

HSE CONFIDENTIAL

[Specialist Services Information Architecture]

HEALTH SERVICE EXECUTIVE

and

[Insert Supplier Name Here]

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

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THIS AGREEMENT is made the XXth XXXXXXXX 2013 between

PARTIES

- (1) **The Health Service Executive**, a body corporate established pursuant to the Health Act 2004, having an office at Dr. Steevens' Hospital, Dublin 8 ("**HSE**"); and
- (2) [**Supplier Name**] incorporated and registered in the Republic of Ireland with registered number [registered number] whose registered office is at [supplier registered address] (the "**Service Provider**"),

(each a "**Party**" and together "**the Parties**").

BACKGROUND

- (A) The HSE wishes to establish a [system name] initially at the following sites. The HSE may also establish the [system name] at other HSE Group sites, subject to the issuance of Lot Agreements in accordance with the terms of this Agreement.
- (B) The HSE issued an EU wide invitation to tender for the design, supply, installation and maintenance of [system name] and related services to which the Service Provider responded and took part in all evaluation processes for the provision of the [system name] and related services.
- (C) The Service Provider has been selected as the preferred Service Provider following the tender process.
- (D) The Service Provider owns the systems Software (or, as applicable for upgrades, will own at the time of delivery) the copyright in the systems Software, the documentation and the upgrades or is otherwise authorised and permitted to licence the systems Software, the documentation and the upgrades to the HSE and members of the HSE Group.
- (E) The Parties wish to set out the terms and conditions upon which the Service Provider will (i) license the use of the systems Software, the documentation and the upgrades to the HSE and members of the HSE Group, and (ii) provide Services.
- (F) The Service Provider has the resources, skills and expertise to supply the system and Services (defined below) to the HSE and to implement the [system name] project with the HSE.

NOW THEREFORE, IT IS HEREBY AGREED, as follows:

PART ONE
GENERIC CLAUSES

This Part One applies to the procurement of both Services and Supplies

1. Interpretation

1.1 The Agreement is separated into the following parts:

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

1.2 Headings and sub-headings are for ease of reference only and do not affect the construction of the Agreement.

1.3 References to Clauses are references to Clauses of the Agreement.

1.4 In this Agreement:

- (a) references to Service Provider where the context requires shall include its permitted subcontractors and agents;
- (b) references to a “**person**” shall be construed so as to include any individual, firm, company, government, state or agency of a state, local authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);
- (c) words in the singular include the plural and the other way around;
- (d) references to one gender includes all genders;
- (e) any reference to an enactment or statutory provision is a reference to it as it may have been, or may from time to time be amended, modified, consolidated or re enacted;

- (f) references to a “**company**” shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
 - (g) references to times are to times in Ireland; and
 - (h) references to a “**month**” shall mean a calendar month.
- 1.5 The Schedules comprise Schedules to this Agreement and form part of this Agreement.
- 1.6 References to indemnifying any person against or with respect to any circumstance shall include indemnifying and keeping it harmless, on an after tax basis, from all actions, claims and proceedings from time to time made against it and all losses, damages, liabilities, payments, costs and expenses suffered, made or incurred by it as a consequence of or in connection with that circumstance.
- 1.7 The Parties shall do and sign or execute or procure to be done, signed or executed all such agreed acts, deeds, documents and things as may be necessary or desirable in order to achieve the purposes of this Agreement.
- 1.8 Where the requirement of consent from any Party is expressly provided for in this Agreement, it may not, unless otherwise stated as being at the discretion of the Party giving it, be unreasonably withheld or delayed, or subject to unreasonable conditions.
- 1.9 Unless the context otherwise requires, the word “including” shall mean “including but not limited to” and “include” and “includes” shall be construed accordingly.
- 1.10 For the purposes of the Electronic Commerce Act, 2000, references to “writing” in this Agreement if provided in an electronic form shall be deemed to be “writing” for the purposes of all applicable legislation where “writing” is required and words in an electronic form shall be deemed to be “signed” for the purposes of all applicable legislation where a “signature” is required.

2. **Definitions**

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

“**Acceptance Certificate**” means the certificate issued to the Service Provider from the HSE on the successful completion of a User Acceptance Test.

“**Acceptance Procedures**” means the terms and conditions applicable to accepting completion of the relevant HSE Requirements and Specifications as set out in 0 (Acceptance Procedures) to this Agreement.

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

“**CCN**” has the meaning given to it in 0 (Change Control Procedures).

“**Change Control Procedure**” means the procedure set out in 0 (Change Control Procedures).

“**Commencement Date**” means the date specified in Clause 14.1 (Programme).

“Commissioned Software” means the Software described in Clause 86.1 (Commissioned Software).

“Configuration” has the meaning given to it in Clause 87.1 (Configured Software).

“Configured” has the meaning given to it in Clause 87.1 (Configured Software).

“days” are calendar days.

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

“Delete” means removing all Information which is electronically held in such a way that it can never be retrieved from the device on which it is held.

“Disaster” means the occurrence of one or more major events which, either separately or cumulatively, mean that the system or the Services, or a material part of them will be unavailable for period of forty eight (48) hours or which it is reasonably anticipated will mean that the system or the Services or a material part will be unavailable for that period.

“Dispute Notice” has the meaning given to it in Clause 100.2 (Mediation).

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

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

“Exit Management Plan” means the exit management plan specified in 0 (Termination Assistance).

“Expert” has the meaning given to it in Clause 100.6 (Mediation).

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

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

- (a) acts of terrorists;
- (b) war declared or undeclared, blockade, revolution, riot, insurrection, civil commotion, invasion or armed conflict;
- (c) sabotage or acts of vandalism, criminal damage or the threat of such acts;
- (d) natural disasters and phenomena including extreme weather or environmental conditions, fire, flood, earthquake, meteorites, explosions including nuclear explosion, radioactive or chemical contamination or ionising radiation or other elements of nature or acts of God;
- (e) acts of national, local or foreign governmental authorities or courts;
- (f) failures in either Party’s or Third Party electrical power, and

- (g) any strike, lockout or other industrial action or labour dispute affecting the HSE or any member of the HSE Group (or any of them),
- (h) but does not include: (i) any strike, lock-out or other industrial action or labour dispute primarily or substantially aimed at the Service Provider or its subcontractors, agents or employees or (ii) events affecting a contractor or supplier of the Party that would not have constituted Force Majeure under this Agreement.

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

“Hardware” means HSE Hardware and hardware to be supplied for the Job.

“Hardware Agreements” means maintenance and support agreements relating to any HSE Hardware used in connection with systems the equivalent of the system prior to the Effective Date and any other leases, rental, maintenance and support agreements relating to any hardware, equipment and/or other tangible property used in the performance of the Job on and from the Effective Date.

“HIQA” means the Health Information and Quality Authority.

“HSE Data” has the meaning given to it in Clause 18.2 (HSE Data).

“HSE Data Security Policies” means the policies relating to data security as included in HSE Policies referred to at Clause 22 (HSE Policies).

“HSE Encryption Policy” means the encryption policy of the HSE, which is one of the HSE Policies.

“HSE Group” means all bodies corporate, statutory corporations, hospitals, partnerships, unincorporated associations, charities and other entities operating as part of the Irish health service and funded in any way directly or indirectly by the HSE or other public funding sources or any local, national or supra-national government or regulatory authority, as well as any employees or contractors of any of the foregoing and any other persons or hospitals assisting in the provision of the Irish health service.

“HSE 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 HSE and used in connection with systems the equivalent of the system prior to the Effective Date.

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

“HSE Job Manager” means the HSE representative responsible for the day to day contract management of the delivery of this Agreement and the Job.

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

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

“HSE Requirements and Specifications” means the description of the Job required by the HSE, as set out in 0 (HSE Requirements and Specifications) to this Agreement, as may be varied by the Parties pursuant to the Change Control Procedure, and/or any Lot Agreement, which may include supply of Software, Hardware and/or the provision of Services.

“HSE Sites” means all Irish Health Service sites where the system or supplies may be deployed or where services may be provided under this contract.

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

“ICDR” has the meaning given to it in Clause 100.4(a) (Mediation).

“Incoming Service Provider” means a service provider who provides relevant Services pursuant to any exercise by the HSE of its rights under Clause 13 (Step In Rights).

“Information” means any and all information, (irrespective of the format - paper, electronic or otherwise) belonging to the HSE, including the following:

- (a) personal information concerning the HSE’s clients, patients or staff, including confidential Information concerning the physical and mental health of the HSE’s clients, patients and staff;
- (b) information regarding the business affairs of the HSE generally, and as regards the Job;
- (c) information regarding the policies, procedures and work practices of the HSE;
- (d) supplies and services (including audit, consultancy and related services);
- (e) information regarding the existence, content, progress or conclusion of any negotiations between the HSE and the Service Provider relating to the Job; and
- (f) confidential codes or other information concerning access to the HSE’s computer networks and/or information systems.

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

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

“Job” means the live implementation of the [SYSTEM NAME] solution, in accordance with the terms of this Agreement in order to meet the HSE Requirements and Specifications.

“Key Personnel” means personnel identified in the Tender submitted by the Service Provider for the performance of the Job 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 Job.

“Legal Requirements” means the requirements of:

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

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

“Lot Agreement” means, where the Job is being provided in a number of Lots, the agreement setting out particular terms and conditions relating to the relevant Lot in the form or substantially the form of the Lot Agreement attached at 0 (Lot Agreement).

“Lot Letting Procedure” has the meaning given to it in Clause 92.1 (Lot Letting Procedure).

“Lot Request” has the meaning given to it in Clause 92.2(a) (Lot Letting Procedure).

“Lot Request Response” has the meaning given to it in Clause 92.2(b) (Lot Letting Procedure).

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

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

“Negotiating Period” has the meaning given to it in Clause 100.3 (Mediation).

“Official Purchase Order” means the HSE purchase order issued in respect of the Job, in the official format of the HSE and which is issued by an authorised officer of the HSE to the Service Provider identifying the:

- (a) Service Provider;
- (b) Price;
- (c) purchase order number; and
- (d) the HSE Representative.

“Payment Schedule” means the schedule attached to this Agreement at 0 (Payment Schedule) detailing the Price payable in respect of the performance of the Job.

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

“Persistent Failure” means a repetitive or continuing failure by the Service Provider to meet the Service Levels Response Times for the relevant Service for any six months in a period of twelve (12) months or for any three (3) consecutive months in accordance with the terms of this Agreement.

“Price” means the sums payable to the Service Provider in accordance with 0 (Payment Schedule).

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

“Project Manager” means the project manager assigned by either the Service Provider or the HSE, as appropriate, with the responsibilities set out in Clause 97.1 (Representatives and Contract Management Review).

“Relevant Claim” has the meaning given to it in Clause 20.3 (Intellectual Property Rights Indemnity).

“Representative” has the meaning given to it in Clause 97.2 (Representatives, Contract Management and Review).

“Review Board” has the meaning given to it in Clause 97.7 (Representatives and Contract Management Review).

“Review Board Report” has the meaning given to it in Clause 97.11 (Representatives and Contract Management Review).

“Review Meeting” has the meaning given to it in Clause 97.3 (Representatives and Contract Management Review).

“Safe Harbour” means the framework for the transfer of personal data from the European Union to the United States of America which has been developed by the U.S. Department of Commerce in consultation with the European Commission and where the U.S. based recipient has been approved by the U.S. Dept of Commerce.

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

“Service Credits” means the service credits specified in 0 (Service Level Agreement).

“Service Level Agreement” means the agreement set out at 0 (Service Level Agreement).

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

“Service Provider Software” means software owned by or licensed to the Service Provider, which is required to be supplied by the Service Provider to the HSE for use by the HSE Group in connection with the Job and which includes the Software listed in 0 (HSE Requirements and Specifications) but which excludes Commissioned Software and the HSE Software.

“Service Provider’s People” means persons assisting the Service Provider and/or the HSE (as the case may be) for the Job, (including officers, employees and sub-service providers and sub-contractors) of any tier.

“Service Provider’s Tender” means the Service Provider’s proposals for the Job attached at 0 (Service Provider’s Tender).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Timetable” means the timetable attached at 0 (Timetable) or, where the Job is to be completed in Lots, the timetable attached to the relevant Lot Agreement.

“Training Services” has the meaning given to it in Clause 71.7 (Training Services).

“User Acceptance Tests” has the meaning given to it in 0 (Acceptance Procedures).

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

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

3. **Term**

- 3.1 This Agreement commences on the Effective Date and shall continue for the Initial Term unless:
- (a) extended under Clause 3.3 below or if agreed as part of the Exit Management Plan; or
 - (b) terminated under Clause 25 (Termination).
- 3.2 The system shall be implemented by the Service Provider at each of the designated Sites during the Implementation Term in accordance with the provisions of this Agreement, and the Service Provider shall provide the Services to the HSE Group during the Initial Term in accordance with the provisions of this Agreement and the HSE Requirements and Specifications as set out in 0 (HSE Requirements and Specification).
- 3.3 The HSE may extend the term of this Agreement for a period of up to [enter extension period as per advertised tender (n)] years beyond the Initial Term by issuing additional Lots or giving the Service Provider at least six (6) months’ notice expiring on or before the last day of the Initial Term. If this Agreement is extended pursuant to this Clause 3.3, any extended period shall form part of the Term.
- 3.4 Where the Term exceeds one year, this Agreement will be subject to annual review during the Term. This annual review shall occur on or about the anniversary of the Effective Date. Both Parties agree to put in place, within three months of the Effective Date, procedures for the conduct of the annual review. The annual review shall consider the performance by both Parties of their respective obligations under this Agreement. Both Parties shall act reasonably and diligently in carrying out each annual review. Any agreed adjustment pursuant to a review shall be effective immediately following the completion of the relevant annual review.
- 3.5 This Agreement supersedes any previous oral or written negotiations, commitments, representations, communications and agreements.

4. **Acceptance of the Terms of the Contract**

- 4.1 By commencing the provision of Services or by delivering the Supplies to a date and location as specified by the HSE, the Service Provider acknowledges that it is bound by the terms of the Agreement.
- 4.2 The Service Provider hereby waives their own conditions of sale save for exceptions to the contrary which specifically and explicitly approved in writing by the HSE.

5. **Provision of the Job**

- 5.1 The Service Provider shall perform the Job the during the Term in accordance with:
- (a) the terms of this Agreement;
 - (b) the HSE requirements as set out in 0 (HSE Requirements and Specifications);

- (c) the Service Provider's Tender;
 - (d) the applicable Service Levels;
 - (e) Official Purchase Orders and/or Lot Agreements; and
 - (f) Good Industry Practice.
- 5.2 The Service Provider acknowledges that the HSE is relying on the Service Provider's knowledge, experience, expertise and competence in the Service Provider's performance of its obligations under this Agreement, and on the accuracy of all statements, reports or returns made by the Service Provider in connection with its obligations pursuant to this Agreement.
- 5.3 The Service Provider shall provide the Job during the agreed working hours and at the locations specified in the HSE Requirements and Specifications.
- 5.4 In providing the Job, the Parties acknowledge that Service Provider co-operation with third parties may be required. In this respect, the Service Provider shall co-operate with third party suppliers:
- (a) to the extent reasonably required for the purposes of integrating the Job with the works or service of such third party suppliers. To the extent there are specific requirements in this regard, these are set out in 0 (HSE Requirements and Specifications); and
 - (b) without incurring any material costs in order to allow such third party suppliers to perform their contractual obligations to the HSE.
- 5.5 The HSE shall, during the Term, comply with its obligations in respect of the delivery of the Job as set out in 0 (HSE Requirements and Specifications).
- 5.6 Unless otherwise expressly stated in the HSE Requirements and Specifications, the Service Provider shall operate on a non-exclusive basis and the HSE reserves the right to allocate services, supplies or support to one or more alternative providers and/or to provide services, supplies or support from its own resources.
- 5.7 The requirements in respect of the Job are set out in 0 (HSE Requirements and Specifications).
- 5.8 The Service Provider warrants that as of the Effective Date:
- (a) it has had an opportunity to carry out a detailed due diligence exercise in relation to the requirements of the HSE for the purpose of the Job and has asked the HSE all questions it considers to be relevant for the purpose of establishing whether it is able to provide the Job in accordance with the terms of this Agreement; and
 - (b) it has received all material Information requested by it from the HSE to enable it to determine whether it is able to provide the Job in accordance with the terms of this Agreement; and
 - (c) it has made its own enquiries to satisfy itself as to the accuracy and adequacy of any Information supplied to it by or on behalf of the HSE; and
 - (d) it has entered into this Agreement in reliance on its own due diligence.

