



TERMS AND CONDITIONS

Definitions

- a. "Agreement" means this agreement executed by the '*CLIENT*' and SHL including all Schedules;
- 1. "Applicable Legislation" means this agreement will be constructed in accordance with English Law and that English courts will have jurisdiction.
- 2. "UK Consumer Price Index" shall mean the UK Consumer Price Index for the prior year (as published by the Bank of England)
- 3. "Change of Control" means a change in the power to direct the management of SHL.
- 4. "Confidential Information" for the purpose of this Agreement means any and all information supplied to, obtained by or which comes to the knowledge of SHL as a result of this Agreement with respect to the '*CLIENT*' including, without limitation, all patient and client information (including patient names, addresses, telephone numbers and medical history), and all operational procedures except that Confidential Information does not include information which SHL can prove is information which is in the public domain at the date of disclosure by '*CLIENT*' to SHL, is received by SHL without obligation of confidence from a third party who is in lawful possession of such information free of any obligation of confidence and is not otherwise prohibited from transmitting such information to SHL by a contractual, legal or fiduciary obligation.
- 5. "Emergency Repair" shall mean a repair required that is determined not to be the fault of SHL.
- 6. "Escrow" means agreement by SHL to file source code with Lincon Perry, Global escrow administrators at '*CLIENT*' cost to ensure '*CLIENT*' has access to code in order to support the '*CLIENT*'s' requirement
- 7. "Managed Hosting Program" shall have the meaning ascribed to it in Schedule A.
- 8. "Party" means either '*CLIENT*' or SHL and "Parties" means both '*CLIENT*' and SHL.
- 9. "Providers" mean those appropriate owned or third party vendors that the '*THE CLIENT*' enters into contractual relationships with for provision of services.
- 10. "Service Level" shall mean the objective with respect to the availability of Software application in any given month as further defined in Schedule E.

11. "Services" is defined in Schedule A.
12. "Software" shall mean the Strata Health computer programs described in Schedule A, and all related files and documents as may be amended from time to time.
- ~~13.~~ "Steering Committee" means a joint committee made up of three '*CLIENT*' and three SHL representatives that will meet quarterly to continually optimize the performance of Strata Health applications within the Region. Members to be jointly agreed by the Executive Sponsor of '*CLIENT*' and SHL annually.
14. "Third Party Software" shall mean the networking and third party software specified in Schedule A
15. "Updates" means improvements and "bug" patches to the Software.
16. "Upgrades" means any significant code revisions of the Software necessitated by changes to the '*CLIENT*'s system software.

Independent Contractor:

1. SHL will be an independent contractor and not the employee, agent, partner or joint venturer of the '*CLIENT*', and SHL will not hold itself out to the public as such. SHL agrees that neither SHL nor any person employed by or associated with SHL in the performance of the Services or otherwise is an employee of, or has an employment relationship of any kind with the '*CLIENT*'.
2. The '*CLIENT*' will have no liability or responsibility for the withholding, collection or payment of income taxes, unemployment insurance, statutory or other taxes or payments of any other nature on behalf of, or for the benefit of, SHL or any other persons.
3. SHL will not in any manner whatsoever commit or purport to commit the '*CLIENT*' to the payment or receipt of any money or other consideration, or the acceptance or provision of any goods or services, except as expressly authorized by this Agreement.
4. SHL will provide and pay for all labour, materials, tools or approvals necessary to provide the Services.

Standard of Care:

5. SHL will perform the Services to a standard of care, skill, and diligence exercised by persons providing, on a commercial basis, services similar to the Services.
9. SHL will at all times undertake its business interactions with the '*CLIENT*' and its stakeholders with the utmost of integrity and transparency.

