

THIS AGREEMENT IS DATED

2018 (“Agreement”).

BETWEEN

**Serba Dinamik IT Solutions Sdn Bhd (Company No. 919896-A)** a company duly incorporated under the laws of Malaysia and having its business address at **8-5 Pusat Dagangan UMNO Shah Alam, Lot 8 Persiaran Damai, Seksyen 11, 40100 Shah Alam, Selangor** (herein referred to as “SDIT”) of the first part.

AND

.....  
a company duly incorporated under the laws of Malaysia having its business address at  
.....  
(herein referred to as “**Corporate Client**” or “**Client**”) of the second part.

WHEREAS:

1. Client has agreed to engage in a program of third party administrator (herein referred to as **Malaysian Medical Third Party Administrator (MyTPA) Program** (hereinafter the “**Program**”) for the administration and payment of claims made and/or occurrences or circumstances which are likely to result in a claim against Client and/or the employees who may from time to time be covered (hereinafter “**Covered Employees**”) thereunder the Program from the appointed panel clinics (herein referred to as “**Panel**”); and
2. SDIT (thereunder MyTPA) is in the business of providing certain services with respect to the investigation, adjustment and management of professional and/or general liability of medical claims (hereinafter, “**Claim**” or “**Claims**” from the Panel; and
3. Client desires to contract with SDIT for the provision of its third-party administration services; and
4. SDIT is willing to provide its third-party administrator services for Client, upon the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the mutual agreements and covenants set forth below the parties hereby agree as follows:

**1. APPOINTMENT AND SERVICES**

1.1 Appointment. Subject to the terms and conditions hereof, Client hereby appoints SDIT to act as its third-party administrator servicing agent with respect to any

professional and/or general liability medical claims made and/or occurrence or circumstance which is likely to result in an any medical claim against a Covered Employees and/or Client under the Program. Subject to the provisions of Clause 6 below, SDIT agrees to provide those services as are set forth in sub-clause 1.2 below (the "Services") with respect to all Claims related to Panel assigned to it by Client.

- a) A Covered Employee is an employee of Client who is covered with medical entitlement by Client.
- b) The MyTPA Program is the third-party administrator program participated by Client and administered by SDIT.

1.2 Services to be Rendered. The Services that SDIT shall have the authority as an agent of Client to provide shall be the following:

- a) Examine all Claims made by Panel including but not limited to reports of matters for which no Claims have been made, any suspicious claims made by Panel and anything related thereto pertaining to possible liability of Client and/or the Covered Person under the Program.
- b) Adjust and handle to a conclusion during the term of this contract any Claim or potential Claim that Client believes it or a Covered Employee may be obligated to pay to the Panel or which Client advises SDIT it for any reason desires to pay the Panel under the Program; and provide protection of the rights or entitlements of Client or any Covered Employees to subrogation or contribution under the Program, if any.
- c) Perform all reasonable administrative and clerical work necessary in the performance of its duties and responsibilities as a third party administrator related to medical claims from the Panel hereunder.
- d) Maintain files for reported Claim from Panel, which shall be reviewable upon reasonable notice by Client or any person or persons designated by Corporate Client.
- e) Promptly confirm to Client in writing the creation of any file, indicating the parties involved, file number, date of event, location, and such other information as Client and SDIT deem pertinent should it is requested by the Client.
- f) Review, analyse, make appropriate recommendations, and provide necessary follow up on all reports and other matters within the scope of this Agreement as set forth in this sub-clause 1.2.
- g) Assist Client in establishing and re-evaluating reserves on each Claim from the Panel.
- h) Respond to Client's information requests pertaining to any matter within the terms and scope of this Agreement.

