

SERVICE LEVEL AGREEMENT

between

(1) [Practice Name]

and

(2) St Helens and Knowsley Health Informatics
Services

dated

(month) 2014

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BETWEEN:

- (1) [], of [] (the **Customer**); and
- (2) St Helens & Knowsley Health Informatics Service of 2nd Floor, Court Block Alexandra Park, Prescot Road, St Helens WA10 3TP (the **Service Provider**).

BACKGROUND:

- (A) This Service Level Agreement defines the key terms applicable to the provision of the eLloyd George service by the Service Provider to the Customer between [] 2013 and [] 20[18].
- (B) The Customer and the Service Provider have agreed that, in consideration of the Customer paying the Charges, the Service Provider will provide the Services to the Customer on the terms but subject to the conditions set out in this Agreement.

AGREED TERMS:

1. **DEFINITIONS, INTERPRETATION AND CONSTRUCTION**

1.1 **Definitions**

In this Agreement the following words and expressions shall mean:

Affected Party has the meaning given in clause 10.1;

Agreement Date means the date of this Agreement;

Authorised Recipient has the meaning given in clause 13.2;

Business Day means any day on which banks are generally open for business in the City of London (other than Saturdays, Sundays or public holidays) and the expression **Business Days** shall be construed accordingly;

CEDR means the Centre for Effective Dispute Resolution;

Charges means the fees set out in the Service Provider's Proposal;

Commencement Date means [] 2013;

Confidential Information has the meaning given in clause 13;

Contract Year means the period of 12 months commencing on the Commencement Date and each successive 12 month period thereafter and the expression **Contract Years** shall be construed accordingly;

Disclosing Party and **Receiving Party** have the meanings respectively given to such expressions in clause 13;

Dispute means any dispute, claim or difference arising out of or relating to this Agreement;

Dispute Resolution Procedure means the Dispute resolution procedure detailed in clause 9;

Force Majeure means any circumstances beyond the reasonable control of a party liable to perform including (a) any act of God (including lightning, storm, tempest, earthquake and naturally occurring floods); (b) any act of war, civil disturbance, riot or unrest or terrorism; (c) strikes, lock-outs, labour disputes or industrial disturbances (save where solely affecting one party or its or their respective sub-contractors); (d) malicious damage, fire or explosion (save where attributable to the breach or negligence of the Service Provider and provided that such malicious damage, fire or explosion could not have been prevented by the Service Provider acting in accordance with Good Industry Practice); (e) compliance with Law or a governmental order, rule, regulation or direction (including an order, rule, regulation or direction issued pursuant to the Civil Contingencies Act 2004); and (f) breakdown of plant or machinery (save where attributable to the breach or negligence of the Service Provider and the expression **Force Majeure Event** shall be construed accordingly;

Good Industry Practice means using standards, practices, methods and procedures conforming to the Law and exercising that standard of skill, care and diligence which would reasonably be expected of an appropriately qualified, skilled and experienced person in the provision of services similar in nature to the Services;

KPIs means the key performance indicators designed to measure the provision by the Service Provider of the Services set out in the Service Provider's Proposal and the word **KPI** shall be construed accordingly;

KPI Target means any of the KPI targets set out in the Service Provider's Proposal and the expression **KPI Targets** shall be construed accordingly;

Law means: (a) any Act of Parliament or the Welsh Assembly, any statutory instrument or other subordinate legislation of either parliament or any exercise of the Royal Prerogative; (b) any enforceable community right within the meaning of Section 2 of the European Communities Act 1972; (c) any applicable guidance direction or determination with which the Customer and/or the Service Provider (as the case may be) is bound to comply, to the extent that the same are published and publicly available; and (d) any applicable judgment of a relevant court of law which creates binding precedent on England and Wales, in each case, in force in England and Wales;

Material breach means any material breach of this Agreement which, to avoid doubt, includes a series of persistent breaches which cumulatively constitute a material breach of this Agreement;

Mediation Agency means CEDR (or such body or organisation that may supersede or replace CEDR from time to time)

Mediation Notice has the meaning given in clause 9.4.1;

Model Procedure means the standard mediation procedure (and standard mediation agreement) of the Mediation Agency (meaning, in the case of CEDR, its Model Mediation Procedure or any procedure that supersedes or replaces such procedure from time to time);