10. SHL will ensure that all persons who perform the Services are competent to perform the Services and are properly trained, instructed, and supervised. SHL will be solely responsible for the acts and omissions of SHL's employees and agents in performing the Services.
11. SHL will perform the Services in accordance with: (a) all Applicable Legislation; (b) the provisions of this Agreement including the decisions of arbitrators pursuant to this Agreement; (c) any instructions or directions that may be given by the '*CLIENT*' to SHL from time to time with respect to the provision of the Services; (d) all policies, guidelines and directives established from time to time by the '*CLIENT*' (including in particular, any policies of '*CLIENT*' regarding confidentiality); and (e) all required permits and licenses.
12. Where by virtue of this Agreement or of any law or governing body having jurisdiction with respect to the same, the Services are required to be provided by a duly qualified or licensed practitioner, professional, or a person with a specified qualification, level of training, or competence and experience, SHL will, upon request of the '*CLIENT*' from time to time, provide evidence satisfactory to the '*CLIENT*' that SHL and all persons engaged by SHL to deliver the Services have the requisite qualification, level of training, competence or experience, holds or have been issued all required licenses, certificates and memberships and that such licenses, certificates and memberships are in good standing.

Change of Control:

13. SHL shall provide '*CLIENT*' with not less than 90 days prior written notice of SHL's intention to:
 - (a) transfer all or substantially all of its assets used for, or in connection with, the Services to a third party;
 - (b) transfer, sell or otherwise dispose of the voting control or effective control of the Contractor to a third party; or
 - (c) amalgamate with another person or entity.

(each of (a), (b) or (c) constitutes a "Change of Control").

1. SHL shall provide '*CLIENT*' with all information and documents which the '*CLIENT*' reasonably requests concerning any of the events listed in subsections (a), (b) or (c) above
2. SHL will deliver formal strategy to deliver uninterrupted continuation of services performance to Agreement service levels.

Intellectual Property:

14. Subject to section 14, the '*CLIENT*' acknowledges and agrees that all right, title and interest in anything conceived, developed or made by SHL in connection with the

delivery of the Services, including all intellectual property rights associated thereto, will be for the benefit of SHL and will be the property of SHL.

15. Notwithstanding section 13, SHL will not own any of the data which is entered, exchanged, stored or manipulated in connection with the Services (the '*CLIENT*' Data"). SHL acknowledges that the '*CLIENT*' Data contains Confidential Information which is protected by section 16.

Confidentiality:

16. SHL will treat as confidential and will not, without the prior written consent of the '*CLIENT*', publish, release, or disclose or permit to be published, released or disclosed either before or after the termination of this Agreement, any Confidential Information nor will SHL use or exploit, directly or indirectly, any Confidential Information for any purpose other than for the fulfilment of SHL's obligations under this Agreement. Notwithstanding the foregoing, SHL will be entitled to disclose Confidential Information if required by law including the *Freedom of Information and Protection of Privacy Act or Information Governance Protocol within the UK* provided that SHL will promptly notify, consult with, and cooperate with the '*CLIENT*', prior to any disclosure, in any attempt to resist or narrow such disclosure or to obtain an order or other assurance so that such information will be accorded confidential treatment.
17. SHL acknowledges *and agrees* that its compliance with the *Freedom of Information and Protection of Privacy Act or Information Governance Protocol within the UK* and this Agreement in respect of Data shall supercede and have paramountcy over any compliance with privacy laws of general application in the private sector having application to SHL.
18. The '*CLIENT*' agrees, unless required by law, not to make SHL's confidential information available in any form to any third party or to use this confidential information for any purpose other than the implementation of this Agreement. '*CLIENT*' agrees to take all reasonable steps to ensure that confidential information is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement. In the event SHL has quoted on areas that are classed as trade secrets unique to SHL, it shall be the responsibility of SHL to draw such areas to the attention of the '*CLIENT*' in writing to secure confidentiality of the trade secret. The foregoing obligation shall survive cancellation, termination or expiration of this Agreement.

Further Agreements:

19. SHL agrees that no person will provide any Services (directly or indirectly) hereunder either as an employee, contractor, sub-contractor or agent unless such person first agrees with '*CLIENT*' and SHL, in writing, to be bound by the terms of Sections 13 to 17 as if such person had contracted with the '*CLIENT*' directly.