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

6. Joint and Several Liability

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

7. Price

- 7.1 The Service Provider must do the Job at its own expense.
- 7.2 The HSE must pay the Service Provider the Price for doing the Job according to this Agreement.
- 7.3 The Service Provider is taken to have satisfied itself before entering into this Agreement that the Price is correct and sufficient, and to have taken account of all that is required to perform this Agreement, and to have included in the Price all costs of the Job including:
- (a) transport;
 - (b) handling, packing, loading, unloading, unpacking, checking and insuring any Supplies;
 - (c) providing operation and maintenance manuals for any Supplies;
 - (d) all required supervision;
 - (e) test, installing data migration and commissioning (to include start-up, calibration, testing and related activities); and
 - (f) all applicable government and local authority taxes, levies or charges.

8. Payments

- 8.1 Unless otherwise directed by the HSE all payments under this Agreement will be by electronic funds transfer in euro.
- 8.2 The HSE shall be under no obligation to accept or pay for any Supplies supplied earlier than the date for delivery as set out in the Timetable.
- 8.3 When the Job or a Lot or a stage of them has properly completed, the Service Provider must submit an invoice to the Representative of the HSE notified to it by the HSE for that purpose stating:
- (a) the name and address of the Service Provider;
 - (b) the invoice number and invoice date and/or Tax Point;
 - (c) the number of the Official Purchase Order or, in the case of a Lot, the reference for the relevant Lot Agreement;
 - (d) the product codes and descriptions for the Job, and a breakdown of the part of the Price applicable to each code;

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

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

- 8.4 If the Job includes Supplies, the invoice must show the delivery address as stated on the Official Purchase Order or Lot Agreement and be accompanied by a delivery note that was signed by the HSE'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 Service Provider to the HSE.
- 8.5 If this Agreement provides for interim payment for completion of stages of the Job, the Service Provider must submit an interim invoice for the stage portion of the Price when the stage has been properly completed. The interim invoice must comply with this Clause 8.
- 8.6 If the HSE is satisfied that the:
 - (a) Job, stage of a Job, or Lot has been completed according to this Agreement;
 - (b) Service Provider has complied with this Clause 8;
 - (c) Service Provider has a current tax clearance certificate where payments by the HSE to the Service Provider total ten thousand euro (€10,000) or more (including VAT) in a 12 month period; and
 - (d) invoice complies with section 17 of the Value Added Tax Act 1972;

then the HSE must pay the amount due, less any deduction permitted under this Agreement, within thirty (30) days after the HSE received the invoice, unless the HSE has informed the Service Provider within twenty (20) days in writing if it disputes in good faith the amount specified in any invoice, providing details of the amount disputed and the grounds for doing so. In this case, both Parties shall apply the Dispute Resolution Procedure in order to resolve such dispute. Where the HSE disputes an amount specified in an invoice then, to the extent applicable, the HSE 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 Service Provider shall, either, withdraw the disputed invoice or obtain release of the sums held as agreed between the Parties. Interest earned on the sums held shall accrue to the benefit of the Parties in the manner agreed between the Parties or otherwise determined by the Dispute Resolution Procedure.

- 8.7 To the extent Term is for a period of greater than one (1) year, indexation shall not apply in respect of the Price unless expressly agreed and detailed in 0 (Payment Schedule).
- 8.8 Payment shall be made in accordance with all applicable Legal Requirements (e.g. the Prompt Payment of Accounts Act, 1997), including the sections referring to the application of interest to late payments.
- 8.9 Except as provided in this Agreement, nothing herein shall entitle the Service Provider 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 Service Provider, as appropriate, and as set out in 0 (Payment Schedule).

- 8.10 The Service Provider shall ensure that the payment provisions of any supply or sub-contract agreement shall not adversely affect the Service Provider's performance of its obligations pursuant to this Agreement.
- 8.11 The HSE shall not be responsible for reimbursement of the Service Provider's expenses, save where and to the extent set out in 0 (Payment Schedule).
- 8.12 The Price payable to the Service Provider under this Agreement shall be made free and clear of and without deduction for or on account of taxes, save where the HSE is required to make such payment subject to the deduction or withholding of tax.
- 8.13 The Service Provider expressly agrees that the HSE shall be entitled to withhold and set off monies owing to the Service Provider in accordance with this Agreement in the event and to the extent that the Service Provider owes any monies, damages, costs or expenses to the HSE as a result of or in connection with the Service Provider's performance or failure to perform its obligations under this Agreement.
- 8.14 Further details in relation to payments are set out in the relevant Payment Schedule.

9. Debts to the HSE

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

10. VAT

- 10.1 All amounts due under this Agreement are inclusive of VAT.
- 10.2 If any supply under this Agreement is or becomes chargeable to VAT then all amounts due under this Agreement are inclusive of VAT.

11. Legal Requirements

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

12. Early Warning

- 12.1 Each Party shall promptly warn the other whenever it has reasonable grounds to believe that any failure on the part of the Service Provider, the HSE or any third party to carry out its obligations and responsibilities under or associated with the performance of the Job, or the manner in which it is carried out, will have, or threatens to have, a detrimental effect on:

- (a) the quality or timing of any of the element of the Job;
- (b) the efficiency or cost to the HSE of its supply;
- (c) the operation of the HSE's or a member of the HSE Group's business; or
- (d) the performance of any other obligations of the Service Provider under this Agreement.

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

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

13. **Step In Rights**

13.1 If:

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

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

13.2 If the Service Provider does not substantially remedy the failure to the satisfaction of the HSE within seven (7) days of the notice referred to in Clause 13.1 above or lesser period if reasonably deemed by the HSE to be necessary to mitigate its potential loss, the HSE may itself provide or may employ and pay a third party service provider to perform the Job.

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

13.4 The HSE shall permit the Service Provider to resume delivery of the Job or the part thereof provided by itself or a third party service provider immediately once it is satisfied on reasonable grounds that the Service Provider will be able to resume delivery of the Job in accordance with this Agreement.

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

14. Programme

- 14.1 Unless otherwise agreed, the Service Provider must start the Job on the Commencement Date, being the date specified in the Timetable or, in the absence of a Timetable, on receipt of the Official Purchase Order.
- 14.2 The Service Provider must do the Job regularly and diligently, and complete it and any stages within the period stated in the Timetable. (In the absence of a Timetable, the Service Provider must complete the Job within the timeframe otherwise agreed with the HSE.)
- 14.3 Any change to a Timetable will only be made in accordance with this Clause 14, Clause 50 (Change Control), and Clause 40 (Force Majeure) and the Service Provider shall submit to the HSE, within five (5) Working Days of any request, a copy of any the varied Timetable.
- 14.4 In the event that the Service Provider fails to fulfil an obligation by the date specified in a Timetable, due to the breach by the HSE of its obligations under this Agreement, the Service Provider shall nevertheless, at the request of the HSE, provide reasonable and agreed assistance and resources as may be necessary to fulfil the said obligations as early as practicable thereafter.
- 14.5 Costs incurred as a result of delays which arise on the part of the Service Provider, any sub-contractor or third party service provider, engaged by the Service Provider, shall be borne by the Service Provider.
- 14.6 In the event that the Service Provider fails to fulfil an obligation by the date specified in a Timetable for fulfilment, due to the act or the omission of the Service Provider:
 - (a) the Parties shall promptly discuss the matter in good faith with a view to resolving the matter as soon as reasonably possible, to the satisfaction of both Parties. In this regard, the HSE shall be entitled to require the Service Provider to submit a report to the HSE identifying (i) the reasons for the detrimental effect and (ii) the Service Provider's proposed corrective measures which, if the Timetable is affected must involve the Service Provider producing and submitting a revised Timetable showing the manner in which future Milestone Dates will be achieved. The corrective measures set out in the report shall include details of arrangements for additional or redeployed resources as are necessary to fulfil the obligations and details of further applicable quality assurance measures relevant to the performance of the relevant Job; and
 - (b) the HSE shall have the right, at its option to:
 - (i) amend the relevant Timetable to take account of the delay, in accordance with the Change Control Procedure (having regard to the reasons provided by the Service Provider pursuant to Clause 14.6(a) above); and/or
 - (ii) deduct a percentage of the Price payable for achievement of the relevant Milestone Date in the manner set out in 0 (Payment Schedule).
- 14.7 The Timetable for the completion of the Job shall expire at the end of the period set out therein. Where the Job is being delivered in Lots such expiry may occur after the expiry date of the Term (as same may be extended in accordance with Clause 3.3

(Term)) provided always that the Lot Agreement has been entered into in advance of the expiry of the Term. For these purposes, any reference to the Term in this Agreement shall be deemed to include the period referred to in the relevant Lot Agreement.

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

15. Suspension

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

16. Disaster Recovery

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

17. Provision of Information

- 17.1 The HSE's response or failure to respond to any communication from the Service Provider does not constitute or imply any review or verification by the HSE, or relieve the Service Provider from any responsibility or liability.
- 17.2 The Service Provider acknowledges and agrees that at the Effective Date it has been supplied with sufficient Information about the HSE's requirements to enable it to perform the Job from the Effective Date. Save as provided in this Agreement, no representations, warranties or conditions are given or assumed by the HSE in respect of any Information provided to the Service Provider by the HSE and any such

representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

18. HSE Data

- 18.1 The Service Provider shall perform the Job in accordance with HSE Data Security Policies and any other HSE Policies furnished to the Service Provider by the HSE after the Effective Date in accordance with Clause 22 (HSE Policies).
- 18.2 The HSE and the Service Provider 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 HSE data (“**HSE Data**”), material and information.
- 18.3 If HSE Data, material or Information are corrupted or lost as a result of any default by the Service Provider, the HSE shall have the option to:
 - (a) require the Service Provider, at the Service Provider’s own expense, to restore or ensure the restoration of HSE Data, material or Information to the most recent data instance in accordance with the applicable HSE Policy as set out in Clause 22 (HSE Policies); or
 - (b) itself restore or ensure the restoration of HSE Data, material or Information and the Service Provider shall be obliged to pay the HSE reasonable costs of so doing.
- 18.4 The following shall apply to data, material or Information supplied by the HSE to the Service Provider:
 - (a) Intellectual Property rights in the HSE Data, material or Information shall remain the property of the HSE or its licensors;
 - (b) the Service Provider may use the data, material or Information solely to the extent necessary for the Job;
 - (c) the Service Provider shall comply with any reasonable directions made by the HSE from time to time relating to use of the data, material or Information; and
 - (d) the Service Provider shall not share, forward, distribute, copy, destroy or otherwise provide access to HSE Data without the prior consent of the HSE.

19. Intellectual Property Rights

- 19.1 The Service Provider hereby grants to the HSE the right to use such Intellectual Property as may be necessary for the HSE to receive the benefit of this Agreement and of any particular Job having regard to the licences provided in Clause 85.2 (Service Provider Software).
- 19.2 The Service Provider shall not acquire any right, title or interest in or to the HSE Software or Commissioned Software or the media on which the HSE Software or Commissioned Software is supplied or kept, or any Intellectual Property rights relating to them, nor generally in any Intellectual Property rights provided by the HSE to the Service Provider (other than the licence rights granted hereunder).
- 19.3 The Service Provider shall not:

- (a) make more than a reasonable number of back-up copies of HSE Software or Commissioned Software such number to align to HSE Policies. Copies of HSE Software and Commissioned Software shall be subject to the terms and conditions of this Agreement and shall be deemed to form part of the HSE Software;
 - (b) except to the extent necessary to perform the Job and expressly permitted by the HSE, use or access the Source Code versions of HSE Software;
 - (c) assign, transfer, sell, lease, rent, charge or otherwise deal in or encumber HSE Software or Commissioned Software or use HSE Software or Commissioned Software on behalf of a third party or make HSE Software available to a third party;
 - (d) remove or alter any copyright or other proprietary notice on any HSE Software or Commissioned Software; or
 - (e) de-compile or reverse engineer HSE Software or Commissioned Software.
- 19.4 Title to HSE Intellectual Property Rights shall vest in the HSE on creation and the Service Provider assigns by present assignment of future rights HSE Intellectual Property Rights to the HSE with unencumbered title and the Service Provider will procure the waiver of all moral rights in HSE Intellectual Property Rights in favour of the HSE. The Service Provider shall during the Term deliver one copy of the Source Materials for HSE Intellectual Property Rights to the HSE upon its creation and update and shall, during the Term, keep up-to-date versions of the Source Materials for HSE Intellectual Property Rights. The Service Provider shall from time to time (and shall procure that its officers, employees and consultants) execute any documents which the HSE requires to perfect its title in HSE Intellectual Property Rights.
- 19.5 Save as otherwise agreed or specified in this Clause 19, the Service Provider shall own all Intellectual Property rights in Software and/or materials developed exclusively by it, not funded by the HSE, and not arising from delivery of the Job (other than, for the avoidance of doubt, Commissioned Software).

20. **Intellectual Property Rights Indemnity**

- 20.1 The Service Provider shall defend and indemnify the HSE and all members of the HSE Group against all claims, proceedings, liability, loss, damages, costs, demands and expenses which the HSE and HSE Group suffers or incurs as a result of any infringement or alleged infringement of any Intellectual Property Rights in connection with the operation of the system and/or receipt of Services or Supplies from the Service Provider.
- 20.2 Where the HSE or a member of HSE Group makes a claim (“**Relevant Claim**”) against the Service Provider pursuant to an indemnity under this Clause 20, the HSE or the member of HSE Group shall:
- (a) notify the Service Provider promptly after becoming aware of a Relevant Claim;
 - (b) provide the Service Provider with all reasonable assistance, information and authority necessary to perform the Service Provider's obligations under this Clause 20, subject to such provision being permitted by law. The Service

Provider will reimburse the HSE's reasonable out-of-pocket expenses incurred in providing such assistance.

- (c) permit the Service Provider, with HSE's consent subject to Clause 31.5 (Conduct of Claims Subject to Service Provider's Indemnities), to conduct any litigation and negotiations to settle a Relevant Claim provided the Service Provider and its conduct of the litigation and negotiations causes minimum disruption to the HSE's business and ensures where possible continued use by the HSE of the Intellectual Property rights or equivalent.
- 20.3 The Service Provider shall not make any admission in respect of a Relevant Claim without the consent of the HSE.
- 20.4 No Party shall use the other Party's name in any action or claim without the other Party's prior written consent.
- 20.5 If, as a result of a Relevant Claim, the system or Services or any part of them are held to constitute an infringement of the Intellectual Property rights of any third party, without prejudice to the HSE's other rights and remedies under this Agreement the Service Provider shall either:
- (i) procure for the HSE and each member of the HSE Group the right to continue to operate the system and/or receive the Services (as the case may be); or
 - (ii) modify the system and/or Services so that the system and/or Services are non-infringing without materially detracting from their overall performance; or
 - (iii) replace the infringing element of the system or Services with other non-infringing items and/or services that have an equivalent performance and functionality to the infringing element of the system and/or Services.
- 20.6 The Service Provider shall be fully liable for the value of the modified Job, or part thereof, offering no less performance or functionality, together with all necessary and reasonable costs incurred in implementing such replacements, which shall be procured or provided, as appropriate, without delay, following the written request of the HSE; or
- 20.7 The Service Provider shall carry out its obligations under this Clause 20 as soon as reasonably practicable and without charge to the HSE and shall ensure that no interruption to the operation of the system or Services occurs. The Service Provider shall indemnify the HSE and each member of the HSE Group against all claims, demands, actions, costs and expenses (including legal costs and disbursements, in each case reasonably and properly incurred) which the HSE or a member of the HSE Group incurs as a result of any loss of use during the modification or replacement.
- 20.8 The provisions of this Clause 20 shall survive termination.

