

## ALCON TERMS OF TECHNICAL SERVICE

These terms of service ("Terms of Service") shall apply to all technical services provided by **ALCON LABORATORIES (M) SDN BHD** ("Alcon"), a company incorporated in Malaysia under the Companies Act 1965 [Act 125], located Level 20-1, Tower B, Plaza 33, No.1, Jalan Kemajuan, Seksyen 13, 46300 Petaling Jaya, Selangor, Malaysia and the Customer identified in a Service Plan or a purchase order for technical service for certain Alcon designated equipment identified in the Service Plan (the "Equipment"). Alcon and Customer may be referred to individually as a "Party" or collectively as the "Parties." All capitalized terms not defined herein shall have the meanings ascribed to them in the Service Plan.

**1. Services and Payment.** Alcon hereby agrees to provide to Customer the Equipment services at the service plan level selected in the Service Plan or as referenced on a purchase order for technical service, and Customer agrees to pay for such services. All invoices for services must be paid in full within 30 calendar days of the date of the invoice. If a claim for any amounts due hereunder is referred to any collection agent or any legal action initiated to recover such amount is initiated by Alcon, a service charge for undisputed invoices may be added at Alcon's option at the rate of 1,5% per month (18% per year) or the maximum legal rate, whichever is less, to unpaid invoices from the date of such referral or initiation.

**2. Scheduled Services.** Alcon will contact the Customer to schedule preventive maintenance service within the following Alcon working hours: 9.00 AM – 5.00 PM, Monday to Friday, excluding Public Holiday. Alcon may combine a non scheduled repair visit with a preventive maintenance one.

**3. Modifications for Safety or Reliability and Enhancement Software Upgrades.** If Alcon determines that a modification to the Equipment (whether hardware or software) is necessary to address safety or reliability concerns identified by Alcon, then Alcon will install the modification in the Equipment at no additional cost. Alcon may also install Enhancement Software Upgrades at no additional charge. Enhancement Software Upgrades are software upgrades that improve existing functionality of the Equipment but do not include software upgrades that provide new functionality for the Equipment. Software upgrades that provide new functionality for the Equipment are not subject to this Section and may incur an additional fee.

**4. Termination.** Either Party may terminate the Services, in whole or with respect to any individual piece of Equipment, at any time by providing the other party at the address indicated in the Service Plan a Cancellation Notice to be effective **60 days after receipt**. For any Equipment removed from this Agreement (the "Cancelled Equipment") at Customer's request, Alcon will calculate the value for all parts, labor, travel and administration time to perform or manage Equipment Services on the Cancelled Equipment from the start of the then-current applicable Service Period through the date of termination at Alcon's then-current standard time & materials rates (the "Actual Alcon Value"). If the Actual Alcon Value exceeds the Service Fee for the applicable Service Period, Customer will be responsible for paying the difference between the Actual Alcon Value and the Service Fee, however, such amount shall not exceed the total amount of the Service Fee for the applicable Service Period. To the extent the Actual Alcon Value is less than the Service Fee paid for the applicable Service Period, Customer will receive a credit for the difference between the Service Fee and Actual Alcon Value, which will be prorated and issued in the form of an on-account Customer credit. Any applicable discounts for service parts provided to Customer during the Service Period shall be forfeited in the event of Termination.

**5. Exclusions.** The Services do not entitle Customer to receive, or obligate Alcon to provide, any service or products not specifically identified in the Service Plan. Without limitation, the Services do not include: (i) any repairs or service attributable to accidents, fluid or cleaning damage, casualty loss, fire or explosion of any origin, riot, civil commotion, aircraft, war or other acts of God; (ii) any disposable products, implanted products

or consumable supplies; (iii) any fiber optics and indirect or LIO; (iv) video or video attachments not sold with the system; (v) services associated with realignment of non-Alcon microscope mounts, or relocation, re-installation (such as site preparation) or removal of the Equipment; (vi) accessories not included in the Service Plan; or (vii) any repairs or service attributable to Customer's or an end user's: (a) mishandling or misuse of the Equipment (including, without limitation, Customer's or end user's failure to comply in all material respects with the manuals and instruction materials provided by Alcon regarding the Equipment, its use and its maintenance); (b) failure to permit only Alcon service representatives to perform maintenance, to repair or to adjust the Equipment; (c) moving or re-installation of such Equipment; (c) Equipment modifications not authorized in writing by Alcon and (c) use of non-approved parts. Customer acknowledges that the Services to be provided by Alcon pursuant to these Terms of Service only apply to the Equipment and not other products that the Equipment may interface with or be installed in. Alcon may elect to provide services or products not included in a Service Plan on a case by case, up to and including time and materials, to the extent that such services are then available from Alcon.