Indemnity, Insurance and Liability:

20. SHL will indemnify and save harmless the '*CLIENT*' and its governors, directors, officers, employees and agents (the "Indemnitees"), from and against any and all losses, claims, damages, actions, causes of action, costs and expenses any of the Indemnitees may sustain or incur, at any time, either before or after the expiration or termination of this Agreement, which are based upon, arise out of or occur, directly or indirectly, by reason of, any act or omission by SHL or any agent, employees, officers, directors or subcontractors in providing the Services except, with respect to the extent any such claim arises solely from the negligence of the '*CLIENT*'.
21. In addition to its obligations under Section 19, SHL shall indemnify '*CLIENT*' and hold it harmless from and against any and all loss, liability or expense by reason of any claim or suit for alleged infringement of any copyright, patent, trademark or trade secret resulting from or arising in connection with any claims that the Software infringes or violates any intellectual property right of any third party, or the performance of any work hereunder, and shall defend any such claim or suit and pay all costs and expenses incidental thereto; provided, however, that '*CLIENT*' shall have the right, at its option, to participate in the defence of any such claim or suit at SHL's cost and expense as aforesaid without relieving SHL of any obligations hereunder. If an injunction issues as a result of any such claim or action. SHL agrees, at its expense and its option, to either:
 1. procure for '*CLIENT*' the right to continue using Software or Services or
 2. replace them with non-infringing Software or Services or modify the Software or Services so they become non-infringing while still meeting the Service Level.
22. The aggregate liability of the '*CLIENT*' to SHL for any matters or claims of whatsoever nature and kind under or in connection with this Agreement will be limited to the "Maximum Amount" specified in Schedule B.
23. SHL will maintain and pay for insurance on the terms, including form, amounts, and deductibles, outlined in Schedule G.

Assignment and Sub-contracting:

24. SHL may not assign its rights under this Agreement without prior written consent by the '*CLIENT*'. Any attempt to assign any of the rights, duties or obligations of this Agreement without such written consent is void.
25. SHL will not sub-contract any of the Services without the prior written consent of the '*CLIENT*'.

26. SHL shall be fully responsible to the '*CLIENT*' for acts and omissions of sub-contractors and of persons directly and indirectly employed by them. No sub-contract, whether consented to or not, relieves SHL from any of its obligations under this Agreement.

Conflict of Interest:

27. SHL will not perform a service for or provide advice to any person, firm or corporation where the performance of the service or the provision of the advice may or does, in the reasonable opinion of the '*CLIENT*', give rise to a conflict of interest between the obligations of SHL to the '*CLIENT*' under this Agreement and the obligations of SHL to such other person, firm or corporation.

Payment:

28. In consideration of SHL providing Services, '*CLIENT*' will pay SHL fees described in Schedule B.
29. The '*CLIENT*' will reimburse SHL for expenses, if any, described in Schedule B provided such expenses are supported, where applicable, by proper receipts and, in the opinion of the '*CLIENT*', such expenses were reasonably and necessarily incurred by SHL in providing the Services.
30. In no circumstances will the aggregate amount required to be paid by '*CLIENT*' to SHL on account of fees and expenses exceed the "Maximum Amount" specified in Schedule B. SHL is not entitled to any other amounts or benefits other than the fees and expenses set out in Schedule B.
31. The '*CLIENT*' may treat amounts owing by it under this Agreement as fully paid and satisfied by way of set-off against amounts owing by SHL to the '*CLIENT*', including any amounts owing by SHL under Section 19.
32. SHL will invoice the '*CLIENT*' with respect to the amounts in Sections 28 and 29 of this Agreement in accordance with Schedule B. If the '*CLIENT*' agrees with the amount and form of the invoice, the '*CLIENT*' will pay such invoice within 30 days of receipt.

Default:

33. If either party or any subcontractor breaches any material provision hereunder, the other party shall have the right (without limiting any other rights or remedies which it may have hereunder or by operation of law), by notice in writing move to terminate this Agreement, whereupon that the terminating party shall be relieved of all further obligations hereunder other than payment of the reasonable value for materials or Services rendered prior to termination for which payment was not made.
34. If the '*CLIENT*' delivers to SHL written notice of default in supplying any of the Services to be provided by SHL, and SHL fails to:

a) remedy such default within 3 working days from and after delivery of the written notice;

1. within such period less than three (3) working days from delivery of the written notices, take such action as will ensure that the 'CLIENT' suffers no loss or damage;

then the 'CLIENT' may, without further notice to SHL take such steps as may, in the sole judgment of the 'CLIENT', be necessary to remedy such default, and without limiting any of the 'CLIENT's remedies at law or in equity, all reasonable costs incurred by the 'CLIENT' shall be paid by SHL. If SHL fails to pay such costs on demand, the 'CLIENT' shall be entitled to deduct the cost from any other amounts payable to SHL until such time as the 'CLIENT' has recovered all costs incurred in the remedying the default.