- i) Provide Client or its designated legal representative or agent copies of any and all investigative materials requested pertaining to any matter encompassed by the terms and scope of this Agreement.
- j) Be available to meet with representatives of Corporate Client at mutually agreeable times and places.
- k) Provide Client with an annual report setting forth a list of all Claims incurred, paid and outstanding to SDIT should it be requested by the Client.
- l) Pay any claims made by Panel on behalf of Client using Client's funds that can be channelled through any but not restricted to of any payment method introduced by SDIT.
- m) Provide phone consultations to employees and agents of Client as may be reasonably necessary in the administration of Client's Program.
- n) Pay claims or settlements only as instructed or permitted by Client to the Panel.
- o) SDIT as one of the Managed Care Organization is explained as outlined in Appendix A.

1.3 Limitations. Notwithstanding anything in this Agreement to the contrary, SDIT shall not, without the consent of Client:

- a) Settle or pay any claim made by Panel; and
- b) Retain any independent expert or technical personnel in connections with any possible Claim made by Panel against Client or Covered Employee.

1.4 Approval and reports. Client shall designate a representative(s) authorized to act on behalf of Client with respect to rendering decisions and providing consent pursuant to the terms and conditions of this Agreement. Whenever SDIT is required to obtain the approval or consent of Client or report to Client, such approval or consent shall be sought from and/or such report shall be delivered to such designated representative(s), or such other person or persons as Client may from time to time designate.

## 2. TERMS OF PAYMENT

2.1 Corporate Client shall pay SDIT for Services provided and SDIT may adjust its terms of payment for Services upon renewal or any agreeable terms of payment bind to this Agreement, as provided in Clause 5.

2.2 SDIT shall prepare an invoice setting forth (a) any payment made by the Corporate Client through prepaid method through SDIT to be paid to the Panel and (b) fees and/or expenses borne first by SDIT (postpaid method) for the period mutually agreed by the Client and SDIT which shall be claim later by SDIT against Client.

2.3 All fees set forth in the Agreement are due and payable within thirty (30) days of the invoice. Any and all past due fees will incur interest at the rate according to the current bank rate calculated as shown below: -

$$\text{Total Payable Amount} = \frac{(Z \times BR \times \text{Total Approved Claim})}{365 \text{ days}} + \text{Total Approved Claim}$$

Whereas

1. Total Payable Amount is defined as the total charges should be paid by the Corporate Client to SDIT.
2. Z is defined as Number of Days calculated after the 30<sup>th</sup> day has ended where it begins on 31<sup>st</sup> day as Day 1, 32<sup>nd</sup> day as Day 2 and so on.
3. BR is defined as Current Bank Rate imposed by the bank used in the transaction.
4. Total Approved Claim is defined as the total amount of claim approved by MyTPA to be claimed to the Corporate Client according to the invoice issued.

2.4 Client acknowledges that in the event SDIT undertakes collections proceedings for any outstanding fees, the Client will reimburse SDIT for all costs associated with such collection action, including a reasonable attorney fees and court cost.

### **3. INDEPENDENT CONTRACTOR**

3.1 The parties acknowledge and agree that SDIT shall at all times under this Agreement be engaged as an independent contractor of Client and either Client nor SDIT is the employee or the employer of the other, and that they are not partners or joint venture with each other in any respect.

### **4. CONFLICT OF INTEREST**

4.1 If in the opinion of SDIT it has or may have a conflict of interest with respect to any Claim from the Panel involving Client or any Covered Employee, SDIT shall give Client written notice of the conflict of interest, may thereafter decline to represent the interests of Client or the Covered Employee, and SDIT shall thereafter be excused from, and Client waives, performance of SDIT's obligations under this Agreement with respect to such Claim.

### **5. TERM, RENEWAL AND TERMINATION OF AGREEMENT**

5.1 Term. Subject to earlier termination as provided herein, this Agreement shall become effective upon signing of this Agreement and shall remain effective until both parties mutually agreed to terminate the Agreement. This Agreement shall thereafter automatically be renewed on an annual basis for successive one-year terms commencing on each anniversary date, unless either party provides thirty (30) days advance written notice of termination prior to the then current anniversary date. SDIT shall have the right to adjust its fees for the Services to be rendered under this Agreement upon thirty (30) days written notice to Client in advance of the annual renewal date of the Agreement. Upon the termination of this Agreement for any reason whatsoever, SDIT shall have no further obligation to continue to provide any Services hereunder.

