.2 The Contractor and the Company shall work diligently to achieve early acceptance of the deliverables. Where an Integrated System module or sub-system provides sufficient functionality such that it permits testing by trained

users, such Integrated System modules and/or sub-systems shall be made available to the Company for testing.

8.3 The parties shall comply with the Acceptance Test Procedures and Acceptance Criteria contained in the Requirement Specifications, as well as the following:

- (i) upon written notice by the Contractor that the Integrated System is completed and ready for final acceptance tests, the Company shall indicate the date to commence the final acceptance tests which shall be within 14 days of the written notice. The final acceptance tests of the Integrated System or any sub-system of the Integrated System shall be conducted at the relevant Site in its production environment and shall include user acceptance tests, stress and performance tests and other tests specified by the Company in accordance with the Acceptance Test Procedures to determine if the Integrated System or sub-system of the Integrated System meets the Acceptance Criteria. The Contractor shall attend at the final acceptance tests and shall provide the Company with the tools, the testing equipment and all necessary facilities and assistance in conducting the final acceptance tests;
- (ii) after the successful completion of the final acceptance tests of the entire Integrated System and if the Acceptance Criteria have been met, the Company shall issue the Certificate of Acceptance to the Contractor accepting the Integrated System;
- (iii) the Acceptance Criteria shall include: (a) delivery of 2 copies of any printed documents, magnetic and other storage media containing the Integrated System Documentation to the Company in the manner and format as prescribed by the Company; and (b) written acceptance of the Integrated System Documentation by the Company;
- (iv) without prejudice to the foregoing, if the Company does not issue the Certificate of Acceptance within 30 days of completion of the final acceptance tests for the entire Integrated System and fails to provide written statements identifying in reasonable detail any nonconformity with the Acceptance Criteria or any deviation from the Requirement Specifications or Performance and Reliability Standards, then the Integrated System shall be deemed to have been accepted by the Company; and
- (v) in the event the Integrated System or any sub-system of the Integrated System is not accepted in accordance with the foregoing, repeat tests shall be carried out within a reasonable time thereafter but in any event no later than 14 days after the previous test. The Contractor shall not be entitled to additional charges for work done in relation to such repeat tests. If 2 subsequent tests demonstrate that the Integrated System is not in accordance with the Acceptance Criteria, the Company may by written notice to the Contractor elect to:
  - (a) require the Contractor to promptly supply, without extra charge, such additional or replacement Software or Services as may be necessary to enable the Integrated System to meet the Acceptance Criteria;

- (b) accept and retain such part of the Integrated System as the Company may consider expedient at such reduced price as may be agreed between the Company and the Contractor; or
  - (c) reject the Integrated System whereupon (i) the Contractor shall be liable to the Company for the costs of any replacement Integrated System with the same or comparable functionalities which the Company may acquire (ii) the Contractor shall be liable to the Company for any incidental administrative cost and any other damages arising from delays occasioned by the replacement.
- 8.4 Upon the issue of the Certificate of Acceptance, the Contractor shall for a period of at least 3 months (“Commissioning Period”) monitor and ensure that the Integrated System performs in accordance with the Requirement Specifications and Performance and Reliability Standards in its production environment with “live” data. Successful commissioning is deemed to occur if the Integrated System performs in accordance with the Requirement Specifications and Performance and Reliability Standards for 30 consecutive days (“Successful Commissioning”). The Commissioning Period shall be no less than 3 months notwithstanding Successful Commissioning within the said period. In the event that the Integrated System fails to perform in accordance with the Requirement Specifications and Performance and Reliability Standards during the third (3<sup>rd</sup>) month of the Commissioning Period, the Commissioning Period shall be automatically extended until Successful Commissioning is achieved, whereupon the Commissioning Period shall expire, provided the Commissioning Period shall not exceed a total of 12 months from the date of issue of the Certificate of Acceptance. The date of expiry of the Commissioning Period shall be known herein as the “Commissioning Date”. If any payment to the Contractor is associated with the Commissioning Date, the date of payment shall be adjusted in accordingly.
- 8.5 If Successful Commissioning is not achieved within 12 months from the date of issue of the Certificate of Acceptance, the Company may, without prejudice to any other rights that it may have against the Contractor, by written notice elect to:-
- (i) require the Contractor to promptly supply, without charge, such additional or replacement Software or Services as may be necessary to enable the Integrated System to meet the Requirement Specifications and Performance and Reliability Standards; or
  - (ii) accept and retain such part of the Integrated System as the Company may consider expedient at such reduced price as may be agreed between the Company and the Contractor; or
  - (iii) reject the Integrated System whereupon (i) the Contractor shall be liable to the Company for the costs of any replacement Integrated System with the same or comparable functionalities which the Company may acquire (ii) the Contractor shall be liable to the Company for any incidental administrative cost and any other damages arising from delays occasioned by the replacement; or
  - (iv) notwithstanding Clause 34 of the General Terms and Conditions or Clause 18 herein, terminate the Contract forthwith upon written notice, whereupon all monies paid by the Company to the Contractor under the Contract shall be refunded without interest to the Contractor.