Nominated Representative means a representative nominated by each of the Customer and the Service Provider and notified to the other party to resolve Disputes between the parties and the expression **Nominated Representatives** shall be construed accordingly;

Party means a party to this Agreement and the word **parties** means all of the parties to this Agreement;

Schedule means the schedule to this Agreement;

Senior Representatives has the meaning given in clause 9.2;

Service Provider's Proposal means the Service provider's proposal version (version number) dated (date);

Services means the services detailed in the Service Provider's Proposal;

Services Intellectual Property Rights means any Intellectual Property rights created during and/or as a result of or in relation to the provision of the Services;

Term means the term of this Agreement;

Terminating Party has the meaning given in clause 11.1; and

VAT means value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994.

1.2 Interpretation and construction

- 1.2.1 All clause, paragraph and section headings and marginal notes and references to them in this Agreement are for identification and indexing purposes only. They shall be deemed not to be part of this Agreement and they shall not affect the construction or interpretation of this Agreement.
- 1.2.2 Where the context otherwise requires, words importing the singular meaning shall include the plural meaning and *vice versa* and words denoting the masculine gender shall include the feminine and neuter genders.
- 1.2.3 Where the context so admits, words denoting persons shall include natural persons, companies, corporations, firms, partnerships, limited liability partnerships, joint ventures, trusts, voluntary associations and other incorporated and/or unincorporated bodies or other entities (in each case, whether or not having separate legal personality) and all such words shall be construed interchangeably in that manner.
- 1.2.4 In this Agreement, a reference to a statutory provision includes a reference to the statutory provision as modified, re-enacted, amended, revised or extended from time to time before the Commencement Date (and any subordinate legislation made under the statutory provision) before the Commencement Date.
- 1.2.5 References in this Agreement to clauses and the Schedules are to be construed as references to the clauses of, and the Schedules to, this Agreement and references to this Agreement include the Schedules and the Schedules shall be deemed to have full force and effect as if set out in the main body of this Agreement.
- 1.2.6 References to any English legal term or concept (including those relating to any action, remedy, method or judicial proceeding, document, statute, court official, governmental authority or agency) shall in respect of any jurisdiction other than England be construed as references to the term or concept which most nearly corresponds to it in that jurisdiction.

1.2.7 In this Agreement, a reference to:

1.2.7.1 a paragraph in a Schedule without identifying the location of the paragraph shall be construed as references to such paragraph in that Schedule; and

1.2.7.2 this Agreement (or to any specified provision of this Agreement) or any other document shall be construed as references to this Agreement, that provision or that document as in force for the time being and as from time to time amended in accordance with the terms thereof, or, as the case may be, with the agreement of the relevant parties.

2. COMMENCEMENT AND TERM

2.1 This Agreement shall take effect on the Commencement Date and shall continue for a period of five Contract Years from the Commencement Date unless terminated earlier in accordance with clause 11 (the **Initial Term**).

2.2 This Agreement shall be capable of extension for not less than 12 months at the option of the Customer (a **Renewal Term**). The Customer shall give notice to the Service Provider not less than 3 months prior to expiry of the Initial Term or any Renewal Term either that:

2.2.1 the Customer wishes to renew this Agreement for a Renewal Term (a **Renewal Notice**); or

2.2.2 the Customer does not wish to renew this Agreement for a Renewal Term (a **Non Renewal Notice**).

2.3 Where the Customer has served a Renewal Notice, the Service Provider shall give notice to the Customer as soon as possible after receipt of the Renewal Notice either:

2.3.1 consenting to such extension; or

2.3.2 consenting to such extension on varied terms proposed by the Service Provider; or

2.3.3 refusing such extension.

If the Service Provider consents to the extension, then this Agreement shall continue for the Renewal Term on its then existing terms. If the Service Provider consents to such extension on varied terms and the Customer and the Service Provider agree to vary the terms of this Agreement, then this Agreement shall continue for the Renewal Term on the varied terms.

3. **NATURE AND SCOPE OF APPOINTMENT**

Subject to clauses 10 and 11, the Customer appoints the Service Provider to provide the Services to the Customer and the Service Provider agrees to provide the Services for the term in accordance with the terms, but subject to the conditions, of this Agreement.