21. **Confidential Information**

- 21.1 The HSE shall:
- (a) keep confidential the details of the negotiations leading up to and the terms of this Agreement and all information, whether in written or any other form,

which has been disclosed to it by or on behalf of the Service Provider in confidence or which by its nature ought to be regarded as confidential (including, without limitation, any business information in respect of the other party which is not directly applicable or relevant to the arrangements contemplated by this Agreement); and

- (b) ensure that its officers, employees and representatives keep secret and treat as confidential all such documentation and information and shall obtain from all such officers, employees and representatives to whom any of such documentation and information is disclosed an undertaking in favour of the Service Provider to keep the same secret and confidential.

21.2 Clause 21.1 does not apply to information:

- (a) which shall after the date of this Agreement become published or otherwise generally available to the public, except in consequence of an act or omission by the HSE in contravention of the obligations in Clause 21.1;
- (b) to the extent made available to the HSE by a third party who is entitled to divulge such information and who is not under any obligation of confidentiality in respect of such information to the Service Provider or which has been disclosed under an express statement that it is not confidential;
- (c) to the extent required to be disclosed by any applicable laws or by any recognised stock exchange or governmental or other regulatory or supervisory body or authority of competent jurisdiction to whose rules the HSE is subject, whether or not having the force of law, provided that the HSE shall notify the Service Provider of the information to be disclosed (and of the circumstances in which the disclosure is alleged to be required) as early as reasonably possible before such disclosure must be made and shall take all reasonable action to avoid and limit such disclosure;
- (d) which has been independently developed by the HSE otherwise than in the course of the exercise of its rights under this Agreement or the implementation of this Agreement; or
- (e) which the HSE can prove was already known to it before its receipt from the disclosing party.

21.3 The HSE may disclose details of this Agreement, (when the party receiving the details is under an equivalent duty of confidentiality to that in this Clause 21), to its legal and financial advisers, an incoming service provider (in the case of HSE), and parties for the purposes of due diligence at an advanced stage of a proposed material corporate transaction.

21.4 In respect of confidentiality, the Service Provider shall comply with the provisions of Part 2 (Confidentiality Agreement Clauses).

21.5 The provisions of this Clause 21 shall survive termination.

22. **HSE Policies**

The Service Provider is obliged to comply with the following policies:

- 22.1 HSE National IT and Policies and Standards, as updated from time to time, as set out at <http://www.hse.ie/eng/services/Publications/pp/ict>;
- 22.2 additional policies contained within the HSE Requirements and Specifications;
- 22.3 standard HSE policies, other than those referenced in Clauses 22.1 and 22.2 above which apply to the system, Supplies and Services provided by the Service Provider generally;
- 22.4 policies introduced during the Term of this Agreement and that are relevant in the context of providing the system, Services and Supplies. The Change Control Procedure will be invoked in circumstances where either Party believes the introduction of such policies is likely to have a material impact.

23. Data Protection and Data Security

- 23.1 For the purposes of this Clause 23, personal data and sensitive personal data shall have the meaning given in data protection legislation.
- 23.2 Each Party shall comply with the registration requirements under data protection legislation and the data protection principles and their obligations as specified in data protection legislation.
- 23.3 The Service Provider shall:
 - (a) save as otherwise required by law, only act on instructions from the HSE regarding the processing of personal data or sensitive personal data pursuant to this Agreement and ensure that necessary technical and organisational measures shall be taken against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data/sensitive personal data;
 - (b) from time to time comply with any reasonable request made by the HSE to ensure compliance with the measures mentioned in Clause 23.2 above;
 - (c) take the measures mentioned in Clauses 23.3(a) and 23.3(b) above, having regard to the state of the technological development and the cost of implementing the measures, so as to ensure a level of security appropriate to (i) the harm that may result from breach of such measures and (ii) the nature of the personal data/sensitive personal data to be protected;
 - (d) take reasonable steps to ensure the reliability of any of its employees or sub-contractors who have access to the personal data/sensitive personal data provided by the HSE;
 - (e) shall promptly comply with any request from the HSE requiring it to amend, transfer or delete personal data/sensitive personal data and provide promptly any data required by the HSE for assisting law enforcement agencies;
 - (f) at the HSE's request, provide to the HSE a copy of all personal data/sensitive personal data held by it in the format in which Service Provider holds that personal data/sensitive personal data or in any other format on any other media reasonably specified by the HSE;
 - (g) if it receives any complaint, notice or communication in respect of the Job and which relates directly or indirectly to the processing of personal data/sensitive personal data and/or to compliance with data protection

legislation, immediately notify the HSE and it shall provide the HSE with full co-operation and assistance in relation to any such complaint, notice or communication;

- (h) shall comply with a data access request within the relevant timescales set out in the data protection legislation provided it is given reasonable notice of such data access request by the HSE;
- (i) not transfer personal data/sensitive personal data outside Ireland without the prior written consent of the HSE and at all times will ensure that any permitted transfer complies with data protection legislation;
- (j) not store or transfer any personal data/sensitive personal data on or to mobile devices without the prior written consent of the HSE; and
- (k) promptly inform the HSE if it becomes aware of any personal data/sensitive personal data connected with this Agreement is lost or destroyed or becomes damaged, corrupted, or unusable or where a device containing any personal data/sensitive personal data connected with this Agreement, including a laptop computers and/or another mobile device, is lost or stolen and shall restore such personal data/sensitive personal data at its own expense in accordance with Clause 16 (Disaster Recovery).

23.4 The Service Provider shall comply with HSE Data Security Policies.

23.5 The Service Provider shall use all reasonable endeavours to ensure that nothing is done by its employees, officers, servants, or invitees which contaminates, corrupts, impairs or adversely affects, and that no invasive programs, “computer viruses” or “logic bombs” are introduced by its employees, officers, servants or invitees onto the computers, computer systems or computer software owned or used by the HSE or any data on those computers or computer systems. Without prejudice to the foregoing, if any of the above is/are found to have been introduced into any such systems, Service Provider shall:

- (a) notify the HSE immediately in writing of the introduction;
- (b) invoke its emergency virus procedures to reduce the effect of the virus on the HSE; and
- (c) if the virus causes an interruption to the Job, a loss of operational efficiency or loss of data, immediately implement procedures to mitigate such losses and fully restore the Services to the last back-up and use reasonable endeavours to the standard of Good Industry Practice to restore lost data to the last available data instance.

24. Access to Premises

Where the Service Provider needs access to the HSE’s premises, the Service Provider shall comply with all safety and security requirements of the HSE and shall ensure that all of the Service Provider’s People shall likewise comply with such requirements.

25. Termination

25.1 The HSE may terminate this Agreement (and for the avoidance of doubt, without payment of any termination charge) by giving not less than thirty (30) calendar days notice to the Service Provider where the Service Provider commits Substantial Breach

(where such termination is disputed the Dispute Resolution Procedure shall apply) of this Agreement and does not (if capable of remedy) remedy the breach before the expiry of that notice period. The HSE shall explain in the notice what the breach is and include a warning that it intends to terminate this Agreement in whole or in part unless the breach is remedied (if capable of remedy).

- 25.2 The HSE may terminate this Agreement in whole by giving at least six (6) months' notice to the Service Provider expiring on or after the first anniversary of the Effective Date.
- 25.3 Without prejudice to the HSE's other rights and remedies, the HSE 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 Service Provider if:
- (a) the Service Provider is or becomes insolvent or unable to pay its debts within the meaning of section 214 of the Companies Act 1963 (as amended) or suspends or threatens to suspend making payments with respect to all or any class of its debts;
 - (b) an order has been made, petition presented, resolution passed or meeting convened for the winding up of the Service Provider or the appointment of an examiner to the Service Provider;
 - (c) a liquidator, receiver or examiner has been appointed over the whole or any part of the property, assets or undertaking of the Service Provider;
 - (d) a composition in satisfaction of debts, scheme of arrangement, or compromise or arrangement with creditors or members (or any class of creditors or members) has been proposed, sanctioned or approved in relation to the Service Provider;
 - (e) the Service Provider is or becomes related to any other company for the purpose of section 140 of the Companies 1990 Act (as amended), is or becomes liable to an order made under that section by virtue of any act (whether of commission or omission);
 - (f) an encumbrance takes possession of, or a liquidator or receiver or similar officer is appointed in respect of, all or any part of the business or assets of the Service Provider, or distress or any form of execution is levied or enforced upon or sued out against any such assets and is not discharged within 7 calendar days of being levied, enforced or sued out;
 - (g) anything analogous to any of the events described in paragraphs (a) to (f) inclusive, occurs under the laws of any applicable jurisdiction;
 - (h) the Service Provider ceases or threatens to cease carrying on the whole or any material part of its business.
- 25.4 Without prejudice to the HSE's other rights and remedies, the HSE 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 Service Provider if there is a change of control of the Service Provider, where such change would in HSE's opinion result in a threat to the supply of the system and/or quality of the Services.

- 25.5 The HSE may terminate this Agreement if the User Acceptance Tests have been recorded as unsuccessful pursuant to **Error! Reference source not found.** (Acceptance Procedures).
- 25.6 The Service Provider may terminate this Agreement if HSE fails to make payment in respect of an undisputed invoice within ninety (90) calendar days of its due date, provided 30 calendar days notice of such breach and the Service Provider's intention to terminate the Agreement is provided to HSE by the Service Provider (during which notice period HSE may remedy the situation).
- 25.7 The HSE may terminate this Agreement in accordance with Clause 40.3 (Force Majeure) for the avoidance of doubt, without payment of any termination fees.
- 25.8 If HSE terminates this Agreement in part, it shall specify the element of the system and/or Services it intends to terminate and the Price shall be reduced to exclude the Price which is payable for the element of the terminated system and/or Services.
- 25.9 Where the HSE has served notice of termination, the HSE may extend the effective termination date once only with respect to each termination. The HSE shall give reasonable notice (not less than 30 calendar days) to the Service Provider of the new effective termination date of the termination. The new effective termination date shall be not more than 6 months from the date of termination specified in the notice of termination.
- 25.10 The failure by HSE to perform its obligations under this Agreement shall not be deemed to be grounds for termination of this Agreement by the Service Provider where damages are a sufficient remedy.
- 25.11 Upon any notice being given under this Clause 25, this Agreement (or the agreement as it relates to the part of the Services being terminated) shall absolutely terminate on the expiry of such notice (unless extended by HSE in accordance with Clause 25.9 above) and cease to have effect without prejudice to the terminating party's other rights and remedies in respect of the breach by the other party of this Agreement or the cause for termination, or without prejudice to any claim that the other party may make in respect of any alleged unlawful termination.
- 25.12 The HSE may terminate this Agreement for Substantial Breach of confidentiality pursuant to Clause 66 (Confidentiality) or in the case of a breach of Clause 23.3(k) (Data Protection and Data Security) where such breach is not rectified pursuant to Clause 16 (Disaster Recovery) within a period of seventy two (72) hours of the occurrence of the breach.
- 25.13 To the extent the Job includes the provision of Services, the HSE may terminate this Agreement for failure by the Service Provider to meet the required and expected performance levels and targets as set out at 0 (Service Level Agreement) and relevant Lot Agreements.

26. **Termination Assistance**

- 26.1 Each Party hereto shall perform its obligations specified in 0 (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 Services on expiry or on a full or partial termination of this Agreement.
- 26.2 Upon request, the Service Provider 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 0 (Termination Assistance). The Service Provider will be liable for all reasonable costs associated with the development of the Exit Management Plan and the subsequent maintenance of the Exit Management Plan throughout the term.

27. Effects of Expiry and Termination

27.1 Effect

On termination or expiry:

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

28. Compensation on Termination

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

29. Indemnity

- 29.1 The Service Provider shall indemnify the HSE against all claims, demands, actions, costs and expenses (including legal costs and disbursements) which the HSE incurs

directly or indirectly as a result of any act, omission or default of the Service Provider, its employees, officers, suppliers and invitees in respect of:

- (a) death, personal injury, fraud or fraudulent misrepresentation;
- (b) loss of or damage to property (including property belonging to any third party or to the HSE or for which the HSE is responsible);
- (c) breach of statutory duty; and
- (d) third party actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis).

29.2 The Service Provider shall not be responsible or be obliged to indemnify the HSE for:

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

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

30. **Limitation of Liability**

30.1 Nothing in this Agreement excludes or limits:

- (a) either parties' liability for fraud, fraudulent misrepresentation or theft by it or its agents or employees or, in the case of the Service Provider, by any subcontractors or its agents or employees;
- (b) the Service Provider's liability for loss of, or damage to, property;
- (c) the Service Provider's liability for its wilful misconduct or the wilful misconduct of its subcontractors, including the wilful misconduct of their respective officers, employees or agents;
- (d) either parties' liability for death or personal injury caused by its negligence or that of its employees or agents or, in the case of the Service Provider, by any subcontractor or its agents or employees; or
- (e) the Service Provider's liability under Clause 23 (Data Protection and Data Security), Clause 66 (Confidentiality), Clause 29 (Indemnity) or Clause 20 (Intellectual Property Indemnity).

30.2 Subject to Clause 30.1 above, the HSE'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 Service Provider, shall in no event exceed two hundred and fifty thousand euro (€250,000).

- 30.3 Subject to Clause 30.1 above, the Service Provider'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 HSE, shall in no event exceed six and a half million (€6.5 million).
- 30.4 Except as otherwise provided for in this Agreement, in no event will either Party be liable to the other Party for any consequential or indirect loss or damage, howsoever arising, under or in connection with this Agreement.
- 30.5 Save as provided in Clause 30.2, 30.3 and 30.4 above, no other limitations shall apply in respect of the liability of either party under this Agreement whether arising from tort (including negligence), breach of contract or otherwise.

31. Conduct of Claims Subject to Service Provider's Indemnities

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

- 31.5 Subject to complying with the provisions of the relevant required insurances, the HSE will be free at any time to give notice to the Service Provider that it is taking over the conduct of any defence, dispute, compromise or appeal of any claim subject to Clause 31.2 above or of any incidental negotiations. Upon receipt of such notice the Service Provider will promptly take all steps necessary to transfer the conduct of such claim to the HSE and will provide to the HSE all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim. If the HSE gives any notice pursuant to this Clause 31.5, then the Service Provider 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 Service Provider, in the opinion of the HSE (acting reasonably), to deal properly with any such claim.

32. Insurance

- 32.1 Unless otherwise agreed in writing, the Service Provider must maintain insurances as follows:

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

- 32.2 The Service Provider must give the HSE on request copies of its insurance policies required by this Agreement and evidence that the insurances remain in effect.
- 32.3 The Service Provider's insurance policy for employers/public liability shall contain a provision indemnifying the HSE against any claim made in respect of which the Service Provider is entitled to indemnity.

- 32.4 The Service Provider's insurances (insofar as they relate to Supplies) must, if the HSE so requests, name the HSE as co-insured. All other aspects of the Job shall incorporate the automatic noting of the HSE's interest on the insurance policy, without specific endorsement.
- 32.5 If the Service Provider does not on request prove that its insurances are fully in force as required by this Agreement, the HSE may insure and recover the cost from the Service Provider.
- 32.6 The insurances shall be placed with reputable insurers approved by the HSE (or by the Irish Financial Regulator as may be appropriate) and shall include an Irish / EU law jurisdiction clause.
- 32.7 The Service Provider shall be liable for any deductible in respect of any claim under any Service Provider 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 Service Provider insurance policies.