**9 TRANSITION**

- 9.1 The Contractor shall, within two (2) weeks of the execution of the Contract, present to the Company for the Company's approval, a transition plan detailing among other things at the least the following:
- (i) a description of the services, data equipment and software being migrated, as applicable;
  - (ii) the Contractor's deliverables in relation to the Transition Services and acceptance criteria in respect thereof;
  - (iii) a timeline which states the dates on or by which the Contractor shall have completed certain tasks or set of tasks which have been defined as or are part of Transition Services ("Transition Milestones");
  - (iv) the methodology or approach to be employed in the performance Transition Services and the resources to be provided by the Contractor;
  - (v) any other information required under the Requirement Specifications; and
  - (vi) such other information and planning as are necessary to provide that the Transition Services take place in accordance with the Transition Milestones and with, in the opinion of the Company, minimal unscheduled disruption to the Company's or its Affiliates' operations and capabilities.
- 9.2 If the Company does not approve of the transition plan submitted as aforesaid, the Contractor shall, within one (1) week, make such changes to the plan as may be directed by the Company and once such changes have been incorporated by the Contractor, the transition plan shall be deemed approved ("Transition Plan").
- 9.3 Whilst performing the transition, the Contractor shall comply with the Transition Plan and ensure that it has adequate resources dedicated to complying with the Transition Plan.
- 9.4 The Contractor shall, as a part of the Transition Services, conduct the acceptance tests outlined in the Transition Plan and such other tests as the Company may reasonably request to verify the successful completion of the Transition Services and the migration of the Company's information technology requirements to the Contractor without degradation in quality of service, reliability or integrity of systems and Data.
- 9.5 Deliverables specified in the Transition Plan will be tested and accepted or rejected by the Company and corrected and redelivered by the Contractor in accordance with criteria and procedures described in the Transition Plan approved by the Company. Without prejudice to the foregoing, in the event that the Contractor performs Data migration or other services related to the uploading of the Company's Data into the Integrated System for the Company, then in the event of discrepancies in the Data before and after migration to the Integrated System or where the Data after migration cannot wholly or partly be used by the Integrated System or where the Data when in use returns erroneous results, and provided such discrepancies are due to the default of the Contractor, the Contractor shall:
- (i) correct the discrepancies within fourteen (14) days or as mutually agreed from the time the foregoing is ascertained; and

- (ii) be obliged, should the Contractor fail to remedy or ameliorate the situation as set out in Clause 9.5(i) above, to engage at its own expense such other service provider, as the Company may nominate, as its sub-contractor in the Data migration efforts.

9.6 Where the Contractor does not comply with Clause 9.5(ii) above within 7 days after the Company's nomination, it shall be deemed that the Contractor has failed to perform the Services in accordance with this Contract, and the Company shall have the right to enforce the remedies under Clause 7.6 of the General Terms and Conditions.