List of accessories not included in the Service Plan are: (1) for WaveLight EX500 - Argon Fluoride Premixed Gas (ArF Premix Gas); (2) for WaveLight Refractive Suite (Combo of EX500 & FS200) – ArF Premix Gas and Laser Engine; (3) for LenSx – Laser Engine and SFM module; (4) for PurePoint - fiber optics, indirect or LIO, Slit lamp; (5) for Constellation, Infiniti and Centurion – Hand Pieces, consumables and disposables. Where any inclusions or exclusions mentioned in this Terms of Service are in contradiction with the terms of Service Plan, the terms of Service Plan shall be deemed to override the provisions of this Terms of Service only to the extent of such contradictions.

**6. Equipment Verification and Equipment Rehabilitation.** Alcon reserves the right to verify the condition of the Equipment at any time and to terminate the Services for such piece of Equipment if Alcon discovers that the Equipment (i) has been serviced by someone other than an Alcon authorized service representative; or (ii) had performance deficiencies prior to entering into a Service Plan. In such cases Alcon may separately invoice Customer for the service time and materials required to perform any needed Equipment servicing or rehabilitation.

**7. Equipment Continuing Education Training:** To ensure the safe and effective use of Alcon medical technologies, Alcon Clinical Application Specialist ("CAS") will provide the Customer with information and training on, and support related to, the use of certain Equipment (the "Training"), in accordance with the approved product marketing authorization for the relevant Equipment and the maximum number of visits indicated in the Service Plan by CAS. Customer may elect to obtain additional Training at additional cost as per the then applicable Alcon's fees for such training. The CAS will under no circumstances engage in the practice of surgery, nursing or medical decision-making or touch the patient, the service being restricted to training and technical advice on the Equipment.

**8. Limited Warranty and Insurance.** Alcon warrants that the Services provided hereunder will be performed in a workmanlike manner in accordance with reasonable commercial standards for the duration of the Service Plan only. Alcon does not warrant that the operation of the Equipment will be uninterrupted or error free. THE WARRANTY STATED IN THE FIRST LINE OF THIS SECTION AND REMEDIES SET FORTH HEREUNDER ARE EXCLUSIVE AND IN LIEU OF ALL OTHERS, ORAL OR WRITTEN, EXPRESS, IMPLIED OR STATUTORY, RESPECTING THE SERVICE PLAN, AND THE SERVICES AND PARTS PROVIDED HEREUNDER. ALCON MAKES NO OTHER REPRESENTATIONS, WARRANTIES OR INDEMNIFICATION INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE RESPECTING THE SERVICES AND PRODUCTS PROVIDED HEREUNDER. Alcon will maintain commercial general liability insurance with

respect to the services provided under these Terms of Service, and shall have the right to self-insure to meet this requirement.

**9. Recertified Parts.** Alcon reserves the right to use recertified parts in performing its obligations hereunder provided such parts meet all specifications and are covered by the same warranty as new parts. All parts removed from the Equipment for replacement become the property of Alcon, billable Customer can retain the removed parts (excluding the recertified parts under exchange).

**10. Service Loan Equipment.** Subject to the terms set forth in the Service Plan and subject to availability, Alcon may place for its use by the Customer, at no additional cost, a service loan equipment for a limited period of time to ensure continuity of patient care while the Equipment is removed for repair or Service. The service loan equipment will be the same model as the Equipment undergoing repair or service, if available, or other Alcon surgical equipment with comparable functionalities. Upon completion of the repair or service, the Customer shall make the service loan equipment promptly available to Alcon for removal in as good a condition as when delivered, subject only to reasonable wear and tear. Notwithstanding the foregoing provisions, Alcon may, at any time and for any reason whatsoever pick up or claim the Equipment from User upon providing at least 10 days prior written notice.

Customer agrees it shall not sell, transfer, pledge, hypothecate or allow any lien or other encumbrance of the service loan equipment, and shall defend Alcon's right, title, and interest in and to the referred equipment. Customer will not move or transfer the service loan equipment from its facility without Alcon's prior consent, or make any alterations, additions or improvements to such equipment not approved or recommended by Alcon. Customer shall keep the referred equipment in a safe and secure location and use the Equipment in accordance with the operating manuals and instructions provided by Alcon. Alcon shall have the right, at reasonable times and after reasonable notice to User, to enter User's Facility to inspect or otherwise protect User's interest in the Equipment and its rights hereunder.