33. Fraud

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

34. Quality Standards

- 34.1 The Service Provider shall have in place appropriate mechanisms to assess quality assurance and standards of the performance of the Job in line with Good Industry Practice.
- 34.2 The Service Provider shall comply with Legal Requirements relating to quality and standards and such other appropriate requirements as may be stipulated by recognised standard setting bodies.
- 34.3 The HSE will have the right to conduct reviews of the Service Provider's quality management programmes and to verify compliance with the requirements of this Agreement. Such reviews may be performed by the HSE, or by its appointed Representatives, provided always that the Service Provider is given not less than fifteen (15) days' prior written notice.
- 34.4 In the event that the HSE review should produce findings with regard to the Service Provider's quality management programme, of concern to the HSE, then, the Service Provider shall produce, within thirty (30) days of the HSE written request, a quality assurance report and plan. The Service Provider shall promptly implement the provisions of such plan at its own cost.
- 34.5 The HSE shall have the right, but not the obligation, at all reasonable times to inspect all or any process or procedural related specifications, documents, drawings and the

like produced by the Service Provider in respect of any part of the Job. Any such inspection or any approval thereof by the HSE shall not relieve the Service Provider of any of its obligations under the Agreement, unless such inspection and/or approval constitutes a change to the Agreement or any part thereto.

35. **Acceptance Procedures**

The Service Provider shall comply with all Acceptance Procedures set out in 0 (Acceptance Procedures) attached to this Agreement.

36. **Notices and Communications**

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

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

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

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

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

Health Service Executive

Dr. Steevens' Hospital
Dublin 8
Ireland

Attn: Director of Information, Communications and Technology

Fax: 01-6352740

[Supplier Name]

[Supplier Address]

Attn: [contact name]

Fax: [contact fax]

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

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

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

(a) For the HSE:

For the attention of: [*]

Telephone: [*]

E-mail: [*]

(b) For the Service Provider:

For the attention of: [*]

Telephone: [*]

E-mail: [*]

37. **Language**

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

38. **Survival of Clauses**

38.1 The provisions of Clause 1 (Interpretation), Clause 17 (Provision of Information), Clause 29 (Indemnity), Clause 32 (Insurance), Part Two Confidentiality Agreement Clauses and Clause 80 (Defective Supplies) shall survive the termination or expiry of this Agreement.

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

39. **Transfer and Sub-Contracting**

39.1 This Agreement will be binding on and will ensure to the benefit of the Service Provider and the HSE and their respective successors and permitted assigns.

39.2 The Service Provider shall not assign, novate, or otherwise dispose of, this Agreement, or any part thereof, without the prior written consent of the HSE.

39.3 The HSE shall have the right to assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Agreement to a third party which has the

equivalent legal capacity and credit status (either alone or evidenced government financial support) to enable it to enter into and meet the obligations under this Agreement as they fall due, upon not less than sixty (60) days prior written notice to the Service Provider.

- 39.4 The Service Provider must obtain the prior written approval of the HSE if it wishes to engage an agent, sub-contractor or third party to perform the Job or part thereof. Key sub-contractors must be listed in 0 (Service Provider's Tender).
- 39.5 The Service Provider must procure that any such agent, sub-contractor or third party is subject to the same obligations to which the Service Provider is subject under this Agreement.
- 39.6 The Service Provider shall remain responsible for the acts and omissions of its sub-contractors, as though they were its own.
- 39.7 The Service Provider shall ensure that, to the extent necessary, the performance of the Job is integrated with work or services of third party service provider(s). The Service Provider shall, on an on-going basis during the Term (and at no cost to the HSE) provide all reasonable and necessary assistance, facilities or documentation requested by the HSE to third party service provider(s) in respect of the Job.
- 39.8 The Service Provider shall be fully responsible for the acts and omissions of any such sub-contractors, agents and third party service provider and will indemnify the HSE 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 HSE as a result of any acts and omissions of any such agent, sub-contractor or third party in connection with the Job.

40. **Force Majeure**

- 40.1 Neither Party shall be responsible for failure to carry out any of its duties under this Agreement to the extent to which the failure is caused by Force Majeure, provided that the affected Party (being the Party suffering the Force Majeure):
 - (a) has taken all reasonable steps to prevent and avoid the Force Majeure
 - (b) carries out its duties to the best level reasonably achievable in the circumstances of the Force Majeure;
 - (c) takes all reasonable steps to overcome and mitigate the effects of the Force Majeure as soon as reasonably practicable, including actively managing any problems caused or contributed to by third parties and liaising with them;
 - (d) if the Force Majeure constitutes a Disaster, complies with its obligations set out in Clause 16 (Disaster Recovery);
 - (e) on becoming aware of the Force Majeure promptly informs the other Party in writing that something has happened which is a Force Majeure, giving details of the Force Majeure, which element of the system or Services have been affected, together with a reasonable estimate of the period during which the Force Majeure will continue;
 - (f) within 7 calendar days of becoming aware of the Force Majeure provides written confirmation and reasonable evidence of the Force Majeure; and
 - (g) notifies the other Party when the Force Majeure has stopped.

- 40.2 In the event the Service Provider does not supply the system or any part of the system or provide the Services or any part of the Services because it is relying on a Force Majeure event, the Price for the system or Services affected by a Force Majeure shall be proportionately reduced or waived to reflect the extent and standard to which the affected system or Services are being provided.
- 40.3 If the Force Majeure affecting the Service Provider continues for more than thirty (30) calendar days, HSE may terminate this Agreement by giving seven (7) calendar days notice.

41. Effect of Suspension of Services for Force Majeure

- 41.1 To the extent that any Force Majeure affecting the Service Provider results in the system not being supplied or any Services being suspended, whether or not described as such (which includes such Services being delivered to a level where they are of no significant commercial benefit to HSE or to a level substantially below the normal level of provision), then HSE may terminate this Agreement without any further liability.
- 41.2 Without prejudice to Clause 40.3 (Force Majeure), from the date of the Force Majeure affecting the Service Provider, HSE may require that any of the following options applies (and may change the option from time to time):
- (a) The HSE will have no liability to pay the Price in respect of such element of the system or Services for the period of such suspension;
 - (b) The HSE may, without notice to the Service Provider, exercise its step in rights under Clause 13 (Step In Rights) or itself procure or direct the Service Provider to, in which case the Service Provider must use all reasonable endeavours to procure the provision of such part of the system or Services from an alternative Service Provider approved by HSE until cessation of the suspension; or
 - (c) The HSE may direct the Service Provider to, in which case the Service Provider must, provide such alternative services (during the period of the suspension) as will be calculated to reasonably minimise the disruption and losses suffered by HSE as a result of the suspension. Without prejudice to the foregoing, if the Service Provider notifies HSE that the Service Provider cannot perform unaffected Services in accordance with the terms of this Agreement or the Specification, HSE may in its discretion suspend the provision of such unaffected Services, in which case HSE may treat those unaffected Services as affected Services for the purposes of this Clause 41.
- 41.3 The Party affected by the Force Majeure shall notify the other Party as soon as practicable after the Force Majeure ceases or no longer causes the Party affected not to be able to comply with its obligations under this Agreement. Following such notification and upon HSE serving not less than five (5) calendar days' written notice and not more than thirty (30) calendar days the Service Provider shall re-commence supply of the system 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 HSE shall not be liable for any costs in relation to the re-commencement of the Services in accordance with this Clause 41.3. Where it is agreed by the Parties that the Service Provider is no longer providing any part of the Services during the existence of the Force Majeure then the Service Provider shall be entitled to deal with the Key Personnel assigned to the part of Services no longer provided as it so wishes provided always that the Service

Provider 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 Services when required by HSE pursuant to this Clause 41.

- 41.4 At the option of HSE, the Term may be extended by a period equal to any period during the original Term affected by the Force Majeure.

42. No Solicitation

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

- (a) from bona fide advertising in national daily newspapers;
- (b) by operation of law; or
- (c) from the prior agreement of the Parties.

43. Warranties and Representations

- 43.1 The Service Provider represents and warrants to the HSE that:

- (a) it has full right, power and authority to supply the System and provide the Services to HSE on the terms of this Agreement;
- (b) title to the System will transfer to the HSE on a free and unencumbered basis;
- (c) the use by the HSE or any member of the HSE Group of the System shall not infringe any Intellectual Property rights nor result in the breach of any licence;
- (d) the supply of the System, performance of the Services and the performance of its obligations under this Agreement by the Service Provider will not infringe the Intellectual Property rights of HSE or any third party, will not contravene any applicable Laws, and conforms with all applicable legal and regulatory requirements.
- (e) the System and any Software, Hardware, Supplies, systems and other materials (including spare parts) provided or made available by the Service Provider to the HSE as part of the Job shall be free of material errors, material viruses and material defects and shall be of good and merchantable quality, shall meet all performance requirements, implicit and explicit, and shall be fit for its intended purpose(s);
- (f) it has obtained, and will during the Term obtain, all necessary authorisations, certificates, consents, approvals, licences, permits and registrations necessary to enable it to perform the Services and its other obligations under this Agreement;
- (g) it will perform its obligations under this Agreement in accordance with Good Industry Practice;

- (h) it will provide the Services in accordance with the Service Levels (subject to the Service Credits regime hereunder where applicable, which shall be offset against any claim made under this warranty);
 - (i) it will ensure that, when complying with its obligations under this Agreement, it does not interfere with the activities of the HSE, members of the HSE Group and each of their employees or agents in a manner not contemplated by the supply of the system or provision of the Services;
 - (j) it is not, and will not during the Term be in breach of any agreements necessary for the proper and efficient performance of the Services including any Third Party Software Agreements or Hardware Agreements.
 - (k) it will not cause damage to real or personal property, injury to persons including injury resulting in death, or breach any leases or licences of the HSE Sites; and
 - (l) it is not aware of any material facts or circumstances that have been disclosed to the HSE and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Agreement with it.
- 43.2 HSE warrants to the Service Provider that it has obtained, and will during the Term obtain, all authorisations, certificates, consents, approvals, licences, permits and registrations required by law to enable it to perform its obligations under this Agreement.
- 43.3 All warranties shall, unless otherwise expressly stated, continue in full force and effect during the Term and shall survive termination.
- 43.4 The Parties agree that there shall be no duplication of claims for the same loss or damages under this Agreement incurred by any one Party (meaning, for the avoidance of doubt, that any Party is only permitted to pursue through the HSE a claim for its own loss or damage).
- 43.5 The Service Provider shall ensure that any warranty, indemnity or other covenant received from any third party in connection with the Services or any part of the system is for the benefit of the Service Provider, the HSE and members of the HSE Group, as appropriate. The Service Provider shall assign to the HSE, at the request of the HSE, 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 system to which such warranty, indemnity or other covenant applies.
- 43.6 Except as expressly set forth in this Agreement, all warranties, terms and conditions, whether oral or written, express or implied by law, custom or otherwise including all warranties, terms and conditions of fitness for purpose, description and quality, are hereby excluded.

44. Information and Audit

- 44.1 The Service Provider acknowledges that it is obliged to comply with a written request from the HSE for any information that the HSE considers material to the provision of the Job. The HSE shall specify in any written request the information required and the reason for the request.

- 44.2 The Service Provider shall establish and maintain at all times accurate, complete and up-to-date books and records in order to comply with its obligations under this Agreement. This will include such books and records as are necessary in order to show clearly all enquiries, claims, settlements, payments, compensation, systems, processes and other proceedings relating to the system/Services and all other information relating to the Service Provider's obligations under this Agreement which would be maintained by a prudent Service Provider in accordance with Good Industry Practice, including such information as may be required under applicable Laws.
- 44.3 On request from the HSE, the Service Provider shall, at its own expense, ensure that its external auditors provide to the HSE, as soon as reasonably practicable after the end of the Service Provider's financial year, confirmation that any statement supplied by the Service Provider to the HSE pursuant to Clause 44.1 during that financial year is complete and accurate.
- 44.4 The Service Provider shall, at its own expense and using its own equipment, store information reported and received by the Service Provider from the HSE's employees and others in the course of performing the Job under this Agreement. The Service Provider 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 HSE. If the HSE wishes to request a data file transfer upon termination of this Agreement, the Service Provider will arrange for such transfer on payment by the HSE of any reasonable costs involved based on format and size of data to be transferred.
- 44.5 The Service Provider shall provide the HSE and the auditors with access to any information and documents (including copies thereof) which may be required to verify that the system has been supplied and that the Services are being provided in accordance with this Agreement and to substantiate the Price. HSE audits may verify that:
- (a) the Price is accurate;
 - (b) the Service Provider is exercising reasonable care to control HSE provided resources, such as heat, light, and utilities used in providing the Services;
 - (c) the Services are being provided in accordance with the Service Levels; and
 - (d) the Service Provider is complying with the security requirements and obligations as set out in this Agreement.
- 44.6 The HSE may carry out, as reasonably required, occasional routine audits for the purposes of meeting routine requirements of the internal audit division of the HSE, and the Service Provider shall provide reasonable access to the HSE for these purposes. Such audits will be in accordance with the annual audit plan of the HSE and will be:
- (a) conducted expeditiously, efficiently, and during reasonable business hours;
 - (b) conducted upon reasonable prior written notice; and
 - (c) performed by the internal audit division of the HSE and/or the HSE's third party auditor, at the HSE's expense on a non contingent basis, provided the third party auditor executes an appropriate confidentiality agreement with the HSE.

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

44.8 Other Information Obligations

- (a) The Service Provider will collaborate with the HSE in its monitoring and audit relationships and in performing the HSE's obligations to third parties (including HIQA, the Comptroller and Auditor General, etc).
- (b) The Service Provider will provide relevant information to appropriate and authorised sources in the health sector and provide the HSE with a copy of the information supplied to such sources.

44.9 The provisions of this Clause 44 shall continue to apply for the appropriate retention periods specified by law or in such policies as may be specified by the HSE to the Service Provider notwithstanding the termination of this Agreement for any reason and notwithstanding the completion of the performance of the Service Provider's obligations hereunder.

44.10 Failure to Provide Information

The Service Provider acknowledges that:

- (a) in order to achieve accurate forecasting, activity monitoring and prompt and accurate funding of health and personal social services, there needs to be timely, regular exchange of detailed and accurate information; and
- (b) the HSE 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 Service Provider without the prior written consent of the HSE, the HSE may (in its sole and absolute discretion), having given not less than fourteen (14) days written notice to the Service Provider, withhold payment of any part of the Price until such time as the required information is supplied.

45. Corrupt Gifts and Payments

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

45.2 The Service Provider shall procure that none of its contractors, employees, servants and agents do anything which, if done by it, would be a breach of HSE Policies set out at Clause 22 (HSE Policies).

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

46. No Partnership and No Agency

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

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

47. Announcements and Publicity

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

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

48. Costs and Expenses

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

49. Entire Agreement

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

49.2 It is agreed that:

- (a) no Party has entered into this Agreement in reliance upon any representation, warranty or undertaking of the other Party which is not expressly set out in this Agreement;
- (b) no Party shall have any remedy in respect of misrepresentation or untrue statement made by the other Party or for any breach of warranty which is not contained in this Agreement; and
- (c) this Clause 49 shall not exclude any liability for, or remedy in respect of, fraudulent misrepresentation.

50. Change Control

- 50.1 All changes must be agreed in writing by the HSE and by a duly authorised Representative of the Service Provider and managed in accordance with 0 (Change Control Procedures).
- 50.2 The HSE reserves the right to amend this Agreement should there be a change in legislation or an order of the Minister for Health and Children necessitating such amendment and, subject to Clause 50.3 below, the Service Provider shall be bound by such amendment for the Term of this Agreement.
- 50.3 The Parties agree to discuss in good faith and on a strictly without prejudice basis any adjustment to the Price required or desirable to take account of any change in law, direction or requirements (in each case not at the date hereof required or in force) that causes a demonstrated material increase or decrease in costs to the Service Provider performing the Services or providing the Job. The Parties shall as far as practicable co-operate to seek to mitigate the effects of such a change.

51. Validity

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

52. Waiver

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

53. Further Assurance

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

54. Remedies

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

55. Supremacy of Agreement Over Schedules

If there is any conflict between the terms in the body of this Agreement and the schedules, then the terms in the body of this Agreement shall prevail.