## **10 DOCUMENTATION**

10.1 The Contractor shall, at no additional charge, supply and deliver to the Company the quantity of copies of Integrated System Documentation (including end user training materials and any other documentation stipulated in the Requirement Specifications) in the manner and format stipulated by the Company, or if not so stipulated, two hard copies and two soft copies of the Integrated System Documentation (including end user training materials) needed for the operation and maintenance of the Integrated System. All subsequent updates of each set of the aforesaid documents, whether as a result of changes to the Integrated System or otherwise, shall be supplied at no charge to the Company as soon as they are available and in any case before the Warranty Period expires.

## **11 TRAINING**

11.1 The Contractor undertakes to provide suitable and adequate formal training in the use of the Integrated System for staff nominated by the Company.

## **PART 2 – MAINTENANCE AND SUPPORT**

### **12 DURATION**

12.1 The Contractor shall provide the services described in this Part commencing from the Commissioning Date and shall continue for an initial term of [ ] years. Thereafter it shall automatically renew for subsequent terms of [ ] year at a time and continue in force until:

- (i) the Software is decommissioned;
- (ii) the Company gives the Contractor 60 days' written notice to terminate the provision of services (without the need to assign any reason); or
- (iii) such time as this Schedule is terminated under the provisions herein;

whichever is earliest.

12.2 Without prejudice to the parties' respective rights and obligations under the Contract, in the event that the services hereunder are terminated in accordance with Clause 12 herein, the Company's obligation to pay Monthly Service Charge shall cease forthwith and the Contractor shall refund and repay to the Company

any unused Monthly Service Charge or advance payment received from the Company.

**13 CHARGES FOR MAINTENANCE AND SUPPORT**

13.1 In consideration of the due performance of Integrated System Maintenance Services by the Contractor, the Company shall, upon the expiry of the Warranty Period, commence payment of the Monthly Service Charge to the Contractor in accordance with the charges as specified in Annex 3. The Monthly Service Charge may not be increased during the term of this Contract.

13.2 The Contractor shall invoice the Company the Monthly Charges on a monthly basis in arrears and the Company shall pay the undisputed amounts due within 30 days of receipt of each invoice.

**14 CONTRACTOR'S RESPONSIBILITIES AND SERVICE LEVELS**

14.1 The Contractor shall maintain a log of all its activities pursuant to this Schedule. The log will track the following events listed below, which list of events shall not be deemed to exhaustive:

- (i) date and time the Contractor is notified of any defect for malfunction;
- (ii) date and time when Contractor commenced rectification of the malfunction or error;
- (iii) item or part of the Integrated System subject to investigation;
- (iv) total time the Integrated System or part thereof is made unavailable to the Company;
- (v) description of defect(s), including cause(s);
- (vi) corrective action taken, including temporary corrections, and workarounds;
- (vii) preventive action to be taken; and
- (viii) tests performed and results.

14.2 Following every visit to any Site by the Contractor's personnel, the Contractor shall at its own expense within a reasonable period of time, clear away and remove from the Site all surplus materials, rubbish and work of every kind and leave the whole of the Site clean and in workmanlike condition.

14.3 The Contractor shall continue with its efforts to correct or rectify any defect or malfunction in the Integrated System reported to it until such time as the defect or malfunction is corrected or restored such as to enable the Integrated System to operate in the manner contemplated in the Requirement Specifications and Performance and Reliability Standards, unless the Contractor is able to satisfy the Company that the defect or malfunction is due to a factor for which the Company is responsible.

14.4 Any software, hardware or equipment of any kind used by the Contractor to carry out its obligations shall be deemed to be included in the charges payable for Integrated System Maintenance Services.

14.5 If at any time on or after the Commissioning Date the Integrated System does not perform at or above the Service Levels Standards, the Contractor shall

compensate the Company in the manner and quantum stipulated in the Requirement Specifications. The Company's levy of or receipt of such compensation shall be without prejudice to and shall be in addition to any right or remedy that the Company may have against the Contractor whether under this Contract or otherwise.

