CLIENT NAME

-AND-

RioMed Ltd

CONTRACT TERMS AND CONDITIONS FOR CELLMA SOFTWARE

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THIS AGREEMENT is made **BETWEEN**

RioMed Ltd (company number 3468288) whose office is at 18 East Links, Tollgate Business Park, Chandler's Ford, Eastleigh, SO53 3TG (hereinafter referred to as 'The Contractor') **AND CLIENT NAME** (hereinafter together with and any and all other affiliates referred to as 'the Client'), having a principal place of business at **(CLIENT ADDRESS)**

Together referred to as the "**Parties**" or individually a "**Party**".

The Contractor is experienced in designing, developing, creating, testing, installing software and has the skill, expertise and knowledge with respect to the same to advise and create for the Client a CELLMA Tool to suit the Client's particular requirements in accordance with the terms and conditions of this Agreement.

1. Definitions

Acceptance Certificate: means the certificate to be signed by the Customer under clause 8.

Acceptance Tests: means the tests of the Software after installation.

Beneficiary: in relation to clause 12, a representative of the client, defined as such by the client

Business Day: means a day other than a Saturday, Sunday or public holiday in England between the hours of 8:30am and 5:00pm, when banks in London are open for business.

Capital Cost: means costs stated in Schedule A.

CEDR: means the Centre for Effective Dispute Resolution.

Completion Date: means the date that the Client is in receipt of the Software in accordance with acceptance procedure set out in clause 8.

Confidential Information: means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, and all Personal Data and sensitive Personal Data within the meaning of the Data Protection Act 2018.

Critical Defect: means that the application is down or is at high risk, business functions cannot be conducted, or the Client is experiencing continual failures or data corruption as a result of the defect.

FOISA : means the Freedom of Information (Scotland) Act, 2002.

Health Authorities: means organisations that are responsible for hospitals and medical services in a particular area.

Helpline: means helpline provided by the Contractor to the Client.

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Intellectual Property Rights: means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, database rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

IT Source Code: means a computer programme written in its original programming language.

Nominated Officers: the persons or their deputies nominated by the Parties to monitor performance of the service, to agree variations and receive notices.

Personal Data: shall have the same meaning as set out in the Data Protection Act 2018.

Purchase Order: is a commercial document issued by the Client to the Contractor, indicating types, quantities and agreed prices for products or services the Contractor will provide to the Client.

Relevant Data: means all data in the Software.

Relevant Materials: means documents in line with the agreement between RioMed and Escrow

Software: means CELLMA software.

Source Code: means a computer programme written in its original programming language.

Support and Maintenance contract: means a contract for provision of support and maintenance services.

The 2018 act: means the Data Protection Act 2018.

The Seventh Principle: means the seventh data protection principle.

Warranty Period: a period of one year from the date of commencement of service.

2. **Commencement and Performance**

The parties have decided to record formally and in writing the terms of this Agreement which commenced on the Effective Date. **Effective date of DD Month Year**

3. **Duration**

This Agreement shall expire on the day before the **fifth (5th)** anniversary of the Effective Date (the **"Expiry Date"**), unless it is terminated earlier in accordance with clause 6 (*Termination*).

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4. Services

Upon execution of this Agreement and subject to the terms and conditions of this Agreement the Contractor undertakes and will be solely responsible for the Services which will comprise of the following:

- Providing the Client with a version of the Software, with the ability to login to the CELLMA service that has been tailored to meet the requirements of the Client.
- The Contractor shall provide the necessary services and technical training to designated employees of the Client for one year from the date of commencement of this Agreement.
- The Contractor shall provide a Helpline to designated employees of the Client for one year from the date of commencement of this Agreement.
- Providing the Client with a web forum for the help service.

5. Costs

Costs are as stated in Schedule A. The Capital Cost, as stated in Schedule A, will be met by **CLIENT NAME.** The cost of any additional services, not covered by the Capital Cost, will be met by **CLIENT NAME**. Costs will be subject to VAT. Payment will be in Sterling (£), or such other currency agreed by the Client and stated on the Purchase Order.

Costs stated in Schedule A shall not be subject to variation except with the prior written consent of the Client. However, Annual Ongoing Costs may be subject to an increase in line with inflation (as defined by The Bank of England) but capped at 2.5% above inflation.

6. Termination

Without prejudice to any other rights or remedies to which it may be entitled, the Client shall be entitled to terminate this Agreement forthwith without liability to the Contractor by giving 30 days' notice to the Contractor.

The Client may terminate this Agreement with immediate effect with no liability to make any further payment to the Contractor (other than in respect of amounts accrued before the Termination Date) if:

- the Contractor commits any gross misconduct affecting the business of the Client;
- the Contractor commits any serious or repeated breach of this Agreement;
- a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Contractor; or
- an application is made to court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over the Contractor.