4. **SERVICE PROVISION AND MANAGEMENT**

4.1 **Service provision**

4.1.1 The Service Provider shall provide the Services:

4.1.1.1 in accordance with the terms of this Agreement;

4.1.1.2 in accordance with the terms of the Service Provider's Proposal

4.1.1.3 in such manner as to achieve the KPI Targets;

4.1.1.4 with all due skill care and diligence using appropriately experienced, qualified and trained personnel;

4.1.1.5 in accordance with Good Industry Practice;

4.1.1.6 in compliance with Law (including the holding and maintaining of all necessary licences, authorisations and permissions in order to ensure compliance in all respects with its obligations under this Agreement);

4.1.1.7 using all reasonable endeavours to ensure that it does not do anything that may damage the name, reputation or goodwill of the Customer or its products, services or brands in any material respect; and in accordance with the Customer's reasonable instructions.

4.1.2 In the event of any conflict or inconsistency between any of the requirements set out in clauses 4.1.1.1 to 4.1.1.7 (inclusive), the Service Provider shall give the Customer notice to that effect and shall, as soon as practicable, discuss such conflict or inconsistency with the Customer. The parties shall seek to agree how the conflict or inconsistency is to be addressed and the impact (if any) on this Agreement.

5. PROVISION AND SECURITY OF DATA

- 5.1 Connectivity to the eLloyd George service will be provided through an approved NHS/Public Sector network.
- 5.2 The Customer agrees to provide patient demographic detail, including NHS number, to support the digitisation of the records and governance of the project.
- 5.3 Records to be scanned will be identified by the Customer by displaying a current NHS number and will be boxed for collection by the Customer using the secure boxes and security seals provided by the Service Provider, in accordance with the Process detailed in the Service Providers Proposal.
- 5.4 No records will be collected by the Service Provider unless contained in a box provided by the Service Provider.
- 5.5 A checklist of the contents of the boxes for collection will be made available to the driver to enable a sample of the contents to be checked and signed for prior to the securing of the boxes.
- 5.6 The Customer will remove disks/CTG and ECG traces contained within the records prior to collection.
- 5.7 The Customer will be wholly responsible for validation checks of a representative sample of scanned patient records against Lloyd George clinical content throughout the scanning process and will confirm acceptance of the scanned records in writing using the "Certificate of Satisfaction and Destruction" document provided by the Service Provider in the Implementation Pack, within ten days of receipt of the validation sample set.

- 5.8 The Customer will be wholly responsible for the destruction of the content of the representative sample of Lloyd George Envelopes returned to them for validation checks.
- 5.9 The “Certificate of Satisfaction and Destruction” document will also provide written authorisation to destroy the paper content of the scanned Lloyd George records after an agreed period of no more than four weeks following conclusion of the scanning process.
- 5.10 The Customer will be responsible for removal of scanned patient records from the eLloyd George Service for any patient subsequently leaving the practice list.
- 5.11 It is the responsibility of the practice to ensure that any transfers of data using electronic media, for any purpose, from the eLloyd George System, are encrypted prior to release of the data from the practice
- 5.12 Ongoing collections of records will be carried out from pre-arranged locations at up to three pre-arranged times per Contract Year.

6. **TIMESCALE**

- 6.1 The Service Provider will project manage, via telephone and e-mail, the roll out of the eLloyd George service and will agree a mutually convenient timescale with the Customer.
- 6.2 The Customer will obtain commitment from its stakeholders to participate in the project and to meet the agreed schedules.
- 6.3 The Customer must identify a nominated lead for the duration of the implementation phase to be the main point of contact and have decision making responsibilities.
- 6.4 The Service Provider will provide a practice specific implementation plan to be signed off by both parties prior to commencement which will include a detailed information and implementation pack.
- 6.5 Any deviation from the implementation plan must be agreed between the Customer, and the Service Provider and include a minimum of two weeks’ notice of change.
- 6.6 Should the agreed implementation timetable for the Customer be delayed on more than one occasion as a result of non-cooperation by the Customer, the delivery of service to that practice will be reprioritised.