**15 MANAGEMENT AND PERSONNEL**

15.1 The Contractor shall appoint a Client Executive who shall be responsible for the co-ordination of all matters relating to the Integrated System Maintenance Services. All communications, documentation and materials relating to the provision of Integrated System Maintenance Services shall be sent as appropriate by the Company to the Client Executive or the Client Executive to the Company. The Client Executive shall not be replaced without the prior written approval of the Company (such approval not to be unreasonably withheld) and any replacement shall have undergone, prior to assuming his or her duties in connection with the Integrated System Maintenance Services, a suitable period of familiarisation with the Integrated System Maintenance Services with his predecessor so far as reasonably practicable. The Company reserves the right to request, on reasonable grounds, the replacement of any person involved in the Integrated System Maintenance Services and the Contractor shall so accede to such request.

**16 WARRANTY AND DEFAULT**

16.1 In relation to the provision of Integrated System Maintenance Services, the Contractor represents and warrants as follows:

- (i) that all its personnel and those of its subcontractors or agents are suitably qualified and competent to perform the Integrated System Maintenance Services;
- (ii) that it shall carry out its obligations in conformity with any standards as stipulated in the Requirement Specifications, and where the Requirement Specifications do not specify any particular standard, in conformity with the general accepted standards of skill, care and diligence appropriate to the nature of the services rendered;
- (iii) that the Contractor observe and comply with, and to procure that its employees, agents and subcontractors observe and comply with, all statutory and other relevant rules and regulations relating to health, safety and security, applicable at the premises of the Company and the Institutions;
- (iv) at the date of commencement of this Schedule the Contractor has obtained and will maintain for the duration of this Schedule all permits, licenses and consents necessary for the Contractor to perform the Integrated System Maintenance Services;
- (v) that any equipment or material provided by the Contractor whether before or during the provision of the Integrated System Maintenance Services, including debugging software, firmware or hardware, shall not interfere with the normal operation of the Integrated System during its Operating Hours; and
- (vi) that in the event it fails to conform to the terms of this Schedule and in particular the warranties given under this Clause, it shall, without request,

take immediate action to remedy the same without any cost to the Company.

- 16.2 Where the Contractor fails or refuses to carry out its obligations under this Schedule and, in particular, the warranties set out above, the Company may itself employ and pay another party to undertake the performance thereof and may charge the Contractor for any expense, cost, damage or loss which the Company sustained on account of the Contractor's default. The Contractor shall not be relieved of its obligations herein by the failure of the Company to make any inspection or discover any defective work or any aspect of the Contractor's default.

### **PART 3 – GENERAL**

#### **17 INTELLECTUAL PROPERTY RIGHTS**

- 17.1 Any modification or enhancement of the Software and any testing, diagnostic, debugging or monitoring software, scripts or functionalities once incorporated into the Software shall be deemed to be part of the Software for all purposes under this Schedule and under other documents forming the Contract.
- 17.2 Any cessation of the provision of Integrated System Maintenance Services (for whatsoever reason) shall not terminate or affect the right of the Licensees to continue their use of the then current version of the Software in whatever manner permitted immediately prior to cessation of the provision of Integrated System Maintenance Services.
- 17.3 As between the Company and the Contractor, the Contractor is and shall remain the sole owner of all right, title, and interest in and to the Software save that all of the foregoing shall be licensed to the Licensees on the same terms and conditions contained in the Contract.

#### **18 TERMINATION**

- 18.1 Without prejudice to the Company's right to terminate this Schedule, as provided elsewhere in this Contract, the Company may forthwith on giving notice in writing to the Contractor terminate the provision of Integrated System Maintenance Services if the Software or any substantial part thereof is lost, deleted, incapacitated or damaged beyond economic repair.
- 18.2 On the termination of this Schedule, any monies or fees paid in advance by the Company for any service to be provided pursuant to this Schedule shall, without affecting any remedy which the Company may have for any breach of terms herein, be pro-rated and refunded to the Company.
- 18.3 Any termination of this Schedule, however occasioned, shall not affect the accrued rights or liabilities of either party nor shall any remedy which any party have against the other for breach of the terms herein be affected. Further, each party shall at its own expense immediately return to the other or, as the other may instruct, dispose of, all copies of all documents, papers, specifications and other materials belonging to the other party being in the first party's possession

or under its control and not intended under the terms of this Contract to remain in the possession of the first party, and shall certify in writing to the other party that the same has been done.