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7. Delivery and Installation

The Contractor will be responsible for the delivery of login details for Software in accordance with Clause 4 above. The Client shall have a period of **14 days** following notification by the Contractor that the Software is ready to be tested to carry out acceptance testing in respect of the Software and any part thereof.

8. Acceptance

Acceptance of the Software shall be deemed to have occurred on whichever is the earliest of:

- the signing by the Client of an Acceptance Certificate for the Software following successful completion of the testing;
- the expiry of five days after the completion of all the Acceptance Tests, unless the Client has given any written notice.

9. Support and Maintenance

The Contractor agrees to provide full maintenance and support of the Software for the duration of the contract, as defined in section 3.

10. Source Code

On signing this agreement the Contractor agrees to routinely arrange or procure storage of all updated copies of the full IT Source Code for the Software together with all Relevant Materials.

In the event of: (1) the Contractor's insolvency; (2) assignment of the Contractor's intellectual property rights in the Software to a third party; and (3) breach by the Contractor of the contractual obligations under the existing agreement, the Contractor undertakes to:

- deliver copy of the latest Source Code and other Relevant materials to the Client;
- ensure that the Source Code and other material, as delivered, comprises the Source Code to the latest version of the Software used by the Client;
- deposit any third party software or documentation − not necessarily in Source Code form − that may be required to enable the Client to make full use of the Source Code and other material;
- provide other relevant information for the purposes of this agreement, including version details, media types, password/encryption details, documentation and Software design information.

11. **Warranties**

The Contractor warrants in respect of the Software that, as at the Completion Date:

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- the structure of the Software is its original work and has not been copied at all, wholly, substantially or insubstantially from any other source;
- the Contractor is the sole legal and beneficial owner of the Intellectual Property Rights in the Software and maker of the Software;
- all the Intellectual Property Rights in the Software are subsisting and enforceable and nothing has been done to make them invalid;
- the Contractor has not assigned or licensed any of the Intellectual Property Rights in the Software;
- the Intellectual Property Rights in the Software are free from any security interest, option, mortgage, charge or lien;
- the Contractor is unaware of any infringement, or likely infringement, of any of the Intellectual Property Rights in the Software;
- as far as Contractor is aware, the exploitation of the rights assigned by this Agreement will not infringe the Intellectual Property Rights of any third party;
- the Software contains nothing that is defamatory or indecent;
- neither the Software nor any of its contents has suffered any loss or corruption;
- Software conforms with specification provided to the Client by the Contractor;
- Contractor has in place appropriate technical and organisational measures to protect the Relevant Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and that provide a level of security appropriate to the risk represented by the processing and the nature of the Relevant Data;
- the Software is free from viruses, worms, time locks or anything else that would impair performance of the Software;
- the Software is guaranteed to run at 99.5% availability;
- the Software is of satisfactory quality and fit for any intended uses expressly or impliedly made known to the Client, and will be free from all defects in materials, workmanship and installation for a period of 12 months from the Completion date.

12. Confidentiality

In respect of any Confidential Information it may receive from the other party ("the Discloser") and subject always to the remainder of this confidentiality clause. Each party ("the Recipient") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser's prior written consent provided that:

- The Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of the Contract;

- The provisions of this confidentiality clause shall not apply to any Confidential Information which:

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- Is in or enters the public domain other than by breach of the Contract or other act or omission of the Recipient;

- Is obtained by a third party who is lawfully authorised to disclose such information; or

- Is authorised for release by the prior written consent of the Discloser; or

- The disclosure of which is required to ensure the compliance of the Client with the FOISA

- Nothing in this confidentiality clause shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law or, where the Contractor is the Recipient, to the Contractor's immediate or ultimate holding company provided that the Contractor procures that such holding company complies with this confidentiality clause as if any reference to the Contractor in this Confidentiality clause were a reference to such holding company.

The Contractor authorises the Client to disclose the Confidential information to such person(s) as may be notified to the Contractor in writing by the Client from time to time to the extent only as is necessary for the purposes of auditing and collecting information so as to ascertain a realistic market price for the goods supplied in accordance with the Contract, such exercise being commonly referred to as "benchmarking". The Client shall use all reasonable endeavours to ensure that such person(s) keeps the Confidential Information confidential and does not make use of the Confidential Information except for the purpose for which the disclosure is made.