56. Counterparts

- 56.1 This Agreement may be executed in any number of counterparts, and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart.
- 56.2 Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

57. Extent of Liability

- 57.1 The HSE and HSE Group has no liability to the Service Provider in connection with this Agreement or the Job (whether for breach of Agreement, breach of duty, including statutory duty, or any other duty, negligence, or anything else) except that stated in this Agreement.
- 57.2 The Service Provider acknowledges that any breach by it of this Agreement may cause financial losses to the HSE not only directly but by liability to others, and acknowledges that it will be liable for those losses.

58. Governing Law and Jurisdiction

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

59. Social Responsibility

- 59.1 The Service Provider must in the performance of the Agreement observe the requirements and standards of any international conventions, covenants and agreements to which Ireland is a signatory or contracting party and which may be directly effective and justiciable in Ireland.
- 59.2 The Service Provider will be expected to adopt, embrace, support and implement in so far as these may impinge on the performance of his duties and obligations under the Agreement, the ten principles of the United Nation's Global Compact covering human rights, labour standards, the environment and anti-corruption.
- 59.3 The Service Provider 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 Job is carried out and whether by agreement, machinery of negotiation or arbitration through organisations of employers and trade unions representatives respectively (of substantial proportions of employers and workers engaged in the trade or industry in the district) (hereinafter referred to as "established rates and conditions") or, failing such established rates and conditions in the trade or industry in the district, established rates and conditions in other districts where the trade or industry is carried on under similar general circumstances.
- 59.4 In the absence of any such agreement or established rates and conditions as described in Clause 59.3 above the Service Provider 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 HSE.

- 59.5 The Service Provider must ensure that the employers of all the Service Provider's People do all of the following:
- (a) pay all wages and other money due to each work person;
 - (b) ensure that the Service Provider's People's wages are paid in accordance with the Payment of Wages Act 1991 and are never more than one (1) month in arrears or unpaid;
 - (c) pay all pension contributions and other amounts due to be paid on behalf of each of the Service Provider's People;
 - (d) make all deductions from payments to work persons required by law, and pay them on as required by law;
 - (e) keep proper records (including time sheets, wage books and copies of pay slips) showing the wages and other sums paid to and the time worked by each of the Service Provider's People, deductions from each of the Service Provider's People's pay and their disposition, and pension and other contributions made in respect of the Service Provider's People, and produce these records for inspection and copying by persons authorised by the HSE, whenever required by the HSE;
 - (f) respect the right under law of the Service Provider's People to be members of trade unions; and
 - (g) observe, in relation to the employment of the Service Provider's People on HSE Sites, the Safety, Health and Welfare at Work Act 2005, and all employment law including the Employment Equality Act 1998, the Industrial Relations Acts 1946 to 2004, the National Minimum Wage Act 2000 and regulations, codes of practice, legally binding determinations of the Labour Court and registered employment agreements under those laws.
- 59.6 If the HSE so requests, the Service Provider must, within five (5) Working Days after the request, provide evidence of compliance with Clause 59.5 above.
- 59.7 The HSE may seek information under the provisions of this Clause 59 only for the purpose of ensuring the obligations described in this Clause 59 to the Service Provider's People have been properly discharged. All information provided under the provisions of this Clause 59 will be returned or destroyed if the HSE is satisfied that the Service Provider has complied with its legal obligations to the Service Provider's People.
- 59.8 If the Service Provider has not complied with this Clause 59, the HSE may (without limiting its other rights or remedies) withhold the estimated amount required for compliance from any payment due to the Service Provider, until such time as the HSE is satisfied that the employees have been paid correctly and the Service Provider is in compliance.
- 59.9 If the Service Provider does not comply with this Clause 59, it must pay to the HSE any costs the HSE incurs in investigating and dealing with the non-compliance.

PART TWO

CONFIDENTIALITY AGREEMENT CLAUSES

This Part Two applies to the treatment of information obtained during the procurement of both Services and Supplies. This Part Two is in addition, and without prejudice, to Clause 18 (HSE Data) of Part 1 of this Agreement.

60. Obligations of the Service Provider

In consideration of the HSE directly making the Information available to the Service Provider, or the Service Provider otherwise acquiring the Information, the Service Provider shall:

- 60.1 not take or remove any Information from HSE Sites without having received the written authorisation of the HSE. Such written authorisation must be issued in advance of the first instance and will apply thereafter;
- 60.2 manage and process any Information which they acquire from the HSE in accordance with the Data Protection Act 1988, The Data Protection (Amendment) Act 2003 and Directive 2002/58/EC of the European Parliament and of the Council;
- 60.3 maintain secret and confidential all Information furnished to it or otherwise acquired by its servants, employees, agents, subsidiaries or sub-contractors save for Information;
 - (a) which shall after the date of this Agreement become published or otherwise generally available to the public, except in consequence of an act or omission by the Service Provider in contravention of the obligations in this Clause 60.3;
 - (b) to the extent made available to the Service Provider by a third party who is entitled to divulge such information and who is not under any obligation of confidentiality in respect of such information to the HSE or which has been disclosed under an express statement that it is not confidential;
 - (c) to the extent required to be disclosed by any applicable laws or by any recognised stock exchange or governmental or other regulatory or supervisory body or authority of competent jurisdiction to whose rules the Service Provider is subject, whether or not having the force of law, provided that the Service Provider shall notify the other party of the information to be disclosed (and of the circumstances in which the disclosure is alleged to be required) as early as reasonably possible before such disclosure must be made and shall take all reasonable action to avoid and limit such disclosure;
 - (d) which has been independently developed by the Service Provider otherwise than in the course of the exercise of its rights under this Agreement or the implementation of this Agreement; or
 - (e) which the Service Provider can prove was already known to it before its receipt from the disclosing party;
- 60.4 take appropriate measures to ensure the reliability of the Service Provider's servants, employees, agents, subsidiaries or sub-contractors who have access to the Information;

- 60.5 provide the HSE with a named list of their servants, employees, agents, subsidiaries or sub-contractors authorised to have access to Information;
- 60.6 not disclose Information to any of the Service Provider's servants, employees, agents, subsidiaries or sub-contractors unless and only to the extent that such person needs to know such Information for the purposes of providing services in connection with the Job, and provided that such person has been made aware of the restrictions in this Agreement on the disclosure of the Information and has agreed in writing to comply with such restrictions;
- 60.7 not disclose any Information to any third party without the prior written consent of the HSE;
- 60.8 not use the Information directly or indirectly for any purpose other than in connection with the provision of services to the HSE regarding the Job;
- 60.9 not reverse engineer, de-compile or disassemble Information or attempt to use the Information in any form other than machine readable object code, or allow a third party to do any of the above;
- 60.10 not make any press announcement or otherwise publicise the business relationship with the HSE in any way including using the name of the HSE in any publicity material, unless authorised to do so by the HSE;
- 60.11 implement appropriate human, organisational and technological controls to protect against accidental loss, destruction, damage, alteration, or disclosure of the Information;
- 60.12 take the necessary precautions for the prevention of unauthorised access to, the Information and in particular:
- (a) keep all Information obtained from the HSE or otherwise relating to the Job separate from all documents and other records of the Service Provider;
 - (b) only make such copies of the Information as are necessary for the performance of the Job;
 - (c) mark all documentation containing the Information as being subject to the terms of this Agreement and indicate that it is contrary to the terms of this Agreement to copy, disclose or use in any manner or fashion such documentation without the prior written consent of the HSE; and
 - (d) have all necessary access controls to include authentication and authorisation for access to Information to ensure its security and confidentiality;
- 60.13 ensure all documents and other tangible objects containing or representing Information which have been disclosed by the HSE to the Service Provider, and all copies thereof which are in the possession of the Service Provider, shall be returned to the HSE upon the completion of the Job. If requested, give the HSE access to them or (at cost) copies. In addition, the Service Provider will confirm, in writing, at the completion of the Job that all electronic Information received from the HSE has been deleted from any of the Service Provider's devices which store Information; and
- 60.14 promptly inform the HSE of any actual or suspected breach in their security which could give rise to the actual or potential loss, theft, unauthorised release or disclosure of Information or any part thereof. In such an event the Service Provider will

immediately supply the HSE with all the relevant facts surrounding the actual or suspected breach.

60.15 For the purposes of freedom of information the Service Provider shall:

- (a) procure that its servants, employees, agents, subsidiaries or sub-contractors shall assist the HSE, at no additional charge and within such timescales as the HSE may reasonably specify, in meeting any requests for Information which are made to the HSE under the Freedom of Information Act 1997, such assistance to include (but not be limited to) the provision of a copy of the requested Information;
- (b) notwithstanding anything to the contrary in this Agreement, if the HSE receives a request for Information pursuant to the Freedom of Information Act 1997, the HSE shall be entitled to disclose all Information (in whatever form) as is necessary to comply with the Freedom of Information Act, 1997;
- (c) if, at the request of the Service Provider, the HSE seeks to withhold Information protected by this Agreement and a competent authority determines, or the Parties subsequently agree, that the Information is not exempt, then the Service Provider shall reimburse the HSE for all costs (including legal costs) incurred by the HSE in seeking to withhold such Information from a request under the Freedom of Information Act, 1997; and
- (d) not (and shall procure that its servants, employees, agents, subsidiaries or sub-contractors do not) respond directly to a request for Information under the Freedom of Information Act, 1997 unless expressly authorised to do so by the HSE.

60.16 Ensure the security of Information stored on mobile computing devices, such as laptop or, notebook computers or, Personal Digital Assistants or, mobile storage device such as CDs, DVDs or portable hard drives:

- (a) Only in exceptional circumstances and with the written consent of the HSE, should the Service Provider hold Information on mobile computing or mobile storage devices. Should the business requirements necessitate the holding of Information on such devices then the Service Provider shall ensure that only the Information absolutely necessary for their purpose is stored in this format and that the Information is held on such devices only for the minimum amount of time necessary and furthermore, after such period that they will delete all Information from these devices.
- (b) Where the use of mobile computing or mobile storage devices is a necessity then the Service Provider will take all necessary precautions to ensure the safety of these devices from theft or loss. As a minimum all mobile computing and mobile storage devices must be protected by the use of strong complex passwords.
- (c) The Service Provider must ensure that all Information held on mobile devices is secured by strong encryption. The encryption methods used must satisfy or better the requirements of the HSE Encryption Policy. At any time during the term of this Agreement the HSE may request the Service Provider to set out in writing the current encryption measures used and the Service Provider will provide this information within five (5) days. If, in the reasonable opinion of the HSE, the encryption standard employed by the Service Provider is not sufficient, the Service Provider will implement, at their expense, whatever

encryption standards are proposed by the HSE. At no time should cipher keys be held on the mobile device for the data which they secure. In addition, the Service Provider will at all times hold cipher keys in a secure fashion.

- (d) Under no circumstances encrypted or otherwise is the Service Provider sanctioned by the HSE to download or store Information on USB memory sticks/keys.

60.17 Ensure the security of Information in transit. Where it is necessary to transfer the Information, the Service Provider must take all necessary precautions to ensure the security of the Information before, during and after transit.

- (a) The Service Provider shall ensure that all transfers of the Information are legal, justifiable, and only the minimum Information absolutely necessary for a given purpose is transferred.
- (b) All transfers of information should, where possible, only take place electronically via secure on-line channels or electronic mail. Where the Service Provider transfers Information electronically, in any form and by any means, the Information must be encrypted using strong encryption. The encryption methods used must satisfy or better the requirements of the HSE Encryption Policy.
- (c) Where it is not possible to transfer the Information electronically, the Information may be encrypted and copied to a mobile storage device (with the exception of USB memory sticks/keys) and transported manually. The encryption methods used must satisfy or better the requirements of the HSE Encryption Policy. The encrypted mobile storage media, should wherever possible, be hand delivered by the Service Provider to, and be signed for by, the intended recipient. If this is not possible, the use of registered post or some other certifiable delivery method must be used.

60.18 **Transfers of Information outside of the Republic of Ireland**

- (a) The Service Provider must seek the written consent of the HSE prior to the Service Provider sending Information outside the jurisdiction of the Republic of Ireland. The HSE may, at its discretion, prohibit the Service Provider from sending Information outside the jurisdiction of the Republic of Ireland.
- (b) Where the HSE has consented to the transfer of Information outside the Republic of Ireland, the Service Provider may only transfer information to a legal entity located in:
 - (i) a country within the European Economic Area;
 - (ii) a country outside the European Economic Area but approved for this purpose by the EU Commission; or
 - (iii) the United States of America only when the Information transferee has agreed in writing to be bound by the Safe Harbour rules.

60.19 If so requested by the HSE, the Service Provider shall:

- (a) permit the HSE or its Representatives (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Service Provider's data processing facilities and activities (and/or those of its agents, subsidiaries and

sub contractors) and comply with all reasonable requests or directions by the HSE to enable the HSE to verify and/or procure that the Service Provider is in full compliance with its obligations under this Agreement;

- (b) make available for audit by the HSE or its Representatives, (subject to reasonable and appropriate confidentiality undertakings), all staff procedures, processes and instructions that the Service Provider employ for the management of Information;
- (c) permit the HSE or its Representatives, (subject to reasonable and appropriate confidentiality undertakings), to inspect the contracts, that the Service Provider has in place, governing the transfer of any Information from the Service Provider to legal entities located outside the European Economic Area;
- (d) forthwith return to the HSE (or as it directs) all written material, photographs, Information and documentation obtained from the HSE together with all copies and reproductions made by the Service Provider; and
- (e) forthwith destroy all notes, memoranda and Information kept in electronic form containing copies or abstracts of the Information.

61. Disclosure Required by Law

- 61.1 In the event that the Service Provider is legally required to disclose any of the Information to a third party, the Service Provider undertakes to notify the HSE of such requirement prior to any disclosure and, unless prohibited by law, to supply the HSE with copies of all communications between the Service Provider and any third party to which such disclosure is made.
- 61.2 The Service Provider must co-operate with the HSE in bringing any legal or other proceedings to challenge the validity of the requirement to disclose Information.

62. No Warranty

Nothing in this Agreement shall constitute a warranty by the HSE as to the accuracy of any of the Information, and the HSE will not be liable to the Service Provider or to any other party to which any of the Information may be disclosed for any loss or damage howsoever caused, arising directly or indirectly out of the inaccuracy of any of the Information.

63. No Lien on Documents

The Service Provider has no lien on any documents.

64. No Licence

The Service Provider acknowledges that the Information gathered during the implementation of the system and provision of Services and Supplies may be of a special and unique character and that the Information and any patent, copyright or other Intellectual Property rights of whatever nature attaching thereto are and will remain the property of the HSE and nothing in this Agreement will be construed as giving the Service Provider a licence in respect of such patent, copyright or other Intellectual Property rights.

65. Know How

Nothing in this part 2 shall prevent the Service Provider, or the HSE, from using data processing techniques, ideas and know-how gained during the performance of this Agreement

in the furtherance of its normal business, to the extent that this does not relate to a disclosure of confidential Information or an infringement by the HSE, or the Service Provider, of any Intellectual Property Right.

66. **Confidentiality**

The Parties agree that any Substantial Breach by the Service Provider of its obligations of confidentiality set out in this Part Two shall be deemed to constitute a breach incapable of remedy entitling the HSE, at its option, to terminate the Agreement in accordance with Clause 25.12 (Termination).

67. **Survival of Obligation**

The non-disclosure obligations of this Agreement will survive and continue and will bind the Service Provider's legal representatives, successors and assigns notwithstanding that the Job may not be actually implemented by the Parties.

PART THREE

SERVICES CONTRACT CLAUSES

This Part Three applies only if the HSE is procuring Services

68. Performance of Services

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

69. Provision of Services

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

- (a) Professional Services to address HSE requirements as set out in 0 (HSE Requirements and Specifications); and
- (b) Professional Services that enable the Service Provider to address the specific requirements and performance criteria as set out in 0 (Service Level Agreement) and associated Lot Agreements(s).

In the event of any inconsistency between a Service Level Agreement and this Agreement, the terms of the Service Level Agreement shall prevail.