**19 ANNEXES**

19.1 This Schedule is supplemented by the following Annexes which shall be incorporated into and be deemed part of this Schedule subject to the necessary amendments to give effect to the parties' intention as expressed herein:

- Annex 1 – Key Personnel
- Annex 2 – Standard Services and Additional Services
- Annex 3 – Monthly Service Charges
- Annex 4 – Preventive Maintenance Schedule

19.2 In the event of conflict between the contents of the Annexes and this Schedule, the provisions of this Schedule shall prevail.

**ANNEX 1 TO SCHEDULE 3**

**KEY PERSONNEL**

[to be inserted]

**ANNEX 2 TO SCHEDULE 3**

**STANDARD SERVICES AND ADDITIONAL SERVICES**

For the purposes of this Annex 2,

1. In respect of the Software, "Standard Services" shall mean the obligations of the Contractor as stated below:
  - (i) investigation and correction of defects in the Integrated System as reported by the Company including temporary corrections and workarounds of the defects until such time as standard corrections and/or updates of the Integrated System are available;
  - (ii) installation, testing and the implementation of standard corrections, updates, releases and upgrades and updating of related documentation and materials;
  - (iii) rendering advice on the performance tuning and security configuration of all items of the Software;
  - (iv) preventive maintenance of Software not less frequently than once every month and to the extent possible outside normal business hours and which shall comprise, amongst other things, the carrying out of any and all operations and procedures necessary to maintain the performance of the Software in accordance with the standards set out in the Performance and Reliability Standards.
  - (v) recovering lost Data, restoration and repair of damaged Data and the correction of erroneous Data to the extent possible;
  - (vi) rendering advice and guidance to the Company in the use of the Integrated System;
  - (vii) at the request of the Company to provide training for the personnel of the Company in the use of the Integrated System;
  - (viii) informing the Company of all future updates and upgrades of the Software or components thereof (including components which are third party commercial off-the-shelf software products) within 1 week of their release for general distribution and, when so requested by the Company, supplying and installing the relevant updates and upgrades within 4 weeks of receipt of the Company's request, but should the Company decide not to update or upgrade any Software, the Contractor shall continue to provide maintenance and support for the Software or components thereof up to 2 versions prior to the latest version of the Software which has been released for general distribution;
  - (ix) assisting in the transfer of knowledge to the Company Level 1 Service Desk as may be required from time to time; and

- (x) maintaining System Software. In respect of such System Software, maintenance shall mean:
  - (b) investigation or location and rectification of faults;
  - (c) applying any patches or fixes provided by the vendor of the System Software; and
  - (d) such other maintenance services as may be described in the Requirement Specifications.
  
- 2. In the provision of the Standard Services, the Contractor shall ensure that the performance standards more particularly described in the Requirement Specifications are complied with and shall, if requested by the Company, provide its personnel with appropriate equipment which the Company may require to ensure that the standards are always complied with.
  
- 3. The Contractor shall establish and maintain during the pendency of the Schedule, a toll-free telephone number and an electronic communications connection ("Contractor Help Desk") for use by the Company. Any temporary or permanent change to such Contractor Help Desk details shall be notified to the Company immediately. The Contractor Help Desk shall function and be accessible to the Company at all times and be adequately manned by trained engineers who are familiar with the Software.
  
- 4. Forthwith upon such remedies being completed the Contractor shall deliver to the Company the corrected version of the object code of the Software in machine-readable form for loading on to the Integrated System together with appropriate amendments to the Documentation, if any, specifying the nature of the correction and providing instructions for the proper use of the corrected version of the Software on the Integrated System.

**ANNEX 3 TO SCHEDULE 3  
MONTHLY SERVICE CHARGES**

[insert in this schedule the monthly maintenance charges, when payable and mode of payment]

**ANNEX 4 TO SCHEDULE 3**  
**PREVENTIVE MAINTENANCE SCHEDULE**

<b>Item No.</b>	<b>Description (Software / Hardware)</b>	<b>Frequency of Preventive Maintenance (No. of visits Per Annum)</b>