



Health Shared Services BC

A division of the Provincial Health Services Authority

**RFP Number &
Name:**

**BC HA SSO-00432 RFPQ
Strategic Transformation for Clinical Information Systems (CIS)**

Closing Date:

Friday September 16, 2011 – 12:00 PM PST

Opening Committee:

Jeff Thom
Senior Material Resources Analyst
Category Management IT

Susan Leroux
Tender Control Administrator
Category Management Capital

Signatures:

This notice acknowledges the receipt and bid opening.

Vendor	Date and Time Rcv'd	Bid Opening Date & Time	Meets Mandatory Criteria
Accenture	16 Sept 11 9:57 a.m.	09-16-11P12:56 RCVD	
Cerner Corporation	14 Sept 11 9:40 a.m.	09-16-11P12:58 RCVD	
CGI Information Systems & Management Consultants Inc.	16 Sept 11 10:49 a.m.	09-16-11P12:59 RCVD	
Hewlett-Packard (Canada) Co.	16 Sept 11 9:39 a.m.	09-16-11P01:01 RCVD	
IBM Canada Ltd.	16 Sept 11 9:44 a.m.	09-16-11P01:03 RCVD	
Trinity Health	16 Sept 11 9:33 a.m.	09-16-11P01:02 RCVD	

REQUEST FOR PROPOSALS

FOR

STRATEGIC TRANSFORMATION FOR CLINICAL INFORMATION SYSTEMS

RFP NUMBER: HSSBC-00578

RFP ISSUE: February 15, 2012

PROPOSERS' MEETING
REGISTRATION: February 21, 2012

PROPOSERS' MEETING: February 28, 2012

PROPOSERS' RFP QUESTION
DEADLINE: March 21, 2012

RFP CLOSING: April 3, 2012 at 12:00 Noon Pacific Time

**PLEASE ENSURE THAT EACH PROPOSAL CONTAINS AN AUTHORISED
SIGNATURE(S) AT APPENDIX B**

AUTHORIZED CONTACT: Jeff Thom, Team Lead, Category Management IMIT
Email Address: Jeff.Thom@hssbc.ca

APPROVED BY: Frank Hale for Health Shared Services BC

**ALL INQUIRIES MUST BE SUBMITTED TO THE AUTHORIZED CONTACT USING
THE SECURE DATA ROOM**

REQUEST FOR PROPOSALS

1 General

- 1.1 HSSBC is issuing this directed Request for Proposal (“**RFP**”) to retain a service provider to provide goods and services (“**Managed Services**”) described in the RFP Data Sheet attached as Appendix A to this RFP for Provincial Health Services Authority, Vancouver Coastal Health Authority and Providence Health Care Society (each a “**Health Organization**”, collectively “**Health Organizations**”). The RFP number (“**RFP Number**”) and RFP name (“**RFP Name**”) is set out in the RFP Data Sheet attached as Appendix A to this RFP..
- 1.2 HSSBC intends to award the agreement through an open , fair and competitive RFP process. The RFP competition will be open to only those entities that prequalified to submit a response to the RFP pursuant to the Request for Prequalification (HSSBC-00432) issued on August 8, 2011 (“**RFPQ**”) as specified in the RFP Data Sheet.
- 1.3 The entities or joint ventures listed in the RFP Data Sheet have been prequalified (the “**Prequalified Parties**”) under the RFPQ and are invited to submit a proposal (the “**Proposal**”) in response to this RFP. In this RFP, individuals or firms that submit documents in response to this RFP are referred to as “**Proponents**” and each team member, if any, constituting a Proponent’s team is referred to as a “**Proponent Team Member**”. The entity or entities that are selected to be awarded the work are referred to as “**Successful Proponent(s)**”. For ease of reference, prospective respondents, whether or not they submit a response to this RFP, are also referred to as “**Proponents**”.
- 1.4 The process (“**RFP Process**”) to select a service provider for the purposes of the Managed Services will commence with the issuance of these RFP Documents and will terminate when HSSBC and the Successful Proponent enter into the Final Agreement.

2 Request for Proposals Documents

- 2.1 The Request for Proposals documents (the “**RFP Documents**”) are:
 - (a) this Request for Proposals;
 - (b) Appendix A – RFP Data Sheet, including any Exhibits;
 - (c) Appendix B – Proposal Submission Form, including any Exhibits;
 - (d) Appendix C – Executive Summary;
 - (e) Appendix D – Managed Services Submission, including any Exhibits;
 - (f) Appendix E – Risk Management Submission
 - (g) Appendix F – Economic Model and Pricing Submission including any Exhibits;

- (h) Appendix G – Draft Services Agreement (including all related schedules, exhibits and statements of work) (the “**Draft Services Agreement**”), including Exhibit G-1;
- (i) Appendix H – Secure Data Room Documents List; and
- (j) Addenda to the RFP Documents, if any.

2.2 The RFP Documents shall be read as a whole. The Appendices and Addenda, if any, constitute an integral part of this RFP and are incorporated by reference.

2.3 HSSBC will open a secure data room (“**Secure Data Room**”) where Proponents will find supplemental information about the Managed Services and copies of the RFP Documents, Addenda, Notices and Response to Questions Document. The universal resource locator (“**URL**”) for the Secure Data Room will be sent to the Proponent’s contact (“**Proponent’s Contact**”) identified in the Proponent’s Prequalification Submission after the Proponent’s Contact completes, signs and returns the Receipt Confirmation Form and the non-disclosure agreement (“**NDA**”) attached to the letter sent to the Proponent’s Contact by the “**Authorized Contact**” identified in the letter and in the RFP Data Sheet. Proponent’s Contact and any other individual from the Proponent’s or a Proponent Team Member’s organization that will require access to the documents contained in the Secure Data Room must sign a NDA and return the NDA to the Authorized Contact prior to receiving the password or accessing the information stored in the Secure Data Room. **Note: Reference to a document number in an Appendix or an Exhibit is a reference to a document in the Secure Data Room. A list of the documents in the Secure Data Room is found in Appendix H.**

2.4 Priority of Documents

- 2.4.1 Except as provided in RFP Section 2.4.2, if there are any inconsistencies between the terms, conditions and provisions of the RFP Documents, the RFP shall prevail over the Appendices to the RFP during the RFP Process.
- 2.4.2 If there is a conflict between the RFP and the RFP Data Sheet, the information in the RFP Data Sheet shall prevail over the RFP.

2.5 Distribution of Documents – Electronic Distribution

- 2.5.1 HSSBC will use the Secure Data Room to distribute all RFP Documents and supplemental information.
- 2.5.2 Each Proponent is solely responsible for making appropriate arrangements to access the RFP Documents and supplemental information through the Secure Data Room.

2.6 Information Provided by HSSBC

- 2.6.1 Each Proponent is solely responsible for conducting its own independent research, due diligence, and any other work or investigations and seeking any other independent advice necessary for the preparation of Proposals, negotiation or finalization of the Draft Agreement, and the subsequent delivery of all the Managed Services to be provided by the Successful Proponent. Nothing in the RFP Documents or in the Secure Data Room is intended to relieve the Proponents from forming their own opinions and conclusions with respect to the matters addressed in this RFP.

- 2.6.2 No guarantee, representation or warranty, express or implied, is made and no responsibility of any kind is accepted by HSSBC or its representatives for the completeness or accuracy of any information presented in the RFP Documents or the Secure Data Room during the RFP Process or during the term of the Final Agreement. HSSBC and its representatives shall not be liable to any person or entity as a result of the use of any information contained in the RFP Documents or in the Secure Data Room or otherwise provided by HSSBC or its representatives during the RFP Process or during the term of the Final Agreement.

3 THE RFP PROCESS

3.1 RFP Timetable

- 3.1.1 The deadline for the submission of Proposals (the “**RFP Closing**”) and other dates for the RFP Process are set out in the RFP Timetable (the “**RFP Timetable**”) included in the RFP Data Sheet. Where there is an inconsistency in a date appearing on the cover page of the RFP and a date in the RFP Timetable, the date in the RFP Timetable will prevail.
- 3.1.2 HSSBC may, without liability, cost or penalty and in its sole discretion amend the RFP Timetable,
- (a) for matters that are to take place on or before the RFP Closing, at any time prior to the RFP Closing; and
 - (b) for matters that are to take place after the RFP Closing, at any time during the RFP Process.
- 3.1.3 If HSSBC extends the RFP Closing, all obligations of Proponents will thereafter be subject to the extended deadline.

3.2 Questions and Communications Related to the RFP Documents

- 3.2.1 Proponents shall submit all questions and other communications regarding the RFP Documents and the RFP Process to the Authorized Contact using the Secure Data Room no later than the deadline for submission of questions (“**Proponents’ RFP Question Deadline**”) set out in the RFP Data Sheet. Questions should be submitted using the Response to Questions Document attached as Exhibit A-2 to Appendix A. Questions involving proprietary information are to be submitted in a separate Response to Questions Document. The words “Proprietary Information” should be entered in capital letters at the top of the Response to Questions Document containing proprietary information. If HSSBC determines that information identified as proprietary by the Proponent is not in fact proprietary, HSSBC will notify the Proponent and the Proponent will have the opportunity to withdraw the question.
- 3.2.2 HSSBC will provide the Proponents with written responses to questions that are submitted in accordance with this RFP Section 3.2 in a “**Response to Questions Document**”. HSSBC will post the Response to Questions Document in the Secure Data Room. Questions posted to the Secure Data Room prior to the Proponents’ RFP Question Deadline will be answered on the Friday of the week they are posted if received in the Secure Data Room prior to 3:00 p.m. on the Wednesday of that week. For clarity, questions posted prior to 3:00 p.m. Wednesday March 7 will be answered on Friday March 9.

- 3.2.3 The Response to Questions Document is not an RFP Document and does not amend the RFP Documents.
- 3.2.4 HSSBC will not attribute the questions in the Response to Questions Document to any person or entity. HSSBC may, in its sole discretion,
- (a) answer similar questions from various Proponents only once;
 - (b) edit the language of the questions for the purpose of clarity;
 - (c) determine whether a submitted question does in fact contain proprietary information;
 - (d) respond to questions containing proprietary information only to the Proponent submitting the proprietary information;
 - (e) respond to questions submitted after the RFP Question Deadline if HSSBC believes that such responses would be of assistance to the Proponents generally; and
 - (f) exclude submitted questions if they are ambiguous or incomprehensible.
- 3.2.5 It is each Proponent's responsibility to seek clarification from HSSBC of any matter it considers to be unclear in the RFP Documents and the Proponent may seek clarification in accordance with this RFP Section 3.2. None of HSSBC nor the Health Organizations shall be responsible for any misunderstanding by a Proponent of the RFP Documents, the RFP Process or the Managed Services.
- 3.2.6 HSSBC may, in its sole discretion, post notices ("**Notices**") to the Secure Data Room for the purpose of communicating to Proponents on issues of importance to the RFP Process.

3.3 Addenda/Changes to the RFP Documents

- 3.3.1 HSSBC may, in its sole discretion, amend or supplement the RFP Documents prior to the RFP Closing. HSSBC shall issue changes to the RFP Documents by Addenda only. No other statement, Response to Questions Document or Notice, whether oral or written, made by HSSBC or any HSSBC advisors, employees or representatives, including, for clarity, the Authorized Contact, or any other person, shall amend the RFP Documents. HSSBC may issue Addenda at any time. Addenda will be posted in the Secure Data Room.
- 3.3.2 Each Proponent is solely responsible for ensuring that it has received all Addenda issued by HSSBC. Proponents may, in writing, seek confirmation of the number of Addenda issued under this RFP from the Authorized Contact.

3.4 Proponents' Meeting

- 3.4.1 To assist Proponents in understanding the RFP and the RFP Process, HSSBC may conduct an information meeting (the "**Proponents' Meeting**") for all Proponents. Whether or not HSSBC will conduct a Proponents' Meeting is set out in the RFP Data Sheet. If HSSBC is conducting a Proponents' Meeting, the meeting will be held on the

date and at the time set out in the RFP Timetable and at the location set out in the RFP Data Sheet.

- 3.4.2 Attendance by Proponents at a Proponents' Meeting is not mandatory but, if one is held, Proponents are strongly encouraged to attend.
- 3.4.3 If HSSBC gives oral answers to questions at the Proponents' Meeting, these answers will not be considered final unless they are provided in response to written questions submitted by Proponents in accordance with RFP Section 3.3, which responses will be included in the Response to Questions Document.
- 3.4.4 If pre-registration for the Proponents' meeting is necessary, the deadline for registration ("**Proponents' Meeting Registration Deadline**") will be set out in the RFP Timetable and details regarding the registration process will be set out in the RFP Data Sheet.

3.5 Prohibited Contacts

- 3.5.1 Proponents and Proponent Team Members and their respective advisors, employees and representatives are prohibited from engaging in any form of political or other lobbying, of any kind whatsoever, to influence the outcome of the RFP Process.
- 3.5.2 Without limiting the generality of RFP Section 3.5.1 and without restricting a Party's ability to conduct business not directly related to the RFP Process, neither Proponents nor Proponent Team Members nor any of their respective advisors, employees or representatives shall contact or attempt to contact, either directly or indirectly, at any time during the RFP Process, any of the following persons or organizations on matters related to the RFP Process, the RFP Documents, or their Proposals:
 - (a) any member of the Evaluation Team;
 - (b) any advisor to HSSBC or the Evaluation Team;
 - (c) any employee or representative of,
 - (i) HSSBC;
 - (ii) Health Organizations; or
 - (iii) any other Health Authority.
 - (d) any consultant engaged by IMITS or Tech Services at HSSBC, Health Organizations or Health Authorities within British Columbia; or
 - (e) any directors, officers, employees, agents, representatives or consultants of any entity listed in RFP Sections 3.5.2(a) to 3.5.2(e) above.
- 3.5.3 If a Proponent or a Proponent Team Member or any of their respective advisors, employees or representatives, in the opinion of HSSBC, contravenes RFP Section 3.5.2, HSSBC may, in its sole discretion,
 - (a) take any action in accordance with RFP Section 7.2; or

- (b) impose conditions on the Proponent's or Proponent Team Member's continued participation in the RFP Process that HSSBC considers, in its sole discretion, to be appropriate.

For clarity, HSSBC is not obliged to take the actions set out in this RFP Section 3.5.3.

3.6 Media Releases, Public Disclosures, Public Announcements and Copyright

- 3.6.1 A Proponent shall not, and shall ensure that its Proponent Team Members, advisors, employees and representatives do not, issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, Internet or any other medium) that relates to the RFP Process, the RFP Documents or the Managed Services or any matters related thereto, without the prior written consent of HSSBC.
- 3.6.2 Neither the Proponents, the Proponent Team Members or any of their respective advisors, employees or representatives shall make any public comment, respond to questions in a public forum, or carry out any activities to either criticize another Proponent or Proposal or to publicly promote or advertise their own qualifications, interest in or participation in the RFP Process without HSSBC's prior written consent, which consent may be withheld, conditioned or delayed in HSSBC's sole discretion. Proponents, Proponent Team Members and their respective advisors, employees and representatives are permitted to state publicly that they are participating in the RFP Process, but shall not make formal public announcements identifying other Proponents without the prior written consent of HSSBC.
- 3.6.3 Proponents shall not use the name of HSSBC, a Health Organization or a Health Authority or any of HSSBC's, Health Organization's or a Health Authority's logos, designs, colours or registered trademarks and names used, owned or registered by HSSBC, a Health Organization or a Health Authority, except with the prior written consent of HSSBC.

3.7 Confidentiality and Disclosure Issues – Proponent Information

- 3.7.1 Proponent acknowledges that HSSBC, Health Organizations and Health Authorities are public bodies, and all information or materials supplied to or obtained or created by the Proponent are subject to the provisions of the *Freedom of Information and Protection of Privacy Act* (British Columbia) as amended from time to time ("**FIPPA**") including orders and decisions made by the Office of the Information & Privacy Commissioner for British Columbia. The Proponent acknowledges and agrees that HSSBC, a Health Organization or a Health Authority may be required to disclose the terms of the Final Agreement and the Proponent's Proposal and any other information supplied in connection with or relating to the Final Agreement to the public in order to comply with Applicable Law and existing and future orders and decisions of the Office of the Information & Privacy Commissioner. The Proponent will to the extent required by Applicable Law, at all times hold, safeguard, use, disclose, document and manage personal information and all other information and records in accordance with Applicable Law including FIPPA, the policies of HSSBC, Health Organizations and Health Authorities and the provisions of the Privacy Schedule in the Draft Agreement attached to this RFP. Notwithstanding the generality of the foregoing, the Proponent acknowledges and agrees that HSSBC, a Health Organization or a Health Authority may, at its option, proactively disclose the terms of the Final Agreement to the public.

- 3.7.2 The Proponent agrees that HSSBC may disclose Proposals to members of the Evaluation Team and their advisors and HSSBC may,
- (a) make copies of the Proposal; and
 - (b) retain the Proposal.
- 3.7.3 HSSBC may disclose any information with respect to the Proponents, the Proponent Team Members, the Proposals and the RFP Process as required by the Applicable Law.
- 3.7.4 The Proponent shall not require HSSBC and Health Organizations or any of their representatives to sign a confidentiality agreement in respect of any step taken or information provided as part of this RFP Process.

3.8 HSSBC Confidentiality Issues

- 3.8.1 In this RFP, “**RFP Information**” shall mean all material, data, information or any item in any form, whether oral or written, including in electronic or hard-copy format, supplied by, obtained from or otherwise procured in any way, whether before or after the RFP Process, from HSSBC, Health Organizations, or Health Authorities in connection with the RFP Documents, or the Managed Services, except it does not include any item which,
- (a) is or becomes generally available to the public other than as a result of a disclosure resulting from a breach of this RFP Section 3.8;
 - (b) becomes available to the Proponent on a non-confidential basis from a source other than HSSBC, Health Organizations or Health Authorities so long as that source is not bound by a confidentiality agreement with respect to the information or otherwise prohibited from transmitting the information to the Proponent by a contractual, legal or fiduciary obligation; or
 - (c) the Proponent is able to demonstrate was known to it on a non-confidential basis before it was disclosed to the Proponent by HSSBC.
- 3.8.2 RFP Information,
- (a) shall remain the sole property of HSSBC, a Health Organization or a Health Authority and the Proponent shall maintain the confidentiality of such information except as required by Applicable Law;
 - (b) shall not be used by the Proponent for any purpose other than submitting a Proposal or performing obligations under any subsequent agreement with HSSBC relating to the Managed Services;
 - (c) shall not be disclosed by the Proponent to any person who is not involved in the Proponent’s preparation of its Proposal or in the performance of any subsequent agreement relating to HSSBC, a Health Organization or a Health Authority, as applicable, without prior written authorization from HSSBC;
 - (d) shall not be used in any way detrimental to HSSBC, a Health Organization or a Health Authority; and

- (e) if requested by HSSBC, shall be returned to the Authorized Contact or destroyed no later than ten (10) calendar days after such request is received in writing by the Proponent.
- 3.8.3 Each Proponent shall be responsible for any breach of the provisions of this RFP Section 3.8 by any person to whom it discloses the RFP Information.
- 3.8.4 Each Proponent acknowledges and agrees that a breach of the provisions of this RFP Section 3.8 would cause HSSBC, a Health Organization or a Health Authority and/or their related entities to suffer loss which could not be adequately compensated by damages, and that HSSBC, a Health Organization or a Health Authority and/or any related entity may, in addition to any other remedy or relief, enforce any of the provisions of this RFP Section 3.8 upon application to a court of competent jurisdiction without proof of actual damage to HSSBC, a Health Organization, a Health Authority or any related entity.
- 3.8.5 Notwithstanding RFP Section 10, the provisions of this RFP Section 3.8 shall be binding and shall survive any cancellation of this RFP and the conclusion of the RFP Process.
- 3.8.6 HSSBC may, in its sole discretion, require that Proponents execute legally binding confidentiality agreements, in a form and substance satisfactory to HSSBC.

3.9 Applicable Law and Attornment

- 3.9.1 This RFP and any agreement entered into pursuant to the RFP Process (the “**Final Agreement**”) shall be governed and construed in accordance with the laws of British Columbia and the applicable laws of Canada (the “**Applicable Law**”).
- 3.9.2 The Proponent agrees that,
 - (a) any action or proceeding relating to this RFP Process shall be brought in any court of competent jurisdiction in the Province of British Columbia and for that purpose each Party irrevocably and unconditionally attorns and submits to the jurisdiction of that British Columbia court;
 - (b) it irrevocably waives any right to and will not oppose any British Columbia action or proceeding relating to this RFP Process on any jurisdictional basis, including forum non conveniens; and
 - (c) it will not oppose the enforcement against it, in any other jurisdiction, of any judgement or order duly obtained from an British Columbia court as contemplated by this RFP Section 3.9.2(b).

3.10 Licences and Permits

- 3.10.1 If a Proponent is required by the Applicable Law to hold or obtain a licence, permit, consent or authorization to carry on an activity contemplated in its Proposal, neither acceptance of the Proposal nor execution of the Final Agreement shall be considered to be approval by HSSBC of carrying on such activity without the requisite licence, permit, consent or authorization.

