

HEALTH SERVICE EXECUTIVE

and

[Insert Supplier Name Here]

**STANDARD TERMS FOR INFORMATION COMMUNICATIONS
TECHNOLOGY SUPPLIES AND SERVICES**

**August 2020
Version 1.3**

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This Agreement is made on the [●] day of 20[●] between

1. [Company Name] (Registered Company Number ●) of [Registered Company Address] (“the Contractor”); and
2. [The Health Service Executive] of [Registered Address] (including its successors and assigns) (“the Customer”).

RECITALS

WHEREAS:

1. The Customer has purchased [X] e.g. certain software products from the Contractor for which the Contractor has granted the Customer a software licence;
 2. The Customer requires the provision of [Y] e.g. Support Services;
 3. The Customer has requested the Contractor to provide [Z] e.g. Software maintenance;
- as set out in this Agreement.

NOW IT IS HEREBY AGREED that:

- A. The Contractor will provide [X, Y or Z] e.g. the Support Services and software maintenance as specified hereunder to the Customer; in consideration of which the Customer shall make certain payments to the Contractor.

PART ONE

GENERIC CONTRACT CLAUSES

This Part One applies to all procurements.

1. Interpretation

1.1 The Agreement is separated into the following parts:

- (a) Generic Clauses (Part One) – this part applies to the procurement of both Services and Supplies;
- (b) Services Contract Clauses (Part Two) – this part applies only if the Customer is procuring Services;
- (c) Supplies Contract Clauses (Part Three) – this part applies only if the Customer is procuring Supplies;
- (d) Software and Hardware (Part Four) – this part applies to the procurement of Software and/or Hardware as part of the provision of the Services and/or Supplies, (as appropriate);
- (e) Contract Management Clauses (Part Five) – this part applies to engagements that which require formal contract management and review over the Term in order to satisfy the Requirements and Specifications;
- (f) Dispute Resolution Procedure (Part Six) – this part applies to the procurement of both Services and Supplies.

- 1.2 Headings and sub-headings are for ease of reference only and do not affect the construction of the Agreement.
- 1.3 References to Clauses are references to Clauses of the Agreement.
- 1.4 In this Agreement:
- (a) references to Contractor, where the context requires, shall include its permitted subcontractors and agents;
 - (b) references to a “**person**” shall be construed so as to include any individual, firm, company, government, state or agency of a state, local authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);
 - (c) words in the singular include the plural and the other way around;
 - (d) references to one gender includes all genders;
 - (e) any reference to an enactment or statutory provision is a reference to it as it may have been, or may from time to time be amended, modified, consolidated or re-enacted;
 - (f) references to a “**company**” shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
 - (g) references to times are to times in Ireland; and
 - (h) references to a “**month**” shall mean a calendar month.
- 1.5 The Schedules comprise Schedules to this Agreement and form part of this Agreement.
- 1.6 References to indemnifying any person against or with respect to any circumstance shall include indemnifying and keeping it harmless, on an after tax basis, from all actions, claims and proceedings from time to time made against it and all losses, damages, liabilities, payments, costs and expenses suffered, made or incurred by it as a consequence of or in connection with that circumstance.
- 1.7 The Parties shall do and sign or execute or procure to be done, signed or executed all such agreed acts, deeds, documents and things as may be necessary or desirable in order to achieve the purposes of this Agreement.
- 1.8 Where the requirement of consent from any Party is expressly provided for in this Agreement, it may not, unless otherwise stated as being at the discretion of the Party giving it, be unreasonably withheld or delayed, or subject to unreasonable conditions.
- 1.9 Unless the context otherwise requires, the word “including” shall mean “including but not limited to” and “include” and “includes” shall be construed accordingly.
- 1.10 For the purposes of the Electronic Commerce Act, 2000, references to “writing” in this Agreement if provided in an electronic form shall be deemed to be “writing” for the purposes of all applicable legislation where “writing” is required and words in an electronic form shall be deemed to be “signed” for the purposes of all applicable legislation where a “signature” is required.

2. Definitions

“2003 TUPE Regulations” means the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003.

“Acceptance Certificate” is the means of formal acceptance issued to the Contractor by the Customer on the successful completion of a User Acceptance Test.

“Acceptance Procedures” means the terms and conditions applicable to accepting completion of the Requirements and Specifications and as set out in Schedule 8 (Acceptance Procedures) to this Agreement.

“Agreement” means this agreement (including all relevant Parts and Schedules) between the Parties and shall include, where applicable, any Service Level Agreement, Official Purchase Order and/or Lot Agreement.

“CCN” means Change Control Note and has the meaning given to it in Schedule 5 (Change Control Procedures).

“Change Control Procedure” means the procedure used to formally manage change as set out in Schedule 5 (Change Control Procedures).

“Commencement Date” means the date the Contractor must start the Agreement and as specified in Clause 14.1 (Programme).

“Commissioned Software” means software that has been developed specifically for the Customer and as described in Clause 79.1 (Commissioned Software).

“Configured Software” means software which exists and/or has been designed and developed with the intention of being configured to meet the specific requirements.

“Configured” has the meaning given to it in Clause 80.1 (Configured Software).

“Contractor Software” means software owned by or licensed to the Contractor, which is required to be supplied by the Contractor to the Customer for use by Customer in connection with the Solution and which includes the Software listed in the Requirements and Specifications but which excludes Commissioned Software and Commissioned Software.

“Contractor’s People” means Contractor staff, employees, contractors, persons assisting the Contractor and/or the Customer (as the case may be) in the provision of the Solution, (including officers, employees and sub-contractors) of any tier.

“Contractor’s Tender” means the Contractor’s proposals for the Solution attached at Schedule 4 (Contractor’s Tender).

“Customer Information” means all and any information, data and material (irrespective of the information format – paper, electronic or otherwise) belonging to and relating to the Customer.

“Customer Information Security Policies” means the policies that relate to the security of Customer Data and as included in Clause 22 (Customer Policies).

“Customer Data Encryption Policy” means the encryption policy of the Customer, which is defined as one of the Customer Policies.

“Customer Hardware” means hardware, tools, equipment and other tangible property (including mobile telephony, personal digital assistance devices and data network components,

diagnostic kits and engineer toolage) and physical infrastructure owned or leased by the Customer and used in connection with systems the equivalent of the system prior to the Effective Date.

“Customer Intellectual Property Rights” means the Intellectual Property rights in the Commissioned Software, Configured Software and in any modifications of the Customer Software or any other work, database or invention made by, or on behalf of, the Contractor in fulfilling its obligations under this Agreement.

“Customer Representative” means the Customer person responsible for the day to day engagement with the Contractor and the delivery of the system, supplies or services, in accordance with this Agreement.

“Customer Policies” means those policies referred to at Clause 22 (Customer Policies).

“Customer’s People” means the Customer’s members, officers, employees, servants or agents including other Customer contractors and sub-contractors.

“Customer Sites” means all Irish Health Service sites where the System or Supplies may be deployed or where Services may be provided under this Agreement.

“Customer Software” means software owned by, or licensed to, the Customer which is used by the Customer in connection with systems the equivalent of the system prior to the Effective Date, including the material software listed in connection with the Solution.

“days” are calendar days.

“Default” means any breach of the obligations of either Party or any default, act, omission, negligence, or statement, of either Party, its employees, agents or sub-contractors in connection with, or in relation to, the subject matter of this Agreement, which causes loss or damage to the other Party.

“Delete, Deleted, Deletion” and like words, shall mean the permanent removal of information and all traces of the information, by means of the physical destruction of the information, or the physical destruction of the medium used to store the information, or the overwriting of the information (held in electronic format), in accordance with internationally accepted data erasure standards using data sanitation software;

“Disaster” means a major event, or series of events which together have the effect of a major event, that significantly impacts the normal operation of the System and/or provision of the Services.

“Dispute Notice” means a written notice of a dispute or difference and has the meaning given to it in Clause 92.2 (Mediation).

“Dispute Resolution Procedure” means the procedures for dispute resolution set out at part 6 of this Agreement.

“Effective Date” means the date of execution of this Agreement.

“Exit Management Plan” means the plan to the managed and controlled exit of the incumbent Contractor and transition to the Customer or other third party as specified by the Customer. The exit management plan specified in Schedule 9 (Termination Assistance).

“Expert” means an independent party who has expertise in the area giving rise to a dispute and has the meaning given to it in Clause 92.6 (Mediation).

“Expiry Date” means the date on which the Term expires pursuant to Clause 3.1 (Term).

“Force Majeure” means in relation to a Party, any of the following events or circumstances beyond the reasonable control of that Party and which is not due to the act, error, omission, breach, default or negligence of the Party or any of its officers, employees, servants, agents or contractors:

- (a) acts of terrorists;
- (b) war declared or undeclared, blockade, revolution, riot, insurrection, civil commotion, invasion or armed conflict;
- (c) sabotage or acts of vandalism, criminal damage or the threat of such acts;
- (d) natural disasters and phenomena including extreme weather or environmental conditions, fire, flood, earthquake, meteorites, explosions including nuclear explosion, radioactive or chemical contamination or ionising radiation or other elements of nature or acts of God;
- (e) acts of national, local or foreign governmental authorities or courts;
- (f) failures in either Party’s or Third Party electrical power, and
- (g) any strike, lockout or other industrial action or labour dispute affecting the Customer
- (h) but does not include: (i) any strike, lock-out or other industrial action or labour dispute primarily or substantially aimed at the Contractor or its subcontractors, agents or employees or (ii) events affecting a contractor or supplier of the Party that would not have constituted Force Majeure under this Agreement.

“Good Industry Practice” means the standards that would apply to a company seeking to perform its contractual obligations in good faith and in a manner that demonstrates the exercise of a degree of skill, diligence, prudence and foresight that would be expected from a skilled and experienced Contractor in the information technology services industry and in compliance with all applicable laws, regulations and applicable quality and industry standards.

“Hardware Agreements” means maintenance and support agreements relating to hardware used in the provision or use of the Solution.

“HIQA” means the Health Information and Quality Authority.

“ICDR” means International Centre for Dispute Resolution and has the meaning given to it in Clause 92.4(a) (Mediation).

“Incoming Contractor” means a Contractor who provides relevant Services pursuant to any exercise by the Customer of its rights under Clause 13 (Step In Rights).

“Initial Term” means the period beginning on the Effective Date and ending on the [enter Agreement length per advertised tender (nth)] anniversary of the Effective Date.

“Intellectual Property” means any and all rights pertaining to discoveries, trade secrets, confidential business information, financial, marketing and business data, concepts, ideas, improvements to existing technology (whether or not written down or otherwise converted to tangible form), patents, patent applications, designs, trademarks, service marks, goodwill, copyright, moral rights, know-how, and all other forms of industrial or intellectual property (in each case in any part of the world and whether or not registered or registrable).

“Key Personnel” means personnel identified in the Tender submitted by the Contractor for the performance of the Agreement whose skills, knowledge or experience are recognised by one or both Parties to be such that they can directly influence the successful outcome of the Agreement.

“Legal Requirements” means the requirements of:

- (a) any governing law, rule or statutory regulation applicable in Ireland;
- (b) any person who, pursuant to European Community or Irish law, has authority in relation to the Agreement (apart from requirements of the Customer under the Agreement);
- (c) any guidance, policy or directions with which the Contractor is contractually bound to comply.

“Lot” means a package or statement of work relating to the Solution, which package or statement of work is the subject of a Lot Agreement.

“Lot Agreement” means, where the Solution is being provided in a number of Lots, the agreement setting out particular terms and conditions relating to the relevant Lot in the form or substantially the form of the Lot Agreement attached at Schedule 7 (Lot Agreement).

“Lot Letting Procedure” has the meaning given to it in Clause 84.1 (Lot Letting Procedure).

“Lot Request” has the meaning given to it in Clause 84.2(a) (Lot Letting Procedure).

“Lot Request Response” has the meaning given to it in Clause 84.2(b) (Lot Letting Procedure).

“Milestone Date” means any date identified as such in a Timetable.

“Necessary Consents” means all permissions, approvals, certificates, licenses, permits, regulations and consents necessary from time to time for the performance of the Agreement.

“Negotiating Period” has the meaning given to it in Clause 92.3 (Mediation).

“Official Purchase Order” means the Customer purchase order issued in respect of the Agreement, in the official format of the Customer and which is issued by an authorised Customer staff member to the Contractor identifying the:

- (a) Contractor;
- (b) Price;
- (c) purchase order number; and
- (d) the Customer Representative.

“Payment Schedule” means the schedule attached to this Agreement at Schedule 2 (Payment Schedule) detailing the Price payable in respect of the performance of the Agreement.

“Performance Criteria” means the performance criteria which it is intended the Hardware, Software, Systems and Services shall fulfil, as specified in the Requirements and Specifications, subject to the tolerances, limitations and exceptions stated therein.

“Persistent Failure” means a repetitive or continuing failure by the Contractor to meet -the Service Levels Response Times for the relevant Service for any six months in a period of twelve

(12) months or for any three (3) consecutive months in accordance with the terms of this Agreement.

“Price” means the sums payable to the Contractor in accordance with Schedule 2 15(d)(viii)(A) (Payment Schedule).

“Personal Data” has the meaning given to that term in Article 4 of the GDPR.

“Process, Processed, Processing” and like words, have the meaning given to those terms in Article of the GDPR.

“Professional Services” means the provision of a service where the vendor makes available either on site or remotely, the services of a suitably competent professional to perform tasks that are deemed necessary for the successful delivery of the Solution.

“Project Manager” means the project manager assigned by either the Contractor or the Customer, as appropriate, with the responsibilities set out in Clause 89.1 (Representatives and Contract Management Review).

“Relevant Claim” has the meaning given to it in Clause 20.2 (Intellectual Property Rights Indemnity).

“Representative” has the meaning given to it in Clause 89.2 (Representatives, Agreement Management and Review).

“Requirements and Specifications” means the description of the goods and services required by the Customer, that forms the basis of this Agreement and as set out in Schedule 1 (Requirements and Specifications) to this Agreement, and as described in associated Lot Agreements and Technical Specifications and as may be varied by the Parties pursuant to the Change Control Procedure.

“Review Board” has the meaning given to it in Clause 89.7 (Representatives and Contract Management Review).

“Review Board Report” has the meaning given to it in Clause 89.11 (Representatives and Contract Management Review).

“Review Meeting” has the meaning given to it in Clause 89.3 (Representatives and Contract Management Review).

“Service” or **“Services”** means those services to be delivered by the Contractor in accordance with this Agreement and which may include Professional Services, Training Services, Technical, Support and Maintenance Services.

“Service Credits” means the service credits specified in Schedule 3 (Service Level Agreement).

“Service Level Agreement” means the agreement set out at Schedule 3 (Service Level Agreement).

“Service Levels” means the levels set out in the Service Level Agreement.

“Software” means any software supplied by the Contractor to the Customer under this Agreement to include the Customer Software, Commissioned Software, Contractor Software, Third Party Software and Configuration.

“Software Specification” means the description of Software functions, facilities, performance levels (where appropriate) and related matters, whether supplied by the Contractor as an output in performing the Agreement, or supplied by the Customer from its own resources.

“Solution” means the combination of systems, supplies, goods and services that the Customer wishes to procure and that forms the basis of this Agreement.

“Source Code” means computer code in eye-readable form and in such form that it can be compiled or interpreted into equivalent object code, together with all technical information and documentation reasonably necessary to allow a competent and trained computer programmer use, reproduce, modify and enhance such software.

“Source Materials” means all eye readable or computer or other machine readable data, specifications, input and output formats, algorithms, file structures, Source Code and object code listings that relate to a piece of software, which together are sufficient to allow a person reasonably skilled in the part to read, understand and modify the software.

“Substantial Breach” means a material breach of the Agreement which has a material adverse effect on the performance of the Agreement.

“Supplies” means those supplies as detailed in the Requirements and Specifications and Official Purchase Order to be supplied by the Contractor in accordance with this Agreement.

“System” means the [SYSTEM NAME] to be provided by the Contractor in accordance with the provisions of this Agreement.

“Tax Point” is the date at which VAT applies.

“Technical Support and Maintenance Services” means those services identified as such in the relevant Service Level Agreement.

“Tender” means the tender submitted by the Contractor for entry into this Agreement and includes any clarifications issued after the date of tender submission and prior to the Effective Date.

“Term” has the meaning given to it in Clause 3 (Term).

“Termination Date” means any date of early termination of this Agreement in accordance with Clauses 25 (Termination).

“Termination Period” means the last twelve (12) months before expiry of this Agreement or, if notice to terminate this Agreement has been served in accordance with its terms and there is a shorter or longer period between such notice and termination, then that shorter or longer period.

“Third Party Software” means Software and User Documentation associated therewith, owned or licensable by third parties which is required in order to deliver the Solution.

“Third Party Software Agreements” means agreements for the licensing, support and/or maintenance of Third Party Software used in connection with services the equivalent of the Services (a) prior to the Effective Date, and (b) in the operation of the system and provision of the Services on and from the Effective Date.

“Timetable” means the timetable attached at Schedule 6 (Timetable) or, where the Agreement is to be completed in Lots, the timetable attached to the relevant Lot Agreement.

“Training Services” has the meaning given to it in Clause 64.7 (Training Services).

“User Acceptance Tests” has the meaning given to it in Schedule 8 (Acceptance Procedures).

“User Documentation” means the operating manuals to be provided by the Contractor in respect of the Software.

“Working Days” are days that are not a Saturday, Sunday, a public holiday established under the Organisation of Working Time Act 1997, Christmas Eve or Good Friday.

3. Term

3.1 This Agreement commences on the Effective Date and shall continue for the Initial Term unless:

- (a) extended under Clause 3.3 below or if agreed as part of the Exit Management Plan; or
- (b) terminated under Clause 25 (Termination).

3.2 The system shall be implemented by the Contractor at each of the Customer Sites during the Implementation Term in accordance with the provisions of this Agreement, and the Contractor shall provide the Services to the Customer during the Initial Term in accordance with the provisions of this Agreement and the Requirements and Specifications.

3.3 The Customer may extend the term of this Agreement for a period of up to [enter extension period as per advertised tender (n)] years beyond the Initial Term by issuing additional Lots or giving the Contractor at least six (6) months’ notice expiring on or before the last day of the Initial Term. If this Agreement is extended pursuant to this Clause 3.3, any extended period shall form part of the Term.

3.4 Where the Term exceeds one year, this Agreement will be subject to annual review during the Term. This annual review shall occur on or about the anniversary of the Effective Date. Both Parties agree to put in place, within three months of the Effective Date, procedures for the conduct of the annual review. The annual review shall consider the performance by both Parties of their respective obligations under this Agreement. Both Parties shall act reasonably and diligently in carrying out each annual review. Any agreed adjustment pursuant to a review shall be effective immediately following the completion of the relevant annual review.

3.5 This Agreement supersedes any previous oral or written negotiations, commitments, representations, communications and agreements.

4. Acceptance of the Terms of the Contract

4.1 By commencing the provision of Services or by delivering the Supplies to a date and location as specified by the Customer, the Contractor acknowledges that it is bound by the terms of the Agreement.

4.2 The Contractor hereby waives its own conditions of sale save for exceptions to the contrary which are specifically and explicitly approved in writing by the Customer and are set out in the relevant Service Level Agreement.

5. Provision of the Solution

5.1 The Contractor shall perform provide the Solution during the Term in accordance with:

- (a) the terms of this Agreement;

- (b) the Customer requirements as set out in the Requirements and Specifications;
 - (c) the Contractor's Tender;
 - (d) the applicable Service Levels;
 - (e) Official Purchase Orders and/or Lot Agreements; and
 - (f) Good Industry Practice.
- 5.2 The Contractor acknowledges that the Customer is relying on the Contractor's knowledge, experience, expertise and competence in the Contractor's performance of its obligations under this Agreement, and on the accuracy of all statements, reports or returns made by the Contractor in connection with its obligations pursuant to this Agreement.
- 5.3 The Contractor shall provide the Solution during the agreed working hours and at the locations specified in the Requirements and Specifications.
- 5.4 In providing the Solution, the Parties acknowledge that Contractor co-operation with other third parties may be required. In this respect, the Contractor shall co-operate with third party suppliers:
- (a) to the extent reasonably required for the purposes of integrating the Solution with that of such third party suppliers. To the extent there are specific requirements in this regard, these are set out in the Requirements and Specifications; and
 - (b) without incurring any material costs in order to allow such third party suppliers to perform their contractual obligations to the Customer.
- 5.5 The Customer shall, during the Term, comply with its obligations in respect of the delivery of the Solution as set out in the Requirements and Specifications.
- 5.6 Unless otherwise expressly stated in the Requirements and Specifications, the Contractor shall operate on a non-exclusive basis and the Customer reserves the right to allocate services, supplies or support to one or more alternative providers and/or to provide services, supplies or support from its own resources.
- 5.7 The requirements in respect of the Solution are set out in the Requirements and Specifications.
- 5.8 The Contractor warrants that as of the Effective Date:
- (a) it has had the opportunity to ask the Customer all questions it considers to be relevant for the purpose of establishing whether it is able to provide the Solution in accordance with the terms of this Agreement; and
 - (b) it has received all material information requested by it from the Customer to enable it to determine whether it is able to provide the Solution in accordance with the terms of this Agreement; and
 - (c) where necessary, has made its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer; and
 - (d) it has entered into this Agreement in reliance on its own due diligence.

- 5.9 The Parties acknowledge and agree that the Customer reserves the right to require the completion of the Agreement in a number of Lots. Where this applies, in addition to the terms of this Agreement, the Contractor shall complete the Agreement in accordance with the terms of the relevant Lot Agreement and Service Level Agreement.

6. Joint and Several Liability

If more than one person is identified as the Contractor, they are jointly and severally liable to the Customer for due performance of the Agreement.

7. Price

- 7.1 The Contractor must provide the Solution at its own expense.
- 7.2 The Customer must pay the Contractor the Price for providing the Solution according to this Agreement.
- 7.3 The Contractor is taken to have satisfied itself before entering into this Agreement that the Price is correct and sufficient, and to have taken account of all that is required to perform this Agreement (and specifically the provision of all goods and services required hereunder), and to have included in the Price all costs associated with the Solution including:
- (a) transport;
 - (b) handling, packing, loading, unloading, unpacking, checking and insuring any Supplies;
 - (c) documentation;
 - (d) all applicable government and local authority taxes, levies or charges. (As provided in Clause 8.3(b) and 8.3(f) to the extent VAT is applicable this will be itemised separately on any submitted invoice).

8. Payments

- 8.1 Unless otherwise directed by the Customer, all payments under this Agreement will be by electronic funds transfer in euro.
- 8.2 The Customer shall be under no obligation to accept or pay for any products or services supplied earlier than the date for delivery as set out in the Timetable.
- 8.3 Payments will only be made upon receipt of completed deliverables. The Payment Schedule sets out the deliverables which trigger payment milestones. When the Agreement, or a Lot or stage within the Agreement, has been properly completed, the Contractor must submit an invoice to the Representative of the Customer notified to it by the Customer for that purpose, stating:
- (a) the name and address of the Contractor;
 - (b) the invoice number and invoice date and/or Tax Point;
 - (c) the number of the Official Purchase Order or, in the case of a Lot, the reference for the relevant Lot Agreement;
 - (d) the product codes and descriptions for the Solution, and a breakdown of the part of the Price applicable to each code;

- (e) the Price;
- (f) if there is VAT, VAT itemised separately by VAT code and the Contractor's VAT registration number.

The form of invoice will be in hard copy unless otherwise requested by the Customer.

- 8.4 If the Agreement includes Supplies, the invoice must show the delivery address as stated on the Official Purchase Order or Lot Agreement and be accompanied by a delivery note that was signed by the Customer's Representative when the Supplies were properly delivered. If the delivery note is not included, the sum set out in the invoice shall not become due and owing until proof of delivery is provided by the Contractor to the Customer.
- 8.5 If this Agreement provides for interim payment for completion of stages of the Agreement, the Contractor must submit an interim invoice for the stage portion of the Price when the stage has been properly completed. The interim invoice must comply with this Clause 8.
- 8.6 If the Customer is satisfied that:
 - (a) The Agreement, Lot or Stage has been completed according to this Agreement;
 - (b) The Contractor has complied with this Clause 8;
 - (c) The Contractor has a current tax clearance certificate where payments by the Customer to the Contractor total ten thousand euro (€10,000) or more (including VAT) in a 12 month period; and
 - (d) The invoice complies with section 17 of the Value Added Tax Act 1972;

then the Customer must pay the amount due, less any deduction permitted under this Agreement, within thirty (30) days after the Customer received the invoice, unless the Customer has informed the Contractor within twenty (20) days in writing if it disputes in good faith the amount specified in any invoice, providing details of the amount disputed and the grounds for doing so. In this case, both Parties shall apply the Dispute Resolution Procedure in order to resolve such dispute. Where the Customer disputes an amount specified in an invoice then, to the extent applicable, the Customer will pay the undisputed part of the invoice but will be entitled not to pay the disputed amount pending resolution of the dispute. Following resolution of the dispute the Contractor shall, either, withdraw the disputed invoice or obtain release of the sums held as agreed between the Parties. Interest earned on the sums held shall accrue to the benefit of the Parties in the manner agreed between the Parties or otherwise determined by the Dispute Resolution Procedure.

- 8.7 To the extent Term is for a period of greater than one (1) year, indexation shall not apply in respect of the Price unless expressly agreed and detailed in Schedule 2 (Payment Schedule).
- 8.8 Payment shall be made in accordance with all applicable Legal Requirements (e.g. the Prompt Payment of Accounts Act, 1997 and the European Communities (Late Payment in Commercial Transactions) Regulations 2012), including the sections referring to the application of interest to late payments.
- 8.9 Except as provided in this Agreement, nothing herein shall entitle the Contractor to payment for goods, supplies or services beyond the scope of this Agreement, or which

are not provided for in this Agreement. In addition, an invoice shall not become valid until all criteria for payment have been accepted, achieved or passed by the Contractor, as appropriate, and as set out in Schedule 2 (Payment Schedule).

- 8.10 The Contractor shall ensure that the payment provisions of any supply or sub-contract agreement shall not adversely affect the Contractor's performance of its obligations pursuant to this Agreement.
- 8.11 The Customer shall not be responsible for reimbursement of the Contractor's expenses, save where and to the extent set out in Schedule 2 (Payment Schedule).
- 8.12 The Price payable to the Contractor under this Agreement shall be made free and clear of and without deduction for or on account of taxes, save where the Customer is required to make such payment subject to the deduction or withholding of tax.
- 8.13 The Contractor expressly agrees that the Customer shall be entitled to withhold and set off monies owing to the Contractor in accordance with this Agreement in the event and to the extent that the Contractor owes any monies, damages, costs or expenses to the Customer as a result of or in connection with the Contractor's performance or failure to perform its obligations under this Agreement.
- 8.14 Further details in relation to payments are set out in Schedule 2 (Payment Schedule).

9. Debts to the Customer

- 9.1 The Customer may recover any money due from the Contractor under or for breach of this Agreement:
 - (a) as a simple contract debt due and recoverable in any Court of competent jurisdiction; or
 - (b) by deducting the money from any other money due or to become due to the Contractor under this Agreement or any other contract between the Parties.

10. VAT

- 10.1 All amounts due under this Agreement are inclusive of VAT.
- 10.2 If any supply under this Agreement is or becomes chargeable to VAT then all amounts due under this Agreement are inclusive of VAT. As set out in Clause 8.3(f), where VAT is chargeable it shall be separately itemised in any invoice submitted by the Contractor to the Customer.

11. Legal Requirements

- 11.1 The Contractor shall, in performing the Agreement, comply with all Legal Requirements and ensure that the Contractor's People comply with all Legal Requirements.
- 11.2 The Contractor shall ensure that the Solution complies with all Legal Requirements.

12. Early Warning

- 12.1 Each Party shall promptly warn the other whenever it has reasonable grounds to believe that any failure on the part of the Contractor, the Customer or any third party to carry out its obligations and responsibilities under or associated with the performance of the

Agreement, or the manner in which it is carried out, will have, or threatens to have, a detrimental effect on:

- (a) the quality or timing of any element of the Solution;
- (b) the efficiency or cost to the Customer of its supply;
- (c) the operation of the Customer's business or
- (d) the performance of any other obligations of the Contractor under this Agreement.

12.2 Following such a warning, Clause 14.6 (Programme) shall apply.

12.3 For the avoidance of doubt nothing in this Clause 12 shall oblige any Party to monitor, supervise or otherwise manage the other Party's obligations under this Agreement (without prejudice to any express provision otherwise, elsewhere in this Agreement).