- 6.7 Should the delay be incurred as a result of any fault of the Service provider, a remediation plan will be provided by the Service provider to mitigate that shortfall whilst not impacting on the overall project timescale.
- 6.8 The Service provider will work with the Customer, in order to seek resolution of any issues affecting delivery of the services.
- 6.9 The Service Provider will project manage the roll out of the eLloyd George service and will agree a mutually convenient timescale with the Customer.
- 6.10 The Customer will obtain commitment from its constituent practices to participate in the project and to meet the agreed schedules.
- 6.11 The Customer's constituent practices must identify a nominated lead for the duration of the implementation phase to be the main point of contact and have decision making responsibilities.
- 6.12 The Service Provider will provide a practice specific implementation plan to be signed off by both parties prior to commencement which will include a detailed information and implementation pack.
- 6.13 Any deviation from the implementation plan must be agreed between the Customer, the constituent practice, and the Service Provider and include a minimum of two weeks' notice of change.
- 6.14 Should the agreed implementation timetable for a constituent practice be delayed on more than one occasion as a result of non-cooperation by the constituent practice the delivery of service to that practice will be reprioritised.
- 6.15 Should the delay be incurred as a result of any fault of the Service provider, a remediation plan will be provided by the Service provider to mitigate that shortfall whilst not impacting on the overall project timescale.
- 6.16 The Service provider will inform the Customer in the event of a constituent practice being unable or unwilling to commit to a project plan, in order to seek resolution.

7. SYSTEM AVAILABILITY

- 7.1 Telephone Access to our service desk team will be during core business hours (9.00 am – 5.00 pm Mon-Fri excl Bank Holidays). Access outside of these hours will be by e-mail.
- 7.2 The Service Provider will not be held responsible for system non-availability if the fault lies with a third party supplier of the Customer or the N3 network.
- 7.3 The Customer must nominate two employees from each constituent practice who will report faults to the Service Providers service desk team, and who the service desk team will report back to upon resolution.

8. CHARGES AND PAYMENT

Charges

- 8.1 Charges are to be paid annually in advance with the first annual payment being due within 7 days of the Commencement Date. Subsequent annual payment will be made every 12 months thereafter, on the anniversary of the first payment.
- 8.2 Payment of the Charges shall be made in pounds sterling by direct bank transfer to such bank account as the Service Provider shall notify to the Customer from time to time within 30 days of receipt by the Customer of an invoice from the Service Provider.
- 8.3 A 5% tolerance increase will be acceptable in Practice List Size during the Initial Term, against the Practice List Size at the Agreement Date.
- 8.4 A charge equal to the Charge per record in the Service Providers Proposal will be incurred pro rata, per record over the 5% tolerance and shall be included the next annual invoice.
- 8.5 An annual assessment of record numbers and Practice List Size will be taken prior to each annual invoice being raised.
- 8.6 Any transfer to an alternate network provider by the Customer will incur a security and support surcharge commensurate with additional costs associated with that change and overall system availability will not be guaranteed.

- 8.7 In the event of the Customer's constituent practice moving to an alternate network/IT provider the Service Provider will not guarantee overall system availability, or be held responsible for any failures arising from the use of equipment or infrastructure not provided by the Service provider.
- 8.8 The financial forecast is inclusive of remote project management and implementation, initial and subsequent record collection, scanning and destruction, hosting, storage, system e-learning, and Help Desk support for the Contract Term..

Set-off

- 8.9 All payments to be made by any party under this Agreement shall be made in full, without any set-off, deduction or counterclaim whatsoever, and free and clear of any deductions or withholding, other than in respect of any matters which are the subject of a bona fide Dispute.

Disputed payments

- 8.10 If the payment of any amount is the subject of a bona fide Dispute then any undisputed element of that amount shall be paid and the disputed element shall be withheld by the paying party and shall be dealt with in accordance with the Dispute Resolution Procedure.

VAT

- 8.11 All sums referred to in this Agreement (including the Charges) are stated exclusive of VAT. Where applicable, the payer shall pay any VAT payable on the relevant sum to the payee at the rate and in the manner prescribed by Law from time to time.

Default interest

- 8.12 The parties shall pay interest on any amount payable by that party under this Agreement not paid on the due date and which is not the subject of a bona fide dispute, for the period from that date to the date of payment at the rate of four per cent. (4%) *per annum* above the base rate of the Bank of England from time to time. Such interest shall accrue on a daily basis and be compounded quarterly. The parties agree that this constitutes a substantial remedy in terms of the Late Payment of Commercial Debts (Interest) Act 1998.