5.2 Termination With Cause. This Agreement will terminate, subject to the contractual rights and remedies of each party, upon the occurrence of any of the following events:

- a) Insolvency. In the event that either party hereto shall (1) apply for or consent to the appointment of a receiver, trustee, liquidator, or similar official for all or a substantial part of its assets; (2) admit in writing its inability to pay its debts as they come due; (3) make a general assignment for the benefit of creditors; (4) file a petition to answer seeking an order for relief, a reorganization, or an arrangement with creditors or to take advantage of any insolvency law; or (5) otherwise cease to meet its financial obligations in the ordinary course of business.
- b) Breach. A material breach of this Agreement by either party for a continuous, unabated 30-day period after receipt of written notice of the same.
- c) Non-Payment of Invoice. If any invoice sent by SDIT to Client remains unpaid for ninety (90) working days after it is due, as provided for in Clause 2 of this Agreement, SDIT shall have the right to cancel this Agreement by giving ten (10) days advance written notice to Client. If Client fails to cure such breach within the ten (10) working days period following mailing of notice, this Agreement will terminate without further action of SDIT as of the date originally specified in the aforesaid written notice and SDIT shall have no further obligation to continue to provide any services, including the Services, under this Agreement. If any invoice remains unpaid for a period of ninety (90) days after mailing of the invoice, as provided for in Clause 2 of this Agreement, SDIT shall have the right to take any legal actions, if established pursuant to the terms of this Agreement, to satisfy the outstanding SDIT invoice(s).

5.3 If SDIT shall terminate this Agreement for non-payment of the invoice due and owing to SDIT under this Agreement, it may, at its option, charge Client the greater of a monthly pro-rata fee to the date of termination or its fees for servicing work computed at its customary hourly rate.

5.4 Upon expiration or termination of this Agreement, SDIT shall deliver, at Client's sole cost, the hard copy and any related files that SDIT has maintained for Claims (but not including any proprietary information of SDIT); provided, however, that SDIT or its agents, employees or attorneys shall continue to be entitled to inspect all such files and make copies or extracts there from. If Client does not agree to accept such files, they will be retained or destroyed at SDIT option and Client shall have no recourse against SDIT for failure to retain them. Upon request and for the prevailing fees at the time of termination, SDIT will also provide its standard tape(s) containing the computer data for the Claim files stored on SDIT computer system(s).

## **6. INDEMNIFICATION**

6.1 SDIT shall be fully responsible for exercising reasonable care at all times in the performance of its obligations hereunder. However, if SDIT is named as a party to any litigation or proceeding, or is the subject of any claim or demand because of its actions on behalf of Client, Client agrees to indemnify, defend, and hold SDIT, its officers, directors, employees and agents harmless from any and all losses, damages, costs, judgments and expenses (including attorneys fees and costs) with respect to any such litigation, proceeding, claim or demand, unless and until a finding is entered to the effect that SDIT failed to exercise such reasonable care in the performance of its obligations hereunder. SDIT agrees to indemnify, hold

harmless and defend Client, its directors, officers, employees and agents from and against any and all liabilities, loss or damage that they may suffer as a result of any claim, demand, cost or judgment against them arising out of the negligence or willful misconduct of SDIT in connection with its performance under this Agreement, provided that such acts or omissions do not arise out of or relate to oral or written instructions, procedures or forms supplied by Client or to Client's internal management or adjustment of its claims. Each party agrees to keep the other fully informed of any matter for which it is defending, holding harmless or indemnifying the other party. Each party reserves the right to appoint its own counsel, at its own expense, regarding any matter defended hereunder and to approve any settlements of same.