- The Contractor acknowledges that the Client is or may be subject to the FOISA. The Contractor notes and acknowledges the FOISA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and the Management of Records (which are issues under section 60 and 61 of the FOISA respectively) and the Environmental Information (Scotland) Regulations 2004 as may be amended, updated or replaced form time to time. The Contractor will act in accordance with the FOISA, these Codes of Practice and these Regulations (and any other applicable codes of practice or guidance notified to the Contractor from time to time) to the extent that they apply to the Contractor's performance under the Contract.

The Contractor agrees that:

- Without prejudice to the generality of the third bullet point of the confidentiality clause, the provisions of this clause are subject to the respective obligations and commitments of the Client under the FOISA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 60 and 61 of the FOISA respectively) and the Environmental Information (Scotland) Regulations 2004;

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- Subject to the next bullet point below, the decision on whether an exemption applies to a request for disclosure of recorded information is a decision solely for the Client;

- Where the Client is managing a request as referred to in confidentiality clause, the Contractor shall co-operate with the Client and shall respond within five (5) working days of any request by it for assistance in determining how to respond to a request for disclosure.

The Contractor shall procure that its sub-contractors shall:

- Transfer any request for information, as defined under section 8 of the FOISA, to the Client as soon as practicable after receipt and in any event within five (5) working days of receiving a request for information;

- Provide the Client with a copy of all information in its possession or power in the form that the Client requires within five (5) working days (or such other period as the Client or Beneficiary may specify) of the Client or a Beneficiary requesting that Information; and

- Provide all necessary assistance as reasonably requested by the Client to enable the Client to respond to a request for information within the time for compliance set out in section 10 of the FOISA

- The Client may consult the Contractor in relation to any request for disclosure of the Contractor's Confidential Information in accordance with all applicable guidance.

- This confidentiality clause shall remain in force without limit in time in respect of Confidential Information which comprises Personal Data or which relates to a patient, his or her treatment and/or medical records. Save as aforesaid and unless otherwise expressly set out in the Contract, this confidentiality clause shall remain in force for a period of 3 years after the termination or expiry of this Contract.

- In the event that the Contractor fails to comply with this confidentiality clause, the Client reserves the right to terminate the Contract by notice in writing with immediate effect.

Personal Data and Medical Records

- The Contractor shall comply with the 2018 Act and any other applicable data protection legislation. In particular the Contractor agrees to comply with the obligations placed on the Client by the Seventh Principle set out in the 2018 Act, namely:

- To maintain technical and organisational security measures sufficient to comply at least with the obligations imposed on the Client by the Seventh Principle;

- Only to process Personal Data for and on behalf of the Client, in accordance with the instructions of the Client and for the purpose of performance of the Contract and to ensure compliance with the 2018 Act;

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- To allow the Client to audit the Contractor's compliance with the requirements of this personal data and medical records clause on reasonable notice and/or to provide the Client with evidence of its compliance with the obligations set out in this personal data and medical records clause.

- The Contractor shall obtain prior agreement of the Client, such agreement not to be unreasonably withheld or delayed, to store or process Personal Data for the purpose of performing the Contractor's obligations under the Contract at sites outside the United Kingdom.

- The Contractor agrees to indemnify and keep indemnified the Client against all claims and proceedings and all liability, loss, costs and expenses incurred in connection therewith by the Client as a result of any claim made or brought by any individual or other legal person in respect of any loss, damage or distress caused to that individual or other legal person as a result of the Contractor's unauthorised processing, unlawful processing, destruction of and/or damage to any Personal Data processed by the Contractor, its employees or agents in the Contractor's performance of the Contract or as otherwise agreed between the Parties.

- Both parties agree to use all reasonable efforts to assist each other to comply with the 2018 Act. For the avoidance of doubt, this includes the Contractor providing the Client with reasonable assistance in complying with subject access requests served on the Client under Section 7 of the 2018 Act and the Contractor consulting with the Client prior to the disclosure by the Contractor of any Personal Data in relation to such requests.

- For the avoidance of doubt, failure to comply with the personal data and medical records sub-clause may constitute a material breach of contract without prejudice to the right of either party to determine that any other breach of the contract constitutes a material breach.

Disclosure to Health Authorities

- Notwithstanding the provisions of the personal data and medical records clause above, the Client may disclose any information provided by the Contractor to other Health Authorities, provided that the Client shall take all reasonable steps to ensure that if such information is confidential it is treated as confidential by other Health Authorities and their employees or agents.

Know-how

- Nothing herein shall be so construed as to prevent either party from using data processing techniques, ideas, know-how and the like gained during the performance of the Contract in the furtherance of its normal business, to the extent that this does not result in a disclosure of confidential information, infringement of any valid Intellectual Property Rights of the other party or the unauthorised processing of any Personal Data.