13. Step In Rights

13.1 If:

- (a) the Contractor commits a Substantial Breach of this Agreement;
- (b) there is a Persistent Failure;
- (c) a Force Majeure event arises; or
- (d) the Customer exercises its rights under Clause 33 (Fraud)

the Customer may, without prejudice to its other rights and remedies, notify the Contractor that it intends to exercise its rights under this Clause 13.

13.2 If the Contractor does not substantially remedy the failure to the satisfaction of the Customer within twenty eight (28) days of the notice referred to in Clause 13.1 above or lesser period if reasonably deemed by the Customer to be necessary to mitigate its potential loss, the Customer may itself perform, or may employ and pay a third party to perform the Agreement.

13.3 The Customer's payment obligations in respect of any affected element of the Agreement shall be suspended until the Contractor resumes delivery of the Solution in accordance with this Clause 13. The Customer's reasonable costs in exercising its rights under this Clause 13 shall, at the Customer's option, be deducted from any sums due to the Contractor or, at the Customer's option, shall be recoverable by the Customer as a debt.

13.4 The Customer shall permit the Contractor to resume delivery of the Solution immediately once it is satisfied on reasonable grounds that the Contractor will be able to resume delivery of the Solution in accordance with this Agreement.

13.5 The Contractor shall co-operate in all reasonable respects with the Customer and any third party engaged by the Customer under this Clause 13. On entering into any agreements with third parties, the Contractor shall ensure that the Customer's rights under this Clause 13 are in no way restricted and that all Necessary Consents are in place to allow the Customer fully exercise its rights under this Clause 13.

14. Programme

- 14.1 Unless otherwise agreed, the Contractor must start the Agreement on the Commencement Date, being the date specified in the Timetable or, in the absence of a Timetable, on receipt of the Official Purchase Order.
- 14.2 The Contractor must do the work regularly and diligently, and complete it within the period stated in the Timetable. In the absence of a Timetable, the Contractor must complete the Agreement within the timeframe as otherwise agreed with the Customer.
- 14.3 Any change to a Timetable will only be made in accordance with this Clause 14, Clause 50 (Change Control), and Clause 40 (Force Majeure) and the Contractor shall submit to the Customer, within five (5) Working Days of any request, a copy of any the varied Timetable.
- 14.4 In the event that the Contractor fails to fulfil an obligation by the date specified in a Timetable, due to the breach by the Customer of its obligations under this Agreement, the Contractor shall nevertheless, at the request of the Customer, provide reasonable and agreed assistance and resources as may be necessary to fulfil the said obligations as early as practicable thereafter.
- 14.5 Costs incurred as a result of delays which arise on the part of the Contractor, any subcontractor or third party, engaged by the Contractor, shall be borne by the Contractor.
- 14.6 In the event that the Contractor fails to fulfil an obligation by the date specified in a Timetable for fulfilment, due to the act or the omission of the Contractor:
- (a) the Parties shall promptly discuss the matter in good faith with a view to resolving the matter as soon as reasonably possible, to the satisfaction of both Parties. In this regard, the Customer shall be entitled to require the Contractor to submit a report to the Customer identifying (i) the reasons for the failure and (ii) the Contractor's proposed corrective measures which, if the Timetable is affected must involve the Contractor submitting a revised Timetable showing the manner in which future Milestone Dates will be achieved. The corrective measures set out in the report shall include details of arrangements for additional or redeployed resources as are necessary to fulfil the obligations and details of any further measures required to ensure the performance of the Agreement; and
 - (b) the Customer shall have the right, at its option to:
 - (i) amend the relevant Timetable to take account of the delay, in accordance with the Change Control Procedure (having regard to the reasons provided by the Contractor pursuant to Clause 14.6(a) above); and/or
 - (ii) deduct a percentage of the Price payable for achievement of the relevant Milestone Date in the manner set out in Schedule 2 (Payment Schedule).
- 14.7 The Timetable for the completion of the Agreement shall expire at the end of the period set out therein. Where the Agreement is being delivered in Lots then that Lot shall expire on the date set out in the Lot Agreement. This date may occur after the expiry date of the Term provided always that the Lot Agreement has been entered into in advance of the expiry of the Term. For these purposes, any reference to the Term in

this Agreement shall be deemed to include the period referred to in the relevant Lot Agreement.

- 14.8 The provisions of this Clause 14 shall be applied at the sole discretion of the Customer and shall be without prejudice to the other rights and remedies of the Customer.

15. Suspension

- 15.1 The Customer may, at any time, acting reasonably (and without prejudice to its other rights or remedies arising under this Agreement or in law), by providing not less than thirty (30) days' prior written notice suspend this Agreement in its entirety for a period of not less than thirty (30) Working Days or greater than one hundred and twenty (120) Working Days, unless otherwise agreed in writing by the Parties, acting in good faith.
- 15.2 In the case of termination for Substantial Breach (where such termination is the subject of a dispute) the Customer reserves the right to suspend the Agreement with immediate effect until such time as the dispute is resolved.
- 15.3 On any suspension by the Customer:
- (a) the Contractor shall wind-down the provision of the Solution as appropriate to a suspension; and
 - (b) The Customer shall be liable to the Contractor for payment of the Price due and payable up to the date of suspension. For the avoidance of doubt, the Contractor shall not be entitled to any other payment or damages for suspension.
- 15.4 The Parties shall agree terms relating to ramp-up of the supply and provision of the Solution in order to meet the intended date for re-commencement thereof, as set out in the initial Customer written notice, or subsequently notified by the Customer in writing. It is acknowledged by the Customer that particular provisions may be required in relation to retention of Key Personnel during the period of suspension.

16. Disaster Recovery

In the event of a Disaster, the Contractor will be required to provide all resources necessary and reasonable on a 24/7 basis until such time as service is restored following the occurrence of the Disaster. Further details may be set out in the Requirements and Specifications.

17. Provision of Information

- 17.1 The Customer's response or failure to respond to any communication from the Contractor does not constitute or imply any review or verification by the Customer, or relieve the Contractor from any responsibility or liability.
- 17.2 The Contractor acknowledges and agrees that at the Effective Date it has been supplied with sufficient information about the Customer's requirements to enable it to perform the Agreement from the Effective Date.

18. Customer Information

- 18.1 The Contractor shall perform the Agreement in accordance with Customer Information Security Policies and any other Customer Policies furnished to the Contractor by the Customer after the Effective Date in accordance with Clause 22 (Customer Policies).

- 18.2 The Customer and the Contractor shall each take reasonable precautions (having regard to the nature of their respective obligations under this Agreement and in accordance with Good Industry Practice) to preserve the integrity of Customer Information.
- 18.3 If Customer Information is corrupted or lost as a result of any default by the Contractor, the Customer shall have the option to:
- (a) require the Contractor, at the Contractor's own expense, to restore or ensure the restoration of the Customer Information to the point in time when the Customer Information was lost or corrupted; or
 - (b) itself restore or ensure the restoration of the Customer Information, and the Contractor shall be obliged to pay the Customer reasonable costs of so doing.
- 18.4 The following shall apply to the Customer Information supplied by the Customer to the Contractor:
- (a) Intellectual Property rights in the Customer Information shall remain the property of the Customer or its licensors;
 - (b) the Contractor may use the Customer Information solely to the extent necessary for the provision of the Solution;
 - (c) the Contractor shall comply with any reasonable directions made by the Customer from time to time relating to use of the Customer Information; and
 - (d) the Contractor shall not share, forward, distribute, copy, destroy or otherwise provide access to the Customer Information without the prior consent of the Customer.

19. Intellectual Property Rights

- 19.1 The Contractor hereby grants to the Customer the right to use such Intellectual Property as may be necessary for the Customer to receive the benefit of this Agreement and of any particular Agreement having regard to the licences provided in Clause 78.2 (Contractor Software).
- 19.2 The Contractor shall not acquire any right, title or interest in or to the Customer Software or Commissioned Software or the media on which the Customer Software or Commissioned Software is supplied or kept, or any Intellectual Property rights relating to them, nor generally in any Intellectual Property rights provided by the Customer to the Contractor (other than the licence rights granted hereunder).
- 19.3 The Contractor shall not:
- (a) make more than a reasonable number of back-up copies of Customer Software or Commissioned Software such number to align to Customer Policies. Copies of Customer Software and Commissioned Software shall be subject to the terms and conditions of this Agreement and shall be deemed to form part of the Customer Software;
 - (b) except to the extent necessary to perform the Agreement and expressly permitted by the Customer, use or access the Source Code versions of Customer Software;
 - (c) assign, transfer, sell, lease, rent, charge or otherwise deal in or encumber Customer Software or Commissioned Software or use Customer Software or

Commissioned Software on behalf of a third party or make Customer Software available to a third party;

- (d) remove or alter any copyright or other proprietary notice on any Customer Software or Commissioned Software; or
- (e) de-compile or reverse engineer Customer Software or Commissioned Software.

19.4 Title to Customer Intellectual Property Rights shall vest in the Customer on creation and the Contractor assigns by present assignment of future rights Customer Intellectual Property Rights to the Customer with unencumbered title and the Contractor will procure the waiver of all moral rights in Customer Intellectual Property Rights in favour of the Customer. The Contractor shall during the Term, deliver one copy of the Source Materials to the Customer upon its creation and shall, during the Term, provide up-to-date versions of the Source Materials for Customer Intellectual Property Rights. The Contractor shall from time to time (and shall procure that its officers, employees, consultants sub-contractors and assignees) execute any documents which the Customer requires to perfect its title in Customer Intellectual Property Rights.

19.5 Save as otherwise agreed or specified in this Clause 19, the Contractor shall own all Intellectual Property rights in Software and/or materials developed exclusively by it, not funded by the Customer, and not arising from delivery of the Solution (other than, for the avoidance of doubt, Commissioned Software).

20. Intellectual Property Rights Indemnity

20.1 The Contractor shall defend and indemnify the Customer against all claims, proceedings, liability, loss, damages, costs, demands and expenses which the Customer suffers or incurs as a result of any infringement or alleged infringement of any Intellectual Property Rights in connection with the operation of the Solution and/or receipt of Services or Supplies from the Contractor.

20.2 Where any claim is made that there has been an infringement or alleged infringement of Intellectual Property Rights (a “**Relevant Claim**”) the Contractor shall not make any admission in respect of the Relevant Claim without the consent of the Customer.

20.3 If, as a result of a Relevant Claim, the Solution, or any part of thereof are held to constitute an infringement of the Intellectual Property rights of any third party, without prejudice to the Customer’s other rights and remedies under this Agreement the Contractor shall either:

- (a) procure for the Customer the rights to continue to operate the Solution and/or receive the Services (as the case may be); or
- (b) modify the Solution, and/or Services so that they are non-infringing without materially detracting from their overall performance; or
- (c) replace the infringing element of the Solution or Services with other non-infringing items that have the equivalent performance and functionality to the infringing element/s.

20.4 The Contractor shall carry out its obligations under this Clause 20 as soon as reasonably practicable and without charge to the Customer and shall ensure that no interruption to the operation of the Solution or Services occurs.

20.5 The provisions of this Clause 20 shall survive termination.

21. Confidential Information

21.1 The Contractor acknowledges that Confidential Information may be provided to them by the Customer and that each item of Confidential Information shall be governed by the terms of this Agreement.

21.2 For the purposes of this Agreement 'Confidential Information' shall mean:

21.2.1 Unless specified in writing to the contrary by the Customer all and any information (whether in documentary form, oral, electronic, audio-visual, audio- recorded or otherwise including any copy or copies thereof and whether scientific, commercial, financial, technical, operational or otherwise) relating to the Customer, the supply of Goods/Services under the Contract and all and any information supplied or made available to the Contractor (to include employees, agents, Subcontractors and other suppliers) for the purposes of the Contract(s); and

21.2.2 Any and all information which has been derived or obtained from information described in sub-paragraph 21.2.1.

21.3 Save as may be required by law, the Contractor agrees in respect of the Confidential Information:

21.3.1 To only use such Confidential Information for the purposes of the Contract(s);

21.3.2 To treat such Confidential Information as confidential and to take all necessary steps to ensure that such confidentiality is maintained;

21.3.3 Not, without the prior written consent of the Customer, to communicate or disclose any part of such Confidential Information to any person except:

- a) To those employees, agents, Subcontractors and other suppliers on a need to know basis, and who are under an obligation to the Contractor to keep such information confidential; and/or
- b) To the Contractor's auditors, professional advisers and any other persons or bodies having a legal right or duty to have access to or knowledge of the Confidential Information in connection with the business of the Contractor.

21.4 The obligations in this Agreement will not apply to any Confidential Information:

21.4.1 In the Contractor's possession (with full right to disclose) before receiving it from the Customer; or

21.4.2 Which is or becomes public knowledge other than by breach of this clause; or

21.4.3 Is independently developed by the Contractor without access to or use of the Confidential Information; or

21.4.4 Is lawfully received from a third party (with full right to disclose).

21.5 The Contractor undertakes:

21.5.1 To comply with all directions of the Customer with regard to the use and application of all and any Confidential Information;

21.5.2 To comply with all directions as to local security arrangements deemed reasonably necessary by the Customer, if required, completion of documentation under the Official Secrets Act 1963 and comply with any vetting requirements of the Customer including by police authorities;

21.5.3 To implement appropriate technical and organisational measures to protect the Confidential Information;

21.5.4 To notify the Customer as soon as possible, and no later than 48 hours, after the Contractor becomes aware of any security breaches within the Contractor's organisation leading to the loss or theft of any Confidential Information;

21.5.5 Upon termination or the completion of any Contract(s), for whatever reason, the Contractor shall, at the request and choice of the Customer, Delete or return to the Customer, all Confidential Information and copies thereof in its possession. As directed by the Customer, all copies of Confidential Information and copies thereof held by the Contractor in electronic form, shall be returned to the customer in a commonly used electronic format or Deleted. The Contractor will upon request, furnish a certificate to that effect should the Customer so request in writing.

21.6 In relation to the processing of any Personal Data, the Contractor shall ensure they fully comply with the provisions of Clause 23 of this Agreement

2.17 The provisions of this Clause 21 shall survive termination.

22. Customer Policies

The Contractor is obliged to comply with the following policies:

22.1 Customer National IT and Policies and Standards, as updated from time to time, as set out at <http://www.hse.ie/eng/services/Publications/pp/ict>;

22.2 additional policies contained within the Requirements and Specifications;

22.3 standard Customer policies, other than those referenced in Clauses 22.1 and 22.2 above which apply to the Solution provided by the Contractor generally;

22.4 policies introduced during the Term of this Agreement and that are relevant in the context of providing the Solution and Services. The Change Control Procedure will be invoked in circumstances where either Party believes the introduction of such policies is likely to have a material impact.

23. Data Protection and Data Security

23.1 The Contractor shall be required to comply with and sign a copy of the HSE Service Provider Data Processing Agreement included in Schedule 10 of this Agreement, and this will govern the Processing of all and any Personal Data by the Contractor on behalf of the HSE.

24. Access to Premises

Where the Contractor needs access to the Customer's premises, the Contractor shall comply with all health and safety (and security) requirements of the Customer and shall ensure that all of the Contractor's People, sub-contractors and third parties engaged by the Contractor shall likewise comply with such requirements.

25. Termination

25.1 The Customer may terminate this Agreement (and for the avoidance of doubt, without payment of any termination charge) by giving not less than thirty (30) calendar days' notice to the Contractor where the Contractor commits Substantial Breach of this Agreement and does not (if capable of remedy) remedy the breach before the expiry of that notice period. The Customer shall explain in the notice what the breach is and include a warning that it intends to terminate this Agreement in whole or in part unless the breach is remedied (if capable of remedy). Where such termination is disputed the Dispute Resolution Procedure shall apply.

25.2 The Customer may terminate this Agreement in whole by giving at least six (6) months' notice to the Contractor expiring on or after the first anniversary of the Effective Date.

25.3 Without prejudice to the Customer's other rights and remedies, the Customer may terminate this Agreement in whole or in part with immediate effect (and for the avoidance of doubt, without payment of any termination charge) by giving notice to the Contractor if:

- (a) the Contractor is, or becomes insolvent, or unable to pay its debts within the meaning of section 214 of the Companies Act 1963 (as amended) or suspends or threatens to suspend making payments with respect to all or any class of its debts;
- (b) an order has been made, petition presented, resolution passed or meeting convened for the winding up of the Contractor or the appointment of an examiner to the Contractor;
- (c) a liquidator, receiver or examiner has been appointed over the whole or any part of the property, assets or undertaking of the Contractor;
- (d) a composition in satisfaction of debts, scheme of arrangement, or compromise or arrangement with creditors or members (or any class of creditors or members) has been proposed, sanctioned or approved in relation to the Contractor;
- (e) the Contractor is or becomes related to any other company for the purpose of section 140 of the Companies 1990 Act (as amended), is or becomes liable to an order made under that section by virtue of any act (whether of commission or omission);
- (f) an encumbrance takes possession of, or a liquidator or receiver or similar officer is appointed in respect of, all or any part of the business or assets of the Contractor, or distress or any form of execution is levied or enforced upon or sued out against any such assets and is not discharged within 7 calendar days of being levied, enforced or sued out;
- (g) anything analogous to any of the events described in paragraphs (a) to (f) inclusive, occurs under the laws of any applicable jurisdiction;

- (h) the Contractor ceases or threatens to cease carrying on the whole or any material part of its business.
- 25.4 Without prejudice to the Customer's other rights and remedies, the Customer may terminate this Agreement in whole or in part with immediate effect (and for the avoidance of doubt, without payment of any termination charge) by giving notice to the Contractor if there is a change of control of the Contractor, where such change would, in the Customer's opinion, materially adversely affect the supply of the system and/or quality of the Services.
- 25.5 The Customer may terminate this Agreement if the User Acceptance Tests have been recorded as unsuccessful pursuant to Schedule 8 (Acceptance Procedures).
- 25.6 The Contractor may terminate this Agreement if the Customer fails to make payment in respect of an undisputed invoice within ninety (90) calendar days of its due date, provided 30 calendar days' notice of such breach and the Contractor's intention to terminate the Agreement is provided to the Customer by the Contractor (during which notice period the Customer may remedy the situation).
- 25.7 If a Force Majeure affecting the Contractor continues for more than one hundred and twenty (120) calendar days, the Customer may terminate this Agreement by giving fourteen (14) calendar days' notice.
- 25.8 If the Customer terminates this Agreement in part, it shall specify the element of the Solution and/or Services it intends to terminate and the Price shall be reduced to exclude the Price which is payable for that element.
- 25.9 Where the Customer has served notice of termination, the Customer may extend the effective termination date once only with respect to each termination. The Customer shall give reasonable notice (not less than 30 calendar days) to the Contractor of the new effective termination date of the termination. The new effective termination date shall be not more than 6 months from the date of termination specified in the notice of termination.
- 25.10 Upon any notice being given under this Clause 25, this Agreement (or the agreement as it relates to the part of the Solution or Services being terminated) shall absolutely terminate on the expiry of such notice (unless extended by Customer in accordance with Clause 25.9 above) and cease to have effect without prejudice to the terminating party's other rights and remedies in respect of the breach by the other party of this Agreement or the cause for termination, or without prejudice to any claim that the other party may make in respect of any alleged unlawful termination.
- 25.11 The Customer may terminate this Agreement in the case of a breach of Clause 23.1 (Data Protection and Data Security) where such breach is not rectified pursuant to Clause 16 (Disaster Recovery) within a period of seventy two (72) hours of the occurrence of the breach.
- 25.12 To the extent the Solution includes the provision of Services, the Customer may terminate this Agreement for failure by the Contractor to meet the required performance levels and targets as set out by the Requirements and Specifications, by Schedule 3 (Service Level Agreement) or relevant Lot Agreements.

26. Termination Assistance

- 26.1 Each Party hereto shall perform its obligations specified in Schedule 9 (Termination Assistance) and shall comply with its obligations with respect to the development and

maintenance of the Exit Management Plan and the hand-over of the Solution, and Services on expiry or on a full or partial termination of this Agreement.

- 26.2 Upon request, the Contractor shall be required to develop an Exit Management Plan within three (3) months of the Effective Date and to update and maintain the Exit Management Plan in accordance with the provisions of Schedule 9 (Termination Assistance). The Contractor will be liable for all reasonable costs associated with the development of the Exit Management Plan and the subsequent maintenance of the Exit Management Plan throughout the term.

27. Effects of Expiry and Termination

27.1 Effect

On termination or expiry:

- (a) the Contractor must stop doing the work except for any tasks specified by the Customer or necessary for the Contractor's duties under law relating to health and safety;
- (b) the Contractor must give the Customer any documents to which the Customer is entitled as soon as practicable;
- (c) the benefit of any contract relating to the Solution will be automatically assigned to the Customer or its nominee, with immediate effect;
- (d) both parties remain liable for amounts due and breaches before termination or expiry;
- (e) The Customer may replace the Contractor with another supplier to complete the work in accordance with the terms, or substantially the terms, of this Agreement;
- (f) the Contractor shall mitigate any losses, costs, liabilities and expenses which the Contractor or its sub-contractors may incur or suffer arising there from;
- (g) to the extent applicable, the Parties will comply with their respective obligations under 2003 TUPE Regulations; and
- (h) to the extent applicable, the Contractor will comply with the requirements of the Exit Management Plan.

28. Compensation on Termination

- 28.1 On termination for Substantial Breach, pursuant to Clause 25.1 (Termination) or Contractor's insolvency pursuant to Clause 25.3 (Termination), the terminating Party is entitled to damages as if the termination was for the other's repudiation of the Agreement.
- 28.2 On any termination by either Party, the Contractor is entitled to a reasonable portion of the Price and costs properly incurred for the portion of the Solution properly completed before the termination. All Contractor costs must be vouched accordingly unless otherwise agreed by the Customer.
- 28.3 Neither Party is entitled to any other payment or damages for any termination.

29. Indemnity

29.1 The Contractor shall indemnify the Customer against all claims, demands, actions, costs and expenses (including legal costs and disbursements) which the Customer incurs directly or indirectly as a result of any act, omission or default of the Contractor, its , employees, officers, sub-contractors or invitees in respect of:

- (a) death, personal injury, fraud or fraudulent misrepresentation;
- (b) loss of or damage to property (including property belonging to any third party or to the Customer or for which the Customer is responsible); and
- (c) breach of statutory duty.

29.2 The Contractor shall not be responsible or be obliged to indemnify the Customer for:

- (a) any of the matters referred to in Clauses 29.1(a) to Clause 29.1(c) above which arise as a direct result of the Contractor acting on the instruction of the Customer; or
- (b) any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Customer, its employees, agents or contractors or by the breach by the Customer of its obligations under this Agreement.

The liability of the Contractor to the Customer under any indemnity in this Agreement will be without prejudice to any other right or remedy available to the Customer and will be without limitation to any indemnity given by the Contractor under any other provision of this Agreement.

30. Limitation of Liability

30.1 Nothing in this Agreement excludes or limits:

- (a) either parties' liability for fraud, fraudulent misrepresentation or theft by it or its agents or employees or, in the case of the Contractor, by any sub-contractors or its agents or employees;
- (b) the Contractor's liability for loss of, or damage to, property (including property belonging to any third party or to the Customer or for which the Customer is responsible);
- (c) the Contractor's liability for its wilful misconduct or the wilful misconduct of its subcontractors, including the wilful misconduct of their respective officers, employees or agents;
- (d) either parties' liability for death or personal injury caused by its negligence or that of its employees or agents or, in the case of the Contractor, by any sub-contractor or its agents or employees; or
- (e) the Contractor's liability under Clause 23 (Data Protection and Data Security), Clause **Error! Reference source not found.** (Confidentiality), Clause 29.1(c) (Indemnity) or Clause 20 (Intellectual Property Indemnity).

30.2 Subject to Clause 30.1 above, the Customer's total aggregate liability, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Agreement resulting in loss of or damage of whatsoever nature to the Contractor, shall in no event exceed two hundred and fifty thousand euro (€250,000).

- 30.3 Subject to Clause 30.1 above and save as otherwise set out in the relevant Service Level Agreement, the Contractor's total aggregate liability, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Agreement resulting in loss of or damage of whatsoever nature to the Customer, shall in no event exceed six and a half million (€6,500,000).
- 30.4 Except as otherwise provided for in this Agreement, in no event will either Party be liable to the other Party for any consequential or indirect loss of profits or damage, howsoever arising, under or in connection with this Agreement.
- 30.5 Save as provided in Clause 30.2, 30.3 and 30.4 above, no other limitations shall apply in respect of the liability of either party under this Agreement whether arising from tort (including negligence), breach of contract or otherwise.

31. Conduct of Claims Subject to Contractor's Indemnities

- 31.1 If the Customer receives any notice, demand, letter or other document concerning any claim from which it appears that the Customer is or may become entitled to indemnification under this Agreement, the Customer will give notice in writing to the Contractor as soon as reasonably practicable.
- 31.2 Subject to the following provisions of this Clause 31 on the giving of a notice pursuant to Clause 31.1 above, the Contractor will be entitled to and will resist the claim in the name of the Customer at its own expense and will have the conduct of any defence, dispute, compromise or appeal of the claim and of any incidental negotiations, and the Customer will give the Contractor all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim.
- 31.3 With respect to any claim being resisted by the Contractor in accordance with Clause 31.2 above:
- (a) the Contractor will keep the Customer fully informed and consult with it about the conduct of the claim;
 - (b) to the extent that the Customer is not entitled to be indemnified by the Contractor for all of the liability arising out of the act or omission which is the subject of the claim, no action will be taken pursuant to Clause 31.2 above which will increase the amount of any payment to be made by the Customer in respect of that part of the claim which is not covered by the indemnity from the Contractor; and
 - (c) the Contractor will not pay or settle such claim without the consent of the Customer (such consent not to be unreasonably withheld), provided that such consent will not be required to the settlement of any action if the amount of the claim to issue does not exceed ten thousand euro (€10,000).
- 31.4 Subject to complying with the provisions of the relevant required insurances, the Customer will be free to pay or settle any claim on such terms as it may, in its absolute discretion, think fit and without prejudice to its rights and remedies under this Agreement if:
- (a) within sixty (60) Working Days of the issue date of the notice from the Authority under Clause 31.1 above the Contractor fails to notify the Customer of its intention to dispute the claim; or

- (b) the Contractor fails to comply in any material respect with the provisions of Clause 31.3 above.

31.5 Subject to complying with the provisions of the relevant required insurances, the Customer will be free at any time to give notice to the Contractor that it is taking over the conduct of any defence, dispute, compromise or appeal of any claim subject to Clause 31.2 above or of any incidental negotiations. Upon receipt of such notice the Contractor will promptly take all steps necessary to transfer the conduct of such claim to the Customer and will provide to the Customer all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim. If the Customer gives any notice pursuant to this Clause 31.5, then the Contractor will be released from its indemnity in respect of such Claim save where such notice was given as a consequence of the failure of the Contractor, in the opinion of the Customer (acting reasonably), to deal properly with any such claim.

32. Insurance

32.1 Unless otherwise agreed with the Customer (such agreement to be specifically contained in writing in the relevant Service Level Agreement), the Contractor must maintain insurances as follows:

Type of insurance	Minimum cover for any one claim	Permitted deductible for any one claim	Period
Property Cover on all Risks basis	Full replacement value and associated expenses	€6,500	From date of Agreement until Supplies delivered and accepted by the Customer
Product liability for any Supplies	€6,500,000	€6,500	From date of Agreement until completion of the contract
Professional indemnity for any professional services (or design works).	€6,500,000	€50,000	From date of Agreement until 6 years after completion of contract
Public liability for death, personal injury, loss of and damage to property	€6,500,000	€6,500	From date of Agreement until completion of the contract
Employer's liability for sickness, injury and death of employees	€12,700,000	€0	From date of Agreement until completion of the contract
Motor Insurance required by law	Third Party Property Damage - €2.6m.	€0	From date of Agreement until completion of the contract

Type of insurance	Minimum cover for any one claim	Permitted deductible for any one claim	Period
	Third Party Personal Damage - Unlimited.		

- 32.2 The Contractor must give the Customer on request copies of its insurance policies required by this Agreement and evidence that the insurances remain in effect.
- 32.3 The Contractor's insurance policy for employers/public liability shall contain a provision indemnifying the Customer against any claim made in respect of which the Contractor is entitled to indemnity.
- 32.4 The Contractor's insurances must, if the Customer so requests, name the Customer as co-insured and incorporate the automatic noting of the Customer's interest on the insurance policy, without specific endorsement.
- 32.5 If the Contractor does not on request prove that its insurances are fully in force as required by this Agreement, the Customer may insure and recover the cost from the Contractor.
- 32.6 The insurances shall be placed with reputable insurers approved by the Customer (or by the Irish Financial Regulator as may be appropriate) and shall include an Irish / EU law jurisdiction clause.
- 32.7 The Contractor shall be liable for any deductible in respect of any claim under any Contractor policy of insurance taken out or maintained under this Agreement and shall be solely responsible for compliance with all requirements of the insurers relating to the relevant Contractor insurance policies.

33. Fraud

- 33.1 The Customer may suspend the Agreement and its payment obligations if it has reasonable grounds to believe that the Contractor, its employees, officers, sub-contractors or invitees has committed a fraud. If it is subsequently found that none of them had done so, the Customer shall pay the Contractor any amounts which have been unjustly withheld.
- 33.2 The Customer shall permit the Contractor, and the Contractor shall be entitled, to resume the Agreement immediately upon the earlier of the following:
- (a) the Customer agreeing in writing to the resumption of the Agreement; or
 - (b) it is established by a court of competent jurisdiction that the Contractor, its employees, officers, sub-contractors or invitees were not responsible for any fraud.

34. Quality Standards

- 34.1 The Contractor shall have in place appropriate mechanisms to assess the quality and of the performance of the Solution in line with Good Industry Practice.

- 34.2 The Contractor shall comply with Legal Requirements relating to quality and standards and such other appropriate requirements as may be stipulated by recognised standard setting bodies.
- 34.3 The Customer will have the right to conduct reviews of the Contractor's quality management system and to verify compliance with the requirements of this Agreement. Such reviews may be performed by the Customer, or by its appointed Representatives, provided always that the Contractor is given not less than fifteen (15) days' prior written notice.
- 34.4 In the event that the a Customer review should produce findings with regard to the Contractor's quality management system, of concern to the Customer, then, the Contractor shall produce, within thirty (30) days of the Customer's written request, a quality assurance report and plan. The Contractor shall promptly implement the provisions of such plan at its own cost.
- 34.5 The Customer shall have the right, but not the obligation, at all times to be able to inspect all or any process or procedural related specifications, documents, drawings and the like, produced by the Contractor in respect of any part of the Solution or Service. Any such inspection or any approval thereof by the Customer, shall not relieve the Contractor of any of its obligations under the Agreement, unless such inspection and/or approval constitutes a change to the Agreement or any part thereto.

35. Acceptance Procedures

The Contractor shall comply with all Acceptance Procedures set out in Schedule 8 (Acceptance Procedures) attached to this Agreement.

36. Notices and Communications

- 36.1 Any notice to be given by one Party to the other Party under, or in connection with, this Agreement shall be in writing and signed by or on behalf of the Party giving it. It shall be served by sending it by fax to the number set out in Clause 36.2 below, or delivering it by hand, or sending it by pre-paid recorded delivery, special delivery or registered post, to the address set out in Clause 36.2 below and in each case marked for the attention of the relevant party (or as otherwise notified from time to time in accordance with the provisions of this Clause 36). Any notice so served by hand, fax or post shall be deemed to have been duly given in the case of:

- (a) delivery by hand, when delivered;
- (b) fax, at the time of transmission;
- (c) pre-paid recorded delivery, special delivery or registered post, at 10.00 am on the second Working Day following the date of posting

provided that in each case where delivery by hand or by fax occurs after 6.00 pm on a Working Day or on a day which is not a Working Day, service shall be deemed to occur at 9.00 am on the next following Working Day.

References to time in this Clause 36 are local time in the country of the addressee.

- 36.2 The addresses and fax numbers of the Parties for the purpose of Clause 36.1 above are as follows:

Customer

ICT Department
2nd Floor
Dr. Steevens Hospital
Dublin. 8
Ireland

Attn: Director of Information, Communications and Technology

Fax: 01-6352740

[Contractor Name]

[Contractor Address]

Attn: [contact name]

Fax: [contact fax]

36.3 A Party may notify the other Party to this Agreement of a change to its name, relevant addressee, address or fax number for the purposes of this Clause 36, provided that, such notice shall only be effective on:

- (a) the date specified in the notice as the date on which the change is to take place;
or
- (b) if no date is specified or the date specified is less than five (5) Working Days after the date on which notice is given, the date following five (5) Working Days after notice of any change has been given.

36.4 For all communications other than notices, email be used. For such purposes the address of each Party shall be:

(a) For the Customer:

For the attention of: [*]

Telephone: [*]

E-mail: [*]

(b) For the Contractor:

For the attention of: [*]

Telephone: [*]

E-mail: [*]

37. Language

Communications, documents and labelling must be in English, except where the Agreement or the law specify other languages.

38. Survival of Clauses

38.1 The provisions of Clause 1 (Interpretation), Clause 17 (Provision of Information), Clause 23 (Data Protection and Data Security), Clause 29 (Indemnity), Clause 32

(Insurance), and Clause 73 (Defective Supplies) shall survive the termination or expiry of this Agreement.

- 38.2 Termination of this Agreement shall not affect either of the Party's accrued rights or liabilities or affect the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after termination.

39. Transfer and Sub-Contracting

- 39.1 This Agreement will be binding on and will ensure to the benefit of the Contractor and the Customer and their respective successors and permitted assigns.
- 39.2 The Contractor shall not assign, novate, or otherwise dispose of, this Agreement, or any part thereof, without the prior written consent of the Customer.
- 39.3 The Customer shall have the right to assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Agreement to a third party which has the equivalent legal capacity and credit status (either alone or evidenced government financial support) to enable it to enter into and meet the obligations under this Agreement as they fall due, upon not less than sixty (60) days prior written notice to the Contractor.
- 39.4 The Contractor must obtain the prior written approval of the Customer if it wishes to engage an agent, sub-contractor or third party to perform the Agreement or part thereof. Key sub-contractors must be listed in Schedule 4 (Contractor's Tender).
- 39.5 The Contractor must procure that any such agent, sub-contractor or third party is subject to the same obligations to which the Contractor is subject under this Agreement.
- 39.6 The Contractor shall remain responsible for the acts and omissions of its sub-contractors and third party suppliers, as though they were its own.
- 39.7 The Contractor shall ensure that, to the extent necessary, the performance of the Agreement is integrated with work or services of its own sub-contractors and third party supplier(s). The Contractor shall, on an on-going basis during the Term (and at no cost to the Customer) provide all reasonable and necessary assistance, facilities or documentation requested by the Customer to other third party supplier(s) in respect of the Solution.
- 39.8 The Contractor shall be fully responsible for the acts and omissions of its sub-contractors, agents and third party supplier(s) and will indemnify the Customer in respect of all losses, damages, claims, costs (including legal costs) and professional and other expenses of any nature whatsoever incurred or suffered by the Customer as a result of any acts and omissions of any such agent, sub-contractor or third party in connection with the provision of the Solution and execution of the Agreement.

40. Force Majeure

- 40.1 Neither Party shall be responsible for failure to carry out any of its duties under this Agreement to the extent to which the failure is caused by Force Majeure, provided that the affected Party (being the Party suffering the Force Majeure):
- (a) has taken all reasonable steps to prevent and avoid the Force Majeure
 - (b) carries out its duties to the best level reasonably achievable in the circumstances of the Force Majeure;

- (c) takes all reasonable steps to overcome and mitigate the effects of the Force Majeure as soon as reasonably practicable, including actively managing any problems caused or contributed to by third parties and liaising with them;
 - (d) if the Force Majeure constitutes a Disaster, complies with its obligations set out in Clause 16 (Disaster Recovery);
 - (e) on becoming aware of the Force Majeure promptly informs the other Party in writing that something has happened which is a Force Majeure, giving details of the Force Majeure, which element of the system or Services have been affected, together with a reasonable estimate of the period during which the Force Majeure will continue;
 - (f) within 7 (seven) calendar days of becoming aware of the Force Majeure provides written confirmation and reasonable evidence of the Force Majeure; and
 - (g) notifies the other Party when the Force Majeure has stopped.
- 40.2 In the event the Contractor does not supply the system or any part of the system or provide the Services or any part of the Services because it is relying on a Force Majeure event, the Price for the system or Services affected by a Force Majeure shall be proportionately reduced or waived to reflect the extent and standard to which the affected system or Services are being provided.

41. Effect of Suspension of Services for Force Majeure

- 41.1 To the extent that any Force Majeure affecting the Contractor results in the system not being supplied or any Services being suspended, whether or not described as such (which includes such Services being delivered to a level where they are of no significant commercial benefit to Customer or to a level substantially below the normal level of provision), then Customer may terminate this Agreement without any further liability.
- 41.2 Without prejudice to Clause 25.7 (Force Majeure), from the date of the Force Majeure affecting the Contractor, the Customer may require that any of the following options applies (and may change the option from time to time):
- (a) The Customer will have no liability to pay the Price in respect of such element of the Solution or Services for the period of such suspension;
 - (b) The Customer may, without notice to the Contractor, exercise its step in rights under Clause 13 (Step In Rights) or itself procure, or direct the Contractor to, in which case the Contractor must use all reasonable endeavours to procure, the provision of such part of the Solution or Services from an alternative supplier approved by the Customer until cessation of the suspension; or
 - (c) The Customer may direct the Contractor to, in which case the Contractor must, provide such alternative services (during the period of the suspension) as will be calculated to reasonably minimise the disruption and losses suffered by Customer as a result of the suspension. Without prejudice to the foregoing, if the Contractor notifies the Customer that the Contractor cannot perform unaffected Services in accordance with the terms of this Agreement or the Specification, the Customer may in its discretion suspend the provision of such unaffected Services, in which case the Customer may treat those unaffected Services as affected Services for the purposes of this Clause 41.

- 41.3 The Party affected by the Force Majeure shall notify the other Party as soon as practicable after the Force Majeure ceases or no longer causes the Party affected not to be able to comply with its obligations under this Agreement. Following such notification and upon the Customer serving not less than five (5) calendar days but more than thirty (30) calendar days written notice, the Contractor shall re-commence supply of the Solution and/or provision of the Services in accordance with the terms of this Agreement as soon as reasonably practicable having regard to the nature of the Force Majeure. For the avoidance of doubt, the Customer shall not be liable for any costs in relation to the re-commencement of Services in accordance with this Clause 41.3. Where it is agreed by the Parties that the Contractor is no longer providing any part of the Solution or Service during the existence of the Force Majeure then the Contractor shall be entitled to deal with its Key Personnel assigned to the part of Solution or Services no longer provided as, it so wishes provided always that the Contractor shall maintain the availability of any Key Personnel for a period of one (1) month following the Force Majeure and that it can meet its obligations to re-commence the provision of the Solution and Services when required by the Customer pursuant to this Clause 41.
- 41.4 At the option of the Customer, the Term may be extended by a period equal to any period during the original Term affected by the Force Majeure.

42. No Solicitation

The Customer and the Contractor agree that from the Effective Date to twelve (12) months after the Expiry Date or earlier termination of the Agreement, they shall not solicit the employment of any of each other's people who have been directly associated with the establishment or performance of the Agreement, without the other Party's prior agreement in writing. The foregoing shall not apply to recruitment resulting:

- 42.1 from bona fide advertising in national daily newspapers;
- 42.2 by operation of law; or
- 42.3 from prior agreement of the Parties.

43. Warranties and Representations

- 43.1 The Contractor represents and warrants to the Customer that:
- (a) it has full right, power and authority to supply the Solution and provide the Services to the Customer on the terms of this Agreement;
 - (b) title to the Solution will transfer to the Customer on a free and unencumbered basis;
 - (c) the use by the Customer of the Solution shall not infringe any Intellectual Property rights nor result in the breach of any licence;
 - (d) the supply of the Solution, the provision of the Services and the performance of its obligations under this Agreement by the Contractor will not infringe the Intellectual Property rights of the Customer or any third party, will not contravene any applicable Laws, and conforms with all applicable legal and regulatory requirements.
 - (e) the Solution and any Software, Hardware, Supplies or other materials (including spare parts) provided or made available by the Contractor to the

Customer as part of the Solution shall be free of material errors, material viruses and material defects and shall be of good and merchantable quality, shall meet all performance requirements, and shall be fit for their intended purpose(s);

- (f) it has obtained, and will during the Term obtain, all necessary authorisations, certificates, consents, approvals, licences, permits and registrations necessary to enable it to perform the Services and its other obligations under this Agreement;
- (g) it will perform its obligations under this Agreement in accordance with Good Industry Practice;
- (h) it will provide the Services in accordance with the Requirements and Specifications (Schedule 1), the Service Level Agreement (Schedule 3) and all relevant Lot Agreements (subject to the Service Credits regime hereunder where applicable, which shall be offset against any claim made under this warranty);
- (i) it will ensure that, when complying with its obligations under this Agreement, it does not interfere with the activities of the Customer, its employees or agents in a manner not contemplated by the supply of the Solution or provision of the Services;
- (j) it is not, and will not during the Term, be in breach of any agreements necessary for the proper and efficient performance of the Services including any Third Party Software or Hardware Agreements;
- (k) it will not cause damage to real or personal property, injury to persons including injury resulting in death, or breach any leases or licences of the Customer Sites; and
- (l) it is not aware of any material facts or circumstances that have been disclosed to the Customer and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Agreement with it.

43.2 The Customer warrants to the Contractor that it has obtained, and will during the Term obtain, all authorisations, certificates, consents, approvals, licences, permits and registrations required by law to enable it to perform its obligations under this Agreement.

43.3 All warranties shall, unless otherwise expressly stated, continue in full force and effect during the Term and shall survive termination.

43.4 The Parties agree that there shall be no duplication of claims for the same loss or damages under this Agreement incurred by any one Party (meaning, for the avoidance of doubt, that any Party is only permitted to pursue through the Customer a claim for its own loss or damage).

43.5 The Contractor shall ensure that any warranty, indemnity or other covenant received from any third party in connection with the Solution or Service is for the benefit of the Contractor or the Customer, as appropriate. The Contractor shall assign to the Customer, at the request of the Customer, the benefit of any such warranty, indemnity or other covenant and shall ensure that its full term commences from the date of

acceptance of that part of the Solution to which such warranty, indemnity or other covenant applies.

- 43.6 Except as expressly set forth in this Agreement, all warranties, terms and conditions, whether oral or written, express or implied by law, custom or otherwise including all warranties, terms and conditions of fitness for purpose, description and quality, are hereby excluded.

44. Information and Audit

- 44.1 The Contractor acknowledges that it is obliged to comply with a written request from the Customer for any information that the Customer considers material to the provision of the Solution. The Customer shall specify in any written request the information required and the reason for the request.
- 44.2 The Contractor shall establish and maintain at all times accurate, complete and up-to-date records in order to comply with its obligations under this Agreement. This will include such records as are necessary in order to show clearly all enquiries, claims, settlements, payments, compensation, systems, processes and other proceedings relating to the Solution and/or Services and all other information relating to the Contractor's obligations under this Agreement which would be maintained by a prudent supplier in accordance with Good Industry Practice, including such information as may be required under applicable Laws.
- 44.3 On request from the Customer, the Contractor shall, at its own expense, ensure that its external auditors provide to the Customer, as soon as reasonably practicable after the end of the Contractor's financial year, confirmation that any statement supplied by the Contractor to the Customer pursuant to Clause 44.1 during that financial year is complete and accurate.
- 44.4 The Contractor shall, at its own expense and using its own equipment, store information reported and received by the Contractor from the Customer's employees and others in the course of performing the Agreement under this Agreement. The Contractor agrees that all reports, forms, records, files, data and other materials derived from such information and all updates and additions thereto are the exclusive property of the Customer. If the Customer wishes to request a data file transfer upon termination of this Agreement, the Contractor will arrange for such transfer on payment by the Customer of any reasonable costs involved based on format and size of data to be transferred.
- 44.5 The Contractor shall provide the Customer access to any information and documents which may be required to verify that the Solution has been supplied and that the Services are being provided in accordance with this Agreement and to verify that:
- (a) the Price is accurate;
 - (b) the Contractor is exercising reasonable care to control Customer provided resources;
 - (c) the Services are being provided in accordance with the Service Levels; and
 - (d) the Contractor is complying with the security requirements and obligations as set out in this Agreement.
- 44.6 As the Customer is a publicly funded organisation it is therefore subject to routine internal audits and ad hoc queries arising from engagement with the Government Public

Accounts Committee. The Contractor shall therefore, to the maximum extent possible, co-operate with all and any requests for information from the Customer, necessary for the Customer to satisfy its obligations in this regard.

- 44.7 The Contractor shall comply with scheduled financial audits of the Price required by the Customer. Should any review reveal that the Contractor has overcharged the Customer in any respect, the Contractor will promptly reimburse the Customer for the amount of any overcharge, together with interest thereon at the late payment rate set out in Clause 7 (Price) from the date on which overpayment was made until the date of reimbursement, as well as the additional cost of the audit arising in connection with investigating the overcharge.

44.8 Other Information Obligations

- (a) The Contractor will co-operate with the Customer in its monitoring and audit relationships and assist the Customer with regard to its obligations to other third parties (including HIQA, the Comptroller and Auditor General, etc.).
 - (b) The Contractor will co-operate with the Customer in providing relevant information to appropriate and authorised sources within the health sector and provide the Customer with a copy of the information supplied to such sources.
- 44.9 The provisions of this Clause 44 shall continue to apply for the appropriate retention periods specified by law or in such policies as may be specified by the Customer to the Contractor notwithstanding the termination of this Agreement for any reason and notwithstanding the completion of the performance of the Contractor's obligations hereunder.

44.10 Failure to Provide Information

The Contractor acknowledges that:

- (a) in order to achieve accurate forecasting, activity monitoring and prompt and accurate funding of health and personal social services, there needs to be timely, regular exchange of detailed and accurate information; and
- (b) the Customer is obliged to properly account for the expenditure of funding provided by the Exchequer.

Accordingly, if any information required pursuant to statute or the provisions of this Agreement is withheld by the Contractor without the prior written consent of the Customer, the Customer may (in its sole and absolute discretion), having given not less than fourteen (14) days written notice to the Contractor, withhold payment of any part of the Price until such time as the required information is supplied.

45. Corrupt Gifts and Payments

- 45.1 The Contractor shall not offer or give or agree to give any person employed or engaged directly or indirectly by the Customer, any gift or consideration of any kind as an inducement or reward for doing or forbearing to do, or for having done, or forborne to do any act in relation to the obtaining or performance of this Agreement or any other agreement with the Customer (or any of them) or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement and/or any matter referred to in it.

45.2 The Contractor shall procure that none of its contractors, employees, sub-contractors or agents do anything that would be a breach of Customer Policies set out at Clause 22 (Customer Policies).

45.3 In the event of any breach of this Clause 45 by the Contractor or by its employees, sub-contractors or agents (whether with or without the knowledge of the Contractor) or the committing of any offence by the Contractor or any of their employees, sub-contractors or agents acting on their behalf under any prevention of corruption legislation or regulations in relation to this or any other agreement, the Customer may summarily terminate this Agreement by notice in writing to the Contractor provided always that such a termination will not prejudice or affect any right or action which may have accrued or shall accrue thereafter to the Customer and provided further that the Customer may recover from the Contractor and the Contractor shall pay to the Customer on demand, all loss, damage, costs and expenses arising from such a termination..

46. No Partnership and No Agency

46.1 Nothing in this Agreement and no action taken by the Parties pursuant to this Agreement shall constitute, or be deemed to constitute, a partnership, association, joint venture or other co-operative entity between any of the Parties.

46.2 Nothing in this Agreement and no action taken by the Parties pursuant to this Agreement shall constitute, or be deemed to constitute, any Party as the agent of any other Party for any purpose. Neither Party has, pursuant to this Agreement, any authority or power to bind or to contract in the name of the other Party to this Agreement.

47. Announcements and Publicity

47.1 Neither Party will make any announcement relating to this Agreement or its subject matter without the prior written approval of the other Party except as required by law or by any legal or regulatory authority in which case it shall notify the other Party of the announcement as soon as is reasonably practicable.

47.2 The Contractor shall only offer the Customer as a client reference to any prospective client in accordance with such terms as shall be agreed with the Customer.

48. Costs and Expenses

Each Party shall pay its own costs, charges and expenses incurred in connection with the negotiation, preparation and completion of this Agreement.

49. Entire Agreement

49.1 This Agreement sets out the entire agreement and understanding between the Parties in respect of the subject matter of this Agreement.

49.2 It is agreed that:

- (a) no Party has entered into this Agreement in reliance upon any representation, warranty or undertaking of the other Party which is not expressly set out in this Agreement;
- (b) no Party shall have any remedy in respect of misrepresentation or untrue statement made by the other Party or for any breach of warranty which is not contained in this Agreement; and

- (c) this Clause 49 shall not exclude any liability for, or remedy in respect of, fraudulent misrepresentation.

50. Change Control

- 50.1 All changes must be agreed in writing by the Customer and by a duly authorised Representative of the Contractor and managed in accordance with Schedule 5 (Change Control Procedures).
- 50.2 The Customer reserves the right to amend this Agreement should there be a change in legislation or an order of a Government Minister necessitating such amendment and, subject to Clause 50.3 below, the Contractor shall be bound by such amendment for the Term of this Agreement.
- 50.3 The Parties agree to discuss in good faith and on a strictly without prejudice basis, any adjustment to the Price required or desirable to take account of any change in law, direction or requirements (in each case not at the date hereof required or in force) that causes a demonstrated material increase or decrease in costs to the Contractor and as they relate to the provision of the Solution. The Parties shall as far as practicable co-operate to seek to mitigate the effects of such a change.

51. Validity

If any provision of this Agreement is held by any competent authority to be invalid, unlawful or unenforceable in whole or part, the validity of the other provisions of this Agreement and the remainder of the provision in question shall not be affected thereby.

52. Waiver

- 52.1 The failure of either Party to insist upon strict performance of any provision of this Agreement, or the failure of either Party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Agreement.
- 52.2 A waiver of any Default shall not constitute a waiver of any subsequent Default.
- 52.3 No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 36 (Notices and Communications).

53. Further Assurance

Either Party shall, from time to time on request, do or procure the doing of all acts and/or the execution of all documents in a form satisfactory to the other Party which the other Party may reasonably consider necessary for giving full effect to this Agreement and securing to the other Party the full benefit of the rights, powers and remedies conferred upon it in or by this Agreement.

54. Remedies

Except as otherwise expressly provided by the Agreement, all remedies available to the Contractor or the Customer for breach of this Agreement are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

55. Supremacy of Agreement Over Schedules

Save where the relevant Service Level Agreement provides otherwise (in which case the Service Level Agreement shall prevail), if there is any conflict between the terms in the body of this Agreement and the schedules, then the terms in the body of this Agreement shall prevail.

56. Counterparts

56.1 This Agreement may be executed in any number of counterparts, and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart.

56.2 Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

57. Extent of Liability

57.1 The Customer has no liability to the Contractor in connection with this Agreement or the Solution (whether for breach of Agreement, breach of duty, including statutory duty, or any other duty, negligence, or anything else) except that stated in this Agreement.

57.2 The Contractor acknowledges that any breach by it of this Agreement may cause financial losses to the Customer not only directly but by liability to others, and acknowledges that it will be liable for those losses.

58. Governing Law and Jurisdiction

58.1 This Agreement and the relationship between the Parties shall be governed by, and interpreted in accordance with, Irish law.

58.2 Each of the Parties agree that the courts of Ireland are to have exclusive jurisdiction to settle any dispute (including claims for set off and counterclaims) which may arise in connection with the creation, validity, effect, interpretation or performance of, or the legal relationships established by, this Agreement or otherwise arising in connection with this Agreement and for such purposes irrevocably submit to the jurisdiction of the Irish courts.

59. Social Responsibility

59.1 The Contractor must, in the performance of the Agreement, observe the requirements and standards of any international conventions, covenants and agreements to which Ireland is a signatory or contracting party and which may be directly effective and justiciable in Ireland.

59.2 The Contractor will be expected to adopt, embrace, support and implement in so far as these may impinge on the performance of his duties and obligations under the Agreement, the ten principles of the United Nation's Global Compact covering human rights, labour standards, the environment and anti-corruption.

59.3 The Contractor shall pay rates of wages and observe hours and conditions of labour not less favourable than those established in the trade or industry in the district where the Agreement is carried out and whether by agreement, machinery of negotiation or arbitration through organisations of employers and trade unions representatives respectively (of substantial proportions of employers and workers engaged in the trade or industry in the district) hereinafter referred to as "established rates and conditions" or, failing such established rates and conditions in the trade or industry in the district,

established rates and conditions in other districts where the trade or industry is carried on under similar general circumstances.

- 59.4 In the absence of any such agreement or established rates and conditions as described in Clause 59.3 above the Contractor shall pay rates and wages and observe hours and other conditions of labour not less favourable than those which would be considered within the bounds of industry norms and verifiable by an independent third party assessor appointed by the Customer.
- 59.5 The Contractor must ensure that the employers of all the Contractor's People do all of the following:
- (a) pay all wages and other money due to each work person;
 - (b) ensure that the Contractor's People's wages are paid in accordance with the Payment of Wages Act 1991 and are never more than one (1) month in arrears or unpaid;
 - (c) pay all pension contributions and other amounts due to be paid on behalf of each of the Contractor's People;
 - (d) make all deductions from payments to work persons required by law, and pay them on as required by law;
 - (e) keep proper records (including time sheets copies of pay slips) showing the wages and other sums paid to and the time worked by each of the Contractor's People, deductions including pension and other contributions made in respect of the Contractor's People;
 - (f) respect the right under law of the Contractor's People to be members of trade unions; and
 - (g) observe, in relation to the employment of the Contractor's People on Customer Sites, the Safety, Health and Welfare at Work Act 2005, and all employment law including the Employment Equality Act 1998, the Industrial Relations Acts 1946 to 2012, the National Minimum Wage Act 2000 and regulations, codes of practice, legally binding determinations of the Labour Court and registered employment agreements under those laws.
- 59.6 If the Customer so requests, the Contractor must, within five (5) Working Days after the request, provide evidence of compliance with Clause 59.5 above.
- 59.7 The Customer may seek information under the provisions of this Clause 59 only for the purpose of ensuring the obligations described in this Clause 59 to the Contractor's People have been properly discharged. All information provided under the provisions of this Clause 59 will be returned or destroyed if the Customer is satisfied that the Contractor has complied with its legal obligations to the Contractor's People.
- 59.8 If the Contractor has not complied with this Clause 59, the Customer may (without limiting its other rights or remedies) withhold the estimated amount required for compliance from any payment due to the Contractor, until such time as the Customer is satisfied that the employees have been paid correctly and the Contractor is in compliance.
- 59.9 If the Contractor does not comply with this Clause 59, it must pay to the Customer any costs the Customer incurs in investigating and dealing with the non-compliance.

60. Blank Clause – ONLY TO RETAIN REFERENCING TO CLAUSES

This Clause (Clause 60) has been inserted to retain the clause referencing in the document.

PART TWO

SERVICES CONTRACT CLAUSES

This Part Two applies only if the Customer is procuring Services

61. Performance of Services

Without limitation to any other obligations, the Contractor must provide all Services with the skill, care, diligence, efficiency, qualifications, experience and professional conduct which ought reasonably to be expected from a Contractor with responsibility for delivering such services.

62. Provision of Services

62.1 The Services comprise some or all of the following elements:

- (a) Professional Services to address Customer requirements as set out in the Requirements and Specifications; and
- (b) Professional Services that enable the Contractor to address the specific requirements and performance criteria as set out in Schedule 3 (Service Level Agreement) and associated Lot Agreements(s).

Specific service level requirements as stated in the Service Level Agreement (Schedule 3) must be considered by the Contractor as being in addition to any such requirements as stated within the Requirement and Specifications and elsewhere in this Agreement.

62.2 Unless expressly stated in this Agreement, the Customer gives no guarantee and accepts no liability for the volume of the Services which may be ordered by the Customer from the Contractor.

62.3 In the event that the Contractor fails to perform the Services in accordance with the Service Levels, then the provisions of Clause 63 (Service Levels and Service Credits) shall apply.

63. Service Levels and Service Credits

63.1 Without prejudice to Clause 61 (Performance of Services), the Contractor shall ensure the Services meet the Service Levels set out in the Service Level Agreement or such other standards as may be set out in a Service Level Agreement. The Contractor acknowledges that its failure to meet Service Levels, or any Persistent Failure, may have a material adverse impact on the business and operations of the Customer.

63.2 If the Contractor fails to meet Service Levels, the Contractor shall, without prejudice to the Customer's other rights and remedies:

- (a) pay the appropriate amount under the Service Credits regime under the Service Level Agreement;

- (b) promptly investigate the underlying causes of the failure to meet the Service Levels and prepare and deliver to the Customer a report on the causes as soon as possible and in any event within seven (7) calendar days of the Contractor becoming aware of the failure arising or receiving notice of such failure from the Customer, whichever is earlier;
- (c) take whatever action is necessary to minimise the impact of the failure and to correct the causes of the failure and advise the Customer of the status of the remedial actions within seven (7) calendar days of submitting the report in accordance with Clause 63.2(b) above; and
- (d) indicate the amount (if any) payable under the Service Credits regime under the Service Level Agreement as a result of the failure to meet Service Levels on the next invoice submitted to the Customer.

64. Professional Services

64.1 Contractor's People

The Contractor's People shall:

- (a) conduct the provision of the professional services (the "**Professional Services**") in the English language; and
- (b) conduct themselves professionally at all times and where appropriate, in accordance with Customer working practices and Customer Policies.

64.2 Professional Services Account Manager

The Contractor shall assign a Professional Services account manager with responsibility for delivery of the Professional Services and for liaising with the Customer Representative.

64.3 Office and Computer Facilities

The Customer shall provide the Contractor free of charge with such office and computer facilities at the Customer Sites as may be agreed between the Parties' Representatives as necessary to enable the Contractor perform the Professional Services. The Contractor recognises that the foregoing facilities shall be provided on a non-exclusive basis. Where any conflict in requirements for shared facilities prevents the Contractor from performing the Professional Services, then, the Contractor shall notify the Customer and the Customer shall take such corrective action as it deems reasonably necessary.

64.4 Customer Sites

- (a) Prior to commencement of the provision of the Professional Services, the Contractor shall satisfy itself that the Customer Sites are suitable for the provision of the Professional Services, or, alternatively, shall advise the Customer in writing of any matter or element of the Customer Sites which are inadequate or unsuitable for provision of the Professional Services.
- (b) The Contractor shall not be entitled to recover any additional costs from the Customer in respect of any matter or element of the Customer Sites which has not been notified to the Customer in accordance with Clause 64.4(a) above. The Contractor shall at all times minimise disruption with the business and administrative affairs of the Customer while present at the Customer Sites.

- 64.5 The Customer shall remain responsible for compliance with the Safety, Health and Welfare at Work Act, 2005 affecting the Customer Sites.

64.6 Payment for Professional Services

In relation to the various pricing methodologies included within the Price set out in Schedule 2 (Payment Schedule), for the provision of the Professional Services the Parties agree that:

- (a) where the Price is based on a daily rate basis, then, where the Contractor's People work at weekends or outside the Working Day, such work shall be separately chargeable, in accordance with Schedule 2 (Payment Schedule). No payments will apply in respect of the agreed non-chargeable additional hours set out in the Contractor's Tender;
- (b) where the Price is based on a daily rate basis (or a daily rate basis subject to an agreed cap), then, the Contractor's People shall complete timesheets on a weekly basis, or such lesser period as agreed between the Parties, which shall be signed-off by the Customer Representative. The Contractor shall report to the Customer at the regular review meetings on the hours of work of the Contractor's People in the preceding period. The Contractor shall provide reasonable and necessary additional information to Customer in the event of any Customer queries in relation to the Contractor's People's timesheets or hours of work;
- (c) The Customer shall not be liable for payments in respect of time spent by the Contractor's People other than in the provision of the Services. The foregoing shall include time spent by the Contractor's People on holiday leave, sick leave, maternity leave or other statutory or contractual leave, attending Contractor internal review meetings, or training courses. In this regard, the Contractor shall report to the Customer at each review meeting on the scheduled absence of the Contractor's People from the provision of the Professional Services in the next following period. The Contractor (other than where absence is unavoidable and/or outside the Contractor's control) shall not authorise absence of the Contractor's People, save as notified to the Customer aforesaid, and the Customer shall not, in any event, be liable for payments in respect of such absences; and
- (d) where the Price in respect of Professional Services set out in the Payment Schedule are based on time and materials, in the event that the Customer wishes to revise the number of Contractor's People allocated to the provision of those Services, then, the Customer shall provide the Contractor with not less than fourteen (14) days prior written notice of the particular Contractor's People to be removed from performance of the Services. In such event, the Parties' Representatives shall promptly, following receipt of the Customer notice, commence good faith negotiations with a view to agreeing revisions to the Price, if applicable, following removal of such Contractor's People. In the event that the Parties' Representatives fail to agree the matter, within fourteen (14) days of commencement of negotiations then the matter shall be determined in accordance with the Dispute Resolution Procedure.

64.7 Training Services

To the extent that training services (the "**Training Services**") are included within the Professional Services:

- (a) the Contractor shall provide the Training Services in accordance with the provisions of the training plan set out or as stated within the Requirements and Specifications and applicable Lot Agreements; and
- (b) the Contractor shall conduct a satisfaction survey in a format agreed between the Parties, following each training course, as set out in the training plan. The Contractor shall endeavour to maintain the results of such surveys at a level deemed acceptable by the Customer and shall provide statistical extracts there for regular review by the Customer.
- (c) The Contractor acknowledges that the Training Services shall include an obligation on the Contractor to undertake a transfer of skills and knowledge to the recipients of the training, to the extent reasonably possible, having regard to the suitability of the candidates for training. The Parties' Representatives shall co-operate in order to maximise the achievement of this outcome.

65. Technical Support and Maintenance Services

- 65.1 In the event the Contractor fails to perform the Technical Support and Maintenance Services in accordance with the Service Levels then the provisions of Clause 63 (Service Levels and Service Credits) shall apply.

PART THREE

SUPPLIES CONTRACT CLAUSES

This Part Three applies only if the Customer is procuring Supplies.

66. Delivery of Supplies

- 66.1 The Contractor shall deliver the Supplies on the date and to the location notified to the Contractor by the Customer and shall be responsible for the proper delivery of the Supplies.
- 66.2 If the Agreement is for multiple, unspecified, deliveries, the Customer shall, when it requires a delivery to be made during the period of the Agreement, send the Contractor written notification of the quantity of Supplies and the date, time and place of delivery and the Contractor shall deliver those Supplies on the date so specified.
- 66.3 If the Agreement does not specify the quantity of Supplies to be provided by the Contractor, the Customer does not provide any guarantee regarding the quantity of Supplies that will be required over the Term.
- 66.4 The Contractor shall provide such packaging of Supplies as is required to prevent their damage or deterioration in transit.
- 66.5 The Contractor shall be responsible for obtaining any import licences, permits or other Necessary Consents for the importation and delivery of Supplies and shall produce evidence of same if requested to do so by the Customer.
- 66.6 The Contractor shall indemnify and hold the Customer harmless against and from all claims, suits and actions for damages, losses and expenses resulting from the transport of the Supplies and shall negotiate and pay all claims arising from their transportation.

67. Partial Delivery

- 67.1 Partial delivery of an Official Purchase Order shall not be made without the prior written consent of the Customer.
- 67.2 In case of partial delivery, all packages etc., advice notes, packing notes and invoices must be clearly marked "Partial Delivery".

68. Risk and Title

- 68.1 Title in the Supplies shall pass on delivery to and acceptance by the Customer unless payment is made prior to delivery, in which event, title shall pass to the Customer once payment has been made. Where title in the Supplies has passed to the Customer prior to delivery pursuant to this condition the Contractor shall keep such Supplies separate from other Supplies and shall clearly mark the Supplies as the property of the Customer.
- 68.2 Notwithstanding the provisions of this Clause 68, risk of damage to or loss of the Supplies shall, unless otherwise agreed between the Parties, remain with the Contractor until delivery, acceptance and commissioning of the Supplies to the Customer in accordance with the provisions of this Agreement and, in particular, Clause 73 (Defective Supplies) hereof.

69. Timing

- 69.1 Unless otherwise agreed to in writing by the Customer the Contractor shall deliver the Supplies on the delivery date specified by the Customer or where no delivery date is specified, within ninety (90) days from date of order.
- 69.2 Without prejudice to Part Four (Software and Hardware), the Supplies shall be delivered to the delivery address specified by the Customer during the Customer's usual business hours.

70. Packing, Marking and Documentation

- 70.1 All packages, cases, pallets and other containers must be clearly and individually marked with the Customer name, and clearly state the Official Purchase Order number and product codes. The following shall appear on the outside of each pack:
- (a) a description of the Supplies;
 - (b) the quantity contained in each pack;
 - (c) storage and/or handling instructions;
 - (d) expiry date of contents, if applicable; and
 - (e) relevant materials safety information, if applicable.
- 70.2 A note must be included in each package stating the Official Purchase Order number, quantities and description of items contained in each box; the product codes (stated on the Official Purchase Order), the delivery date and the delivery address.
- 70.3 The Customer may (unless otherwise agreed in writing) require the Contractor to dispose, at the Contractor's cost, of all packaging materials. Failure by the Contractor to effect disposal within fourteen (14) days of delivery shall entitle the Customer to arrange disposal with another supplier and any costs incurred by the Customer in effecting disposal of packaging shall be paid by the Contractor to the Customer or set

off against any monies owed to the Contractor pursuant to Clause 9 (Debts to the Customer).

71. Returns

The Customer accepts no liability in regard to the satisfactory return to the Contractor of any consignment or part of a consignment delivered in error.

72. Quality of Supplies

The Contractor warrants that the Supplies will:

- 72.1 correspond with their description;
- 72.2 be equal in all respects to any samples provided;
- 72.3 comply with any technical specification and any other requirements of this Agreement;
- 72.4 be capable of any standard of performance specified by the Customer, but in any event shall be of merchantable quality;
- 72.5 be fit for any particular purpose made known to the Contractor by the Customer either expressly or by implication;
- 72.6 shall not have any defect arising from design, materials or workmanship; and
- 72.7 be subject to the manufacturer's warranty.

73. Defective Supplies

- 73.1 If any Supplies are found to be defective or otherwise not in accordance with the Agreement, or the Contractor has failed to deliver on time, or the Customer has notified the Contractor of a shortage of Supplies or damage to the Supplies and has given the Contractor all reasonable opportunity to remedy, the Customer may:
 - (a) require the Contractor, at the Contractor's expense, to fulfil its obligations in all respects within fourteen days or such other period as is specified by the Customer;
 - (b) terminate the Agreement (in full or in part) and the Contractor shall refund any part of the Price which has been paid in respect of the defective, late or undelivered Supplies;
 - (c) purchase substitute Supplies elsewhere;
 - (d) at the Contractor's risk and expense, return any Supplies already supplied under the Agreement;
 - (e) recover from the Contractor any direct, indirect and/or consequential losses, cost and liabilities incurred by the Customer (including the costs of any replacement Supplies);
 - (f) reject the Supplies by giving notice to the Contractor, with reasons; and/or
 - (g) require the Contractor to promptly replace defective Supplies.

- 73.2 The Customer right of rejection shall continue irrespective of whether the Customer has accepted, inspected, used or paid for, the Supplies.
- 73.3 The whole of any consignment of Supplies may be rejected by the Customer if a reasonable sample of the Supplies taken randomly from the consignment is found not to conform substantially with the requirements of the Agreement.
- 73.4 The Customer shall be under no obligation to accept or pay for any Supplies delivered in excess of the quantity ordered.
- 73.5 If the Customer elects not to accept such over-delivered Supplies it shall be entitled to give notice in writing to the Contractor to remove them within seven (7) days of receipt by the Contractor of such notice and to refund to the Customer any expenses incurred by the Customer as a result of such over-delivery (including the costs of moving and storing them) failing which the Customer shall be entitled to dispose of such Supplies and to charge the Contractor for the costs of such disposal.
- 73.6 The risk in any over-delivered Supplies shall remain with the Contractor until they are collected by or on behalf of the Contractor or disposed of or purchased by the Customer, as appropriate.
- 73.7 In the event that a product recall or defect notice is issued by the manufacturer or a medical device regulatory body in any country in relation to the Supplies, the Contractor shall notify the Customer of the said recall or defect within five (5) days of the earliest recall or defect notice.

74. Supply of Documents

To ensure the Customer can receive the full benefit from the provision of supplies, the Contractor shall supply to the Customer the latest versions of all supporting documentation which relate to the supplies e.g. user manuals, operational instructions, technical drawings, service manuals, maintenance specifications etc.. or as otherwise agreed with the Customer at time of order, written in the English language.

75. Inspection and Samples

- 75.1 The Customer may at all reasonable times during manufacture, assembly or processing inspect and test the Supplies (including all designs, materials and other components).
- 75.2 If required by the Customer, samples of Supplies shall be submitted, at the Contractor's cost and expense, to the Customer for evaluation and approval.

76. After Sales Service

Unless otherwise agreed in writing, the Contractor shall:

- 76.1 supply to the Customer spare parts necessary for the Supplies at a reasonable cost, not exceeding that charged under like circumstances to other customers of the Contractor;
- 76.2 authorise the Customer to negotiate with and purchase spare parts for the Supplies directly from providers to the Contractor;
- 76.3 provide the Supplies free of any restrictions or impediments, which may exist between the Contractor and its providers; and
- 76.4 maintain sufficient stock levels so as to be in a position to meet the Customer's requirements for Supplies as notified to the Contractor prior to signing this Agreement.

PART FOUR

SOFTWARE

This Part Four applies only if the Customer is procuring Software - Contractor Software, Commissioned Software, Configured Software and 3rd Part Software.

77. Customer Software

Customer Software is and shall remain the property of the Customer.

78. Contractor Software

- 78.1 The Contractor may not use open source software in the provision of the Services without the Customer's prior written consent.
- 78.2 In consideration of the Price due and owing to the Contractor by the Customer, the Contractor hereby grants to the Customer an irrevocable, fully paid-up, non-exclusive sub-licensable perpetual royalty free licence to use the Contractor Software for any purpose relating to the Solution or to exercise the Customer's business including to grant sub-licences to other Customer funded organisations, its successors and assigns and to any replacement of the Contractor. The Customer confirms that the licence granted hereunder shall not entitle it to commercially exploit the Contractor Software.
- 78.3 Perpetual licenses for Contractor Software must also cover data dictionaries and all other associated constructs or components upon which the Solution depends.
- 78.4 The Customer may make such copies of the Contractor Software as they may reasonably require or direct the Contractor to provide such copies to the Customer.
- 78.5 Unless otherwise stated within the Requirements and Specifications (Schedule 1), Service Level Agreement (Schedule 3) or associated Lot Agreement(s) and for the avoidance of doubt, there is no limit on the number of users of the Contractor Software and licences provided for in this Agreement.
- 78.6 The Contractor shall procure that all agreements entered into after the Effective Date relating to maintenance and support of Contractor Software necessary for maintaining the performance of the Solution shall remain in force for the Term.
- 78.7 To the extent that Contractor Software shall include Third Party Software which it is not commercially possible for the Contractor to licence and/or sub licence in accordance with Clause 78.2 above, the Contractor shall notify the Customer of any issues in this regard prior to supplying that Third Party Software as part of the Contractor Software. In such circumstances, the Customer may at its option agree to accept a licence/sub licence of the Third Party Software on terms that are notified to it by the Contractor, provided always that those terms shall entitle the Customer to enjoy the benefit of the Contractor Software as envisaged by Clause 78.2 above on terms that are broadly equivalent to those, or, direct that the Contractor procure alternative Third Party Software on terms that are to the Customer's satisfaction.
- 78.8 The Customer shall be entitled to copy the Contractor Software in order to create a reasonable number of archival and back-up copies thereof in accordance with normal backup procedures or direct the Contractor to provide such copies to the Customer.
- 78.9 The Customer shall be entitled to engage a third party to provide certain managed Services in respect of the Contractor Software on behalf of the Customer, including full or partial use thereof, subject to and in accordance with the terms and conditions of the

applicable provisions of this Agreement, provided that, such third party shall have entered into a confidentiality / data processing undertaking to the Contractor in terms no less onerous than set out in Schedule 10 (HSE Service Provider Data Processing Agreement) of this Agreement.

- 78.10 Failure of the Customer to enter into, or maintain, support and maintenance contracts with the Contractor will not impact the right of the Customer to the perpetual licence(s) associated with any software or configuration provided. The Customer will continue to have the right to use, access, and if necessary, either itself or via a third party, maintain and support the application.
- 78.11 Change in the ownership of the Contractor will in no way diminish the rights of the Customer to the perpetual licence or the right of the Customer for continued use of the software associated with said licence.
- 78.12 Any and all accrued rights in relation to licences will continue to the benefit of the Customer regardless of whether the Term expires naturally or suspension or termination clauses are invoked. In such circumstances, the Customer will continue to have the right to use, access, and if necessary, either itself or via a third party, maintain and support the application.

79. Commissioned Software

- 79.1 Commissioned Software refers to Software that has been developed specifically for the Customer based on the provision of requirements, specifications and subsequent information sharing and communications associated with the development of the Solution. In such circumstances and where required, pursuant to the Requirements and Specifications, the Contractor shall develop the Software (“**Commissioned**” shall be construed accordingly), in accordance with the requirements of:
 - (a) the Requirements and Specifications;
 - (b) the Software Specifications;
 - (c) reasonable instructions of the Customer provided in accordance with this Agreement; and
 - (d) in accordance with the Service Level Agreement (Schedule 3) and/or applicable Lot Agreement(s).
- 79.2 The Commissioned Software shall provide the functions and offer the facilities set out in the Requirements and Specifications and associated Software Specifications, as appropriate, and shall fulfil the performance criteria in all material respects.
- 79.3 Title to Commissioned Software shall vest in the Customer on creation and the Contractor assigns by present assignment of future rights all rights in and to Commissioned Software to the Customer with unencumbered title.
- 79.4 The Customer hereby licences the Contractor to use Commissioned Software solely for the provision of the Solution in accordance with Clause 19 (Intellectual Property Rights) during the Term. On termination, this licence shall also terminate and the Contractor shall stop using Commissioned Software and shall promptly deliver to the Customer all copies of it in its possession or under its control.
- 79.5 In the event that the Contractor wishes to use the Commissioned Software other than to perform the Agreement under this Agreement, the Customer shall (unless the

Customer determines, acting reasonably that the grant of such a licence would conflict with the Solution or the Customer's requirements) grant a non-exclusive licence to the Contractor for the Commissioned Software on terms to be agreed by the Parties.

- 79.6 The Contractor shall, upon creation and update, deliver one (1) copy of the Source Materials for Commissioned Software to the Customer and shall, during the Term, keep up-to-date versions of the Source Materials for the Commissioned Software and shall as a separate obligation provide an up-to-date copy of the latest versions of such Source Materials on termination.

80. Configured Software

- 80.1 Configured Software refers to Software which exists and/or has been designed and developed with the intention of being configured to meet the specific requirements. In such circumstances and where required, pursuant to the Requirements and Specifications, the Contractor shall develop /configure the Software (the "**Configuration**", and "**Configured**" shall be construed accordingly), in accordance with the requirements of:

- (a) the Requirements and Specifications;
- (b) the Software Specifications;
- (c) reasonable instructions of the Customer provided in accordance with this Agreement; and
- (d) in accordance with the Service Level Agreement (Schedule 3) and/or relevant Lot Agreement(s).

- 80.2 The Configured/developed Software shall provide the functions and offer the facilities set out in the Requirements and Specifications and associated Software Specifications, as appropriate, and shall fulfil the performance criteria in all material respects.

- 80.3 Title to the Configuration shall vest in the Customer on creation and the Contractor assigns by present assignment of future rights all rights in and to the Configuration to the Customer with unencumbered title.

- 80.4 The Customer hereby licences the Contractor to use the Configuration solely for the provision of the Solution in accordance with Clause 19 (Intellectual Property Rights) during the Term. On termination, this licence shall also terminate and the Contractor shall stop using the Configuration and shall promptly deliver to the Customer all copies of it in its possession or under its control.

- 80.5 In the event that the Contractor wishes to use the Configuration other than to perform the Agreement under this Agreement, the Customer may grant a non-exclusive licence to the Contractor for the Configuration on terms to be agreed by the Parties.

- 80.6 The Contractor shall, upon creation and update, deliver one (1) copy of the Source Materials for the Configuration to the Customer and shall, during the Term, keep up-to-date versions of the Source Materials for the Configuration and shall as a separate obligation provide an up-to-date copy of the latest versions of such Source Materials on termination.

- 80.7 The Contractor shall keep the Customer advised of variations and additions thereto, included within new releases or versions of the Software, provided by the Contractor pursuant to the deployment, support and maintenance of the Solution.

80.8 The Customer may, during the period of Software development/configuration, in accordance with the Requirements and Specifications, require the Contractor in writing to make variations or amendments thereto. The variations or amendments shall be agreed between the Parties by way of the Change Control Procedure.

80.9 Third Party Software

- (a) The Contractor may not use Third Party Software to perform the Agreement other than:
 - (i) Third Party Software listed in the Contractor's Tender; or
 - (ii) with the prior written consent of the Customer (such consent not to be unreasonably withheld or delayed, or subject to unreasonable conditions).
- (b) Unless otherwise agreed, after the Effective Date, the Contractor shall ensure that all Third Party Software Agreements relating to the Software listed in the Contractor's Tender shall be entered into in Customer's name or, to the extent this is not achievable, procure the benefit to Customer of such Third Party Software Agreements. The terms and conditions of those agreements shall be subject to the Customer's prior written consent and shall entitle the Customer and its employees and contractors to benefit from the use of Third Party Software as required. At a minimum, the Contractor shall be responsible for the amounts payable to Third Parties under such Third Party Software Agreements.
- (c) For the purposes of this Agreement, Third Party Software also includes embedded Software upon which Hardware supplied by the Contractor depends.
- (d) The Customer shall notify the Contractor of the terms of any material Third Party Software Agreements entered into by it in force on the Effective Date (to the extent permissible under any confidentiality obligations under those agreements) and the Contractor shall use best endeavours to procure, at the Customer's option, and at the Contractor's expense, any Necessary Consents to make use of the Third Party Software by the Contractor to perform the Agreement.
- (e) The Contractor may not enter into any Third Party Software Agreement without the Customer's prior written consent. Where the Contractor proposes to enter into any Third Party Software Agreement after the Effective Date it shall first consult with the Customer with a view to reaching mutual agreement. In the event any Third Party Software Agreement is required by the relevant third party to be in the name of the Contractor, the Contractor may, subject to the consent of the Customer, enter into it provided that it shall be terminable (by the Customer only) and/or transferable at the Customer's option to the Customer or an incoming supplier at no additional charge and on the same terms and conditions on termination without restriction. The Contractor shall not place itself or the Customer in breach of Third Party Software Agreements.
- (f) The Contractor shall use reasonable endeavours to procure that the Source Materials for any Software licensed under a Third Party Software Agreement are placed in escrow on an industry standard tripartite escrow agreement. However, where the licensor of Third Party Software places the Source Code for the relevant Software in escrow in the normal course of its business the Contractor shall, at the Customer's request, procure that the Source Materials

are placed in escrow with a company of the Customer's choosing, on an industry standard tripartite escrow agreement.

- (g) The Contractor shall provide information relating to known bugs in the Third Party Software available from the provider of the Third Party Software, prior to the date of delivery thereof;

81. Software Specification Development

- 81.1 The Contractor shall prepare Software Specifications in accordance with the Requirements and Specifications and shall deliver said specifications to the Customer for approval in accordance with the Timetable.
- 81.2 During the development of Software Specifications, the Contractor shall keep the Customer advised of variations and additions thereto and shall discuss with the Customer any comments which the Customer may make upon the draft documentation.
- 81.3 In the event that the Customer requires amendments to the Software Specifications, which are outside the scope of the Requirements and Specifications, then, the Parties shall promptly commence good faith negotiations in order to agree such amendments together with suitable variations to the Timetable and/or the Price, within a period of thirty (30) days of the Customer written notification of the required amendments, in accordance with the Change Control Procedure.
- 81.4 Approval of Software Specifications shall be subject to the Acceptance Procedures.
- 81.5 Following approval of the Software Specifications, then the Customer may, at its sole option.
 - (a) authorise the Contractor to develop/configure the Software, based upon the Software Specifications; or
 - (b) notify the Contractor in writing of its decision to itself develop/configure the Software or
 - (c) alternatively, appoint a third party to develop/configure the Software, in which event the Contractor shall co-operate with the Customer and/or its alternative developer in order to ensure a smooth transfer of responsibility, know-how and delivery

provided that, where the Customer notifies the Contractor of its decision under Clause 81.5(b) above, the authorisation may be contingent upon the Services being provided by the Contractor's People engaged in the development of the applicable Software Specification.

81.6 Software Acceptance

- (a) In relation to the provision of Configured, Commissioned or Third Party Software, the Contractor shall, in accordance with the Timetable, deliver to the Customer:
 - (i) all Commissioned Software, Configuration and Third Party Software upon which the Solution depends, in object code form; and
 - (ii) the Source Code of each stage of the development of the Software or Configuration, together with the Source Code of the relevant existing Contractor materials in the electronic format agreed between the

Parties, including all ancillary materials necessary to enable a reasonably skilled programmer to correct, modify and enhance such Software/Configuration without reference to any other person or document. In addition, at the conclusion of the Contractor's development work, the Contractor shall deliver the Source Code and ancillary materials in respect of the entirety of the Software or Configuration, together with the Source Code of the relevant existing Contractor materials. The Contractor's supply of the Source Code in respect of existing materials shall be subject to the provisions of any applicable restrictions in respect of Third Party Software notified to the Customer by the Contractor or as otherwise agreed by the Parties; and

- (iii) copies of the test data and results of all in-house tests carried out by the Contractor on the Configuration prior to delivery of all Software and Configuration.
 - (iv) copies of all supporting information to include technical, training and end user documentation and manuals.
- (b) In relation to the provision of Contractor Software, the Contractor shall, in accordance with the Timetable, deliver to the Customer:
 - (i) all Contractor Software in object code form;
 - (ii) on request, copies of the test data and results of all in-house tests carried out by the Contractor on the Software prior to delivery; and
 - (iii) copies of all supporting information to include technical, training and end user documentation and manuals.
- (c) Following installation, Software shall be subject to the User Acceptance Tests and Acceptance Procedures. Payments for Software will be subject to a successful outcome from these procedures and formal acceptance of the Software or Configuration by the Customer.
- (d) For the period of engagement, the Contractor shall ensure that all documentation is kept at current release levels and available to all users.

81.7 Software Escrow

At the election of the Customer, the Contractor may be directed by the Customer to place, within thirty (30) days of the date of the grant of licence set out in Clause 78.2 (Contractor Software), the Source Code of the Contractor Software, together with associated design materials and documentation reasonably necessary in order to make proper use of the foregoing, in one or more escrow arrangements of the customers choosing, and shall, without delay, provide the Customer with copies of such relevant escrow arrangement(s), together with the confirmation document included therein, which the Customer may complete in order to register as a licensee or beneficiary thereunder. For the avoidance of doubt the foregoing reference to the Contractor Software shall include all subsequent releases and versions thereof, provided in accordance with the Services, which shall be lodged in escrow within thirty (30) days of their release date. The Customer shall be responsible for payment of escrow beneficiary costs to the third party provider of such escrow arrangement, and for reasonable set-up and verification type charges.

81.8 Software Warranty

The Contractor warrants and represents as follows, which shall apply in addition to those warranties set out in Clause 43 (Warranties and Representations) of the Agreement:

- (a) All Software and Configuration shall provide the functions and facilities set out in the Requirements and Specifications, Service Level Agreement (Schedule 3), relevant Lot Agreement(s), associated Software Specifications, and will fulfil the performance criteria, in both cases, in all material respects.
- (b) the User Documentation and the Training Services will provide adequate instruction to enable reasonably skilled and experienced personnel of the Customer to make proper use of the functions and facilities of the applicable element of the Software and Configuration;
- (c) the Contractor shall use Good Industry Practice to detect and delete commonly known viruses in all delivered Software, prior to the date of installation thereof; and
- (d) New versions, upgrades and new releases of the Contractor Software, Commissioned Software and Configuration shall be backward and forward compatible and shall not reduce the functionality or performance of the Software.

81.9 Software User Documentation

- (a) User Documentation shall consist of:
 - (i) in respect of Commissioned Software, Configuration and Contractor Software, the documentation set out in the Requirements and Specifications, Service Level Agreement (Schedule 3), relevant Lit Agreements(s) and associated Software Specifications;
 - (ii) in respect of the Third Party Software, the standard User Documentation, as provided to the Contractor by the third party service provider; and
- (b) User Documentation shall be provided in electronic format, where possible, in addition to such number of paper copies agreed between the Parties Representatives (subject to any applicable third party licence restrictions). The Customer may reprint User Documentation for the benefit of its users, subject only to any limitation set out in any applicable third party licence restrictions and without charge.

81.10 Software Support

- (a) The Contractor will be responsible for the support of all Software provided during development and implementation and, in the absence of a separate support contract, for a minimum period of 6 months thereafter.
- (b) Any additional Contractor responsibility for Software Support is defined by the Requirements and Specifications, the Service Level Agreement (Schedule 3) and the relevant Lot Agreement(s).

82. General Provisions Applicable to both Software and Hardware

- 82.1 Where it is agreed that the Contractor may use Customer Hardware for the provision of the Solution, Customer Hardware is expressly provided as is.
- 82.2 The Contractor acknowledges that Hardware Agreements are in place at certain Customer Sites. The Contractor will co-operate at all times with the parties to those Hardware Agreements to ensure the proper implementation of the System and the provision of Services.
- 82.3 The Contractor shall maintain from the Effective Date and throughout the remainder of the Term, an up-to-date inventory of all Software and Hardware necessary for the provision of the Solution. The Contractor shall make such inventory available to the Customer (using pre-defined templates containing such details as are required by the Customer) on the Effective Date and shall update the inventory on a monthly basis (or such other basis as may be agreed in writing between the Contractor and the Customer) thereafter and at the Customer's request, provide a copy thereof to the Customer or as it may direct from time to time and on termination.
- 82.4 If this Agreement expressly states that the Solution will be provided using specific items of Software, Hardware, equipment, materials or consumables, the Contractor shall use them and shall ensure that Software and Hardware used for the Services are in versions approved by the Customer. The Contractor shall not change the applications listed in the Contractor's Tender (or the version of such applications) or the hardware on which the applications are running, without the Customer's prior written consent (such consent not to be unreasonably withheld or delayed, or subject to unreasonable conditions).
- 82.5 The Contractor shall provide the Customer with full details of all Hardware, Software and system changes or upgrades scheduled to take place or which should take place during the Termination Period or six (6) months after termination, as well as details of any renewals or expiry of agreements that are to arise in the twenty-four (24) months after termination.
- 82.6 The Contractor shall manage all Software and Hardware used in the provision of the Solution in such a way that the Customer is able to exercise its rights under Clause 13 (Step In Rights).

PART FIVE

CONTRACT MANAGEMENT CLAUSES

This Part Five shall apply unless expressly excluded in the Official Purchase Order, Lot Agreement or Service Level Agreement.

83. Project Management and Service Delivery

- 83.1 The clauses in this Part 6 of the Agreement apply in circumstances where the Contractor is engaged in the delivery of a Solution in accordance with agreed milestones, Timetable, Term(s), Stage or Stages, Lots and/or Service Level Agreement(s). Such Solutions may include, for example:
 - (a) development of a Software, Hardware or systems solution;
 - (b) implementation of a Software, Hardware or systems solution;

- (c) deployment of a Software, Hardware or systems solution on one or more Customer Sites;
 - (d) provision of Supplies in accordance with a specific timeline;
 - (e) provision of Technical Support and Maintenance Services;
 - (f) provision of Professional Services or
 - (g) any combination of the above.
- 83.2 Contracts may be managed via a single Lot or multiple Lots that together, constitute the complete Agreement.
- 83.3 Where the Customer elects to manage the Agreement via multiple Lots, the Lot Letting Procedure set out in Clause 84 (Lot Letting Procedure) shall apply.
- 83.4 The timetable for delivery will be agreed with the Contractor and all payments will be based on successful attainment of milestones or completion of stages. Failure on the part of the Contractor to meet these milestones will incur penalties. The penalties that apply are outlined in Schedule 2 (Payment Schedule), relevant Lot Agreement(s) and Service Level Agreement(s).
- 83.5 The Solution provided must meet or exceed all quality and performance criteria defined in the Requirements and Specifications (Schedule 1), Service Level Agreement (Schedule 3) and the relevant Lot Agreement(s).

84. Lot Letting Procedure

- 84.1 The Parties acknowledge and agree that the Customer reserves the right to have the Agreement delivered in a number of separate lots, or work packages (“**Lots**”) under the procedure set out in Clause 84.2 below (the “**Lot Letting Procedure**”). Where this applies, in addition to the terms of this Agreement, the Contractor shall provide the Solution in accordance with a Lot Agreement (the “**Lot Agreement**”) in the form or substantially the form set out at Schedule 7 (Lot Agreement).
- 84.2 The Lot Letting Procedure shall comprise the following steps:
- (a) The Customer shall issue a “**Lot Request**” to the Contractor in the form or substantially in the form as set out in Schedule 7 (Lot Agreement).
 - (b) The Contractor shall have no less than five (5) and not more than thirty (30) days to respond to a Lot Request (a “**Lot Request Response**”).
 - (c) The Customer shall notify the Contractor within ten (10) days of receipt of the Lot Request Response whether or not its proposal:
 - (i) is accepted;
 - (ii) requires further information for consideration by the Customer; or
 - (iii) is rejected.
 - (d) In the event that the Customer notifies the Contractor that the Lot Request Response is accepted, the Lot Request Response shall thereupon be deemed to constitute a Lot Agreement setting out the agreed and binding terms and conditions applying to the relevant Lot to be delivered. The Contractor shall

commence implementing the Lot set out in the Lot Agreement within five days of notification of the acceptance of the Lot Request Response and complete it in accordance with the terms of the Lot Agreement and this Agreement and within the Timetable set out therein.

- (e) In the event that further information is required following receipt of a Lot Request Response, the Contractor shall supply such information to the Customer within a further period of ten (10) days. Within ten (10) days following receipt of the required additional information, the Customer shall confirm whether the amended Lot Request Response is approved in which case Clause 84.2(d) above shall apply (as if reference to the Lot Request Response was a reference to it as amended) or is rejected in which case Clause 84.2(f) shall apply.
- (f) In the event that the Customer rejects a Lot Request Response or an amended Lot Request Response (following a request for further information), the Contractor shall not deliver the Lot that was the subject of the Lot Request and the Customer shall reserve its rights to separately procure performance of that Lot.

84.3 Nothing in this Agreement shall compel the Customer to enter into any Lot Agreement with the Contractor.

85. Project Management

Unless otherwise agreed in writing with the Customer, the Contractor will be required to manage all development activity in accordance with the principles of Prince2 Project Management Methodology.

86. Management of Issues and Risks

The Contractor shall be required to maintain an issues and risks register throughout the Term. All issues and risks encountered during the provision of the Solution must be recorded on the register and actively managed by the Contractor. Key issues and risks must be highlighted to the Customer. The Customer shall be provided with access to the register.

87. Status Reporting

87.1 The Contractor shall submit to the Customer's Representative the reports required by the Requirements and Specifications in such numbers and at such times as provided therein (the "**Required Reports**"). The form of the Required Reports will be agreed with the Customer's Representative.

87.2 Such Required Reports may include, for example:

Type of Report	Frequency	Producer
Regular (Weekly/Monthly) Status Report (reporting key information weekly)	Weekly	Contractor
Service Quality Report (reporting against SLAs)	Monthly	Contractor
Manpower Utilisation / Budget Report	Monthly	Contractor

Type of Report	Frequency	Producer
(reports actual costs against budgeted)		
KPI Performance Report (reports the performance against KPIs for account management review)	Quarterly	Contractor
End of Lot Report	End of Lot	Contractor

88. Performance Monitoring

- 88.1 The Contractor shall maintain systems, procedures and controls which reflect the best practices of accountability in expending public funds, and will fully co-operate with the Customer in any reviews of such practices required by the Customer.
- 88.2 The Customer shall be entitled to inspect and review the performance and provision of the Solution by the Contractor and may arrange for an independent party to inspect and review the same throughout the Term.
- 88.3 The Customer's Representative may visit the Contractor's premises on reasonable written notice to review quality management processes and/or inspect the provision of the Solution. Such audits and inspection shall include, inter alia, the inspection, monitoring and assessment of the Contractor's premises, facilities, Contractor's People, records, equipment and procedures. The Contractor shall give all such assistance and provide all such facilities as the Customer's Representative may reasonably require for such audit or inspection.
- 88.4 To the extent applicable, specific requirements in relation to performance targets or measures relating to the Solution will be set out in the Requirements and Specifications, Service Level Agreement(s) and relevant Lot Agreement(s).

89. Representatives and Contract Management Review

- 89.1 Governance arrangements must be established to provide the level of project assurance required by the Customer. At a minimum, the Contractor shall assign a Project Manager for the duration of the engagement to ensure that the Solution is delivered on schedule, on budget and to the quality standards defined and expected. The Project Manager will also be responsible for status reporting.
- 89.2 The Contractor and the Customer shall also each designate in writing one (1) individual to serve as its "**Representative**". The Representative shall have authority to issue, execute, grant or provide any approvals, requests, notices or other communications required hereunder or requested by the other Party.
- 89.3 "**Review Meetings**" will be held at regular intervals, in relation to matters affecting the provision of the Solution. Each Parties' Representative, as well as appropriate additional personnel, shall meet at a location designated by the Customer to discuss the progress made by the Customer and the Contractor in the performance of their respective obligations hereunder during the preceding agreed period.
- 89.4 Not less than five (5) Working Days prior to a Review Meeting, the Contractor shall provide a progress report to the Customer (in a form agreed between the Parties) in

respect of the progress since the previous Review Meeting. This progress report will include:

- (a) A summary of progress since the previous Review Meeting
- (b) A summary of any instances of non-compliance with this Agreement;
- (c) A summary of issues and risks raised, resolved and outstanding;
- (d) Any issues and items for consideration under the Change Control Procedure;
- (e) Any expected or likely failures to comply with the Service Levels (where applicable);
- (f) Issues in relation to the management of the Contractor's People;
- (g) A summary of monies received by the Contractor and invoices outstanding;
- (h) Written details of any issues with the Solution or Service;
- (i) Any anticipated potential delays or any overruns in the implementation plan; and
- (j) Any other matters that the Customer may reasonably request.

89.5 Discussions at Review Meetings shall include reviewing:

- (a) the previous Review Meeting minutes (and approving them);
- (b) the progress report in respect of the preceding period;
- (c) compliance with this Agreement generally;
- (d) if applicable, service delivery issues, including compliance with Service Levels and achieving key performance targets;
- (e) the issues and risks register and discussing proposed solutions for items not yet resolved, contained or mitigated;
- (f) issues and risks associated with this Agreement and raised by either Party and discussing proposed solutions for them;
- (g) any issues for consideration under the Change Control Procedure.

89.6 At each Review Meeting, the Parties' Representatives shall agree the minutes of the immediately preceding Review Meeting, which shall be prepared by the Customer and signed by both Parties' Representatives.

89.7 Within thirty (30) Working Days of the Effective Date a **"Review Board"** shall be established by the Parties, which shall typically consist of the following persons:

- (a) The Customer Project Sponsor/Project Executive/Senior Responsible Owner (as each party is identified to the Contractor by the Customer);
- (b) The Contractor Representative with overall responsibility for delivery of the Solution;
- (c) Contractor Project Manager;

- (d) Customer Project Manager; and
 - (e) other nominated and agreed personnel.
- 89.8 The Customer and the Contractor shall each be entitled to change any of its nominated Representatives on the Review Board with suitably senior and experienced replacements, by giving not less than fifteen (15) Working Days written notice of such change to the other Party, as soon as reasonably practicable and, in any event, prior to any meeting of the Review Board. The replacement nominated Representative shall be reasonably acceptable to the other Party, who shall communicate any concerns in relation to the replacement nominated Representative within ten (10) Working Days of receipt of notice, which concerns shall be discussed between the Parties in good faith. The Parties recognise the mutual benefit of maintaining nominated Representatives agreeable to the other Party.
- 89.9 The Customer and the Contractor shall use their reasonable endeavours to ensure that:
- (a) persons suitably qualified to consider the matters on any agenda circulated, as set out below, attend the relevant Review Board meetings;
 - (b) meetings of the Review Board shall be held at regular intervals;
 - (c) unless agreed to the contrary by the Customer, the Review Board meetings shall be held at Customer Sites, during normal business hours;
 - (d) an agenda of any proposed Review Board meeting shall be prepared by the Contractor in consultation with the Customer and circulated in sufficient time prior to any meeting to enable all Review Board members to attend the meeting well prepared. The agenda may include matters such as those referred to in Clause 89.5 above and such other relevant matter appropriate to raise and discuss at Review Board level.
- 89.10 The Review Board shall discuss the matters referred to in the agenda and such other relevant matters to the ongoing performance and operation of this Agreement as is necessary or appropriate.
- 89.11 Minutes of Review Board meetings shall be prepared by the Contractor and a report (based on the minutes) shall be prepared by the Contractor (the “**Review Board Report**”) and circulated to the Review Board not more than five (5) Working Days following a Review Board meeting, setting out in detail all matters discussed by the Review Board at any relevant meeting and, in particular, indicating any matters which have been discussed and agreed and/or disagreed. Should any matter not be agreed, the Review Board Report should indicate what steps the Review Board propose to take to settle the relevant matter, including whether the recommendation of the Review Board is that the matter should be referred to the Dispute Resolution Procedure for resolution.
- 89.12 Following the circulation of the Review Board Report, and subject to any agreed changes to it, the relevant Report will be approved by the Parties, which shall then be deemed to be an authoritative record of the matters discussed and agreed. The Contractor shall at all times act reasonably and in good faith in agreeing the minutes and Review Board Report.
- 89.13 In the event that either Party requires ad-hoc meetings (either Review Meetings or Review Board meetings) with the other Party or third parties to discuss particular

aspects of the performance of its contractual obligations, it shall provide the other Party with not less than five (5) Working Days' notice of such request.

90. Contractor's People

- 90.1 The Contractor shall ensure that its People, Officers, Sub-contractors and Assignees (which includes Key Personnel):
- (a) are suitably qualified and experienced and of an appropriate number to perform the Agreement;
 - (b) endeavour to cause as little disruption to employees or business of the Customer at any of its Sites; and
 - (c) comply with the terms of this Agreement.
- 90.2 The Contractor shall ensure that each of the Key Personnel are available to assist in performing the Agreement in their respective roles.
- 90.3 In the event that any such Key Personnel become unavailable, for whatever reason, the Contractor shall use its reasonable endeavours to replace the Key Personnel with persons who are no less experienced and qualified to assist in the performance of the Agreement as the original Key Personnel, and shall request the Customer's prior consent to such replacement.
- 90.4 The Customer may reasonably object (whether in writing or at a Review Meeting) to the continued allocation of certain named personnel to the provision of the Solution, which objection shall be made in good faith and for service delivery and/or performance related reasons, which shall not be frivolous or vexatious. Following receipt of the Customer objection, the Parties shall discuss in good faith the reallocation of the Contractor resources in order to accommodate the Customer objection.
- 90.5 The Contractor shall promptly, following such good faith discussions, replace such personnel with another individual of no less ability, training and qualifications, to whom the Customer has agreed (such agreement not to be unreasonably withheld or delayed) prior to their commencing work.
- 90.6 The Contractor shall be solely responsible for ensuring, in so far as reasonably possible, a continuity of Contractor resources allocated to the performance of the Agreement.
- 90.7 The Contractor shall use its commercially reasonable endeavours to minimise turnover in the Contractor's People, subject to the normal promotions, demotions, discipline procedures and other employment procedures operated by a Party.
- 90.8 The Contractor shall be solely responsible for:
- (a) paying all salaries, wages, benefits and other compensation that the Contractor's People or other employees of the Contractor, may be entitled to receive in connection with the performance of the Agreement.
 - (b) fully complying with all relevant Legal Requirements relating to employment and health and safety at work and such other rules (including Customer Policies) governing the conduct of Contractor's People as have been notified to the Contractor by the Customer in writing.
- 90.9 The Contractor shall keep proper records (including time sheets) showing the time worked by Contractor's People. Other than in the case of a fixed price contract, the

Contractor shall make these records available for inspection and copying by the Customer upon receipt of a request to do so by the Customer.

- 90.10 Each Party will be responsible for the supervision, direction and control of its own personnel in relation to this Agreement. The Contractor, as employer of the Contractor's People shall assume full responsibility and liability for the actions of the Contractor's People.
- 90.11 The Parties agree that the 2003 TUPE Regulations do not apply to the performance of the Agreement and no employees or any other persons shall transfer to the Customer on entry into, termination or expiration of this Agreement howsoever or whenever arising.
- 90.12 If, notwithstanding Clause 90.11 above, the 2003 TUPE Regulations do apply to the transfer of employment as between the Contractor and the Customer (arising as a result of the entry into or the termination of this Agreement) the Contractor shall indemnify and keep indemnified the Customer against any and all reasonable costs, claims, losses, liabilities and expenses which the Customer may incur arising out of or in connection with the employment or termination of employment of any staff member the subject of the 2003 TUPE Regulations in connection with the provision of the Solution.

PART SIX

DISPUTE RESOLUTION PROCEDURE

This Part Six applies to the procurement of both Services and Supplies.

91. Amicable Dispute Settlement

- 91.1 If any dispute arises between the Parties, the Parties shall first make every effort to settle the dispute amicably as follows:
 - (a) Any dispute is to be notified in writing by a person at senior management level in one Party to a person at senior management level in the other Party;
 - (b) The senior parties will have six (6) days in which to resolve the dispute.
- 91.2 The Parties agree that they shall bear their own costs in the procedure set out in this Clause 91.

92. Mediation

- 92.1 If a dispute is not resolved under the amicable dispute settlement (above), then save in respect of a dispute referred to by agreement to the Expert under Clause 92.6 below, the Parties shall follow the Dispute Resolution Procedures set out in this Clause 92.
- 92.2 Any Party shall give to the other Parties a written notice of the dispute or difference (a "**Dispute Notice**"), setting out its nature and such particulars as shall be then available to that Party. Within ten (10) Working Days of a Dispute Notice being deemed to have been duly served in accordance with Clause 36 (Notices and Communications) all the Parties shall consult and negotiate with each other and, recognising their mutual interests, shall attempt to reach a binding settlement in writing satisfactory to all the Parties.
- 92.3 If all the Parties do not reach a binding settlement in writing within a period of ten (10) Working Days (the "**Negotiating Period**") of the date on which the Dispute Notice shall be deemed to have been duly served in accordance with Clause 36 (Notices and

Communications), then any Party may, by a further written notice served on all the other Parties in accordance with Clause 36 (Notices and Communications), within a further period of ten (10) Working Days commencing on the Working Day following the expiry of the Negotiating Period, request mediation of the dispute or difference.

92.4 Unless otherwise agreed in writing between the Parties:

- (a) The mediator shall be nominated at the request of either Party by the International Centre for Dispute Resolution (the “**ICDR**”) in accordance with the rules of ICDR and the mediation shall be conducted in accordance with the international mediation rules of the ICDR, in each case being the relevant rules for the time being and from time to time in force;
- (b) The costs of the mediator shall be borne and discharged as to 50% by the Contractor and as to the remaining 50% by the Customer, and the costs of all experts and any other third parties who, at the request of any Party, shall have been instructed in the mediation, shall be for the sole account of, and shall be discharged by, that Party;
- (c) The mediation shall be conducted in Dublin, Ireland, at a venue agreed upon by the Parties and the mediator or, failing such agreement, at a venue selected by the mediator in his discretion;
- (d) The mediation shall commence not later than twenty (20) Working Days following a request for mediation being made in accordance with the provisions of Clause 92.3 above;
- (e) Decisions of the mediator shall in the absence of manifest error, be final and binding and not subject to appeal.

92.5 In the event that:

- (a) Mediation is not requested within the period of ten (10) Working Days commencing on the Working Day following the expiry of the Negotiating Period;
- (b) Having been so requested, the mediation does not take place within twenty (20) Working Days of the request for mediation;
- (c) A binding settlement in writing is not reached within ten (10) Working Days after commencement of the mediation.

And, in any such case, the dispute or difference referred to in Clause 92.1 remains unresolved, the provisions of Clause 93 (Arbitration) shall apply as regards any such unresolved dispute or difference.

92.6 92.6

- (a) If a dispute or difference arises between the Parties that is not of a material technical nature nor relating to a material financial matter, the Parties may refer such dispute, by agreement in writing between the Parties, for final determination to the Expert (as hereinafter defined).
- (b) The expert for the purposes of this Clause 92 shall be an independent Party who has expertise in the area giving rise to the dispute (the “**Expert**”) appointed by agreement by the Parties or, in default of agreement on such appointment, on the application of either Party, by the President for the time

being of the Law Society of Ireland or his duly appointed deputy, who shall carry out his functions in accordance with the following:

- (i) in making a determination, the Expert shall act as an expert and not as an arbitrator and his decision shall (in the absence of manifest error (and the Expert shall give reasons for his determination)) be final and binding on the Parties;
- (ii) the Expert shall afford both Parties a reasonable opportunity to be heard and to state their respective cases and to advance arguments or evidence in support of their respective positions;
- (iii) each Party shall bear the costs and expenses of all counsel and other advisers, witnesses and employees retained by it and the costs and expenses of the Expert shall be borne by the Parties in the proportions the Expert may direct or, in the absence of direction, equally;
- (iv) subject to any rule of law or of any regulatory body or any provision of any contract or arrangement entered into prior to the date of this agreement to the contrary the Parties shall afford as soon as reasonably practicable upon request to the other and their respective agents and to the Expert all facilities and access to their respective premises, personal papers, books, accounts, records, returns and other documents as may be in their respective possession or under their respective control as may be required by the Expert to make his determination as soon as possible following his appointment;
- (v) work and activity to be carried out under this Agreement shall not cease or be delayed by this Dispute Resolution Procedure; and
- (vi) the Parties and the Expert shall treat as confidential all information obtained in relation to the reference to the Expert, the fact that a dispute has been referred to the Expert, its occurrence and the decision of the Expert arising therefrom.

93. Arbitration

93.1 Any dispute that is referred to in this Clause 93 shall be finally settled by arbitration in accordance with the UNCITRAL Model Law as provided for in the Arbitration (International Commercial) Act 2010.

93.2 For purposes of those rules, the person or body to appoint the arbitrator, if not agreed by the Parties, is the ICDR.

94. Jurisdiction

Subject to the above provisions of Clause 91 (Amicable Dispute Settlement), Clause 92 (Mediation) and Clause 93 (Arbitration), the Parties submit to the jurisdiction of the Irish courts to settle any dispute that may arise out of or in connection with the Agreement.

95. Agent for Service

If the Contractor has notified the Customer of an agent for service of legal proceedings on the Contractor, the Contractor confirms to the Customer that it has irrevocably appointed that person as its agent for the service of all documents relating to legal proceedings, and that failure

of the agent to notify the Contractor of receipt of a document will not invalidate any proceedings or the service of the document.

96. Obligations to continue during a Dispute

Despite the existence of a dispute, the Parties shall continue to perform their obligations under the Agreement in good faith.

97. Confidentiality

The Parties and mediator or arbitrator shall treat as confidential all information obtained in relation to the reference to the mediator or arbitrator, the fact that a dispute has been referred to the mediator or arbitrator, its occurrences and the decision of the mediator or arbitrator arising therefrom.

IN WITNESS WHEREOF this Agreement is executed by the parties as follows:

Signed by
for and on behalf of the
HEALTH SERVICE EXECUTIVE:

.....
Name (printed) Title (e.g. GM Finance) Signature Date

.....
Name (printed) Title (e.g. GM Finance) Signature Date

.....
Name (printed) Title (e.g. GM Finance) Signature Date

.....
Name (printed) Title (e.g. GM Finance) Signature Date

Signed by
for and on behalf of
[SUPPLIER NAME]:

.....
Name (printed) Title (e.g. GM Finance) Signature Date

.....
Name (printed) Title (e.g. GM Finance) Signature Date

SCHEDULE 1

REQUIREMENTS AND SPECIFICATIONS

As stated in the Invitation to Tender document

SCHEDULE 2

PAYMENT SCHEDULE

Tenderers will propose a payment milestone with their tender response for consideration by the HSE

SCHEDULE 3

SERVICE LEVEL AGREEMENT

[Appropriate Service Levels can only be determined on the basis of a specific System and Services. Below are the HSE's minimum requirements in relation to Support and Maintenance Services]

[INSERT PROJECT NAME HERE]

1. Introduction

- (a) This Schedule describes the Service Levels for the services ("Support Services") that the Contractor will provide to the CUSTOMER in consideration of payment by the CUSTOMER of the relevant charges for such services as described in the payments Schedule 2 (Payment Schedule), together with the working arrangements to be deployed by the CUSTOMER and the Contractor concerning Support Services.
- (b) Definitions and interpretations governing this Schedule are as set out in the CUSTOMER Standard Terms for ICT Services and Supplies Agreement.
- (c) The Contractor has agreed to provide Support Services in respect of the System as deployed at the CUSTOMER Premises.
- (d) Support Services shall continue until expiry of this Agreement or this Agreement is terminated under the terms of the Agreement.
- (e) Hours for Support Services

"Normal Service Time" shall be defined as Monday to Friday 09:00 to 17:00 excluding Irish public holidays.

"Emergency Cover Time" shall be defined as those hours within a full 24 hour day excluding Normal Service Time, for every day of each year, including Irish public holidays.

2. Support Services Components

The Contractor shall provide Support Services for the System. These support and maintenance services include any changes required such as bug fixes or emergency fixes and the investigation and resolution of issues resulting in operational problems, including System downtime.

- (a) The Parties agree that the following shall not be included within the scope of the Support Services:

Any problems with, or malfunctions of, hardware and/or peripherals which are not attributable to problems, malfunctions or performance degradation of the configured System.

For the avoidance of doubt, the Contractor shall deal with any problems, malfunctions, performance degradation with the System to assist in identifying whether the source of the problem lies with the relevant hardware and/or peripheral(s);

- (b) For the avoidance of doubt, the Contractor shall comply with CUSTOMER's reasonable demands when the CUSTOMER encounters an event which, although outside the scope of normal Support Services for the System, impinges on the proper functioning of the System. Such an event, typically a Force Majeure or Disaster type event, may require Contractor assistance to ensure the proper and continuing functioning of the System. As soon as possible after the occurrence of such an event, the CUSTOMER will establish contact with the Contractor and outline the requirements and timelines to the Contractor to ensure re-establishment of the System. In a Disaster scenario for example the CUSTOMER would likely require all relevant Contractor's People to be available as and when advised by the CUSTOMER to validate proper functioning of the System on re-establishment of the System by the CUSTOMER or Third Party.
- (c) For any and all problems with Third Party Software not supplied by the Contractor save however where such Third Party Software interacts with the System, the Contractor shall be obliged to investigate the source of the problem, identify same and to eliminate any problems with the System so as to enable correction of any problems with the relevant Third Party Software.

3. Support Services Personnel

- (a) The Contractor will make available to the CUSTOMER a number of personnel for the provision of Support Services under this Agreement ("Support Services Personnel").
 - (i) The Contractor must ensure that all Support Services are provided by well trained staff who have the requisite knowledge and experience of the System as used by the CUSTOMER.
 - (ii) The Support Services Personnel must have extensive communications proficiency in both written and spoken English.
 - (iii) The Contractor must agree in advance with the CUSTOMER the exact number of Support Services Personnel to be allocated for the provision of Support Services. Support Services Personnel with specific knowledge, training and background in the System will be required.
 - (iv) Any changes to the number, composition or skill set of the Support Services Personnel must be agreed with the CUSTOMER at least one month in advance of any proposed change.
 - (v) In the event that the Support Services Personnel cannot perform their duties due to any leave type the Contractor must inform the CUSTOMER of the event at the earliest possible opportunity and agree with the CUSTOMER contingency provisions to be put in place to ensure continuity of service.
 - (vi) The Contractor must strive to provide, and the CUSTOMER must be assured of receiving a consistent complement of skilled, knowledgeable and experienced Support Services Personnel.
 - (vii) Turnover of Support Services Personnel must be kept to a minimum.

- (viii) The Contractor must ensure that the necessary network and communications infrastructure is in place to allow the Support Services Personnel to access the CUSTOMER systems as required either from within the CUSTOMER or remotely utilising remote access and remote desktop / server management tools.
- (ix) The Contractor must provide contact information that can be used during Emergency Cover Time to report Priority 1 and Priority 2 Incidents.
- (b) The functions of the Support Services Personnel are:
 - (i) to resolve all Incidents logged by the CUSTOMER;
 - (ii) to provide a day to day point-of-contact for the CUSTOMER to access Support Services;
 - (iii) to receive, respond and update all CUSTOMER calls for technical enquiries and Incidents (as defined below);
 - (iv) to manage and monitor Incidents until Resolution is achieved;
 - (v) to document the details of each Incident in an issue tracking system;
 - (vi) to carry out the initial analysis and impact on service of each Incident;
 - (vii) to record Incident Priority on advice of the relevant CUSTOMER staff;
 - (viii) to respond to general questions and queries, as appropriate;
 - (ix) to continuously track Incidents and update their status on an issue tracking system;
 - (x) to escalate Incidents via the agreed incident management and escalation process;
 - (xi) to inform the CUSTOMER of actions being taken by the Contractor to resolve each Incident and the estimated Resolution Time;
 - (xii) to carry out periodic analyses of Incident activity;
 - (xiii) to provide System configuration changes as requested by the CUSTOMER and to have responsibility for the integrity of the changes made to the System configuration as part of Support Services;
 - (xiv) to assist in end user testing and provide technical support and advice during end user testing;
 - (xv) to be responsible for quality assurance and deployment of any configuration changes to the System in production requested by the CUSTOMER;
 - (xvi) to be responsible for the integrity of the System in production;
 - (xvii) to assist in the testing and application of service packs, patches and other System updates;
 - (xviii) to provide technical input and support for short, medium and long term planning;

- (xix) to develop and maintain technical documentation in a format to be agreed with the CUSTOMER;
 - (xx) to develop a training programme if the CUSTOMER chose to provide some or all training in-house. The extent of this Training programme will be based on the Contractor's proposal and subsequent discussion with the CUSTOMER. Once a specification is determined, periodic assessment and review of the progress of the Training programme will be established between the Contractor and the CUSTOMER; and
- (c) Throughout the Term of this Agreement, the CUSTOMER shall:
- (i) nominate the personnel who can contact the Support Services Personnel on behalf of the CUSTOMER;
 - (ii) keep the Contractor informed of these nominations;
 - (iii) ensure that all CUSTOMER users know how to access support via the nominated personnel, and
 - (iv) ensure that infrastructure and Third-Party Software enquiries are not directed to the Support Services Personnel.

4. Incident Management

- (a) An "Incident" is defined as any defect or failure in the System that prevents it from operating in accordance with its normal use, including without interruption or delay or failure to perform to its usual level of functionality.
- (b) The CUSTOMER will log Incidents with the Contractor.
- (c) Each Incident shall have a Priority specified by the CUSTOMER that is based on the Incident's Impact and Urgency and that identifies the relative importance of the Incident. The Impact shall be a measure of the effect of the Incident on the CUSTOMER. The Urgency shall be measure of how long it will be until an Incident has a significant Impact on the CUSTOMER. The Priority shall be determined based on the Incident's Impact and as described in the table below.

Incident Priority				
		Urgency		
		High	Medium	Low
Impact	Critical	1	2	3
	High	2	3	4
	Medium	3	4	5
	Low	4	5	5

- (d) Throughout the Term of this Agreement, the Contractor shall ensure that its Support Services Personnel use an issue tracking system to maintain a comprehensive record of all Incidents, including the Priority of each and the actions taken to achieve their Resolution.

- (e) Incidents may be communicated by either telephone or electronic mail or other means agreed between the Parties, however all Incidents must be recorded and logged in the issue tracking system.
- (f) If a Priority 1 or Priority 2 Incident occurs during Emergency Cover Time, the Contractor shall ensure that the CUSTOMER has continuous direct access by telephone to the Support Services Personnel so as to enable effective access to Support Services at all times.

5. Resolution of Incidents

- (a) The Contractor shall respond to and fix all Incidents logged by the CUSTOMER in the course of their use of the System.
- (b) Every effort shall be made by the Contractor to resolve each Incident at, or shortly after, the first point of contact.
- (c) The following table defines the timescales within which Incidents will be dealt with and resolved by the Contractor. The Priority for each Incident shall be specified by the CUSTOMER (acting reasonably) when it reports the Incident and updated as soon as practicable after it becomes aware of any change in the Priority of the Incident in question. The Contractor shall not change or downgrade the Priority assigned without prior agreement of the CUSTOMER.

Priority	Examples	Response Time	Resolution Time Threshold
1	The System is unavailable or unusable at one or more CUSTOMER Premises.	30 mins	4 hours
2	One or more key functions cannot be completed or the System is severely limited in its usability with no alternative workaround available at one or more CUSTOMER Premises.	30 mins	8 hours
3	A non-critical feature (such as an operational report) is not operating correctly. There is a critical problem affecting one person or a small number of people.	60 mins	3 days
4	A non-operational feature (such as an administration function or a statistical report) is not operating correctly. A key function is not available to one person or a small number of people.	60 mins	1 week
5	Users are inconvenienced by a problem but can continue to perform normal work with an alternative workaround.	120 mins	4 weeks

[The table above provides examples of the issues that may arise, to be agreed during finalisation of the contract. The list is not intended to be exhaustive.]

- (d) A “Response” is a communication from the Contractor to the CUSTOMER acknowledging receipt of the Incident report and informing the CUSTOMER that the Contractor has commenced diagnosis of the Incident.

- (e) The “Response Time” is the time taken by the Support Services Personnel to assess each Incident once reported by the CUSTOMER and to provide a Response to the CUSTOMER. The Response Time commences upon notification of the Incident either verbally or electronically to the Contractor.
- (f) “Resolution” is defined as a solution to an Incident, supplied to and acceptable to the CUSTOMER to enable continuation of the CUSTOMER’s business and its use of the System in the same way as before the Incident arose. In providing a Resolution the CUSTOMER acknowledges that an interim Resolution or fix may be required to enable the continuation of the CUSTOMER business.
- (g) The “Resolution Time” is the time to be taken by the Support Services Personnel to provide a Resolution to the Incident. The Resolution Time commences upon notification of the Incident either verbally or electronically to the Contractor.
- (h) Response and Resolution Times shall be measured during Normal Service Time and Emergency Cover Time for all Priority levels.
- (i) Where it becomes evident that the Response and Resolution of an Incident will take place outside the hours of normal working hours (e.g. Incident reported at end of a working day or end of a working week, or prior to a public holiday), the Contractor must ensure that its staff is available to carry out the necessary Resolution of these Incidents as per the Response and Resolution Times schedule above.

The Response and Resolution Times listed above assumes that the Contractor has access to the System in order to resolve the Incident and that the necessary CUSTOMER’s People are available within the timescales required to enable the Contractor to meet their obligations set out in this Agreement

6. Escalation Process for Incidents

The CUSTOMER shall operate an internal escalation process for all Incidents logged.

- (a) The Contractor shall operate an escalation process for all Incidents logged.
- (b) The process will commence with the logging of the Incident by the CUSTOMER.
- (c) Typically for a Priority 1 or Priority 2 Incident a conference call will be held with all relevant parties to discuss the Incident. The Contractor will be required to propose a Resolution of the Incident on this call, and outline timescales for Resolution and next steps.
- (d) If the CUSTOMER is not satisfied with how any Incident is being dealt with or resolved by the Contractor personnel, the CUSTOMER may escalate the Incident to the appropriate Contractor personnel, initially to the relevant account manager but ultimately this will include the managing director of the Contractor or any equivalent staff member, if the title of this post should change. The appropriate person shall take any action necessary within his/her level of responsibility to effect a full Resolution of the problem for the benefit of the CUSTOMER.

7. Technical Assistance in the Resolution of Incidents

- (a) The Contractor undertakes to make available duly qualified staff to deal with any queries or problems communicated by the CUSTOMER at any time.

- (b) Where Support Services Personnel are unable to resolve Incidents logged, the Contractor undertakes to provide the required suitably qualified personnel to assist the nominated staff to resolve the Incident as soon as possible.
- (c) Where an Incident cannot be resolved utilising remote access, the Contractor will locate personnel at no extra cost to the most appropriate CUSTOMER site determined to be suitable for resolving the Incident. Personnel in these circumstances will be required to remain on site until the Incident is resolved.

8. Availability Guarantees

- (a) The Contractor acknowledges and agrees that, following its Acceptance, the System is required to be Available for operational use by the CUSTOMER 24 hours per day, 7 days per week and 365 days per year (366 days in a leap year) provided that:
 - (i) it is used on agreed Hardware; and
 - (ii) the unavailability has not been caused by an event of Force Majeure, down-time agreed in advance in writing with the CUSTOMER, by use of the System outside of the permitted use, a negligent act or negligent omission of the CUSTOMER, its employees, servants, contractors or agents, a failure of hardware, network component or other component, in each case, not provided by Contractor and which is outside of its control.

“Available” means that the System is ready for and capable of full operation, execution and use at the Premises(s) nominated by the CUSTOMER.

- (b) Availability will be measured as the time in any period during which it is planned that the System will be operational, minus any time recorded in that period during which the System is unavailable. The elapsed time during which the System is unavailable will be measured from the time that the Incident is reported to the Contractor to the time that the Incident is resolved and the System becomes fully available.

The System is deemed to be unavailable if one or more of the key functions of the System are unavailable on one or more CUSTOMER Premises and there is no workaround possible, or the System has slowed down due to a failure with the System such that Response Times make the System unusable, and/or there is a problem which has caused or has the potential to cause a critical impact on the provision of services or a significant financial loss to the CUSTOMER. The System shall not be deemed unavailable if the CUSTOMER supplied ICT infrastructure is not available or non-performant.

- (c) The Contractor shall ensure that the System is 99% Available¹. Even with agreed preventative maintenance tasks scheduled for any period, the System must still maintain these availability levels during these housekeeping duties with no loss of System performance.
- (d) Planned Unavailability
 - (i) Contractor will use appropriate techniques to ensure that periods when the System is unavailable can be kept to the minimum.
 - (ii) The maximum duration of any one period of Planned Unavailability is 1 hour. The maximum total of all Planned Unavailability in a quarterly measurement

¹The System shall be unavailable for less than 22 hours over 3 consecutive months.

period shall be 4 hours and in an annual measurement period shall be 12 hours, unless previously agreed in advance by the Parties.

- (iii) When Planned Unavailability is required, Contractor shall seek the consent of the CUSTOMER a minimum of 7 days prior to the requirement and the CUSTOMER shall not unreasonably withhold or delay consent for such Planned Unavailability.
- (iv) In seeking consent Contractor shall advise the CUSTOMER of the following:
 - (I) elements of the System to be interrupted;
 - (II) impact on users/processes;
 - (III) reason for interruption;
 - (IV) estimated period of interruption;
 - (V) plan for work to be done during downtime;
 - (VI) Contractor personnel participating in the work;
 - (VII) any sub-contractor or third parties participating in the work;
 - (VIII) testing procedure to determine success or failure of the work;
 - (IX) recovery plan to be used if the work cannot be completed in the time allowed or if the work is unsuccessful.
- (v) Once consent has been granted, the CUSTOMER shall inform all affected end-users;
- (vi) During any periods of Planned Unavailability for which the CUSTOMER has granted consent, the Service Desk shall operate as normal and Contractor will continue to work to remedy any problems or faults logged with its helpdesk. To the extent only that any problem or fault is caused by the Planned Unavailability or Resolution is prevented by it, the recording of Resolution Times and addition of service failure points shall be suspended.
- (vii) If Contractor no longer requires the Planned Unavailability Contractor will notify the CUSTOMER at least one day in advance of the previously agreed date for the Planned Unavailability.

9. Support Services Remedies

- (a) The provision of Support Services will be assessed on a monthly basis by reference to the monthly reports received. At the end of each month, in the event that the Resolution Times for any Incidents have exceeded the Resolution Time Threshold, Service Credits will be applied as per the table below;

Priority	Service Credits for Exceeding Resolution Time Threshold (for each Incident)	Service Credits for Each Additional Day ² without a Resolution (for each Incident)
1	5	5

² Applies to each calendar day (or part thereof) commencing on the day after the resolution time threshold was exceeded

2	4	4
3	3	0
4	2	0
5	1	0

Service Credits will be accumulated for all Incidents exceeding the Resolution Time Threshold during the month. Each Service Credit shall equate to a refund of 0.5 per cent of the monthly Support Services charge for the System.

- (b) The availability guarantees will be assessed on a quarterly basis by reference to the monthly reports received. At the end of each quarter, in the event that the unavailability has exceeded the agreed rate, Service Credits will be applied. For each 10 hours or part thereof that the System was unavailable in excess of the agreed rate, 4 Services Credits will be applied.
- (c) Service Credits will be accumulated for unavailability on a quarterly basis. Each Service Credit shall equate to a refund of 0.5 per cent of the monthly Support Services charge for the System.
- (d) The Contractor shall be in material breach of this Agreement if the number of Service Credits exceeds a total of 30 for any 3 consecutive months or if the total number of hours that the System was unavailable exceeds a total of 72 hours for any 3 consecutive months.
- (e) In the event that any refunds apply under the terms of this clause, the Contractor shall refund the CUSTOMER within 30 days of the date of the receipt of an invoice for such refund from the CUSTOMER. The CUSTOMER shall be entitled to offset refunds against any future payments due.

10. Service Reports

Throughout the Term of this Agreement the Contractor shall provide the CUSTOMER with a number of reports which will be used to monitor performance of the Agreement on an ongoing basis. Reporting formats will be agreed in advance with the CUSTOMER.

Key reports to be delivered by the Contractor include:

- (a) Monthly activity and performance report of all Incidents occurring in the System. The reports shall be supplied to the CUSTOMER no later than the 10th working day after the end date to which the reporting period relates. The reports should cover but not be limited to the following:
 - (i) Resolution of Incidents, in accordance with the requirements set out in Response and Resolution Times Table above and the meeting by the Contractor of its obligations under those requirements;
 - (ii) Availability of the production System for the reporting period based on an analysis of Incidents logged relating to unplanned unavailability and planned unavailability;
 - (iii) Performance of the Instances for the reporting period, including details of any critical events or repetitive non-critical events noted in the System;
 - (iv) Recommendations for any changes in the System to support performance and availability;

- (v) Incident management activity for the period.
- (b) Weekly status reports reporting key information weekly in a format to be agreed with the Contractor for inclusion in the CUSTOMER's weekly status report.
- (c) Manpower utilisation/ resource reporting – weekly report outlining activities to be undertaken by Support Services Personnel each week.
- (d) Monthly KPI (Key Performance Indicators) Report - for review at monthly contract review meetings.

11. CUSTOMER Responsibilities

The CUSTOMER is responsible for and undertakes to:

- (a) Provide the Contractor with all the required information to allow the Contractor to provide Support Services. This information will be contained in a mutually agreed specification prepared by the CUSTOMER and reviewed by the Contractor prior to making any changes to the System. CUSTOMER Representatives will review and approve as per the user acceptance testing procedures any changes to the System prior to the Contractor making such changes and applying them to the production System;
- (b) save in the case of emergency or escrow release, not allow any persons other than the Contractor, its authorised representatives, or agents to modify, alter or enhance the System;
- (c) notify the Contractor as soon as possible if the System is not operating correctly;
- (d) inform the Contractor immediately following its having become aware of any material loss of or damage to the System, or any part thereof;
- (e) allow the Contractor access to inspect the System where necessary in order to carry out Support Services; and
- (f) have appropriate personnel available within timescales required to enable the Contractor to meet their obligations set out in this Agreement.

12. Upgrade Services

- (a) The term Upgrade shall mean the enhancement, update, modification, adaptation, or replacement of the System, or some part(s) of the System, by the Contractor from time to time for the purposes of extending the functionality of the System and keeping the System up to-date with changing business and technical requirements.
- (b) The Contractor shall notify the CUSTOMER in advance of any Upgrade which it intends to make available. The Contractor must provide with any such notification an explanatory memorandum specifying the nature of the improvements and any adverse effects that the Upgrade may be expected to have including any expected degradation in performance. The Contractor will also provide any other information in relation to the Upgrade that the CUSTOMER reasonably requires.
- (c) If the CUSTOMER wishes to evaluate any Upgrade, it will notify the Contractor in writing accordingly. Upon receipt of such notification, the Contractor will deliver to the CUSTOMER a copy of the Upgrade together with any documentation necessary to describe and enable testing and proper use of the Upgrade.

- (d) The Contractor will also provide all reasonable assistance in respect of the evaluation and testing of such Upgrade, including all applicable training as soon as reasonably practicable after the delivery of the Upgrade.
- (e) The CUSTOMER may decide to implement an Upgrade at none, all or any of the installations of the System.
- (f) For the avoidance of doubt, the CUSTOMER is not obliged to install any Upgrade.
- (g) The Contractor hereby agrees to produce at least two Upgrades of a substantial nature in every year of the term of this Agreement.
- (h) The Contractor undertakes to include in Upgrades on a timely basis enhancements and functionality improvements to the System which will, inter alia:
 - (i) Enable the CUSTOMER to take advantage of improvements in technology and avoid obsolescence;
 - (ii) Maintain pace and be in full compliance with all relevant healthcare and IT de facto and de jure standards;
 - (iii) Enable the use of new, upgraded or enhanced software or software components provided to the CUSTOMER by Contractors other than the Contractor for the purposes of supporting the infrastructure and environment of the System, including operating system software and ancillaries; Third Party Software and software developed by the CUSTOMER or its agents; and
 - (iv) Maintain pace with developing practice in health care both in Ireland and internationally.
- (i) The Contractor hereby agrees that an Upgrade will not (i) remove functionality which is already available to the CUSTOMER or (ii) re-set configuration parameters which are already in place, in each case, without the prior written agreement of the CUSTOMER to such removal or re-setting.
- (j) The Contractor agrees to provide Upgrades for the System to enable the CUSTOMER to meet its statutory or regulatory obligations including those relating to data collection or reporting within the timescales and deadlines given to the CUSTOMER to implement such directives and obligations.
- (k) On delivery of each Upgrade the Contractor shall provide updated documentation in respect of the System to the CUSTOMER. The Contractor shall provide such number of copies of the updated documentation as the CUSTOMER may reasonably require.

13. Input to Product Development

- (a) The CUSTOMER will have the opportunity to influence and participate in the Contractor's product development by means of the following:
 - (i) Formal briefings by Contractor product management team on product developments and collaboration on development plans;
 - (ii) Collaborative development of new functionality through discussion and agreement of specifications;
 - (iii) Annual user group meetings which will;

- Update the attendees on enhancements to existing and planned new versions;
 - Collect feedback from the attendees as to suggested enhancements;
 - Provide a networking event.
- (iv) Opportunity to take early advantage of new releases (e.g. to pilot beta releases);
- (v) Technical assistance on best deployment of products;
- (vi) Access to other customers to benefit from their experience.

SCHEDULE 4

CONTRACTOR'S TENDER

The successful tenderers response will be inserted here as part of contract finalisation.

SCHEDULE 5

CHANGE CONTROL PROCEDURES

14. Principles

- (a) Where the Customer or the Contractor see a need to change the Agreement, a Lot Agreement, or any deliverable provided thereunder, the Customer may at any time request, and the Contractor may at any time recommend, such change only in accordance with the Change Control Procedure as set out at paragraph 2 below.
- (b) Neither the Customer nor the Contractor shall unreasonably withhold its agreement to any change.
- (c) Until such time as a change is made in accordance with the Change Control Procedure, the Contractor shall, unless otherwise agreed in writing, continue to perform its obligations under the Agreement and supply the services thereunder as if the request or recommendation had not been made.
- (d) Any discussions which may take place between the Customer and the Contractor in connection with a request or recommendation before the authorisation of a resultant change shall be without prejudice to the rights of either Party.
- (e) Any work undertaken by the Contractor, its sub-contractors or agents which has not been authorised in advance by a change and which has not been otherwise agreed in accordance with the provisions of paragraph 1(c) above shall be undertaken entirely at the expense and liability of the Contractor.

15. Procedures

- (a) Discussion between the Customer and the Contractor concerning a change shall result in any one of the following:
 - (i) no further action being taken;
 - (ii) a request to change by the Customer ; or
 - (iii) a recommendation to change by the Contractor.
- (b) Where a written request for an amendment is received from the Customer, the Contractor shall, unless otherwise agreed, submit two copies of a change control note (“CCN”) signed by the Contractor to the Customer within three weeks of the date of the request.
- (c) A recommendation to amend by the Contractor shall be submitted direct to the Customer in the form of two copies of a CCN signed by the Contractor at the time of such recommendation.
- (d) Each CCN shall contain:
 - (i) the title of the change;
 - (ii) the originator and date of the request or recommendation for the change;
 - (iii) the reason for the change;
 - (iv) full details of the change including any specification;

- (v) the price, if any, of the change;
- (vi) a timetable for implementation together with any proposals for acceptance of the change;
- (vii) a schedule of payments if appropriate;
- (viii) details of the likely impact, if any, of the change on other aspects of the Agreement and/or services including to:
 - (A) the Term of the Agreement;
 - (B) the personnel to be provided;
 - (C) the Price and payment profile;
 - (D) the Timetable;
 - (E) the documentation to be provided;
 - (F) the training to be provided;
 - (G) the service levels;
 - (H) working arrangements;
 - (I) other Agreement issues;
 - (J) the date of expiry of validity of the CCN; and
 - (K) provision for signature by the Customer and by the Contractor.
- (e) For each CCN submitted, the Customer shall, within the period of the validity of the CCN, do the following (in the event that no period of validity is specified the CCN it shall lapse unless accepted in writing by the Customer within fourteen (14) days or receipt):
 - (i) allocate a sequential number to the CCN;
 - (ii) evaluate the CCN and, as appropriate:
 - (A) request further information;
 - (B) arrange for two copies of the CCN to be signed by or on behalf of the Customer and return one of the copies to the Contractor; or
 - (C) notify the Contractor of the rejection of the CCN.

FORM OF CHANGE CONTROL NOTE

BY AND BETWEEN

THE HEALTH SERVICE EXECUTIVE;

AND

● Limited, registered in ●, number●, whose registered office is at ● (the “Contractor”).

CHANGE CONTROL NOTICE DETAILS	RELEVANT AGREEMENT/LOT AGREEMENT number
Date:	Title or Ref. No.:
Reference No.:	Date:
Raised by:	

Reason for the change:
Description of the change:
Timetable for the change & commencement date:
Price:
Impact on other work under the Agreement:
Impact on the time scales under the Agreement:

The Parties hereby agree to change the Agreement in the manner and in consideration of the terms set out above. Save as expressly set out in this Change Control Notice, the terms and conditions of the Agreement shall remain in full force and effect.

AGREED FOR AND ON BEHALF OF THE CONTRACTOR

Signed:

Title:

Date:

AGREED FOR AND ON BEHALF OF THE HEALTH SERVICE EXECUTIVE

Signed:

Title:

Date:

SCHEDULE 6

TIMETABLE

This Schedule is deliberately left blank

SCHEDULE 7
LOT AGREEMENT

FORM OF LOT AGREEMENT

THIS LOT AGREEMENT is dated the day of.....2012

MADE BY THE [HEALTH SERVICE DIRECTORATE] ON [●]

AND

● Limited, registered in ●, number ●, whose registered office is at ● (the “**Contractor**”).

WHEREAS:

A. The Parties have concluded an agreement, dated the ● day of ● 2012, and entitled ● [Technical Maintenance and Support Agreement] (the “**Agreement**”);

B. On [●] the Customer issued a Lot Request to the Contractor. The Contractor submitted its Lot Request Response on [●]. The Customer accepted the Lot Request Response on [●]. This Agreement sets out the terms and conditions to apply to the relevant Requirements and Specifications being delivered under this lot.

NOW THEREFORE, IT IS HEREBY AGREED THAT the Contractor shall supply and provide, and the Customer shall purchase, the products and services as described in the Requirements and Specifications set out in this Lot Agreement and the ancillary document attached hereto:

1. REQUEST FOR SPECIFICATION

The Customer requested the Contractor to submit its response to the following Requirement and Specification:

LOT REQUEST

Details of Lot request made by Customer to the Contractor to be inserted here

2. AGREEMENT REFERENCE NUMBER

--

3. Customer PO NO

--

4. LOT REQUEST RESPONSE

Details of the relevant Requirements and Specifications to be performed by the Contractor and relevant payment terms are set out below:

5. **REQUIREMENTS AND SPECIFICATIONS**

Service Specification	Details of Professional Services to be provided by Contractor to be inserted here
Software Specification	Details of Software Specification to be provided by Contractor to be inserted here

6. **PROFESSIONAL SERVICES – Organisation and Staffing**

Details of named resources and skills to be supplied inserted here

Customer Named Resources to be inserted here

7. **PRICE AND PAYMENT TERMS**

7.1 Price and Payment Terms must outline charges and payments for the following, preferably in a Tabular format

7.2 Professional Services, including Software Development and Configuration Services daily rates:

7.3 Support and Maintenance Services daily rates:

8. **CUSTOMER EXPENSES POLICY – AGREEMENT ON PER DIEMS AND OTHER EXPENSES TO BE CLARIFIED HERE**

9. **TIMETABLE**

9.1 The Timetable for completion of the Requirements and Specifications under the Lot Agreement is set out below:

9.2 This Lot Agreement shall commence on the date of execution by both Parties. It is expected that completion will occur by [insert date] or as otherwise agreed between the Parties in writing.

9.3 [Contractor to insert Project Timetable, with Milestones]

10. **WARRANTY (SCOPE AND DURATION)**

Services	
-----------------	--

11. **ANCILLARY DOCUMENTS**

Implementation Plan	Yes/No - Refer to document, including reference number
Other	Yes/No - Refer to document, including reference number

12. CUSTOMER SITES TO WHICH SOFTWARE / SERVICES TO BE SUPPLIED

12.1 [●]

13. INTELLECTUAL PROPERTY RIGHTS APPLY

Please tick as appropriate

Yes		If yes, please insert details below. Please also refer to Intellectual Property Rights Schedule attached to the Letting Request.
No		

Deliverables	Party in whom IPR Vests
Configuration	THE HEALTH SERVICE EXECUTIVE
Other Deliverables	

14. SERVICE LEVEL AGREEMENT

To the extent that this Lot Agreement relates to the provision of Services as part of the solution, a Service Level Agreement will apply in the form or substantially the form as set out at Schedule 3 (Service Level Agreement) to the Agreement and this Lot Agreement is to be read in conjunction with the Service Level Agreement.

15. ASSUMPTIONS – DETAIL ANY FURTHER ASSUMPTIONS NOT COVERED IN PREVIOUS SECTIONS

SCHEDULE 8
ACCEPTANCE PROCEDURES
SYSTEM TESTING

Below are the HSE's minimum requirements in relation to System Testing

1. DEFINITIONS

For purposes of this Schedule 8:

“Deliverable” means a portion of the System for an initial installation or later upgrade, as the case may be, at a Site.

“Go-Live Date” means the date of first Productive Use of the System at a Site.

“Productive Use” means the processing of live data.

“Site” means the central data centre or one of the HSE Premises, as the case may be.

“System Installation Date” means the date when the Supplier advises the HSE that the relevant portion of the System is first available for Productive Use at the Site in question.

“System Tests” means the tests described in this Schedule which constitute the Acceptance Criteria and successful completion of which constitutes Acceptance for the portion of the System in question.

2. SCOPE OF SYSTEM TESTS

2.1. The System (including all upgrades and resolutions or fixes applied to the System) must be able to be operated by HSE employees, contractors and agents. A key element in ensuring this will be the execution of testing at various stages throughout the duration of the Agreement. System Testing will:

2.1.1. ensure that the System delivered at the Data Centre and each HSE Premise is complete, has been setup and configured correctly and that all major functionality components and linkages are operational;

2.1.2. test that the System processes and procedures work within the overall environment in so far as it is reasonable and practical to do so in a test environment;

2.1.3. report to Supplier in an error report any element that fails the test such that it shows that the System does not conform in all material respects with the Specification.

2.2. System Testing will not:

2.2.1. provide any absolute certification and verification to the Supplier that the System is without fault or deficiency;

2.2.2. relieve the Supplier of their responsibility as a reasonable and prudent Supplier to deliver the System which has been professionally developed, thoroughly tested, quality assured and ready for clinical use or for Productive Use by the HSE; or

2.2.3. relieve the Supplier of their obligation to ensure that the System delivered materially complies with the Specification and where an element of the System is subsequently found to be materially deficient or faulty to remedy such deficiency or fault in accordance with the terms of this Agreement.

2.3. The HSE and Supplier will work together on the approach and mechanism which will be used to complete the testing of the System. This may include the use of test scripts and stress testing of the system which will be agreed with Supplier prior to the commencement of Local Installation Testing. It is agreed that the proposed mechanism and test scripts tests must be within the boundaries of the agreed specifications but can include testing of other System elements influenced or affected by the new element of the System or upgrade. The Supplier must permit such System Tests unless it can demonstrate that such tests require the System or, as applicable, upgrades in question to operate outside the agreed specifications.

2.4. For each Site the tests shall include aspects such as:

2.4.1. sample patient/client journeys / scenarios;

2.4.2. confirmation of the integration of the System with applicable IT systems existing in the HSE for which integrations or interfaces have been specified;

2.4.3. administration, access and security testing

2.4.4. data migration testing, where applicable

2.4.5. stress or load testing of local archives in individual sites

2.4.6. stress or load testing of the central data repository (or equivalent) for both for data storage/retrieval and report/query generation. This may include a test database employed to mirror the dynamic growth which will occur in the production environment so that tests can be performed to see if System changes affect the time to write and/or retrieve information from the local and/or central data repository.

2.4.6.1. The nature and content of such testing will depend on the System and the Supplier shall co-operate with and assist HSE in preparing appropriate stress/load testing aspects of the System Tests.

3. PROCESS FOR SYSTEM TESTS

3.1. Each System Test at a Site will comprise and follow this sequence:

3.1.1. Supplier standard installation tests

3.1.2. Local installation tests

3.1.3. Post Go-Live tests

3.2. Data Centre Configuration Testing will be performed during the central system design process and prior to any local installations at HSE Premises progressing.

3.3. Supplier Standard Installation Tests

3.3.1. Following installation, integration and configuration of a Deliverable at a Site, the Supplier shall carry out its standard installation tests to ensure, as far as practicable, that there are no material faults with the Deliverable. If the Supplier finds any material faults, the Supplier will remedy them. The Supplier shall provide HSE with details of the nature and content of these Supplier installation tests for review by HSE prior to the Supplier installation tests commencing. In connection with its standard installation tests, the Supplier shall reasonably co-operate with any third party supplier of products and/or services with which HSE Group has contracted, including third party suppliers to individual HSE Premises to the extent necessary to perform this Agreement.

3.3.2. Once the Deliverable passes Supplier installation tests, the Supplier will notify the HSE that the Deliverable and Site are ready for Productive Use and will provide supporting details as reasonably requested. The date of this notification is the System Installation Date.

3.4. Local Installation Tests

3.4.1 Local Installation Tests at a Site begin on the System Installation Date and end on the Go-Live Date. During Local Installation Tests the HSE may test the Deliverable and bring any material and reproducible faults to the attention of the Supplier to be remedied to the reasonable satisfaction of the HSE prior to Go-Live, unless otherwise agreed by both parties.

3.4.2 If the Supplier cannot correct any material and reproducible fault within a period of 90 Business Days from the date of notification to the supplier by the HSE, unless otherwise agreed the Supplier will be deemed to have committed a “Substantial Fault” for the purposes of clause 5.6 of this Agreement.

3.5. Post Go-Live Tests

Post Go-Live Tests at a Site begin on the Go-Live Date and end

- after 90 days for the data centre and first four HSE Premises; or
- after 30 days for all remaining Sites,

unless prior to the expiration of this Post Go-Live testing period the HSE provides the Supplier with a reasonably detailed written report identifying a material and reproducible fault(s) with the Deliverable. In such event, the Post Go-Live Testing Period will continue until the Supplier corrects all such material faults.

4. GENERAL

4.1. The Supplier and HSE will each nominate a suitably qualified person or persons to undertake System Tests. The HSE may engage a third party to carry out part or all of the System Tests.

4.2. Any dispute regarding System Testing, or any failure to agree, shall be resolved pursuant to clause 35 (Dispute Resolution Procedure).

4.3. When the Supplier performs its own installation tests, the Supplier shall co-operate with any third party supplier of products and/or services with which HSE Group has contracted, including third party suppliers to individual HSE Premises only to the extent necessary to perform this Agreement.

SCHEDULE 9

TERMINATION ASSISTANCE

1. DEFINITIONS

1.1. In this schedule:

"Assets" means all assets, hardware, software, intellectual property and other rights used by the Service Provider to provide the System and the Services in accordance with this Agreement but excluding CUSTOMER Hardware and CUSTOMER Software;

"Asset Register" means the register of Assets, sub-contracts and other relevant agreements to be created and maintained by the Service Provider throughout the Term pursuant to paragraph 3.1.1;

"Business Process Manual" means a manual setting out a detailed definition of all the business processes that will be supported by the Services;

"Emergency Exit" means any termination of this Agreement which is in whole or part.

"Exit Manager" means the person appointed by each party pursuant to paragraph 3.5 of for managing the parties' respective obligations under this schedule;

"Exit Management Plan" means the plan produced and updated by the Service Provider during the Term in accordance with paragraph 5;

"Net Book Value" means the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of CUSTOMER at the time of their transfer to CUSTOMER in accordance with this Schedule;

"Ordinary Exit" means any termination of this Agreement which occurs due to termination or as a result of the expiry of the Initial Term or any Renewal Period;

"Registers" means has the meaning set out in paragraph 3.1;

"System Assets" means Commissioned Software, Systems Hardware, Systems Software and Third Party Software;

"Termination Assistance Notice" has the meaning set out in paragraph 6.10;

"Termination Assistance Period" means the period specified in the Termination Assistance Notice in which the Service Provider shall provide the Termination Services as may be extended pursuant to paragraph 6.11;

"Termination Services" means the services and activities to be performed by the Service Provider pursuant to the Exit Management Plan, including those activities listed in paragraph 6.15 and any other services required pursuant to the Termination Assistance Notice;

"Transferring Contracts" shall have the meaning set out in paragraph 8.2.2.

2. OVERVIEW

2.1. The Service Provider is required to ensure the orderly transition of the Services from the Service Provider to CUSTOMER and/or any replacement Service Provider in the event of termination (including partial termination) or expiry of this Agreement. This schedule sets out the principles of the exit and service transfer arrangements that are intended to achieve such orderly transition and which shall form the basis of the Exit Management Plan. For the avoidance of doubt, the Service Provider shall be responsible for the overall management of the exit and service transfer arrangements.

3. CONTRACT LIFE OBLIGATIONS

3.1. During the Term the Service Provider will:

3.1.1. maintain the Asset Register, detailing the ownership of Assets and status as either System Assets or Service Provider Hardware and the Net Book Value of such Assets, and detailing all sub contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;

3.1.2. Maintain a document detailing the technical infrastructure through which the Service Provider provides the Services and the System. This document should be of sufficient detail to permit CUSTOMER and/or replacement Service Provider to understand how the Service Provider provides the System and the Services and to enable the smooth transition of the Services with the minimum of disruption,(collectively the "Registers"). The Service Provider shall maintain the Registers in such format as is agreed between the parties and shall update the Registers from time to time and in particular in the event that Assets, sub-contracts or other relevant agreements are added to or removed from the Services. CUSTOMER shall be provided with access to these Registers during the Term.

3.2. The Service Provider shall ensure that all System Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the System and the Services under this Agreement.

3.3. The Service Provider shall (unless otherwise agreed by CUSTOMER in writing) procure that all sub-contracts and other agreements with third parties, which are necessary to enable CUSTOMER and/or any replacement Service Provider to provide the System or perform the Services in accordance with this Agreement, shall be assignable and/or capable of novation at the request of CUSTOMER to CUSTOMER (and/or its nominee) and/or any replacement Service Provider upon the Service Provider ceasing to provide the Services (or part of them) without restriction (including any need to obtain any consent or approval) or payment by CUSTOMER.

3.4. Where the Service Provider is unable to procure that any sub-contract or other agreement referred to in paragraph 3.3 above which the Service Provider proposes to enter into after the Effective Date is assignable and/or capable of novation to CUSTOMER (and/or its nominee) and/or any replacement Service Provider without restriction or payment, the Service Provider shall promptly notify CUSTOMER of this and the parties shall (acting reasonably and without undue delay) discuss the appropriate action to be taken which, where CUSTOMER so directs, may include the Service Provider seeking an alternative sub-contractor, to be agreed with CUSTOMER.

3.5. Each party will appoint an Exit Manager and provide written notification of such appointment to the other party within three months of the Effective Date. The Service Provider's Exit Manager will be responsible for ensuring that the Service Provider and its employees, agents and sub-contractors comply with this schedule. The Service Provider will ensure that its Exit

Manager has the requisite authority to arrange and procure any resources of the Service Provider as are reasonably necessary to enable the Service Provider to comply with the requirements set out in this schedule. The parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Agreement and all matters connected with this schedule and each party's compliance with it.

4. OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

4.1. Subject to paragraph 4.2 of this schedule, on reasonable notice, the Service Provider shall provide to CUSTOMER and/or (subject to the potential replacement Service Provider entering into reasonable written confidentiality undertakings) to its potential replacement Service Provider, the following material and information in order to facilitate the preparation by CUSTOMER of any invitation to tender and/or to facilitate any potential replacement Service Provider undertaking due diligence:

4.1.1. details of the System and the Services;

4.1.2. details of the Assets (including make, model and asset number), as set out in the Asset Register, and details of their condition and physical location;

4.1.3. details of and information relating to the use of the Assets (including technical specifications);

4.1.4. an inventory of CUSTOMER data in the Service Provider's possession or control; and

4.1.5. a copy of the Registers, updated by the Service Provider up to the date of delivery of such Registers.

4.2. The Service Provider shall not be required to comply with the provisions of paragraph 4.1 before service of a notice to terminate this Agreement or in the period which is more than six months before the expiry of the Term.

5. EXIT MANAGEMENT PLAN

5.1. The Service Provider will, within three months after the Effective Date, deliver to CUSTOMER an Exit Management Plan which sets out the Service Provider's proposed methodology for achieving an orderly transition of Services from the Service Provider to CUSTOMER and/or its replacement Service Provider on the expiry or termination of this Agreement and which complies with the requirements set out in paragraphs 5.2 and 5.3 below. Within 30 days after the submission of the Exit Management Plan, the parties will use their respective reasonable endeavours to agree the contents of the Exit Management Plan. If the parties are unable to agree the contents of the Exit Management Plan then such dispute shall be resolved in accordance with the CUSTOMER Dispute Resolution Procedure.

5.2. The Exit Management Plan will contain, as a minimum:

5.2.1. separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Service Provider may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Service Provider of all such reasonable assistance as CUSTOMER shall require to enable CUSTOMER or its subcontractors to provide the Services;

5.2.2. the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit; and

5.2.3. a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit.

5.3. In addition, the Exit Management Plan shall:

5.3.1. document how the Services will transfer to the replacement Service Provider and/or CUSTOMER, including details of the processes, documentation, data transfer, systems migration, security and the segregation of CUSTOMER's technology components from any technology components operated by the Service Provider or its Sub-Contractors (where applicable);

5.3.2. specify the scope of the Termination Services that may be required for the benefit of CUSTOMER (including such of the services set out in paragraph 6.15 below as are applicable) and any charges that would be payable for the provision of such Termination Services (calculated in accordance with the day rates and charging methodology set out in Schedule 2 (Payment Schedule) and detail how such services would be provided (if required), during the Termination Assistance Period;

5.3.3. address each of the issues set out in this schedule to facilitate the transition of the Services from the Service Provider to the replacement Service Provider and/or CUSTOMER with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period;

5.3.4. provide a timetable and identify critical issues for providing the Termination Services; and

5.3.5. set out the management structure to be put in place and employed during the Termination Assistance Period.

5.4. The Service Provider will review and (if appropriate) update the Exit Management Plan in the first month of each Contract Year (commencing with the second Contract Year) to reflect changes in the Services. Following such update the Service Provider will submit the revised Exit Management Plan to CUSTOMER for review. Within 30 days following submission of the revised Exit Management Plan, the parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Management Plan, based on the principles set out in this schedule and the changes that have occurred in the Services since the Exit Management Plan was last agreed. If the parties are unable to agree the contents of the revised Exit Management Plan within that 30 day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

6. TERMINATION SERVICES

General

6.1. During the Termination Assistance Period or such shorter period as CUSTOMER may require, the Service Provider will continue to provide the Services (as applicable) and will, at the request of CUSTOMER pursuant to paragraph 6.12, provide the Termination Services.

6.2. The costs of providing these Termination Services shall be as stated in schedule 2 (Payment Schedule).

6.3. During the Termination Assistance Period, the Service Provider will, in addition to providing the Services and the Termination Services, provide to CUSTOMER any reasonable

assistance requested by CUSTOMER to allow the Services to continue without interruption following the termination or expiry of this Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to CUSTOMER and/or its replacement Service Provider. The Service Provider will use all reasonable endeavours to reallocate resources to provide these services without additional costs. However if this is not possible any additional costs incurred by the Service Provider in providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Management Plan will be subject to schedule 5 (Change Control Procedures), discussion and agreement (which will not be unreasonably withheld or delayed by either party).

6.4. During the Termination Assistance Period, the Services and the Termination Services will be provided at no detriment to the Service Levels, save to the extent that the parties agree otherwise in accordance with paragraph 6.5.

6.5. Where the Service Provider demonstrates to CUSTOMER's reasonable satisfaction that transition of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Service Provider's ability to meet a particular Service Level(s), the parties shall vary the relevant Service Level(s) and/or the applicable Service Credits to take account of such adverse effect.

6.6. At CUSTOMER's request and on reasonable notice, the Service Provider will deliver up-to-date Registers to CUSTOMER.

6.7. The parties acknowledge that the migration of the Services from the Service Provider to CUSTOMER and/or its replacement Service Provider may be phased, such that certain of the Services are handed over before others.

6.8. Within 30 days after service of notice of termination by either party the Service Provider will submit for CUSTOMER's approval the Exit Management Plan in a final form that can be implemented immediately.

6.9. The parties will meet and use their respective reasonable endeavours to agree the contents of the final form Exit Management Plan. If the parties are unable to agree the contents of the Exit Management Plan within 30 days following its delivery to CUSTOMER then such dispute shall be resolved in accordance with Part 7 of the main agreement (Dispute Resolution Procedure). Until the agreement of the final form Exit Management Plan, the Service Provider will provide the Termination Services in accordance with the principles set out in this schedule and the last approved version of the Exit Management Plan (insofar as this still applies).

Notification of Requirements for Termination Services

6.10. CUSTOMER shall be entitled to require the provision of Termination Services by notifying the Service Provider in writing ("Termination Assistance Notice") at least four months prior to the date of termination or expiry of this Agreement or as soon as reasonably practicable (but in any event, not later than one month) following the service by either party of any notice to terminate. The Termination Assistance Notice shall specify the:

6.10.1. date from which Termination Services are required which shall be no earlier than 12 months prior to expiry of this Agreement or from the service by either party of any notice to terminate, as the case may be;

6.10.2. nature of the Termination Services required; and

6.10.3. period during which it is anticipated that Termination Services will be required which shall continue no longer than 24 months after the date that the Service Provider ceases to provide the Services and which shall be subject to the costs stated in schedule 2 (Payment Charges), irrespective of the period during which Termination Services will be required.

6.11. CUSTOMER shall have an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than six months after the date the Service Provider ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Service Provider to such effect no later than 20 Working Days prior to the date on which the provision of Termination Services is otherwise due to expire. CUSTOMER shall have the right to terminate its requirement for Termination Services by serving not less than 20 Working Days' written notice upon the Service Provider to such effect.

Termination Obligations

6.12. The Service Provider shall comply with all of its obligations contained in the Exit Management Plan and shall, upon termination or expiry of this Agreement provide to CUSTOMER an up to date Business Process Manual.

6.13. At the end of the Termination Assistance Period (or earlier if this does not adversely affect the Service Provider's performance of the Services and the Termination Services and its compliance with the other provisions of this schedule):

6.13.1. the Service Provider will erase from any computers, storage devices and storage media that are to be retained by the Service Provider after the end of the Termination Assistance Period any software containing the Commissioned Software and all CUSTOMER data;

6.13.2. the Service Provider will return to CUSTOMER such of the following as is in the Service Provider's possession or control:

- (1) all copies of CUSTOMER Software and any other software licensed by CUSTOMER to the Service Provider under this Agreement;
- (2) all materials created by the Service Provider under this Agreement, the IPRs in which are owned by CUSTOMER;
- (3) any parts of the Hardware and any other equipment which belongs to CUSTOMER; and
- (4) any items that have been on-charged to CUSTOMER, such as consumables;

6.13.3. the Service Provider will transfer all CUSTOMER Data (in complete, uncorrupted form) in its possession or control to CUSTOMER save to the extent (and for the limited period) that such data is required for the purposes of providing any services to CUSTOMER under this schedule or the Exit Management Plan;

6.13.4. the Service Provider shall vacate any CUSTOMER Premises;

6.13.5. each party will return to the other party all Confidential Information of the other party and will certify that it does not retain the other party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the party in question for the purposes of providing or receiving any Services or Termination Services.

6.14. Except where this Agreement provides otherwise, all licences, leases and authorisations granted by CUSTOMER to the Service Provider in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

Scope of the Termination Services

6.15. The Termination Services to be provided by the Service Provider shall include (without limitation) such of the following services as CUSTOMER may specify:

6.15.1. ceasing all non-critical Software changes (by agreement with CUSTOMER);

6.15.2. notifying the sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;

6.15.3. providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by CUSTOMER and/or replacement Service Provider after the end of the Termination Assistance Period;

6.15.4. delivering to CUSTOMER the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports all relating to the 12 month period immediately prior to the commencement of the Termination Services);

6.15.5. providing details of work volumes and staffing requirements over the 12 month period immediately prior to the commencement of the Termination Services;

6.15.6. with respect to work in progress as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition;

6.15.7. providing CUSTOMER with any problem logs which have not previously been provided to CUSTOMER;

6.15.8. providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services and re writing and implementing these during and for a period of 12 months after the Termination Assistance Period;

6.15.9. providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and re-writing and implementing these such that they are appropriate for the continuation of the Services after the Termination Assistance Period;

6.15.10. reviewing all Software libraries used in connection with the Services and providing details of these to CUSTOMER and/or its replacement Service Provider;

6.15.11. making available to CUSTOMER and/or the replacement Service Provider expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by CUSTOMER (acting reasonably) at the time of termination or expiry. A documented plan is to be separately provided for this activity and agreed with CUSTOMER at the time of termination or expiry;

6.15.12. assisting in establishing any required naming conventions;

6.15.13. analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;

6.15.14. generating a computer listing of the Source Code of Commissioned Software in a form and on media reasonably requested by CUSTOMER;

6.15.15. agreeing with CUSTOMER a handover plan for all of the Service Provider's security responsibilities under this Agreement. The Service Provider will co-operate fully in the execution of the agreed plan, providing skills and expertise of a suitable standard;

6.15.16. delivering copies of the production databases (with content listings) to CUSTOMER's and/or the replacement Service Provider's operations staff (on appropriate media) as reasonably requested by CUSTOMER;

6.15.17. assisting with the loading, testing and implementation of the production databases;

6.15.18. assisting in the execution of a parallel operation until the effective date of expiry or termination of this Agreement;

6.15.19. in respect of the maintenance and support of the Service Provider System, providing historical performance data collated during the Term;

6.15.20. assisting in the execution of a parallel operation of the maintenance and support of the Service Provider System until the end of the Termination Assistance Period or as otherwise specified by CUSTOMER (provided that these Services end on a date no later than the end of the Termination Assistance Period);

6.15.21. the provision of an information pack listing and describing the Services for use by CUSTOMER in the procurement of replacement services;

6.15.22. answering all reasonable questions from CUSTOMER and/or its replacement Service Provider regarding the Services;

6.15.23. agreeing with CUSTOMER and/or the replacement Service Provider a plan for the migration of any Systems or Services data to CUSTOMER and/or the replacement Service Provider. The Service Provider will fully co-operate in the execution of the agreed plan, providing skills and expertise of a reasonably acceptable standard;

6.15.24. the provision of access to CUSTOMER and/or the replacement Service Provider during the Termination Assistance Period and for a period not exceeding six months afterwards for the purpose of the smooth transfer of the Services to CUSTOMER and/or the replacement Service Provider:

(1) to information and documentation relating to the transferring services that is in the possession or control of the Service Provider or its sub-contractors (and the Service Provider agrees and shall procure that its sub-contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and

(2) following reasonable notice and during the Service Provider's normal business hours, to members of the Service Provider Personnel who have been involved in the provision or

management of the Services and who are still employed or engaged by the Service Provider or its sub-contractors.

Disputes Relating to Termination Services

6.16. Where there is any dispute between the parties regarding the manner in which the Termination Services are to be performed, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

7. KNOWLEDGE TRANSFER

7.1. During the Termination Assistance Period, the Service Provider will:

7.1.1. transfer all training material and provide appropriate training to those CUSTOMER and/or replacement Service Provider staff responsible for internal training in connection with the provision of the Services;

7.1.2. provide for transfer to CUSTOMER and/or the replacement Service Provider of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents; and

7.1.3. provide the Service Provider and/or replacement Service Provider with access to such members of the Service Provider's or its sub-contractors' personnel as have been involved in the design, development, provision or management of the Services and who are still employed or engaged by the Service Provider or its Sub contractors.

7.2. To facilitate the transfer of knowledge from the Service Provider to CUSTOMER and/or its replacement Service Provider, the Service Provider shall provide a detailed explanation of the procedures and operations used to provide the Services, the change management process and other standards and procedures to the operations personnel of CUSTOMER and/or the replacement Service Provider.

7.3. The information which the Service Provider shall provide to CUSTOMER and/or its replacement Service Provider pursuant to paragraph 7.1 above will include:

7.3.1. copies of up-to-date procedures and operations manuals;

7.3.2. product information;

7.3.3. agreements with third party Service Providers of goods and services which are to be transferred to CUSTOMER;

7.3.4. key support contact details for third party Service Provider personnel under contracts which are to be assigned or novated to CUSTOMER pursuant to this schedule;

7.3.5. information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;

7.3.6. details of physical and logical security processes and tools which will be available to CUSTOMER; and

7.3.7. any relevant interface information.

7.4. During the Termination Assistance Period the Service Provider shall grant any agent or personnel (including employees, consultants and contractors) of the replacement Service Provider and/or CUSTOMER access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:

7.4.1. any such agent or personnel (including employees, consultants and contractors) having access to any Sites under this paragraph shall sign a confidentiality undertaking in favour of the Service Provider (in such form as the Service Provider shall reasonably require); and

7.4.2. CUSTOMER and/or the replacement Service Provider shall pay the reasonable, proven and proper costs of the Service Provider incurred in facilitating such access.

8. ASSETS, SUB-CONTRACTS AND SOFTWARE

8.1. Following notice of termination of this Agreement and during the Termination Assistance Period, the Service Provider will not, without CUSTOMER's prior written consent:

8.1.1. terminate, enter into or vary any sub-contract;

8.1.2. (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or

8.1.3. terminate, enter into or vary any licence for software in connection with the Services.

8.2. Within 30 days of receipt of the up-to-date Registers provided by the Service Provider pursuant to paragraph 6.6 above, CUSTOMER will provide written notice to the Service Provider setting out:

8.2.1. which Assets CUSTOMER requires to be transferred to CUSTOMER and/or its replacement Service Provider; and

8.2.2. which sub-contracts and other agreements specified in paragraph 3.3 above CUSTOMER requires to be assigned or novated to CUSTOMER and/or its replacement Service Provider (the "Transferring Contracts"),

in order for CUSTOMER and/or its replacement Service Provider to provide the Services at the expiry of the Termination Assistance Period. Where requested by CUSTOMER and/or its replacement Service Provider, the Service Provider will provide all reasonable assistance to CUSTOMER and/or its replacement Service Provider to enable it to determine which Assets and Transferring Contracts CUSTOMER and/or its replacement Service Provider requires in order to provide the Services.

8.3. With effect from the expiry of the Termination Assistance Period, the Service Provider shall assign to CUSTOMER (and/or its nominated replacement Service Provider), free from all liens, charges, options, encumbrances and third party rights, title to and all rights and interests in those System Assets identified by CUSTOMER pursuant to paragraph 8.2 above. Such System Assets will be acquired by CUSTOMER for a consideration not greater than their Net Book Value.

8.4. In respect of those Service Provider Hardware that CUSTOMER has identified pursuant to paragraph 8.2, the Service Provider will either (at CUSTOMER's option, acting reasonably):

8.4.1. sell such Assets to CUSTOMER and/or its replacement Service Provider at an agreed price; or

8.4.2. offer or procure for CUSTOMER and/or its replacement Service Provider the use, rental or licensing of such assets (as appropriate) in each case for such period of time and on such commercial and other terms as may be agreed between the parties, acting reasonably.

8.5. The Service Provider shall assign or procure the novation to CUSTOMER of the Transferring Contracts. The Service Provider shall execute such documents and provide such other assistance as CUSTOMER reasonably requires to effect this novation or assignment.

8.6. CUSTOMER shall:

8.6.1. accept assignments from the Service Provider or join with the Service Provider in procuring a novation of each Transferring Contract;

8.6.2. once a Transferring Contract is novated or assigned to CUSTOMER and/or the replacement Service Provider, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that a replacement Service Provider does the same.

8.7. The Service Provider shall hold any Transferring Contracts on trust for CUSTOMER until such time as the transfer of the contract to CUSTOMER and/or the replacement Service Provider has been effected.

8.8. The Service Provider shall indemnify CUSTOMER (and/or the replacement Service Provider, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a sub-contract which is assigned or novated to CUSTOMER (and/or replacement Service Provider) pursuant to paragraph 8.5 above in relation to any matters arising prior to the date of assignment or novation of such sub-contract.

9. CHARGES AND APPORTIONMENTS

9.1. During the Termination Assistance Period (or for such shorter period as CUSTOMER may require the Service Provider to provide the Termination Services), CUSTOMER shall pay the Charges to the Service Provider in respect of the Termination Services, such Charges to be calculated in accordance with Schedule 2 (Payment Schedule).

9.2. All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Assets and sub-contracts transferred to CUSTOMER and/or the replacement Service Provider pursuant to paragraph 8 above shall be apportioned between CUSTOMER and the Service Provider and/or the replacement Service Provider and the Service Provider, as applicable.

9.3. This apportionment will be carried out as follows:

9.3.1. the payments will be annualised and divided by 365 to reach a daily rate;

9.3.2. CUSTOMER shall be responsible for or shall procure that the replacement Service Provider shall be responsible for or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and

9.3.3. the Service Provider will be responsible for or entitled to (as the case may be) the rest of the invoice.

9.4. Each party shall pay and/or CUSTOMER shall procure that the replacement Service Provider shall pay any monies due under paragraph 9.3 as soon as reasonably practicable.

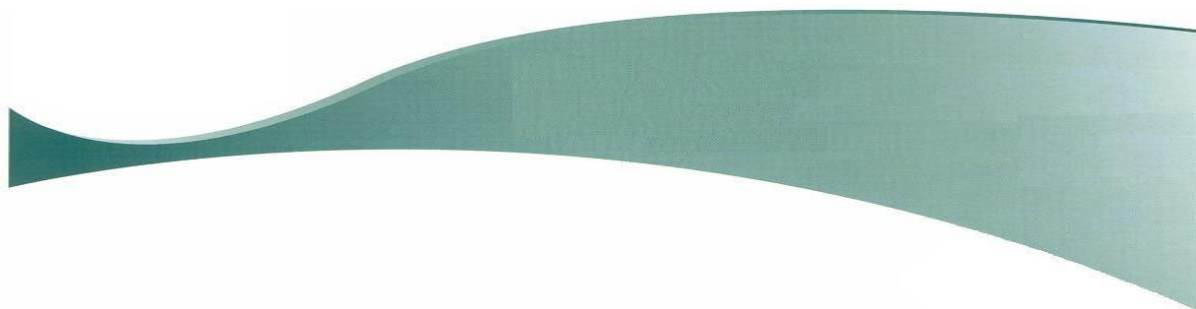
SCHEDULE 10

HSE SERVICE PROVIDER DATA PROCESSING AGREEMENT



Feidhmeannacht na Seirbhíse Sláinte
Health Service Executive

Service Provider Data Processing Agreement



THIS AGREEMENT is datedand made between:

(1) **The Health Service Executive**, a body corporate with perpetual succession established by the Health Act 2004 (the **HSE**), and

(2)
(the **Service Provider's** name (Block Capitals))

.....
(the **Service Provider's** registration number (Block Capitals))

.....
(the **Service Provider's** registered office (Block Capitals))

RECITALS

- A.** The Service Provider provides one or more services (the **Services**) to the HSE. The HSE and the Service Provider have entered into one or more written service agreements pursuant to the provision of these Services (collectively, the **Contract(s)**). This Agreement is an addendum to any and all Contracts between the HSE and the Service Provider.
- B.** Unless agreed otherwise by the HSE and the Service Provider, where any of the Services provided under Contract to the HSE, involve the Service Provider processing Personal Data on behalf of the HSE, the HSE shall be considered the Data Controller or Joint Data Controller of the HSE Personal Data and the Service Provider shall be considered the Data Processor.
- C.** The HSE shall comply at all times with its obligations as a Data Controller or Joint Data Controller as set out in the Data Protection Legislation.
- D.** Appendix 1 contains a description of the subject matter, duration of the Processing, nature and purpose of Processing, as well as the type of Personal Data and categories of Data Subjects' Personal Data Processed by the Service Provider under this Agreement.
- E.** This Agreement will cover the Service Providers Processing of any and all HSE Personal Data under any and all Contracts between the HSE and the Service Provider.

NOW IT IS HEREBY AGREED by and between the parties hereto as follows:

1 Definitions:

In this Agreement, unless the context otherwise requires:

Agreement shall mean the HSE Service Provider Data Processing Agreement (SPDP);

Data Controller or Controller has the meaning given to that term in Article 4 of the GDPR;

Data Processor or Processor has the meaning given to that term in Article 4 of the GDPR;

Data Protection Commission means the Irish Data Protection Commission which is the Irish data protection supervisory authority;

Data Protection Legislation means all applicable laws and regulations relating to the processing of Personal Data and privacy including the Data Protection Act 2018, the General Data Protection Regulation 2016/679 (the “GDPR”) and the European Communities (Electronic Communications, Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (S.I. 336/2011) and any statutory instrument, order, rule or regulation made thereunder, as from time to time amended, extended, re-enacted or consolidated;

Data Subject has the meaning given to that term in Article 4(1) of the GDPR;

Delete, Deleted, Deletion and like words, shall mean the permanent removal of data and all traces of the data, by means of the physical destruction of the data, or the physical destruction of the medium used to store the data, or the overwriting of the data, in accordance with internationally accepted data erasure standards using data sanitation software;

GDPR means the EU General Data Protection Regulation, Regulation (EU) 2016/679, the effective date of which is 25th May 2018;

HSE Personal Data shall mean the Personal Data and Special Categories of Personal Data Processed by the Service Provider on behalf of the HSE as more specifically detailed in Appendix 1;

Personal Data has the meaning given to that term in Article 4 of the GDPR;

Personal Data Breach has the meaning given to that term in Article 4 of the GDPR;

Processing, Process and like words, have the meaning given to those terms in Article 4 of the GDPR;

Pseudonymisation, Pseudonymised and like words, have the meaning given to those terms in Article 4 of the GDPR;

Special Categories of Personal Data has the meaning given to that term in Article 9(1) of the GDPR;

Sub-Processors shall mean any person or legal entity which is not party to any Contract(s) between the HSE and the Service Provider and this Agreement, and which is engaged by the Service Provider to perform any or all of its obligations in relation to the Processing of HSE Personal Data, including for the avoidance of doubt, a Service Provider group company including subsidiaries and affiliates;

2 **Obligations of the Service Provider**

2.1 To the extent that the Service Provider Processes HSE Personal Data as a Data Processor on behalf of the HSE, the Service Provider shall:

2.1.1 Comply at all times with their obligations as a Data Processor as set out in the Data Protection Legislation and this Agreement, and not undertake any actions or permit any actions to be undertaken on their behalf which may cause the HSE to be in breach of the Data Protection Legislation;

- 2.1.2 Manage and Process any HSE Personal Data they acquire from the HSE solely in accordance with the documented instructions of the HSE as set out in this Agreement, including with regard to transfers of HSE Personal Data to a third country or an international organisation, unless required to do so by European Union or Irish Law to which the Service Provider is subject; in such a case, the Service Provider shall inform the HSE in writing of that legal requirement before Processing, unless that law prohibits such information on important grounds of public interest;
- 2.1.3 Notify the HSE prior to carrying out any instruction from the HSE if, in the Service Providers opinion, such instruction is likely to result in Processing that is in breach of the Data Protection Legislation;
- 2.1.4 Only Process and use HSE Personal Data for the purposes of providing any contracted Services to the HSE and, not otherwise modify, amend or alter the contents of HSE Personal Data unless specifically authorised to do so in writing by the HSE;
- 2.1.5 Take all reasonable measures to ensure the reliability of any of the Service Providers employees and contractors who have access to HSE Personal Data;
- 2.1.6 Ensure that access to HSE Personal Data is limited to those of the Service Provider's employees and contractors who need to have access to it, and that they are informed of the confidential nature of the HSE Personal Data, are under an obligation to keep such HSE Personal Data confidential, and comply with the obligations set out in this Agreement;
- 2.1.7 Ensure that all the relevant Service Provider employees and contractors with access to HSE Personal Data have been provided with and have undergone appropriate Data Protection and IT security training;
- 2.1.8 Ensure they have appropriate procedures in place which prevent the Service Provider's employees and contractors from downloading HSE Personal Data from the Service Provider's IT devices and Servers and storing this HSE Personal Data on the employees' or contractors' personal IT devices (i.e. where the IT device is the personal property of the employee or contractor and not the Service Provider);
- 2.1.9 Ensure they have appropriate processes implemented and documented which will allow the Service Provider to promptly and effectively detect, contain, analyse, respond and recover from any suspected or actual information security and cyber security incidents within their organisation, and where necessary to promptly notify the HSE of any such incidents involving HSE Personal Data;
- 2.1.10 Ensure all printouts taken by the Service Providers employees and contractors containing HSE Personal Data are managed and stored appropriately and, disposed of securely when they are no longer required;

- 2.1.11 Not disclose or permit the disclosure of any the HSE Personal Data to any third party unless specifically authorised to do so in writing by the HSE. In the event that the Service Provider is legally required to disclose any HSE Personal Data to a third party, the Service Provider undertakes to notify the HSE of such requirement prior to any disclosure and, unless prohibited by law, to supply the HSE with copies of all communications between the Service Provider and any third party to which such disclosure is made. At the request of the HSE, the Service Provider shall co-operate with the HSE in bringing any legal or other proceedings to challenge the validity of the requirement to disclose the HSE Personal Data;
- 2.1.12 At no additional cost to the HSE, and while taking into account the nature of Processing, assist the HSE by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the HSE's obligations to respond to requests from Data Subjects, exercising their rights laid down in Chapter III of the GDPR (including their right of access, rectification of and erasure of their Personal Data). Upon a request from the HSE for such assistance, the Service Provider shall comply with the request in a timely manner, so as to allow the HSE comply with its legal obligations concerning the timescales for responding to such requests from Data Subjects, as laid down in Article 12 of the GDPR;
- 2.1.13 At no additional cost to the HSE, and while taking into account the nature of Processing and the information available to the Service Provider, assist the HSE in ensuring compliance with the obligations pursuant to Articles 32, 33, 34 and 36 of the GDPR (including the security of HSE Personal Data, Personal Data Breach notifications, and prior consultations) including without limitation the preparation or provision of supporting documentation to be submitted to the Data Protection Commission;
- 2.1.14 Assist the HSE in relation to any assessment, enquiry, notice or investigation received by the HSE from the Data Protection Commission which may include (as appropriate) the provision of data requested by the HSE within the timescales reasonably specified by the HSE in each case.

3 Data Protection Impact Assessments

- 3.1 At no additional cost to the HSE, while taking into account the nature of Processing and the information available to the Service Provider, the Service Provider shall provide all reasonable assistance to the HSE in the preparation of any assessment by the HSE of the impact of the envisaged Processing on the protection of HSE Personal Data ("Data Protection Impact Assessment") prior to commencing any Processing. Such assistance may, at the discretion of the HSE, include assistance regarding the preparation of the following:
- 3.1.1 A systematic description of the envisaged Processing operations and the purpose of the Processing;
- 3.1.2 An assessment of the necessity and proportionality of the Processing operations in relation to the Services;

3.1.3 An assessment of the risks to the rights and freedoms of Data Subjects; and

3.1.4 The measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of HSE Personal Data.

4 Technical & Operational Measures

- 4.1 The Service Provider shall implement appropriate technical and organizational measures to protect against the accidental or unlawful destruction, loss alteration, unauthorised disclosure of, or access to HSE Personal Data processed by the Service Provider;
- 4.2 Where the Service Provider uses their own ICT resources (i.e. ICT resources which are owned or controlled by the Service Provider) to Process or store HSE Personal Data, the Service Provider must implement the minimum technical and organizational measures set out in Appendix 3 of this Agreement to protect the HSE Personal Data;
- 4.3 At the written request of the HSE, the Service Provider shall provide the HSE within 7 calendar days, with a written description of the technical and organisational measures implemented by the Service Provider and (as applicable) their Sub-Processors to protect HSE Personal Data they Process.

5 Appointment of Sub-Processors

- 5.1 The Service Provider shall not engage any Sub-Processors to Process HSE Personal Data other than with the prior written consent of the HSE. For the avoidance of doubt, HSE written consent shall be deemed given for the authorised Sub-Processors listed in Appendix 2 of this Agreement;
- 5.2 The Service Provider shall inform the HSE in writing of any intended changes concerning the addition or replacement of other Sub-Processors who will Process HSE Personal Data, thereby giving the HSE the opportunity to object to such changes where it considers that such Sub-Processors do not provide sufficient guarantees under the Data Protection Legislation. In the event that the HSE objects to the addition or replacement of Sub-Processors, the Service Provider shall use reasonable endeavour's to address the HSE's concerns;
- 5.3 Where the Service Provider engages a Sub-Processor to Process HSE Personal Data, the Service Provider shall impose obligations on the Sub-Processor, by way of a separate contract / agreement between the Service Provider and the Sub-Processor, which includes terms that are the same as, or equivalent to those terms set out in this Agreement. The Service Provider shall ensure that Sub-Processors engaged by them to Process HSE Personal Data, cease Processing HSE Personal Data upon the earlier termination of this Agreement or the termination of the Service Provider's contract / agreement with the Sub-Processor. The Service Provider shall remain fully liable to the HSE for any failure by a Sub-Processor to fulfil its obligations in relation to the Processing of any HSE Personal Data.

6 International Data Transfers

- 6.1 The Service Provider shall not process and/or transfer any HSE Personal Data in or to any country outside the European Economic Area (EEA) without the prior written consent of the HSE;

- 6.2 Where the HSE has consented to the Service Provider processing and/or transferring HSE Personal Data in or to a country outside the EEA, the Service Provider may only process and/or transfer HSE Personal Data in or to:
- 6.2.1 A country outside the EEA in respect of which an adequacy decision made by the European Commission under Article 45(3) of the GDPR is in force;
 - 6.2.2 A country outside the EEA subject to the execution of standard data protection clauses adopted by the EU Commission in accordance with the examination procedure referred to Article 93(2) of the GDPR, as provided for in Article 46(2)(c) and Article 46(2)(d) of the GDPR (the ‘Standard Contractual Clauses’) as between:
 - (a) the HSE and the Service Provider (where the Service Provider is receiving the HSE Personal Data (i.e. it is the data importer)); and/or as applicable
 - (b) the Service Provider and a Sub-Processor approved in accordance with Clause 5, where the Service Provider is transferring the HSE Personal Data (i.e. it is the data exporter) and the Sub-Processor is receiving the HSE Personal Data (i.e. it is the data importer).
 - 6.2.3 A country outside the EEA but where the transferee (i.e. the data importer) of the HSE Personal Data is a parent or subsidiary company of the Service Provider, approved in accordance with Clause 5, provided that the Service Provider and that parent or subsidiary company have adopted Binding Corporate Rules which have been approved by the relevant national data protection supervisory authority under Article 47 of the GDPR.
- 6.3 For the purposes of Clause 6.2.2 above, the parties to the Standard Contractual Clauses shall undertake and document a risk assessment on the laws and practices in force within the country outside the EEA where the data importer is located (a ‘Transfer Impact Assessment’), and where necessary implement supplementary measures. Where the Service Provider, and not the HSE, is acting as the data exporter, the Service Provider shall, upon request, make available to the HSE a copy of the Transfer Impact Assessment, and provide details of any supplementary measures implemented.
- 6.4 For the purposes of Clause 6.2.3 above, the Service Provider and the transferee in the country outside the EEA, shall undertake and document a Transfer Impact Assessment, and where necessary implement supplementary measures. The Service Provider shall, upon request, make available to the HSE a copy of the Transfer Impact Assessment, and provide details of any supplementary measures implemented.
- 6.5 Upon the written request of the HSE, the Service Provider shall supply the HSE within 14 calendar days, with a complete list of all countries around the world, where the Service provider and (as applicable) their Sub-Processors are currently processing HSE Personal Data.
- 6.6 In the event that the transfer mechanism entered into under this Clause 6 of this Agreement ceases to be valid, the Service Provider shall at the HSE’s discretion:
- 6.6.1 Enter into and/or procure that any relevant Sub-Processor enters into an appropriate alternative data transfer mechanism;
 - 6.6.2 Delete any HSE Personal Data in its and/or its Sub-Processor’s possession; or
 - 6.6.3 Return any HSE Personal Data in its and/or its Sub-Processor’s possession to the HSE;

- 6.7 In the event that there ceases to exist any valid data transfer mechanism which would enable the Personal Data to be lawfully transferred by the HSE to the Service Provider, the HSE shall be entitled to terminate the Contract(s) forthwith.

7 Personal Data Breach

- 7.1 The Service Provider shall notify the HSE without undue delay, and at the latest within 72 hours, after the Service Provider or (as applicable) their Sub-Processors become aware of a Personal Data Breach within their respective organisations which affects any HSE Personal Data which is Processed by the Service Provider or (as applicable) their Sub-Processors;
- 7.2 When notifying the HSE of a Personal Data Breach, the Service Provider shall ensure the notification includes, at a minimum, the information listed in Article 33(3) of the GDPR.

8 Audit

- 8.1 The Service Provider shall keep accurate and up-to-date records relating to its Processing of HSE Personal Data;
- 8.2 At no additional cost to the HSE, the Service Provider shall make available to the HSE all information necessary to demonstrate the Service Providers compliance with the obligations laid down in Article 28 of the GDPR and allow for and contribute to audits, including inspections, conducted by the HSE or, subject to the Service Providers consent, another auditor mandated by the HSE. If and when the HSE decides to exercise its rights under this provision, the HSE and the Service Provider agree to negotiate in good faith the scope and implementation details of this provision. Without prejudice to the foregoing, any such audits or inspections shall be carried out under a duty of confidentiality, on reasonable written notice and during regular business hours and shall not unreasonably interfere with the Service Provider's business activities.

9 Termination or Completion of Agreement

- 9.1 Without affecting indemnity, other right or remedy available to the HSE, a breach by the Service Provider of any of the terms of this Agreement shall be deemed a material breach and where that breach is irremediable or if such breach is remediable and the Service Provider fails to remedy that breach within 30 calendar days after being notified by the HSE to do so, then the HSE may terminate any Contract(s) it has with the Supplier with immediate effect by giving written notice to the Service Provider.
- 9.2 Upon termination or the completion of any Contract(s), the Service Provider shall, at the request and choice of the HSE, Delete or return to the HSE, all HSE Personal Data held by the Service Provider and (as applicable) their Sub-Processors:
- 9.2.1 Where the HSE has requested the Service Provider Delete the HSE Personal Data, the Service Provider shall ensure all HSE Personal Data and all the copies thereof (irrespective of format) held by the Service Provider and (as applicable) their Sub-Processors is Deleted from all of the Service Provider's and (as applicable) their Sub-Processors' IT systems, IT devices, mobile computer devices, removable storage devices and Servers within 30 calendar days. The Service Provider shall notify the HSE in writing, when they and (as applicable) their Sub-Processors have completed the Deletion process;

- 9.2.2 Where the HSE has requested the Service Provider return the HSE Personal Data, the Service Provider shall ensure all HSE Personal Data and all the copies thereof (irrespective of format) held by the Service Provider and (as applicable) their Sub-Processors is returned to the HSE within 30 calendar days. The Service Provider shall ensure all HSE Personal Data held electronically by the Service Provider and (as applicable) their Sub-Processors is returned to the HSE in a commonly used electronic format;
- 9.2.3 In circumstances where, after the termination or completion of any Contracts, the Service Provider is required under European Union or Irish Law to retain a copy of any HSE Personal Data, the Service Provider undertakes to supply the HSE in writing, unless prohibited by law, with the full details of any HSE Personal Data they are legally required to retain and the details of the European Union or Irish Law governing this requirement. In such circumstances, the Service Provider shall ensure all HSE Personal Data is appropriately secured and encrypted at all times to a standard which is satisfactory to the HSE and shall ensure that the HSE Personal Data is only processed for the specific legal retention purpose so-notified to the HSE. When the Service Provider is no longer legally required to retain the HSE Personal Data, the Service Provider shall, at the request and choice of the HSE, Delete or return to the HSE, the HSE Personal Data in accordance with Clauses 9.2.1 and 9.2.2 of this Agreement.

9.3 Upon termination or the completion of any Contract(s), the Service Provider shall return to the HSE with immediate effect, all HSE IT devices, mobile computer devices, removable storage devices, phones, parking permits, I.D. badges and any other equipment which the HSE provided to the Service Providers employees and contractors.

10 Indemnity. Notwithstanding any other provision of the Contract(s), The Service Provider hereby indemnifies and holds harmless, and agrees to keep indemnified and hold the HSE harmless against all damages, losses, liabilities, costs, fines and/or penalties, expenses, compensation and associated costs arising out of or in connection with any act, omission, default or negligence of the Service Provider and its Sub-Processors relating to the Processing of HSE Personal Data under this Agreement.

11 Survival of Obligations. All the obligations under this Agreement will survive and continue after termination, and will bind the Service Provider's legal representatives, successors and assigns until such time as all the HSE Personal Data has been returned to the HSE or permanently destroyed.

12 Waiver. The rights of the HSE under this Agreement will not be prejudiced or restricted by any indulgence or forbearance extended to the Service Provider or other parties, and no waiver by the HSE in respect of any breach of the terms of this Agreement will operate as a waiver in respect of any subsequent breach.

13 Variation

13.1 Subject to Clause 13.2, this Agreement may not be released, discharged, supplemented, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each of the parties hereto;

13.2 The HSE may amend this Agreement if there is any change to the Data Protection Legislation which necessitates changes to this Agreement, and this Agreement as so amended shall be binding on the parties hereto.

- 14 Notice.** Any notice or other communication given or made under this Agreement shall be in writing and may be sent by email, delivered to the relevant party, or sent by pre-paid registered post airmail to the address of that party specified in this Agreement or such other address as may be notified hereunder by that party from time to time for this purpose and will be effective notwithstanding any change of address not so notified. Unless the contrary is proved, each such notice or communication will be deemed to have been given or made and delivered, if by email upon delivery, if by post 48 hours after posting, or if by delivery when left at the relevant address.
- 15 Severance.** If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions of this Agreement will remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision will apply with whatever modification is necessary to make it valid, enforceable or legal.
- 16 Conflicts.** With regard to the Processing of HSE Personal Data, in the event of any conflicts or inconsistency between the terms of this Agreement and the Contract(s), the terms of this Agreement shall prevail.
- 17 Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Transmission of the executed signature page of a counterpart of this Agreement by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement. If such method of delivery is adopted, without prejudice to the validity of this Agreement, each party shall provide the other with the original of such counterpart as soon as reasonably possible thereafter.
- 18 Assignment.** The Service Provider cannot, without the prior written consent of the HSE, assign, sublicense, subcontract, mortgage or otherwise transfer or dispose of the whole or any part of this Agreement.
- 19 Further Assurance.** Each Party undertakes to do all acts and execute all documents which may be necessary to give full effect to this Agreement.
- 20 Further Assistance.** Each Party shall cooperate with and provide assistance to the other Party consistent with the terms and conditions of this Agreement.
- 21 Governing Law.** This Agreement will be governed by and construed in accordance with the laws of Ireland and the parties hereto hereby irrevocably submit to the exclusive jurisdiction of the courts of Ireland.

IN WITNESS where of this Agreement has been entered into the day and year first herein written.

SIGNED on behalf of the
Health Service Executive

In the presence of

.....
Signature

.....
Signature

.....
Name (printed)

.....
Name (printed)

.....
Title

.....
Title

Date:

Date:

SIGNED on behalf of

In the presence of

.....
(the **Service Provider**)

.....
Signature

.....
Signature

.....
Name (printed)

.....
Name (printed)

.....
Title

.....
Title

Date:

Date:

Appendix 1

The data processing activities carried out by the Service Provider pursuant to the Agreement are described as follows:

1. Subject Matter of the Processing

The Service Provider is under Contract(s) to provide one or more Services to the HSE. The provision of these Services to the HSE necessitates the Service Provider Processing data including Personal Data on behalf of the HSE.

2. Duration of the Processing

The HSE Personal Data shall be Processed by the Service Provider for as long as necessary. The duration of the Processing shall correspond to the terms of the Contract(s) for the Services between the Service Provider and the HSE.

3. Nature and Purpose of the Processing

The Service Provider shall only Process Personal Data as necessary to provide the Services pursuant to the Contract(s) between the HSE and the Service Provider, this Agreement and as further instructed by the HSE.

Depending on the Service(s) provided by the Service Provider to the HSE, the Personal Data may be subject to the following basic Processing activities

- Receive data, including collection, accessing, retrieval, recording and data entry.
- Hold data, including storage, hosting, organisation and structuring.
- Use data, including analysing, consultation, migrating and testing.
- Update data, including correcting, adaptation, alteration, alignment and combination.
- Send data, including electronic transmission and sending by other means.
- Protect data, including restricting, encrypting, and security testing.
- Share data, including disclosure, dissemination, allowing access or otherwise making data available.
- Backup data, including taking, storing and restoration of data.
- Erase data, including destruction and deletion.

4. Description of the HSE Personal Data (if applicable) processed

Depending on the Service(s) provided by the Service Provider to the HSE, the Service Provider whilst providing the Service(s) to the HSE, may Process the following categories of Personal Data & Special Categories of Personal Data:

Personal Data, which may include, but is not limited to the following:

- First and Last name
- Title
- Position
- Date of Birth
- Home contact details (address, telephone number, mobile number, personal email address)

- Business contact details (address, telephone number, mobile number, personal email address, work location)
- Family life
- Civil Partnership and Marital status
- Employer name & address
- Employee number
- Personal Public Service Number (PPSN)
- Individual Health Identifier (IHI)
- Medical Record Number (MRN)
- Personal life data
- Professional life data
- Connection data
- Location data
- Financial and bank details
- Employment details
- Education details
- General Practitioner contact details (name, address, contact telephone number)

Special Categories of Personal Data, which may include, but is not limited to the following:

- Racial or Ethnic origin
- Religious or philosophical beliefs
- Trade union membership
- Data concerning health
- Sex life or sexual orientation
- Biometric data
- Genetic data

5. Categories of Data Subjects who's Personal Data is processed

Depending on the Service(s) provided by the Service Provider to the HSE, the Service Provider whilst providing the Services to the HSE, may Process Personal Data relating to the following categories of Data Subjects:

- HSE staff and contractors
- HSE Agency staff and contractors
- HSE patients, clients and service users
- HSE Agency patients, clients and service users
- HSE business partners, service providers and suppliers (who are natural persons)
- HSE business partners, service providers and suppliers staff and contractors (who are natural persons)

Appendix 2

List of Sub-Processors currently engaged by the Service Provider and approved by the HSE to Process the HSE Personal Data or any part thereof the Personal Data.

Sub-Processor (Company name, location etc.)	Function (Type of service(s) provided by the sub-processor)	Processing location (Geographic location where processing takes place)

Appendix 3

The minimum technical and organisational measures that must be implemented by the Service Provider when using their own ICT resources to Process HSE Personal Data:

1. All IT Networks (with the exception of those which are owned or controlled by the HSE) used by the Service Provider to Process or store any HSE Personal Data have properly managed, configured and up to date firewalls in place;
2. All IT Networks (with the exception of those which are owned or controlled by the HSE) used by the Service Provider to Process or store HSE Personal Data have properly managed and configured network monitoring and logging in place;
3. All IT Networks (with the exception of those which are owned or controlled by the HSE) used by the Service Provider to Process or store HSE Personal Data have properly managed, configured and up to date intrusion detection and/or intrusion prevention systems in place;
4. All IT Networks (with the exception of those which are owned or controlled by the HSE) used by the Service Provider to Process or store HSE Personal Data have strong access controls in place;
5. Appropriate levels of network, system, and physical redundancy are in place;
6. All the buildings or facilities (with the exception of those which are owned or controlled by the HSE) used by the Service Provider to host IT systems, IT devices, Servers and other critical IT equipment which are used to Process or store HSE Personal Data are protected by appropriate physical and environmental controls;
7. All IT devices, mobile computer devices and Servers (with the exception of those which are owned or controlled by the HSE) used by the Service Provider to Process or store HSE Personal Data have real-time protection anti-virus, anti-malware and anti-spyware software installed and updated daily;
8. All IT systems, IT devices, mobile computer devices, Servers and other critical IT equipment (with the exception of those which are owned or controlled by the HSE) used by the Service Provider to Process or store HSE Personal Data are protected by strong unique passwords which satisfy or better the requirements of the HSE Password Standards Policy (<https://www.hse.ie/eng/services/publications/pp/ict/>);
9. All the mobile computer devices and removable storage devices (with the exception of those which are owned or controlled by the HSE) used by the Service Provider to Process or store HSE Personal Data have encryption enabled which encrypts any HSE Personal Data stored at rest on the device. The encryption of the HSE Personal Data on the device may be achieved by either full-disk encryption, file system encryption or (as applicable) database encryption. All encryption used by the Service Provider must satisfy or better the requirements of the HSE Encryption Policy (<https://www.hse.ie/eng/services/publications/pp/ict/>);
10. All Servers (with the exception of those which are owned or controlled by the HSE) used by the Service Provider to Process or store HSE Personal Data have encryption enabled which encrypts any HSE Personal Data stored at rest on the Server. The encryption of the HSE Personal Data on the Server may be achieved by either full-disk encryption, file system encryption or (as applicable) database encryption. All encryption used by the Service Provider must satisfy or better the requirements of the HSE Encryption Policy (<https://www.hse.ie/eng/services/publications/pp/ict/>);
11. All Servers (with the exception of those which are owned or controlled by the HSE) used by the Service Provider to Process or store HSE Personal Data are backed up on a daily basis. Where the Service Provider backs up the Servers onto backup media, the Service Provider must ensure the following:
 - 11.1 The backup media is stored a sufficient distance away from the Server, for example, in another building on-site under the control of the Service Provider or off-site in a building or facility controlled by the Service Provider or a contracted third party;
 - 11.2 When not in use, the backup media is protected from damage caused by fire, heat, humidity, water and exposure to strong magnetic fields;

- 11.3 The backup media is password protected by strong unique passwords which satisfy or better the requirements of the HSE Password Standards Policy (<https://www.hse.ie/eng/services/publications/pp/ict/>);
 - 11.4 The backup media is encrypted using strong encryption which satisfies or better the requirements of the HSE Encryption Policy (<https://www.hse.ie/eng/services/publications/pp/ict/>);
 - 11.5 Access to the backup media is limited to the Service Providers employees, contractors and/or (as applicable) Sub-Processors who are involved in the backup process;
 - 11.6 When in transit, the backup media is protected at all times from damage, theft, interference and loss;
 - 11.7 The backup media is tested by the Service Provider on a regular basis;
 - 11.8 All old, obsolete and damaged backup media which was used to backup HSE Personal Data is physically destroyed.
12. All Servers (with the exception of those which are owned or controlled by the HSE) used by the Service Provider to Process or store HSE Personal Data have logging enabled, and the Server logs are monitored by the Service Provider on a regular basis;
13. All HSE Personal Data which is sent in transit by the Service Provider is sent via secure channels (for example, VPN, Secure FTP or TLS) or encrypted email. All encryption used by the Service Provider must satisfy or better the requirements of the HSE Encryption Policy (<https://www.hse.ie/eng/services/publications/pp/ict/>);
14. Appropriate patch management procedures are in place for managing the timely application of relevant security software updates and patches to all IT devices, mobile computer devices, Servers and other critical IT equipment (with the exception of those which are owned or controlled by the HSE) used by the Service Provider to Process or store HSE Personal Data;
15. Documented disaster recovery plans are in place which detail how the Service Provider will restore the availability of, and access to any Servers (with the exception of those which are owned or controlled by the HSE) used by the Service Provider to Process or store HSE Personal Data in the event of a physical or technical security breach;
16. Appropriate asset management procedures are in place which allow for the management and recording of all the Service Providers IT hardware and software assets used to Process or store HSE Personal Data;
17. Appropriate procedures are in place for the timely decommissioning and secure wiping or destruction (i.e. process that renders data unrecoverable) of all old, obsolete and damaged IT devices, mobile computer devices, Servers, software and other critical IT equipment (with the exception of those which are owned or controlled by the HSE) used by the Service Provider to Process or store HSE Personal Data;

18. Appropriate procedures are in place which allow the Service Provider to regularly, test, assess and evaluate the effectiveness of the technical and organisational measures they have implemented to ensure the security of HSE Personal Data which they Process on behalf of the HSE;
19. Appropriate separation controls are in place which provide for the separation of different customers data on the Service Providers IT hardware and software and ensure HSE Personal Data is Processed by the Service Provider as separately as possible from the Service Providers other customer's data;
20. Full separation (where applicable) of the Service Providers production and development / test / training environments is in place;
21. Documented IT and information security policies are in place which all the Service Provider's employees and contractors sign up to, and are expected to comply with;
22. Appropriate procedures are in place for the vetting of all new Service Provider employees and contractors who will have access to HSE Personal Data;
23. Non-disclosure and confidentiality clauses are included in the Service Providers contracts of employment for all their employees and contractors who have access to HSE Personal Data;
24. Where legally required to do so, the Service Provider has appointed a Data Protection Officer (DPO) in accordance with Article 37 of the GDPR.