3.11 Entities Permitted to Submit Proposals

- 3.11.1 A prequalification process preceded this RFP Process and, subject to RFP Section 1.3, only the Prequalified Parties are eligible to participate in this RFP Process. The prequalification documents submitted by each Prequalified Party in the prequalification process that preceded this RFP Process are referred to as a Prequalified Party's **"Prequalification Submission"**.
- 3.11.2 Each **"Joint Venture Proponent"** shall submit, as part of its Proposal, a written commitment, in the form of a letter duly executed by a responsible officer of each **"Joint Venture Participant"** that,
- (a) confirms each Joint Venture Participant's commitment to the joint venture and acceptance of the joint venture arrangements described in the Proposal in accordance with this RFP Section 3.11;
 - (b) confirms each Joint Venture Participant's willingness to provide a joint and several guarantee to HSSBC to underwrite the performance of the joint venture in respect of the Final Agreement; and
 - (c) identifies which Joint Venture Participant,
 - (i) will assume the leading role on behalf of the other Joint Venture Participants; and
 - (ii) will have the authority to bind or commit all Joint Venture Participants (the **"Participant in Charge"**).
 - (d) Each Joint Venture Participant shall demonstrate its authorization of the Participant in Charge by submitting a power of attorney signed by legally authorized signatories.
 - (e) If a Final Agreement is executed between HSSBC and a Joint Venture Proponent, the parent companies of the entities forming the Joint Venture Proponent shall jointly and severally guarantee the obligations of the Joint Venture Proponent under the Final Agreement. HSSBC may, in its sole discretion, also require parent companies of the entities forming the Joint Venture Proponent to be parties to the Final Agreement.

3.12 Proponents' Costs

- 3.12.1 The Proponent shall bear all costs and expenses incurred by the Proponent relating to any aspect of its participation in this RFP Process, including, without limitation, all costs and expenses related to the Proponent's involvement in,
- (a) the preparation, presentation and submission of its Proposal;
 - (b) due diligence and information gathering processes;
 - (c) attendance at any interviews or Proponents' Meeting(s);
 - (d) attendance at any site visits;

- (e) preparation of any prototypes or proof of concept demonstrations;
- (f) preparation of responses to questions or requests for clarification from HSSBC;
- (g) preparation of the Proponent's own questions during the clarification process; and
- (h) any discussion or negotiations with HSSBC regarding the Draft Agreement.

3.12.2 In no event shall HSSBC, Health Organizations, Health Authorities or any related entity be liable to pay any costs or expenses or to reimburse or compensate a Proponent under any circumstances, regardless of the conduct or outcome of the RFP Process.

3.13 Delay and Costs of Delay

3.13.1 The Proponent shall not hold HSSBC, Health Organizations, Health Authorities or any related entity liable for any error or omission in any part of the RFP Documents or RFP Information or for any delay or costs associated with delays in the RFP Process.

3.14 Clarification and Verification of Proponent's Proposal

3.14.1 HSSBC may,

- (a) require the Proponent to clarify the contents of its Proposal;
- (b) require the Proponent to submit supplementary documentation clarifying any matters contained in its Proposal; and
- (c) seek a Proponent's acknowledgement of an HSSBC interpretation of the Proponent's Proposal.

3.14.2 HSSBC is not obliged to seek clarification or verification of any aspect of a Proposal or any statement by a Proponent, including an ambiguity in a Proposal or in a statement made by a Proponent.

3.14.3 Any written information received by HSSBC from a Proponent pursuant to a request for clarification or verification from HSSBC as part of the RFP Process may, in HSSBC's discretion, be considered as an integral part of the Proposal.

3.14.4 HSSBC may, in its sole discretion, verify or clarify any statement or claim contained in any Proposal or made subsequently in any interview, presentation, or discussion. That verification or clarification may be made by whatever means that HSSBC deems appropriate and may include contacting the persons identified in the contact information provided by the Proponent and, in addition, contacting persons or entities other than those identified by any Proponent.

3.14.5 In submitting a Proposal, the Proponent is deemed to consent to HSSBC verifying or clarifying any information and requesting additional information from third parties regarding the Proponent, the Proponent Team Members (if any) and their respective directors, officers, shareholders or owners and any other person associated with the Proponent as HSSBC may determine.

- 3.14.6 HSSBC may, in its sole discretion, convene a meeting with one, some or all Proponents for the purposes of clarifying or verifying the contents of a Proponent's Proposal. Any written information received by HSSBC from a Proponent during a clarification/verification meeting may, in HSSBC's sole discretion, be considered as an integral part of the Proposal, even if such information should have been submitted as part of the Proponent's Proposal. Oral information received during a clarification/verification meeting may not be taken into account in the evaluation of the Proponent's Proposal unless it is confirmed in writing by the Proponent and submitted within twenty-four (24) hours of the conclusion of the clarification/verification meeting.

3.15 Changes to Proponents and Proponent Team Members

- 3.15.1 During the RFP Process, a Proponent shall not permit a Prequalified Proponent Change in the Proponent or any Identified Proponent Party without the prior written consent of HSSBC. For the purposes of this RFP, a **"Prequalified Proponent Change"** means:

- (a) an actual or proposed transaction that will result or has resulted in a change of majority Control or ownership of the Proponent or any Identified Proponent Party;
- (b) a change in circumstances that may materially adversely affect a Proponent or an Identified Proponent Party in a way which could impair the Proponent's or the Identified Proponent Party's ability to perform their respective obligations under or in connection with the Draft Agreement;
- (c) a change in relationship between the Proponent and any Identified Proponent Party whereby an Identified Proponent Party becomes the Proponent and the Proponent becomes an Identified Proponent Party;
- (d) the withdrawal of any of the Identified Proponent Parties and the proposed substitution of such person or entity; or
- (e) the proposed addition of any person or entity as an Identified Proponent Party.

For the purposes of this RFP Section 3.15, an **"Identified Proponent Party"** means any of the entities identified in the Proponent's Prequalification Submission, including for clarity, proposed subcontractors, key individuals or Joint Venture Participants.

- 3.15.2 If, prior to the RFP Closing, there is a Prequalified Proponent Change, the Proponent shall request the consent of HSSBC by notifying the Authorized Contact in writing as soon as possible and, in any event, no later than seven days prior to the RFP Closing. That notification shall clearly identify the Prequalified Proponent Change and provide details regarding the impact of the Prequalified Proponent Change on the Proponent or Identified Proponent Party, as applicable. In addition, in the event that the Prequalified Proponent Change involves the proposed substitution of an Identified Proponent Party, the Proponent shall include sufficient documentation to demonstrate that the proposed substitute would have met or exceeded any applicable criteria applied during the prequalification process that preceded this RFP Process.
- 3.15.3 In response to a notification in accordance with RFP Section 3.15.2, HSSBC may, in its sole discretion, provide the Proponent with instructions as to the type of information required by HSSBC to consider the Prequalified Proponent Change as well as the deadlines for submission of information that the Proponent must meet in order to have

its request considered by HSSBC. The Proponent shall provide any further documentation as may be reasonably requested by HSSBC to assess the impact of the Prequalified Proponent Change on the Proponent and any Identified Proponent Party, including in the case of a proposed substitution, the acceptability of the proposed substitute. If HSSBC, in its sole discretion, considers the Prequalified Proponent Change to be acceptable, HSSBC may consent to the Prequalified Proponent Change. HSSBC's consent to the Prequalified Proponent Change, however, may be subject to such terms and conditions as HSSBC may require. In the case of a proposed substitution of an Identified Proponent Party, if a Prequalified Proponent Change is not acceptable to HSSBC, the Proponent may propose an alternate substitute for review by HSSBC in the same manner as the first proposed substitute. HSSBC may, in its sole discretion, disallow any Prequalified Proponent Change and may disqualify a Proponent from further consideration in the RFP Process.

- 3.15.4 In the case of a Prequalified Proponent Change made by the Proponent without consent by HSSBC or a Prequalified Proponent Change after the RFP Closing, HSSBC may, in its sole discretion, disqualify the Proponent and terminate the Proponent's continued involvement in the RFP Process or allow the Proponent to continue under such terms and conditions as HSSBC, in its sole discretion, may require.
- 3.15.5 Regardless of whether a prequalification process has preceded this RFP Process, if, on or after the RFP Closing and prior to execution of the Final Agreement, there is a Post-Submission Proponent Change, then the Proponent shall promptly notify HSSBC in writing to the Authorized Contact. For the purposes of this RFP Section 3.15, a "**Post-Submission Proponent Change**" means:
- (a) an actual or proposed change of Control of the Proponent or a Proponent Team Member;
 - (b) a change in circumstances that may materially adversely affect a Proponent or a Proponent Team Member in a way which could impair the Proponent's or a Proponent Team Member's ability to perform their respective obligations under the Draft Agreement;
 - (c) a change in relationship between the Proponent and any Identified Proponent Party whereby an Identified Proponent Party becomes the Proponent and the Proponent becomes an Identified Proponent Party;
 - (d) the withdrawal of any Proponent Team Member and the proposed substitution of such person or entity; or
 - (e) the proposed addition of any person or entity as a Proponent Team Member.

In response to a notification in accordance with this RFP Section 3.15.5, HSSBC may, in its sole discretion, provide the Proponent with instructions as to the type of information required by HSSBC to consider the Post-Submission Proponent Change as well as the deadlines for submission of information that the Proponent must meet in order to have its request considered by HSSBC. The Proponent shall provide any further documentation as may be reasonably requested by HSSBC to assess the impact of the Post-Submission Proponent Change on the Proponent and any Proponent Team Member, including in the case of a proposed substitution, the acceptability of the proposed substitute. In the case of a proposed substitution of a Proponent Team Member, if a Post-Submission Proponent Change is not acceptable to

HSSBC, the Proponent may propose an alternate substitute for review by HSSBC in the same manner as the first proposed substitute. HSSBC may, in its sole discretion, refuse to accept a Post-Submission Proponent Change that occurs or is requested by the Proponent after the Submission Deadline and may, in its sole discretion, disqualify the Proponent from continuing in the RFP Process.

4 Format and Content of Proposal

4.1 Format

4.1.1 Proponents shall prepare their Proposals in accordance with and in the content and format requirements set out as follows:

- (a) a cover letter signed by an authorized signatory of the Proponent;
- (b) a completed Proposal Submission Form prepared in accordance with the requirements set out in Appendix B, including any Exhibits attached to Appendix B, if applicable;
- (c) a completed Executive Summary prepared in accordance with the requirements set out in Appendix C;
- (d) a completed Managed Services Submission prepared in accordance with the requirements set out in Appendix D, including any Exhibits attached to Appendix D;
- (e) a completed Risk Management Submission prepared in accordance with the requirements set out in Appendix E, including any Exhibits attached to Appendix E; and
- (f) an Economic Model and Pricing Submission prepared in accordance with the requirements set out in Appendix F, including any Exhibits attached to Appendix F.

4.1.2 In respect to sales and promotional material,

- (a) the Proponent shall not submit any pre-printed or electronic sales or promotional material; and
- (b) HSSBC will not evaluate pre-printed or electronic sales or promotional material.

4.1.3 Each Proponent shall,

- (a) examine all instructions, terms and conditions, forms and information in the RFP Documents and the Response to Questions Document; and
- (b) in a clear, concise and legible manner, complete and submit all documentation and information required by Appendices B, C, D, E and F to the RFP.

4.1.4 The Proponents are strongly encouraged to use formatting and a font size (12 point type is recommended) that is readable. Proponents should not change the numbering or order of the material within the Appendices.

- 4.1.5 Proponents should ensure their proposals are concise and do not include sales or promotional verbiage.

4.2 Proposal Submission Form

- 4.2.1 Each Proponent shall complete and sign the Proposal Submission Form attached as Appendix B of this RFP.

- 4.2.2 Proponents shall execute the Proposal Submission Form as follows:

- (a) in the case of a limited company, an authorized signing officer shall sign the Proposal Submission Form;
- (b) in the case of a partnership, a designated partner shall sign the Proposal Submission Form on behalf of all partners and have their signature witnessed; and
- (c) in the case of a joint venture, each Joint Venture Participant in the Joint Venture Proponent shall sign the Proposal Submission Form in accordance with the requirements of RFP Section 4.2.2(a) or 4.2.2(b), as applicable.

4.3 Executive Summary

- 4.3.1 The Proponent shall prepare and submit its Executive Summary in the format and containing the information set out in Appendix C to the RFP.

4.4 Contents of the Managed Services Submission

- 4.4.1 The Proponent shall prepare and submit its Managed Services Submission in the format and containing the information set out in Appendix D to the RFP.

4.5 Contents of the Risk Management Submission

- 4.5.1 The Proponent shall prepare and submit its Risk Management Submission in the format and containing the information set out in Appendix E to the RFP

4.6 Contents of the Economic Model and Pricing Submission

- 4.6.1 The Proponent shall prepare and submit its Economic Model and Pricing Submission in the format and containing the information set out in Appendix F to the RFP.

4.7 References and Past Performance Issues

- 4.7.1 If specified in the Proposal Submission Form, Proponents shall provide reference information. Unless otherwise set out in the Proposal Submission Form, all references shall be with respect to goods and/or services provided, as applicable, sometime during the five years immediately prior to the RFP Closing. The Proponent shall provide a minimum of three references, unless otherwise set out in the Proponent Submission Form.
- 4.7.2 HSSBC reserves the right to request reference information from a Proponent at any time during the RFP Process.

- 4.7.3 HSSBC may, in its sole discretion, confirm the Proponent's experience and ability to provide the Managed Services by contacting the Proponent's references. However, HSSBC is under no obligation to contact references submitted by any Proponent and may determine, in its sole discretion, how, and whether, the responses of references will be taken into account in the evaluation process.
- 4.7.4 If HSSBC has reliable information with respect to a Proponent's poor performance in providing goods and/or services, as applicable, HSSBC may take such past poor performance into account in its evaluation of the Proponent and the Proponent's Proposal.

4.8 Conflict of Interest

- 4.8.1 Each Proponent shall disclose any potential, perceived or actual conflict of interest of the Proponent or Proponent Team Members ("**Conflict of Interest**") to the Authorized Contact and in its Proposal Submission Form, in accordance with this RFP Section 4.8. HSSBC may, in its sole discretion, waive any Conflict of Interest or may impose conditions on a Proponent that require the management, mitigation and/or minimization of the Conflict of Interest.
- 4.8.2 Upon discovery of a Conflict of Interest, Proponents shall promptly disclose the Conflict of Interest in a written statement to the Authorized Contact. If HSSBC discovers a Proponent's failure to disclose a Conflict of Interest, HSSBC may disqualify the Proponent or terminate any Final Agreement awarded to that Proponent pursuant to this RFP Process.
- 4.8.3 If, in the sole discretion of HSSBC, a Proponent or Proponent Team Member is determined to have a Conflict of Interest that, in HSSBC's sole discretion, cannot be managed, mitigated or minimized, HSSBC may, in addition to any other remedies available at law or in equity, disqualify the Proposal submitted by the Proponent.

5 Submission of Proposals

- 5.1 Each Proponent shall submit its Proposal to the area of the Secure Data Room reserved for the Proponent.
- 5.2 Proponents shall place their Proposal in the Secure Data Room as follows:
- (a) The Proponents shall place the Cover Letter, the Executive Summary, the Proposal Submission Form, the Managed Services Submission and the Risk Management Submission in the area named "**Managed Services Submission**" within the area of the Secure Data Room reserved for the Proponent's response;
 - (b) The Proponents shall place the Economic Model and Pricing Submission in the area named "**Financial Model Submission**" within the area of the Secure Data Room reserved for the Proponent's response; and
 - (c) Proponents shall not submit Proposals by other methods, electronic or physical, unless specifically permitted in the RFP Data Sheet.

5.3 Withdrawal of Proposals

A Proponent may withdraw its Proposal only by giving written notice of an intention to withdraw to the Authorized Contact before the RFP Closing. Proponent is to use the Secure Data Room to provide their notice. HSSBC shall delete a Proposal from the Secure Data Room that has been withdrawn in accordance with this RFP Section 5.3.

5.4 Amendment of Proposals

Proponents may amend their Proposals after submission but only if the Proposal is amended and resubmitted before the RFP Closing in accordance with the following:

- (a) the Proponent shall withdraw its original Proposal by notifying the Authorized Contact in writing using the Secure Data Room;
- (b) HSSBC shall delete the Proponent's original Proposal from the Secure Data Room and notify the Proponent when this action is completed; and
- (c) the Proponent shall submit a revised fully complete replacement Proposal in accordance with the RFP Documents after receiving the notification in RFP Section 5.4(b) and no later than the RFP Closing; or
- (d) the Proponent shall advise Authorized Contact that they are withdrawing from the competition in accordance with Section 5.3..

5.5 Proposal Validity Period

- 5.5.1 Subject to the Proponent's right to withdraw before the RFP Closing, the Proponent's Proposal shall be irrevocable and shall remain in effect and open for acceptance for the number of days set out in the RFP Data Sheet after the RFP Closing (the "**Proposal Validity Period**").

5.6 One Proposal per Person or Entity

- 5.6.1 Except with HSSBC's prior written consent,
- (a) a person or entity shall submit or participate in only one Proposal either individually or as a Proponent Team Member; and
 - (b) no person or entity shall be a subcontractor of a Proponent while submitting a Proposal individually or as a Proponent Team Member in the same RFP Process.
- 5.6.2 If a person or entity submits or participates in more than one Proposal in contravention of RFP Section 5.6.1, HSSBC may, in its sole discretion, disqualify any or all of the Proposals submitted by that person or entity or in which that person or entity is a participant.

5.7 Two Solutions per Proposal

- 5.7.1 A Proponent may submit a maximum of two (2) solutions in their Proposal.

- 5.7.2 For each solution Proponent must complete a set consisting of a Proposal Submission Form, an Executive Summary, a Managed Services Submission, a Risk Management Submission, and an Economic Model and Pricing Submission.

6 RFP Evaluation

6.1 Evaluation Team

- 6.1.1 HSSBC will establish an evaluation team for the purpose of evaluating Proposals (the **"Evaluation Team"**).
- 6.1.2 HSSBC will delegate certain administrative functions related to the evaluation of Proposals to a separate team of individuals who are not members of the Evaluation Team.

6.2 Evaluation of Proposals

- 6.2.1 The Proponents' Proposals will be reviewed and evaluated by the Evaluation Team on the basis of the evaluation criteria set out in the RFP Data Sheet (the **"Evaluation Criteria"**).

6.3 Steps in the Evaluation Process

- 6.3.1 Step 1 – Compliance of Proposals with the RFP Documents

- (a) In Step 1, HSSBC will review the contents of the Proposal Submission Form, Managed Services Submission, Risk Management Submission, Economic Model and Pricing Submission, and other documents submitted by the Proponent in the Secure Data Room to determine whether the Proponent's Proposal is in compliance with the terms and conditions of the RFP Documents and the **"Mandatory Requirements"** as set out in the RFP Data Sheet. HSSBC will verify that all forms have been signed in accordance with this RFP and included in the Proponent's Proposal.
- (b) If in Step 1, or at any time during the RFP Process, in the sole discretion of HSSBC, a Proponent's Proposal does not comply with the requirements set out in the RFP Documents, HSSBC shall, without liability, cost or penalty, eliminate the Proposal and the Proposal shall not be given any further consideration. For purposes of this RFP, "comply" and "compliance" mean that the Proposal conforms to the requirements of the RFP Documents without material deviation or reservation. A "material deviation or reservation" is a statement or omission in the Proponent's Proposal,
- (i) that affects or could affect in any substantial way the scope, quality or performance of the Managed Services under the Final Agreement arising from the RFP Process; or
 - (ii) that results in a material component of an RFP requirement for the Proponent's Proposal (as set out in the RFP Documents) not being complied with.

- (c) The Proponent's submission is of a poor quality, but complete, Proposal shall not be considered a failure to comply but will affect the Proponent's Managed Services Score as defined in RFP Section 6.3.2(a).
- (d) For the purpose of clarity, each Proponent acknowledges and agrees that HSSBC's evaluation of compliance with the RFP Documents is not an evaluation of absolute compliance and that HSSBC may waive failures to comply that, in HSSBC's sole discretion, do not constitute a material deviation or reservation in accordance with RFP Section 6.3.1(b).

6.3.2 Step 2 – Review of the Submissions (Appendices D, E, F)

- (a) In Step 2, a subset of the Evaluation Team will review and score the Managed Services Submission of the Proposals (the "**Managed Services Score**"). Proponents must achieve a passing score on the Managed Services Submission (the "**Passing Score (Managed Services)**") and a passing score on the subset of the Managed Services Score referred to as Clinical and Technology Vision (the "**Passing Score (Clinical and Technology Vision)**") in order to be considered further in the evaluation process as set out in the RFP Data Sheet.
- (b) A subset of the Evaluation Team will review and score the Risk Management Submission of the Proposals (the "**Risk Management Score**"). Proponents must achieve a passing score on the Risk Management Submission (the "**Passing Score (Risk Management)**") in order to be considered further in the evaluation process as set out in the RFP Data Sheet.
- (c) A subset of the Evaluation Team will review and score the Economic Model and Pricing Submission of the Proposals (the "**Economic Model Score**").

6.3.3 Step 3 – Short-Listed Proponents

- (a) In Step 3, the Evaluation Team may, in its sole discretion, establish a short-list of Proponents (the "**Short-listed Proponents**") based on the total of the Managed Services Score, the Risk Management Score and the Economic Model Score of the Proponents.
- (b) If HSSBC short-lists Proponents, it will short-list Proponents with the highest total scores. The number of Short-Listed Proponents is at the sole discretion of HSSBC.
- (c) If HSSBC short-lists Proponents, only the Short-Listed Proponents will move to the next step of the Evaluation Process.

6.3.4 Step 4 – Interviews, Site Visits, Demonstrations and Presentations

- (a) In Step 4, HSSBC may, in its sole discretion, conduct interviews, demonstrations, site visits or presentations if set out in the RFP Data Sheet.
- (b) The evaluation of any interviews, presentations, demonstrations, site visits or presentations will be conducted in accordance with the process set out in the RFP Data Sheet.

- (c) Notwithstanding RFP Section 6.3.4(a) and RFP Section 6.3.4(b), HSSBC may conduct interviews, presentations, demonstrations, site visits or presentations with some or all Proponents, or may restrict participation to only Short-Listed Proponents.

6.3.5 Step 5 – Establishing a Final Proposal Score

- (a) The components of and the maximum attainable score that HSSBC will apply with respect to the calculation of the final proposal score (the “**Final Proposal Score**”) are set out in the RFP Data Sheet.
- (b) The score established based on RFP Section 6.3.5(a) shall be the Final Proposal Score.