69.2 Unless expressly stated in this Agreement, the HSE gives no guarantee and accepts no liability for the volume of the Services which may be ordered by the HSE from the Service Provider.

69.3 In the event that the Service Provider fails to perform the Services in accordance with the Service Levels, then the provisions of Clause 70 (Service Levels and Service Credits) shall apply.

70. Service Levels and Service Credits

70.1 Without prejudice to Clause 68 (Performance of Services), the Service Provider shall ensure the Services meet the Service Levels set out in the Service Level Agreement or such other standards as may be set out in a Service Level Agreement. The Service Provider 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 HSE and the HSE Group.

70.2 If the Service Provider fails to meet Service Levels, the Service Provider shall, without prejudice to the HSE's other rights and remedies:

- (a) pay the appropriate amount under the Service Credits regime under the Service Level Agreement;
- (b) promptly investigate the underlying causes of the failure to meet the Service Levels and prepare and deliver to the HSE a report on the causes as soon as possible and in any event within seven (7) calendar days of the Service Provider becoming aware of the failure arising or receiving notice of such failure from the HSE, whichever is earlier;

- (c) take whatever action is necessary to minimise the impact of the failure and to correct the causes of the failure and advise the HSE of the status of the remedial actions within seven (7) calendar days of submitting the report in accordance with Clause 70.2(b) above; and
- (d) indicate the amount (if any) payable under the Service Credits regime under the Service Level Agreement as a result of the failure to meet Service Levels on the next invoice submitted to the HSE.

71. **Professional Services**

71.1 **Service Provider's People**

The Service Provider's People shall:

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

71.2 **Professional Services Account Manager**

The Service Provider shall assign a Professional Services account manager with responsibility for delivery of the Professional Services and for liaising with the HSE Representative.

71.3 **Office and Computer Facilities**

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

71.4 **HSE Sites**

- (a) Prior to commencement of the provision of the Professional Services, the Service Provider shall satisfy itself that the HSE Sites are suitable for the provision of the Professional Services, or, alternatively, shall advise the HSE in writing of any matter or element of the HSE Sites which are inadequate or unsuitable for provision of the Professional Services.
- (b) The Service Provider shall not be entitled to recover any additional costs from the HSE in respect of any matter or element of the HSE Sites which has not been notified to the HSE in accordance with Clause 71.4(a) above. The Service Provider shall at all times minimise disruption with the business and administrative affairs of the HSE while present at the HSE Sites.

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

71.6 **Payment for Professional Services**

In relation to the various pricing methodologies included within the Price set out in 0 (Payment Schedule), for the provision of the Professional Services the Parties agree that:

- (a) where the Price is based on a daily rate basis, then, where the Service Provider's People work at weekends or outside the Working Day, such work shall be separately chargeable, in accordance with 0 (Payment Schedule). No payments will apply in respect of the agreed non-chargeable additional hours set out in the Service Provider's Tender;
- (b) where the Price is based on a daily rate basis (or a daily rate basis subject to an agreed cap), then, the Service Provider'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 HSE Representative. The Service Provider shall report to the HSE at the regular review meetings on the hours of work of the Service Provider's People in the preceding period. The Service Provider shall provide reasonable and necessary additional information to HSE in the event of any HSE queries in relation to the Service Provider's People's timesheets or hours of work;
- (c) The HSE shall not be liable for payments in respect of time spent by the Service Provider's People other than in the provision of the Services. The foregoing shall include time spent by the Service Provider's People on holiday leave, sick leave, maternity leave or other statutory or contractual leave, attending Service Provider internal review meetings, or training courses. In this regard, the Service Provider shall report to the HSE at each review meeting on the scheduled absence of the Service Provider's People from the provision of the Professional Services in the next following period. The Service Provider (other than where absence is unavoidable and/or outside the Service Provider control) shall not authorise absence of the Service Provider's People, save as notified to the HSE aforesaid, and the HSE shall not, in any event, be liable for payments in respect of such absences; and
- (d) where the Price in respect of Professional Services set out in the Payment Schedule are based on time and materials, in the event that the HSE wishes to revise the number of Service Provider's People allocated to the provision of those Services, then, the HSE shall provide the Service Provider with not less than fourteen (14) days prior written notice of the particular Service Provider's People to be removed from performance of the Services. In such event, the Parties' Representatives shall promptly, following receipt of the HSE notice, commence good faith negotiations with a view to agreeing revisions to the Price, if applicable, following removal of such Service Provider'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.

71.7 **Training Services**

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

- (a) the Service Provider shall provide the Training Services in accordance with the provisions of the training plan set out or as stated within the HSE Requirements and Specifications; and
- (b) the Service Provider shall conduct a satisfaction survey in a format agreed between the Parties, following each training course, as set out in the training plan. The Service Provider shall endeavour to maintain the results of such surveys at a level deemed acceptable by the HSE and shall provide statistical extracts there for regular review by the HSE.
- (c) The Service Provider acknowledges that the Training Services shall include an obligation on the Service Provider 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.

72. Technical Support and Maintenance Services

- 72.1 In the event the Service Provider fails to perform the Technical Support and Maintenance Services in accordance with the Service Levels then the provisions of Clause 70 (Service Levels and Service Credits) shall apply.

PART FOUR
SUPPLIES CONTRACT CLAUSES

This Part Four applies only if the HSE is procuring Supplies.

73. Delivery of Supplies

- 73.1 The Service Provider shall deliver the Supplies on the date and to the location notified to the Service Provider by the HSE and shall be responsible for the proper delivery of the Supplies.
- 73.2 If the Job is for multiple, unspecified, deliveries, the HSE shall, when it requires a delivery to be made during the period of the Job, send the Service Provider written notification of the quantity of Supplies and the date, time and place of delivery and the Service Provider shall deliver those Supplies on the date so specified.
- 73.3 If the Job does not specify the quantity of Supplies to be provided by the Service Provider, the HSE does not provide any guarantee regarding the quantity of Supplies that will be required over the Term.
- 73.4 The Service Provider shall provide such packaging of Supplies as is required to prevent their damage or deterioration in transit.
- 73.5 The Service Provider 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 HSE.
- 73.6 The Service Provider shall indemnify and hold the HSE harmless against and from all claims, suits and actions for damages, losses and expenses resulting from the transport of the Supplies and shall negotiate and pay all claims arising from their transportation.

74. Partial Delivery

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

75. Risk and Title

- 75.1 Title in the Supplies shall pass on delivery to and acceptance by the HSE unless payment is made prior to delivery, in which event, title shall pass to the HSE once payment has been made. Where title in the Supplies has passed to the HSE prior to delivery pursuant to this condition the Service Provider shall keep such Supplies separate from other Supplies and shall clearly mark the Supplies as the property of the HSE.
- 75.2 Notwithstanding the provisions of this Clause 75, risk of damage to or loss of the Supplies shall, unless otherwise agreed between the Parties, remain with the Service Provider until delivery, acceptance and commissioning of the Supplies to the HSE in accordance with the provisions of this Agreement and, in particular, Clause 80 (Defective Supplies) hereof.

76. Timing

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

77. Packing, Marking and Documentation

- 77.1 All packages, cases, pallets and other containers must be clearly and individually marked "Health Service Executive", and clearly state the Official Purchase Order number and product codes. The following shall appear on the outside of each pack:
- (a) a description of the Supplies;
 - (b) the quantity contained in each pack;
 - (c) storage and/or handling instructions;
 - (d) expiry date of contents, if applicable; and
 - (e) relevant materials safety information, if applicable.
- 77.2 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.
- 77.3 The HSE may (unless otherwise agreed in writing) require the Service Provider to dispose, at the Service Provider's cost, of all packaging materials. Failure by the Service Provider to effect disposal within fourteen (14) days of delivery shall entitle the HSE to arrange disposal with another Service Provider and any costs incurred by the HSE in effecting disposal of packaging shall be paid by the Service Provider to the HSE or set off against any monies owed to the Service Provider pursuant to Clause 9 (Debts to the HSE).

78. Returns

The HSE accepts no liability in regard to the satisfactory return to the Service Provider of any consignment or part of a consignment delivered in error.

79. Quality of Supplies

The Service Provider warrants that the Supplies will:

- 79.1 correspond with their description;
- 79.2 be equal in all respects to any samples provided;
- 79.3 comply with any technical specification and any other requirements of this Agreement;
- 79.4 be capable of any standard of performance specified by the HSE, but in any event shall be of merchantable quality;

- 79.5 be fit for any particular purpose made known to the Service Provider by the HSE either expressly or by implication;
- 79.6 shall not have any defect arising from design, materials or workmanship; and
- 79.7 be subject to the manufacturer's warranty.

80. Defective Supplies

- 80.1 If any Supplies are found to be defective or otherwise not in accordance with the Agreement, or the Service Provider has failed to deliver on time, or the HSE has notified the Service Provider of a shortage of Supplies or damage to the Supplies and has given the Service Provider all reasonable opportunity to remedy, the HSE may:
- (a) require the Service Provider, at the Service Provider's expense, to fulfil its obligations in all respects within fourteen days or such other period as is specified by the HSE;
 - (b) terminate the Agreement (in full or in part) and the Service Provider shall refund any part of the Price which has been paid in respect of the defective, late or undelivered Supplies;
 - (c) purchase substitute Supplies elsewhere;
 - (d) at the Service Provider's risk and expense, return any Supplies already supplied under the Agreement;
 - (e) recover from the Service Provider any direct, indirect and/or consequential losses, cost and liabilities incurred by the HSE (including the costs of any replacement Supplies);
 - (f) reject the Supplies by giving notice to the Service Provider, with reasons; and/or
 - (g) require the Service Provider to promptly replace defective Supplies.
- 80.2 The HSE's right of rejection shall continue irrespective of whether the HSE has accepted, inspected, used or paid for, the Supplies.
- 80.3 The whole of any consignment of Supplies may be rejected by the HSE if a reasonable sample of the Supplies taken randomly from the consignment is found not to conform substantially with the requirements of the Agreement.
- 80.4 The HSE shall be under no obligation to accept or pay for any Supplies delivered in excess of the quantity ordered.
- 80.5 If the HSE elects not to accept such over-delivered Supplies it shall be entitled to give notice in writing to the Service Provider to remove them within seven (7) days of receipt by the Service Provider of such notice and to refund to the HSE any expenses incurred by the HSE as a result of such over-delivery (including the costs of moving and storing them) failing which the HSE shall be entitled to dispose of such Supplies and to charge the Service Provider for the costs of such disposal.
- 80.6 The risk in any over-delivered Supplies shall remain with the Service Provider until they are collected by or on behalf of the Service Provider or disposed of or purchased by the HSE, as appropriate.

80.7 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 Service Provider shall notify the HSE of the said recall or defect within five (5) days of the earliest recall or defect notice.

81. **Supply of Documents**

The Service Provider shall supply to the HSE free of charge all technical drawings, service manuals, and maintenance specifications written in the English language with all relevant updating documents, which relate to the Supplies.

82. **Inspection and Samples**

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

82.2 If required by the HSE, samples of Supplies shall be submitted, at the Service Provider's cost and expense, to the HSE for evaluation and approval.

83. **After Sales Service**

Unless otherwise agreed in writing, the Service Provider shall:

83.1 supply to the HSE spare parts necessary for the Supplies at a reasonable cost, not exceeding that charged under like circumstances to other customers of the Service Provider;

83.2 authorise the HSE to negotiate with and purchase spare parts for the Supplies directly from providers to the Service Provider;

83.3 provide the Supplies free of any restrictions or impediments, which may exist between the Service Provider and its providers; and

83.4 maintain sufficient stock levels so as to be in a position to meet the HSE's requirements for Supplies as notified to the Service Provider prior to signing this Agreement.

PART FIVE

SOFTWARE AND HARDWARE

This Part Five applies only if the HSE is procuring Software, Hardware, systems and associated Services.

84. HSE Software

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

85. Service Provider Software

85.1 The Service Provider may not use open source software in the provision of the Services without the HSE's prior written consent.

85.2 In consideration of the Price due and owing to the Service Provider by the HSE, the Service Provider hereby grants to the HSE and each member of the HSE Group an irrevocable, fully paid-up, non-exclusive sub-licensable perpetual royalty free licence to use the Service Provider Software and to permit the HSE Group's employees, contractors (including any Party to whom the HSE Group has outsourced, or outsources at any time in the future, all or part of its business, technical or other operations together and/or which requires the sub-licensing of same to third parties for use on behalf of the HSE, or all or any members of the HSE Group), general practitioners, patients, servants and agents to use the Service Provider Software.

85.3 Perpetual licenses for Service Provider Software must also cover data dictionaries and all other associated constructs or components upon which the Software solution depends.

85.4 Each member of the HSE Group may make such copies of the Service Provider Software as they may reasonably require.

85.5 For the avoidance of doubt, there is no limit on the number of users of the Service Provider Software. The licences provided for in this Agreement are not subject to the use of the Service Provider Software on Hardware of any particular size, capacity or processing speed.

85.6 The Service Provider shall procure that all agreements entered into after the Effective Date relating to maintenance and support of Service Provider Software necessary for maintaining the performance of the solution shall remain in force for the Term.

85.7 To the extent that Service Provider Software shall include Third Party Software which it is not commercially possible for the Service Provider to licence and/or sub licence in accordance with Clause 85.2 above, the Service Provider shall notify the HSE of any issues in this regard prior to supplying that Third Party Software as part of the Service Provider Software. In such circumstances, the HSE 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 Service Provider, provided always that those terms shall entitle the HSE to enjoy the benefit of the Service Provider Software as envisaged by Clause 85.2 above on terms that are broadly equivalent to those, or, direct that the Service Provider procure alternative Third Party Software on terms that are to the HSE's satisfaction.

85.8 The HSE shall be entitled to copy the Service Provider Software in order to create a reasonable number of archival and back-up copies thereof in accordance with normal

backup procedures, whether for storage at HSE Sites, or otherwise and whether using its own resources or those of a third party service provider. When copying Software, the HSE shall include the original machine-readable copyright notice, and a label affixed to the media identifying the Service Provider Software and its ownership.

- 85.9 The HSE shall be entitled to engage a third party to provide certain managed Services in respect of the Service Provider Software on behalf of the HSE, including full or partial use thereof, subject to and in accordance with the terms and conditions of the applicable provisions of this Agreement, provided that, such third party shall have entered into a confidentiality undertaking to the Service Provider in terms no less onerous than set out in Part 2 (Confidentiality Agreement Clauses) of this Agreement.
- 85.10 Failure of the HSE to enter into, or maintain, support and maintenance contracts with the Service Provider will not impact the right of the HSE to the perpetual licence(s) associated with any software or configuration provided. The HSE will continue to have the right to use, access, and if necessary, either itself or via a third party, maintain and support the application.
- 85.11 Change in the ownership of the Service Provider will in no way diminish the rights of the HSE to the perpetual licence or the right of the HSE for continued use of the software associated with said licence.
- 85.12 Any and all accrued rights in relation to licences will continue to the benefit of HSE regardless of whether the Term expires naturally or suspension or termination clauses are invoked. In such circumstances, the HSE will continue to have the right to use, access, and if necessary, either itself or via a third party, maintain and support the application.

86. **Commissioned Software**

- 86.1 Commissioned Software refers to Software that has been developed specifically for the HSE based on the provision of requirements, specifications and subsequent information sharing and communications associated with the development of the solution. In such circumstances and where required, pursuant to the HSE Requirements and Specifications, the Service Provider shall develop the Software (“**Commissioned**” shall be construed accordingly), in accordance with the requirements of:
 - (a) the HSE Requirements and Specifications;
 - (b) the Software Specifications;
 - (c) reasonable instructions of the HSE provided in accordance with this Agreement; and
 - (d) in accordance with relevant Lot Agreement(s).
- 86.2 The Commissioned Software shall provide the functions and offer the facilities set out in the HSE Requirements and Specifications and associated Software Specifications, as appropriate, and shall fulfil the performance criteria in all material respects.
- 86.3 Title to Commissioned Software shall vest in the HSE on creation and the Service Provider assigns by present assignment of future rights all rights in and to Commissioned Software to the HSE with unencumbered title.