Termination:

35. If either party defaults as detailed in Section 33 or fails to perform in accordance with the terms and conditions of this Agreement and if such default or failure to perform continues for thirty (30) days after notice in writing from the non-defaulting party to the defaulting party to remedy the default or perform as required, the non-defaulting party may, without prejudice to any other right or remedy, terminate this Agreement on sixty (60) days notice to the defaulting party.
36. This Agreement may be terminated at the option of 'CLIENT', on a date specified in a written notice delivered to SHL, when one of the following events has occurred:
 1. an order is made, a resolution is passed or a petition is filed, for SHL's liquidation or winding up;
 2. SHL commits an act of bankruptcy, makes an assignment for the benefit of its creditors or otherwise acknowledges its insolvency;
 3. a bankruptcy petition is filed or presented against SHL or a proposal under the *Bankruptcy and Insolvency Act* (Canada) is made by SHL;
 4. a compromise or arrangement is proposed in respect of SHL under the *Companies' Creditors Arrangement Act* (Canada);
 5. a receiver or receiver-manager of any of SHL's property is appointed; or
 6. SHL ceases, in 'CLIENT's' reasonable opinion based on generally accepted accounting principles, to carry on business as a going concern.
 7. Under section 13.1.2 the CLIENT has determined via documented occurrence that SHL is in breach of suitable strategy to continue servicing the contracted SLA (service level agreement) within Schedule E.
37. SHL agrees that, notwithstanding receipt of notice of termination of the Agreement hereunder, it will continue to maintain the same standard of Service as required under the Agreement to the termination date. The 'CLIENT' agrees that it will, upon delivery of notice of termination, use best efforts to ensure that a replacement company has been put into place, sufficient to avoid disruption of Service and to ensure that SHL has reasonable opportunity to remove its equipment from the sites.

38. Upon termination of this Agreement, SHL will release to the '*CLIENT*' all property of the '*CLIENT*' which is in the control of SHL pursuant to this Agreement.

Notice:

39. Any notice contemplated by this Agreement, to be effective, must be in writing and be:
- (a) faxed to the addressee's fax number specified in this Agreement, or
 - (b) delivered by hand to the addressee's address specified in this Agreement, or
 - (c) mailed by prepaid registered mail to the addressee's address specified in this Agreement.
40. Any notice issued in accordance with Section 33, 34, 35 and 36 is deemed to be received 96 hours after mailing if mailed, on receipt if delivered by hand, or on the next business day if sent by facsimile. Either of the parties may give notice to the other of a substitute address or fax number from time to time.

Force Majeure:

41. Force Majeure means any cause beyond the control of a party which prevents the performance by a party of any of its duties, liabilities, and obligations under the contract not caused by its default or act of commission (except lockouts) or omission and not avoidable by the exercise or reasonable effort or foresight by that party, excluding lack of or insufficient financial resources to discharge and pay any monetary obligations, but including, without limitation, strikes, lockouts, or other labour industrial disturbances, civil disturbances, acts, orders, legislation, regulations, directives or of failure to act by any governmental agency, act of public enemy, war, riot sabotage, blockade, embargo, hurricane, earthquake, flood, washout, explosion, and Acts of God. If a party fails to perform any term of the Contract and such failure is due to an event of Force Majeure, that failure will not be deemed to be a default under the Contract. The party affected by an event of Force Majeure will immediately notify the other parties and will take all reasonable steps to minimize the extent and duration of the Force.
42. In the event of Force Majeure or any action flowing therewith or there from, the parties hereto agree that the services required under the Agreement may, at the sole discretion of the '*CLIENT*' be put into abeyance pending resolution and the '*CLIENT*' shall not be under obligation to compensate SHL for any loss or damages flowing from such abeyance. Further, any prepaid funds for services under the SLA (service level agreement) within Schedule E deemed undeliverable by Force Majeure, may be claimed back by the *CLIENT* calculated to a prorated amount based on the number of days of any outage or SLA breach. The '*CLIENT*' reserves the right to utilize alternate contractors to ensure continuation of services during the Force.