**11. Remedies.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR (A) ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR (B) ANY DAMAGES RESULTING FROM LOSS OF USE, PATIENTS OR PROFITS, OR ANY DEFECT IN THE EQUIPMENT, WHETHER IN CONTRACT OR TORT ACTION, INCLUDING NEGLIGENCE. IN NO EVENT SHALL EITHER PARTY'S LIABILITY EXCEED THE TOTAL MAINTENANCE CHARGES PAID OR PAYABLE WITH RESPECT TO THE EQUIPMENT SERVICE PLAN DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE DATE OF THE DAMAGE. Customer acknowledges that the charges, which apply to the Service Plan, are based in part upon the limited warranty and limitation of liabilities and remedies set forth in this Agreement.

**12. Confidentiality.** Customer agrees that the existence and all terms and conditions of these Terms of Service and the Service Plan shall be maintained in confidence, and not disclosed to any third party except as may be required by law. Violation of this provision by Customer shall be a material breach of this agreement subject to immediate termination by Alcon. Alcon may disclose such information to the extent reasonably necessary in the ordinary course of business.

**13. Data Protection.**

13.1 Alcon shall not receive or process any personal data from the Customer under this Agreement or through provision of the Services other than limited business contact information of the Customer.

13.2 Notwithstanding section 13.1, each party as independent personal data Controllers (Controller(s) as defined in the applicable data protection laws) shall comply with any applicable data protection laws.

**14. Vigilance.** Any adverse events, device malfunctions or quality complaints related to the Equipment should be dealt with according to local legal requirements. Please also report these occurrences to the Alcon QA Medical Complaints (QAMC) team within one business day at the following contact point:

**ALCON LABORATORIES (M) SDN BHD**

Email: [complaint.malaysia@Alcon.com](mailto:complaint.malaysia@Alcon.com)

Address: Level 20-1, Tower B, Plaza 33, No.1, Jalan Kemajuan, Seksyen 13, 46300 Petaling Jaya, Selangor, Malaysia

**15. Force Majeure.** Neither Party shall be liable for any failure or delay in the performance or shipment of any order when such failure or delay is directly or indirectly caused by or in any manner arises or results from fire, flood, accident, riot, war, governmental interference, rationing, allocations or embargoes, strikes or shortages of labor, delay in delivery of material by suppliers, or other difficulties (whether or not similar in nature to any of the foregoing) beyond its control.

**16. Governing Law.** These Terms of Service are governed by and construed in accordance with the substantive and procedural laws of Malaysia (without regard to conflict of law principles).

**17. Notices.** All notices required or permitted under the Agreement shall be sufficient if sent via mail or express courier delivery to a Party at its address as set forth in the Service Plan, or at such other address as the Party may designate to the other in writing from time to time. Any such notice sent via mail shall be effective 3 days after it has been duly addressed and postmarked. Notices may be delivered electronically only with written acknowledgment of receipt by the other Party, effective upon such acknowledgement of receipt.

**18. Severance.** If any sections, sentences, clauses, or phrases of these Terms of Service are found by any court or administrative body of competent jurisdiction to be invalid, void, and/or unenforceable, for any reason, neither the Terms generally nor the remainder of the Terms shall, as a result, be rendered invalid, void, and/or unenforceable.

**19. Entire Agreement and Modification.** These Terms of Service together with the Service Plan constitute the final entire agreement of the parties hereto with respect to the subject matter hereof, and shall supersede any other agreements or proposals, whether oral or written, pertaining to the subject matter hereof, including, without limitation, any purchase order issued by Customer. Customer acknowledges that Alcon sales representatives are not authorized to vary the Alcon Terms of Service. Alcon objects to and shall not be bound by any terms and conditions contained in Customer's purchase order forms (regardless of when such purchase order is issued by Customer) related to a Service Plan.

**20. Survival.** Any provision of this Agreement that by its general nature and operation imposes or contemplates continuing obligation, including but not limited to the provisions pertaining to [Section 12 - Confidentiality], [Section 13 - Data Protection], [Section 4 - Termination], and [Section 17 - Notices], shall remain in force and effect notwithstanding the termination or expiration of this Agreement.

**21. Waiver.** No claim or right arising out of any term or condition of these Terms of Service or out of any breach of these Terms of Service can be discharged in whole or in part by a waiver of the claim or right unless the waiver is in writing signed by the party granting such waiver. If any term or condition of these Terms of Service are held invalid, the remaining terms and conditions of these Terms of Service shall not be affected thereby.

**22. Assignment.** Alcon may assign or sub-contract its obligations and/or rights under the Service Plan. Customer may not assign or sub-contract any of its rights or obligations under the Service Plan without the prior written consent of Alcon. Any attempted assignment in violation of these restrictions shall be void.

**23. Binding Effect.** The provisions of these Terms of Service shall be binding upon and shall inure to the benefit of Customer and Alcon, their respective successors, and permitted assigns.

*[END OF TERMS OF TECHNICAL SERVICE]*