- 6.2 Notwithstanding anything to the contrary contained in the above paragraph, it is understood and agreed that if Client retains administration of a claim, Client will indemnify, defend, and hold SDIT, its officers, directors, employees and agents harmless from the losses, damages, costs, judgments and expenses (including attorneys fees and costs) as a result of any litigation or proceeding, fines, penalties, revocation of license, or any other state regulatory investigation or action arising against SDIT from Client's acts or omissions in administering such claim.
- 6.3 If Client's access to claim data includes the ability to add and modify data, SDIT shall not be required to verify, or otherwise be responsible for, the accuracy of data added or modified by Client. Client shall indemnify, defend and hold SDIT, its officers, directors, employees and agents harmless for any loss, cost (including attorneys fees), claim or judgment which is attributable to Client's input or modification of data.
- 6.4 The provisions of this section shall survive the expiration or termination of the Agreement.

## **7. CONFIDENTIALITY**

- 7.1 If Client's access to the data management system requires a network connection (the "Network Connection") between Client's network and SDIT's network, SDIT and Client shall take reasonable and customary precautions to prevent unauthorized access to or use of the Network Connection through their respective networks. The parties agree, however, that each party is responsible for the security of its own network. Neither party shall be liable to the other for unauthorized access to the Network Connection, so long as the accused party shall have taken reasonable and customary precautions to prevent such unauthorized access.
- 7.2 Whether or not marked as such, and without regard to the media in which such records are stored, "Confidential Information" shall mean
- a) any business or technical information pertaining to the parties herein or to third parties, which is furnished, disclosed or made available by one party to the other, including, without limitation, specifications, prototypes, software, marketing plans, financial data and personnel statistics; and
  - b) (b) medical records, reports and information, as well as any other non-medical records, reports or information pertaining to claimants under the Program.

7.3 Each party agrees to protect Confidential Information received hereunder with the same degree of care that such party exercises with its own confidential information (but in no event less than reasonable care) and to limit access and disclosure of Confidential Information only to their employees, agents and contractors who have a “need to know,” and who agree to maintain confidentiality in accordance with this section. Notwithstanding the foregoing, Client agrees to permit SDIT to compile and disseminate aggregate, de-identified information for benchmarking purposes or forward to a data collection facility data for Claims handled pursuant to this Agreement, provided that such facility agrees in writing to keep Client’s data confidential. Further, SDIT shall be entitled, without violation of this section and without the prior consent of Client, to retain claims administration information and to forward claims administration information to government agencies to the extent required by law for the proper performance of the services set forth herein.

7.4 The provisions of this section shall survive the expiration or termination of the Agreement.

## 8. MISCELLANEOUS PROVISIONS

8.1 Prevention of Performance. Neither party shall be liable to the other for any delays or damages or any failure to act due to, occasioned, or caused by any federal or state laws or the rules, regulations, or orders of any public body or official purporting to exercise authority or control respecting the operations covered hereby, or due to, occasioned, or caused by strikes, action of the elements, acts of God or other causes beyond the control of the parties, and delays due to any of the above shall not be deemed to be a breach of or failure to perform under this Agreement.

8.2 Assignment. No assignment either party’s rights or obligations under this Agreement shall be made without the written consent of the other party. If prior written consent to an assignment is given by the other party, then the assigning party’s rights and obligations under this Agreement shall terminate upon the effective date of the assignment, subject to the terms of the assignment.

8.3 Notice. Any notice required to be given under this Agreement shall be sent by certified or registered mail, postage prepaid, to **14<sup>TH</sup> Floor, Menara Serba Dinamik, Presint 3.4, Persiaran Perbandaran, Seskyen 14, 40000 Shah Alam, Selangor Darul Ehsan** in the case of SDIT, and to

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in the case of Client.

8.4 Waiver/Breach. The waiver of a breach of any term or condition of this Agreement shall not be deemed to constitute a waiver of a subsequent breach of the same or any other term or condition.

8.5 Severability. In the event any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of this Agreement, which shall remain in full force and effect and enforceable in accordance with the remaining terms of this Agreement.