6.3.6 Step 6 – Ranking the Proposals

- (a) In Step 6, the Evaluation Team will rank only those Proposals that have,
 - (i) met all requirements in Steps 1 through 5; and
 - (ii) have received a Passing Score (Clinical and Technology Vision), a Passing Score (Managed Services) and a Passing Score (Risk Management), if any, and, if applicable, any other passing score set out in the RFP Data Sheet,

and HSSBC will base the ranking on the Final Proposal Score.

7 HSSBC’s Discretion

7.1 HSSBC’s Discretion

7.1.1 HSSBC shall determine, in its sole discretion,

- (a) the membership of the Evaluation Team;
- (b) whether a Proposal is in compliance with the RFP Documents;
- (c) whether a failure to comply constitutes a material deviation or reservation;
- (d) the Managed Services Score of a Proposal;
- (e) which Proponents and how many Proponents, based on the evaluation process, will be Short-listed Proponents;
- (f) if applicable, the interview score of a Proponent;
- (g) the Economic Model Score of a Proposal;
- (h) the rankings of the Proposals; and
- (i) whether a Proposal or a Proponent,
 - (i) is disqualified; or

- (ii) will cease to be considered in the evaluation process.

7.1.2 HSSBC's discretion in determining compliance, ranking, shortlisting and disqualification is not limited or restricted in any way by the fact that a prequalification process has preceded this RFP Process.

7.2 Disqualification

7.2.1 HSSBC may, in its sole discretion, disqualify a Proposal or cancel its decision to identify a Proponent as a Successful Proponent at any time prior to the execution of the Final Agreement by HSSBC, if,

- (a) the Proposal is determined to be non-compliant pursuant to RFP Section 6.3.1;
- (b) the Proponent, including any of its Proponent Team Members, fails to cooperate in any attempt by HSSBC to clarify or verify any information provided by the Proponent in its Proposal;
- (c) the Proponent, including any of its Proponent Team Members, contravenes RFP Section 3.5, RFP Section 3.6 or RFP Section 5.6;
- (d) the Proponent, including any of its Proponent Team Members, fails to comply with the Applicable Law;
- (e) the Proposal contains false or misleading information or the Proponent or a Proponent Team Member provides false or misleading information in its interview (if an interview is conducted);
- (f) the Proposal, in the sole discretion of HSSBC, reveals a Conflict of Interest that cannot be managed, mitigated or minimized;
- (g) the Proponent or Proponent Team Member misrepresents any information provided in the Proposal;
- (h) there is evidence that the Proponent, any of its Proponent Team Members or any of their respective employees, agents, consultants, contractors, service providers or representatives colluded with one or more other Proponents, including other Proponent Team Members or any of its or their respective employees, agents, consultants, contractors, service providers or representatives in the preparation or submission of Proposals;
- (i) a Prequalified Proponent Change has occurred which has not been approved by HSSBC in accordance with RFP Section 3.15.3;
- (j) a Post-Submission Proponent Change has occurred which has not been approved by HSSBC in accordance with RFP Section 3.15.5;
- (k) the Proponent or any Proponent Team Member has breached any agreement with HSSBC;

- (l) the Proponent, including any of its Proponent Team Members, has been convicted of an offence in connection with, or any services rendered to HSSBC, a Health Organization, a Health Authority, or any Municipal, Provincial, State, or Federal Governments;
- (m) the Proponent or any Proponent Team Member has breached an agreement for goods or services or goods and services similar to the ones requested under this RFP with an entity other than HSSBC;
- (n) the Proponent or any Proponent Team Member was convicted of a criminal offence within the three years immediately prior to the RFP Closing;
- (o) the Proponent or any Proponent Team Member was found liable for a violation of applicable laws of British Columbia or Canada within the three years immediately prior to the RFP Closing;
- (p) a Proponent or any Proponent Team Member is, at the time of issuance of this RFP or any time during the RFP Process, engaged in ongoing litigation against HSSBC, a Health Organization or a Health Authority; or
- (q) a Proponent or any Proponent Team Member engages in any activity which, at the sole discretion of HSSBC, is contrary to the public interest or is harmful to the integrity or reputation of HSSBC, a Health Organization or a Health Authority.

8 Successful Proponents

- 8.1** HSSBC shall determine the Successful Proponent in accordance with the ranking of Proponents pursuant to RFP Section 6.3.6.
- 8.2** Notwithstanding anything else to the contrary in this RFP, if HSSBC, in its sole discretion, acting reasonably, is of the opinion that a Proponent has submitted a price that is too low to be sustainable and to ensure the delivery of the Managed Services in accordance with the Draft Agreement, HSSBC may decline to award a Final Agreement to that Proponent.

9 Agreement Finalization

- 9.1** HSSBC will notify the Successful Proponent, in writing, that it has been selected as a Successful Proponent.
- 9.2** At the time the Successful Proponent is notified pursuant to RFP Section 9.1, the Successful Proponent and HSSBC shall enter into discussions to finalize the Final Agreement.
- 9.3** After the selection of the Successful Proponent, if any, HSSBC may finalize the terms and conditions of the Final Agreement with the Successful Proponent, and, as part of that process, may, in its sole discretion, negotiate changes, amendments or modifications to the Successful Proponent's Proposal or the Draft Agreement.
- 9.4** Unless HSSBC initiates negotiations in accordance with RFP Section 9.3, each Successful Proponent shall sign the Final Agreement in the same form and substance as the Draft Services Agreement attached as Appendix F of this RFP.

9.5 The Successful Proponent shall, no later than ten (10) days after receipt of the Final Agreement or such later date as may be specified in written notice given by HSSBC,

- (a)** enter into and execute the Final Agreement; and
- (b)** submit to HSSBC a certificate of insurance which,
 - (i) references the Final Agreement by name;
 - (ii) confirms that the requirements set out in the Final Agreement have been met;
 - (iii) sets out any pertinent exclusions contained in the policy or policies; and
 - (iv) is otherwise acceptable to HSSBC.

9.6 Notification If Successful or Not

9.6.1 The Successful Proponent and unsuccessful Proponents shall be notified by HSSBC in writing as to their success or failure in the RFP Process.

9.7 Debriefing

9.7.1 Proponents may request a debriefing after receipt of a notification pursuant to RFP Section 9.6. All Proponent requests should be in writing to the Authorized Contact no later than 30 days of receipt of the notification. HSSBC will determine the format, timing and contents of the debriefing session.

9.8 Contractor Safety Evaluation

9.8.1 If specified in the RFP Data Sheet, the Successful Proponent shall provide the information set out in the RFP Data Sheet with respect to the Successful Proponent's health and safety policies and procedures, safety incidents and Workplace Safety and Insurance Board coverage prior to the deadline specified in the RFP Data Sheet (the "**Health and Safety Submission**").

9.8.2 HSSBC will review the Health and Safety Submission submitted in accordance with RFP Section 9.8.1 and determine whether, based on the information and documentation, a Successful Proponent satisfies HSSBC's requirements with respect to health and safety policies and procedures. HSSBC may require a Successful Proponent to clarify the contents of its Health and Safety Submission or submit supplementary documentation clarifying any matter contained in its Health and Safety Submission.

9.8.3 If a Successful Proponent fails to satisfy HSSBC's requirements in accordance with RFP Section 9.8.2, HSSBC may, in its sole discretion, disqualify the Successful Proponent from future participation in the RFP Process.

10 General Rights of HSSBC

10.1 HSSBC may, in its sole discretion and at any time during the RFP Process,

- (a)** reject any or all of the Proposals;

- (b) accept any Proposal;
- (c) if only one Proposal is received, elect to accept or reject it;
- (d) elect not to proceed with the RFP;
- (e) alter the RFP Timetable, the RFP Process or any other aspect of this RFP; and
- (f) cancel this RFP and subsequently advertise or call for new Proposals for the subject matter of this RFP.

10.2 If HSSBC determines that all or the majority of Proposals submitted are non-compliant, HSSBC may,

- (a) take any action in accordance with RFP Section 10.1; or
- (b) carry out a process whereby all Proponents are directed to correct the deficiencies in their Proposals for re-submission, without a change in their Financial Model Submission.

10.3 HSSBC shall not be liable for any expense, cost, loss or damage occurred or suffered by any Proponent, or any person connected with any Proponent, as a result of any action referred to in RFP Section 10.1 or RFP Section 10.2.

10.4 If a Successful Proponent fails or refuses to enter into and execute the Final Agreement and provide the documentation in accordance with RFP Section 9.5, HSSBC may, in its sole discretion, take any one or all of the following actions:

- (a) terminate all discussions to enter into the Final Agreement with that Successful Proponent and cancel its identification of a Proponent as a Successful Proponent;
- (b) select another Proponent to enter into the Final Agreement;
- (c) take any action in accordance with RFP Section 10.1; and
- (d) pursue any other remedy available to HSSBC under the Applicable Law.

10.5 HSSBC may, in its sole discretion, cancel its decision to enter into a Final Agreement with a Successful Proponent if,

- (a) HSSBC elects to exercise its discretion pursuant to RFP Section 7.2, RFP Section 10.1 or RFP Section 10.4;
- (b) a Prequalified Proponent Change or a Post-Submission Proponent Change has occurred in respect of the Successful Proponent which has not been approved by HSSBC in accordance with RFP Section 3.15.4 or RFP Section 3.15.6; or
- (c) any other material change has occurred with respect to the Successful Proponent's Proposal.

10.6 Limit on Liability

The Proponent, by submitting a Proposal, acknowledges and agrees that it shall not make any claim for any losses, costs, expenses, damages (or any similar losses) for any reason, relating to: this RFP Process; the Proponent's participation in, or failure to be invited to participate in, any phase of the RFP Process; the preparation of the Proponent's Proposal; the Proponent's engagement, to any extent whatsoever, with third parties in connection with this RFP Process; or relating to, in any manner whatsoever, the Final Contract (regardless of whether a Final Contract is ultimately awarded by HSSBC or not). If HSSBC (or the Health Organizations, the Health Authorities, the Government of British Columbia and any Ministry of the Government of British Columbia) is found at law to be liable for any reason whatsoever (in contract or in tort) for any losses, costs, expenses, damages (or any similar losses), then such any losses, costs, expenses, damages (or any similar losses) shall not, under any circumstances, exceed an amount that is the lesser of: (a) \$100,000 (CDN) or (b) an amount equivalent to reasonable costs incurred by the Proponent in preparing the Proponent's Proposal (including, for greater certainty, any third parties, subcontractors involved with the Proponent Proposal).

11 Definitions

11.1 General

11.1.1 In this RFP, the singular shall include the plural and the plural shall include the singular, except where the context otherwise requires.

11.1.2 All references in this RFP to "discretion" or "sole discretion" means in the sole and absolute discretion of the party exercising the discretion; and

11.1.3 All references in this RFP to "includes" and "including" means "includes without limitation" and "including without limitation" respectively.

11.2 RFP Definitions

Whenever used in this RFP,

"Addendum" means a written addendum to the RFP Documents issued by HSSBC as set out in RFP Section 3.3;

"Applicable Law" is defined in RFP Section 3.9.1;

"Authorized Contact" means the contact person listed on the cover page of this RFP in respect of RFP Section 2.3;

"Conflict of Interest" is defined in RFP Section 4.8.1;

"Contract A" is defined in RFP Section 10.6;

"Control" means, with respect to any Person at any time, (i) holding, whether directly or indirectly, as owner or other beneficiary (other than solely as the beneficiary of an unrealized security interest) securities or ownership interests of that Person carrying votes or ownership interests sufficient to elect or appoint fifty percent (50%) or more of the individuals who are responsible for the supervision or management of that Person, or (ii) the exercise of de facto control of that Person, whether direct or indirect and whether through the ownership of securities or ownership interests or by contract, trust or otherwise;

“Draft Services Agreement” is defined in RFP Section 2.1(h);

“Economic Model Score” is defined in RFP Section 6.3.2(c);

“Economic Model Submission” means the form provided in Appendix F to the RFP;

“Evaluation Criteria” is defined in RFP Section 6.2.1;

“Evaluation Team” is defined in RFP Section 6.1.1;

“Final Agreement” is defined in RFP Section 3.9.1;

“Final Proposal Score” is defined in RFP Section 6.3.5(a);

“FIPPA” is defined in RFP Section 3.7.1;

“Health and Safety Submission” is defined in RFP Section 9.8.1;

“Health Organization” is defined in RFP Section 1.1;

“Identified Proponent Parties” is defined in RFP Section 3.15.1;

“Joint Venture Participant” is defined in RFP Section 3.11.2;

“Joint Venture Proponent” is defined in RFP Section 3.11.2;

“Managed Services” is defined in RFP Section 1.1;

“Managed Services Submission” means the form provided in Appendix D;

“Managed Services Score” is defined in RFP Section 6.3.2(a);

“Mandatory Requirements” is defined in RFP Section 6.3.1(a);

“NDA” is defined in RFP Section 2.3;

“Notices” is defined in RFP Section 3.2.6;

“Participant in Charge” is defined in RFP Section 3.11.2(c)(ii);

“Passing Score (Clinical and Technology Vision)” is defined in RFP Section 6.3.2(a);

“Passing Score (Managed Services)” is defined in RFP Section 6.3.2(a);

“Passing Score (Risk Management)” is defined in RFP Section 6.3.2(b);

“Person” means a natural person, firm, trust, partnership, limited partnership, company or corporation (with or without share capital), joint venture, sole proprietorship, governmental authority or other entity of any kind;

“Post-Submission Proponent Change” is defined in RFP Section 3.15.5;

“Prequalification Submission” is defined in RFP Section 3.11.1;

“Prequalified Parties” is defined in RFP Section 1.3;

“Prequalified Proponent Change” is defined in RFP Section 3.15.1;

“Proponent” is defined in RFP Section 1.3;

“Proponent Team Member” is defined in RFP Section 1.3;

“Proponent’s Contact” is defined in RFP Section 2.3;

“Proponents’ Meeting” is defined in RFP Section 3.4.1;

“Proponents’ Meeting Registration Deadline” is defined in RFP Section 3.4.4;

“Proponents’ RFP Question Deadline” is defined in RFP Section 3.2.1;

“Proposal” is defined in RFP Section 1.3;

“Proposal Validity Period” is defined in RFP Section 5.5.1;

“Proposed Solution” is defined in RFP Appendix B;

“Response to Questions Document” is defined in RFP Section 3.2.2;

“RFP” is defined in RFP Section 1.1;

“RFP Closing” is defined in RFP Section 3.1.1;

“RFP Documents” is defined in RFP Section 2.1;

“RFP Information” is defined in RFP Section 3.8.1;

“RFP Name” is defined in RFP Section 1.1;

“RFP Number” is defined in RFP Section 1.1;

“RFP Process” is defined in RFP Section 1.4;

“RFP Timetable” is defined in RFP Section 3.1.1;

“RFPQ” is defined in RFP Section 1.2;

“Risk Management Score” is defined in RFP Section 6.3.2(b);

“Risk Management Submission” means the form provided in Appendix E;

“Secure Data Room” is defined in RFP Section 2.3;

“Short-listed Proponents” is defined in RFP Section 6.3.3(a); and

“Successful Proponent” is defined in RFP Section 1.3.

“URL” is defined in RFP Section 2.3.

APPENDIX A BEGINS ON NEXT PAGE

APPENDIX A
RFP DATA SHEET

RFP SECTION REFERENCE AND DESCRIPTION	ITEM
RFP Section 1.1 – Managed Services	See Exhibit A-1 attached to this Appendix A.
RFP Section 1.1 – RFP Number and RFP Name	HSSBC-00578 Strategic Transformation for Clinical Information Systems
RFP Section 1.3 – Prequalified Parties	<p>The Prequalified Parties (Proponents and Proponent Team Members) for this directed RFP are:</p> <ul style="list-style-type: none"> ➤ Cerner Corporation (Proponent) <ul style="list-style-type: none"> ○ TELUS Communications Inc. ➤ CGI Information Systems and Management Consultants Inc. (Proponent) <ul style="list-style-type: none"> ○ Dell Canada Inc. ○ Knowledgegetech Inc. ➤ IBM Canada Ltd. (Proponent) <ul style="list-style-type: none"> ○ Deloitte Inc. ○ University of Pittsburgh Medical Centre ○ maxIT Healthcare LLC <p>Note: For greater clarity, Proponent Team Members will be considered subcontractors for the Draft Services Agreement.</p>
RFP Section 2.3 – Authorized Contact	<ul style="list-style-type: none"> • Jeff Thom, Team Lead, Category Management IMIT • E-Mail: jeff.thom@hssbc.ca
RFP Section 3.1 – RFP Timetable	<ul style="list-style-type: none"> • RFP Issue: February 15, 2012 • Proponents' Meeting Registration Deadline: February 21, 2012 at 12:00 Noon Pacific Time • Proponents' Meeting: February 28, 2012 • Proponents' RFP Question Deadline: March 21, 2012 at 3:00 p.m. Pacific Time • RFP Closing: April 3, 2012 at 12:00 Noon Pacific Time

RFP SECTION REFERENCE AND DESCRIPTION	ITEM																												
RFP Section 3.4.1 – Proponents’ Meeting	<ul style="list-style-type: none"> • HSSBC will be conducting a Proponents’ Meeting in Vancouver, British Columbia on the date set out for the meeting in the RFP Timetable. The time and location of the meeting will be posted in the Secure Data Room on or about February 21, 2012. • Proponents will be limited in the number of representatives that may attend the Proponents’ Meeting. The number of attendees each Proponent will be allowed to bring to the Proponents’ Meeting will be posted in the Secure Data Room on or about February 21, 2012. • Proponents who wish to attend the Proponent’s Meeting shall notify the Authorized Contact by email no later than the date and time set out for registration in the RFP Timetable. Proponents shall include the names and positions of all representatives that are expected to attend. 																												
RFP Section 5.5.1 – Proposal Validity Period	<ul style="list-style-type: none"> • The Proponent’s Proposal shall remain in effect and open for acceptance for 180 calendar days after the RFP Closing. 																												
RFP Section 6.2.1 – Evaluation Criteria	<table> <tr> <th data-bbox="540 982 1052 1014">EVALUATION CRITERIA</th><th data-bbox="1133 982 1252 1014">WEIGHT</th></tr> <tr> <td data-bbox="540 1035 1052 1066">• <u>Managed Services Submission:</u></td><td></td></tr> <tr> <td data-bbox="540 1087 1052 1119">Clinical and Technology Visions</td><td data-bbox="1198 1087 1235 1119">60</td></tr> <tr> <td data-bbox="540 1140 1052 1171">Design, Build, Integrate and Implement</td><td data-bbox="1198 1140 1235 1171">30</td></tr> <tr> <td data-bbox="540 1192 1052 1224">Transition</td><td data-bbox="1198 1192 1235 1224">15</td></tr> <tr> <td data-bbox="540 1245 1052 1276">Ongoing Management and Operations</td><td data-bbox="1198 1245 1235 1276">30</td></tr> <tr> <td data-bbox="540 1297 1052 1329">Managed Services Teams</td><td data-bbox="1198 1297 1235 1329">30</td></tr> <tr> <td data-bbox="540 1350 1052 1381">Governance</td><td data-bbox="1198 1350 1235 1381">15</td></tr> <tr> <td data-bbox="540 1402 1052 1434">Total</td><td data-bbox="1198 1402 1235 1434">180</td></tr> <tr> <td data-bbox="540 1455 1052 1486">• <u>Risk Management Submission</u></td><td data-bbox="1198 1455 1235 1486">24</td></tr> <tr> <td data-bbox="540 1507 1052 1539">• <u>Economic Model and Pricing Submission:</u></td><td></td></tr> <tr> <td data-bbox="540 1560 1052 1591">Economic Model</td><td data-bbox="1198 1560 1235 1591">60</td></tr> <tr> <td data-bbox="540 1612 1052 1644">Pricing Submission</td><td data-bbox="1198 1612 1235 1644">76</td></tr> <tr> <td data-bbox="540 1665 1052 1696">Total</td><td data-bbox="1198 1665 1235 1696">136</td></tr> </table>	EVALUATION CRITERIA	WEIGHT	• <u>Managed Services Submission:</u>		Clinical and Technology Visions	60	Design, Build, Integrate and Implement	30	Transition	15	Ongoing Management and Operations	30	Managed Services Teams	30	Governance	15	Total	180	• <u>Risk Management Submission</u>	24	• <u>Economic Model and Pricing Submission:</u>		Economic Model	60	Pricing Submission	76	Total	136
EVALUATION CRITERIA	WEIGHT																												
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Economic Model	60																												
Pricing Submission	76																												
Total	136																												

RFP SECTION REFERENCE AND DESCRIPTION	ITEM										
RFP Section 6.3.1 – Mandatory Requirements	<p><u>Mandatory Requirements</u></p> <p>Proposals not clearly demonstrating they meet the following mandatory requirements may, in the sole discretion of HSSBC, not be accepted for consideration:</p> <ul style="list-style-type: none"> • Proponent is willing and able to transition any Public Sector union agreements relevant to the Managed Services to their organization, if required, as stated in Appendix B Section 4; • Proposal received by RFP Closing; • Proposal written in English; and • Appendix B completed and signed by an authorized signatory of the Proponent and, if applicable, by each Joint Venture Participant. 										
RFP Section 6.3.2(a) Passing Score (Clinical and Technology Vision)	<ul style="list-style-type: none"> • The Passing Score (Clinical and Technology Vision) is 75%. 										
RFP Section 6.3.2(a) – Passing Score (Managed Services)	<ul style="list-style-type: none"> • The Passing Score (Managed Services) is 75%. 										
RFP Section 6.3.2(b) – Passing Score (Risk Management)	<ul style="list-style-type: none"> • The Passing Score (Risk Management) is 75%. 										
RFP Section 6.3.4 – Interviews, Demonstrations, Site Visits, and Presentations	<ul style="list-style-type: none"> • Dates and further information will be provided to Short-Listed Proponents along with the invitation to participate in the interview process. • The Proponent should ensure that following personnel are available to participate in the Proponent's interview: Executive Sponsor, Account Manager, Senior Solution Architect and Management Information Systems (MIS) Manager, as a minimum. 										
RFP Section 6.3.5 – Establishment of Final Proposal Score	<ul style="list-style-type: none"> • Final Proposal Score will be calculated using the following components: <table> <tr> <th></th><th>WEIGHT</th></tr> <tr> <td>➤ Managed Services Score</td><td>180</td></tr> <tr> <td>➤ Risk Management Score</td><td>24</td></tr> <tr> <td>➤ Economic Model & Pricing Submission Score</td><td><u>136</u></td></tr> <tr> <td>➤ Maximum attainable Final Proposal Score</td><td>340</td></tr> </table> 		WEIGHT	➤ Managed Services Score	180	➤ Risk Management Score	24	➤ Economic Model & Pricing Submission Score	<u>136</u>	➤ Maximum attainable Final Proposal Score	340
	WEIGHT										
➤ Managed Services Score	180										
➤ Risk Management Score	24										
➤ Economic Model & Pricing Submission Score	<u>136</u>										
➤ Maximum attainable Final Proposal Score	340										

EXHIBIT A-1

MANAGED SERVICES

1. OBJECTIVES

The primary objective of the Health Organizations in undertaking this RFP is to achieve a strategic transformation that will create a common, integrated, end-to-end clinical information system and environment (“Integrated CIS Environment”) that furthers the Health Organizations’ strategic plans and vision for better health and addresses the current challenges associated with disparate clinical systems. This is a strategy that has been approved and accepted by the Boards and Executive of the Health Organizations involved.

The goals of the envisaged strategic transformation are:

- rapid advancement of ‘best practice’ standardization and optimization of core clinical, business, research and intelligence systems and processes among the Health Organizations;
- accelerated implementation of a clinical data repository among the Health Organizations, with clinical decision support tools to support care providers with electronic clinical information;
- enabling clinical information sharing across the continuum of care and patient journey;
- enabling a cohesive, seamless solution across the continuum of healthcare among the Health Organizations; and
- at a minimum, achieving a health care automation ranking per the HIMSS Electronic Medical Record Adoption Model (HIMSS) of Stage 5+ within five years and Stage 7 within seven years across the Health Organizations.

This RFP is expected to achieve the above goals and objectives through the delivery of the Managed Services to the Health Organizations.

2. STRATEGIC TRANSFORMATION GUIDING PRINCIPLES

The CEOs of each of the Health Organizations have confirmed the following principles to guide the transformation:

- a. This project is a clinical transformation project supported by IMITS.
- b. Patient safety and quality are of paramount importance and will drive decisions.
- c. Change management, communications and project management principles will be used and implemented extensively.
- d. CEOs will make decisions based on what is best for the patient and on these Principles.
- e. All parties are committed to producing a single instance of the core system.
- f. Standardized protocols, order sets, clinical documentation, and key business processes, will be developed and used.
- g. The Cerner implementation will avoid customization.

- h. There will be no major changes to the basic code in the implementation at any of the three organizations. Minor configuration changes that do not result in any changes to code may be needed to accommodate site- specific needs. These must be approved in advance by the project management team. These changes must have no implications for future upgrades of the product.
- i. Technology infrastructure and standards will be consistent across the three Health Organizations.
- j. Timelines will be respected and each organization commits to delivering – on time, on budget, and within the scope. Resources will be committed to the project in order to achieve the implementation.
- k. Individuals and participating departments (e.g. MI, HIM, Pharmacy, Lab, IMITS, HSSBC Tech Services) are core to the effort and will work as an integrated team (Integrated Core Team).
- l. Dedicated roles will be in place in each organization to articulate the clinical needs and bridge with the Integrated Core Team.
- m. Risk assessments will be performed at key intervals of the program to identify risks/issues/costs/benefits and mitigation plans will be established. Risk assessments will be holistic and incorporate clinical practice, clinical operations, business process, applications, technology, engagement, funding and people.
- n. Rules of engagement will be developed and will guide the way individuals behave and work together.
- o. Discussions will be Values based. (Patients First, Honesty, Fairness, Best Value, Results Matter, Collaboration)
- p. All work products including project documents (e.g.: Statements of Work (SOW) developed both by the clinical transformation teams and by IMITS), will be reflective of these Principles.

3. ENVISAGED MODEL FOR MANAGED SERVICES

The model envisaged for the delivery of the Managed Services is one that:

- allows the Proponent to provide its expertise in architecting the business and supporting technical solution while collaborating with and being responsive to the Health Organizations' clinical and technical experts.
- allows the Proponent to be efficient and effective without the Health Organizations' involvement in the operational management of the Managed Services; and
- protects the security and privacy of personal information contained within the Integrated CIS Environment.

IMITS as the supporting department for the Health Organizations expects the Managed Services will be provided over a long term, possibly a ten to fifteen year period. As a result of the expected term of the relationship, the Health Organizations and IMITS anticipate that the model for the delivery of the Managed Services supports:

- mutual benefits to the Health Organizations and successful Proponent;
- innovation to control and achieve efficiencies in current costs and reinvestment of the savings to advance the adoption of an electronic health record;

- transition to a reduced cost, leading practice, service level based managed technology and managed application model; and
- overall flexibility to provide for the addition or removal of services within the planned scope and adjustments to such services as may be required due to planned, changing or unforeseen circumstances.

Within the arrangement the Health Organizations expect that IMITS will retain responsibility for, but not limited to:

- establishing and enforcing adherence to architecture standards;
- setting the standards, policies and guidelines relating to the planned scope of services including those relating to clinical services, privacy and security and records management;
- setting the strategy, direction and undertaking the clinical analytics function; and
- the relationships and/or agreements with any other health care organizations, including other Health Authorities within the Province of British Columbia, that may participate in the agreement resulting from this RFP.

4. COLLABORATION GUIDING PRINCIPLES

The guiding principles set out below have been developed by the Health Organizations to clearly communicate expectations and thus ensure the successful achievement of the Managed Services (referenced as 'Services' in the principles below) with the collaboration partner.

- **Enhance Capabilities and Effectiveness.** Services are to be provided in a manner that enhances the Health Organizations' ability to deliver high-quality, cost-effective services internally to its users with the bare minimum of interruptions in, and adverse impacts on, their delivery of such services. The quality of the Services and the technology utilized to provide the Services will be no less than consistent with the standards customarily observed by leading North American providers of the same or substantially similar services.
- **Reduce Costs.** Cost reduction is a key objective for the Health Organizations in securing Services from a service provider. The service provider will advise HSSBC of cost reduction opportunities and will, subject to a change process, implement such cost reduction opportunities. The service provider will also implement improved internal processes and methodologies in order to further reduce the overall cost of the Services to the Health Organizations and will report on same to the Health Organizations.
- **Improve Services.** The service provider will identify ways to improve the service levels and the functionality, quality, consistency, reliability, security and accuracy of the Services and will, subject to a change process, implement same. The service provider will also implement improved internal processes and methodologies in order to further improve the service levels and the functionality, quality, consistency, reliability, security and accuracy of the Services and will report on same to the Health Organizations.

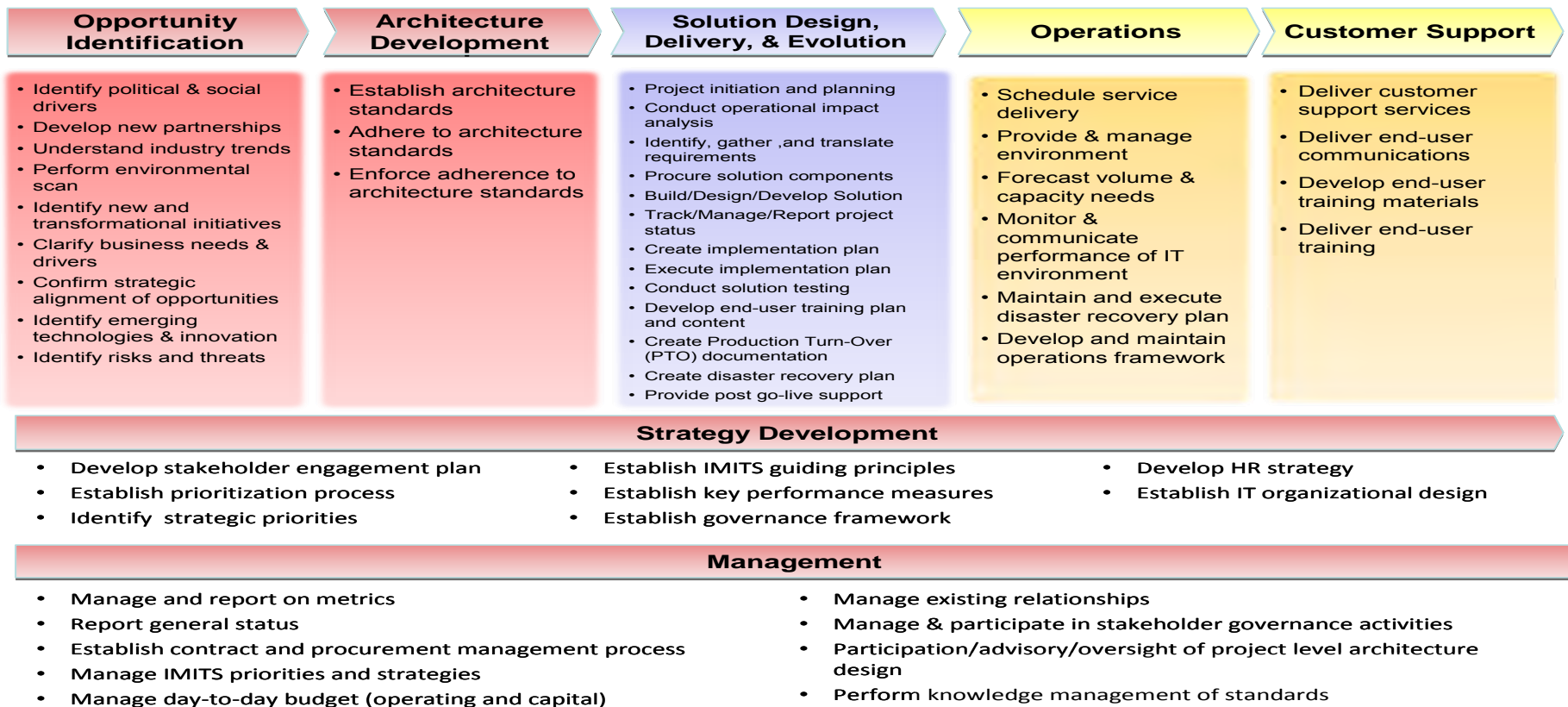
- **Flexibility.** The service provider will be highly responsive and flexible to meet the Health Organizations' evolving requirements for Services and its obligations to third parties, and with respect to changes in technology and methods for providing the Services. Such flexibility will accommodate significant changes in: volumes of operation, scope of Services, service level requirements, service delivery models, architecture, regulatory or audit requirements, technology, and methods of achieving, monitoring and measuring service levels.
- **Effective Relationship.** The Health Organizations and the service provider each value the development of a close and effective working relationship and recognize that such a relationship will better facilitate the implementation and delivery of the Services and the achievement of the objectives of the Health Organizations.
- **Focus on Core Competencies.** By having the Services performed by the service provider and leveraging the service provider's core competencies, the service provider will enable the Health Organizations to focus more of their internal resources on strategy, providing services to their users and to improving the levels of service.
- **Measurement and Reporting.** The service provider will periodically, consistently and accurately measure the quality, quantity and cost-effectiveness of the Services using periodic reports, user surveys, benchmarking and pricing reviews and will provide the Health Organizations with detailed reports of Services performance.
- **Security and Privacy.** The service provider will identify ways to improve and, subject to a change process, will implement such improvements to the control and security of the Services. The service provider will use Canadian privacy and security industry best practices to protect the Health Organizations' data and environment.
- **Disaster Recovery.** The service provider will maintain and, where possible, improve, the Disaster Recovery Services provided by the Health Organizations.
- **Transition.** Transition activities, into, between and from Services are to be smooth and seamless, are to be performed in a cooperative manner (among the Health Organizations and their service providers), and to cause minimum disruptions to the Health Organizations and their users.
- **Environmental Requirements.** The service provider acknowledges the importance of environmental leadership. The service provider maintains a corporate environmental policy and the service provider will: (a) provide available reports to the Health Organizations on the direct and indirect environmental impacts of the Services; and (b) use all commercially reasonable efforts to reduce the environmental impacts of the Services (including GHG Emissions) in a manner consistent with the practices customarily observed by leading North American providers of services the same or substantially similar to the Services (or as may otherwise be required by the Health Organizations subject to a change process).

5. IMITS HIGH LEVEL PROCESSES

In support of the Lower Mainland Consolidation, IMITS had developed the diagram below to define the department's high level processes in support of its clients, the Health Organizations, and to establish a common understanding of such.

This diagram, Diagram A-1.1, is to provide Proponents with an understanding of the high level functions of IMITS and as a reference point in outlining the scope of the Managed Services.

Diagram A-1.1



6. SCOPE OF MANAGED SERVICES

a. Scope

The scope of the Managed Services is designed to achieve an Integrated CIS Environment through the provision of the following services:

- architect the clinical business solution and the technology solution required to enable and support the clinical business solution;
- design, build, integrate and implement the clinical and technology solutions;
- transition the IMITS assets, services, processes and people; and
- ongoing management and operation of the Integrated CIS Environments, including the remaining legacy systems.

The Health Organizations expect that the integrated clinical system solution and infrastructure is scalable and will support planned and unforeseen expansions in operations and the addition or participation of other health care organizations, including other health authorities.

Further, in the context of the anticipated long term collaboration and to foster ongoing clinical and technological innovation, the Health Organizations reserve the right to add additional requirements to the scope.

b. Clinical and Technology Visions

Appendix D – Managed Services Submission contains the detailed response requirements.

The Health Organizations have developed a clinical solution strategy which lays out a path for implementing a set of Cerner modules across each of the sites within the Health Organizations. This path, or roadmap, has been planned to achieve a ranking of HIMSS Stage 3 across all clinical service areas and Stage 4 to 5 in some clinical service settings.

The clinical and technology solution design services require either a new roadmap or improvements to the Health Organizations' existing roadmap to accelerate and ensure achievement of the following:

- standardization and optimization of clinical and operating processes;
- a transformed clinical information solution that is compliant with provincial and health industry standards and interoperable with provincial eHealth solutions; and
- at a minimum a health care automation ranking per the HIMSS of Stage 5+ within five years or less, and Stage 7 within seven years or less across PHSA, VCH and PHC.

In relation to Diagram A-1.1 above, these services align with the Opportunity Identification process. Proponents are expected, but not limited to merging their understandings of clinical needs, trends and emerging technologies and innovation to:

- For the in-scope applications, identify the clinical business solution including but not limited to the clinical users' experience with respect to information access, information processing and information retrieval, both 'on-site' and remotely;

- Translate the clinical business solution to define the technology and infrastructure solution required to support the business solution; and
- Provide a roadmap that achieves the Health Organizations' objectives and enables the defined clinical and technology solutions.

In providing these services, Proponents will be required to have a working understanding of the Canadian Health Industry standards including knowledge of Professional Practice standards.

Further, Proponents will be required to adhere to IMITS' architectural standards and technology policies, including for security. Where Proponent solutions involve new or emerging technologies for which IMITS may not have defined standards or policies, IMITS will define the enabling standards and/or policies.

To ensure innovation and a cycle of continuous improvement, Proponents will also be expected to identify new clinical and technology initiatives on an ongoing basis. Such initiatives are expected to be formulated from the Proponents' ongoing environmental scans that identify emerging issues, anticipated need and innovations in technology. Such initiatives will also be informed by the Health Organizations' determination of strategic alignment within the Health Organizations and with provincial initiatives and direction.

c. Design, Build, Integrate and Implement

Appendix D – Managed Services Submission contains the detailed response requirements.

The services required to design, build, integrate and implement the integrated clinical system encompass the Solution Design, Delivery and Evolution process noted in Diagram A-1.1. These services require the development and execution of the strategies, approaches and plans for all services (excluding procurement which is the responsibility of HSSBC Supply Chain) underpinning the full implementation life-cycle of an Integrated CIS Environment including, but not limited to:

- business analysis to support the clinical and technology requirements, definition and design of the *Cerner Millennium* system, including the security architecture and model;
- integration services that provide business analysis for the clinical requirements, design and configuration necessary to support interfacing the *Cerner Millennium* system with other information systems where required, including legacy systems and the PeopleSoft ERP solution;
- system and environment design, build and/or configuration;
- conversion which includes a definition of the strategy, approach and plans for decommissioning and archiving of and data migration from legacy clinical applications that are identified for replacement or conversion to the *Cerner Millennium* system;
- complete solution testing (unit through to end-user);
- complete production hand-over documentation to transition and support the Integrated CIS Environment;

- training which includes a learning strategy and plan, execution of the plan, development of role and workflow based training material for end users and super-user training programs;
- organizational change and communication management with a strategic emphasis to ensure commitment to standardized and optimized clinical and business processes on an ongoing basis; and
- post go-live support.

Proponents will also be required to provide the required project management services, including initiation and planning and status tracking/managing/reporting.

d. Transition Services

Appendix D – Managed Services Submission contains the detailed response requirements.

Proponents will be required to transition IMITS assets, services (and supporting processes), projects and people as specified in Appendix F - Economic Model and Pricing Submission, Section 1.3 Normalizing Assumptions.

e. Ongoing Management and Operations

Appendix D – Managed Services Submission contains the detailed response requirements.

Proponents will be required to provide the services associated with the high level processes of Operations and Customer Support per Diagram A-1.1. Proponents will be required to supply these services under a managed technology offering that provides for service level based system and infrastructure support and management.

In providing these services Proponents will also provide, but not be limited to, the following:

- provision of an initial business case for infrastructure standardization and consolidation followed by development and execution of an implementation approach;
- provision of Cerner certified standardized hardware for the *Cerner Millennium* system;
- provision of a application support help desk and tier-2 help desk services using systems and processes that integrate with the current line of business enterprise service management service desk;
- infrastructure management services for the hardware listed in Document #55; and
- application management services for the applications per Document #55 including:
 - application support and upgrades for the *Cerner Millennium* system;
 - interim management of any legacy clinical applications to be decommissioned; and
 - ongoing management of any remaining legacy clinical applications.

Unless agreed otherwise, the Health Organizations expect that a collaboration partner could own, operate, support, maintain and enhance the applications, including the associated IMITS business operations and system licensing, required in connection with the integrated clinical information system until such time as the Health Organizations repatriate or re-procure the assets and services comprising the solution for an Integrated CIS Environment.

f. Out of Scope

The systems and/or related operational functions in the table below are considered out of scope for the purpose of responding to this RFP. However, in the context of the longer term collaboration being sought, the Health Organizations reserve the right to transition items to being in-scope.

	Solution Replacement/ Implementation	Managed Technology and Application Support
Provincial solutions as articulated in the Provincial EHR roadmap available at: http://www.health.gov.bc.ca/ehealth/	Out of Scope	Out of Scope
Business solutions	Out of Scope	Out of Scope
Provincial initiatives currently in place for management and support of: <ul style="list-style-type: none"> • Network BC, for telecommunications; • Strategic Transformation and Mainframe Services (STMS), for the provincial data centre; and • Workplace Support Services, for desktops and Tier 1 support as represented by 'Infrastructure' in Diagrams 4 and 5. For details regarding the context of the items in the above provincial initiatives visit the site: http://www.lcs.gov.bc.ca/asd/alliance/summaries.asp <p><i>NOTE: Hardware functionality to support proposed solutions is in scope. Provision of physical data centres is not in scope.</i></p>	Out of Scope	Out of Scope
IMIT systems and operations of Provincial eHealth, BC Ambulance Services (BCAS), and Occupational Health & Safety Agency for Healthcare (OHSAH)	Out of Scope	Out of Scope

g. Clarification of Scope

With respect to Diagram A-1.1 and the Managed Services, the table below outlines items that are considered either out of scope or to be developed and/or delivered in collaboration or in conjunction with the successful Proponent. Proponents should note that in conjunction includes where each party may have a distinct role. Further Proponents should note that the Health Organizations expect IMITS to retain sole responsibility for all items with respect to IMITS activities that relate to other than the Managed Services. Health Organizations have been abbreviated as 'HO' in the table below.

	Scope for Managed Services
Opportunity Identification: Determining the strategic alignment of opportunities for the collaboration. Further, IMITS anticipates continuing with many of the activities within this process to maintain staff's expertise.	HO, IMITS and Successful Proponent
Architecture Development: The strategic responsibility for establishing and enforcing adherence to architecture standards.	HO and IMITS
<p>Strategy Development: While the successful Proponent will be responsible for clinical engagement, the roles and responsibilities pertaining to the strategic planning and prioritization and stakeholder relationships across the Health Organizations will be retained by IMITS.</p> <ul style="list-style-type: none"> • Develop stakeholder engagement plan • Establish prioritization process • Identify strategic priorities • Establish IMITS guiding principles • Establish key performance measures • Establish governance framework • Develop HR strategy • Establish IT organizational design 	<ul style="list-style-type: none"> • HO, IMITS and Successful Proponent • HO, IMITS and Successful Proponent • HO, IMITS and Successful Proponent • IMITS • HO, IMITS and Successful Proponent • HO, IMITS • HO and Successful Proponent • IMITS
<p>Management:</p> <ul style="list-style-type: none"> • Manage and report on metrics • Report general status • Establish contract and procurement management process • Manage IMITS priorities and strategies • Manage day-to-day budget (operating and capital) • Manage existing relationships • Manage & participate in stakeholder governance activities • Participation/advisory/oversight of project level architecture design 	<ul style="list-style-type: none"> • Successful Proponent • Successful Proponent • IMITS and Successful Proponent • IMITS • HO, IMITS and Successful Proponent • IMITS and Successful Proponent • HO, IMITS and Successful Proponent • HO, IMITS and Successful Proponent

EXHIBIT A-2
RESPONSE TO QUESTIONS DOCUMENT

Instructions: Use a separate Response to Questions Document if submitting a question that contains proprietary information. If the Response to Questions Document contains proprietary information enter the words "PROPRIETARY INFORMATION" in capital letters at the top of the Response to Questions Document. Any questions not marked as proprietary and the answers to those questions will be distributed to all Proponents. HSSBC retains the right to make the final decision whether a question contains proprietary information. Where HSSBC does not believe that a question contains proprietary information, HSSBC will advise the Proponent and provide the Proponent an opportunity to withdraw a question.

Response to Questions Document is to be submitted in accordance with RFP Section 3.2.

Reference	Proponent's Question	HSSBC's Response

[Proponents: Add additional rows if required.]

APPENDIX B
PROPOSAL SUBMISSION FORM

TO: Jeff Thom, Team Lead, Category Management IMIT

RE: HSSBC-00578

RE: Strategic Transformation of Clinical Information Systems

RE: Managed Services

1. Proponent Information

- (a) Proponent's registered legal business name and any other name under which it carries on business:

- (b) Proponent's address, telephone and facsimile numbers:

- (c) Name, address, telephone, e-mail and facsimile numbers of the Proponent's Contact:

- (d) Name, address, telephone, e-mail and facsimile numbers of the backup to the Proponent's Contact:

- (e) Whether the Proponent is a corporation, a partnership, a joint venture, an incorporated consortium or a consortium that is a partnership or other legally recognized entity:

- (f) Name(s) of each of the directors and officers where the Proponent is a corporation; each of the partners where the Proponent is a partnership; and applicable combinations of these when the Proponent is a joint venture, whichever applies:

- (g) Proponent Team Member Information (See Exhibit B-1 to this Proposal Submission Form)
- (h) Joint Venture Information (See Exhibit B-2 to this Proposal Submission Form)

2. Regulatory Matters

[Proponent to strike the provision not applicable to them.]

We confirm as follows:

- (a) With respect to the *Excise Tax Act*, we are either:
- (i) a Harmonized Sales Tax registrant for purposes of the *Excise Tax Act* and our HST registration number is _____;
- OR
- (ii) not a HST registrant for the purposes of the *Excise Tax Act*.

3. Draft Services Agreement

We agree to the non-negotiable provisions set out in the document titled *Form of Services Agreement – Non-Negotiable Provisions* included as Exhibit G-1.

4. Public Union Agreements

[Proponent to strike the provision not applicable to them.]

We are willing and able to transition any Public Sector union agreements relevant to the Managed Services to our organization, if required.

OR

We are unwilling and/or unable to transition any Public Sector union agreements relevant to the Managed Services to our organization.

5. Proposal

With respect to the above noted RFP, we confirm as follows:

- (i) capitalized terms used in clauses (ii) through (x) below shall have the meanings given thereto in the RFP Documents;
- (ii) we have examined the RFP Documents and confirm that we have received all pages of the RFP Documents;
- (iii) we have made any necessary inquiries with respect to Addenda issued by HSSBC and have ensured that we have received and examined all Addenda to the RFP Documents;
- (iv) our Proposal is based on the terms and conditions of the RFP Documents;
- (v) we acknowledge and accept the obligations set out in RFP Section 3.8;
- (vi) we acknowledge and accept the limit of liability set out in RFP Section 10.2;
- (vii) we acknowledge that, except as explicitly provided in RFP Section 3.8 and RFP Section 10.2, the submission of this Proposal creates no legal or contractual obligations or rights on HSSBC or the Proponent, all as set out in RFP Section 10.1;
- (viii) the prices contained in our Economic Model and Pricing Submission are based on the terms and conditions of the RFP Documents;
- (ix) we understand that any negotiations with HSSBC with respect to the Managed Services will assume that we will hold our prices submitted pursuant RFP Appendix F – Economic Model and Pricing Submission and that, in the event we do not hold our prices, HSSBC may, in its sole discretion, cease negotiations with us with respect to the Managed Services; and
- (x) having made all necessary inquiries of our insurers in respect of the insurance requirements set out in the Draft Services Agreement, we confirm that we are able to meet the insurance obligations as set out in the Draft Services Agreement and that our prices include the costs associated with such insurance obligations;

6. Conflict of Interest and Confidential Information

(i) We confirm that we do not have any actual or perceived conflict of interest or any other type of unfair advantage in submitting our Proposal or performing or observing the contractual obligations set out in the Draft Services Agreement, except to the extent that such conflict of interest or potential conflict of interest is disclosed in Attachment 2 to this Proposal Submission Form.

(ii) We confirm that we have not had access to HSSBC confidential information, other than the RFP Documents themselves, with respect to this RFP Process, except as disclosed as follows:

(1) Conflict of Interest

[Proponent to strike the provision not applicable to them.]

The following are existing or potential conflicts of interest:

1. _____
2. _____
3. _____

[Proponent to add more rows if necessary.]

OR

We confirm that we do not have any existing or potential conflicts of interest.

(2) Confidential Information

[Proponent to strike the provision not applicable to them.]

In addition to the RFP Documents, we have access to the following confidential information relating to the RFP Process.

1. _____
2. _____
3. _____

[Proponent to add more rows if necessary.]

OR

We confirm that we do not have access to any confidential information relating to the RFP Process other than the RFP Documents.

Signed by person or persons authorised to
bind the Proponent in accordance with RFP
Section 4.2

Print Name and Title of Person Signing

Signed by person or persons authorised to

bind the Proponent in accordance with RFP
Section 4.2

Print Name and Title of Person Signing

Signed by person or persons authorised to
bind the Proponent in accordance with RFP
Section 4.2

Print Name and Title of Person Signing

Signed by person or persons authorised to
bind the Proponent in accordance with RFP
Section 4.2

Print Name and Title of Person Signing

EXHIBIT B-1

PROPONENT TEAM MEMBER INFORMATION

Proponent is to provide the following information for each Proponent Team Member. Make copies of Exhibit B-2 as required.

1. Proponent Team Member's registered legal business name and any other name under which it carries on business.

2. Proponent Team Member's address, telephone and fax numbers.

3. Whether the Proponent Team Member is a corporation, a partnership, a joint venture, an incorporated consortium or a consortium that is a partnership or other legally recognized entity.

4. Name(s) of each of the directors and officers where the Proponent is a corporation, each of the partners where the Proponent is a partnership, and applicable combination of these when the Proponent is a joint venture, whichever applies.

EXHIBIT B-2
Joint Venture Information

1. General Information

Name of Person/Firm (List whether Sole Proprietor, Partnership or Corporation)	Role in Joint Venture	Representative Signing Proposal and Position of Representative
1.		
2.		
3.		
4.		
5.		

2. Attach Joint Venture Letter and Power of Attorney pursuant to RFP Section 3.11.2 for each joint venture participant.

APPENDIX C

EXECUTIVE SUMMARY

Proponents should provide an overview of their proposed strategy and approach for the transformation of the Health Organizations and IMITS (“**Proposed Solution**”), and explain how that Proposed Solution addresses the Health Organizations’ business challenges, risks and objectives for the planned scope of the initiative as outlined in Exhibit A-1 of this RFP by describing and explaining the information required in each of the sections below.

#	Requirement	Response
1	Describe your Proposed Solution for the transformed Health Organizations within the planned scope and how it contributes to the transformation objectives.	
2	Describe your high-level approach for achieving the Proposed Solution including transforming the current IMITS service delivery structure.	
3	Describe how your Proposed Solution addresses the Health Organizations’ needs during transformation, particularly for minimizing the impact on the Health Organizations and patients served.	
4	Explain your understanding of the business challenges and risks facing the Health Organizations and how your Proposed Solution addresses those business challenges and risks.	
5	Describe your proposed approach for transitioning services, including: <ul style="list-style-type: none"> a. provisioning the underlying infrastructure required for the Solution; and b. the initial transference of people, services and processes. 	
6	Describe how your Proposed Solution addresses ongoing management and operation of the Integrated CIS Environment.	
7	Outline how your Proposed Solution provides the needed flexibility and scalability to address future opportunities of growth within the Health Organizations, adjustments for unforeseen circumstances, and on-boarding of other Health Authorities.	
8	Briefly describe the roll the Proponent and each Proponent Team Member will play in delivery of the Managed Services as described by the Proponent in the Managed Services Submission.	

APPENDICES D TO H

The following appendices are posted to the Secure Data Room separately. Exhibits are posted with the relevant appendix.

- Appendix D Managed Services Submission
- Appendix E Risk Management Submission
- Appendix F Economic Model and Pricing Submission
- Appendix G Draft Services Agreement
- Appendix H Secure Data Room Documents List

**STRATEGIC TRANSFORMATION FOR CLINICAL INFORMATION SYSTEM
RFP # HSSBC-00578
AMENDMENT 1
21 FEBRUARY 2012**

The following changes apply to the Request for Proposals, # HSSBC-00578, Strategic Transformation for Clinical Information Systems:

Appendix A: RFP Section 3.1 RFP Timetable

Original Wording:

RFP Section 3.1 – RFP Timetable	<ul style="list-style-type: none"> • RFP Issue: February 15, 2012 • Proponents' Meeting Registration Deadline: February 21, 2012 at 12:00 Noon Pacific Time • Proponents' Meeting: February 28, 2012 • Proponents' RFP Question Deadline: March 21, 2012 at 3:00 p.m. Pacific Time • RFP Closing: April 3, 2012 at 12:00 Noon Pacific Time
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New Wording:

RFP Section 3.1 – RFP Timetable	<ul style="list-style-type: none"> • RFP Issue: February 15, 2012 • Proponents' Meeting Registration Deadline: February 22, 2012 at 12:00 Noon Pacific Time • Proponents' Meeting: February 28, 2012 • Proponents' RFP Question Deadline: March 21, 2012 at 3:00 p.m. Pacific Time • RFP Closing: April 3, 2012 at 12:00 Noon Pacific Time
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STRATEGIC TRANSFORMATION FOR CLINICAL INFORMATION SYSTEM
RFP # HSSBC-00578
AMENDMENT 2
28 FEBRUARY 2012

The Request for Proposals, # HSSBC-00578, Strategic Transformation for Clinical Information Systems (attached) has been amended as follows:

RFP Section 11 Definitions (original) RFP Section 12: Definitions (new)

RFP Section 11 Definitions has been renumbered and is now RFP Section 12 Definitions. No change has been made to the content.

RFP Section 11: Extension of Contract to Other Healthcare Facilities (new)

RFP Section 11 covers the extension of the Contract to other Healthcare facilities.

NOTE: THE ATTACHED RFP DOCUMENT INCORPORATES THE CHANGES FROM AMENDMENT # 1 (ISSUED 21 FEBRUARY 2012) AND AMENDMENT # 2 (THIS AMENDMENT). PROPONENTS ARE TO USE THIS VERSION WHEN RESPONDING TO THE REQUEST FOR PROPOSALS.

REQUEST FOR PROPOSALS

FOR

STRATEGIC TRANSFORMATION FOR CLINICAL INFORMATION SYSTEMS

RFP NUMBER: HSSBC-00578

RFP ISSUE: February 15, 2012

PROPOSERS' MEETING
REGISTRATION: February 22, 2012

PROPOSERS' MEETING: February 28, 2012

PROPOSERS' RFP QUESTION
DEADLINE: March 21, 2012

RFP CLOSING: April 3, 2012 at 12:00 Noon Pacific Time

**PLEASE ENSURE THAT EACH PROPOSAL CONTAINS AN AUTHORISED
SIGNATURE(S) AT APPENDIX B**

AUTHORIZED CONTACT: Jeff Thom, Team Lead, Category Management IMIT

Email Address: Jeff.Thom@hssbc.ca

APPROVED BY: Frank Hale for Health Shared Services BC

**ALL INQUIRIES MUST BE SUBMITTED TO THE AUTHORIZED CONTACT USING
THE SECURE DATA ROOM**

REQUEST FOR PROPOSALS

1 General

- 1.1 HSSBC is issuing this directed Request for Proposal (“**RFP**”) to retain a service provider to provide goods and services (“**Managed Services**”) described in the RFP Data Sheet attached as Appendix A to this RFP for Provincial Health Services Authority, Vancouver Coastal Health Authority and Providence Health Care Society (each a “**Health Organization**”, collectively “**Health Organizations**”). The RFP number (“**RFP Number**”) and RFP name (“**RFP Name**”) is set out in the RFP Data Sheet attached as Appendix A to this RFP..
- 1.2 HSSBC intends to award the agreement through an open, fair and competitive RFP process. The RFP competition will be open to only those entities that prequalified to submit a response to the RFP pursuant to the Request for Prequalification (HSSBC-00432) issued on August 8, 2011 (“**RFPQ**”) as specified in the RFP Data Sheet.
- 1.3 The entities or joint ventures listed in the RFP Data Sheet have been prequalified (the “**Prequalified Parties**”) under the RFPQ and are invited to submit a proposal (the “**Proposal**”) in response to this RFP. In this RFP, individuals or firms that submit documents in response to this RFP are referred to as “**Proponents**” and each team member, if any, constituting a Proponent’s team is referred to as a “**Proponent Team Member**”. The entity or entities that are selected to be awarded the work are referred to as “**Successful Proponent(s)**”. For ease of reference, prospective respondents, whether or not they submit a response to this RFP, are also referred to as “**Proponents**”.
- 1.4 The process (“**RFP Process**”) to select a service provider for the purposes of the Managed Services will commence with the issuance of these RFP Documents and will terminate when HSSBC and the Successful Proponent enter into the Final Agreement.

2 Request for Proposals Documents

- 2.1 The Request for Proposals documents (the “**RFP Documents**”) are:
 - (a) this Request for Proposals;
 - (b) Appendix A – RFP Data Sheet, including any Exhibits;
 - (c) Appendix B – Proposal Submission Form, including any Exhibits;
 - (d) Appendix C – Executive Summary;
 - (e) Appendix D – Managed Services Submission, including any Exhibits;
 - (f) Appendix E – Risk Management Submission
 - (g) Appendix F – Economic Model and Pricing Submission including any Exhibits;

- (h) Appendix G – Draft Services Agreement (including all related schedules, exhibits and statements of work) (the “**Draft Services Agreement**”), including Exhibit G-1;
- (i) Appendix H – Secure Data Room Documents List; and
- (j) Addenda to the RFP Documents, if any.

2.2 The RFP Documents shall be read as a whole. The Appendices and Addenda, if any, constitute an integral part of this RFP and are incorporated by reference.

2.3 HSSBC will open a secure data room (“**Secure Data Room**”) where Proponents will find supplemental information about the Managed Services and copies of the RFP Documents, Addenda, Notices and Response to Questions Document. The universal resource locator (“**URL**”) for the Secure Data Room will be sent to the Proponent’s contact (“**Proponent’s Contact**”) identified in the Proponent’s Prequalification Submission after the Proponent’s Contact completes, signs and returns the Receipt Confirmation Form and the non-disclosure agreement (“**NDA**”) attached to the letter sent to the Proponent’s Contact by the “**Authorized Contact**” identified in the letter and in the RFP Data Sheet. Proponent’s Contact and any other individual from the Proponent’s or a Proponent Team Member’s organization that will require access to the documents contained in the Secure Data Room must sign a NDA and return the NDA to the Authorized Contact prior to receiving the password or accessing the information stored in the Secure Data Room. **Note: Reference to a document number in an Appendix or an Exhibit is a reference to a document in the Secure Data Room. A list of the documents in the Secure Data Room is found in Appendix H.**

2.4 Priority of Documents

- 2.4.1 Except as provided in RFP Section 2.4.2, if there are any inconsistencies between the terms, conditions and provisions of the RFP Documents, the RFP shall prevail over the Appendices to the RFP during the RFP Process.
- 2.4.2 If there is a conflict between the RFP and the RFP Data Sheet, the information in the RFP Data Sheet shall prevail over the RFP.

2.5 Distribution of Documents – Electronic Distribution

- 2.5.1 HSSBC will use the Secure Data Room to distribute all RFP Documents and supplemental information.
- 2.5.2 Each Proponent is solely responsible for making appropriate arrangements to access the RFP Documents and supplemental information through the Secure Data Room.

2.6 Information Provided by HSSBC

- 2.6.1 Each Proponent is solely responsible for conducting its own independent research, due diligence, and any other work or investigations and seeking any other independent advice necessary for the preparation of Proposals, negotiation or finalization of the Draft Agreement, and the subsequent delivery of all the Managed Services to be provided by the Successful Proponent. Nothing in the RFP Documents or in the Secure Data Room is intended to relieve the Proponents from forming their own opinions and conclusions with respect to the matters addressed in this RFP.

- 2.6.2 No guarantee, representation or warranty, express or implied, is made and no responsibility of any kind is accepted by HSSBC or its representatives for the completeness or accuracy of any information presented in the RFP Documents or the Secure Data Room during the RFP Process or during the term of the Final Agreement. HSSBC and its representatives shall not be liable to any person or entity as a result of the use of any information contained in the RFP Documents or in the Secure Data Room or otherwise provided by HSSBC or its representatives during the RFP Process or during the term of the Final Agreement.

3 THE RFP PROCESS

3.1 RFP Timetable

- 3.1.1 The deadline for the submission of Proposals (the “**RFP Closing**”) and other dates for the RFP Process are set out in the RFP Timetable (the “**RFP Timetable**”) included in the RFP Data Sheet. Where there is an inconsistency in a date appearing on the cover page of the RFP and a date in the RFP Timetable, the date in the RFP Timetable will prevail.
- 3.1.2 HSSBC may, without liability, cost or penalty and in its sole discretion amend the RFP Timetable,
- (a) for matters that are to take place on or before the RFP Closing, at any time prior to the RFP Closing; and
 - (b) for matters that are to take place after the RFP Closing, at any time during the RFP Process.
- 3.1.3 If HSSBC extends the RFP Closing, all obligations of Proponents will thereafter be subject to the extended deadline.

3.2 Questions and Communications Related to the RFP Documents

- 3.2.1 Proponents shall submit all questions and other communications regarding the RFP Documents and the RFP Process to the Authorized Contact using the Secure Data Room no later than the deadline for submission of questions (“**Proponents’ RFP Question Deadline**”) set out in the RFP Data Sheet. Questions should be submitted using the Response to Questions Document attached as Exhibit A-2 to Appendix A. Questions involving proprietary information are to be submitted in a separate Response to Questions Document. The words “Proprietary Information” should be entered in capital letters at the top of the Response to Questions Document containing proprietary information. If HSSBC determines that information identified as proprietary by the Proponent is not in fact proprietary, HSSBC will notify the Proponent and the Proponent will have the opportunity to withdraw the question.
- 3.2.2 HSSBC will provide the Proponents with written responses to questions that are submitted in accordance with this RFP Section 3.2 in a “**Response to Questions Document**”. HSSBC will post the Response to Questions Document in the Secure Data Room. Questions posted to the Secure Data Room prior to the Proponents’ RFP Question Deadline will be answered on the Friday of the week they are posted if received in the Secure Data Room prior to 3:00 p.m. on the Wednesday of that week. For clarity, questions posted prior to 3:00 p.m. Wednesday March 7 will be answered on Friday March 9.

- 3.2.3 The Response to Questions Document is not an RFP Document and does not amend the RFP Documents.
- 3.2.4 HSSBC will not attribute the questions in the Response to Questions Document to any person or entity. HSSBC may, in its sole discretion,
- (a) answer similar questions from various Proponents only once;
 - (b) edit the language of the questions for the purpose of clarity;
 - (c) determine whether a submitted question does in fact contain proprietary information;
 - (d) respond to questions containing proprietary information only to the Proponent submitting the proprietary information;
 - (e) respond to questions submitted after the RFP Question Deadline if HSSBC believes that such responses would be of assistance to the Proponents generally; and
 - (f) exclude submitted questions if they are ambiguous or incomprehensible.
- 3.2.5 It is each Proponent's responsibility to seek clarification from HSSBC of any matter it considers to be unclear in the RFP Documents and the Proponent may seek clarification in accordance with this RFP Section 3.2. None of HSSBC nor the Health Organizations shall be responsible for any misunderstanding by a Proponent of the RFP Documents, the RFP Process or the Managed Services.
- 3.2.6 HSSBC may, in its sole discretion, post notices ("**Notices**") to the Secure Data Room for the purpose of communicating to Proponents on issues of importance to the RFP Process.

3.3 Addenda/Changes to the RFP Documents

- 3.3.1 HSSBC may, in its sole discretion, amend or supplement the RFP Documents prior to the RFP Closing. HSSBC shall issue changes to the RFP Documents by Addenda only. No other statement, Response to Questions Document or Notice, whether oral or written, made by HSSBC or any HSSBC advisors, employees or representatives, including, for clarity, the Authorized Contact, or any other person, shall amend the RFP Documents. HSSBC may issue Addenda at any time. Addenda will be posted in the Secure Data Room.
- 3.3.2 Each Proponent is solely responsible for ensuring that it has received all Addenda issued by HSSBC. Proponents may, in writing, seek confirmation of the number of Addenda issued under this RFP from the Authorized Contact.

3.4 Proponents' Meeting

- 3.4.1 To assist Proponents in understanding the RFP and the RFP Process, HSSBC may conduct an information meeting (the "**Proponents' Meeting**") for all Proponents. Whether or not HSSBC will conduct a Proponents' Meeting is set out in the RFP Data Sheet. If HSSBC is conducting a Proponents' Meeting, the meeting will be held on the

date and at the time set out in the RFP Timetable and at the location set out in the RFP Data Sheet.

- 3.4.2 Attendance by Proponents at a Proponents' Meeting is not mandatory but, if one is held, Proponents are strongly encouraged to attend.
- 3.4.3 If HSSBC gives oral answers to questions at the Proponents' Meeting, these answers will not be considered final unless they are provided in response to written questions submitted by Proponents in accordance with RFP Section 3.3, which responses will be included in the Response to Questions Document.
- 3.4.4 If pre-registration for the Proponents' meeting is necessary, the deadline for registration ("**Proponents' Meeting Registration Deadline**") will be set out in the RFP Timetable and details regarding the registration process will be set out in the RFP Data Sheet.

3.5 Prohibited Contacts

- 3.5.1 Proponents and Proponent Team Members and their respective advisors, employees and representatives are prohibited from engaging in any form of political or other lobbying, of any kind whatsoever, to influence the outcome of the RFP Process.
- 3.5.2 Without limiting the generality of RFP Section 3.5.1 and without restricting a Party's ability to conduct business not directly related to the RFP Process, neither Proponents nor Proponent Team Members nor any of their respective advisors, employees or representatives shall contact or attempt to contact, either directly or indirectly, at any time during the RFP Process, any of the following persons or organizations on matters related to the RFP Process, the RFP Documents, or their Proposals:
 - (a) any member of the Evaluation Team;
 - (b) any advisor to HSSBC or the Evaluation Team;
 - (c) any employee or representative of,
 - (i) HSSBC;
 - (ii) Health Organizations; or
 - (iii) any other Health Authority.
 - (d) any consultant engaged by IMITS or Tech Services at HSSBC, Health Organizations or Health Authorities within British Columbia; or
 - (e) any directors, officers, employees, agents, representatives or consultants of any entity listed in RFP Sections 3.5.2(a) to 3.5.2(e) above.
- 3.5.3 If a Proponent or a Proponent Team Member or any of their respective advisors, employees or representatives, in the opinion of HSSBC, contravenes RFP Section 3.5.2, HSSBC may, in its sole discretion,
 - (a) take any action in accordance with RFP Section 7.2; or

- (b) impose conditions on the Proponent's or Proponent Team Member's continued participation in the RFP Process that HSSBC considers, in its sole discretion, to be appropriate.

For clarity, HSSBC is not obliged to take the actions set out in this RFP Section 3.5.3.

3.6 Media Releases, Public Disclosures, Public Announcements and Copyright

- 3.6.1 A Proponent shall not, and shall ensure that its Proponent Team Members, advisors, employees and representatives do not, issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, Internet or any other medium) that relates to the RFP Process, the RFP Documents or the Managed Services or any matters related thereto, without the prior written consent of HSSBC.
- 3.6.2 Neither the Proponents, the Proponent Team Members or any of their respective advisors, employees or representatives shall make any public comment, respond to questions in a public forum, or carry out any activities to either criticize another Proponent or Proposal or to publicly promote or advertise their own qualifications, interest in or participation in the RFP Process without HSSBC's prior written consent, which consent may be withheld, conditioned or delayed in HSSBC's sole discretion. Proponents, Proponent Team Members and their respective advisors, employees and representatives are permitted to state publicly that they are participating in the RFP Process, but shall not make formal public announcements identifying other Proponents without the prior written consent of HSSBC.
- 3.6.3 Proponents shall not use the name of HSSBC, a Health Organization or a Health Authority or any of HSSBC's, Health Organization's or a Health Authority's logos, designs, colours or registered trademarks and names used, owned or registered by HSSBC, a Health Organization or a Health Authority, except with the prior written consent of HSSBC.

3.7 Confidentiality and Disclosure Issues – Proponent Information

- 3.7.1 Proponent acknowledges that HSSBC, Health Organizations and Health Authorities are public bodies, and all information or materials supplied to or obtained or created by the Proponent are subject to the provisions of the *Freedom of Information and Protection of Privacy Act* (British Columbia) as amended from time to time (“**FIPPA**”) including orders and decisions made by the Office of the Information & Privacy Commissioner for British Columbia. The Proponent acknowledges and agrees that HSSBC, a Health Organization or a Health Authority may be required to disclose the terms of the Final Agreement and the Proponent's Proposal and any other information supplied in connection with or relating to the Final Agreement to the public in order to comply with Applicable Law and existing and future orders and decisions of the Office of the Information & Privacy Commissioner. The Proponent will to the extent required by Applicable Law, at all times hold, safeguard, use, disclose, document and manage personal information and all other information and records in accordance with Applicable Law including FIPPA, the policies of HSSBC, Health Organizations and Health Authorities and the provisions of the Privacy Schedule in the Draft Agreement attached to this RFP. Notwithstanding the generality of the foregoing, the Proponent acknowledges and agrees that HSSBC, a Health Organization or a Health Authority may, at its option, proactively disclose the terms of the Final Agreement to the public.

- 3.7.2 The Proponent agrees that HSSBC may disclose Proposals to members of the Evaluation Team and their advisors and HSSBC may,
- (a) make copies of the Proposal; and
 - (b) retain the Proposal.
- 3.7.3 HSSBC may disclose any information with respect to the Proponents, the Proponent Team Members, the Proposals and the RFP Process as required by the Applicable Law.
- 3.7.4 The Proponent shall not require HSSBC and Health Organizations or any of their representatives to sign a confidentiality agreement in respect of any step taken or information provided as part of this RFP Process.

3.8 HSSBC Confidentiality Issues

- 3.8.1 In this RFP, “**RFP Information**” shall mean all material, data, information or any item in any form, whether oral or written, including in electronic or hard-copy format, supplied by, obtained from or otherwise procured in any way, whether before or after the RFP Process, from HSSBC, Health Organizations, or Health Authorities in connection with the RFP Documents, or the Managed Services, except it does not include any item which,
- (a) is or becomes generally available to the public other than as a result of a disclosure resulting from a breach of this RFP Section 3.8;
 - (b) becomes available to the Proponent on a non-confidential basis from a source other than HSSBC, Health Organizations or Health Authorities so long as that source is not bound by a confidentiality agreement with respect to the information or otherwise prohibited from transmitting the information to the Proponent by a contractual, legal or fiduciary obligation; or
 - (c) the Proponent is able to demonstrate was known to it on a non-confidential basis before it was disclosed to the Proponent by HSSBC.
- 3.8.2 RFP Information,
- (a) shall remain the sole property of HSSBC, a Health Organization or a Health Authority and the Proponent shall maintain the confidentiality of such information except as required by Applicable Law;
 - (b) shall not be used by the Proponent for any purpose other than submitting a Proposal or performing obligations under any subsequent agreement with HSSBC relating to the Managed Services;
 - (c) shall not be disclosed by the Proponent to any person who is not involved in the Proponent’s preparation of its Proposal or in the performance of any subsequent agreement relating to HSSBC, a Health Organization or a Health Authority, as applicable, without prior written authorization from HSSBC;
 - (d) shall not be used in any way detrimental to HSSBC, a Health Organization or a Health Authority; and

- (e) if requested by HSSBC, shall be returned to the Authorized Contact or destroyed no later than ten (10) calendar days after such request is received in writing by the Proponent.
- 3.8.3 Each Proponent shall be responsible for any breach of the provisions of this RFP Section 3.8 by any person to whom it discloses the RFP Information.
- 3.8.4 Each Proponent acknowledges and agrees that a breach of the provisions of this RFP Section 3.8 would cause HSSBC, a Health Organization or a Health Authority and/or their related entities to suffer loss which could not be adequately compensated by damages, and that HSSBC, a Health Organization or a Health Authority and/or any related entity may, in addition to any other remedy or relief, enforce any of the provisions of this RFP Section 3.8 upon application to a court of competent jurisdiction without proof of actual damage to HSSBC, a Health Organization, a Health Authority or any related entity.
- 3.8.5 Notwithstanding RFP Section 10, the provisions of this RFP Section 3.8 shall be binding and shall survive any cancellation of this RFP and the conclusion of the RFP Process.
- 3.8.6 HSSBC may, in its sole discretion, require that Proponents execute legally binding confidentiality agreements, in a form and substance satisfactory to HSSBC.

3.9 Applicable Law and Attornment

- 3.9.1 This RFP and any agreement entered into pursuant to the RFP Process (the “**Final Agreement**”) shall be governed and construed in accordance with the laws of British Columbia and the applicable laws of Canada (the “**Applicable Law**”).
- 3.9.2 The Proponent agrees that,
 - (a) any action or proceeding relating to this RFP Process shall be brought in any court of competent jurisdiction in the Province of British Columbia and for that purpose each Party irrevocably and unconditionally attorns and submits to the jurisdiction of that British Columbia court;
 - (b) it irrevocably waives any right to and will not oppose any British Columbia action or proceeding relating to this RFP Process on any jurisdictional basis, including forum non conveniens; and
 - (c) it will not oppose the enforcement against it, in any other jurisdiction, of any judgement or order duly obtained from an British Columbia court as contemplated by this RFP Section 3.9.2(b).

3.10 Licences and Permits

- 3.10.1 If a Proponent is required by the Applicable Law to hold or obtain a licence, permit, consent or authorization to carry on an activity contemplated in its Proposal, neither acceptance of the Proposal nor execution of the Final Agreement shall be considered to be approval by HSSBC of carrying on such activity without the requisite licence, permit, consent or authorization.

3.11 Entities Permitted to Submit Proposals

- 3.11.1 A prequalification process preceded this RFP Process and, subject to RFP Section 1.3, only the Prequalified Parties are eligible to participate in this RFP Process. The prequalification documents submitted by each Prequalified Party in the prequalification process that preceded this RFP Process are referred to as a Prequalified Party's **"Prequalification Submission"**.
- 3.11.2 Each **"Joint Venture Proponent"** shall submit, as part of its Proposal, a written commitment, in the form of a letter duly executed by a responsible officer of each **"Joint Venture Participant"** that,
- (a) confirms each Joint Venture Participant's commitment to the joint venture and acceptance of the joint venture arrangements described in the Proposal in accordance with this RFP Section 3.11;
 - (b) confirms each Joint Venture Participant's willingness to provide a joint and several guarantee to HSSBC to underwrite the performance of the joint venture in respect of the Final Agreement; and
 - (c) identifies which Joint Venture Participant,
 - (i) will assume the leading role on behalf of the other Joint Venture Participants; and
 - (ii) will have the authority to bind or commit all Joint Venture Participants (the **"Participant in Charge"**).
 - (d) Each Joint Venture Participant shall demonstrate its authorization of the Participant in Charge by submitting a power of attorney signed by legally authorized signatories.
 - (e) If a Final Agreement is executed between HSSBC and a Joint Venture Proponent, the parent companies of the entities forming the Joint Venture Proponent shall jointly and severally guarantee the obligations of the Joint Venture Proponent under the Final Agreement. HSSBC may, in its sole discretion, also require parent companies of the entities forming the Joint Venture Proponent to be parties to the Final Agreement.

3.12 Proponents' Costs

- 3.12.1 The Proponent shall bear all costs and expenses incurred by the Proponent relating to any aspect of its participation in this RFP Process, including, without limitation, all costs and expenses related to the Proponent's involvement in,
- (a) the preparation, presentation and submission of its Proposal;
 - (b) due diligence and information gathering processes;
 - (c) attendance at any interviews or Proponents' Meeting(s);
 - (d) attendance at any site visits;

- (e) preparation of any prototypes or proof of concept demonstrations;
- (f) preparation of responses to questions or requests for clarification from HSSBC;
- (g) preparation of the Proponent's own questions during the clarification process; and
- (h) any discussion or negotiations with HSSBC regarding the Draft Agreement.

3.12.2 In no event shall HSSBC, Health Organizations, Health Authorities or any related entity be liable to pay any costs or expenses or to reimburse or compensate a Proponent under any circumstances, regardless of the conduct or outcome of the RFP Process.

3.13 Delay and Costs of Delay

3.13.1 The Proponent shall not hold HSSBC, Health Organizations, Health Authorities or any related entity liable for any error or omission in any part of the RFP Documents or RFP Information or for any delay or costs associated with delays in the RFP Process.

3.14 Clarification and Verification of Proponent's Proposal

3.14.1 HSSBC may,

- (a) require the Proponent to clarify the contents of its Proposal;
- (b) require the Proponent to submit supplementary documentation clarifying any matters contained in its Proposal; and
- (c) seek a Proponent's acknowledgement of an HSSBC interpretation of the Proponent's Proposal.

3.14.2 HSSBC is not obliged to seek clarification or verification of any aspect of a Proposal or any statement by a Proponent, including an ambiguity in a Proposal or in a statement made by a Proponent.

3.14.3 Any written information received by HSSBC from a Proponent pursuant to a request for clarification or verification from HSSBC as part of the RFP Process may, in HSSBC's discretion, be considered as an integral part of the Proposal.

3.14.4 HSSBC may, in its sole discretion, verify or clarify any statement or claim contained in any Proposal or made subsequently in any interview, presentation, or discussion. That verification or clarification may be made by whatever means that HSSBC deems appropriate and may include contacting the persons identified in the contact information provided by the Proponent and, in addition, contacting persons or entities other than those identified by any Proponent.

3.14.5 In submitting a Proposal, the Proponent is deemed to consent to HSSBC verifying or clarifying any information and requesting additional information from third parties regarding the Proponent, the Proponent Team Members (if any) and their respective directors, officers, shareholders or owners and any other person associated with the Proponent as HSSBC may determine.

- 3.14.6 HSSBC may, in its sole discretion, convene a meeting with one, some or all Proponents for the purposes of clarifying or verifying the contents of a Proponent's Proposal. Any written information received by HSSBC from a Proponent during a clarification/verification meeting may, in HSSBC's sole discretion, be considered as an integral part of the Proposal, even if such information should have been submitted as part of the Proponent's Proposal. Oral information received during a clarification/verification meeting may not be taken into account in the evaluation of the Proponent's Proposal unless it is confirmed in writing by the Proponent and submitted within twenty-four (24) hours of the conclusion of the clarification/verification meeting.

3.15 Changes to Proponents and Proponent Team Members

- 3.15.1 During the RFP Process, a Proponent shall not permit a Prequalified Proponent Change in the Proponent or any Identified Proponent Party without the prior written consent of HSSBC. For the purposes of this RFP, a **"Prequalified Proponent Change"** means:

- (a) an actual or proposed transaction that will result or has resulted in a change of majority Control or ownership of the Proponent or any Identified Proponent Party;
- (b) a change in circumstances that may materially adversely affect a Proponent or an Identified Proponent Party in a way which could impair the Proponent's or the Identified Proponent Party's ability to perform their respective obligations under or in connection with the Draft Agreement;
- (c) a change in relationship between the Proponent and any Identified Proponent Party whereby an Identified Proponent Party becomes the Proponent and the Proponent becomes an Identified Proponent Party;
- (d) the withdrawal of any of the Identified Proponent Parties and the proposed substitution of such person or entity; or
- (e) the proposed addition of any person or entity as an Identified Proponent Party.

For the purposes of this RFP Section 3.15, an **"Identified Proponent Party"** means any of the entities identified in the Proponent's Prequalification Submission, including for clarity, proposed subcontractors, key individuals or Joint Venture Participants.

- 3.15.2 If, prior to the RFP Closing, there is a Prequalified Proponent Change, the Proponent shall request the consent of HSSBC by notifying the Authorized Contact in writing as soon as possible and, in any event, no later than seven days prior to the RFP Closing. That notification shall clearly identify the Prequalified Proponent Change and provide details regarding the impact of the Prequalified Proponent Change on the Proponent or Identified Proponent Party, as applicable. In addition, in the event that the Prequalified Proponent Change involves the proposed substitution of an Identified Proponent Party, the Proponent shall include sufficient documentation to demonstrate that the proposed substitute would have met or exceeded any applicable criteria applied during the prequalification process that preceded this RFP Process.
- 3.15.3 In response to a notification in accordance with RFP Section 3.15.2, HSSBC may, in its sole discretion, provide the Proponent with instructions as to the type of information required by HSSBC to consider the Prequalified Proponent Change as well as the deadlines for submission of information that the Proponent must meet in order to have

its request considered by HSSBC. The Proponent shall provide any further documentation as may be reasonably requested by HSSBC to assess the impact of the Prequalified Proponent Change on the Proponent and any Identified Proponent Party, including in the case of a proposed substitution, the acceptability of the proposed substitute. If HSSBC, in its sole discretion, considers the Prequalified Proponent Change to be acceptable, HSSBC may consent to the Prequalified Proponent Change. HSSBC's consent to the Prequalified Proponent Change, however, may be subject to such terms and conditions as HSSBC may require. In the case of a proposed substitution of an Identified Proponent Party, if a Prequalified Proponent Change is not acceptable to HSSBC, the Proponent may propose an alternate substitute for review by HSSBC in the same manner as the first proposed substitute. HSSBC may, in its sole discretion, disallow any Prequalified Proponent Change and may disqualify a Proponent from further consideration in the RFP Process.

- 3.15.4 In the case of a Prequalified Proponent Change made by the Proponent without consent by HSSBC or a Prequalified Proponent Change after the RFP Closing, HSSBC may, in its sole discretion, disqualify the Proponent and terminate the Proponent's continued involvement in the RFP Process or allow the Proponent to continue under such terms and conditions as HSSBC, in its sole discretion, may require.
- 3.15.5 Regardless of whether a prequalification process has preceded this RFP Process, if, on or after the RFP Closing and prior to execution of the Final Agreement, there is a Post-Submission Proponent Change, then the Proponent shall promptly notify HSSBC in writing to the Authorized Contact. For the purposes of this RFP Section 3.15, a "**Post-Submission Proponent Change**" means:
- (a) an actual or proposed change of Control of the Proponent or a Proponent Team Member;
 - (b) a change in circumstances that may materially adversely affect a Proponent or a Proponent Team Member in a way which could impair the Proponent's or a Proponent Team Member's ability to perform their respective obligations under the Draft Agreement;
 - (c) a change in relationship between the Proponent and any Identified Proponent Party whereby an Identified Proponent Party becomes the Proponent and the Proponent becomes an Identified Proponent Party;
 - (d) the withdrawal of any Proponent Team Member and the proposed substitution of such person or entity; or
 - (e) the proposed addition of any person or entity as a Proponent Team Member.

In response to a notification in accordance with this RFP Section 3.15.5, HSSBC may, in its sole discretion, provide the Proponent with instructions as to the type of information required by HSSBC to consider the Post-Submission Proponent Change as well as the deadlines for submission of information that the Proponent must meet in order to have its request considered by HSSBC. The Proponent shall provide any further documentation as may be reasonably requested by HSSBC to assess the impact of the Post-Submission Proponent Change on the Proponent and any Proponent Team Member, including in the case of a proposed substitution, the acceptability of the proposed substitute. In the case of a proposed substitution of a Proponent Team Member, if a Post-Submission Proponent Change is not acceptable to

HSSBC, the Proponent may propose an alternate substitute for review by HSSBC in the same manner as the first proposed substitute. HSSBC may, in its sole discretion, refuse to accept a Post-Submission Proponent Change that occurs or is requested by the Proponent after the Submission Deadline and may, in its sole discretion, disqualify the Proponent from continuing in the RFP Process.

4 Format and Content of Proposal

4.1 Format

4.1.1 Proponents shall prepare their Proposals in accordance with and in the content and format requirements set out as follows:

- (a) a cover letter signed by an authorized signatory of the Proponent;
- (b) a completed Proposal Submission Form prepared in accordance with the requirements set out in Appendix B, including any Exhibits attached to Appendix B, if applicable;
- (c) a completed Executive Summary prepared in accordance with the requirements set out in Appendix C;
- (d) a completed Managed Services Submission prepared in accordance with the requirements set out in Appendix D, including any Exhibits attached to Appendix D;
- (e) a completed Risk Management Submission prepared in accordance with the requirements set out in Appendix E, including any Exhibits attached to Appendix E; and
- (f) an Economic Model and Pricing Submission prepared in accordance with the requirements set out in Appendix F, including any Exhibits attached to Appendix F.

4.1.2 In respect to sales and promotional material,

- (a) the Proponent shall not submit any pre-printed or electronic sales or promotional material; and
- (b) HSSBC will not evaluate pre-printed or electronic sales or promotional material.

4.1.3 Each Proponent shall,

- (a) examine all instructions, terms and conditions, forms and information in the RFP Documents and the Response to Questions Document; and
- (b) in a clear, concise and legible manner, complete and submit all documentation and information required by Appendices B, C, D, E and F to the RFP.

4.1.4 The Proponents are strongly encouraged to use formatting and a font size (12 point type is recommended) that is readable. Proponents should not change the numbering or order of the material within the Appendices.

- 4.1.5 Proponents should ensure their proposals are concise and do not include sales or promotional verbiage.

4.2 Proposal Submission Form

- 4.2.1 Each Proponent shall complete and sign the Proposal Submission Form attached as Appendix B of this RFP.

- 4.2.2 Proponents shall execute the Proposal Submission Form as follows:

- (a) in the case of a limited company, an authorized signing officer shall sign the Proposal Submission Form;
- (b) in the case of a partnership, a designated partner shall sign the Proposal Submission Form on behalf of all partners and have their signature witnessed; and
- (c) in the case of a joint venture, each Joint Venture Participant in the Joint Venture Proponent shall sign the Proposal Submission Form in accordance with the requirements of RFP Section 4.2.2(a) or 4.2.2(b), as applicable.

4.3 Executive Summary

- 4.3.1 The Proponent shall prepare and submit its Executive Summary in the format and containing the information set out in Appendix C to the RFP.

4.4 Contents of the Managed Services Submission

- 4.4.1 The Proponent shall prepare and submit its Managed Services Submission in the format and containing the information set out in Appendix D to the RFP.

4.5 Contents of the Risk Management Submission

- 4.5.1 The Proponent shall prepare and submit its Risk Management Submission in the format and containing the information set out in Appendix E to the RFP

4.6 Contents of the Economic Model and Pricing Submission

- 4.6.1 The Proponent shall prepare and submit its Economic Model and Pricing Submission in the format and containing the information set out in Appendix F to the RFP.

4.7 References and Past Performance Issues

- 4.7.1 If specified in the Proposal Submission Form, Proponents shall provide reference information. Unless otherwise set out in the Proposal Submission Form, all references shall be with respect to goods and/or services provided, as applicable, sometime during the five years immediately prior to the RFP Closing. The Proponent shall provide a minimum of three references, unless otherwise set out in the Proponent Submission Form.
- 4.7.2 HSSBC reserves the right to request reference information from a Proponent at any time during the RFP Process.

- 4.7.3 HSSBC may, in its sole discretion, confirm the Proponent's experience and ability to provide the Managed Services by contacting the Proponent's references. However, HSSBC is under no obligation to contact references submitted by any Proponent and may determine, in its sole discretion, how, and whether, the responses of references will be taken into account in the evaluation process.
- 4.7.4 If HSSBC has reliable information with respect to a Proponent's poor performance in providing goods and/or services, as applicable, HSSBC may take such past poor performance into account in its evaluation of the Proponent and the Proponent's Proposal.

4.8 Conflict of Interest

- 4.8.1 Each Proponent shall disclose any potential, perceived or actual conflict of interest of the Proponent or Proponent Team Members ("**Conflict of Interest**") to the Authorized Contact and in its Proposal Submission Form, in accordance with this RFP Section 4.8. HSSBC may, in its sole discretion, waive any Conflict of Interest or may impose conditions on a Proponent that require the management, mitigation and/or minimization of the Conflict of Interest.
- 4.8.2 Upon discovery of a Conflict of Interest, Proponents shall promptly disclose the Conflict of Interest in a written statement to the Authorized Contact. If HSSBC discovers a Proponent's failure to disclose a Conflict of Interest, HSSBC may disqualify the Proponent or terminate any Final Agreement awarded to that Proponent pursuant to this RFP Process.
- 4.8.3 If, in the sole discretion of HSSBC, a Proponent or Proponent Team Member is determined to have a Conflict of Interest that, in HSSBC's sole discretion, cannot be managed, mitigated or minimized, HSSBC may, in addition to any other remedies available at law or in equity, disqualify the Proposal submitted by the Proponent.

5 Submission of Proposals

- 5.1 Each Proponent shall submit its Proposal to the area of the Secure Data Room reserved for the Proponent.
- 5.2 Proponents shall place their Proposal in the Secure Data Room as follows:
- (a) The Proponents shall place the Cover Letter, the Executive Summary, the Proposal Submission Form, the Managed Services Submission and the Risk Management Submission in the area named "**Managed Services Submission**" within the area of the Secure Data Room reserved for the Proponent's response;
 - (b) The Proponents shall place the Economic Model and Pricing Submission in the area named "**Financial Model Submission**" within the area of the Secure Data Room reserved for the Proponent's response; and
 - (c) Proponents shall not submit Proposals by other methods, electronic or physical, unless specifically permitted in the RFP Data Sheet.

5.3 Withdrawal of Proposals

A Proponent may withdraw its Proposal only by giving written notice of an intention to withdraw to the Authorized Contact before the RFP Closing. Proponent is to use the Secure Data Room to provide their notice. HSSBC shall delete a Proposal from the Secure Data Room that has been withdrawn in accordance with this RFP Section 5.3.

5.4 Amendment of Proposals

Proponents may amend their Proposals after submission but only if the Proposal is amended and resubmitted before the RFP Closing in accordance with the following:

- (a) the Proponent shall withdraw its original Proposal by notifying the Authorized Contact in writing using the Secure Data Room;
- (b) HSSBC shall delete the Proponent's original Proposal from the Secure Data Room and notify the Proponent when this action is completed; and
- (c) the Proponent shall submit a revised fully complete replacement Proposal in accordance with the RFP Documents after receiving the notification in RFP Section 5.4(b) and no later than the RFP Closing; or
- (d) the Proponent shall advise Authorized Contact that they are withdrawing from the competition in accordance with Section 5.3..

5.5 Proposal Validity Period

- 5.5.1 Subject to the Proponent's right to withdraw before the RFP Closing, the Proponent's Proposal shall be irrevocable and shall remain in effect and open for acceptance for the number of days set out in the RFP Data Sheet after the RFP Closing (the "**Proposal Validity Period**").

5.6 One Proposal per Person or Entity

- 5.6.1 Except with HSSBC's prior written consent,
- (a) a person or entity shall submit or participate in only one Proposal either individually or as a Proponent Team Member; and
 - (b) no person or entity shall be a subcontractor of a Proponent while submitting a Proposal individually or as a Proponent Team Member in the same RFP Process.
- 5.6.2 If a person or entity submits or participates in more than one Proposal in contravention of RFP Section 5.6.1, HSSBC may, in its sole discretion, disqualify any or all of the Proposals submitted by that person or entity or in which that person or entity is a participant.

5.7 Two Solutions per Proposal

- 5.7.1 A Proponent may submit a maximum of two (2) solutions in their Proposal.

- 5.7.2 For each solution Proponent must complete a set consisting of a Proposal Submission Form, an Executive Summary, a Managed Services Submission, a Risk Management Submission, and an Economic Model and Pricing Submission.

6 RFP Evaluation

6.1 Evaluation Team

- 6.1.1 HSSBC will establish an evaluation team for the purpose of evaluating Proposals (the **"Evaluation Team"**).
- 6.1.2 HSSBC will delegate certain administrative functions related to the evaluation of Proposals to a separate team of individuals who are not members of the Evaluation Team.

6.2 Evaluation of Proposals

- 6.2.1 The Proponents' Proposals will be reviewed and evaluated by the Evaluation Team on the basis of the evaluation criteria set out in the RFP Data Sheet (the **"Evaluation Criteria"**).

6.3 Steps in the Evaluation Process

- 6.3.1 Step 1 – Compliance of Proposals with the RFP Documents

- (a) In Step 1, HSSBC will review the contents of the Proposal Submission Form, Managed Services Submission, Risk Management Submission, Economic Model and Pricing Submission, and other documents submitted by the Proponent in the Secure Data Room to determine whether the Proponent's Proposal is in compliance with the terms and conditions of the RFP Documents and the **"Mandatory Requirements"** as set out in the RFP Data Sheet. HSSBC will verify that all forms have been signed in accordance with this RFP and included in the Proponent's Proposal.
- (b) If in Step 1, or at any time during the RFP Process, in the sole discretion of HSSBC, a Proponent's Proposal does not comply with the requirements set out in the RFP Documents, HSSBC shall, without liability, cost or penalty, eliminate the Proposal and the Proposal shall not be given any further consideration. For purposes of this RFP, "comply" and "compliance" mean that the Proposal conforms to the requirements of the RFP Documents without material deviation or reservation. A "material deviation or reservation" is a statement or omission in the Proponent's Proposal,
- (i) that affects or could affect in any substantial way the scope, quality or performance of the Managed Services under the Final Agreement arising from the RFP Process; or
 - (ii) that results in a material component of an RFP requirement for the Proponent's Proposal (as set out in the RFP Documents) not being complied with.

- (c) The Proponent's submission is of a poor quality, but complete, Proposal shall not be considered a failure to comply but will affect the Proponent's Managed Services Score as defined in RFP Section 6.3.2(a).
- (d) For the purpose of clarity, each Proponent acknowledges and agrees that HSSBC's evaluation of compliance with the RFP Documents is not an evaluation of absolute compliance and that HSSBC may waive failures to comply that, in HSSBC's sole discretion, do not constitute a material deviation or reservation in accordance with RFP Section 6.3.1(b).

6.3.2 Step 2 – Review of the Submissions (Appendices D, E, F)

- (a) In Step 2, a subset of the Evaluation Team will review and score the Managed Services Submission of the Proposals (the "**Managed Services Score**"). Proponents must achieve a passing score on the Managed Services Submission (the "**Passing Score (Managed Services)**") and a passing score on the subset of the Managed Services Score referred to as Clinical and Technology Vision (the "**Passing Score (Clinical and Technology Vision)**") in order to be considered further in the evaluation process as set out in the RFP Data Sheet.
- (b) A subset of the Evaluation Team will review and score the Risk Management Submission of the Proposals (the "**Risk Management Score**"). Proponents must achieve a passing score on the Risk Management Submission (the "**Passing Score (Risk Management)**") in order to be considered further in the evaluation process as set out in the RFP Data Sheet.
- (c) A subset of the Evaluation Team will review and score the Economic Model and Pricing Submission of the Proposals (the "**Economic Model Score**").

6.3.3 Step 3 – Short-Listed Proponents

- (a) In Step 3, the Evaluation Team may, in its sole discretion, establish a short-list of Proponents (the "**Short-listed Proponents**") based on the total of the Managed Services Score, the Risk Management Score and the Economic Model Score of the Proponents.
- (b) If HSSBC short-lists Proponents, it will short-list Proponents with the highest total scores. The number of Short-Listed Proponents is at the sole discretion of HSSBC.
- (c) If HSSBC short-lists Proponents, only the Short-Listed Proponents will move to the next step of the Evaluation Process.

6.3.4 Step 4 – Interviews, Site Visits, Demonstrations and Presentations

- (a) In Step 4, HSSBC may, in its sole discretion, conduct interviews, demonstrations, site visits or presentations if set out in the RFP Data Sheet.
- (b) The evaluation of any interviews, presentations, demonstrations, site visits or presentations will be conducted in accordance with the process set out in the RFP Data Sheet.

- (c) Notwithstanding RFP Section 6.3.4(a) and RFP Section 6.3.4(b), HSSBC may conduct interviews, presentations, demonstrations, site visits or presentations with some or all Proponents, or may restrict participation to only Short-Listed Proponents.

6.3.5 Step 5 – Establishing a Final Proposal Score

- (a) The components of and the maximum attainable score that HSSBC will apply with respect to the calculation of the final proposal score (the “**Final Proposal Score**”) are set out in the RFP Data Sheet.
- (b) The score established based on RFP Section 6.3.5(a) shall be the Final Proposal Score.

6.3.6 Step 6 – Ranking the Proposals

- (a) In Step 6, the Evaluation Team will rank only those Proposals that have,
 - (i) met all requirements in Steps 1 through 5; and
 - (ii) have received a Passing Score (Clinical and Technology Vision), a Passing Score (Managed Services) and a Passing Score (Risk Management), if any, and, if applicable, any other passing score set out in the RFP Data Sheet,

and HSSBC will base the ranking on the Final Proposal Score.

7 HSSBC’s Discretion

7.1 HSSBC’s Discretion

7.1.1 HSSBC shall determine, in its sole discretion,

- (a) the membership of the Evaluation Team;
- (b) whether a Proposal is in compliance with the RFP Documents;
- (c) whether a failure to comply constitutes a material deviation or reservation;
- (d) the Managed Services Score of a Proposal;
- (e) which Proponents and how many Proponents, based on the evaluation process, will be Short-listed Proponents;
- (f) if applicable, the interview score of a Proponent;
- (g) the Economic Model Score of a Proposal;
- (h) the rankings of the Proposals; and
- (i) whether a Proposal or a Proponent,
 - (i) is disqualified; or

- (ii) will cease to be considered in the evaluation process.

7.1.2 HSSBC's discretion in determining compliance, ranking, shortlisting and disqualification is not limited or restricted in any way by the fact that a prequalification process has preceded this RFP Process.

7.2 Disqualification

7.2.1 HSSBC may, in its sole discretion, disqualify a Proposal or cancel its decision to identify a Proponent as a Successful Proponent at any time prior to the execution of the Final Agreement by HSSBC, if,

- (a) the Proposal is determined to be non-compliant pursuant to RFP Section 6.3.1;
- (b) the Proponent, including any of its Proponent Team Members, fails to cooperate in any attempt by HSSBC to clarify or verify any information provided by the Proponent in its Proposal;
- (c) the Proponent, including any of its Proponent Team Members, contravenes RFP Section 3.5, RFP Section 3.6 or RFP Section 5.6;
- (d) the Proponent, including any of its Proponent Team Members, fails to comply with the Applicable Law;
- (e) the Proposal contains false or misleading information or the Proponent or a Proponent Team Member provides false or misleading information in its interview (if an interview is conducted);
- (f) the Proposal, in the sole discretion of HSSBC, reveals a Conflict of Interest that cannot be managed, mitigated or minimized;
- (g) the Proponent or Proponent Team Member misrepresents any information provided in the Proposal;
- (h) there is evidence that the Proponent, any of its Proponent Team Members or any of their respective employees, agents, consultants, contractors, service providers or representatives colluded with one or more other Proponents, including other Proponent Team Members or any of its or their respective employees, agents, consultants, contractors, service providers or representatives in the preparation or submission of Proposals;
- (i) a Prequalified Proponent Change has occurred which has not been approved by HSSBC in accordance with RFP Section 3.15.3;
- (j) a Post-Submission Proponent Change has occurred which has not been approved by HSSBC in accordance with RFP Section 3.15.5;
- (k) the Proponent or any Proponent Team Member has breached any agreement with HSSBC;

- (l) the Proponent, including any of its Proponent Team Members, has been convicted of an offence in connection with, or any services rendered to HSSBC, a Health Organization, a Health Authority, or any Municipal, Provincial, State, or Federal Governments;
- (m) the Proponent or any Proponent Team Member has breached an agreement for goods or services or goods and services similar to the ones requested under this RFP with an entity other than HSSBC;
- (n) the Proponent or any Proponent Team Member was convicted of a criminal offence within the three years immediately prior to the RFP Closing;
- (o) the Proponent or any Proponent Team Member was found liable for a violation of applicable laws of British Columbia or Canada within the three years immediately prior to the RFP Closing;
- (p) a Proponent or any Proponent Team Member is, at the time of issuance of this RFP or any time during the RFP Process, engaged in ongoing litigation against HSSBC, a Health Organization or a Health Authority; or
- (q) a Proponent or any Proponent Team Member engages in any activity which, at the sole discretion of HSSBC, is contrary to the public interest or is harmful to the integrity or reputation of HSSBC, a Health Organization or a Health Authority.

8 Successful Proponents

- 8.1** HSSBC shall determine the Successful Proponent in accordance with the ranking of Proponents pursuant to RFP Section 6.3.6.
- 8.2** Notwithstanding anything else to the contrary in this RFP, if HSSBC, in its sole discretion, acting reasonably, is of the opinion that a Proponent has submitted a price that is too low to be sustainable and to ensure the delivery of the Managed Services in accordance with the Draft Agreement, HSSBC may decline to award a Final Agreement to that Proponent.

9 Agreement Finalization

- 9.1** HSSBC will notify the Successful Proponent, in writing, that it has been selected as a Successful Proponent.
- 9.2** At the time the Successful Proponent is notified pursuant to RFP Section 9.1, the Successful Proponent and HSSBC shall enter into discussions to finalize the Final Agreement.
- 9.3** After the selection of the Successful Proponent, if any, HSSBC may finalize the terms and conditions of the Final Agreement with the Successful Proponent, and, as part of that process, may, in its sole discretion, negotiate changes, amendments or modifications to the Successful Proponent's Proposal or the Draft Agreement.
- 9.4** Unless HSSBC initiates negotiations in accordance with RFP Section 9.3, each Successful Proponent shall sign the Final Agreement in the same form and substance as the Draft Services Agreement attached as Appendix F of this RFP.

9.5 The Successful Proponent shall, no later than ten (10) days after receipt of the Final Agreement or such later date as may be specified in written notice given by HSSBC,

- (a)** enter into and execute the Final Agreement; and
- (b)** submit to HSSBC a certificate of insurance which,
 - (i) references the Final Agreement by name;
 - (ii) confirms that the requirements set out in the Final Agreement have been met;
 - (iii) sets out any pertinent exclusions contained in the policy or policies; and
 - (iv) is otherwise acceptable to HSSBC.

9.6 Notification If Successful or Not

9.6.1 The Successful Proponent and unsuccessful Proponents shall be notified by HSSBC in writing as to their success or failure in the RFP Process.

9.7 Debriefing

9.7.1 Proponents may request a debriefing after receipt of a notification pursuant to RFP Section 9.6. All Proponent requests should be in writing to the Authorized Contact no later than 30 days of receipt of the notification. HSSBC will determine the format, timing and contents of the debriefing session.

9.8 Contractor Safety Evaluation

9.8.1 If specified in the RFP Data Sheet, the Successful Proponent shall provide the information set out in the RFP Data Sheet with respect to the Successful Proponent's health and safety policies and procedures, safety incidents and Workplace Safety and Insurance Board coverage prior to the deadline specified in the RFP Data Sheet (the "**Health and Safety Submission**").

9.8.2 HSSBC will review the Health and Safety Submission submitted in accordance with RFP Section 9.8.1 and determine whether, based on the information and documentation, a Successful Proponent satisfies HSSBC's requirements with respect to health and safety policies and procedures. HSSBC may require a Successful Proponent to clarify the contents of its Health and Safety Submission or submit supplementary documentation clarifying any matter contained in its Health and Safety Submission.

9.8.3 If a Successful Proponent fails to satisfy HSSBC's requirements in accordance with RFP Section 9.8.2, HSSBC may, in its sole discretion, disqualify the Successful Proponent from future participation in the RFP Process.

10 General Rights of HSSBC

10.1 HSSBC may, in its sole discretion and at any time during the RFP Process,

- (a)** reject any or all of the Proposals;

- (b) accept any Proposal;
- (c) if only one Proposal is received, elect to accept or reject it;
- (d) elect not to proceed with the RFP;
- (e) alter the RFP Timetable, the RFP Process or any other aspect of this RFP; and
- (f) cancel this RFP and subsequently advertise or call for new Proposals for the subject matter of this RFP.

10.2 If HSSBC determines that all or the majority of Proposals submitted are non-compliant, HSSBC may,

- (a) take any action in accordance with RFP Section 10.1; or
- (b) carry out a process whereby all Proponents are directed to correct the deficiencies in their Proposals for re-submission, without a change in their Financial Model Submission.

10.3 HSSBC shall not be liable for any expense, cost, loss or damage occurred or suffered by any Proponent, or any person connected with any Proponent, as a result of any action referred to in RFP Section 10.1 or RFP Section 10.2.

10.4 If a Successful Proponent fails or refuses to enter into and execute the Final Agreement and provide the documentation in accordance with RFP Section 9.5, HSSBC may, in its sole discretion, take any one or all of the following actions:

- (a) terminate all discussions to enter into the Final Agreement with that Successful Proponent and cancel its identification of a Proponent as a Successful Proponent;
- (b) select another Proponent to enter into the Final Agreement;
- (c) take any action in accordance with RFP Section 10.1; and
- (d) pursue any other remedy available to HSSBC under the Applicable Law.

10.5 HSSBC may, in its sole discretion, cancel its decision to enter into a Final Agreement with a Successful Proponent if,

- (a) HSSBC elects to exercise its discretion pursuant to RFP Section 7.2, RFP Section 10.1 or RFP Section 10.4;
- (b) a Prequalified Proponent Change or a Post-Submission Proponent Change has occurred in respect of the Successful Proponent which has not been approved by HSSBC in accordance with RFP Section 3.15.4 or RFP Section 3.15.6; or
- (c) any other material change has occurred with respect to the Successful Proponent's Proposal.

10.6 Limit on Liability

The Proponent, by submitting a Proposal, acknowledges and agrees that it shall not make any claim for any losses, costs, expenses, damages (or any similar losses) for any reason, relating to: this RFP Process; the Proponent's participation in, or failure to be invited to participate in, any phase of the RFP Process; the preparation of the Proponent's Proposal; the Proponent's engagement, to any extent whatsoever, with third parties in connection with this RFP Process; or relating to, in any manner whatsoever, the Final Contract (regardless of whether a Final Contract is ultimately awarded by HSSBC or not). If HSSBC (or the Health Organizations, the Health Authorities, the Government of British Columbia and any Ministry of the Government of British Columbia) is found at law to be liable for any reason whatsoever (in contract or in tort) for any losses, costs, expenses, damages (or any similar losses), then such any losses, costs, expenses, damages (or any similar losses) shall not, under any circumstances, exceed an amount that is the lesser of: (a) \$100,000 (CDN) or (b) an amount equivalent to reasonable costs incurred by the Proponent in preparing the Proponent's Proposal (including, for greater certainty, any third parties, subcontractors involved with the Proponent Proposal).

11 Extension of Contract to Other Healthcare Facilities

The Proponent must at the request of HSSBC, agree to extend the same price, terms and conditions contained in the Contract to other Health Authorities in British Columbia. . In addition, in recognition of the *New West Partnership Trade Agreement* which encourages trade, investment and labour mobility among the three Western Provinces, a Proponent must also, at the request of HSSBC agree to extend the same price, terms and conditions contained in the Contract to any of the Health Authorities or hospitals, health care agencies or facilities of such Health Authorities in the Provinces of Alberta or Saskatchewan.

12 Definitions

12.1 General

- 12.1.1 In this RFP, the singular shall include the plural and the plural shall include the singular, except where the context otherwise requires.
- 12.1.2 All references in this RFP to "discretion" or "sole discretion" means in the sole and absolute discretion of the party exercising the discretion; and
- 12.1.3 All references in this RFP to "includes" and "including" means "includes without limitation" and "including without limitation" respectively.