- 86.4 The HSE hereby licences the Service Provider to use Commissioned Software solely for the provision of the Job in accordance with Clause 19 (Intellectual Property Rights) during the Term. On termination, this licence shall also terminate and the Service Provider shall stop using Commissioned Software and shall promptly deliver to the HSE all copies of it in its possession or under its control.
- 86.5 In the event that the Service Provider wishes to use the Commissioned Software other than to perform the Job under this Agreement, the HSE may grant a non-exclusive licence to the Service Provider for the Commissioned Software on terms to be agreed by the Parties.
- 86.6 The Service Provider shall, upon creation and update, deliver one (1) copy of the Source Materials for Commissioned Software to the HSE 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.

87. Configured Software

- 87.1 Configured Software refers to Software which exists and/or has been designed and developed with the intention of being configured to meet the specific requirements. In such circumstances and where required, pursuant to the HSE Requirements and Specifications, the Service Provider shall develop /configure the Software (the “**Configuration**”, and “**Configured**” shall be construed accordingly), in accordance with the requirements of:
- (a) the HSE Requirements and Specifications;
 - (b) the Software Specifications;
 - (c) reasonable instructions of the HSE provided in accordance with this Agreement; and
 - (d) where applicable, in accordance with relevant Lot Agreement(s).
- 87.2 The Configured/developed Software shall provide the functions and offer the facilities set out in the HSE Requirements and Specifications and associated Software Specifications, as appropriate, and shall fulfil the performance criteria in all material respects.
- 87.3 Title to the Configuration shall vest in the HSE on creation and the Service Provider assigns by present assignment of future rights all rights in and to the Configuration to the HSE with unencumbered title.
- 87.4 The HSE hereby licences the Service Provider to use the Configuration solely for the provision of the Job in accordance with Clause 19 (Intellectual Property Rights) during the Term. On termination, this licence shall also terminate and the Service Provider shall stop using the Configuration and shall promptly deliver to the HSE all copies of it in its possession or under its control.
- 87.5 In the event that the Service Provider wishes to use the Configuration other than to perform the Job under this Agreement, the HSE may grant a non-exclusive licence to the Service Provider for the Configuration on terms to be agreed by the Parties.
- 87.6 The Service Provider shall, upon creation and update, deliver one (1) copy of the Source Materials for the Configuration to the HSE and shall, during the Term, keep

up-to-date versions of the Source Materials for the Configuration and shall as a separate obligation provide an up-to-date copy of the latest versions of such Source Materials on termination.

87.7 The Service Provider shall keep the HSE advised of variations and additions thereto, included within new releases or versions of the Software, provided by the Service Provider pursuant to the deployment, support and maintenance of the Job.

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

87.9 **Third Party Software**

(a) The Service Provider may not use Third Party Software to perform the Job other than:

- (i) Third Party Software listed in the Service Provider's Tender; or
- (ii) with the prior written consent of the HSE (such consent not to be unreasonably withheld or delayed, or subject to unreasonable conditions).

(b) Unless otherwise agreed, after the Effective Date, the Service Provider shall ensure that all Third Party Software Agreements relating to the Software listed in the Service Provider's Tender shall be entered into in HSE's name or, to the extent this is not achievable, procure the benefit to HSE of such Third Party Software Agreements. The terms and conditions of those agreements shall be subject to the HSE's prior written consent and shall entitle each and every member of HSE Group and their employees and contractors to benefit from the use of Third Party Software as required. At a minimum, the Service Provider shall be responsible for the amounts payable to Third Parties under such Third Party Software Agreements.

(c) For the purposes of this Agreement, Third Party Software also includes embedded Software upon which Hardware supplied by the Service Provider depends.

(d) The HSE shall notify the Service Provider 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 Service Provider shall use best endeavours to procure, at the HSE's option, and at the Service Provider's expense, any Necessary Consents to make use of the Third Party Software by the Service Provider to perform the Job.

(e) The Service Provider may not enter into any Third Party Software Agreement without the HSE's prior written consent. Where the Service Provider proposes to enter into any Third Party Software Agreement after the Effective Date it shall first consult with the HSE 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 Service Provider, the Service Provider may, subject to the consent of the HSE, enter into it provided that it shall be terminable (by the HSE only) and/or transferable at the HSE's option

to the HSE or the incoming service provider at no additional charge and on the same terms and conditions on termination without restriction. The Service Provider shall not place itself or the HSE in breach of Third Party Software Agreements.

- (f) The Service Provider 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 Service Provider shall, at HSE's request, procure that the Source Materials are placed in escrow with the UK National Computing Centre (or equivalent body) on an industry standard tripartite escrow agreement.
- (g) The Service Provider shall provide information relating to known bugs in the Third Party Software available from the Service Provider of the Third Party Software, prior to the date of delivery thereof;

88. Software Specification Development

- 88.1 The Service Provider shall prepare Software Specifications in accordance with the HSE Requirements and Specifications and shall deliver said specifications to the HSE for approval in accordance with the Timetable.
- 88.2 During the development of Software Specifications, the Service Provider shall keep the HSE advised of variations and additions thereto and shall discuss with the HSE any comments which the HSE may make upon the draft documentation.
- 88.3 In the event that the HSE requires amendments to the Software Specifications, which are outside the scope of the HSE 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 HSE written notification of the required amendments, in accordance with the Change Control Procedure.
- 88.4 Approval of Software Specifications shall be subject to the Acceptance Procedures.
- 88.5 Following approval of the Software Specifications, then the HSE may, at its sole option.
 - (a) authorise the Service Provider to develop/configure the Software, based upon the Software Specifications; or
 - (b) notify the Service Provider in writing of its decision to itself develop/configure the Software or
 - (c) alternatively, appoint a third party to develop/configure the Software, in which event the Service Provider shall co-operate with the HSE and/or its alternative developer in order to ensure a smooth transfer of responsibility, know-how and delivery

provided that, where the HSE notifies the Service Provider of its decision under Clause 88.5(b) above, the authorisation may be contingent upon the Services being provided by the Service Provider's People engaged in the development of the applicable Software Specification.

88.6 Software Acceptance

- (a) In relation to the provision of Configured, Commissioned or Third Party Software, the Service Provider shall, in accordance with the Timetable, deliver to the HSE:
 - (i) all Commissioned Software, Configuration and Third Party Software upon which the Job depends, in object code form; and
 - (ii) the Source Code of each stage of the development of the Software or Configuration, together with the Source Code of the relevant existing Service Provider materials in the electronic format agreed between the Parties, including all ancillary materials necessary to enable a reasonably skilled programmer to correct, modify and enhance such Software/Configuration without reference to any other person or document. In addition, at the conclusion of the Service Provider development work, the Service Provider shall deliver the Source Code and ancillary materials in respect of the entire of the Software or Configuration, together with the Source Code of the relevant existing Service Provider materials. The Service Provider supply of the Source Code in respect of existing Service Provider materials shall be subject to the provisions of any applicable restrictions in respect of Third Party Software notified to the HSE by the Service Provider or as otherwise agreed by the Parties; and
 - (iii) copies of the test data and results of all in-house tests carried out by the Service Provider on the Configuration prior to delivery of all Software and Configuration.
 - (iv) copies of all supporting information to include technical, training and end user documentation and manuals.
- (b) In relation to the provision of Service Provider Software, the Service Provider shall, in accordance with the Timetable, deliver to the HSE:
 - (i) all Service Provider Software in object code form;
 - (ii) on request, copies of the test data and results of all in-house tests carried out by the Service Provider on the Software prior to delivery; and
 - (iii) copies of all supporting information to include technical, training and end user documentation and manuals.
- (c) Following installation, Software shall be subject to the User Acceptance Tests and Acceptance Procedures. Payments for Software will be subject to a successful outcome from these procedures and formal acceptance of the Software or Configuration by the HSE.
- (d) For the period of engagement, the Service Provider shall ensure that all documentation is kept at current release levels and available to all users.

88.7 Software Escrow

At the election of the HSE, the Service Provider may be directed by the HSE to place, within thirty (30) days of the date of the grant of licence set out in Clause 85.2

(Service Provider Software), the Source Code of the Service Provider 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 and shall, without delay, provide the HSE with copies of such relevant escrow arrangement(s), together with the confirmation document included therein, which the HSE may complete in order to register as a licensee or beneficiary thereunder. For the avoidance of doubt the foregoing reference to the Service Provider Software shall include all subsequent releases and versions thereof, provided in accordance with the Services, which shall be lodged in escrow within thirty (30) days of their release date. The HSE 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.

88.8 Software Warranty

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

- (a) All Software and Configuration shall provide the functions and facilities set out in the HSE Requirements and Specifications (0) and associated Software Specifications, and will fulfil the performance criteria, in both cases, in all material respects.
- (b) the User Documentation and the Training Services will provide adequate instruction to enable reasonably skilled and experienced personnel of the HSE to make proper use of the functions and facilities of the applicable element of the Software and Configuration;
- (c) the Service Provider shall use Good Industry Practice to detect and delete commonly known viruses in all delivered Software, prior to the date of installation thereof; and
- (d) New versions, upgrades and new releases of the Service Provider Software, Commissioned Software and Configuration shall be backward and forward compatible and shall not reduce the functionality or performance of the Software.

88.9 Software User Documentation

- (a) The User Documentation shall consist of:
 - (i) in respect of Commissioned Software, Configuration and Service Provider Software, the documentation set out in the HSE Requirements and Specifications and associated Software Specifications;
 - (ii) in respect of the Third Party Software, the standard User Documentation, as provided to the Service Provider by the third party service provider; and
- (b) The User Documentation shall be provided in electronic format, where possible, in addition to such number of paper copies agreed between the Parties Representatives (subject to any applicable third party licence restrictions). The HSE may reprint and publish the User Documentation for

Configuration, for the benefit of its users, subject only to any limitation set out in any applicable third party licence restrictions and without charge.

88.10 Software Support

- (a) The Service Provider will be responsible for the support of all Software provided during development and implementation and, in the absence of a separate support contract, for a minimum period of 6 months thereafter.
- (b) The Service Provider responsibility for Software support is defined by the HSE Requirements and Specifications (0) and the Service Level Agreement (0) and the relevant Lot Agreement(s).

89. HSE Hardware

- 89.1 Where it is agreed that the Service Provider may use HSE Hardware for the performance of the Job, HSE Hardware is expressly provided as is and the HSE expressly disclaims, to the fullest extent permitted by law, any and all representations and warranties in relation to HSE Hardware, whether express or implied, whether arising by statute or otherwise, including any warranty of merchantability, accuracy, completeness, currency and/or fitness for a particular purpose.
- 89.2 The Service Provider acknowledges that Hardware Agreements are in place at certain HSE Sites. The Service Provider will co-operate at all times with the parties to those Hardware Agreements to ensure the proper implementation of the system and the provision of Services.

90. General Provisions Applicable to both Software and Hardware

- 90.1 Unless otherwise agreed, the Service Provider shall be responsible for making payments under Third Party Software Agreements and Hardware Agreements to the extent to which they relate to the period after the Effective Date. If the HSE has made payments to third party service providers which relate to the period after the Effective Date, the payments shall be pro rated and the amount which relates to the period after the Effective Date shall be set off against the Price. The HSE shall be responsible for making payments under Third Party Software Agreements and Hardware Agreements to which it is a Party to the extent to which they relate to the period up to and including the Effective Date.
- 90.2 The Service Provider shall be responsible for the adequate provision, regular maintenance and support of, and shall maintain in good repair and condition, all Hardware, Software, equipment, materials and consumables necessary for the performance of the Job and in accordance with Good Industry Practice, this Agreement and the HSE Requirements and Specifications. The Service Provider shall, at its own expense, enter into any reasonably requested agreements required by the suppliers of Hardware, Software, equipment, materials and consumables necessary for the proper and efficient performance of the Job and keep the HSE informed of all such agreements.
- 90.3 The Service Provider shall maintain from the Effective Date and throughout the remainder of the Term, an up-to-date inventory of all Software and Hardware necessary for the provision of the Job. The Service Provider shall make such inventory available to the HSE (using pre-defined templates containing such details as are required by the HSE) 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 Service

Provider and the HSE) thereafter and at the HSE's request, provide a copy thereof to the HSE or as it may direct from time to time and on termination.

- 90.4 If this Agreement expressly states that the Job will be provided using specific items of Software, Hardware, equipment, materials or consumables, the Service Provider shall use them and the Service Provider shall ensure that Software and Hardware used for the Services are in versions approved by the HSE. The Service Provider shall not change the applications listed in the Service Provider's Tender (or the version of such applications) or the hardware on which the applications are running, without the HSE's prior written consent (such consent not to be unreasonably withheld or delayed, or subject to unreasonable conditions).
- 90.5 The Service Provider shall provide the HSE with full details of all Hardware, Software and system changes or upgrades scheduled to take place or which should take place during the Termination Period or six (6) months after termination, as well as details of any renewals or expiry of agreements that are to arise in the twenty-four (24) months after termination.
- 90.6 Where consent is to be provided in the sole and absolute discretion of the HSE, the HSE shall have no liability whatsoever for the refusal of any consents. The HSE shall, at the request and expense of the Service Provider, provide reasonable assistance in obtaining third party consents as appropriate.
- 90.7 The Service Provider shall manage all Software and Hardware used in the performance of the Job in such a way that the HSE is able to exercise its rights under Clause 13 (Step In Rights).

PART SIX

CONTRACT MANAGEMENT CLAUSES

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

91. Project Management and Service Delivery

- 91.1 The clauses in this Part 6 of the Agreement apply in circumstances where the Service Provider is engaged in the delivery of a Job in accordance with agreed milestones, Timetable, Term(s), stage or stages, Lots and/or Service Level Agreements. Such Jobs may include for example:
- (a) development of a Software, Hardware or systems solution;
 - (b) implementation of a Software, Hardware or systems solution;
 - (c) deployment of a Software, Hardware or systems solution on one or more HSE Sites;
 - (d) provision of Supplies in accordance with a specific timeline;
 - (e) provision of Technical Support and Maintenance Services;
 - (f) provision of Professional Services or
 - (g) any combination of the above.
- 91.2 Jobs may be managed via a single Lot or multiple Lots that together, constitute the complete Job.
- 91.3 Where the HSE elects to manage the Job via multiple Lots, the Lot Letting Procedure set out in Clause 92 (Lot Letting Procedure) shall apply.
- 91.4 The timetable for delivery will be agreed with the Service Provider and all payments will be based on successful attainment of milestones or completion of stages. Failure on the part of the Service Provider to meet these milestones will incur penalties. The penalties that apply are outlined in 0 (Payment Schedule), relevant Lot Agreement(s) and Service Level Agreement(s).
- 91.5 The solution provided must meet or exceed all quality and performance criteria defined in 0 (HSE Requirements and Specifications) and the relevant Lot Agreements and Service Level Agreement(s).