General:

43. Each provision of this Agreement is several. If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect: the legality, validity or enforceability of the remaining provisions of this Agreement or the legality, validity or enforceability of that provision in any other jurisdiction.
44. Time is of the essence in this Agreement.
45. The schedules attached to this Agreement, will, for all purposes, form an integral part of the Agreement.
46. This Agreement enures to the benefit of and binds the Parties and their respective successors, heirs, executors, administrators, personal and legal representatives and permitted assigns.
47. All disputes arising out of or in connection with this Agreement must, unless the parties otherwise agree, be submitted to arbitration review RE applicable Law and Jurisdiction. Ref 53. The award of the arbitrator will be final and binding on the parties.
48. No failure to exercise, and no delay in exercising, any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.
49. Any party may deliver an executed copy of this Agreement by fax but that party will immediately dispatch by delivery in person to the other parties an originally executed copy of this Agreement. This Agreement and all documents contemplated by or delivered under or in connection with this Agreement may be executed and delivered in any number of counterparts with the same effect as if all parties had signed and delivered the same document and all counterparts will be construed together to be an original and will constitute one and the same agreement.
50. No amendment, supplement, restatement or termination of any provision of this Agreement is binding unless it is in writing and signed by each person that is a party to this Agreement at the time of the amendment, supplement, restatement or termination.
51. This Agreement and all documents contemplated by or delivered under or in connection with this Agreement, constitute the entire agreement between the parties with respect to the subject matter of this Agreement and supercede all prior agreements, negotiations, discussions, undertakings, representations, warranties and understandings, whether written or oral, express or implied, statutory or otherwise.
52. All provisions of this Agreement which are expressly or by implication to come into or continue in force and effect after the expiration or termination of this Agreement will remain in effect and be enforceable following expiration or termination, including without limiting the generality of the foregoing, Sections 12 to 17 inclusive, 19 and 20.
53. This Agreement is governed by and is to be construed in accordance with the laws of England.

54. If there is a conflict between a Schedule to this Agreement and any other provision of this Agreement, the Agreement shall govern to the extent of the conflict.
55. SHL will execute such further assurances and other documents and instruments and do such further and other things as may be necessary to implement and carry out the intent of this Agreement.
56. SHL shall be solely responsible for all costs and risks related to any personnel or approved subcontractors of SHL involved in and to any equipment or other property owned by SHL and used in performance of the Services. Inspection and acceptance of any Services by a receiving party shall not be deemed to waive rights related to any failure to comply with this Agreement.
57. In the event of a labor dispute or work stoppage, either any of the sites and/or at any other site or involving SHL's employees or suppliers, SHL shall take whatever steps are necessary to reasonably maintain services to all the '*CLIENT*' sites on a regular and mutually acceptable basis. SHL shall take all reasonable action to prevent any picketing or strikes by its employees at the sites or any other '*CLIENT*' facilities.
58. SHL shall agree to maintain a current version of Strata RMeR™ source code in third party Escrow provided all costs associated with said Escrow be paid by the '*CLIENT*' beyond Set-up fees and Year 1 fee. SHL's obligations under Escrow shall survive the cancellation, termination or expiration of this agreement.

Entire Agreement

59. The Schedules to this Agreement, which are incorporated into this Agreement by reference and are considered to be a part of this Agreement are as follows:

| | |
|------------|---|
| Schedule A | Description of Services/Deliverables |
| Schedule B | Fees and Expenses |
| Schedule C | Integration and Configuration |
| Schedule D | Reporting Accountabilities |
| Schedule E | Service Level Requirements |
| Schedule F | Information Management Responsibilities |
| Schedule G | Insurance |

Plus any jointly agreed Addendums to this contract: