



CONFIDENTIAL

HEALTH SERVICE EXECUTIVE

and

[Insert Contractor Name Here]

STANDARD AGREEMENT FOR
DIGITAL SOLUTIONS, SUPPLIES AND SERVICES

JULY 2026

Version 2.0

Agreement/Contract No: [INSERT]

Agreement/Contract Title: [INSERT]

Effective Date: [INSERT]

Initial Term (Months/Years): [INSERT]

Initial Term End Date: [INSERT]

Extension Options (Months/Years): [INSERT]



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This Agreement is made on the [INSERT DATE] day of [INSERT MONTH] 20[INSERT YEAR] between:

- (1) The **HEALTH SERVICE EXECUTIVE** having its head office at Limetree Avenue, Millennium Business Park, Naas, Co. Kildare (including its successors and assigns) (the “**Customer**”) of the one part; and
- (2) [INSERT COMPANY NAME] ([insert Registered Company Number]) of [insert Registered Company Address] (the “**Contractor**”) of the other part;

(Each a “**Party**” and together the “**Parties**”)

RECITALS

WHEREAS:

- (A) The Customer is a statutory body with statutory responsibility for the provision of health and social care services in Ireland. The Customer was established by the Health Act 2004 and came into official operation on 1 January 2005.
- (B) The Customer wishes to procure [INSERT SUMMARY OF SERVICES/SUPPLIES/SOFTWARE] and the Contractor is a supplier of such [INSERT SUMMARY OF SERVICES/SUPPLIES/SOFTWARE].
- (C) Accordingly the Parties have agreed to enter into this Agreement, for the provision by the Contractor of the [INSERT SUMMARY OF SERVICES/SUPPLIES/SOFTWARE].
- (D) [The Parties acknowledge that the Contractor Software being procured is [CHOOSE APPLICABLE OPTION WITH REFERENCE TO APPLICABLE DEFINED TERMS AND DELETE NOT APPLICABLE TYPES - On-premises Software / Cloud-based Software / both On-premises Software and Cloud-based Software].

NOW IT IS HEREBY AGREED that:

1. STRUCTURE

1.1 The Agreement is separated into the following parts:

- 1.1.1 Generic Clauses (Part One) – this part applies to the procurement of the Solution;
- 1.1.2 Services Contract Clauses (Part Two) – this part applies only if the Customer is procuring Services;
- 1.1.3 Supplies Contract Clauses (Part Three) – this part applies only if the Customer is procuring Supplies (including Hardware);
- 1.1.4 Software and Hardware (Part Four) – this part applies to the procurement of Software and/or Hardware;
- 1.1.5 Contract Management Clauses (Part Five) – this part applies as stipulated in Part Five;
- 1.1.6 Dispute Resolution Procedure (Part Six) – this part applies to the procurement of all Software, Services and Supplies; and
- 1.1.7 Schedules to the Agreement.

PART ONE

GENERIC CONTRACT CLAUSES

2. CONSTRUCTION

- 2.1 Headings and sub-headings are for ease of reference only and do not affect the construction of the Agreement.
- 2.2 References to Clauses are references to Clauses of the Agreement.
- 2.3 In this Agreement:
 - 2.3.1 references to Contractor, where the context requires, shall include its permitted subcontractors and agents;
 - 2.3.2 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);
 - 2.3.3 words in the singular include the plural and the other way around;
 - 2.3.4 references to one gender includes all genders;
 - 2.3.5 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;
 - 2.3.6 references to a “company” shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
 - 2.3.7 references to times are to times in Ireland.
- 2.4 The Schedules comprise schedules to this Agreement and form part of this Agreement.
- 2.5 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.
- 2.6 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.
- 2.7 Unless the context otherwise requires, the word “including” shall mean “including but not limited to” and “include” and “includes” shall be construed accordingly.
- 2.8 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.

3. DEFINITIONS

The following definitions apply to the Agreement:

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

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

"Acceptance Criteria" has the meaning given to the term in Schedule 8 (Acceptance Procedures).

"Acceptance Procedures" means the terms and conditions applicable to accepting completion as set out in Schedule 8 (Acceptance Procedures) to this Agreement.

"Acceptance Test Plan" has the meaning given to the term in Schedule 8 (Acceptance Procedures).

"Acceptance Report" means the report issued by the Contractor on completion of successful User Acceptance Tests as set out in Schedule 8 (Acceptance Procedures).

"Agreement" means this agreement (including all relevant Parts and Schedules) between the Parties and shall include, where applicable, Official Purchase Order(s).

"AI System" has the meaning set out in Article 3(1) of the AI Act.

"Alternative Transitional Period" has the meaning set out in Clause 30.13.6.

"Appropriate Security Safeguards" means administrative, technical, operational and organisational safeguards (appropriate to the Risk posed) with a view to protecting the data and network and information systems of the Customer and the Contractor from unauthorised access, acquisition, disclosure, destruction, alteration, accidental loss, misuse or damage and will include, where applicable, any specific requirements as set out in Schedule 7 (Cybersecurity Requirements);

"Approved AI System" has the meaning set out in Clause 14.1.1.

"AI Legislation" means all applicable laws, instruments and regulations relating to the use of artificial intelligence, including Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (the **"AI Act"**) as may be amended or updated from time to time.

"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).

"Cloud-based Software" means software that is hosted, operated or otherwise made available by the Contractor (or its authorised third-party hosting providers) on remote servers or cloud infrastructure not controlled by the Customer and that the Customer accesses via the internet or other remote network

"Commissioned Software" means software that has been developed by the Contractor specifically for the Customer in accordance with Clause 82 (Commissioned Software).

"Confidential Information" has the meaning given to it in Clause 25.2 (*Confidential Information*).

“Configured Software” means those elements of the programmable Contractor Software which have been selected and programmed to make the Contractor Software function to the Customer’s requirements (excluding Commissioned Software). **“Configure”, “Configured”** and **“Configuration”** shall be construed accordingly.

“Contractor Background Intellectual Property Rights” means Intellectual Property Rights owned by or licensed to the Contractor prior to the Effective Date or developed or acquired exclusively by the Contractor independently of the performance of this Agreement or delivery of the Solution during the Term, without the use or reliance on Customer Intellectual Property Rights and which is not funded by the Customer.

“Contractor 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 Contractor.

“Contractor Software” means (as applicable) the On-premises Software and/or Cloud-based 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 Schedule 1 (Requirements and Specifications) and Schedule 4 (Contractor’s Tender) but which excludes Commissioned Software.

“Contractor’s People” means the Key Personnel and any other Contractor staff, employees, contractors, persons engaged in the provision, management, implementation or support 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) and includes any clarifications issued after the date of tender submission and prior to the Effective Date but which excludes any qualifications, assumptions, caveats or similar contained in it;

“Control” means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and **Controls, Controlled** and the expression **change of Control** shall be construed accordingly.

“Current HSE Service Provider Data Processing Agreement” has the meaning set out in Clause 28;

“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.

“Customer Information” means all and any information, data and material (irrespective of the information format – paper, electronic or otherwise) belonging to and/or relating to the Customer and its business, operations and functions, including but not limited to information, data and materials relating to patients, service users, persons related or connected to such patients and service users, medical and other professionals, employees, contractors and service providers;

“Customer Information Security Policies” means the policies that relate to the security of Customer Information and as referred to in Clause 26 (Customer Policies).

“Customer Intellectual Property Rights” means the Intellectual Property rights in the Commissioned 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 Solution.

“Customer Policies” means those policies referred to in Clause 26 (Customer Policies).

“Customer’s People” means the Customer’s members, officers, employees, servants, contractors, sub-contractors or agents and such other entities and persons as may be authorised by the Customer to utilise the Solution or part thereof.

“Customer Software” means software owned by, or licensed to, the Customer which is used by the Customer.

“Cybersecurity Requirements” means all applicable laws relating to the security of network and information systems and security breach and incident reporting requirements including NIS 2 and Data Protection Legislation.

“Days” means 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.

“Deployer” has the meaning set out in the AI Act.

“Digital Assets” has the meaning set out in the EU Data Act.

“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 Solution 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 97.2 (Mediation).

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

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

“EHDS Regulation” means the European Health Data Space Regulation, Regulation (EU) 2025/327 of 11 February 2025 as may be amended or updated from time to time.

“EU Data Act” means Regulation (EU) 2023/2854 of 13 December 2023 on harmonised rules on fair access to and use of data as may be amended or updated from time to time.

“EU Data Act Services” has the meaning set out in Clause 30.13.1.

“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 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 97.6 (Mediation).

“Exportable Data” has the meaning set out in the EU Data Act.

“Extended Maximum Transitional Period” has the meaning set out in Clause 30.13.5.

“Extended Term(s)” has the meaning given to the term in Clause 4 (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) epidemic or pandemic that curtails transportation facilities or access to premises (where physical access to premises is required and services cannot be provided on a virtual basis);
- (f) acts of national, local or foreign governmental authorities or courts;
- (g) failures in either Party’s or third party electrical power, and
- (h) any strike, lockout or other industrial action or labour dispute affecting the Customer

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.

“Garda Vetted” means that a person has undergone full and complete police screening which at a minimum shall disclose details of any convictions spent or unspent, non-convictions and any proceedings pending in accordance with the respective jurisdiction’s justice system and such checks shall be equivalent to An Garda Síochána vetting.

“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” means any 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 supplied by the Contractor to the Customer as set out in an Official Purchase Order and/or Schedule 1 (Requirements and Specifications);

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

“High-Risk AI System” has the meaning given in Article 6 of the AI Act.

“HIQA” means the Health Information and Quality Authority.

“Incident” means an event compromising the availability, authenticity, integrity or confidentiality of stored, or transmitted or processed data, or of the services offered or accessible by a network and information system;

“ICDR” means International Centre for Dispute Resolution.

“Initial Term” means the period as defined in Clause 4.1.

“Intellectual Property Rights” means any and all rights pertaining to discoveries, inventions, 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 and/or copyright works, rights related to copyright and such related rights’ works, mask work rights, moral rights, know-how, and all other forms of industrial or intellectual property arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued or acquired (in each case in any part of the world and whether or not registered or registrable).

“Key Personnel” means personnel identified in Schedule 4 (Contractor’s Tender) 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 or body who, pursuant to any applicable law including European Union 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.

“Maximum Notice Period” has the meaning set out in Clause 30.13.2.

“Maximum Transitional Period” has the meaning set out in Clause 30.13.4.

“Milestone” means any one part of a Stage as set out in the Timetable and/or Schedule 2 (Payment Schedule) and Milestones shall be interpreted accordingly.

“Milestone Date” has the meaning given to it in Schedule 2 (Payment Schedule).

“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 97.3 (Mediation).

“NIS 2” means Directive (EU) 2022/2555 of the European Parliament and of the Council of 14 December 2022 on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No 910/2014 and Directive (EU) 2018/1972 and repealing Directive (EU) 2016/1148 (“NIS 1”) and any implementing regulations and legislation as may be in force from time to time.

“Notifiable Incident” means an Incident or Vulnerability that is notifiable in accordance with Clause 13.7.1;

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

- (a) Agreement/Contract Number;
- (b) Contractor;
- (c) Price;
- (d) Purchase order number; and
- (e) Hardware, Software and/or Services required;
- (f) Customer Representative;

“On-premises Software” means any software program, application or related component that is installed, operated or otherwise maintained on hardware, servers or other computing infrastructure owned, leased or controlled by the Customer or its nominees, rather than on infrastructure hosted or operated by the Contractor or its nominees.

“Output” means content, data and information generated or created by an Approved AI System based on input data, questions and/or prompts;

“Performance Criteria” means the performance criteria which it is intended the Hardware, Software, Solution and Services shall fulfil, as specified in Schedule 1 (Requirements and Specifications) and Schedule 3 (Service Level Agreement), 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 (or part thereof) for the relevant Service for any six (6) months in a period of twelve (12) months or for any three (3) consecutive months in accordance with the terms of this Agreement.

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

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

“Process, Processed, Processing” and like words, have the meaning given to those terms in Article 4 of the GDPR.

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

“Prohibited Acts” the following each constitute a **Prohibited Act**:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Customer a financial or other advantage as an inducement or reward for any improper performance of a relevant function of activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) committing any offence or being in breach of: (i) the Criminal Justice (Corruption Offences) Act 2018; (ii) under legislation or common law concerning fraudulent acts; (iii) Ethics in Public Office Acts 1995 and The Standards in Public Office Act 2001 or (iv) of defrauding, attempting to defraud or conspiring to defraud Customer;
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above, if such activity, practice or conduct had been carried out in Ireland;

“Project Manager” means the project manager assigned by the Contractor with the responsibilities set out in Clause 95.1 (Representatives and Contract Management Review).

“Provider” has the meaning set out in the AI Act.

“Public Body” means any of (a) a Department of State; (b) an entity established by or under any Irish enactment (other than the Companies Act); (c) any other entity established (other than under the Companies Act) or appointed by the Government or a Minister of the Government, including an entity established (other than under the Companies Act) by a Minister of the Government under any scheme; (d) a company (within the meaning of the Companies Act) a majority of the shares in which are held by or on behalf of a Minister of the Government; (e) a subsidiary (within the meaning of the Companies Act) of a company to which paragraph (d) relates; (f) an entity (other than a subsidiary to which paragraph (e) relates) that is directly or indirectly controlled by an entity to which paragraph (b), (c), (d) or (e) relates; (g) a higher education institution in receipt of public funding; (h) a Section 38 Body; and/or (i) a Section 39 Body, in each case where that entity derives performance of functions and/or activities that had previously been performed in whole or in part by the Customer pursuant to legislation or following government decision or reorganisation.

“Relevant Claim” has the meaning given to it in Clause 24.2 (Intellectual Property Rights Indemnity).

“Relevant Requirements” means all applicable law relating to bribery, corruption and fraud, including the Criminal Justice (Corruption Offences) Act 2018;

“Representative” has the meaning given to it in Clause 95.2 (Representatives and Contract Management Review).

“Retrieval Period” has the meaning set out in Clause 30.13.9.

“Requirements and Specifications” means the description of the goods and services (as applicable) required by the Customer, that forms the basis of this Agreement and as set out in Schedule 1 (Requirements and Specifications) to this Agreement as may be varied by the Parties pursuant to Schedule 5 (Change Control Procedures).

“Required Reports” has the meaning given to it in Clause 93.1 (Status Reporting);



“Review Board” has the meaning given to it in Clause 95.7 (Representatives and Contract Management Review).

“Review Board Report” has the meaning given to it in Clause 95.11 (Representatives and Contract Management Review).

“Review Meeting” has the meaning given to it in Clause 95.3 (Representatives and Contract Management Review).

“Risk” means the potential for loss or disruption caused by an Incident and is expressed as a combination of the magnitude of such loss or disruption and the likelihood of occurrence of the Incident;

“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 and Support 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 Schedule 3 (Service Level Agreement).

“Service Quality Report” means the monthly report to be provided by the Contractor to the Customer as set out in Schedule 3 (Service Level Agreement).

“Sites” means all Irish health and social care sites, including but not limited to, as may be applicable, public, voluntary, Section 38 and Section 39 body sites, where the Solution may be deployed or Services may be provided under this Agreement.

“Software” means any Software supplied by the Contractor to the Customer under this Agreement to include the Commissioned Software, Contractor Software (including Configured Software) and Third Party Software.

“Software Specifications” means the description of Software functions, facilities, performance levels (where appropriate) and related matters as agreed between the Parties in accordance with Clause 84;

“Solution” means the combination of Software, Supplies and Services (as applicable) to be delivered to the Customer in accordance with 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, maintain 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.

“Stage” means each one of the stages to deliver the Solution in accordance with the Agreement, each comprising a number of Milestones as identified in Schedule 2 (Payment Schedule) and/or the Timetable.



“Substantial Breach” means a material breach of the Agreement which has a material adverse effect on the performance of the Agreement, including but not limited to a Persistent Failure.

“Supplies” means those supplies, including Hardware, as detailed in Schedule 1 (Requirements and Specifications) and Official Purchase Order(s) to be supplied by the Contractor in accordance with this Agreement.

“Support Services” means the support and maintenance services as defined in Schedule 3 (Service Level Agreement).

“Switching Notice” has the meaning set out in Clause 30.13.2.

“Switching Process” has the meaning set out in Clause 30.13.1.

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

“Term” means the Initial Term and any Extended Term together.

“Termination Assistance Notice” has the meaning given to it in Schedule 9 (Termination Assistance).

“Termination Date” means any date of early termination of this Agreement in accordance with Clause 30 (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 the operation of the Solution and provision of the Services on and from the Effective Date.

“Timetable” means the timetable agreed between the Parties and included at Schedule 6 (Timetable).

“Training Services” has the meaning given to it in Clause 68.2 (Training Services).

“Transferring Contracts” has the meaning given to it in Schedule 9 (Termination Assistance).

“Trigger Release Event” has the meaning given to it in Clause 85.1 (Software Escrow).

“User Acceptance Tests” means the formal process of testing of the Solution by the Customer to ensure compliance with the Requirements and Specifications in accordance with Schedule 8 (Acceptance Procedures).

“User Acceptance Tests Period” 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, together with all other documentation required to be provided by the Contractor in accordance with Schedule 1 (Requirements and Specifications).

“Vulnerability” means a weakness, susceptibility or flaw of the Solution (or part thereof) or other infrastructure or components of the Contractor used to provide or support the Solution that can be exploited by a cyber threat.

“Wilful Misconduct” means any act or failure to act by a person that was intended to cause or was in reckless disregard of the harmful consequences to another person / Party which the person / Party acting or failing to act knew would result from such act or omission.

“WISP” has the meaning given to it in Clause 13.4 (General Security Requirements).

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

4. TERM

- 4.1 This Agreement will commence on the Effective Date and shall continue for a period of [INSERT NUMBER OF YEARS/MONTHS] (the **“Initial Term”**), unless extended under Clause 4.2 or if required as part of the Exit Management Plan or terminated in accordance with the provisions of this Agreement.
- 4.2 The Customer may extend the term of this Agreement for additional [INSERT EXTENDED PERIOD e.g. one year] period(s) up to [ENTER TOTAL EXTENSION PERIOD AS PER ADVERTISED TENDER] years beyond the Initial Term (the **“Extended Term”**) by giving the Contractor at least six (6) months’ notice expiring on or before the last day of the Initial Term or any Extended Term. If this Agreement is extended pursuant to this Clause 4.2 any extended period shall form part of the Term.
- 4.3 The Solution shall be implemented by the Contractor at each of the Sites during the Term in accordance with the provisions of this Agreement.
- 4.4 The Contractor shall provide the Solution to the Customer during the Term in accordance with the provisions of this Agreement and Schedule 1 (Requirements and Specifications).
- 4.5 This Agreement supersedes any previous oral or written negotiations, commitments, representations, communications and agreements between the Parties in connection with the subject matter of this Agreement.

5. ACCEPTANCE OF THE TERMS OF THE AGREEMENT

- 5.1 By entering into this Agreement, the Parties acknowledge that they will be bound by the terms of the Agreement.
- 5.2 The Contractor acknowledges and confirms that:
 - 5.2.1 it has had an opportunity to carry out a thorough due diligence exercise in relation to the Solution and has asked the Customer all the 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;
 - 5.2.2 it has received all information requested by it from the Customer pursuant to Clause 5.2.1 to enable it to determine whether it is able to provide the Solution in accordance with the terms of this Agreement;
 - 5.2.3 it has made and shall make 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 pursuant to Clause 5.2.2;

- 5.2.4 it has raised all relevant due diligence and/or clarification questions with the Customer before the Effective Date; and
- 5.2.5 it has entered into this Agreement in reliance on its own due diligence.
- 5.3 Save as provided in this Agreement, no representations, warranties or conditions are given or assumed by either Party in respect of any information which is provided to the other Party and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
- 5.4 The Contractor hereby waives its own conditions of sale save for exceptions to the contrary which are approved in writing by the Customer and specifically and explicitly set out in a schedule to this Agreement.

6. PROVISION OF THE SOLUTION

- 6.1 The Contractor shall provide the Solution during the Term in accordance with (a) to (f) below. In the event of and only to the extent of any ambiguity between the provisions of the documents listed below, the order of precedence shall be as follows:
 - 6.1.1 the terms of this Agreement (excluding the Schedules and the Official Purchase Orders);
 - 6.1.2 the Customer requirements as set out in Schedule 1 (Requirements and Specifications) and includes any clarifications by the Customer issued after the date of tender submission and prior to the Effective Date;
 - 6.1.3 Schedule 3 (Service Level Agreement);
 - 6.1.4 Official Purchase Orders;
 - 6.1.5 the Schedules, other than those referred to above;
 - 6.1.6 Schedule 4 (Contractor's Tender).
- 6.2 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.
- 6.3 The Contractor confirms that it has, where applicable, provided to the Customer, clear information on any data processing services as referred to in the EU Data Act, including those utilising Cloud-based Software, that involve highly complex or costly switching or for which it is impossible to switch to another service provider or to an on-premises ICT infrastructure without significant interference in the data, digital assets or service architecture.
- 6.4 The Contractor shall provide the Solution during the agreed working hours and at the locations specified in Schedule 1 (Requirements and Specifications).
- 6.5 Where there is any conflict or inconsistency between the provisions of the documents set out under Clause 6.1 above, the conflict or inconsistency will be resolved in such manner as gives rise to the greatest standard and level of performance of the Solution (and does not give rise to any breach of Irish or European public procurement law) and according to the order of priority set out above.

- 6.6 In providing the Solution, the Parties acknowledge that the Contractor's co-operation with other third parties may be required. In this respect, the Contractor shall co-operate with third party suppliers:
- 6.6.1 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 as set out in Schedule 1 (Requirements and Specifications) and/or as otherwise agreed in writing between the parties;
 - 6.6.2 to the extent reasonably required by the Customer for the purposes of implementation of the Software (including any part thereof) by the Customer's People at any Sites;
 - 6.6.3 to the extent reasonably required by the Customer for the purposes of satisfying Schedule 1 (Requirements and Specifications); and
 - 6.6.4 without incurring any material costs in order to allow such third party suppliers and/or the Customer's People to perform their contractual obligations to the Customer.
- 6.7 The Customer shall, during the Term, comply with its obligations in respect of the delivery of the Solution as set out in Schedule 1 (Requirements and Specifications).
- 6.8 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.

7. JOINT AND SEVERAL LIABILITY

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

8. PRICE

- 8.1 The Customer will pay the Contractor the Price for providing the Solution in accordance with the terms of this Agreement.
- 8.2 The Contractor acknowledges and confirms that the Price is correct and sufficient, and that the Contractor has taken account of all that is required to perform its obligations under this Agreement (and specifically the provision of all goods, products and services required hereunder). The Price includes all costs associated with the supply of the Solution, including all applicable governmental and local authority taxes, levies, tariffs or charges which may arise. Subject to Clause 11, to the extent VAT is applicable this will be itemised separately on any submitted invoice.
- 8.3 The Contractor shall not commence work on any of the Stages unless it receives the prior written approval of the Customer by way of Official Purchase Order for that Stage.
- 8.4 The Customer shall only be liable to pay the Contractor such of the Price as is applicable to that part of the Solution as is ordered by the Customer in Official Purchase Orders; and the Customer shall not be liable to pay the Contractor for any part of the Solution not ordered by the Customer.
- 8.5 In accordance with the EU Data Act, it is acknowledged that, from 12 January 2027, with respect to Solutions constituting 'data processing services' as defined in the EU Data Act, no charge (including data egress charges) shall be imposed for the switching to the system of a different

service provider or to an on-premises ICT infrastructure or the Deletion of the Customer Information, Exportable Data and Digital Assets.

9. PAYMENTS

- 9.1 Unless otherwise directed by the Customer, all payments under this Agreement will be by electronic funds transfer in euro.
- 9.2 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 Schedule 6 (Timetable).
- 9.3 Payments will only be made upon receipt of completed deliverables. Schedule 2 (Payment Schedule) sets out the deliverables which trigger payment milestones. When the Agreement (or applicable Stage or Milestone thereof) has been properly completed, the Contractor must submit an invoice in electronic/digital format (unless otherwise requested by the Customer) to the Representative of the Customer notified to it by the Customer for that purpose, stating:
- 9.3.1 the name and address of the Contractor;
 - 9.3.2 the invoice number and invoice date and/or Tax Point;
 - 9.3.3 the number of the Official Purchase Order;
 - 9.3.4 the Agreement/contract number;
 - 9.3.5 the product codes and descriptions for the Solution, and a breakdown of the part of the Price applicable to each code;
 - 9.3.6 the applicable part of the Price payable; and
 - 9.3.7 if there is VAT, Price excluding VAT, VAT rate applicable, VAT value, Price including VAT and the Contractor's VAT registration number.
- 9.4 If the Agreement includes Supplies, the invoice must show the delivery address as stated on the Official Purchase Order 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.
- 9.5 If Schedule 2 (Payment Schedule) provides for interim payment for completion of Stages or Milestones of the Agreement, the Contractor must submit an interim invoice for the Stage or Milestone portion of the Price when the Stage or Milestone has been properly completed and accepted by the Customer. The interim invoice must comply with this Clause 9.
- 9.6 If the Customer is satisfied that:
- 9.6.1 the Agreement or Stage or Milestone (as applicable) has been completed according to this Agreement;
 - 9.6.2 the Contractor has complied with this Clause 9;
 - 9.6.3 the Contractor has a current tax clearance certificate (this will be required only where payments by the Customer to the Contractor total ten thousand euro (€10,000) or more (including VAT) in a 12 month period) (which the Contractor must maintain and provide to the Customer upon request); and

- 9.6.4 the invoice complies with section 17 of the Value Added Tax Act 1972;

then the Customer will pay the amount due, less any deduction permitted under this Agreement, within thirty (30) days of receipt of the invoice, unless the Customer has informed the Contractor within twenty (20) days of receipt of the invoice 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.

- 9.7 To the extent that the 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).
- 9.8 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. The Contractor acknowledges that the Customer is required to, and shall, apply Professional Services Withholding Tax to payments in respect of professional services.
- 9.9 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).
- 9.10 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.
- 9.11 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).
- 9.12 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.
- 9.13 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.
- 9.14 The Contractor confirms that it shall not be entitled to any increase to the Price which is set out in Schedule 2 (Payment Schedule), beyond the scope of increases specifically provided for in Schedule 2 (Payment Schedule), as a result of or in connection with indexation, any country (or part of a country) leaving the European Union, or any foreseeable or unforeseeable change of law consequent on or concerning such a departure or otherwise.

9.15 Further detail in relation to payment may be set out in Schedule 2 (Payment Schedule).

10. DEBTS TO THE CUSTOMER

10.1 The Customer may recover any money due from the Contractor under or for breach of this Agreement:

10.1.1 as a simple contract debt due and recoverable in any court of competent jurisdiction; or

10.1.2 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.

11. VAT

11.1 All amounts due under this Agreement are exclusive of VAT.

11.2 If any supply under this Agreement is or becomes chargeable to VAT then VAT shall be chargeable on applicable amounts due under this Agreement. As set out in Clause 9.3.7 where VAT is chargeable it shall be separately itemised in any invoice submitted by the Contractor to the Customer. Each invoice should include Price excluding VAT, VAT rate applicable, VAT value, Price including VAT.

12. LEGAL REQUIREMENTS

12.1 The Contractor shall, in performing the Agreement, comply with all Legal Requirements and ensure that the Contractor's People comply with all Legal Requirements.

12.2 The Contractor shall ensure that the Solution complies with all Legal Requirements.

13. CYBERSECURITY

13.1 Compliance with cybersecurity laws

13.1.1 The Contractor shall at all times comply with, and warrants to the Customer that it is compliant with, all Cybersecurity Requirements relating to the security of network and information systems and security breach and incident reporting.

13.1.2 The Contractor undertakes to the Customer that it shall implement and maintain Appropriate Security Safeguards in accordance with Cybersecurity Requirements and Good Industry Practice.

13.2 General security obligations

13.2.1 Without affecting the Contractor's obligations under Clause 13.1, the Contractor shall, in accordance with Good Industry Practice, at all times, implement and maintain and comply with Appropriate Security Safeguards when:

(a) designing, developing, implementing, providing or maintaining the Solution to be provided in connection with this Agreement; and

(b) performing its obligations or exercising its rights under this Agreement.

13.2.2 The Appropriate Security Safeguards include, as a minimum, the contractual security requirements set out in Schedule 7 (Cybersecurity Requirements).

13.3 The Contractor shall at all times in accordance with Good Industry Practice:

- 13.3.1 continuously log and monitor all activities on its network and implement, operate and maintain and comply with, an incident management process which shall enable the Contractor, as a minimum, to proactively detect, prioritise and manage Risks, Incidents and Vulnerabilities, on a continuous basis, sufficient to meet its obligations in Clause 13.7;
 - 13.3.2 mitigate against all Incidents, Vulnerabilities and Notifiable Incidents;
 - 13.3.3 not introduce any Vulnerability into the Customer's network and information systems or Solution which it provides in connection with this Agreement;
 - 13.3.4 take reasonable steps to preserve the integrity of any Customer Information to prevent any corruption, compromise or loss of Customer Information;
 - 13.3.5 make back-ups of Customer Information in accordance with the Requirements and Specifications and, where not specified, in accordance with Good Industry Practice, and record the copy on media from which the data can be reloaded if there is any corruption or loss of the Customer Information; and
 - 13.3.6 in the event of any loss or corruption to Customer Information attributable to any default by or behalf of the Contractor, promptly restore that Customer Information from the most recent backup copy at its own expense.
- 13.4 *General Security Representations*
- 13.4.1 The Contractor warrants, represents and undertakes that it has implemented, and will at all times maintain and comply with a written and fully documented information security program ("WISP") which includes appropriate policies, procedures and Risk assessments to ensure the confidentiality, integrity, availability and security of network and information systems (and those of its customers) and any data processed via such systems, in accordance with Good Industry Practice. The Contractor shall review the WISP and these measures at least annually and when significant Incidents or changes to its operations or Risks occur.
 - 13.4.2 The Contractor warrants and represents that all information provided to the Customer in, or pursuant to this Clause 13 and its associated schedules is true, up to date and accurate and agrees that it will promptly update the Customer in the event of any changes to such information.
- 13.5 The Contractor warrants and represents that:
- 13.5.1 the Solution provided in connection with this Agreement has been designed, developed and implemented in accordance with Good Industry Practice and incorporates Appropriate Security Safeguards;
 - 13.5.2 it has conducted a cybersecurity risk assessment, in accordance with Good Industry Practice, covering all its core IT or operational environments and critical supply chains within the last twelve (12) months, the result of which do not, as of the date of this Agreement, reveal any material:
 - (a) Vulnerabilities;
 - (b) Risks that may lead to a Vulnerability;
 - (c) Gaps in regulatory compliance;
 - (d) Breaches of third party contract terms relating to security obligations;

(e) Security practices not in accordance with Good Industry Practice;

13.5.3 it has not suffered any Incident or Vulnerability within the last twelve (12) months that has disrupted or compromised the operations of the Contractor in any material respect. It has not been the subject of any regulatory or third party action, request, enforcement, litigation, claim or dispute or complaint in connection with any Incident or Vulnerability within the last twelve (12) months.

13.6 *Co-operation and Audits*

The Contractor shall maintain adequate records, and on the Customer's request, make available such information as the Customer may reasonably require, to demonstrate its compliance with this Clause 13 and Schedule 7 (Cybersecurity Requirements).

13.7 *Incident Handling and Vulnerability Management*

13.7.1 The Contractor shall notify the Customer without undue delay and in any event within twenty-four (24) hours of becoming aware of any of the below:

- (a) any Incident which has caused, or is capable of causing, operational disruption to, or an impact on the security of, the Contractor or the Customer or the Solution provided in connection with this Agreement;
- (b) any Incident which has caused or is capable of causing financial loss to the Customer;
- (c) any Incident which has affected or is capable of affecting other natural or legal persons by causing damage to the Customer or the Solution provided in connection with this Agreement; or
- (d) any Vulnerability contained in the Solution provided in connection with this Agreement.

13.7.2 The Contractor shall provide updates as information becomes available and shall include in the notification as minimum:

- (a) a description of the Incident or Vulnerability and what Customer Information is affected, if any;
- (b) an outline of the nature and cause of the Incident;
- (c) details of the system and data affected;
- (d) the measures being taken to address the Incident or Vulnerability;
- (e) the recommended mitigation measures.

13.7.3 For the purposes of Clause 13.7.1, the Contractor shall promptly conduct an initial assessment to determine, with a reasonable degree of certainty, whether an Incident or Vulnerability qualifies as a Notifiable Incident and shall provide a copy of this initial assessment along with the notification to be provided in accordance with Clause 13.7.1, or on the Customer's request.

13.7.4 The Contractor shall respond, without undue delay, to all queries and requests for information from the Customer about any actual or suspected Incident or Vulnerability, whether discovered by the Contractor or the Customer, with due consideration of any reporting obligations the Customer may have under the Cybersecurity Requirements.

- 13.7.5 The Contractor shall cooperate fully with the Customer in its investigation, remediation and any required notification to any competent authorities or affected users.

13.8 Cybersecurity obligations re Personnel

- 13.8.1 The Contractor shall, before engaging any Contractor's People or approved sub-contractor with respect to this Agreement, and in accordance with Good Industry Practice:

- (a) conduct due diligence on the relevant sub-contractor and (if applicable) its products and services, sufficient to reasonably establish that the sub-contractor can meet the requirements of this Clause 13;
- (b) vet the relevant Contractor's People (whether of the Contractor or its sub-contractor) including appropriate background and reference checks, with a view to establishing that such personnel have received adequate cybersecurity training, experience and qualifications sufficient for their engagement on the Services, and to meet the Contractor's security obligations under this Clause 13;
- (c) ensure that any subcontractors engaged in the performance of the Solution are bound by a written agreement with that subcontractor which imposes obligations substantially similar to those imposed on the Contractor with respect to the Cybersecurity Requirements; and
- (d) ensure that any personnel or sub-contractor will notify the Contractor of an Incident or the Risk of an Incident in accordance with Clause 13.7.

- 13.8.2 The Contractor shall maintain and keep an up-to-date register of:

- (a) all sub-contractors and personnel engaged on the Solution, including points of contact, and the levels of access rights granted; and
- (b) the Solution provided to the Customer and its core and critical components.

14. ARTIFICIAL INTELLIGENCE

14.1 Incorporation of AI Systems in the Solution

- 14.1.1 The Contractor undertakes that it shall not supply to the Customer any AI System as part of the Solution without the prior express written consent of the Customer (including but not limited to any AI System for the purposes of, or related to, the processing of Personal Data, any clinical purposes, the provision of care or treatment or decision making with respect to care or treatment or the granting or otherwise of access to or eligibility for healthcare). Any such AI System which is approved by the Customer for inclusion in the Solution is referred to as an '**Approved AI System**'.

- 14.1.2 The Contractor acknowledges that any such proposed supply of an AI System shall be reviewed by the Customer in accordance with the Customer's then current AI governance arrangements and implementation frameworks. The Contractor undertakes to provide all information that the Customer may reasonably require with respect to the proposed AI System (both in advance of its potential adoption and during the course of its use in the event that the AI System is approved for use by the HSE).

- 14.1.3 The Contractor shall provide full written details of:

- (a) the nature and purpose of the proposed AI System;

- (b) whether it is proprietary to the Contractor or licensed from a third party;
- (c) the categories of data used to train the AI System;
- (d) the role of the AI System in decision-making; and
- (e) all material risks associated with its use.

14.1.4 The Contractor will comply with the AI Legislation with respect to any Approved AI System.

14.1.5 In the event that the HSE consents to an Approved AI System forming part of the Solution upon execution of this Agreement, details of the Approved AI System (including the information referred to in Clause 14.1.3 above, shall be included in Schedule 11 (Approved AI System).

14.2 *Classification*

14.2.1 The Contractor represents and warrants that it has carried out a documented assessment of whether an Approved AI System constitutes a High-Risk AI System under the AI Act.

14.2.2 The Contractor shall notify the Customer in writing if:

- (a) the Approved AI System qualifies as High-Risk; or
- (b) there is any change to the Approved AI System which results in a change of classification.

14.2.3 Where the Approved AI System is High-Risk, it is agreed that the Contractor shall act as Provider for the purposes of the AI Act unless otherwise expressly agreed in writing.

14.2.4 The Contractor shall not take any action which would cause the Customer to be deemed a Provider under Article 25 of the AI Act without the Customer's prior written consent.

14.3 *Provider Obligations for High-Risk AI Systems*

14.3.1 Where an Approved AI System is a High-Risk AI System, the Contractor shall, without prejudice to its obligation to comply with the AI Legislation more generally:

14.3.2 implement and maintain a documented risk management system in accordance with Article 9 of the AI Act;

14.3.3 ensure appropriate data governance and data management practices in accordance with Article 10 of the AI Act;

14.3.4 prepare and maintain complete technical documentation in accordance with Article 11 of the AI Act;

14.3.5 ensure the AI System is designed to enable automatic recording of events in accordance with Article 12 of the AI Act;

14.3.6 ensure compliance with transparency and provision of information obligations under Article 13 of the AI Act;

14.3.7 design and implement appropriate human oversight measures in accordance with Article 14 of the AI Act;

14.3.8 ensure appropriate levels of accuracy, robustness and cybersecurity in accordance with Article 15 of the AI Act;

14.3.9 complete any required conformity assessment procedure under Article 43 of the AI Act;

- 14.3.10 affix CE marking where required;
- 14.3.11 register the system in the applicable EU database under Article 71 of the AI Act (where applicable); and
- 14.3.12 implement and maintain a post-market monitoring system in accordance with Article 72 of the AI Act.

The Contractor shall provide written evidence of the above upon request.

14.4 *Customer Information*

- 14.4.1 The Contractor undertakes that it shall not, without the prior specific written consent of the Customer for the proposed category of input or usage, during the term of this Agreement, or at any time following expiry or termination of this Agreement, input or use any Customer Information (or sub-set thereof) in any AI System. The Contractor acknowledges that the Customer may withhold, caveat or condition such consent. Where such consent is granted during the term of this Agreement, the Parties will agree, via Change Control, any additional conditions or protections that may be required by the Customer in connection with any such agreed use of Customer Information.
- 14.4.2 Without limiting the generality of the foregoing, the Contractor shall not use Customer Information to train, retrain, or fine-tune any AI System, or permit any third-party provider to use Customer Information for training purposes or combine Customer Information with data from other customers without the Customer's prior written consent.
- 14.4.3 Customer Information shall not be input into, or shared with, any publicly available or shared AI model.
- 14.4.4 In the event that the HSE consents to certain of those matters referred to in Clauses 14.4.1 or 14.4.2 upon execution of this Agreement, the details of such consent and any applicable requirements, conditions or caveats to the provision of such consent shall be set out in Schedule 11 (Approved AI System).

14.5 *Ownership of Output*

- 14.5.1 Unless otherwise agreed, it is acknowledged that, to the fullest extent legally possible, any and all Intellectual Property Rights in the Output of an Approved AI System generated in the provision of the Solution to the Customer shall vest in the Customer unconditionally and immediately upon their creation. The Contractor hereby assigns to the Customer by present assignment of future rights all Intellectual Property Rights in the Outputs with unencumbered title. The Contractor shall carry out all acts and execute all documents as the Customer may consider reasonably necessary to give effect to this clause.

14.6 *Incident Notification and Regulatory Cooperation*

- 14.6.1 The Contractor shall notify the Customer without undue delay (and in any event within 48 hours) of any serious incident (as defined in the AI Act).
- 14.6.2 The Contractor shall provide updates as information becomes available and shall include in the notification as minimum:
 - (a) a description of the incident and what persons and Customer Information are affected, if any;
 - (b) an outline of the nature and cause of the incident;

- (c) details of the systems, data and categories of person(s) affected;
- (d) the measures being taken to address the incident;
- (e) the recommended mitigation measures.

14.6.3 The Contractor shall respond, without undue delay, to all queries and requests for information from the Customer about any actual or suspected incident, whether discovered by the Contractor or the Customer, with due consideration of any reporting obligations the Customer may have under the AI Legislation.

14.6.4 The Contractor shall cooperate fully with the Customer in its investigation and remediation of any such incidents and in any required notifications to any competent authorities or affected users.

14.7 *Human Oversight*

14.7.1 The Contractor shall ensure that an Approved AI System which is a High-Risk AI System enables effective human oversight consistent with Article 14 of the AI Act.

14.7.2 The Contractor shall provide sufficient training materials and operational guidance sufficient to enable the Customer to exercise appropriate oversight as a Deployer.

14.7.3 Where an Approved AI System may influence or assist decision making the Contractor shall ensure that appropriate documentation is available for purposes of explainability of decision making and meaningful human review.

14.8 *AI Governance*

14.8.1 The Contractor shall appoint a suitably qualified individual to act as point of contact for the Customer with respect to the Approved AI Systems.

14.8.2 The Contractor shall provide the Customer with all such information and assistance that the Customer requires for the Customer to comply with applicable regulatory obligations with respect to the Customer's use of the Approved AI Systems.

15. **ELECTRONIC HEALTH RECORD SYSTEMS**

Where the Solution incorporates an electronic health record to which the EHDS Regulation applies, the provisions as set out in Schedule 12 shall apply.

16. **EARLY WARNING**

16.1 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:

16.1.1 the quality or timing of any element of the Solution;

16.1.2 the efficiency or cost to the Customer of its supply;

16.1.3 the operation of the Customer's business; or

16.1.4 the performance of any other obligations of the Contractor under this Agreement.

- 16.2 Following such a warning, Clause 18.4 and/or Clause 18.6 shall apply, where appropriate.
- 16.3 For the avoidance of doubt nothing in this Clause 16 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).

17. STEP IN RIGHTS

- 17.1 The Customer may, without prejudice to its other rights and remedies under this Agreement, provide prior written notice to the Contractor that it intends to exercise its rights under this Clause 17 if:
- 17.1.1 the Contractor commits a Substantial Breach of this Agreement;
 - 17.1.2 there is a Persistent Failure;
 - 17.1.3 a Force Majeure event arises; or
 - 17.1.4 the Customer exercises its rights under Clause 38 (Fraud).
- 17.2 If the Contractor does not substantially remedy the matter referred to above to the satisfaction of the Customer within twenty eight (28) days of the notice referred to in Clause 17.1 above or such lesser deemed reasonable 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 Contractors obligations under this Agreement.
- 17.3 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.
- 17.4 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 17. The Customer's reasonable costs in exercising its rights under this Clause 17 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.
- 17.5 The Contractor shall co-operate in all reasonable respects with the Customer and any third party engaged by the Customer under this Clause 17. On entering into any agreements with third parties, the Contractor shall ensure that the Customer's rights under this Clause 17 are in no way restricted and that all Necessary Consents are in place to allow the Customer to fully exercise its rights under this Clause 17.

18. TIMETABLE

- 18.1 Unless otherwise agreed, the Contractor must commence the provision of the Solution on the date specified in the Timetable or, where not so specified, on receipt of the applicable Official Purchase Order.
- 18.2 The Contractor must carry out the Services regularly and diligently, and within any time 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.
- 18.3 Any change to a Timetable will only be made in accordance with this Clause 18, Clause 55 (Change Control), and Clause 45 (Force Majeure) and the Contractor shall submit to the Customer, within five (5) Working Days of such a change being agreed, a copy of the revised Timetable.

- 18.4 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 at the request of the Customer, provide reasonable and agreed assistance and resources as may be necessary to fulfil said obligations as early as practicable thereafter.
- 18.5 Costs incurred as a result of delays which arise on the part of the Contractor, any sub-contractor or third party, engaged by the Contractor, shall be borne by the Contractor.
- 18.6 In the event that the Contractor fails to fulfil an obligation by the date specified in a Timetable (or, in the absence of a Timetable, the timeframe as otherwise agreed with the Customer), due to an act or the omission of the Contractor:
- 18.6.1 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 Milestones will be completed in accordance with the Timetable (or other agreed timeframes). 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
- 18.6.2 the Customer shall have the right, at its option to:
- (a) amend the relevant Timetable to take account of the delay, in accordance with Schedule 5 (Change Control Procedures) (having regard to the reasons provided by the Contractor pursuant to Clause 18.6.1 above); and/or
 - (b) deduct a percentage of the Price payable for achievement of the relevant date as set out in the Timetable in the manner set out in Schedule 2 (Payment Schedule).
- 18.7 The provisions of this Clause 18 shall be applied at the sole discretion of the Customer and shall be without prejudice to the other rights and remedies of the Customer.

19. SUSPENSION

- 19.1 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 to the Contractor, suspend this Agreement in its entirety for a period of not less than thirty (30) Working Days nor greater than one hundred and twenty (120) Working Days, unless otherwise agreed in writing by the Parties, acting in good faith.
- 19.2 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.
- 19.3 On any suspension by the Customer:
- 19.3.1 the Contractor shall wind-down the provision of the Solution as appropriate to a suspension; and
- 19.3.2 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.

- 19.4 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.

20. DISASTER RECOVERY

Subject to any additional requirements set out in Schedule 1 (Requirements and Specifications), 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 the Solution is restored following the occurrence of the Disaster.

21. PROVISION OF INFORMATION

- 21.1 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.
- 21.2 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.

22. CUSTOMER INFORMATION

- 22.1 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.
- 22.2 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.
- 22.3 If Customer Information is corrupted or lost as a result of any default by the Contractor, the Customer shall have the option to:
- 22.3.1 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
- 22.3.2 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.
- 22.4 The following shall apply to the Customer Information supplied by the Customer to the Contractor and to Customer Information which is generated or created through use of the Solution:
- 22.4.1 Intellectual Property Rights in the Customer Information shall remain the property of the Customer or its licensors;
- 22.4.2 the Contractor may use the Customer Information solely to the extent necessary for the provision of the Solution;
- 22.4.3 the Contractor shall comply with any reasonable directions made by the Customer from time to time relating to use of the Customer Information; and

- 22.4.4 the Contractor shall not share, forward, distribute, copy, destroy or otherwise provide access to the Customer Information without the prior consent of the Customer.
- 22.5 The Contractor shall, in accordance with the EU Data Act, provide the Customer with details of the on-line register hosted by the Contractor which sets out details of all the data structures and data formats as well as the relevant standards and open interoperability specifications in which the Customer Information, Exportable Data and Digital Assets may be ported upon the Customer switching to an alternative service provider or moving to an on-premises ICT infrastructure.
- 22.6 The Contractor shall, in accordance with the EU Data Act, make the following information available on their websites and keep that information up to date:
- 22.6.1 the jurisdiction to which their information technology infrastructure deployed for data processing of their individual services is subject:
- 22.6.2 a general description of the technical, organisational and contractual measures adopted by the Contractor to prevent international governmental access to or transfer of non-personal data held in the European Union where such access or transfer would create a conflict with European Union law or the national law of Ireland
- and the websites referred to in Clause 22.6 are: **[insert details here]**.

23. INTELLECTUAL PROPERTY RIGHTS

- 23.1 The Contractor hereby grants to the Customer and the Customer's People the right to use such Intellectual Property Rights as may be necessary for the Customer and the Customer's People to receive the benefit of this Agreement, including but not limited to use of the Contractor Software and User Documentation.
- 23.2 The Contractor shall not acquire any right, title or interest in or to the Customer Software, Commissioned Software or Customer Information or the media on which the Customer Software, Commissioned Software or Customer Information 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).
- 23.3 The Contractor shall not:
- 23.3.1 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;
- 23.3.2 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;
- 23.3.3 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 or Commissioned Software available to a third party (subject to Clause 82.5);
- 23.3.4 remove or alter any copyright or other proprietary notice on any Customer Software or Commissioned Software; or
- 23.3.5 de-compile or reverse engineer Customer Software or Commissioned Software.

- 23.4 Save as otherwise agreed or specified in this Clause 23 (Intellectual Property Rights), the Contractor shall own all Intellectual Property Rights in the Contractor Software and the Contractor Background Intellectual Property Rights.
- 23.5 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, consultant's sub-contractors and assignees) execute any documents which the Customer requires to perfect its title in Customer Intellectual Property Rights.
- 23.6 Nothing in this Agreement shall be construed as preventing the Contractor from using any know how or trade secret rights created by it prior to or during the performance of this Agreement in the course of its ordinary business nor from using for any purpose that experience which is gained by its staff in providing the Services (excluding for the avoidance of doubt the Customer Intellectual Property Rights), or prevent the Contractor from providing similar services to others using the same or different staff, provided that nothing in this Clause 23.6 shall relieve the Contractor from complying with its obligations under this Agreement, including in respect of Key Personnel.

24. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

- 24.1 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 the Intellectual Property Rights of any third party in connection with the operation of the Solution and/or receipt of Services or Supplies from the Contractor.
- 24.2 Where any claim is made that there has been an infringement or alleged infringement by the Customer of such 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.
- 24.3 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:
- 24.3.1 procure for the Customer the rights to continue to operate the Solution and/or receive the Services (as the case may be); or
- 24.3.2 modify the Solution, and/or Services so that they are non-infringing without materially detracting from their overall performance; or
- 24.3.3 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.
- 24.4 The Contractor shall carry out its obligations under this Clause 24 (Intellectual Property Rights Indemnity) 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.

25. CONFIDENTIAL INFORMATION

- 25.1 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.
- 25.2 For the purposes of this Agreement “**Confidential Information**” shall mean:
- 25.2.1 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 Supplies/Services under the Agreement 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 Agreement(s) (including but not limited to the Customer Information); and
- 25.2.2 any and all information which has been derived or obtained from information described in Clause 25.2.1.
- 25.3 Save as may be required by law, the Contractor agrees in respect of the Confidential Information:
- 25.3.1 to only use such Confidential Information for the purposes of the Agreement(s);
- 25.3.2 to treat such Confidential Information as confidential and to take all necessary steps to ensure that such confidentiality is maintained;
- 25.3.3 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.
- 25.4 The obligations in this Agreement will not apply to any Confidential Information:
- 25.4.1 in the Contractor’s possession (with full right to disclose) before receiving it from the Customer; or
- 25.4.2 which is or becomes public knowledge other than by breach of this clause; or
- 25.4.3 is independently developed by the Contractor without access to or use of the Confidential Information; or
- 25.4.4 is lawfully received from a third party (with full right to disclose).
- 25.5 The Contractor undertakes:
- 25.5.1 to comply with all directions of the Customer with regard to the use and application of all and any Confidential Information;

- 25.5.2 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;
 - 25.5.3 to implement appropriate technical and organisational measures to protect the Confidential Information;
 - 25.5.4 to notify the Customer as soon as possible, and no later than 24 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;
 - 25.5.5 upon termination or the completion of this Agreement, 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.
- 25.6 In relation to the processing of any Personal Data, the Contractor shall ensure they fully comply with the provisions of Clause 28 (Data Protection and Data Security) of this Agreement.

26. CUSTOMER POLICIES

- 26.1 The Contractor is obliged to comply with the following policies:
- 26.1.1 Customer National I.T Policies and Standards as provided by the Customer to the Contractor;
 - 26.1.2 additional policies and standards contained or referred to within Schedule 1 (Requirements and Specifications);
 - 26.1.3 Customer policies, other than those referenced in Clause 26.1.1 and 26.1.2 above which apply to the Solution provided by the Contractor generally;
 - 26.1.4 policies introduced during the Term of this Agreement and that are relevant in the context of providing the Solution. Schedule 5 (Change Control Procedures) will be invoked in circumstances where either Party believes the introduction of such policies is likely to have a material impact.

27. CONTRACTOR'S PEOPLE

- 27.1 The Contractor shall ensure that the Contractor's People, officers, sub-contractors and assignees (which includes Key Personnel):
- 27.1.1 are suitably qualified and experienced and of an appropriate number to perform the Contractor's obligations under the Agreement;
 - 27.1.2 endeavour to cause as little disruption to employees or business of the Customer at any of its Sites;
 - 27.1.3 comply with the terms of this Agreement; and
 - 27.1.4 are Garda Vetted, where they carry out any work or activity, a necessary and regular part of which consists mainly of access to, or contact with, children or vulnerable persons at any of the following types of Sites:

- (a) a hospital or health care centre;
 - (b) a designated centre within the meaning of Section 2 of the Health Act 2007;
 - (c) a special care unit provided and maintained in accordance with Section 23K of the Child Care Act 1991; or
 - (d) an approved centre within the meaning of Part Five of the Mental Health Act 2001.
- 27.2 Where the Contractor's People and/or sub-contractors will carry out any work or activity, a necessary and regular part of which consists mainly of the persons in question having access to, or contact with children in any of the types of establishments listed in Schedule 1 of the Children First Act 2015, the Contractor shall comply with the applicable obligations as set out in the Children First Act 2015. Where requested to do so by the Customer, the Contractor will provide reasonable assistance to the Customer in the support of risk assessments and controls to safeguard children from harm as part of the Customer's Child Safeguarding Risk Assessment and Child Safeguarding Statement, including requiring their personnel and/or sub-contractors to be Garda Vetted in accordance with Clause 27.1.4 of this Agreement, undertake assigned Children First Training and adhere to applicable Customer Child Protection and Welfare policies (as applicable).
- 27.3 The Contractor shall ensure that each of the Key Personnel are available to assist in performing the Agreement in their respective roles.
- 27.4 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.
- 27.5 The Customer may reasonably object (whether in writing or at a Review Meeting) to the continued allocation of certain named Contractor's People 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.
- 27.6 The Contractor shall promptly, following such good faith discussions, replace such Contractor's People with other individual(s) 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.
- 27.7 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.
- 27.8 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.
- 27.9 The Contractor shall be solely responsible for:
- 27.9.1 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 in accordance with all applicable laws; and

27.9.2 fully complying with all relevant Legal Requirements relating to conditions of employment, terms of employment and health and safety at work, immigration and work permits and, in addition, with 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.

27.10 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.

27.11 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.

27.12 Transfer of Undertakings

27.12.1 It is not the intention of the Parties that the commencement, or expiry of this Agreement or the Services (or part of the Services) should give rise to a transfer of undertakings under the 2003 TUPE Regulations.

27.12.2 The Contractor will not organise the Contractor's People in such a way that they or any of them are wholly or mainly dedicated to providing the Services. The Contractor will provide the Services to an acceptable standard in accordance with the terms of this Agreement by providing sufficient resources, including Contractor's People, who also provide other services to or on behalf of the Contractor and the Contractor's clients who are not the Customer.

27.12.3 If it is found or alleged that any Contractor's People's employment transfers to the Customer to a replacement contractor in connection with the termination or expiry of the Services or this Agreement, whether pursuant to the 2003 TUPE Regulations or otherwise:

- (a) the Customer shall notify the Contractor of that finding or allegation as soon as reasonably practicable after becoming aware of it and the Parties will cooperate with each other with a view to identifying and complying with their respective legal obligations towards employees and each other (including obligations under this Agreement); and
- (b) the Contractor shall indemnify and keep indemnified the Customer and the replacement contractor against any and all costs, claims, liabilities, damages, awards, losses, demands and expenses (including reasonable legal expenses) which the Customer or Replacement Contractor may suffer or incur in respect of any claim of any kind whatsoever arising from any act or omission on the part of the Contractor in respect of the employment or non-employment by the Contractor of any person who was (or alleges they were) an employee who was the subject of any such transfer.

28. DATA PROTECTION AND DATA SECURITY

28.1 The Contractor is required to sign and comply with the most up-to-date version (as at the Effective Date) of the standard HSE Service Provider Data Processing Agreement (the "**Current HSE Service Provider Data Processing Agreement**"), and this will govern the processing of all and any Personal Data by the Contractor on behalf of the Customer.

28.2 Current HSE Service Provider Data Processing Agreement Not in Place

28.2.1 If, in advance of the Effective Date, the Contractor has not already entered into the Current HSE Service Provider Data Processing Agreement (whether due to not having entered into any data

processing agreement with the Customer, having signed another data processing agreement or having signed a different or older version of the HSE Service Provider Data Processing Agreement), execution of the Current HSE Service Provider Data Processing Agreement by the Contractor shall be a condition of entry into this Agreement and a copy of the executed Current HSE Service Provider Data Processing Agreement shall be included in Schedule 10 (HSE Service Provider Data Processing Agreement).

28.3 Current HSE Service Provider Data Processing Agreement in Place

28.3.1 If, in advance of the Effective Date, the Contractor has already entered into the Current HSE Service Provider Data Processing Agreement, a copy of the executed Current HSE Service Provider Data Processing Agreement will be included in Schedule 10 (HSE Service Provider Data Processing Agreement).

28.3.2 If the Contractor has, since entry into the Current HSE Service Provider Data Processing Agreement, made, or proposes to make with respect to the Solution the subject of this Agreement, changes to their approved Sub-Processors (as referred to in Appendix 2 of the HSE Data Processing Agreement) the Service Provider shall be required to update Appendix 2 of the Current HSE Service Provider Data Processing Agreement for Customer approval and the duly updated HSE Service Provider Data Processing Agreement will be included in Schedule 10 (HSE Service Provider Data Processing Agreement).

29. ACCESS TO PREMISES

29.1 On notice from the Contractor, the Customer shall arrange to provide the Contractor with access to the Customer's premises as is reasonably required so as to enable the Contractor to carry out its obligations under this Agreement.

29.2 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.

30. TERMINATION

30.1 The Customer may terminate this Agreement in whole or in part (and for the avoidance of doubt, without payment of any termination charge) with immediate effect where the Contractor commits: (i) a Substantial Breach which is incapable of remedy; or (ii) where a Substantial Breach is capable of being remedied, fails to remedy such a breach within thirty (30) days of notice being given by the Customer requiring the Contractor to do so. Where such termination is disputed the Dispute Resolution Procedure shall apply.

30.2 Subject to Clause 30.13 with respect to those Services constituting 'data processing services' under the EU Data Act, the Customer may terminate this Agreement in whole or in part by giving at least six (6) months' notice to the Contractor expiring on or after the first anniversary of the Effective Date.

30.3 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:

30.3.1 the Contractor is, or becomes insolvent, or unable to pay its debts within the meaning of the Companies Act 2014 (as amended) or suspends or threatens to suspend making payments with respect to all or any class of its debts;

- 30.3.2 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;
- 30.3.3 a liquidator, receiver or examiner has been appointed over the whole or any part of the property, assets or undertaking of the Contractor;
- 30.3.4 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;
- 30.3.5 the Contractor is or becomes related to any other company for the purpose of section 2(10) of the Companies Act 2014 (as amended), is or becomes liable to an order made under that section by virtue of any act (whether of commission or omission);
- 30.3.6 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;
- 30.3.7 anything analogous to any of the events described in Clauses 30.3.1 to 30.3.6 inclusive, occurs under the laws of any applicable jurisdiction; or
- 30.3.8 the Contractor ceases or threatens to cease carrying on the whole or any material part of its business.
- 30.4 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), with the Customer receiving a pro rata refund for the period for which Services are not received, 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 Solution and/or quality of the Services.
- 30.5 The Customer may terminate this Agreement in whole or in part if the User Acceptance Tests have been recorded as unsuccessful pursuant to Schedule 8 (Acceptance Procedures).
- 30.6 Without prejudice to the Customer's other rights and remedies, the Customer may terminate this Agreement in whole or in part by notice in writing with immediate effect if, in the reasonable opinion of the Customer, it is necessary or prudent to terminate it in order to comply with the requirements of applicable public procurement law or settle any complaint or challenge received by the Customer in such respect.
- 30.7 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 thirty (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).
- 30.8 If a Force Majeure affecting the Contractor continues for more than thirty (30) calendar days, the Customer may terminate this Agreement by giving fourteen (14) calendar days' notice.
- 30.9 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.

- 30.10 The Customer may terminate this Agreement in writing with immediate effect if in the reasonable opinion of the Customer any of the situations outlined in Regulation 73 of the European Union (Award of Public Authority Contracts) Regulations 2016 apply.
- 30.11 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 thirty (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 six (6) months from the date of termination specified in the notice of termination.
- 30.12 The Customer may terminate this Agreement pursuant to and in accordance with the provisions of Schedule 10 (HSE Service Provider Data Processing Agreement) in the event that the termination events specified in Schedule 10 apply.
- 30.13 EU Data Act - Data Processing Services - Switching**
- 30.13.1 The Customer may, notwithstanding any other rights of termination it may have under this Agreement, notify the Contractor that, with respect to all or part of those Services which constitute 'data processing services' under the EU Data Act ("**EU Data Act Services**"), of its decision to perform one or more of the following actions upon termination of the Maximum Notice Period referred to in Clause 30.13.2:
- (a) switch to a different provider of EU Data Act Services, in which case the Customer shall provide the necessary details of that provider; or
 - (b) switch to an on-premises ICT infrastructure;
(each a "**Switching Process**"); or
 - (c) Delete its Customer Information, Exportable Data and Digital Assets.
- 30.13.2 The Customer may initiate one of the actions referred to in Clause 30.13.1 by sending the Contractor a formal switching notice ("**Switching Notice**") with a maximum period of two (2) months' notice (the "**Maximum Notice Period**"). Nothing in this clause shall prevent the Customer indicating to the Contractor, in advance of service of such formal Switching Notice, that it intends to proceed in this manner. If the Customer wishes to switch only with regard to certain EU Data Act Services (and corresponding Customer Information, Exportable Data and Digital Assets) this shall be specified in the Switching Notice. The Customer may notify the Contractor that switching will happen on a phased basis in which case the Maximum Transitional Period (and, where applicable, Extended Maximum Transitional Period and/or Alternative Transitional Period) will, at the Customer's option, apply on a per phase basis.
- 30.13.3 In the Switching Notice the Customer shall inform the Contractor of which of the actions referred to in Clause 30.13.1 it intends to proceed with. The Contractor shall confirm receipt of the Switching Notice no later than forty-eight (48) hours after receipt using the same means of communication as the one used by the Customer.
- 30.13.4 The Customer has the right to switch without undue delay within the maximum transitional period of thirty (30) days (after expiry of the Maximum Notice Period) (the "**Maximum Transitional Period**").
- 30.13.5 Where the Contractor cannot respect the Maximum Transitional Period because this is not technically feasible, the Contractor shall:

- (a) notify the Customer within fourteen (14) Working Days from receipt of the Switching Notice;
 - (b) indicate an alternative transitional period, which must not exceed seven (7) months from the date of the Switching Notice (the “**Extended Maximum Transitional Period**”); and
 - (c) duly justify the technical infeasibility.
- 30.13.6 The Customer may extend the Maximum Transitional Period once, for a period it considers more appropriate for its own purposes (the “**Alternative Transitional Period**”). In that case the Customer will notify the Contractor before the end of the Maximum Transitional Period or Extended Maximum Transitional Period (as applicable) and indicate the length of the Alternative Transitional Period.
- 30.13.7 Without limiting the application of Clause 31 below, it is acknowledged that the Contractor will throughout the applicable transitional period:
 - (a) provide reasonable assistance to the Customer and third parties authorised by the Customer in the Switching Process;
 - (b) act with due care to maintain business continuity and continue the provision of the functions or Services under the Agreement;
 - (c) provide clear information concerning known risks to continuity in the provision of the functions or Services on the part of the Contractor; and
 - (d) maintain a high level of security, in particular the security of data throughout the Switching Process, in particular the security of data during its transfer and the continued security of the data during the Retrieval Period specified in Clause 30.13.9.
- 30.13.8 Both Parties shall cooperate in good faith to make the Switching Process effective, enable the timely transfer of data and maintain the continuity of the applicable EU Data Act Service. The Contractor shall comply with Article 23 (*Removing Obstacles to Effective Switching*) and Article 30 (*Technical Aspects of Switching*) of the EU Data Act.
- 30.13.9 The Customer may retrieve or Delete its data during the agreed period for data retrieval which shall be a minimum of thirty (30) days from termination of the applicable transitional period referred to above and shall, where Termination Services are being availed of pursuant to Schedule 9 (Termination Assistance), be for a longer period at least equivalent to the Termination Assistance Period as referred to therein, unless otherwise agreed between the Parties (the “**Retrieval Period**”).
- 30.13.10 At the end of the Retrieval Period, subject to successful completion of the Switching Process, the Contractor shall erase all Customer Information, including Exportable Data and Digital Assets generated by the Customer or directly related to the Customer. The Contractor shall confirm within thirty (30) days that such erasure has been completed, except for Personal Data which the Provider is obliged to store under EU or national laws.
- 30.13.11 *EU Data Act Services Termination Process*
 - (a) The Agreement will be considered terminated with respect to the applicable EU Data Act Services when one of the following has occurred:

- (i) where applicable, upon successful completion of the Switching Process in accordance with Clause 30.13.12 below; or
- (ii) at the end of the Maximum Notice Period where the Customer does not wish to switch but instead to Delete its Exportable Data and Digital Assets upon termination of the applicable EU Data Act Services in accordance with Clause 30.13.13 below.

30.13.12 Termination Upon Completion of Switching Process

- (a) The Agreement is not terminated with respect to the EU Data Act Services until the applicable Switching Process has been successfully completed. As soon as the Customer notifies the Contractor that the Switching Process was successfully completed, the Contractor shall without undue delay notify the Customer of the termination of the Agreement with respect to the EU Data Act Services.
- (b) If the Customer does not notify the Contractor of the successful completion of the Switching Process, the Contractor may, where it has reasonable grounds to believe that the Switching Process was successfully completed by the Customer, send the Customer a request for confirmation as to whether or not the Switching Process was successfully completed. If the Customer does not confirm successful switching within 30 Working Days from such request, the Switching Process is deemed unsuccessful, and the Agreement shall continue in accordance with its terms with respect to the applicable EU Data Act Services pending successful completion of the applicable Switching Process.

30.13.13 Termination Without Switching

- (a) If the Customer does not wish to switch but instead has opted to Delete their Customer Information, Exportable Data and Digital Assets upon termination of the applicable EU Data Act Service as referred to in Clause 30.13.11(a)(ii) above, this can only occur and be deemed completed if:
 - (i) the Maximum Notice Period has expired; and
 - (ii) the Customer has explicitly requested the Contractor to complete the Deletion, the Deletion has been successfully completed and this has been confirmed in writing by the Contractor; and
 - (iii) the Contractor has notified the Customer of termination of the Agreement with respect to the EU Data Act Services.

Notwithstanding Clause 30.13.11, it is agreed that Schedule 9 (Termination Assistance) shall survive any termination of this Agreement pursuant to Clause 30.13 with respect to the provision of the Termination Services for the Termination Assistance Period (where applicable).

31. TERMINATION ASSISTANCE

- 31.1 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.
- 31.2 In accordance with Schedule 9 (Termination Assistance), 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 costs associated with the development of the Exit Management Plan and the subsequent maintenance of the Exit Management Plan throughout the Term.

32. EFFECTS OF EXPIRY AND TERMINATION

32.1 On termination or expiry:

32.1.1 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;

32.1.2 the Contractor must give the Customer any documents to which the Customer is entitled as soon as practicable;

32.1.3 the Contractor must return all Confidential Information in accordance with Clause 25.5.5;

32.1.4 the benefit of any contract relating to the Solution will be automatically assigned to the Customer or its nominee, with immediate effect;

32.1.5 both Parties remain liable for amounts due and breaches before termination or expiry;

32.1.6 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;

32.1.7 the Contractor shall mitigate any losses, costs, liabilities and expenses which the Contractor or its sub-contractors may incur or suffer therefrom (which obligation shall not in any way be taken as any acceptance by the Customer of any responsibility for such losses, costs, liabilities or expenses);

32.1.8 to the extent applicable, the Parties will comply with their respective obligations under 2003 TUPE Regulations; and

32.1.9 the Contractor shall, subject to compliance with Clause 30.13 where applicable, cease to use the Customer Information and, at the direction of the Customer either:

- (a) provide the Customer with a complete and uncorrupted version of the Customer Information in electronic form (or such other format as reasonably required by the Customer); or
- (b) destroy (including removal from any digital storage) or return (at the Customer's option) all copies of the Customer's Information and confirm in writing that such destruction has taken place; and
- (c) to the extent applicable, the Contractor will comply with the requirements of the Exit Management Plan.

33. COMPENSATION ON TERMINATION

33.1 On termination for Substantial Breach, pursuant to Clause 30.1 (Termination) or due to Contractor's status pursuant to Clause 30.3 (Termination), the terminating Party, without limiting its other rights and remedies, is entitled to resulting damages, subject to the requirement to take all reasonable measures to mitigate the same.

33.2 On any termination by either Party, the Contractor is entitled to the part of the Price properly incurred for the portion of the Solution properly completed and delivered before the date of termination. All Contractor costs must be vouched accordingly unless otherwise agreed by the Customer.

33.3 The Contractor is not entitled to any other payment or damages for any termination.

34. INDEMNITY

34.1 Subject to Clause 36.1 (Conduct of Claims Subject to Contractor's Indemnities), 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:

34.1.1 death, personal injury, fraud or fraudulent misrepresentation;

34.1.2 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

34.1.3 breach of the Contractor's statutory duty.

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

34.2.1 any of the matters referred to in Clauses 34.1.1 to Clause 34.1.3 above which arise as a direct result of the Contractor acting on the instruction of the Customer; or

34.2.2 any injury, loss, damage, cost and expense to the extent 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.

34.3 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.

35. LIMITATION OF LIABILITY

35.1 Nothing in this Agreement excludes or limits:

35.1.1 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;

35.1.2 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);

35.1.3 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;

35.1.4 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

35.1.5 the Contractor's liability under Clause 24 (Intellectual Property Rights Indemnity), Clause 34 (Indemnity) or Clause 25 (Confidential Information).

- 35.2 Subject to Clause 35.1 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).
- 35.3 Subject to Clause 35.1, the Contractor's total aggregate liability (excluding such liability as is referred to in Clause 35.4 below), 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 [€6,500,000].
- 35.4 The liability of the Contractor arising from Clause 28 (Data Protection) and Schedule 10 (HSE Service Provider Data Processing Agreement) shall in no event exceed twenty-five million euro (€25,000,000).
- 35.5 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.
- 35.6 Save as provided in Clause 35.2, 35.3 and 35.4 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.

36. CONDUCT OF CLAIMS SUBJECT TO CONTRACTOR'S INDEMNITIES

- 36.1 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.
- 36.2 Subject to the following provisions of this Clause 36, and on giving of a notice pursuant to Clause 36.1, 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.
- 36.3 With respect to any claim being resisted by the Contractor in accordance with Clause 36.2 above:
- 36.3.1 the Contractor will keep the Customer fully informed and consult with it about the conduct of the claim;
- 36.3.2 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 36.2 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
- 36.3.3 the Contractor will not pay or settle such claim or make an admission 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).

- 36.4 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:
- 36.4.1 within sixty (60) Working Days of the issue date of the notice from the Customer under Clause 36.1 above the Contractor fails to notify the Customer of its intention to dispute the claim; or
- 36.4.2 the Contractor fails to comply in any material respect with the provisions of Clause 36.3 above.
- 36.5 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 36.2 above or 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 36.5, 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.

37. INSURANCE

- 37.1 Unless otherwise agreed in writing with the Customer, the Contractor must maintain insurances as follows:

Type of insurance	Minimum cover for any one claim	Period
Property Cover on all risks basis	Full replacement value and associated expenses	From date of Agreement until Supplies delivered and accepted by the Customer
Product liability	€6,500,000	From date of Agreement until completion of the contract
Professional indemnity for any professional services (or design works).	€6,500,000	From date of Agreement until six (6) years after completion of contract
Public liability for death, personal injury, loss of and damage to property	€6,500,000	From date of Agreement until completion of the contract
Employer's liability for sickness, injury and death of employees	€13,000,000	From date of Agreement until completion of the contract

Type of insurance	Minimum cover for any one claim	Period
Cyber Insurance	€5,000,000	From date of Agreement until completion of the contract
Motor Insurance required by law	Third Party Property Damage - €2.6m. Third Party Personal Damage - Unlimited.	From date of Agreement until completion of the contract

37.2 The Contractor must give the Customer on request copies of its insurance policies required by this Agreement or a letter of confirmation from the Contractor's insurance provider or broker together with a policy schedule summarising the cover and limits of indemnity and evidence that the insurances remain in effect.

37.3 The Contractor's insurance policies shall include an indemnity to principals provision in favour of the Customer and shall be confirmed by the Customer's insurance broker in writing.

37.4 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.

37.5 The insurances shall be placed with reputable insurers authorised to transact business within the Republic of Ireland (or within the EU under the Freedom of Services Directive) with a minimum rating of at least "A" from A.M (or equivalent ratings agency). Territorial and jurisdiction limits of such insurances shall include Ireland.

37.6 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.

38. FRAUD

38.1 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.

38.2 The Customer shall permit the Contractor, and the Contractor shall be entitled, to resume the Agreement immediately upon the earlier of the following:

38.2.1 the Customer agreeing in writing to the resumption of the Agreement; or

38.2.2 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.

39. QUALITY STANDARDS

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

- 39.2 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.
- 39.3 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.
- 39.4 In the event that 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.
- 39.5 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.

40. ACCEPTANCE PROCEDURES

The Contractor shall, as applicable, comply with all Acceptance Procedures set out in Schedule 8 (Acceptance Procedures).

41. NOTICES AND COMMUNICATIONS

- 41.1 Any notice to be given by one Party to the other Party under, or in connection with, this Agreement shall be in writing and shall be served by sending it by email, pre-paid recorded delivery, special delivery or registered post, to the address set out in Clause 41.3 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 41). Any notice so served by email or post shall be deemed to have been duly given in the case of:
- 41.1.1 email, at 12:00 pm on the next Working Day after being sent unless the sender receives an automated message that the email has not been delivered; and
- 41.1.2 pre-paid recorded delivery, special delivery or registered post, at 10.00 am on the second Working Day following the date of posting.
- 41.2 References to time in this Clause 41 are local time in the country of the addressee.
- 41.3 The addresses of the Parties for the purpose of Clause 41.1 above are as follows:

Customer

Office of the Chief Technology and Transformation Officer,

HSE, Dr. Steevens' Hospital,

Dublin 8,

D08 W2A8 Ireland

Attn: Chief Technology and Transformation Officer,

Email Address: CTTO@HSE.IE

Contractor

[Contractor Name]

[Contractor Address]

Attn: [contact name]

Email Address: [Email]

41.4 A Party may notify the other Party to this Agreement of a change to its name, relevant addressee, address or email address for the purposes of this Clause 41, provided that, such notice shall only be effective on:

41.4.1 the date specified in the notice as the date on which the change is to take place; or

41.4.2 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.

42. LANGUAGE

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

43. SURVIVAL OF CLAUSES

43.1 The provisions of Clause 1 (Structure), Clause 21 (Provision of Information), Clause 23 (Intellectual Property Rights), Clause 24 (Intellectual Property Rights Indemnity), Clause 25 (Confidential Information), Clause 28 (Data Protection and Data Security), Clause 31 (Termination Assistance), Clause 32 (Effects of Expiry and Termination), Clause 33 (Compensation on Termination), Clause 34 (Indemnity), Clause 35 (Limitation of Liability), Clause 37 (Insurance), Clause 43 (Survival of Clauses), Clause 47 (No Solicitation), Clause 48 (Warranties and Representations), Clause 49 (Information and Audit), Clause 61 (Extent of Liability), Clause 80 (Customer Software), Clause 81 (Contractor Software), Clause 82 (Commissioned Software), Clause 86 (Software Warranty), Clause 88 (Software Support), Schedule 3 (Service Level Agreement), Schedule 9 (Termination Assistance) and Schedule 10 (HSE Service Provider Data Processing Agreement) shall survive the termination or expiry of this Agreement.

43.2 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.

44. TRANSFER AND SUB-CONTRACTING

44.1 This Agreement will be binding on and will enure to the benefit of the Contractor and the Customer and their respective successors and permitted assigns.

44.2 Subject to Clause 44.3, the Contractor shall not assign, novate, or otherwise dispose of, this Agreement, or any part thereof, without the prior written consent of the Customer.

44.3 The Contractor may, with the prior written consent of the Customer, assign novate, or otherwise dispose of, this Agreement, or any part thereof, to any of its affiliates provided that the assignee

confirms in writing to the satisfaction of the Customer, acting reasonably, that it meets the financial and economic standing requirement(s) and technical and professional ability required by the Customer and undertakes in writing to the Customer to be bound by Contractor's obligations under this Agreement.

44.4 Without prejudice to other rights or any legislative provisions dealing with the transfer of obligations, the Customer (and each person or entity falling within the definition of Customer) may at its discretion, on prior written notice from the Customer to the Contractor of not less than sixty (60) days, assign, novate, sub-contract or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:

44.4.1 any Public Body or

44.4.2 a body other than a Public Body (including any private sector body) which performs any of the functions that previously had been performed by the Customer and/or (as applicable) such person or entity falling within the definition of Customer,

and the Contractor shall, at the Customer's request, enter into a novation agreement in such form as the Customer shall reasonably specify in order to enable the Customer (or relevant person or entity within the definition of the Customer, as applicable) to exercise its rights pursuant to this Clause 44.4.

44.5 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).

44.6 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.

44.7 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.

44.8 Subject to Clause 35, 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.

45. FORCE MAJEURE

45.1 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):

45.1.1 has taken all reasonable steps to prevent and avoid the Force Majeure;

45.1.2 carries out its duties to the best level reasonably achievable in the circumstances of the Force Majeure;

- 45.1.3 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;
- 45.1.4 if the Force Majeure constitutes a Disaster, complies with its obligations set out in Clause 20 (Disaster Recovery);
- 45.1.5 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 Solution or Services have been affected, together with a reasonable estimate of the period during which the Force Majeure will continue;
- 45.1.6 within (7) seven calendar days of becoming aware of the Force Majeure provides written confirmation and reasonable evidence of the Force Majeure; and
- 45.1.7 notifies the other Party when the Force Majeure has stopped.
- 45.2 In the event the Contractor does not supply the Solution or any part of the Solution or provide the Services or any part of the Services because it is relying on an event of Force Majeure, the Price for the Solution or Services affected by a Force Majeure shall be proportionately reduced or waived to reflect the extent and standard to which the affected Solution or Services are being provided.

46. EFFECT OF SUSPENSION OF SERVICES FOR FORCE MAJEURE

- 46.1 To the extent that any Force Majeure affecting the Contractor results in the Solution 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 the Customer or to a level substantially below the normal level of provision) for a period of more than thirty (30) calendar days, then the Customer may terminate this Agreement, upon fourteen (14) calendar days' notice, without any further liability.
- 46.2 Without prejudice to Clause 46.1 (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):
 - 46.2.1 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;
 - 46.2.2 the Customer may, without notice to the Contractor, exercise its step in rights under Clause 17 (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
 - 46.2.3 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 46.

46.3 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. 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 46.3. 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 46.

46.4 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.

47. NO SOLICITATION

The Customer and the Contractor agree that from the Effective Date to twelve (12) months after the date of expiry or 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:

47.1.1 from bona fide advertising in national daily newspapers;

47.1.2 by operation of law; or

47.1.3 from prior agreement of the Parties.

48. WARRANTIES AND REPRESENTATIONS

48.1 The Contractor represents, warrants and undertakes to the Customer that:

48.1.1 it has full right, power and authority to enter into this Agreement, supply the Solution and provide the Services to the Customer on the terms of this Agreement;

48.1.2 title to the Commissioned Software and relevant User Documentation will transfer to the Customer on a free and unencumbered basis.

48.1.3 the use by the Customer of the Contractor Software, Commissioned Software and User Documentation shall not infringe any Intellectual Property Rights nor result in the breach of any licence.

48.1.4 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.

48.1.5 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);

- 48.1.6 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;
- 48.1.7 it will perform its obligations under this Agreement in accordance with Good Industry Practice;
- 48.1.8 it will provide the Services in accordance with Schedule 1 (Requirements and Specifications) and Schedule 3 (Service Level Agreement) (subject to the Service Credits regime hereunder where applicable, which shall be offset against any claim made under this warranty);
- 48.1.9 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;
- 48.1.10 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 Agreements or Hardware Agreements;
- 48.1.11 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 Sites; and
- 48.1.12 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.
- 48.1.13 all statements and representations in any submissions made by the Contractor as part of the procurement process, including without limitation as referred to in Schedule 4 (Contractor's Tender), and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement or to the extent that the Contractor has otherwise disclosed to the Customer in writing prior to the date of this Agreement.
- 48.2 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.
- 48.3 All warranties shall, unless otherwise expressly stated, continue in full force and effect during the Term and shall survive termination or expiry of this Agreement.
- 48.4 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.
- 48.5 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.

48.6 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.

48.7 The Customer represents and warrants to the Contractor it has full right, power and authority to enter into this Agreement.

49. INFORMATION AND AUDIT

49.1 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.

49.2 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.

49.3 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 49.1 during that financial year is complete and accurate.

49.4 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.

49.5 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:

49.5.1 the Price is accurate;

49.5.2 the Contractor is exercising reasonable care to control Customer provided resources;

49.5.3 the Services are being provided in accordance with the Service Levels;

49.5.4 the Contractor is complying with the security requirements and obligations as set out in this Agreement; and

49.5.5 the Solution protects the integrity, operational availability, confidentiality and security of the Customer Information.

49.6 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,

HIQA and the Comptroller and Auditor General. 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.

- 49.7 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 8 (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.
- 49.8 Nothing in this Clause 49 shall require the Contractor to provide any information regarding other customers of the Contractor or the Contractor's company books of account and ledgers, company books and records or internal meeting minutes unless they are relevant to the provision of the Solution.
- 49.9 Subject to the rights and obligations of the Customer to disclose information and records where required to do so by any Legal Requirements, (including under the Freedom of Information Act 2014), all information and records designated in writing as confidential or that would appear to a reasonable person to be confidential and which relates to the Contractor's business including its products, operations, processes, plans or intentions, developments, trade secrets, know how, design rights, market opportunities, personnel, and suppliers shall be kept confidential, secure and not disclosed without the Contractor's written consent. Where written consent is required of the Contractor it cannot be unreasonably withheld or delayed.
- 49.10 Other Information Obligations
- 49.10.1 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 without limitation HIQA, the Comptroller and Auditor General.).
- 49.10.2 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.
- 49.10.3 The provisions of this Clause 49 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.
- 49.11 Failure to Provide Information
- The Contractor acknowledges that:
- 49.11.1 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
- 49.11.2 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.

50. CORRUPT GIFTS AND PAYMENTS

50.1 The Contractor represents and warrants that neither it, nor any Contractor personnel:

50.1.1 has committed a Prohibited Act;

50.1.2 to the best of its knowledge has been or is subject to an investigation, inquiry or enforcement proceedings by a governmental, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act; or

50.1.3 has been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

50.2 The Contractor will promptly notify the Customer if, at any time during the Term, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in Clause 50.1 at the relevant time.

50.3 The Contractor will (and will procure that its personnel will) during the Term:

50.3.1 not commit a Prohibited Act;

50.3.2 not do or omit to do anything that would cause the Customer or any of the Customer's employees, consultants, contractors, sub-contractors, agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements;

50.3.3 notify the Customer (in writing) if it becomes aware of any breach of Clause 50.3.1 or Clause 50.3.2, or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage in connection with performance of this Agreement.

50.4 The Contractor will maintain appropriate and up to date records showing all payments made by the Contractor in connection with this Agreement and the steps taken to comply with its obligations under Clause 50.3.

50.5 If the Contractor is in default under this Clause 50 the Customer may by notice:

50.5.1 require the Contractor to remove from performance of this Agreement any Contractor personnel whose acts or omissions have caused the default; or

50.5.2 immediately terminate this Agreement.

50.6 Any notice served by the Customer under Clause 50.5 will specify the nature of the Prohibited Act, the identity of the party who the Customer believes has committed the Prohibited Act and the action that the Customer has elected to take (including, where relevant, the date on which this Agreement will terminate).

51. NO PARTNERSHIP AND NO AGENCY

51.1 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.

- 51.2 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.

52. ANNOUNCEMENTS AND PUBLICITY

- 52.1 Save as provided for in Clause 52.2, 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.
- 52.2 The Customer shall be entitled to make an announcement stating that following a procurement process the Customer has procured the Contractor to deliver the Solution.
- 52.3 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.

53. 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.

54. ENTIRE AGREEMENT

- 54.1 This Agreement and the Data Processing Agreement sets out the entire agreement and understanding between the Parties in respect of the subject matter of this Agreement.
- 54.2 It is agreed that, subject to Clause 48.1.13:
- 54.2.1 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;
- 54.2.2 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
- 54.2.3 this Clause 54 shall not exclude any liability for, or remedy in respect of, fraudulent misrepresentation.

55. CHANGE CONTROL

- 55.1 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).
- 55.2 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 55.3 below, the Contractor shall be bound by such amendment for the Term of this Agreement.
- 55.3 The Parties agree that all fees and costs proposed by the Contractor pursuant to and as part of Schedule 5 (Change Control Procedures) shall be reasonable and shall be consistent with the prices set out by it in the Contractor's Tender.
- 55.4 The Parties acknowledge and agree that Schedule 5 (Change Control Procedures) may not be applied to introduce a material change which would, in the reasonable opinion of the Customer, risk breaching applicable public procurement law.



56. 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.

57. WAIVER

57.1 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.

57.2 A waiver of any Default shall not constitute a waiver of any subsequent Default.

57.3 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 41 (Notices and Communications).

58. 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.

59. 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.

60. COUNTERPARTS

60.1 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.

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

60.3 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 the transmission of an executed "wet-ink" counterpart of this Agreement. The use of electronic signature (including via platforms such as DocuSign) for the execution of this Agreement shall be considered valid and binding and will be treated as if this was a "wet-ink" signature.

61. EXTENT OF LIABILITY

61.1 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.

- 61.2 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.

62. GOVERNING LAW AND JURISDICTION

- 62.1 This Agreement and the relationship between the Parties shall be governed by, and interpreted in accordance with, Irish law.
- 62.2 Subject to Part 6 of this Agreement (Dispute Resolution), 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.

63. SOCIAL RESPONSIBILITY

- 63.1 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.
- 63.2 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.
- 63.3 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.
- 63.4 In the absence of any such agreement or established rates and conditions as described in Clause 63 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.
- 63.5 The Customer may seek information under the provisions of this Clause 63 only for the purpose of ensuring the obligations described in this Clause 63 to the Contractor's People have been properly discharged. All information provided under the provisions of this Clause 63 will be returned or destroyed if the Customer is satisfied that the Contractor has complied with its legal obligations to the Contractor's People.
- 63.6 If the Contractor has not complied with this Clause 63, 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.



- 63.7 If the Contractor does not comply with this Clause 63, it must pay to the Customer any costs the Customer incurs in investigating and dealing with the non-compliance.

PART TWO

SERVICES CONTRACT CLAUSES

This Part Two applies only if the Customer is procuring Service(s) from the Contractor

64. 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.

65. PROVISION OF SERVICES

- 65.1 Specific service level requirements as stated in Schedule 3 (Service Level Agreement) must be considered by the Contractor as being in addition to any such requirements as stated within Schedule 1 (Requirements and Specifications) and elsewhere in this Agreement.

- 65.2 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.

- 65.3 In the event that the Contractor fails to perform the Services in accordance with the Service Levels, then the provisions of Clause 66 (Service Levels and Service Credits) shall apply.

66. SERVICE LEVELS AND SERVICE CREDITS

- 66.1 Without prejudice to Clause 64 (Performance of Services), the Contractor shall ensure the Services meet the Service Levels set out in Schedule 3 (Service Level Agreement) and such other standards as may be set out in Schedule 3 (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.

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

- 66.2.1 pay the appropriate amount under the Service Credits regime under Schedule 3 (Service Level Agreement);

- 66.2.2 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;

- 66.2.3 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 66.2.2 above; and

- 66.2.4 indicate the amount (if any) payable under the Service Credits regime under Schedule 3 (Service Level Agreement) as a result of the failure to meet Service Levels on the next invoice submitted to the Customer.

67. PROFESSIONAL SERVICES

67.1 Contractor's People

The Contractor's People shall:

- 67.1.1 conduct the provision of the Professional Services in the English language; and
- 67.1.2 conduct themselves professionally at all times and where appropriate, in accordance with Customer working practices and Customer Policies.

67.2 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.

67.3 Office and Computer Facilities

The Customer shall provide the Contractor free of charge with such office and computer facilities at the 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.

67.4 Sites

- 67.4.1 Prior to commencement of the provision of the Professional Services, the Contractor shall satisfy itself that the 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 Sites which are inadequate or unsuitable for provision of the Professional Services.
- 67.4.2 The Contractor shall not be entitled to recover any additional costs from the Customer in respect of any matter or element of the Sites which has not been notified to the Customer in accordance with Clause 67.4.1 above. The Contractor shall at all times minimise disruption with the business and administrative affairs of the Customer while present at the Sites.
- 67.4.3 The Customer shall remain responsible for compliance with the Safety, Health and Welfare at Work Act, 2005 affecting the Sites.
- 67.4.4 The Contractor and the Contractors People shall comply with all requirements communicated to it by the Customer in relation to, without limitation, access, rules and conditions applying at Sites and all applicable health and safety requirements. The Contractor acknowledges that any costs that may be incurred as a result of any delays in complying with the requirements in this Clause shall be borne by the Contractor and that extensions of time will not be granted by the Customer.

68. PAYMENT FOR PROFESSIONAL SERVICES

- 68.1 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:

- 68.1.1 where the Price or part thereof 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, where provided for in Schedule 2 (Payment Schedule). No payments will apply in respect of the agreed non-chargeable additional hours set out in Schedule 4 (Contractor's Tender);
- 68.1.2 where the Price or part thereof 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;
- 68.1.3 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 Key Personnel 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 Key Personnel, save as notified to the Customer aforesaid. The Customer shall not, in any event, be liable for payments in respect of such absences. The Contractor shall continue to provide the Services in accordance with the terms of this Agreement notwithstanding any absence, scheduled or otherwise, of any member of the Contractor's People; and
- 68.1.4 where the Price in respect of Professional Services set out in Schedule 2 (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.

68.2 Training Services

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

- 68.2.1 the Contractor shall provide the Training Services in accordance with the provisions of Schedule 1 (Requirements and Specifications) and any training plan agreed between the Parties.
- 68.2.2 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.
- 68.2.3 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.

69. SUPPORT SERVICES

- 69.1 In the event the Contractor fails to perform the Support Services in accordance with the Service Levels then the provisions of Clause 66 (Service Levels and Service Credits) shall apply.



PART THREE

SUPPLIES CONTRACT CLAUSES

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

70. DELIVERY OF SUPPLIES

- 70.1 The Contractor shall be responsible for the proper delivery of the Supplies.
- 70.2 Where the Customer requires multiple deliveries, the Customer shall, when it requires a delivery to be made, 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.
- 70.3 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.
- 70.4 The Contractor shall provide such packaging of Supplies as is required to prevent their damage or deterioration in transit and ensure that the Supplies are packaged in such a way as to eliminate any damage in transit.
- 70.5 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.
- 70.6 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 any damage suffered by the Supplies during transit and shall negotiate and pay all claims arising from their transportation.

71. PARTIAL DELIVERY

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

72. RISK AND TITLE

- 72.1 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.
- 72.2 Notwithstanding the provisions of this Clause 72, 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 76 (Defective Supplies) hereof.

73. TIMING AND LOCATION

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

74. PACKING, MARKING AND DOCUMENTATION

- 74.1 All packages, cases, pallets and other containers must be clearly and individually marked with the Customer name, and clearly state the Contractor's name, the Official Purchase Order number and product codes. The following shall appear on the outside of each pack:
- 74.1.1 a description of the Supplies;
 - 74.1.2 the quantity contained in each pack;
 - 74.1.3 storage and/or handling instructions;
 - 74.1.4 expiry date of contents, if applicable; and
 - 74.1.5 relevant materials safety information, if applicable.
- 74.2 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.
- 74.3 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 10 (Debts to the Customer).
- 74.4 The HSE's Climate Action Strategy aims to achieve net-zero emissions by 2050 and to provide healthcare that is environmentally and socially sustainable. The Contractor agrees to implement sustainable practices in the production, delivery and disposal of the Solution under this Agreement. These practices will include minimising environmental impact, reducing packaging and waste, conserving energy and complying with all applicable environmental regulations.

75. QUALITY OF SUPPLIES

- 75.1 The Contractor warrants that the Supplies will:
- 75.1.1 correspond with their description;
 - 75.1.2 be equal in all respects to any samples provided;
 - 75.1.3 comply with Schedule 1 (Requirements and Specifications) and any other requirements of this Agreement;
 - 75.1.4 be capable of any standard of performance specified by the Customer, but in any event shall be of merchantable quality;



- 75.1.5 be fit for any particular purpose made known to the Contractor by the Customer either expressly or by implication;
- 75.1.6 shall not have any defect arising from design, materials or workmanship; and
- 75.1.7 be subject to the manufacturer's warranty and will pass on to the Customer the benefit of any manufacturer's warranty.

76. DEFECTIVE SUPPLIES

- 76.1 If any Supplies are found to be defective or otherwise not compliant with the terms of this Agreement (including the Requirements and Specifications), 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:
 - 76.1.1 require the Contractor, at the Contractor's expense, to fulfil its obligations in all respects within fourteen (14) days or such other period as is specified by the Customer;
 - 76.1.2 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;
 - 76.1.3 purchase substitute Supplies elsewhere;
 - 76.1.4 at the Contractor's risk and expense, return any Supplies already supplied under the Agreement;
 - 76.1.5 recover from the Contractor any direct cost and liabilities incurred by the Customer (including the costs of any replacement Supplies);
 - 76.1.6 reject the Supplies by giving notice to the Contractor, with reasons; and/or
 - 76.1.7 require the Contractor to promptly replace defective Supplies.
- 76.2 The Customer's right of rejection shall continue irrespective of whether the Customer has accepted, inspected, used or paid for, the Supplies.
- 76.3 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.
- 76.4 The Customer shall be under no obligation to accept or pay for any Supplies delivered in excess of the quantity ordered, incorrectly delivered or delivered in error to the Customer and accepts no liability for any such Supplies or in regard to the satisfactory return of any such Supplies.
- 76.5 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.
- 76.6 The risk in any over-delivered or additional 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.

- 76.7 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.

77. 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.

78. INSPECTION AND SAMPLES

- 78.1 The Customer may at all reasonable times during manufacture, assembly or processing inspect and test the Supplies (including all designs, materials and other components).
- 78.2 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.

79. AFTER SALES SERVICE

- 79.1 The Contractor shall provide Support Services in respect of the Supplies.
- 79.2 Without prejudice to Clause 79.1, the Contractor shall, as required:
- 79.2.1 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;
 - 79.2.2 authorise the Customer to negotiate with and purchase spare parts for the Supplies directly from providers to the Contractor;
 - 79.2.3 provide the Supplies free of any restrictions or impediments, which may exist between the Contractor and its providers; and
 - 79.2.4 maintain sufficient stock levels 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 from the Contractor.

80. CUSTOMER SOFTWARE

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

81. CONTRACTOR SOFTWARE

81.1 The Contractor may not use open source software in the provision of the Software without the Customer's prior written consent.

81.2 As part of the licences granted under this Clause 81, a licence for Contractor Software must include data dictionaries and all other associated constructs or components upon which the Solution depends.

81.3 Unless otherwise stated within Schedule 1 (Requirements and Specifications) or Schedule 3 (Service Level Agreement) or Schedule 2 (Payment Schedule), 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.

81.4 The Contractor shall ensure (and if necessary shall procure) that all agreements relating to maintenance and support of Contractor Software necessary for maintaining the performance of the Solution shall remain in force for the Term.

81.5 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 an appropriate confidentiality undertaking and, where applicable, a 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.

81.6 On-Premises Contractor Software

The provisions of this Clause 81.6 shall apply to Contractor Software constituting On-premises Software.

81.6.1 In consideration of the Price due and owing to the Contractor by the Customer, the Contractor hereby grants to the Customer (and to its successors, assigns and/or replacements) an irrevocable, fully paid-up, non-exclusive sub-licensable perpetual royalty free licence to use the Contractor Software, including Configured 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 Customer. The Customer confirms that the licence granted hereunder shall not entitle it to commercially exploit the Contractor Software. Further, the licence and rights granted under this Clause 81.6 to the Contractor Software shall include the right for the Customer to Configure (or to have Configured on its behalf) the Contractor Software for the purposes of the Customer's business and/or activities and the licence granted under this Clause 81 shall include a licence on the same terms to the Contractor Software.

- 81.6.2 The Customer may make such copies of the Contractor Software as it reasonably requires or direct the Contractor to provide such copies to the Customer.
- 81.6.3 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 to the Customer in accordance with Clause 81.6.1 above, the Contractor shall notify the Customer of any issues prior to the supply of such Third Party 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 81.6.1 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.
- 81.6.4 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.
- 81.6.5 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 that is licensed and/or made available under this Agreement. 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 Software in whatever version of the Software then applies and/or is then in use by the Customer at the relevant time.
- 81.6.6 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.
- 81.6.7 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.

81.7 Cloud-based Software

The provisions of this Clause 81.7 shall apply to Contractor Software constituting Cloud-based Software.

- 81.7.1 The Contractor hereby grants to the Customer, for the Term and where, applicable, the Termination Assistance Period, a non-exclusive right and licence to access and use the Services, Contractor Software and User Documentation for any purpose relating to the Solution and in order to exercise the Customer's business, including to grant sub-licences or permit usage by other Customer funded organisations, its successors and assigns and to any replacement of the Customer.
- 81.7.2 Change in the ownership of the Contractor will in no way diminish the rights of the Customer right of the Customer for continued use of the Solution in accordance with the terms of this Agreement.

82. COMMISSIONED SOFTWARE

- 82.1 Where required in accordance with Schedule 1 (Requirements and Specifications) or as otherwise agreed between the Parties, the Contractor shall develop the Commissioned Software in accordance with the requirements of:

- 82.1.1 Schedule 1 (Requirements and Specifications);
- 82.1.2 the Software Specifications;
- 82.1.3 reasonable instructions of the Customer provided in accordance with this Agreement;
- 82.1.4 in accordance with Schedule 3 (Service Level Agreement); and
- 82.1.5 as may be required to implement the Solution in accordance with the terms of the Agreement.
- 82.2 The Commissioned Software shall provide the functions and offer the facilities set out in Schedule 1 (Requirements and Specifications) and associated Software Specifications, as appropriate, and shall fulfil the Performance Criteria in all material respects.
- 82.3 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.
- 82.4 The Customer grants the Contractor a limited, revocable, non-sublicensable, royalty free licence to use the Commissioned Software solely for the provision of the Solution during the Term. On termination or expiry of this Agreement, this licence shall, subject to any agreement being reached in accordance with Clause 82.5, be automatically revoked and the Contractor shall from the date of termination or expiry immediately cease using Commissioned Software and shall promptly deliver to the Customer all copies of it in its possession or under its control.
- 82.5 In the event that the Contractor wishes to use the Commissioned Software other than to perform its obligations 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 other needs, policies or requirements) grant a non-exclusive licence to the Contractor for the Commissioned Software on terms to be agreed by the Parties.
- 82.6 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.
- 82.7 The Customer may, during the period of development of Commissioned Software, in accordance with Schedule 1 (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 Schedule 5 (Change Control Procedures).
- 83. **THIRD PARTY SOFTWARE**
- 83.1 The Contractor may not use Third Party Software to perform the Agreement other than:
 - 83.1.1 Third Party Software listed in Schedule 4 (Contractor's Tender) or Schedule 1 (Requirements and Specifications); or
 - 83.1.2 with the prior written consent of the Customer (such consent not to be unreasonably withheld or delayed, or subject to unreasonable conditions).
- 83.2 Unless otherwise agreed, after the Effective Date, the Contractor shall ensure that all Third Party Software Agreements relating to the Software listed in Schedule 4 (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.

- 83.3 For the purposes of this Agreement, Third Party Software also includes embedded Software upon which Hardware supplied by the Contractor depends.
- 83.4 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.
- 83.5 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.
- 83.6 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.
- 83.7 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;

84. SOFTWARE SPECIFICATION DEVELOPMENT

- 84.1 The Contractor shall prepare Software Specifications in accordance with Schedule 1 (Requirements and Specifications) and shall deliver said specifications to the Customer for approval in accordance with the Timetable.
- 84.2 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 Software Specifications.
- 84.3 In the event that the Customer requires amendments to the Software Specifications, which are outside the scope of Schedule 1 (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 Schedule 5 (Change Control Procedures).

84.4 Approval of Software Specifications will be subject to the Acceptance Procedures. The Customer's prior written approval of the Software Specifications is required prior to the development of any Commissioned Software and implementation of any Configured Software.

84.5 Following approval of the Software Specifications, then the Customer may, at its sole option:

84.5.1 authorise the Contractor to develop/configure the applicable Software, based upon the Software Specifications; or

84.5.2 notify the Contractor in writing of its decision to itself develop/configure the Software; or

84.5.3 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 84.5.1, the authorisation may be contingent upon the Services being provided by the Contractor's People engaged in the development of the applicable Software Specification.

84.6 Software Acceptance

84.6.1 In relation to the provision of Commissioned Software, the Contractor shall, in accordance with the Timetable, deliver to the Customer:

- (a) all Commissioned Software upon which the Solution depends, in object code form;
- (b) the Source Code of each stage of the development of the Commissioned Software, together with the Source Code of the relevant existing Contractor materials in the electronic format agreed between the Parties, including all Source Materials and ancillary materials necessary to enable a reasonably skilled programmer to correct, modify and enhance such Commissioned Software 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, Source Materials and ancillary materials in respect of the entirety of the Commissioned Software, 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;
- (c) copies of the test data and results of all in-house tests carried out by the Contractor on the Commissioned Software prior to delivery of all Commissioned Software; and
- (d) copies of all supporting information to include technical, training, User Documentation and manuals.

84.6.2 In relation to the provision of Contractor Software and Third Party Software, the Contractor shall, in accordance with the Timetable, deliver to the Customer:

- (a) all Contractor Software and Third Party Software in object code form;
- (b) 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
- (c) copies of all supporting information to include technical, training, User Documentation and manuals.

84.6.3 Following installation, Software shall be subject to the User Acceptance Tests and Schedule 8 (Acceptance Procedures). Payments for Software will be subject to a successful outcome from these procedures and formal acceptance of the Software by the Customer.

84.6.4 For the duration of the Term, the Contractor shall ensure that all Software is kept at current release levels and available to all users.

85. SOFTWARE ESCROW

85.1 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 81 (Contractor Software) (or at such other time as directed by the Customer during the Term), 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 Customer's choosing, and shall, without delay, provide the Customer with copies of such relevant escrow arrangement(s), together with the confirmation document or escrow agreement included therein (which shall stipulate the applicable trigger events permitting release and access to materials and data held under the relevant escrow arrangement (the "**Trigger Release Event**"), which the Customer may complete in order to register as a licensee or beneficiary thereunder.

85.2 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.

85.3 Where the Solution being provided by the Contractor to the Customer is based on Cloud-based Software the Customer may require, in accordance with the procedures referred to in Clause 85.1 and 85.2, in addition to the requirements set out in Clause 85.1 above, compliance by the Contractor with the following obligations:

85.3.1 the automated deposit (in accordance with the applicable escrow agreement) with the chosen escrow provider of requisite deployment scripts, containers, virtual machine images and database back-ups and other components required for the recovery and deployment of the applicable Cloud-based Software and its environment in the event of a Trigger Release Event;

85.3.2 the deposit and update (in accordance with the applicable escrow agreement) of access credentials and documentation to the applicable cloud environment to allow administrator access in the event of a Trigger Release Event; and/or

85.3.3 the build and deployment of a secondary cloud environment (in accordance with the applicable escrow agreement) by the Contractor, which shall be hosted and managed by the chosen escrow provider, which, in the event of a Trigger Release Event, may be transferred and deposited with the Customer. Post implementation of the secondary cloud environment, database back-ups to the secondary cloud environment from the Solution shall be provided by the Contractor (as stipulated in the applicable escrow agreement) and the Contractor shall take the requisite steps to liaise and engage with the chosen escrow provider with respect to validation and knowledge transfer in order to ensure documentation and processes remain current.

85.4 Upon a Trigger Release Event referred to in Clause 85.1 above, the Customer shall receive a perpetual, irrevocable, sub-licensable, royalty-free licence to use, modify, support and operate the Cloud-based Software and related documentation, tools, materials and components as necessary to continue uninterrupted operation of the Solution.

- 85.5 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.

86. SOFTWARE WARRANTY

- 86.1 The Contractor warrants and represents as follows, which shall apply in addition to those warranties set out in Clause 48 (Warranties and Representations) of the Agreement:
- 86.1.1 all Software shall provide the functions and facilities set out in Schedule 1 (Requirements and Specifications), Schedule 3 (Service Level Agreement) and associated Software Specifications, and will fulfil the Performance Criteria in both cases in all material respects;
- 86.1.2 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;
- 86.1.3 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
- 86.1.4 new versions, upgrades and new releases of the Contractor Software and Commissioned Software shall be backward and forward compatible and shall not reduce the functionality or performance of the Software.

87. USER DOCUMENTATION

- 87.1 User Documentation shall consist of:
- 87.1.1 in respect of Commissioned Software and Contractor Software, the documentation set out in Schedule 1 (Requirements and Specifications), Schedule 3 (Service Level Agreement), and associated Software Specifications as required for the use of the Software by the Customer, and where no such documentation is so specified, such standard user documentation as would be provided by an equivalent provider of software in accordance with Good Industry Practice;
- 87.1.2 in respect of the Third Party Software, the standard user documentation, as provided to the Contractor by the third party service provider; and
- 87.1.3 any other documentation required to be provided by the Contractor in accordance with Schedule 1 (Requirements and Specifications).
- 87.2 User Documentation shall be provided in electronic format, 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 or copy 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.

88. SOFTWARE SUPPORT

- 88.1 The Contractor shall co-operate fully with the Customer's People, including for the avoidance of doubt any third party providing implementation or support services and/or certain managed services in respect of the Software, to ensure that the Solution is supported and maintained to the highest standard and level of performance in accordance with Good Industry Practice.
- 88.2 Any additional Contractor responsibility for Support Services is as set out in Schedule 1 (Requirements and Specifications) and in Schedule 3 (Service Level Agreement).



89. GENERAL PROVISIONS APPLICABLE TO BOTH SOFTWARE AND HARDWARE

- 89.1 Where it is agreed that the Contractor may use Customer Hardware for the provision of the Solution, Customer Hardware is expressly provided as is and the customer provides no warranties of any kind in connection with Customer Hardware.
- 89.2 The Contractor acknowledges that Hardware Agreements may be in place. Where applicable, Contractor will co-operate at all times with the parties to those agreements to ensure the proper implementation of the Solution and the provision of Services.
- 89.3 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, Contractor Hardware and Customer 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.
- 89.4 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 Schedule 4 (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).
- 89.5 The Contractor shall provide the Customer with full details of all Hardware, Software and Solution 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.
- 89.6 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 17 (Step In Rights).

PART FIVE

CONTRACT MANAGEMENT CLAUSES

This Part Five shall apply unless expressly excluded in an Official Purchase Order or Schedule 3 (Service Level Agreement).

90. PROJECT MANAGEMENT AND SERVICE DELIVERY

90.1 The Clauses in this Part Five of the Agreement apply in circumstances where the Contractor is engaged in the delivery of the Solution in accordance with agreed Milestones, Stages and/or Schedule 3 (Service Level Agreement).

90.2 The Timetable for delivery of the Solution shall be as agreed between the Parties and all payments will be based on successful attainment of Milestones or Stages (as applicable). The Solution provided must meet or exceed all quality and Performance Criteria.

91. 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 the industry standard project management methodology as agreed in writing between the Parties.

92. 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 on request to the Contractor.

93. STATUS REPORTING

93.1 The Contractor shall submit to the Customer's Representative the reports as set out in this Part Five and any additional reports as set out in Schedule 1 (Requirements and Specifications) and Schedule 3 (Service Level Agreement) 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.

93.2 The minimum 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 as set out in Schedule 3 (reporting against Service Levels)	Monthly	Contractor
Resource Utilisation / Budget Report (reports actual costs against budgeted)	Monthly	Contractor

Type of Report	Frequency	Producer
End of Milestone or Stage (as set out in Timetable)	End of Milestone or Stage	Contractor

94. PERFORMANCE MONITORING

- 94.1 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.
- 94.2 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.
- 94.3 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.
- 94.4 Specific requirements in relation to performance targets or measures relating to the Solution will be set out in Schedule 1 (Requirements and Specifications) and Schedule 3 (Service Level Agreement).

95. REPRESENTATIVES AND CONTRACT MANAGEMENT REVIEW

- 95.1 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.
- 95.2 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.
- 95.3 Meetings to review progress will be held at regular intervals, in relation to matters affecting the provision of the Solution (the **"Review Meetings"**). Each Parties' Representative, as well as appropriate additional personnel, shall meet either at a time and 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.
- 95.4 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:
- 95.4.1 a summary of progress since the previous Review Meeting;
- 95.4.2 a summary of any instances of non-compliance with this Agreement;

- 95.4.3 a summary of issues and risks raised, resolved and outstanding;
- 95.4.4 any issues and items for consideration under the Change Control Procedures;
- 95.4.5 any expected or likely failures to comply with the Service Levels (where applicable);
- 95.4.6 issues in relation to the management of the Contractor's People;
- 95.4.7 a summary of monies received by the Contractor and invoices outstanding;
- 95.4.8 written details of any issues with the Solution;
- 95.4.9 any anticipated potential delays or any overruns in the implementation plan; and
- 95.4.10 any other matters that the Customer may reasonably request.
- 95.5 Discussions at Review Meetings shall include reviewing:
 - 95.5.1 the previous Review Meeting minutes (and approving them);
 - 95.5.2 the progress report in respect of the preceding period;
 - 95.5.3 compliance with this Agreement and issues arising with the Agreement generally;
 - 95.5.4 if applicable, service delivery issues, including compliance with Service Levels and achieving key performance targets;
 - 95.5.5 the issues and risks register and discussing proposed solutions for items not yet resolved, contained or mitigated;
 - 95.5.6 issues and risks associated with this Agreement and raised by either Party and discussing proposed solutions for them; and
 - 95.5.7 any issues for consideration under the Change Control Procedures.
- 95.6 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.
- 95.7 Within thirty (30) Working Days of the Effective Date a board of persons for the review of the Agreement shall be established by the Parties (the "**Review Board**"), which shall typically consist of the following persons:
 - 95.7.1 the Customer project sponsor/project executive/senior responsible owner (as each party is identified to the Contractor by the Customer);
 - 95.7.2 the Contractor Representative with overall responsibility for delivery of the Solution;
 - 95.7.3 Project Manager;
 - 95.7.4 Customer Representative;
 - 95.7.5 other Customer People as are relevant to the delivery of the Solution; and
 - 95.7.6 other nominated and agreed personnel.

- 95.8 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 such 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.
- 95.9 The Customer and the Contractor shall use their reasonable endeavours to ensure that:
- 95.9.1 persons suitably qualified to consider the matters on any agenda circulated, as set out below, attend the relevant Review Board meetings;
- 95.9.2 meetings of the Review Board shall be held at regular intervals;
- 95.9.3 unless agreed to the contrary by the Customer, the Review Board meetings shall be held at an appropriate Site, during normal business hours;
- 95.9.4 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 95.5 above and such other relevant matter appropriate to raise and discuss at Review Board level.
- 95.10 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.
- 95.11 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.
- 95.12 Following the circulation of the Review Board Report, and subject to any agreed changes to it, the relevant Review Board 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.
- 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.
- 95.13 In addition to the Parties other obligations under this Clause 95, where the Term exceeds one year, this Agreement will be subject to annual contractual review during the Term. This annual contractual review shall occur on or about the anniversary of the Effective Date. Both Parties



agree to put in place, within three (3) 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.

PART SIX

DISPUTE RESOLUTION PROCEDURE

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

96. AMICABLE DISPUTE SETTLEMENT

- 96.1 If any dispute arises between the Parties, the Parties shall first make every effort to settle the dispute amicably as follows:
- 96.1.1 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;
- 96.1.2 the senior parties will have six (6) days in which to resolve the dispute.
- 96.2 The Parties agree that they shall bear their own costs in the procedure set out in this Clause 96.

97. MEDIATION

- 97.1 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 97.6 below, the Parties shall follow the Dispute Resolution Procedures set out in this Clause 97.
- 97.2 Any Party shall give to the other Party a written notice of the dispute or difference setting out its nature and such particulars as shall be then available to that Party (a “**Dispute Notice**”). Within ten (10) Working Days of a Dispute Notice being deemed to have been duly served in accordance with Clause 41 (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 both of the Parties.
- 97.3 If the Parties do not reach a binding settlement in writing within a period of ten (10) Working Days of the date on which the Dispute Notice shall be deemed to have been duly served in accordance with Clause 41 (Notices and Communications) (the “**Negotiating Period**”), then either Party may, by a further written notice served on the other Party in accordance with Clause 41 (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.
- 97.4 Unless otherwise agreed in writing between the Parties:
- 97.4.1 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;
- 97.4.2 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 either Party, shall have been instructed in the mediation, shall be for the sole account of, and shall be discharged by, that Party;
- 97.4.3 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;

- 97.4.4 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 97.3 above; and
- 97.4.5 decisions of the mediator shall in the absence of manifest error, be final and binding and not subject to appeal.
- 97.5 In the event that:
- 97.5.1 mediation is not requested within the period of ten (10) Working Days commencing on the Working Day following the expiry of the Negotiating Period;
- 97.5.2 having been so requested, the mediation does not take place within twenty (20) Working Days of the request for mediation;
- 97.5.3 a binding settlement in writing is not reached within ten (10) Working Days after commencement of the mediation; or
- 97.5.4 in any such case, the dispute or difference referred to in Clause 97.1 remains unresolved;
- the provisions of Clause 98 (Arbitration) shall apply as regards any such unresolved dispute or difference.
- 97.6
- 97.6.1 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 an Expert.
- 97.6.2 The Expert shall be 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:
- (a) 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;
 - (b) 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;
 - (c) 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;
 - (d) 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;
 - (e) work and activity to be carried out under this Agreement shall not cease or be delayed by this Dispute Resolution Procedure; and

- (f) 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.

98. ARBITRATION

- 98.1 Any dispute that is referred to in this Clause 98 shall be finally settled by arbitration in accordance with the UNCITRAL Model Law as provided for in the Arbitration (International Commercial) Act 2010.
- 98.2 For purposes of those rules, the person or body to appoint the arbitrator, if not agreed by the Parties, is the ICDR.

99. JURISDICTION

Subject to the above provisions of Clause 96 (Amicable Dispute Settlement), Clause 97 (Mediation) and Clause 98 (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.

100. 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.

101. OBLIGATIONS TO CONTINUE DURING A DISPUTE

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

102. CONFIDENTIALITY

The Parties and any mediator and 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. <i>General Manager,</i> <i>Assistant National Director,</i> <i>National Director</i>)	Signature	Date

.....			
Name (printed)	Title (e.g. <i>General Manager,</i> <i>Assistant National Director,</i> <i>National Director</i>)	Signature	Date

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

.....			
Name (printed)	Title (Director)	Signature	Date

.....			
Name (printed)	Title (Director)	Signature	Date



SCHEDULE 1

REQUIREMENTS AND SPECIFICATIONS

[This Schedule is deliberately left blank and will be inserted before contract finalisation as stated in the Invitation to Tender document and includes any clarifications issued by the Customer after the date of tender submission and prior to the Effective Date].

SCHEDULE 2

PAYMENT SCHEDULE

[HEADINGS BELOW ARE FOR CONSIDERATION PURPOSES ONLY – TO BE ADAPTED OR REPLACED BY HSE AS APPROPRIATE FOR EACH CONTRACT **BEFORE** DRAFT CONTRACT IS ISSUED TO MARKET]

1. **Basis of Pricing** [Details to be selected / deleted /added to as applicable]
 - (a) Fixed price
 - (b) Time and Material / Rate Card (if applicable)
 - (c) Unit Price for Supplies (if any)
 - (d) Licensing Model and Software Costs
 - (e) Optional extras
2. **Payment Schedule**
 - (a) Payment Milestones / Related Deliverables
 - (b) Payment Schedule (timeline, Milestone Dates, list of payments tied to delivery of the Milestones)
3. **Deductions for Failure to comply with Timetable¹**

In accordance with Clause 18.6.2(b) (Timetable) of the Agreement, where there is a failure by the Contractor to comply with a date set out in the Timetable for delivery of a Milestone (“**Milestone Date**”), the Customer may deduct a percentage(s) of the Price otherwise payable for achievement of the applicable Milestone in accordance with the below table:

Delay by reference to applicable Milestone Date	% deduction for failure to meet Milestone Date
Deduction for Week 1 Delay	X% of Price payable for achievement of the relevant Milestone
Deduction for Week 2 Delay	Additional X% of Price payable for achievement of the relevant Milestone
Deduction for Week 3 Delay	Additional X% of Price payable for achievement of the relevant Milestone
Deduction for Week 4 Delay	Additional X% of Price payable for achievement of the relevant Milestone
Deduction for Week 5 Delay	Additional X% of Price payable for achievement of the relevant Milestone
5 week or longer Delay	Total of X% of Price payable for achievement of the relevant Milestone

¹ Methodology subject to HSE requirements per individual tender



subject to a maximum permitted reduction in respect of any individual Milestone being X% of the Price otherwise payable for achievement of the applicable Milestone;

4. **Termination Services Charges**

[Day Rates and Methodology for Charges]

[Note that from 12 September 2027, in accordance with the requirements of the EU Data Act, Suppliers are not permitted to charge switching charges for moving from one cloud service provider to another, or for moving to an on-premises ICT infrastructure (including a prohibition of charges for data egress).]

SCHEDULE 3

SERVICE LEVEL AGREEMENT

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

1. Introduction

- (a) This Schedule describes the Service Levels for the support and maintenance services ("**Support Services**") that the Contractor will provide to the Customer in consideration of payment by the Customer of the relevant portion of the Price for such services as described in 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 Agreement and Paragraph 2 of this Schedule 3.
- (c) Without prejudice to and without limiting any of the specific obligations and standards set out in this Agreement, it is acknowledged that the Solution shall be provided in accordance with the below:
 - (i) a reliable Solution;
 - (ii) a safe Solution that does not expose the Customer or its users to security threats;
 - (iii) a Solution that is easy to use;
 - (iv) a well organised, up to date and usable online support system for the management and monitoring of issues;
 - (v) rapid response and resolution of support issues that go from first line support to second line support;
 - (vi) regular provision of metrics of the Solution;
 - (vii) regular reports on the functioning of the Support Services including numbers and types of issues, response times, new online support material created, additional training provided;
 - (viii) agreed and clear communication pathways between all lines of support;
 - (ix) application of software updates and patches as necessary;
 - (x) attention to security issues and threats as these evolve and change;
 - (xi) the Support Services available for Normal Service Time and Emergency Cover Time;
 - (xii) the Support Services shall provide a response to first line support and a resolution of the Incident within agreed times, depending on the priority of the Incident as outlined in the Resolution of Incidents section below; and
 - (xiii) that an escalation protocol shall be agreed for issues that cannot be resolved within the agreed time.



2. Definitions:

“Available” means that the Solution is ready for and capable of full operation, execution and use by the Customer;

“Emergency Cover Time” means those hours outside Normal Service Time. Emergency Cover Time is only required for Priority 1 and 2 incidents which have occurred outside of the hours of Normal Service Time or where it becomes evident that the response and resolution times for a Priority 1 or Priority 2 incident will take place outside the hours of Normal Service Time.

“Incident” for the purposes of this Schedule 3, means any defect or failure in the Solution 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.

“Normal Service Time” means Monday to Friday from 08:00 to 20:00 on Working Days.

“Priority” means the priority level assigned to an Incident in accordance with Paragraph 5 of this Schedule 3.

“Response” means 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.

“Response Time” means 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.

“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 Solution 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.

“Resolution Time” means 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.

“Support Services” has the meaning as set out in Paragraph 1 of this Schedule 3.

“Support Services Personnel” has the meaning as set out in Paragraph 4 of this Schedule 3.

“Unavailable/Unavailability” means that one or more of the key functions of the Solution are unavailable and there is no workaround possible, or the Solution has slowed down due to a failure with the Solution such that response times make the Solution 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 Solution shall not be deemed Unavailable if the Customer supplied IT infrastructure is not available or non-performant.

“Upgrade” means the enhancement, update, modification, adaptation or replacement of the Solution, or some part(s) of the Solution, by the Contractor from time to time for the purposes of extending the functionality of the Solution and keeping the Solution up to date with changing business and technical requirements and new releases of Software.

3. Support Services Components

- (a) The Contractor shall provide Support Services for the Solution. These Support Services include but are not limited to any changes required such as bug fixes or emergency fixes

and the investigation and resolution of issues resulting in operational problems, including Solution downtime.

- (b) The Parties agree that the following shall not be included within the scope of the Support Services:
 - (i) any problems with, or malfunctions of, hardware and/or peripherals not forming part of the Solution which are not attributable to problems, malfunctions or performance degradation of the Solution.
 - (ii) for the avoidance of doubt, the Contractor shall deal with any problems, malfunctions, performance degradation with the Solution to assist in identifying whether the source of the problem lies with the relevant hardware and/or peripheral(s);
- (c) 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 Solution, impinges on the proper functioning of the Solution. Such an event, typically a Force Majeure or Disaster type event, may require Contractor assistance to ensure the proper and continuing functioning of the Solution. 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 Solution. 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 Solution on re-establishment of the Solution by the Customer or third party.
- (d) For any and all problems with third party software not supplied by the Contractor, the Contractor shall be obliged to investigate the source of the problem, identify same and to eliminate any relevant problems with the Solution so as to enable correction of any problems with the relevant Third Party Software.

4. **Support Services Personnel**

- (a) The Contractor will make available to the Customer an appropriate 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 and competent staff who have the requisite knowledge and experience of the Solution 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 minimum 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 Solution will be required.
 - (iv) 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 Site(s) or remotely utilising remote access and remote desktop/server management tools.

- (v) 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 manually by the Customer or automatically by monitoring/alerting systems;
 - (ii) to proactively identify and prevent incidents and problems from occurring;
 - (iii) to provide a day-to-day point-of-contact for the Customer to access Support Services;
 - (iv) to receive, respond and update all Customer calls for enquiries and Incidents (as defined below);
 - (v) to manage and monitor Incidents until Resolution is achieved;
 - (vi) to document the details of each Incident in an issue tracking system;
 - (vii) to carry out the initial analysis and impact on service of each Incident;
 - (viii) to record Incident Priority on advice of the relevant Customer staff;
 - (ix) to respond to general questions and queries, as appropriate;
 - (x) to continuously track Incidents and update their status on an issue tracking system;
 - (xi) to escalate Incidents via the agreed incident management and escalation process;
 - (xii) to inform the Customer of actions being taken by the Contractor to resolve each Incident and the estimated Resolution Time;
 - (xiii) to carry out periodic analyses of Incident activity;
 - (xiv) to provide Solution configuration changes as requested by the Customer and to have responsibility for the integrity of the changes made to the Solution configuration as part of Support Services;
 - (xv) to assist in end user testing and provide support and advice during end user testing;
 - (xvi) to be responsible for quality assurance and deployment of any configuration changes to the Solution in production requested by the Customer;
 - (xvii) to be responsible for the integrity of the Solution in production;
 - (xviii) to assist in the testing and application of service packs, patches and other Solution updates;
 - (xix) to provide input and support for short, medium and long term planning;
 - (xx) to develop and maintain technical documentation in a format to be agreed with the Customer;



(xxi) to provide knowledge transfer to the Customer as appropriate.

5. **Incident Management**

- (a) The Customer will, to the extent possible given the nature of an Incident, log Incidents with the Contractor using the agreed on-line support system.
- (b) 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 Urgency 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

- (c) 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.
- (d) Incidents may be communicated by either telephone or electronic mail or other means agreed between the Parties, however, subject to paragraph 5(a), above all Incidents must be recorded and logged in the issue tracking system.
- (e) If a Priority 1 or Priority 2 Incident occurs during Normal Service Time or Emergency Cover Time, the Contractor shall ensure, in addition to receiving updates via the on-line support system, 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.

6. **Service Levels / Resolution of Incidents**

- (a) The Contractor shall respond to, and resolve to the Customer's satisfaction, all Incidents logged by the Customer in the course of their use of the Solution. The Contractor shall resolve each Incident within the Response Times set out in paragraph 6(b) below.
- (b) 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 Solution is Unavailable or unusable.	15 mins	4 hours
2	One or more key functions cannot be completed or the Solution is severely limited in its usability with no alternative workaround available.	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 Unavailable 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.]

- (c) Response Time and Resolution Time shall be measured during Normal Service Time and Emergency Cover Time for all Priority levels.
- (d) Where it becomes evident that the Response and Resolution of an Incident will take place outside Normal Service Time (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 suitable Contractor People are available to carry out the necessary Resolution of these Incidents as per the Response Times and Resolution Time schedule above.
- (e) The Response Times and Resolution Times listed above assume that the Contractor has access to the Solution 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.

7. Acceptance Testing

If changes are proposed to be made to Software or other part of the Solution as part of the management and resolution of an Incident, Schedule 8 (Acceptance Procedures) must be followed.

8. Escalation Process for Incidents

- (a) The Contractor shall operate an escalation process for all Incidents requiring escalation.

- (b) If the Customer is not satisfied with how any Incident is being dealt with or resolved by the Support Services Personnel, the Customer may escalate the Incident to the appropriate Contractor personnel, initially to the Project 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.
- (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.

9. 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 Site determined to be suitable for resolving the Incident. Contractor's People in these circumstances will be required to remain on Site until the Incident is resolved.

10. Availability Guarantees

- (a) The Solution shall be 99% Available. The Solution shall be Unavailable for not more than 22 hours over 3 consecutive months.
- (b) The Solution shall not be deemed Unavailable for the purposes of calculating Availability where such Unavailability has been caused by an event of Force Majeure, down-time agreed in advance in writing with the Customer, by use of the Solution by the Customer 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, which is not provided by Contractor and which is outside of its control.
- (c) Availability will be measured as the time in any period during which it is planned that the Solution will be Available, minus any time recorded in that period during which the Solution is Unavailable.
- (d) Unavailability will be measured as the time in any period during which the Solution is Unavailable from the time that the Incident is reported to the Contractor to the time that the Incident is resolved and the Solution becomes Available.
- (e) Subject to paragraph 10(a) of this schedule, the Solution will be available to the Customer 24 hours per day, 7 days per week and 365 days per year (366 days in a leap year).
- (f) Even with agreed preventative maintenance tasks scheduled for any period, the Solution must still maintain these availability levels during these housekeeping duties with no loss of Solution performance.

- (g) **Planned Unavailability:**
 - (i) Contractor will use appropriate techniques to ensure that periods when the Solution is Unavailable can be kept to the minimum.
 - (ii) when planned Unavailability is required, it shall, unless otherwise agreed, take place between [12 and 4 am GMT].
 - (iii) the maximum duration of any one period of planned Unavailability is 1 hour. The maximum total of all planned Unavailability in a quarterly measurement period shall be 4 hours and in an annual measurement period shall be 12 hours, unless previously agreed in advance by the Parties.
 - (iv) when planned Unavailability is required, Contractor shall seek the consent of the Customer a minimum of seven (7) days prior to the requirement and the Customer shall not unreasonably withhold or delay consent for such planned Unavailability.
 - (v) in seeking consent Contractor shall advise the Customer of the following:
 - (A) elements of the Solution to be interrupted;
 - (B) impact on users/processes;
 - (C) reason for interruption;
 - (D) estimated period and duration of interruption;
 - (E) plan for work to be done during downtime;
 - (F) Contractor personnel participating in the work;
 - (G) any sub-contractor or third parties participating in the work;
 - (H) testing procedure to determine success or failure of the work; and
 - (I) recovery plan to be used if the work cannot be completed in the time allowed or if the work is unsuccessful.
 - (vi) once consent has been granted, the Customer shall inform all affected end-users;
 - (vii) during any periods of planned Unavailability for which the Customer has granted consent, the Support Services shall operate as normal and Contractor will continue to work to remedy any Incidents logged by the Customer. To the extent only that any Incidents are caused by the planned Unavailability or Resolution is prevented by it, the recording of Resolution Times and addition of Service Credits shall be suspended.
 - (viii) should planned Unavailability not be required by the Contractor, the Contractor will notify the Customer that it is no longer required at least 1 day in advance of the agreed planned Unavailability.

11. **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 without a Resolution (for each Incident)
1	5	5
2	4	4
3	3	0
4	2	0
5	1	0

- (b) Service Credits will be accumulated for all Incidents exceeding the Resolution Time Threshold (as set out in Paragraph 6 above) during the month. Each Service Credit shall equate to a refund of 0.5 per cent of the monthly Support Services charge for the Solution.
- (c) Availability 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 referred to in Paragraph 10 of this Schedule 3, Service Credits will be applied. For each 10 hours or part thereof that the Solution was Unavailable in excess of the agreed rate, 4 Services Credits will be applied.
- (d) Service Credits will be accumulated for Unavailability on a quarterly basis. Each Service Credit shall equate to a refund of 0.5% of the monthly Support Services charge for the Solution.
- (e) The Contractor shall be in material breach of this Agreement if the number of Service Credits exceeds a total of 30 for any three (3) consecutive months or if the total number of hours that the Solution was Unavailable exceeds a total of 72 hours for any three (3) consecutive months.
- (f) In the event that any refunds apply under the terms of this Paragraph 11, the Contractor shall refund the Customer within thirty (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.

12. Service Reports

- (a) Throughout the Term of this Agreement the Contractor shall provide the Customer with Service Quality 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.
- (b) Key reports to be delivered by the Contractor include:
 - (i) each monthly Service Quality Report will include a monthly activity and performance report of all Incidents occurring in the Solution. The Service Quality Report shall be supplied to the Customer no later than the 10th Working Day of the following month. The reports should cover but not be limited to the following:

- (ii) performance against Service Levels, including 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;
- (iii) Availability and Unavailability of the Solution for the reporting period based on an analysis of Incidents logged relating to Availability;
- (iv) performance of the Solution for the reporting period, including details of any critical events or repetitive non-critical events noted in the Solution;
- (v) recommendations for any changes in the Solution to support performance and availability;
- (vi) Incident management activity for the period;
- (vii) 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;
- (viii) resource utilisation / resource reporting – weekly report outlining activities to be undertaken by Support Services Personnel each week.

13. **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;
- (b) notify the Contractor as soon as possible following awareness of the Solution not operating correctly;
- (c) provide the Contractor with appropriate access to Sites to enable them to carry out Support Services; and
- (d) have appropriate personnel available within timescales required to enable the Contractor to meet their obligations set out in this Agreement.

14. **Upgrades**

- (a) 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.
- (b) 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.
- (c) 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.

- (d) The Customer may decide to implement an Upgrade at none, all or any of the installations of the Solution.
- (e) For the avoidance of doubt, the Customer is not obliged to install or implement any Upgrade.
- (f) The Contractor hereby agrees to produce at least two Upgrades of a substantial nature in every year of the term of this Agreement.
- (g) The Contractor undertakes to include in Upgrades on a timely basis enhancements and functionality improvements to the Solution 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 parties other than the Contractor for the purposes of supporting the infrastructure and environment of the Solution, including operating solution software and ancillaries including 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 and maintain appropriate major and minor versions of the Solution.
- (h) 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.
- (i) The Contractor agrees to provide Upgrades for the Solution 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.
- (j) On delivery of each Upgrade the Contractor shall provide updated documentation in respect of the Solution to the Customer. The Contractor shall provide such number of copies of the updated documentation as the Customer may reasonably require.

15. Input into 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;



- (A) update the attendees on enhancements to existing and planned new versions;
 - (B) collect feedback from the attendees as to suggested enhancements;
 - (C) 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

[This Schedule is deliberately left blank and the successful tenderers response and any clarifications issued after the date of tender submission and prior to the Effective Date will be inserted before contract finalisation.]

SCHEDULE 5

CHANGE CONTROL PROCEDURES

1. Principles

- (a) Where the Customer or the Contractor see a need to change the Agreement, the Customer may at any time request, and the Contractor may at any time recommend, such change only in accordance with this Schedule 5 (Change Control Procedures) as set out at Paragraph 2 (Procedures) 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 Schedule 5 (Change Control Procedures), 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 the Customer and which has not been otherwise agreed in accordance with the provisions of this Schedule 5 (Change Control Procedures) shall be undertaken entirely at the expense and liability of the Contractor.

2. 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 a change is received from the Customer, the Contractor shall submit a draft of the change control note (“CCN”), in the form set out in Appendix 1 of this Schedule 5, 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 a CCN.
- (d) Each CCN will be in the form set out in Appendix 1 of this Schedule 5 and shall be amended as required to include sufficient detail on details of the likely impact, if any, of the change on other aspects of the Agreement and/or services including:
 - (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 and its priority; 'standard' or 'urgent' (an urgent CCN is one which requires expedited timescales in order to avoid a potential operational impact);
 - (iv) full details of the change, including any specification;
 - (v) the Term of the Agreement;
 - (vi) the personnel to be provided;
 - (vii) the change to the Price and payment profile, if any;
 - (viii) proposed changes to the Timetable (if any);
 - (ix) the documentation to be provided;
 - (x) the training to be provided;
 - (xi) the Service Levels;
 - (xii) working arrangements;
 - (xiii) other Agreement issues;
 - (xiv) the date of expiry of validity of the CCN (which shall be no shorter than 30 days);
 - (xv) provision for signature by the Customer and the Contractor.
- (e) For each CCN submitted, the Customer shall, within the period of the validity of the CCN, do the following:
 - (i) issue a unique sequential number to the CCN;
 - (ii) evaluate the CCN and, as appropriate:
 - (A) request for amendments;
 - (B) request further information; or
 - (C) notify the Contractor of the rejection of the CCN.
- (f) Notwithstanding paragraph 2(e) above, in the event that the Customer requests amendments to the CCN or requests further information on the CCN the Customer will then have a further 14 day period from receipt of the amended CCN or such further information as is required, to either accept or reject the CCN, as appropriate.
- (g) Where the Parties are in agreement with respect to the CCN the Contractor and the Customer shall both sign the CCN and return the signed CCN to the other Party.



Appendix 1 – Form of Change of Control Note

BY AND BETWEEN

The Health Service Executive of [Registered Address] (including its successors and assigns) (the “Customer”);

And

[Company Name] (Registered Company Number [insert]) of [Registered Company Address] (the “Contractor”)

Change Control Notice Details	Relevant Agreement/Contract Number
Date:	Title or Ref. No.:
Reference No.:	Date:
Raised by:	
Reason for the change:	
Priority of 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 and will be inserted here when finalised as part of the tender process]



SCHEDULE 7

CYBERSECURITY REQUIREMENTS

[This Schedule is deliberately left blank and will be inserted here when finalised as part of the tender process]

SCHEDULE 8

ACCEPTANCE PROCEDURES

1. General

- (a) This Schedule applies to all elements of the Solution that require inspection, commissioning and testing prior to acceptance by the Customer in accordance with the terms of this Schedule 8 (Acceptance Procedures).
- (b) As part of Incident (as defined in Schedule 3) management or changes being made to the Solution, acceptance testing as per Schedule 8 (Acceptance Procedures) must be followed.
- (c) Prior to applying this Schedule 8 (Acceptance Procedures), the Customer in conjunction with the Contractor shall define the acceptance criteria to be applied for any individual round of acceptance testing (e.g. pass/fail thresholds, volume of testing required) (the “**Acceptance Criteria**”). In addition, the Contractor shall conduct its standard in-house tests (on the dates/times set out in the Timetable), in order to ensure that the relevant Solution requirements (per Schedule 1 (Requirements and Specifications)) are suitable for the performance of the Acceptance Procedures, on which assurance the Customer shall rely. Any defects, faults or failures identified by the Contractor in the performance of such in-house tests shall be remedied by the Contractor, notified to the Customer in writing, and shall not remove or reduce the Contractor obligation to comply with the provisions of the Agreement, including the Timetable.
- (d) The Contractor, if required by the Customer, shall provide support to the User Acceptance Tests throughout the User Acceptance Tests Period.
- (e) The Customer Representative (or its nominee) shall during the User Acceptance Tests Period:
 - (i) supervise the conduct of the User Acceptance Tests on behalf of the Customer; and
 - (ii) sign the Acceptance Report and Acceptance Certificates at the successful conclusion of the User Acceptance Tests.

2. Testing Period

The User Acceptance Tests shall commence on the date set out in the Timetable or such other date as agreed between the Parties and will continue for the duration as agreed between the Parties in the Acceptance Test Plan (the “**User Acceptance Tests Period**”).

3. User Acceptance Tests Procedure

- (a) User Acceptance Tests shall be conducted in accordance with the Acceptance Test Plan. The Customer in conjunction with the Contractor shall develop a test plan for approval by the Customer prior to the commencement of the User Acceptance Tests Period (the “**Acceptance Test Plan**”).
- (b) The Acceptance Test Plan shall include a timetable for completion.
- (c) The Customer, with support from the Contractor, shall provide or propose any test data that may be required for the User Acceptance Tests, and if so required, shall supply the

test data not later than one working week prior to the commencement of the User Acceptance Tests Period.

- (d) The User Acceptance Tests shall be undertaken by the Customer, with support, if required, from the Contractor.
- (e) During the User Acceptance Tests Period the Customer shall maintain the following records:
 - (i) reports of any failures of the relevant requirements in Schedule 1 (Requirements and Specifications) and relevant elements of the Solution to meet the Acceptance Criteria;
 - (ii) all measurements required for the verification of the performance of the relevant requirements in the Schedule 1 (Requirements and Specifications) and relevant elements of the Solution to meet the Acceptance Criteria; and
 - (iii) a weekly summary of progress, if appropriate.

4. **Acceptance/Part Acceptance and Failure**

- (a) The User Acceptance Tests shall be recorded as successful if:
 - (i) the Acceptance Criteria have been met within the User Acceptance Tests Period (including such extensions of the User Acceptance Tests Period as shall be agreed in the manner set out below);
 - (ii) Acceptance Certificates have issued in respect of each Stage or applicable Milestone (where required);
 - (iii) an Acceptance Report (pursuant to paragraph 4(c) of this Schedule 8 below) is issued by the Customer to the Contractor; and
 - (iv) the final Acceptance Certificate is executed by the Customer Representative (or its nominee); and

failure to meet any of these requirements means the User Acceptance Tests are liable to be recorded as unsuccessful.

- (b) The Parties agree and acknowledge that Acceptance Certificates may be issued on an interim basis at the successful completion and testing of a relevant Stage or Milestone.
- (c) At the conclusion of the User Acceptance Tests Period and prior to the execution of the final Acceptance Certificate, the Customer will produce a report (the “**Acceptance Report**”) describing the process undertaken and itemising all reported failures in respect of the relevant requirements in Schedule 1 (Requirements and Specifications) to meet the Acceptance Criteria occurring during the User Acceptance Tests Period. When the Contractor has satisfactorily resolved the cause of failure and demonstrated the ability of the relevant requirements in Schedule 1 (Requirements and Specifications) to meet the Acceptance Criteria, the Customer’s Representative (or its nominee) shall sign the Acceptance Report by way of confirmation of satisfactory resolution by the Contractor of the cause of failure and the User Acceptance Tests shall be deemed to have been successful.
- (d) At the conclusion of the User Acceptance Tests Period, the Customer may:

- (i) accept the deliverables, or;
 - (ii) part-accept the deliverables, or;
 - (iii) require the Contractor to re-present the Solution (or part of the Solution) for a further set of User Acceptance Tests at a time to be agreed between the Parties.
- (e) Following successful conclusion of each stage of the Acceptance Test Plan, the Customer's Representative may execute a mutually agreed form of Acceptance Certificate for that stage. If the Customer fails to notify the Contractor of acceptance or rejection in accordance with the requirements of the Acceptance Test Plan in a timely manner and in any event within twenty (20) days of the date of completion of the User Acceptance Test (whether the due date set out in the Acceptance Test Plan or the actual date of completion if later), or, the Customer, has put the relevant Stage or Milestone into live use without issue for a period in excess of ten (10) consecutive Working Days, excluding any period of live use contemplated by the Acceptance Test Plan for the purposes of carrying out the User Acceptance Tests, then, the Contractor may deem the User Acceptance Tests to have concluded successfully in respect of the relevant Stage.
- (f) If the Acceptance Procedures, in respect of the relevant Stage or Milestone have not been recorded as successful in accordance with the Acceptance Criteria by the relevant Acceptance Date, then, the Customer shall notify the Contractor in writing and shall have the right, as notified by the Customer, at its sole option, to:
- (i) accept such part of the Stage or Milestone as the Customer may, at its sole discretion, decide and pay a portion of the relevant Charges therefore calculated in accordance with Schedule 2 (Payment Schedule), or such other charge as may be agreed by the Parties' Representatives. The Contractor shall correct the fault which caused the User Acceptance Tests to be recorded as unsuccessful, at its sole cost and expense, within a reasonable period directed by the Customer, which shall not, save where directed by the Customer, exceed thirty (30) days from the date of notification aforesaid; or
 - (ii) without prejudice to its other rights and remedies, extend the User Acceptance Tests Period for a period agreed between the Parties which shall not, save where directed by the Customer, exceed thirty (30) days from the date of notification aforesaid, during which period, the Contractor shall, at its sole cost and expense, correct the fault which caused the User Acceptance Tests to be recorded as unsuccessful

PROVIDED THAT, the Parties note that the provisions of this paragraph 4(f) may apply on one occasion or more than one occasion, as set out in paragraph 4(g) of this Schedule 8.

- (g) In the event the Customer extends the User Acceptance Tests Period for a period pursuant to paragraph 4(f) of this Schedule 8 and the User Acceptance Tests have not been recorded as successful by the end of the relevant extended period, then, the Customer shall have the right, at its sole option (and without prejudice to its other rights and remedies) to either accept or further extend the User Acceptance Tests Period in the same manner as provided pursuant to paragraph 4(f) of this Schedule 8 above.
- (h) In the event that the Customer extends the User Acceptance Tests Period for a further period pursuant to paragraph 4(g) of this Schedule 8 above and the User Acceptance Tests have not been recorded as successful by the end of the relevant extended period, then, the Customer shall notify the Contractor in writing and shall have the right, as notified by the Customer, at its sole option, to either:

- (i) accept or further extend the User Acceptance Tests Period in the same manner provided pursuant to paragraph 4(f) of this Schedule 8 above; or
 - (ii) terminate the Agreement in accordance with Clause 30 (Termination) of the Agreement.
- (i) In the event of the Customer serving a notice of termination in accordance with paragraph 4(h)(ii) of this Schedule 8 then the following shall apply:
 - (i) the notice shall refer to the entire or part of the Solution or Schedule 1 (Requirements and Specifications) as determined by the Customer, at its sole discretion, as appropriate in the circumstances by reference to the capability of a deliverable or service component for cost effective and useful standalone existence in the business and administrative operations of the Customer, PROVIDED THAT, the foregoing shall be based upon the principle that, save where determined otherwise by the Customer, the failure to successfully complete the User Acceptance Tests pursuant to paragraphs 4(f) to 4(h) of this Schedule 8 above in respect of a Stage or Milestone shall entitle the Customer to terminate the entirety of the Solution.
 - (ii) the Contractor shall, notwithstanding any other provision of this Agreement and without prejudice to the rights and remedies available to the Customer under this Agreement, rebate to the Customer, within a period of thirty (30) days of the Customer notice of termination aforesaid, all relevant Charges, including VAT and expenses, paid by the Customer pursuant to the Agreement, or part thereof, set out in the Customer notice provided pursuant to paragraph 4(i)(i) of this Schedule 8 above, prior to the date of notice aforesaid.
- (j) Where the User Acceptance Tests have been recorded as successfully completed in accordance with the Acceptance Criteria and where the Acceptance Test Plan allows for a certain number or amount of non-compliance within the determination of successful completion, then, the Contractor shall remedy such non-compliance within the lesser of:
 - (i) the period set out in the Acceptance Test Plan, if any; (ii) the period directed by the Customer, where no such stated period exists, which shall not be less than seven (7) days; or (iii) as soon as reasonably possible in the circumstances.

SCHEDULE 9

TERMINATION ASSISTANCE

1. Definitions

(a) In this Schedule:

"Assets" means all assets, hardware, software, intellectual property and other rights used by the Contractor to provide the Solution 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 Contractor throughout the Term pursuant to paragraph 3(a)(i) of this Schedule 9;

"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 in whole or in part which is not considered an Ordinary Exit;

"Exit Manager" means the person appointed by each Party pursuant to paragraph 4 of this Schedule 9 of for managing the Parties' respective obligations under this schedule;

"Exit Management Plan" means the plan produced and updated by the Contractor during the Term in accordance with paragraph 7 below;

"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 the expiry of this Agreement at the end of the Initial Term or any Renewal Period or a termination by the Customer in accordance with Clause 30.2;

"Registers" means has the meaning set out in paragraph 3(a)(ii) of this Schedule 9;

"Termination Assistance Notice" has the meaning set out in paragraph 8(j) of this Schedule 9;

"Termination Assistance Period" means the period specified in the Termination Assistance Notice in which the Contractor shall provide the Termination Services as may be extended pursuant to paragraph 8(k) of this Schedule 9;

"Termination Services" means the services and activities to be performed by the Contractor pursuant to the Exit Management Plan, including those activities listed in paragraph 8(o) of this Schedule 9 and any other services required pursuant to the Termination Assistance Notice;

"Transferring Contracts" shall have the meaning set out in paragraph 10(b)(ii) of this Schedule 9.

2. Overview

- (a) The Contractor is required to ensure the orderly transition and migration of the Services and/or Customer Information comprised in the Solution (as applicable) from the Contractor to Customer and/or any replacement contractor in the event of termination

(including partial termination) or expiry of this Agreement. This Schedule 9 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 Contractor shall be responsible for the overall management of the exit and service transfer arrangements.

3. **Contract Life Obligations**

- (a) During the Term the Contractor will:
 - (i) maintain the Asset Register, detailing the ownership of Assets, which class of Asset each item is 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;
 - (ii) maintain a document detailing the technical infrastructure through which the Contractor provides the Services and the Solution. This document should be of sufficient detail to permit Customer and/or replacement contractor to understand how the Contractor provides the Solution and the Services and to enable the smooth transition of the Services or the implementation by the Customer of a replacement solution with the minimum of disruption, (collectively the "**Registers**"). The Contractor 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.
 - (b) The Contractor shall ensure that all Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Solution and the Services under this Agreement.
 - (c) The Contractor 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 contractor to provide the Solution 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 contractor upon the Contractor ceasing to provide the Services (or part of them) without restriction (including any need to obtain any consent or approval) or payment by Customer. Where the Contractor Software consists of Cloud-based Software the Customer may deem that assignability or capability of novation of such sub-contracts or agreements is not required.
 - (d) Where the Contractor is unable to procure that any sub-contract or other agreement referred to in paragraph 3(c) of this Schedule 9 above which the Contractor 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 Contractor without restriction or payment, the Contractor 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 Contractor seeking an alternative sub-contractor, to be agreed with Customer.
4. Each Party will appoint an Exit Manager and provide written notification of such appointment to the other Party within three (3) months of the Effective Date. The Contractor's Exit Manager will be responsible for ensuring that the Contractor and its employees, agents and sub-contractors

comply with this schedule. The Contractor will ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Contractor as are reasonably necessary to enable the Contractor 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 9 and each Party's compliance with it.

5. Obligations to Assist on Re-Tendering of Services

- (a) Subject to paragraph 5(b) of this Schedule 9, on reasonable notice, the Contractor shall provide to Customer and/or (subject to the potential replacement contractor entering into reasonable written confidentiality undertakings) to its potential replacement contractor, 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 contractor undertaking due diligence:
 - (i) details of the Solution and the Services;
 - (ii) 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;
 - (iii) details of and information relating to the use of the Assets (including technical specifications);
 - (iv) an inventory of Customer Information and data in the Contractor's possession or control; and
 - (v) a copy of the Registers, updated by the Contractor up to the date of delivery of such Registers.
- (b) The Contractor shall not be required to comply with the provisions of paragraph 5(a) of this Schedule 9 before service of a notice to terminate this Agreement or in the period which is more than six (6) months before the expiry of the Term.

6. Categories of Data

- (a) The below is an exhaustive specification of all categories of data and digital assets that can be ported during the Switching Process referred to under Clause 30.13 of the Agreement to a replacement contractor or to an on-premises ICT infrastructure, including, at a minimum, all Exportable Data:
 - (i) **[LIST TO BE INSERTED]**
- (b) The below is an exhaustive specification of categories of data specific to the internal functioning of the Contractor's data processing service that may be exempted from paragraph 6(a) where a risk of breach of trade secrets of the Contractor exists, provided that such exemptions do not impede or delay the required Switching Process referred to under Clause 30.13 of the Agreement:
 - (i) **[LIST TO BE INSERTED]**

7. Exit Management Plan

- (a) The Contractor will, within three (3) months after the Effective Date, deliver to Customer an Exit Management Plan which sets out the Contractor proposed methodology for achieving an orderly transition of Services and/or the Customer Information as may be

hosted in the Solution (as applicable) from the Contractor to Customer and/or its replacement contractor on the expiry or termination of this Agreement and which complies with the requirements set out in paragraphs 7(b) and 7(c) of this Schedule 9 below. Within thirty (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 Dispute Resolution Procedure.

- (b) The Exit Management Plan will contain, as a minimum:
 - (i) separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Contractor 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 Contractor of all such reasonable assistance as Customer shall require to enable Customer or its subcontractors to provide the Services and, where required, to migrate the Customer Information to another platform;
 - (ii) the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit; and
 - (iii) 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.
- (c) In addition, the Exit Management Plan shall:
 - (i) document how the Services and/or the Customer Information hosted in the Solution (as applicable) will transfer to the replacement contractor and/or Customer, including details of the processes, documentation, data transfer and portability, Solution migration, security and the segregation of Customer's technology components from any technology components operated by the Contractor or its Sub-Contractors (where applicable);
 - (ii) 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 8(o) of this Schedule 9 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)), noting that from 12 January 2027 Contractor may not charge any switching charges for the switching process as referred to in Clause 30.13 of the Agreement, including for egress of data) and detail how such services would be provided (if required), during the Termination Assistance Period;
 - (iii) address each of the issues set out in this Schedule 9 to facilitate the transition of the Services and/or Customer Information (as applicable) from the Contractor to the replacement Contractor and/or Customer with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period;
 - (iv) provide a timetable and identify critical issues for providing the Termination Services; and

- (v) set out the management structure to be put in place and employed during the Termination Assistance Period.
- (d) The Contractor 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 Contractor will submit the revised Exit Management Plan to Customer for review. Within thirty (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 9 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 thirty (30) day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

8. Termination Services

General

- (a) During the Termination Assistance Period or such shorter period as Customer may require, the Contractor will continue to provide the Services (as applicable) and will, at the request of Customer pursuant to paragraph 8(j) of this Schedule 9, provide the Termination Services.
- (b) The costs of providing these Termination Services shall be as stated in Schedule 2 (Payment Schedule). In accordance with the EU Data Act, it is acknowledged that, with respect to Solutions constituting 'data processing services' as defined in the EU Data Act, from 12 January 2027, no charge (including data egress charges) shall be imposed for the switching to the system of a different service provider or to an on-premises ICT infrastructure.
- (c) During the Termination Assistance Period, the Contractor 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 contractor and to facilitate the migration of the Customer Information to the Customer or replacement contractor (as applicable). The Contractor 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 Contractor 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).
- (d) 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 8(e) of this Schedule 9.
- (e) Where the Contractor 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 Contractor'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.
- (f) At Customer's request and on reasonable notice, the Contractor will deliver up-to-date Registers to Customer.

- (g) The Parties acknowledge that the migration of the Services and/or Customer Information as may be comprised the Solution (as applicable) from the Contractor to Customer and/or its replacement contractor may be phased, such that certain of the Services and/or Customer Information (as applicable) are handed over before others.
- (h) Within thirty (30) days after service of notice of termination by either Party the Contractor will submit for Customer's approval the Exit Management Plan in a final form that can be implemented immediately.
- (i) 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 thirty (30) days following its delivery to Customer then such dispute shall be resolved in accordance with Part Six of this Agreement (Dispute Resolution Procedure). Until the agreement of the final form Exit Management Plan, the Contractor will provide the Termination Services in accordance with the principles set out in this Schedule 9 and the last approved version of the Exit Management Plan (insofar as this still applies).

Notification of Requirements for Termination Services

- (j) Customer shall be entitled to require the provision of Termination Services by notifying the Contractor in writing ("**Termination Assistance Notice**") at least three (3) 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:
 - (i) date from which Termination Services are required which shall be no earlier than twelve (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;
 - (ii) nature of the Termination Services required; and
 - (iii) the Termination Assistance Period during which it is anticipated that Termination Services will be required which shall continue no longer than twenty-four (24) months after the date that the Contractor would otherwise have ceased to provide the Services and which shall be subject to the costs stated in Schedule 2 (Payment Schedule), irrespective of the period during which Termination Services will be required.
- (k) The Customer shall have an option to extend the period of assistance beyond the Termination Assistance Period specified in the Termination Assistance Notice provided that such extension shall not extend for more than six (6) months beyond the end of the Termination Assistance Period and provided that it shall notify the Contractor to such effect no later than twenty (20) Working Days prior to the date on which the provision of Termination Services is otherwise due to expire. The Customer shall have the right to terminate its requirement for Termination Services by serving not less than twenty (20) Working Days' written notice upon the Contractor to such effect.

Termination Obligations

- (l) The Contractor 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.

- (m) At the end of the Termination Assistance Period (or earlier if this does not adversely affect the Contractor's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule 9):
 - (i) the Contractor will, subject to the Customer's confirmation of successful completion of the required migration of the Customer Information comprised in the Solution to the Customer or a replacement contractor (where applicable), erase from any computers, storage devices and storage media that are to be retained by the Contractor after the end of the Termination Assistance Period any software containing the Commissioned Software and all Customer Information;
 - (ii) the Contractor will return to Customer such of the following as is in the Contractor's possession or control:
 - (A) all copies of Customer Software and any other software licensed by Customer to the Contractor under this Agreement;
 - (B) all materials created by the Contractor under this Agreement, the Intellectual Property Rights in which are owned by Customer;
 - (C) Source Materials for Commissioned Software (where applicable);
 - (D) any parts of the Hardware, Customer Hardware and any other equipment which belongs to Customer; and
 - (E) any items that have been on-charged to Customer, such as consumables;
 - (iii) the Contractor will transfer all Customer Information (in a complete, usable, uncorrupted, electronic, open data format (including the European Electronic Health Record Exchange Format where applicable and in compliance with interoperability specifications and standards as referred to in the EU Data Act)) in its possession or control to the 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 9 or the Exit Management Plan;
 - (iv) the Contractor shall vacate any Sites, as applicable;
 - (v) the Contractor will return to the Customer all Confidential Information and will certify that it does not retain the Customer's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Contractor for the purpose of providing any Services or Termination Services.
- (n) Except where this Agreement provides otherwise, all licences, leases and authorisations granted by Customer to the Contractor in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

Scope of the Termination Services

- (o) The Termination Services to be provided by the Contractor shall include (without limitation) such of the following services as Customer may specify:
 - (i) ceasing all non-critical Software changes (by agreement with Customer);

- (ii) notifying the sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
- (iii) 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 contractor after the end of the Termination Assistance Period (in the case of a Cloud-based Software product, solely to the extent such processes and procedures may relate to the use by the Customer of a replacement product or service);
- (iv) 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;
- (v) providing documentation relating to the mapping and rules from source systems to data core data model, all application programming interfaces (“APIs”) and associated documentation required to migrate or port all Customer Information from the Solution to a platform or solution of the Customer or a replacement contractor, as identified by the Customer, in order to interoperate or interwork with the platform or solution of the Customer or a replacement contractor;
- (vi) providing details of work volumes and staffing requirements over the 12 month period immediately prior to the commencement of the Termination Services;
- (vii) 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;
- (viii) providing Customer with any problem logs which have not previously been provided to Customer;
- (ix) 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 twelve (12) months after the Termination Assistance Period;
- (x) 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 (in the case of a Cloud-based Software product solely to the extent such roles and responsibilities may be related to the use by the Customer of a replacement product or service);
- (xi) reviewing all Software libraries used in connection with the Services and providing details of these to Customer and/or its replacement Contractor;
- (xii) making available to Customer and/or the replacement Contractor 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 of this Agreement;

- (xiii) assisting in establishing any required naming conventions;
- (xiv) analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;
- (xv) generating a computer listing of the Source Code of Commissioned Software in a form and on media reasonably requested by Customer and provisions of the Source Materials related to same;
- (xvi) agreeing with Customer a handover plan for all of the Contractor's security responsibilities under this Agreement. The Contractor will co-operate fully in the execution of the agreed plan, providing skills and expertise of a suitable standard;
- (xvii) delivering copies of the production databases (with content listings) to Customer's and/or the replacement Contractor's operations staff (on appropriate media) as reasonably requested by Customer;
- (xviii) assisting with the loading, testing and implementation of the production databases;
- (xix) assisting in the execution of a parallel operation until the effective date of expiry or termination of this Agreement;
- (xx) in respect of the maintenance and support of the Solution, providing historical performance data collated during the Term;
- (xxi) assisting in the execution of a parallel operation of the maintenance and support of the Solution 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);
- (xxii) the provision of an information pack listing and describing the Services for use by Customer in the procurement of replacement services;
- (xxiii) answering all reasonable questions from Customer and/or its replacement Contractor regarding the Services;
- (xxiv) agreeing with Customer and/or the replacement Contractor a plan for the migration of any Solution or Services data to Customer and/or the replacement Contractor. The Contractor will fully co-operate in the execution of the agreed plan, providing skills and expertise of a reasonably acceptable standard;
- (xxv) the provision of access to Customer and/or the replacement Contractor during the Termination Assistance Period and for a period not exceeding six (6) months afterwards for the purpose of the smooth transfer of the Services to Customer and/or the replacement Contractor;
- (xxvi) to information and documentation relating to the transferring services that is in the possession or control of the Contractor or its sub-contractors (and the Contractor 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



- (xxvii) following reasonable notice and during the Contractor's normal business hours, to members of the Contractor Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Contractor or its sub-contractors.

Disputes Relating to Termination Services

- (p) 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.

9. Knowledge Transfer

- (a) During the Termination Assistance Period, the Contractor will:
 - (i) transfer all training material and provide appropriate training to those Customer and/or replacement contractor staff responsible for internal training in connection with the provision of the Services, for example, in relation to developed interfaces and industry standards;
 - (ii) provide for transfer to Customer and/or the replacement contractor of all knowledge reasonably required for the provision of the Services, or in the case of a Solution based upon a Cloud-based Software, for the operation of a replacement solution, which may, as appropriate, include information, records and documents; and
 - (iii) provide the Contractor and/or replacement contractor with access to such members of the Contractor '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 Contractor or its Sub contractors.
- (b) To facilitate the transfer of knowledge from the Contractor to Customer and/or its replacement contractor, the Contractor 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 contractor.
- (c) The information which the Contractor shall provide to Customer and/or its replacement contractor pursuant to paragraph 9(a) of this Schedule 9 above will include:
 - (i) copies of up-to-date procedures, User Documentation and operations manuals (in the case of Cloud-based Software, where applicable to the Customer Information);
 - (ii) product information;
 - (iii) agreements with third party contractors of goods and services which are to be transferred to Customer;
 - (iv) key support contact details for third party contractor personnel under contracts which are to be assigned or novated to Customer pursuant to this Schedule 9;
 - (v) 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;

- (vi) details of physical and logical security processes and tools which will be available to Customer; and
 - (vii) any relevant interface information.
- (d) During the Termination Assistance Period the Contractor shall grant any agent or personnel (including employees, consultants and contractors) of the replacement Contractor and/or Customer access, during business hours and upon reasonable prior written notice, to any contractor sites for the purpose of effecting a prompt knowledge transfer provided that:
- (i) 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 Contractor (in such form as the Contractor shall reasonably require); and
 - (ii) Customer and/or the replacement contractor shall pay the reasonable, proven and proper costs of the Contractor incurred in facilitating such access.

10. **Assets, Sub-Contracts and Software**

- (a) Following notice of termination of this Agreement and during the Termination Assistance Period, the Contractor will not, without Customer's prior written consent:
- (i) terminate, enter into or vary any sub-contract;
 - (ii) (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or
 - (iii) terminate, enter into or vary any licence for software in connection with the Services.
- (b) Within thirty (30) days of receipt of the up-to-date Registers provided by the Contractor pursuant to paragraph 8(f) of this Schedule 9 above, Customer will provide written notice to the Contractor setting out:
- (i) which Assets Customer requires to be transferred to Customer and/or its replacement Contractor; and
 - (ii) which sub-contracts and other agreements specified in paragraph 3(c) of this Schedule 9 above Customer requires to be assigned or novated to Customer and/or its replacement Contractor (the "**Transferring Contracts**"),

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

- (c) With effect from the expiry of the Termination Assistance Period, the Contractor shall assign to Customer (and/or its nominated replacement Contractor), free from all liens, charges, options, encumbrances and third party rights, title to and all rights and interests in those Assets identified by Customer pursuant to paragraph 10(b) of this Schedule 9

above. Such Assets will be acquired by Customer for a consideration not greater than their Net Book Value.

- (d) In respect of those Contractor Hardware that Customer has identified pursuant to paragraph 10(b) of this Schedule 9, the Contractor will either (at Customer's option, acting reasonably):
 - (i) sell such Assets to Customer and/or its replacement Contractor at an agreed price; or
 - (ii) offer or procure for Customer and/or its replacement Contractor 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.
- (e) The Contractor shall assign or procure the novation to Customer of the Transferring Contracts. The Contractor shall execute such documents and provide such other assistance as Customer reasonably requires to effect this novation or assignment. (e)
- (f) The Customer shall:
 - (i) accept assignments from the Contractor or join with the Contractor in procuring a novation of each Transferring Contract;
 - (ii) once a Transferring Contract is novated or assigned to Customer and/or the replacement Contractor, 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 Contractor does the same.
- (g) The Contractor shall hold any Transferring Contracts on trust for Customer until such time as the transfer of the contract to Customer and/or the replacement contractor has been effected.
- (h) The Contractor shall indemnify Customer (and/or the replacement contractor, 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 contractor) pursuant to paragraph 10(e) of this Schedule 9 above in relation to any matters arising prior to the date of assignment or novation of such sub-contract.

11. Charges and Apportionments

- (a) During the Termination Assistance Period (or for such shorter period as Customer may require the Contractor to provide the Termination Services), Customer shall pay the Charges to the Contractor in respect of the Termination Services, such Charges to be calculated in accordance with Schedule 2 (Payment Schedule).
- (b) 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 contractor pursuant to paragraph 10 above shall be apportioned between Customer and the Contractor and/or the replacement Contractor and the Contractor as applicable.
- (c) This apportionment will be carried out as follows:

- (i) the payments will be annualised and divided by 365 to reach a daily rate;
 - (ii) the Customer shall be responsible for or shall procure that the replacement contractor 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
 - (iii) the Contractor will be responsible for or entitled to (as the case may be) the rest of the invoice.
- (d) Each Party shall pay and/or Customer shall procure that the replacement contractor shall pay any monies due under paragraph 9(c) of this Schedule 9 as soon as reasonably practicable.



SCHEDULE 10

HSE SERVICE PROVIDER DATA PROCESSING AGREEMENT

[This Schedule is deliberately left blank. - HSE standard Service Provider Data Processing Agreement to be signed and inserted before contract finalisation]



SCHEDULE 11

APPROVED AI SYSTEM

[This Schedule is deliberately left blank and will, where HSE consents to an Approved AI System forming part of the Solution, be finalised as part of tender process]

SCHEDULE 12

ELECTRONIC HEALTH RECORD SYSTEMS

The following definitions apply to this Schedule:

“EHDS Legislation”	means the EHDS Regulation together with any implementing legislation, acts, delegated acts, regulations, codes and guidelines adopted thereunder;
“EHDS Regulation”	means the European Health Data Space Regulation, Regulation (EU) 2025/327 of 11 February 2025 as may be amended or updated from time to time;
“Electronic Health Data”	has the meaning given to it in the EHDS Regulation;
“Electronic Health Data Access Service”	the electronic health data access services (such as a portal or app) to be established in Ireland in accordance with Article 4 of the EHDS which enables natural persons to access their personal electronic health data and exercise their rights under the EHDS Regulation;
“Electronic Health Record”	has the meaning set out in the EHDS;
“European Electronic Health Record Exchange Format”	the European electronic health record exchange format as referred to in Article 15 of the EHDS Regulation
“Personal Electronic Health Data”	has the meaning given to it in the EHDS Regulation;
“Interoperability”	has the meaning given to it in the EHDS Regulation;
“Priority Categories of Personal Electronic Health Data”	means those categories of data as set out in Article 14(1) of the EHDS Regulation or stipulated by other applicable EHDS Legislation as being priority categories;
“Secondary Use”	has the meaning give to it in the EHDS Regulation.

1. Compliance with EHDS Regulation

(a) Applicability of this Schedule

- (i) This schedule shall apply to Solutions incorporating an Electronic Health Record to which the EHDS Legislation is applicable.

(b) Compliance with EHDS

- (i) Without limiting the obligation of the Contractor to provide the Solution in accordance with the Requirements and Specifications, the Contractor warrants, represents and undertakes that the Solution will be compliant with applicable EHDS Legislation during the Term.

(c) **Interoperability**

- (i) The Contractor shall ensure that the Solution processes, stores and permits transmission of all Priority Categories of Personal Electronic Health Data and any other categories of data in scope of the Requirements and Specifications or as otherwise agreed between the Parties in the European Electronic Health Record Exchange Format in accordance with Article 15 and Annex II of the EHDS Regulation and the technical specifications to be adopted by way of implementing acts of the European Commission from time to time.

(d) **Enabling Compliance with EHDS Obligations**

- (i) Without limiting the requirement to comply with paragraph 1(a) above, the Contractor shall ensure that:
 - (A) the Solution enables the Customer to comply with the rights of natural persons or their representatives to access their personal electronic health data via the Electronic Health Data Access Services in the European Electronic Health Record Exchange Format in accordance with the EHDS Legislation together with any other categories of data that may be stipulated in the Requirements and Specifications;
 - (B) the Solution enables the Customer to comply with the rights of natural persons or their representatives to insert information in the Solution via the Electronic Health Data Access Services;
 - (C) the Solution enables the Customer to comply with the rights of rectification of personal electronic health data as requested by natural persons via the Electronic Health Data Access Services;
 - (D) the Solution enables the Customer to comply with the rights of natural persons to give access to, or to request the Customer to transmit, all or part of their personal electronic health data to another healthcare provider of their choice immediately, free of charge and without hindrance;
 - (E) the Solution enables the Customer to comply with a request of natural persons to transmit their personal electronic health data in the European Electronic Health Record Exchange Format to healthcare providers in other EU member states;
 - (F) the Solution enables the Customer to comply with a request of a natural person to transmit a part of their personal electronic health data to a clearly identified recipient in the social security or reimbursement sector immediately, free of charge and without hindrance;
 - (G) the Solution enables the Customer to comply with the rights of a natural person to restrict the access of health professionals and healthcare providers to all or parts of their personal electronic health data;
 - (H) the Solution enables the Customer to comply with the right of natural person to obtain information, including through automatic notifications, on any access to their personal electronic health data through the Electronic Health Data Access Services in accordance with the requirements set out in Article 9 EHDS Regulations;

- (I) the Solution enables the Customer to comply, where applicable under national implementing legislation, with the right of natural persons to opt out from the access to their personal electronic health data registered in the Solution and with the requirements of applicable opt-out mechanisms as may be stipulated by national implementing legislation;
 - (J) the Solution enables the Customer to comply with the obligation to make personal electronic health data of natural persons accessible to health professionals in accordance with the requirements of Article 11 and Article 12 of the EHDS Regulations;
- (e) **Implementing Acts**
 - (i) It is acknowledged between the Parties that the EHDS Regulation stipulates that technical and other requirements relating to the rights and obligations as set out in the EHDS Regulation will be implemented by the EU Commission and national authorities during the Term by applicable EHDS Legislation.
 - (ii) The Contractor shall update the Solution as required for compliance with the EHDS Legislation during the Term. Such updates shall form part of the Support Services and are included in the portion of the Price attributable to the Support Services.
- (f) **Conformity Testing**
 - (i) The Contractor shall draw up the EU declaration of conformity as required in accordance with Article 39 of the EHDS Regulation and affix the CE marking of conformity to the applicable part of the Solution.
- (g) **Technical Documentation and Information Sheet**
 - (i) The Contractor shall provide to the Customer the technical documentation as required to be prepared and kept up to date in accordance with Article 37 of the EHDS Regulation and the information sheet referred to in Article 38 of the EHDS Regulation.
- (h) **Secondary Use**
 - (i) The Contractor shall ensure that the Solution enables the Customer to comply with the obligations of a 'health data holder' under the EHDS Legislation upon the coming into force of the applicable parts of the EHDS Legislation.
 - (ii) The Contractor shall not process Electronic Health Data for Secondary Use purposes other than in accordance with the EHDS Legislation and in accordance with a valid data permit as issued by the relevant health data access body as appointed in Ireland in accordance with Article 55 of the EHDS Regulation or as otherwise expressly authorised to do so in accordance with the EHDS Legislation.
- (i) **Market Surveillance Requirements**
 - (i) The Contractor shall comply with all applicable market surveillance requirements as set out in the EHDS Legislation.

- (ii) The Contractor shall fully and promptly cooperate with any competent authority or authorities designated as responsible for the implementation of the EHDS Legislation in the event of an evaluation of the Solution or part thereof being carried out by such competent authority or authorities.
- (iii) The Contractor shall notify the Customer in writing without undue delay and in any event within 48 hours of becoming aware of any of the below with respect to the Solution, including the underlying EHR system or software forming part of the Solution:
 - (A) any notification to market surveillance authorities in the European Union in relation to the EHR system forming part of the Solution;
 - (B) any actual or suspected non-compliance with the EHDS Legislation;
 - (C) any investigation, inspection finding or enforcement action by a competent authority relating to the EHDS Legislation;
 - (D) any requirement to implement corrective measures imposed by a competent authority relating to the EHDS Legislation.
- (iv) Without prejudice to Clause 49 of the Agreement, it is agreed that, at no additional cost to the Customer, the Contractor shall make available all information necessary to demonstrate the Contractor's compliance with the obligations laid down in the EHDS Legislation and allow for and contribute to audits by and of the Customer with respect to EHDS Legislation compliance, including inspections.