9. DISPUTE RESOLUTION

- 9.1 All Disputes between the parties shall be referred to the Nominated Representatives for resolution.
- 9.2 If a Dispute cannot be resolved by the Nominated Representatives within a maximum of ten Business Days after it has been referred under clause 9.1, that Dispute shall be referred to:
- 9.2.1 the [] of the Service Provider; and
- 9.2.2 the [] of the Customer
- (together, the **Senior Representatives**) for resolution.
- 9.3 If a Dispute cannot be resolved by the Senior Representatives within a maximum of ten Business Days after it has been referred under clause 9.2, the parties shall attempt to settle the Dispute by referring the Dispute for mediation in accordance with clause 9.4.
- 9.4 Referral of a Dispute to mediation shall be carried out in accordance with the procedure set out in clauses 9.4.1 to 9.4.4 (inclusive).
- 9.4.1 To initiate a mediation, a party (acting by its Senior Representative) shall give notice (a **Mediation Notice**) to the other party of the Dispute addressed to the other party's Senior Representative requesting a mediation in accordance with this clause 9;
- 9.4.2 The party initiating the mediation shall refer the Dispute for mediation under the supervision of the Mediation Agency (simultaneously notifying the other party of such referral), in which case:
- 9.4.2.1 the mediator shall be a registered or panel mediator of the Mediation Agency appointed by the Mediation Agency; and
- 9.4.2.2 the procedure in the Model Procedure will (subject to amendment to take account of any relevant provisions in this Agreement or any other agreement which the parties may enter into in relation to the conduct of the mediation) apply.

- 9.4.3 Unless agreed otherwise, each party shall bear its own costs of a mediation.
- 9.4.4 Where the Dispute remains unsolved following mediation, or 60 days after the service of the Mediation Notice, the parties shall be free to commence proceedings in relation to the Dispute.
- 9.5 Work and activity to be carried out, and in particular the provision by the Service Provider of the Services, and compliance with all other obligations under this Agreement, shall (where possible) not cease or be delayed by the invocation of the Dispute Resolution Procedure.
- 9.6 The parties acknowledge that, notwithstanding the provisions of this clause 9, nothing in this Agreement shall prevent any party from bringing proceedings in any court of competent jurisdiction for any interim or interlocutory relief or to protect its assets or the Intellectual Property rights or Confidential Information of that party.

10. **FORCE MAJEURE**

- 10.1 If a party (the **Affected Party**) is prevented, hindered or delayed from or in performing any of its obligations under this Agreement (other than a payment obligation) by a Force Majeure Event:
- 10.1.1 as soon as reasonably possible after the start of the Force Majeure Event, the Affected Party shall notify the other party of the Force Majeure Event, the date on which the Force Majeure Event started, and the effects of the Force Majeure Event on its ability to perform its obligations under this Agreement;
- 10.1.2 the Affected Party shall not be deemed to be in breach of this Agreement, or otherwise be liable to the other party, by reason of any delay in performance, or non-performance, of any of its obligations under this Agreement to the extent that such delay or non-performance, is due to any Force Majeure Event of which it has notified the other party and the time for performance of that obligation shall be extended appropriately;

10.1.3 the Affected Party shall use all reasonable endeavours to mitigate the effects of the Force Majeure Event on the performance of its obligations under this Agreement; and

10.1.4 as soon as reasonably possible after the end of the Force Majeure Event, the Affected Party shall notify the other party that the Force Majeure Event has ended and shall resume performance of its obligations under this Agreement.

10.2 Either the Customer or the Service Provider shall be entitled to terminate this Agreement forthwith if the effect of any Force Majeure Event in relation to the provision of the Services which has been notified to the other party in terms of clause 10.1 continues for a period greater than three months. No party shall have any liability to the other party in respect of termination of this Agreement due to a Force Majeure Event, but rights and liabilities which have accrued prior to termination shall subsist.