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Publicity

- Except with the written consent of the other party, which shall not be unreasonably withheld or delayed, neither party shall make any press announcements or publicise the Contract in any way. The provisions of this clause shall not apply to information regarding the Contract made available by the Client to any other Health Authorities under the provision of disclosure to health authorities' clause.

13. Warranty

Contractor warrants that the Software licensed to the Client shall, under normal use and service, and for the Warranty Period perform in all material respects in accordance with the published specifications for such Software as established by the Contractor.

The Software warranty consists of:

- **Defect and Critical Defect Reporting**: Contractor will provide telephone or e-mail access during the normal working day. Critical Defect means that the application is down or is at high risk, business functions cannot be conducted, or the Client is experiencing continual failures or data corruption as a result of the defect.

- **Corrective Support**: Corrective support includes verification of the existence of a defect, determination of the severity or impact of the defect, and determination of the conditions under which the defect may recur. During such verification, Contractor may ask the Client to provide further information about the defect. After sufficient information is provided to enable Contractor to duplicate or verify the defect, Contractor will, at its option:
    - For a Critical Defect, commence action within a 2 hours response window using commercially reasonable efforts to provide an immediate fix or temporary solution of, or workaround to, the defect.
    - For a non-critical defect, commence action within an 8 hours response window to provide either the action described for a Critical Defect or a statement that the defect will be corrected in a software product revision or a future software release.
    - Provide a statement that the Software operates as described in Contractor's current user documentation or that the defect arises when such Software is used other than in a manner for which it was designed.

  Contractor does not warrant that the Software will operate uninterrupted or error free, operate in combination with other software, meet Client's requirements, or that its use will be uninterrupted.

14. Liability and Indemnity

Neither party excludes or limits liability to the other party for death or personal injury caused by its negligence.

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Neither party shall be liable to the other for any special loss or any indirect or consequential loss of any nature (including, without limitation, any economic loss or other loss of business, revenue, profit, goodwill or anticipated savings), whether arising in contract, tort, negligence, breach of statutory duty or otherwise.

The Contractor shall indemnify the Client against any claims, losses, damages, costs (including all legal fees) and expenses incurred by or awarded against the Client arising out of or in connection with any breach by the Contractor of the warranties in clause 11.

15. Dispute resolution

The Parties shall attempt in good faith to resolve any dispute, difference or questions arising out of or in connection with this Agreement.

To achieve this, the following procedure shall apply:

a) Within fourteen (14) days of the dispute arising the relevant Contractor's Nominated Officer and Client's Nominated Officer shall discuss the matter in order to reach resolution.

b) If for any reason the dispute referred to in sub-clause (a) is not successfully resolved, the matter should then be referred to the Chief Executive of each party to attempt to resolve the dispute in good faith effort.

c) If there is no resolution within one (1) month of the matter being notified to the Parties respective Chief Executives then the Parties shall attempt to settle it by mediation in accordance with CEDR Model Mediation Procedure in use by CEDR from time to time.

Neither party shall commence court proceedings until the Parties have attempted to settle the dispute by mediation.

16. Waiver

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

17. Notice

Any notice or other communication required to be given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand or sent by prepaid first class post or other next working day delivery service providing proof of postage, to the address of the parties as set out at the beginning of this Agreement.

Any notice or communication shall be deemed to have been received, if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper

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address, or if sent by fax, at 9.00 am on the next Business Day after transmission, or otherwise at 9.00 am on the second Business Day after posting.

This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, writing shall not include e-mail.

18. Entire Agreement

This Agreement constitutes the entire Agreement between the Parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.

Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies for, any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement.

No party shall have any claim for innocent or negligent misrepresentation based on any statement in this Agreement.

19. Variation

The Client may choose to expand the use of the software to other services and user groups within their organisation, any expansion or extension of this type is subject to a written agreement between the parties (or their authorised representatives).

Except as expressly provided in this Agreement, no variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

20. Severance

If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the Parties shall negotiate in good faith to amend that provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the Parties' original commercial intention.

21. Third-party Rights

This Agreement is intended and agreed to be solely for the benefit of the Client and the Contractor. For the purposes of the Contracts (Rights of Third Parties) Act 1999, this Agreement is not intended to, and does not give any person who is not a party to it any right to enforce any of its provisions.

22. Survival Clause

The following clauses shall survive the termination or expiry of this Agreement: 1, 12, 14, 15, 23 and 24

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23. Governing Law and Jurisdiction

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of [Scotland]

24. Date of Commencement

Date of execution by both the Contractor and the Client.

SIGNED by **Mario Mohammed** **DATE:**

For and on behalf of RioMed Ltd.

SIGNED by **Name** **DATE:**
Title

For and on behalf of **CLIENT NAME**

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Schedule A

Costs

Capital Costs

Annual Ongoing Costs

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