- 8.6 Headings. The headings contained in this Agreement are for convenience or reference only and are not intended to define, limit or describe the scope or intent of any provision of this Agreement.
- 8.7 Choice of Law. This Agreement shall be governed in all respects, including validity, interpretation and effect, by the laws of Malaysia without giving effect to its conflicts of laws provisions.
- 8.8 Entire Agreement. This Agreement and its attached exhibit represents the full and final understanding of the parties with respect to the subject matter described herein and supersedes any and all prior agreements or understandings, written or oral, express or implied. This Agreement may be modified or amended only by a written statement signed by both parties.
- 8.9 Successors. This Agreement shall be binding upon and shall inure to the benefit of all transferees, assigns and successors in interest of any kind of the parties hereto, but no transfer or assignment may be made without the prior written permission of the other party.
- 8.10 Practice of Law. It is understood and agreed that SDIT will not perform, and Client will not request performance of, any services which may constitute the unauthorized practice of law.
- 8.11 Claim Definitions. Definitions of the various claim types are set forth in Appendix B.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their authorized representatives on the date first above written.

SIGNED by for and on behalf of **Serba** )  
**Dinamik IT Solutions Sdn Bhd** in the )  
presence of )  
)

**Name:** **Dato' Dr. Ir. Hj. Mohd Abdul Karim Abdullah**  
**Designation:** **Group CEO**  
**NRIC No:**

SIGNED by for and on behalf of )  
\_\_\_\_\_ )  
in the presence of )  
)

**Name:**  
**Designation:**  
**NRIC No:**

## APPENDIX A

### WHEREAS:

1. The Ministry of Health has set forth specifications for the Managed Care Organization that is subjected to relevant provisions under Part XV, the Private Healthcare Facilities and Services Act 1998 (Act 586).
2. Interpretation of managed care organization: For the purpose of this Part, “managed care organization” (herein referred to as “**MCO**”) means any organization or body, with whom a private healthcare facility or service makes a contract or has an arrangement or intends to make a contract or have an arrangement to provide specified types or quality of healthcare within a specified financing system through one or a combination of the following mechanisms
  - (a) delivering or giving healthcare to consumers through the organization or body’s own healthcare provider or a third-party healthcare provider in accordance with the contract or arrangement between all parties concerned;
  - (b) administering healthcare services to employees or enrolees on behalf of payors including individuals, employers or financiers in accordance with contractual agreements between all parties concerned.

**THEREFORE**, for valuable consideration, Client and SDIT hereby agree to follow any rules adhered by the Ministry of Health of Malaysia from time to time above this Agreement. Attached in as an addendum to Appendix A is the approval consent by the Ministry of Health of Malaysia to Serba Dinamik IT Solutions Sdn Bhd.

## **APPENDIX B**

### **DEFINITIONS**

#### **1. Notice Only:**

- These matters are reported by the Client for the purpose of entering same into the applicable claim management application. Upon receipt by SDIT, a preliminary review of the matter is performed by the assigned officer to determine appropriateness of the designation and subsequently submitted internally for entry into the applicable claim management application.
- These matters require no payment or activity other than generating a record in the claims administration system.
- These matters carry no reserves and no contacts or investigations are conducted by SDIT. If any of the aforementioned are required on these matters, additional fees will apply.
- Coded in Claim Application as Notice Only.

#### **2. Incident/Potentially Compensable Event:**

- An occurrence reported by the Covered Employee and/or Client which resulted in an actual or potential personal and/or bodily injury and which, in the opinion of the client, has the potential to become a Claim as hereinafter defined.
- These occurrences are sufficiently analysed by the professional liability specialist to allow a preliminary determination of exposure and liability in order to appropriately enter it into the applicable claim management application, apply a reserve and report to excess carrier(s), if required.
- If a complete Investigation is required, additional charges may apply.
- Coded in Claim Application as Incident Report.

#### **3. Claim:**

- A matter submitted by the SDIT against the Client as a result of a demand by a third-party(ies) (Panel) alleging personal and/or bodily injury.
- Coded in claim application as Claim.

#### **4. Investigation:**

- Activities to include medical record review, interviews with appropriate parties, interaction with claimant or claimant attorney, preparation of captioned reports which include summary of facts as well as assessment of liability. Travel time and expense not included.