10.3 Upon the occurrence of a Force Majeure Event affecting the Service Provider, the Customer may (without prejudice to any of its other rights, including the right subsequently to terminate this Agreement) make such arrangements as it considers appropriate or desirable in its absolute discretion for the continued provision of the Services including from any third party appointed by the Customer, during the continuance of the Force Majeure Event. Where the Customer requests assistance from the Service Provider in relation to such arrangements (and they are not costed for and payable in terms of this Agreement) the Customer agrees to meet the additional costs reasonably and properly incurred by the Service Provider in providing such assistance.

11. TERMINATION

11.1 The Service Provider may terminate this Agreement with immediate effect by notice to the Customer if:

11.1.1 the Customer is in material breach of an obligation under this Agreement and, if the breach is capable of remedy, the Customer has failed to remedy such breach within a period of 30 days after being given notice by the Terminating Party to remedy the breach (such notice specifying the remedial action that the Terminating Party requires the Defaulting Party to take);

11.1.2 if the Customer has failed to pay by the due date any sum due and payable by it to the Service Provider under this Agreement and which is not the subject of a Dispute and such non-payment continues unremedied at the expiry of a period of 30 days following notification by the Service Provider of such non-payment by the Customer.

11.1.3 it has the right to terminate this Agreement in accordance with the provisions of clause 10.2;

11.1.4 the Customer ceases to carry on the whole or a substantial part of its business;

11.2 Without prejudice to clause 11.1, the Customer may terminate this Agreement with immediate effect by notice to the Service Provider if the Service Provider:

11.2.1 has failed to achieve all KPI Targets for 12 consecutive months (such failure not being the result of any breach by the Customer of the provisions of this Agreement).

12. CONSEQUENCES OF TERMINATION OR EXPIRY

12.1 If this Agreement is terminated due to a breach by the Service Provider then financial compensation amounting to no more than 30% of the current Contract Years' annual fee will be refunded to the Customer.

12.2 Upon the expiry or termination of this Agreement for any other reason, the Customer shall (subject to clause 8.10) pay to the Service Provider all arrears and any other sums due to the Service Provider under this Agreement within 30 days of the date of expiry or termination.

12.3 Should the Customer terminate this Agreement for any reason the Service Provider shall:

12.3.1 return the scanned clinical information to the Customer on the appropriate electronic media at a cost of £750.

12.4 Termination of this Agreement shall be without prejudice to the accrued rights and liabilities of the parties and shall not affect any continuing obligations of the parties under this Agreement. Without prejudice to that generality, the provisions of clauses 1, 5, 8, 9, 12.3, 13, 0, and 15 shall survive the termination of this Agreement for any reason, or the expiry of this Agreement.

13. CONFIDENTIAL INFORMATION

In this clause 13, **Confidential Information** means all information disclosed (whether in writing, orally or by another means and whether directly or indirectly) by a party (the **Disclosing Party**) to the other party (the **Receiving Party**) whether before or after the Agreement Date including information relating to the Disclosing Party's products, operations, processes, plans or intentions, product information, know-how, trade secrets and other Intellectual Property, market opportunities, business affairs, financial information and other confidential information.

13.1 During the term and after expiry or termination of this Agreement for any reason, the Receiving Party:

13.1.1 may not use Confidential Information for any purpose other than the performance of its obligations under this Agreement;

13.1.2 may not disclose Confidential Information to a person except with the prior written consent of the Disclosing Party or in accordance with clauses 13.2 and 13.3; and

13.1.3 shall make every effort to prevent the use or disclosure of Confidential Information, including by restricting access to Confidential Information.

13.2 During the term, the Receiving Party may disclose Confidential Information to any of its directors, other officers and employees (each an **Authorised Recipient**), to the extent that disclosure is necessary for the purposes of this Agreement.

13.3 Before disclosure of Confidential Information to an Authorised Recipient, the Receiving Party shall ensure that the Authorised Recipient executes a confidentiality agreement in favour of the Disclosing Party in a form approved by the Disclosing Party. The Receiving Party shall ensure that the Authorised Recipient at all times complies with the confidentiality agreement.

13.4 Clauses 13.1 to 13.3 do not apply to Confidential Information which:

13.4.1 is, at the Agreement Date, or at any time after that date becomes, publicly known other than by the Receiving Party's or Authorised Recipient's breach of this Agreement;

13.4.2 can be shown by the Receiving Party to the Disclosing Party's satisfaction to have been known by the Receiving Party before disclosure by the Disclosing Party to the Receiving Party; or

13.4.3 is required to be disclosed by Law or a court of competent jurisdiction.