92. Lot Letting Procedure

- 92.1 The Parties acknowledge and agree that the HSE reserves the right to have the Job delivered in a number of separate lots, statements of work or packages (“**Lots**”) under the procedure set out in Clause 92.2 below (the “**Lot Letting Procedure**”). Where this applies, in addition to the terms of this Agreement, the Service Provider shall provide the Job in accordance with a Lot Agreement (the “**Lot Agreement**”) in the form or substantially the form set out at 0 (Lot Agreement).
- 92.2 The Lot Letting Procedure shall comprise the following steps:

- (a) The HSE shall issue a “**Lot Request**” to the Service Provider in the form or substantially in the form as set out in 0 (Lot Agreement).
- (b) The Service Provider shall have no less than five (5) and not more than thirty (30) days to respond to a Lot Request (a “**Lot Request Response**”).
- (c) The HSE shall notify the Service Provider within ten (10) days of receipt of the Lot Request Response whether or not its proposal:
 - (i) is accepted;
 - (ii) requires further information for consideration by the HSE; or
 - (iii) is rejected.
- (d) In the event that the HSE notifies the Service Provider that the Lot Request Response is accepted, the Lot Request Response shall thereupon be deemed to constitute a Lot Agreement setting out the agreed and binding terms and conditions applying to the relevant Lot to be delivered. The Service Provider shall commence implementing the Lot set out in the Lot Agreement within five days of notification of the acceptance of the Lot Request Response and complete it in accordance with the terms of the Lot Agreement and this Agreement and within the Timetable set out therein.
- (e) In the event that further information is required following receipt of a Lot Request Response, the Service Provider shall supply such information to the HSE within a further period of ten (10) days. Within ten (10) days following receipt of the required additional information, the HSE shall confirm whether the amended Lot Request Response is approved in which case Clause 92.2(d) above shall apply (as if reference to the Lot Request Response was a reference to it as amended) or is rejected in which case Clause 92.2(f) shall apply.
- (f) In the event that the HSE rejects a Lot Request Response or an amended Lot Request Response (following a request for further information), the Service Provider shall not deliver the Lot the subject of the Lot Request and the HSE shall reserve its rights to separately procure performance of that Lot.

92.3 Nothing in this Agreement shall compel the HSE to enter into any Lot Agreement with the Service Provider.

93. **Project Management**

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

94. **Management of Issues and Risks**

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

95. **Status Reporting**

95.1 The Service Provider shall submit to the HSE's Representative the reports required by the HSE Requirements and Specifications in such numbers and at such times as provided therein (the “**Required Reports**”). The form of the Required Reports will be agreed with the HSE's Representative.

95.2 Such Required Reports may include:

| Type of Report | Frequency | Producer |
|---|------------|------------------|
| Regular (Weekly/Monthly) Status Report (reporting key information weekly) | Weekly | Service Provider |
| Service Quality Report (reporting against SLAs) | Monthly | Service Provider |
| Manpower Utilisation / Budget Report (reports actual costs against budgeted) | Monthly | Service Provider |
| KPI Performance Report (reports the performance against KPIs for account management review) | Quarterly | Service Provider |
| End of Lot Report | End of Lot | Service Provider |

96. **Performance Monitoring**

96.1 The Service Provider shall maintain systems, procedures and controls which reflect the best practices of accountability in expending public funds, and will fully co-operate with the HSE in any reviews of such practices required by the HSE.

96.2 The HSE shall be entitled to inspect and review the performance and provision of the Job by the Service Provider and may arrange for an independent party to inspect and review the same throughout the Term.

96.3 The HSE's Representative may visit the Service Provider's premises on reasonable written notice to carry out an audit, review quality management processes and/or inspection of the provision of the Job. Such audits and inspection shall include, inter alia, the inspection, monitoring and assessment of the Service Provider's premises, facilities, Service Provider's People, records, equipment and procedures. The Service Provider shall give all such assistance and provide all such facilities as the HSE's Representative may reasonably require for such audit or inspection.

96.4 To the extent applicable, specific requirements in relation to performance targets or measures relating to the Job will be set out in 0 (HSE Requirements and Specifications), relevant Lot Agreement(s) and Service Level Agreement(s).

97. **Representatives and Contract Management Review**

97.1 Governance arrangements must be agreed to provide the level of project assurance required by the HSE. At a minimum, the Service Provider shall assign a Project Manager for the duration of the engagement to ensure the Job is delivered on schedule, on budget and to the quality standards defined and expected. The Project Manager will also be responsible for status reporting.

- 97.2 The Service Provider and the HSE 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.
- 97.3 A review meeting (“**Review Meeting**”) will be held at regular intervals, in relation to matters affecting the provision of the Job. Each Parties’ Representative, as well as appropriate additional personnel, shall meet at a location designated by the HSE to discuss the progress made by the HSE and the Service Provider in the performance of their respective obligations hereunder during the preceding agreed period.
- 97.4 Not less than five (5) Working Days prior to a Review Meeting, the Service Provider shall provide a progress report to the HSE (in a form agreed between the Parties) in respect of the progress since the previous Review Meeting. This progress report will include:
- (a) summary of any instances of non-compliance with this Agreement;
 - (b) summary of issues and risks raised, resolved and outstanding;
 - (c) any issues and items for consideration under the Change Control Procedure;
 - (d) any expected or likely failures to comply with the Service Levels (where applicable);
 - (e) management of the Service Provider’s People;
 - (f) summary of monies received by the Service Provider and invoices outstanding;
 - (g) written details of any issues with the Job or Service;
 - (h) any anticipated potential delays or any overruns in the implementation plan; and
 - (i) any other matters that the HSE may reasonably request.
- 97.5 Discussions at Review Meetings shall include reviewing:
- (a) the previous Review Meeting minutes (and approving them);
 - (b) the progress report in respect of the preceding period;
 - (c) compliance with this Agreement generally;
 - (d) if applicable, service delivery issues, including compliance with Service Levels and achieving key performance targets;
 - (e) the issues and risks register and discussing proposed solutions for items not yet resolved, contained or mitigated;
 - (f) issues and risks associated with this Agreement and raised by either Party and discussing proposed solutions for them;
 - (g) any issues for consideration under the Change Control Procedure.

- 97.6 At each Review Meeting, the Parties' Representatives shall agree the minutes of the immediately preceding Review Meeting, which shall be prepared by the HSE and signed by both Parties' Representatives.
- 97.7 Within thirty (30) Working Days of the Effective Date a review board (the "**Review Board**"), shall be established by the Parties, which shall typically consist of the following persons:
- (a) The HSE Project Sponsor/Project Executive/Senior Responsible Owner (as each party is identified to the Service Provider by the HSE);
 - (b) The Service Provider Representative with overall responsibility for delivery of the Job;
 - (c) Service Provider Project Manager;
 - (d) HSE Project Manager (as appropriate); and
 - (e) other nominated and agreed personnel.
- 97.8 The HSE and the Service Provider shall each be entitled to change any of its nominated Representatives on the Review Board with suitably senior and experienced replacements, by giving not less than fifteen (15) Working Days written notice of such change to the other Party, as soon as reasonably practicable and, in any event, prior to any meeting of the Review Board. The replacement nominated Representative shall be reasonably acceptable to the other Party, who shall communicate any concerns in relation to the replacement nominated Representative within ten (10) Working Days of receipt of notice, which concerns shall be discussed between the Parties in good faith. The Parties recognise the mutual benefit of maintaining nominated Representatives agreeable to the other Party.
- 97.9 The HSE and the Service Provider shall use their reasonable endeavours to ensure that:
- (a) persons suitably qualified to consider the matters on any agenda circulated, as set out below, attend the relevant Review Board meetings;
 - (b) meetings of the Review Board shall be held at regular intervals;
 - (c) unless agreed to the contrary by the HSE, the Review Board meetings shall be held at HSE Sites, during normal business hours;
 - (d) an agenda of any proposed Review Board meeting shall be prepared by the Service Provider in consultation with the HSE 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 97.5 above and such other relevant matter appropriate to raise and discuss at Review Board level.
- 97.10 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.
- 97.11 Minutes of Review Board meetings shall be prepared by the Service Provider and a report (based on the minutes) shall be prepared by the Service Provider (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.

97.12 Following the circulation of the Review Board Report, and subject to any agreed changes to it, the relevant Report will be approved by the Parties, which shall then be deemed to be an authoritative record of the matters discussed and agreed. The Service Provider shall at all times act reasonably and in good faith in agreeing the minutes and Review Board Report.

97.13 In the event that either Party requires ad-hoc meetings (either Review Meetings or Review Board meetings) with the other Party or third parties to discuss particular aspects of the performance of its contractual obligations it shall provide the other Party with not less than five (5) Working Days notice of such request.

98. Service Provider's People

98.1 The Service Provider shall ensure that the Service Provider's People (which includes Key Personnel):

- (a) are suitably qualified and experienced and of an appropriate number to perform the Job;
- (b) endeavour to cause as little disruption to employees or business of the HSE or the HSE Group at any HSE Sites; and
- (c) comply with the terms of this Agreement.

98.2 The Service Provider shall ensure that each of the Key Personnel are available to assist in performing the Job in their respective roles.

98.3 In the event that any such Key Personnel become unavailable, for whatever reason, the Service Provider 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 Job as the original Key Personnel, and shall request the HSE's prior consent to such replacement.

98.4 The HSE may reasonably object (whether in writing or at a Review Meeting) to the continued allocation of certain named Service Provider's People to the performance of the Job, 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 HSE objection, the Parties shall discuss in good faith the reallocation of the Service Provider resources in order to accommodate the HSE objection.

98.5 The Service Provider shall promptly, following such good faith discussions, replace such Service Provider's People with another individual of no less ability, training and qualifications, to whom the HSE has agreed (such agreement not to be unreasonably withheld or delayed) prior to their commencing work.

98.6 The Service Provider shall be solely responsible for ensuring, in so far as reasonably possible, a continuity of Service Provider's People allocated to the performance of the Job.

- 98.7 The Service Provider shall use its commercially reasonable endeavours to minimise turnover in the Service Provider's People, subject to the normal promotions, demotions, discipline procedures and other employment procedures operated by a Party.
- 98.8 The Service Provider shall be solely responsible for:
- (a) paying all salaries, wages, benefits and other compensation that the Service Provider's People or other employees of the Service Provider, may be entitled to receive in connection with the performance of the Job. The Service Provider shall pay rates of wages and observe hours of labour not less favourable than those commonly recognised by employers and trade unions (or, in the absence of such recognised wages and hours, those which in practice prevail amongst good employers) in the trade in Ireland; and
 - (b) fully complying with all relevant Legal Requirements relating to employment and health and safety at work and such other rules (including HSE Policies) governing the conduct of Service Provider's People as have been notified to the Service Provider by the HSE in writing.
- 98.9 The Service Provider shall keep proper records (including time sheets) showing the remuneration paid and time worked by Service Provider's People. The Service Provider shall make these records available for inspection and copying by the HSE upon receipt of a request to do so by the HSE.
- 98.10 Each Party will be responsible for the supervision, direction and control of its own personnel in relation to this Agreement. The Service Provider, as employer of the Service Provider's People shall assume full responsibility and liability for the actions of the Service Provider's People.
- 98.11 The Parties agree that the 2003 TUPE Regulations do not apply to the performance of the Job and no employees or any other persons shall transfer to the HSE on entry into, termination or expiration of this Agreement howsoever or whenever arising.
- 98.12 If, notwithstanding Clause 98.11 above, the 2003 TUPE Regulations do apply to the transfer of employment as between the Service Provider and the HSE (arising as a result of the entry into or the termination of this Agreement) the Service Provider shall indemnify and keep indemnified the HSE against any and all reasonable costs, claims, losses, liabilities and expenses which the HSE may incur arising out of or in connection with the employment or termination of employment of any staff member the subject of the 2003 TUPE Regulations in connection with the provision of the Job.

PART SEVEN

DISPUTE RESOLUTION PROCEDURE

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

99. Amicable Dispute Settlement

99.1 If any dispute arises between the Parties, the Parties shall first make every effort to settle the dispute amicably as follows:

- (a) Any dispute is to be notified in writing by a person at senior management level in one Party to a person at senior management level in the other Party;
- (b) The senior parties will have six (6) days in which to resolve the dispute.

99.2 The Parties agree that they shall bear their own costs in the procedure set out in this Clause 99.

100. Mediation

100.1 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 100.6 below, the Parties shall follow the Dispute Resolution Procedures set out in this Clause 100.

100.2 Any Party shall give to the other Parties a written notice of the dispute or difference (a “**Dispute Notice**”), setting out its nature and such particulars as shall be then available to that Party. Within ten (10) Working Days of a Dispute Notice being deemed to have been duly served in accordance with Clause 36 (Notices and Communications) all the Parties shall consult and negotiate with each other and, recognising their mutual interests, shall attempt to reach a binding settlement in writing satisfactory to all the Parties.

100.3 If all the Parties do not reach a binding settlement in writing within a period of ten (10) Working Days (the “**Negotiating Period**”) of the date on which the Dispute Notice shall be deemed to have been duly served in accordance with Clause 36 (Notices and Communications), then any Party may, by a further written notice served on all the other Parties in accordance with Clause 36 (Notices and Communications), within a further period of ten (10) Working Days commencing on the Working Day following the expiry of the Negotiating Period, request mediation of the dispute or difference.

100.4 Unless otherwise agreed in writing between the Parties:

- (a) The mediator shall be nominated at the request of either Party by the International Centre for Dispute Resolution (the “**ICDR**”) in accordance with the rules of ICDR and the mediation shall be conducted in accordance with the international mediation rules of the ICDR, in each case being the relevant rules for the time being and from time to time in force;
- (b) The costs of the mediator shall be borne and discharged as to 50% by the Service Provider and as to the remaining 50% by the HSE, and the costs of all experts and any other third parties who, at the request of any Party, shall have been instructed in the mediation, shall be for the sole account of, and shall be discharged by, that Party;

- (c) The mediation shall be conducted in Dublin, Ireland, at a venue agreed upon by the Parties and the mediator or, failing such agreement, at a venue selected by the mediator in his discretion;
- (d) The mediation shall commence not later than twenty (20) Working Days following a request for mediation being made in accordance with the provisions of Clause 100.3 above;
- (e) Decisions of the mediator shall in the absence of manifest error, be final and binding and not subject to appeal.

100.5 In the event that:

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

And, in any such case, the dispute or difference referred to in Clause 100.1 remains unresolved, the provisions of Clause 101 (Arbitration) shall apply as regards any such unresolved dispute or difference.

100.6

- (a) If a dispute or difference arises between the Parties that is not of a material technical nature nor relating to a material financial matter, the Parties may refer such dispute, by agreement in writing between the Parties, for final determination to the Expert (as hereinafter defined).
- (b) The expert for the purposes of this Clause 100 shall be an independent Party who has expertise in the area giving rise to the dispute (the “**Expert**”) appointed by agreement by the Parties or, in default of agreement on such appointment, on the application of either Party, by the President for the time being of the Law Society of Ireland or his duly appointed deputy, who shall carry out his functions in accordance with the following:
 - (i) in making a determination, the Expert shall act as an expert and not as an arbitrator and his decision shall (in the absence of manifest error (and the Expert shall give reasons for his determination)) be final and binding on the Parties;
 - (ii) the Expert shall afford both Parties a reasonable opportunity to be heard and to state their respective cases and to advance arguments or evidence in support of their respective positions;
 - (iii) each Party shall bear the costs and expenses of all counsel and other advisers, witnesses and employees retained by it and the costs and expenses of the Expert shall be borne by the Parties in the proportions the Expert may direct or, in the absence of direction, equally;

- (iv) subject to any rule of law or of any regulatory body or any provision of any contract or arrangement entered into prior to the date of this agreement to the contrary the Parties shall afford as soon as reasonably practicable upon request to the other and their respective agents and to the Expert all facilities and access to their respective premises, personal papers, books, accounts, records, returns and other documents as may be in their respective possession or under their respective control as may be required by the Expert to make his determination as soon as possible following his appointment;
- (v) work and activity to be carried out under this Agreement shall not cease or be delayed by this Dispute Resolution Procedure; and
- (vi) the Parties and the Expert shall treat as confidential all information obtained in relation to the reference to the Expert, the fact that a dispute has been referred to the Expert, its occurrence and the decision of the Expert arising therefrom.

101. Arbitration

101.1 Any dispute that is referred to in this Clause 101 shall be finally settled by arbitration in accordance with the UNCITRAL Model Law as provided for in the Arbitration (International Commercial) Act 1998.

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

102. Jurisdiction

Subject to the above provisions of Clause 99 (Amicable Dispute Settlement), Clause 100 (Mediation) and Clause 101 (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.

103. Agent for Service

If the Service Provider has notified the HSE of an agent for service of legal proceedings on the Service Provider, the Service Provider confirms to the HSE 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 Service Provider of receipt of a document will not invalidate any proceedings or the service of the document.

104. Obligations to continue during a Dispute

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

105. Confidentiality

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

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

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

Date

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

Date