14. COSTS

Each party shall pay its own costs relating to the negotiation, preparation, execution and implementation by it of this Agreement and of each document referred to in it.

15. GENERAL

15.1 Entire agreement

Unless otherwise stated in this Agreement, this Agreement constitutes the entire understanding between the parties in relation to its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement. No party has relied on any warranty or representation except as expressly set out in this Agreement.

15.2 Variation and waiver

15.2.1 No variation of this Agreement shall be valid and effective unless it is in writing and signed by each of the parties or by a duly authorised representative on behalf of each party.

15.2.2 The failure by a party to exercise or the delay by a party in exercising any right, power or remedy provided by this Agreement or by law does not constitute a waiver of such right, power or remedy or a waiver of any other rights, powers or remedies. Any waiver by one party of the obligations of another party under this Agreement shall be in writing, signed by the party giving the waiver and shall not affect obligations of any party not specified in such waiver. No single or partial exercise of a right, power or remedy provided by this Agreement shall prevent any further exercise of the right, power or remedy or the exercise of another right, power or remedy.

15.3 Severance

15.3.1 If any provision of this Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

15.3.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

15.4 **Nature of rights**

Except where this Agreement provides otherwise, the rights and remedies contained in this Agreement are cumulative and not exclusive of any rights or remedies provided by Law.

16. **TRANSFER OF RIGHTS AND OBLIGATIONS**

Each party is entering into this Agreement for its benefit and not for the benefit of another person. A party may not assign or transfer or purport to assign or transfer a right or obligation under this Agreement without having first obtained the other party's written consent.

17. **NOTICES**

17.1 A notice or other communication under or in connection with this Agreement shall be in writing (not including e-mail) in the English language and shall be delivered personally or sent by first class pre-paid post or by facsimile transmission to the party due to receive the notice or other communication, at its address or to the facsimile number set out in clause 17.2 or to such other address or facsimile number as a party may have notified to the other party by not less than five Business Days' prior notice. In the absence of evidence of earlier receipt, service of a notice or other communication is deemed to have been effected as follows:

17.1.1 if delivered personally, at the time when left at the address referred to in clause 17.2;

17.1.2 if sent by first class prepaid post, on the second Business Day after it is put in the post; and

17.1.3 if sent by facsimile transmission, at the time of transmission or, if the time of transmission is outside normal working hours (which shall be deemed to be 9.00 a.m. to 5.00 p.m. GMT on a Business Day), at 9.00 a.m. GMT upon the next Business Day.

17.2 For the purposes of clause 17.1:

17.2.1 the Supplier's details are as follows:

Address: ◆
Facsimile No: +44 (0) ◆
Attention: ◆

17.2.2 the Distributor's details are as follows:

Address: ◆
Facsimile No: +44 (0) ◆
Attention: ◆

17.3 In proving service under this clause 17, it shall be sufficient to prove that personal delivery was made, or as the case may be, that the letter was properly addressed and posted or, as the case may be, the facsimile transmission was properly addressed and despatched and that the sender shall have received a transmission report confirming continuous uninterrupted transmission of the facsimile notice or communication.

18. THIRD PARTY RIGHTS

Nothing in this Agreement is intended to confer on any person any right to enforce any term of this Agreement which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

19. GOVERNING LAW AND JURISDICTION

19.1 This Agreement is governed by, and shall be construed in accordance with, English law. The courts of England and Wales have exclusive jurisdiction to hear and decide any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with this Agreement and, for these purposes, each party irrevocably submits to the jurisdiction of the courts of England and Wales.

19.2 Each party irrevocably waives any objection which it might at any time have to the courts of England being nominated as the forum to hear and decide any proceedings and to settle any disputes and agrees not to claim that the courts of England are not a convenient or appropriate forum.

20. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts each of which when executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

[EXECUTED by)
[)
acting by:)

Signature of authorised signatory
Name of director authorised signatory

EXECUTED by)
ST HELENS AND KNOWSLEY HEALTH)
INFORMATICS SERVICES)
acting by:)

Signature of authorised signatory
Name of authorised signatory