12.2 RFP Definitions

Whenever used in this RFP,

"Addendum" means a written addendum to the RFP Documents issued by HSSBC as set out in RFP Section 3.3;

"Applicable Law" is defined in RFP Section 3.9.1;

"Authorized Contact" means the contact person listed on the cover page of this RFP in respect of RFP Section 2.3;

"Conflict of Interest" is defined in RFP Section 4.8.1;

“Contract A” is defined in RFP Section 10.6;

“Control” means, with respect to any Person at any time, (i) holding, whether directly or indirectly, as owner or other beneficiary (other than solely as the beneficiary of an unrealized security interest) securities or ownership interests of that Person carrying votes or ownership interests sufficient to elect or appoint fifty percent (50%) or more of the individuals who are responsible for the supervision or management of that Person, or (ii) the exercise of de facto control of that Person, whether direct or indirect and whether through the ownership of securities or ownership interests or by contract, trust or otherwise;

“Draft Services Agreement” is defined in RFP Section 2.1(h);

“Economic Model Score” is defined in RFP Section 6.3.2(c);

“Economic Model Submission” means the form provided in Appendix F to the RFP;

“Evaluation Criteria” is defined in RFP Section 6.2.1;

“Evaluation Team” is defined in RFP Section 6.1.1;

“Final Agreement” is defined in RFP Section 3.9.1;

“Final Proposal Score” is defined in RFP Section 6.3.5(a);

“FIPPA” is defined in RFP Section 3.7.1;

“Health and Safety Submission” is defined in RFP Section 9.8.1;

“Health Organization” is defined in RFP Section 1.1;

“Identified Proponent Parties” is defined in RFP Section 3.15.1;

“Joint Venture Participant” is defined in RFP Section 3.11.2;

“Joint Venture Proponent” is defined in RFP Section 3.11.2;

“Managed Services” is defined in RFP Section 1.1;

“Managed Services Submission” means the form provided in Appendix D;

“Managed Services Score” is defined in RFP Section 6.3.2(a);

“Mandatory Requirements” is defined in RFP Section 6.3.1(a);

“NDA” is defined in RFP Section 2.3;

“Notices” is defined in RFP Section 3.2.6;

“Participant in Charge” is defined in RFP Section 3.11.2(c)(ii);

“Passing Score (Clinical and Technology Vision)” is defined in RFP Section 6.3.2(a);

“Passing Score (Managed Services)” is defined in RFP Section 6.3.2(a);

“Passing Score (Risk Management)” is defined in RFP Section 6.3.2(b);

“Person” means a natural person, firm, trust, partnership, limited partnership, company or corporation (with or without share capital), joint venture, sole proprietorship, governmental authority or other entity of any kind;

“Post-Submission Proponent Change” is defined in RFP Section 3.15.5;

“Prequalification Submission” is defined in RFP Section 3.11.1;

“Prequalified Parties” is defined in RFP Section 1.3;

“Prequalified Proponent Change” is defined in RFP Section 3.15.1;

“Proponent” is defined in RFP Section 1.3;

“Proponent Team Member” is defined in RFP Section 1.3;

“Proponent’s Contact” is defined in RFP Section 2.3;

“Proponents’ Meeting” is defined in RFP Section 3.4.1;

“Proponents’ Meeting Registration Deadline” is defined in RFP Section 3.4.4;

“Proponents’ RFP Question Deadline” is defined in RFP Section 3.2.1;

“Proposal” is defined in RFP Section 1.3;

“Proposal Validity Period” is defined in RFP Section 5.5.1;

“Proposed Solution” is defined in RFP Appendix B;

“Response to Questions Document” is defined in RFP Section 3.2.2;

“RFP” is defined in RFP Section 1.1;

“RFP Closing” is defined in RFP Section 3.1.1;

“RFP Documents” is defined in RFP Section 2.1;

“RFP Information” is defined in RFP Section 3.8.1;

“RFP Name” is defined in RFP Section 1.1;

“RFP Number” is defined in RFP Section 1.1;

“RFP Process” is defined in RFP Section 1.4;

“RFP Timetable” is defined in RFP Section 3.1.1;

“RFPQ” is defined in RFP Section 1.2;

“Risk Management Score” is defined in RFP Section 6.3.2(b);

“Risk Management Submission” means the form provided in Appendix E;

“Secure Data Room” is defined in RFP Section 2.3;

“Short-listed Proponents” is defined in RFP Section 6.3.3(a); and

“Successful Proponent” is defined in RFP Section 1.3.

“URL” is defined in RFP Section 2.3.

APPENDIX A BEGINS ON NEXT PAGE

APPENDIX A
RFP DATA SHEET

RFP SECTION REFERENCE AND DESCRIPTION	ITEM
RFP Section 1.1 – Managed Services	See Exhibit A-1 attached to this Appendix A.
RFP Section 1.1 – RFP Number and RFP Name	HSSBC-00578 Strategic Transformation for Clinical Information Systems
RFP Section 1.3 – Prequalified Parties	<p>The Prequalified Parties (Proponents and Proponent Team Members) for this directed RFP are:</p> <ul style="list-style-type: none"> ➤ Cerner Corporation (Proponent) <ul style="list-style-type: none"> ○ TELUS Communications Inc. ➤ CGI Information Systems and Management Consultants Inc. (Proponent) <ul style="list-style-type: none"> ○ Dell Canada Inc. ○ Knowledgegetech Inc. ➤ IBM Canada Ltd. (Proponent) <ul style="list-style-type: none"> ○ Deloitte Inc. ○ University of Pittsburgh Medical Centre ○ maxIT Healthcare LLC <p>Note: For greater clarity, Proponent Team Members will be considered subcontractors for the Draft Services Agreement.</p>
RFP Section 2.3 – Authorized Contact	<ul style="list-style-type: none"> • Jeff Thom, Team Lead, Category Management IMIT • E-Mail: jeff.thom@hssbc.ca
RFP Section 3.1 – RFP Timetable	<ul style="list-style-type: none"> • RFP Issue: February 15, 2012 • Proponents' Meeting Registration Deadline: February 22, 2012 at 12:00 Noon Pacific Time • Proponents' Meeting: February 28, 2012 • Proponents' RFP Question Deadline: March 21, 2012 at 3:00 p.m. Pacific Time • RFP Closing: April 3, 2012 at 12:00 Noon Pacific Time

RFP SECTION REFERENCE AND DESCRIPTION	ITEM																												
RFP Section 3.4.1 – Proponents’ Meeting	<ul style="list-style-type: none"> • HSSBC will be conducting a Proponents’ Meeting in Vancouver, British Columbia on the date set out for the meeting in the RFP Timetable. The time and location of the meeting will be posted in the Secure Data Room on or about February 21, 2012. • Proponents will be limited in the number of representatives that may attend the Proponents’ Meeting. The number of attendees each Proponent will be allowed to bring to the Proponents’ Meeting will be posted in the Secure Data Room on or about February 21, 2012. • Proponents who wish to attend the Proponent’s Meeting shall notify the Authorized Contact by email no later than the date and time set out for registration in the RFP Timetable. Proponents shall include the names and positions of all representatives that are expected to attend. 																												
RFP Section 5.5.1 – Proposal Validity Period	<ul style="list-style-type: none"> • The Proponent’s Proposal shall remain in effect and open for acceptance for 180 calendar days after the RFP Closing. 																												
RFP Section 6.2.1 – Evaluation Criteria	<table> <tr> <th data-bbox="540 982 1052 1014">EVALUATION CRITERIA</th><th data-bbox="1133 982 1255 1014">WEIGHT</th></tr> <tr> <td data-bbox="540 1035 1052 1066">• <u>Managed Services Submission:</u></td><td></td></tr> <tr> <td data-bbox="540 1087 1052 1119">Clinical and Technology Visions</td><td data-bbox="1198 1087 1239 1119">60</td></tr> <tr> <td data-bbox="540 1140 1052 1171">Design, Build, Integrate and Implement</td><td data-bbox="1198 1140 1239 1171">30</td></tr> <tr> <td data-bbox="540 1192 1052 1224">Transition</td><td data-bbox="1198 1192 1239 1224">15</td></tr> <tr> <td data-bbox="540 1245 1052 1276">Ongoing Management and Operations</td><td data-bbox="1198 1245 1239 1276">30</td></tr> <tr> <td data-bbox="540 1297 1052 1329">Managed Services Teams</td><td data-bbox="1198 1297 1239 1329">30</td></tr> <tr> <td data-bbox="540 1350 1052 1381">Governance</td><td data-bbox="1198 1350 1239 1381">15</td></tr> <tr> <td data-bbox="540 1402 1052 1434">Total</td><td data-bbox="1198 1402 1239 1434">180</td></tr> <tr> <td data-bbox="540 1455 1052 1486">• <u>Risk Management Submission</u></td><td data-bbox="1198 1455 1239 1486">24</td></tr> <tr> <td data-bbox="540 1507 1052 1539">• <u>Economic Model and Pricing Submission:</u></td><td></td></tr> <tr> <td data-bbox="540 1560 1052 1591">Economic Model</td><td data-bbox="1198 1560 1239 1591">60</td></tr> <tr> <td data-bbox="540 1612 1052 1644">Pricing Submission</td><td data-bbox="1198 1612 1239 1644">76</td></tr> <tr> <td data-bbox="540 1665 1052 1696">Total</td><td data-bbox="1198 1665 1239 1696">136</td></tr> </table>	EVALUATION CRITERIA	WEIGHT	• <u>Managed Services Submission:</u>		Clinical and Technology Visions	60	Design, Build, Integrate and Implement	30	Transition	15	Ongoing Management and Operations	30	Managed Services Teams	30	Governance	15	Total	180	• <u>Risk Management Submission</u>	24	• <u>Economic Model and Pricing Submission:</u>		Economic Model	60	Pricing Submission	76	Total	136
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Economic Model	60																												
Pricing Submission	76																												
Total	136																												

RFP SECTION REFERENCE AND DESCRIPTION	ITEM										
RFP Section 6.3.1 – Mandatory Requirements	<p><u>Mandatory Requirements</u></p> <p>Proposals not clearly demonstrating they meet the following mandatory requirements may, in the sole discretion of HSSBC, not be accepted for consideration:</p> <ul style="list-style-type: none"> • Proponent is willing and able to transition any Public Sector union agreements relevant to the Managed Services to their organization, if required, as stated in Appendix B Section 4; • Proposal received by RFP Closing; • Proposal written in English; and • Appendix B completed and signed by an authorized signatory of the Proponent and, if applicable, by each Joint Venture Participant. 										
RFP Section 6.3.2(a) Passing Score (Clinical and Technology Vision)	<ul style="list-style-type: none"> • The Passing Score (Clinical and Technology Vision) is 75%. 										
RFP Section 6.3.2(a) – Passing Score (Managed Services)	<ul style="list-style-type: none"> • The Passing Score (Managed Services) is 75%. 										
RFP Section 6.3.2(b) – Passing Score (Risk Management)	<ul style="list-style-type: none"> • The Passing Score (Risk Management) is 75%. 										
RFP Section 6.3.4 – Interviews, Demonstrations, Site Visits, and Presentations	<ul style="list-style-type: none"> • Dates and further information will be provided to Short-Listed Proponents along with the invitation to participate in the interview process. • The Proponent should ensure that following personnel are available to participate in the Proponent's interview: Executive Sponsor, Account Manager, Senior Solution Architect and Management Information Systems (MIS) Manager, as a minimum. 										
RFP Section 6.3.5 – Establishment of Final Proposal Score	<ul style="list-style-type: none"> • Final Proposal Score will be calculated using the following components: <table> <tr> <th></th><th>WEIGHT</th></tr> <tr> <td>➤ Managed Services Score</td><td>180</td></tr> <tr> <td>➤ Risk Management Score</td><td>24</td></tr> <tr> <td>➤ Economic Model & Pricing Submission Score</td><td><u>136</u></td></tr> <tr> <td>➤ Maximum attainable Final Proposal Score</td><td>340</td></tr> </table> 		WEIGHT	➤ Managed Services Score	180	➤ Risk Management Score	24	➤ Economic Model & Pricing Submission Score	<u>136</u>	➤ Maximum attainable Final Proposal Score	340
	WEIGHT										
➤ Managed Services Score	180										
➤ Risk Management Score	24										
➤ Economic Model & Pricing Submission Score	<u>136</u>										
➤ Maximum attainable Final Proposal Score	340										

EXHIBIT A-1

MANAGED SERVICES

1. OBJECTIVES

The primary objective of the Health Organizations in undertaking this RFP is to achieve a strategic transformation that will create a common, integrated, end-to-end clinical information system and environment (“Integrated CIS Environment”) that furthers the Health Organizations’ strategic plans and vision for better health and addresses the current challenges associated with disparate clinical systems. This is a strategy that has been approved and accepted by the Boards and Executive of the Health Organizations involved.

The goals of the envisaged strategic transformation are:

- rapid advancement of ‘best practice’ standardization and optimization of core clinical, business, research and intelligence systems and processes among the Health Organizations;
- accelerated implementation of a clinical data repository among the Health Organizations, with clinical decision support tools to support care providers with electronic clinical information;
- enabling clinical information sharing across the continuum of care and patient journey;
- enabling a cohesive, seamless solution across the continuum of healthcare among the Health Organizations; and
- at a minimum, achieving a health care automation ranking per the HIMSS Electronic Medical Record Adoption Model (HIMSS) of Stage 5+ within five years and Stage 7 within seven years across the Health Organizations.

This RFP is expected to achieve the above goals and objectives through the delivery of the Managed Services to the Health Organizations.

2. STRATEGIC TRANSFORMATION GUIDING PRINCIPLES

The CEOs of each of the Health Organizations have confirmed the following principles to guide the transformation:

- a. This project is a clinical transformation project supported by IMITS.
- b. Patient safety and quality are of paramount importance and will drive decisions.
- c. Change management, communications and project management principles will be used and implemented extensively.
- d. CEOs will make decisions based on what is best for the patient and on these Principles.
- e. All parties are committed to producing a single instance of the core system.
- f. Standardized protocols, order sets, clinical documentation, and key business processes, will be developed and used.
- g. The Cerner implementation will avoid customization.

- h. There will be no major changes to the basic code in the implementation at any of the three organizations. Minor configuration changes that do not result in any changes to code may be needed to accommodate site- specific needs. These must be approved in advance by the project management team. These changes must have no implications for future upgrades of the product.
- i. Technology infrastructure and standards will be consistent across the three Health Organizations.
- j. Timelines will be respected and each organization commits to delivering – on time, on budget, and within the scope. Resources will be committed to the project in order to achieve the implementation.
- k. Individuals and participating departments (e.g. MI, HIM, Pharmacy, Lab, IMITS, HSSBC Tech Services) are core to the effort and will work as an integrated team (Integrated Core Team).
- l. Dedicated roles will be in place in each organization to articulate the clinical needs and bridge with the Integrated Core Team.
- m. Risk assessments will be performed at key intervals of the program to identify risks/issues/costs/benefits and mitigation plans will be established. Risk assessments will be holistic and incorporate clinical practice, clinical operations, business process, applications, technology, engagement, funding and people.
- n. Rules of engagement will be developed and will guide the way individuals behave and work together.
- o. Discussions will be Values based. (Patients First, Honesty, Fairness, Best Value, Results Matter, Collaboration)
- p. All work products including project documents (e.g.: Statements of Work (SOW) developed both by the clinical transformation teams and by IMITS), will be reflective of these Principles.

3. ENVISAGED MODEL FOR MANAGED SERVICES

The model envisaged for the delivery of the Managed Services is one that:

- allows the Proponent to provide its expertise in architecting the business and supporting technical solution while collaborating with and being responsive to the Health Organizations' clinical and technical experts.
- allows the Proponent to be efficient and effective without the Health Organizations' involvement in the operational management of the Managed Services; and
- protects the security and privacy of personal information contained within the Integrated CIS Environment.

IMITS as the supporting department for the Health Organizations expects the Managed Services will be provided over a long term, possibly a ten to fifteen year period. As a result of the expected term of the relationship, the Health Organizations and IMITS anticipate that the model for the delivery of the Managed Services supports:

- mutual benefits to the Health Organizations and successful Proponent;
- innovation to control and achieve efficiencies in current costs and reinvestment of the savings to advance the adoption of an electronic health record;

- transition to a reduced cost, leading practice, service level based managed technology and managed application model; and
- overall flexibility to provide for the addition or removal of services within the planned scope and adjustments to such services as may be required due to planned, changing or unforeseen circumstances.

Within the arrangement the Health Organizations expect that IMITS will retain responsibility for, but not limited to:

- establishing and enforcing adherence to architecture standards;
- setting the standards, policies and guidelines relating to the planned scope of services including those relating to clinical services, privacy and security and records management;
- setting the strategy, direction and undertaking the clinical analytics function; and
- the relationships and/or agreements with any other health care organizations, including other Health Authorities within the Province of British Columbia, that may participate in the agreement resulting from this RFP.

4. COLLABORATION GUIDING PRINCIPLES

The guiding principles set out below have been developed by the Health Organizations to clearly communicate expectations and thus ensure the successful achievement of the Managed Services (referenced as 'Services' in the principles below) with the collaboration partner.

- **Enhance Capabilities and Effectiveness.** Services are to be provided in a manner that enhances the Health Organizations' ability to deliver high-quality, cost-effective services internally to its users with the bare minimum of interruptions in, and adverse impacts on, their delivery of such services. The quality of the Services and the technology utilized to provide the Services will be no less than consistent with the standards customarily observed by leading North American providers of the same or substantially similar services.
- **Reduce Costs.** Cost reduction is a key objective for the Health Organizations in securing Services from a service provider. The service provider will advise HSSBC of cost reduction opportunities and will, subject to a change process, implement such cost reduction opportunities. The service provider will also implement improved internal processes and methodologies in order to further reduce the overall cost of the Services to the Health Organizations and will report on same to the Health Organizations.
- **Improve Services.** The service provider will identify ways to improve the service levels and the functionality, quality, consistency, reliability, security and accuracy of the Services and will, subject to a change process, implement same. The service provider will also implement improved internal processes and methodologies in order to further improve the service levels and the functionality, quality, consistency, reliability, security and accuracy of the Services and will report on same to the Health Organizations.

- **Flexibility.** The service provider will be highly responsive and flexible to meet the Health Organizations' evolving requirements for Services and its obligations to third parties, and with respect to changes in technology and methods for providing the Services. Such flexibility will accommodate significant changes in: volumes of operation, scope of Services, service level requirements, service delivery models, architecture, regulatory or audit requirements, technology, and methods of achieving, monitoring and measuring service levels.
- **Effective Relationship.** The Health Organizations and the service provider each value the development of a close and effective working relationship and recognize that such a relationship will better facilitate the implementation and delivery of the Services and the achievement of the objectives of the Health Organizations.
- **Focus on Core Competencies.** By having the Services performed by the service provider and leveraging the service provider's core competencies, the service provider will enable the Health Organizations to focus more of their internal resources on strategy, providing services to their users and to improving the levels of service.
- **Measurement and Reporting.** The service provider will periodically, consistently and accurately measure the quality, quantity and cost-effectiveness of the Services using periodic reports, user surveys, benchmarking and pricing reviews and will provide the Health Organizations with detailed reports of Services performance.
- **Security and Privacy.** The service provider will identify ways to improve and, subject to a change process, will implement such improvements to the control and security of the Services. The service provider will use Canadian privacy and security industry best practices to protect the Health Organizations' data and environment.
- **Disaster Recovery.** The service provider will maintain and, where possible, improve, the Disaster Recovery Services provided by the Health Organizations.
- **Transition.** Transition activities, into, between and from Services are to be smooth and seamless, are to be performed in a cooperative manner (among the Health Organizations and their service providers), and to cause minimum disruptions to the Health Organizations and their users.
- **Environmental Requirements.** The service provider acknowledges the importance of environmental leadership. The service provider maintains a corporate environmental policy and the service provider will: (a) provide available reports to the Health Organizations on the direct and indirect environmental impacts of the Services; and (b) use all commercially reasonable efforts to reduce the environmental impacts of the Services (including GHG Emissions) in a manner consistent with the practices customarily observed by leading North American providers of services the same or substantially similar to the Services (or as may otherwise be required by the Health Organizations subject to a change process).

5. IMITS HIGH LEVEL PROCESSES

In support of the Lower Mainland Consolidation, IMITS had developed the diagram below to define the department's high level processes in support of its clients, the Health Organizations, and to establish a common understanding of such.

This diagram, Diagram A-1.1, is to provide Proponents with an understanding of the high level functions of IMITS and as a reference point in outlining the scope of the Managed Services.

Diagram A-1.1



6. SCOPE OF MANAGED SERVICES

a. Scope

The scope of the Managed Services is designed to achieve an Integrated CIS Environment through the provision of the following services:

- architect the clinical business solution and the technology solution required to enable and support the clinical business solution;
- design, build, integrate and implement the clinical and technology solutions;
- transition the IMITS assets, services, processes and people; and
- ongoing management and operation of the Integrated CIS Environments, including the remaining legacy systems.

The Health Organizations expect that the integrated clinical system solution and infrastructure is scalable and will support planned and unforeseen expansions in operations and the addition or participation of other health care organizations, including other health authorities.

Further, in the context of the anticipated long term collaboration and to foster ongoing clinical and technological innovation, the Health Organizations reserve the right to add additional requirements to the scope.

b. Clinical and Technology Visions

Appendix D – Managed Services Submission contains the detailed response requirements.

The Health Organizations have developed a clinical solution strategy which lays out a path for implementing a set of Cerner modules across each of the sites within the Health Organizations. This path, or roadmap, has been planned to achieve a ranking of HIMSS Stage 3 across all clinical service areas and Stage 4 to 5 in some clinical service settings.

The clinical and technology solution design services require either a new roadmap or improvements to the Health Organizations' existing roadmap to accelerate and ensure achievement of the following:

- standardization and optimization of clinical and operating processes;
- a transformed clinical information solution that is compliant with provincial and health industry standards and interoperable with provincial eHealth solutions; and
- at a minimum a health care automation ranking per the HIMSS of Stage 5+ within five years or less, and Stage 7 within seven years or less across PHSA, VCH and PHC.

In relation to Diagram A-1.1 above, these services align with the Opportunity Identification process. Proponents are expected, but not limited to merging their understandings of clinical needs, trends and emerging technologies and innovation to:

- For the in-scope applications, identify the clinical business solution including but not limited to the clinical users' experience with respect to information access, information processing and information retrieval, both 'on-site' and remotely;

- Translate the clinical business solution to define the technology and infrastructure solution required to support the business solution; and
- Provide a roadmap that achieves the Health Organizations' objectives and enables the defined clinical and technology solutions.

In providing these services, Proponents will be required to have a working understanding of the Canadian Health Industry standards including knowledge of Professional Practice standards.

Further, Proponents will be required to adhere to IMITS' architectural standards and technology policies, including for security. Where Proponent solutions involve new or emerging technologies for which IMITS may not have defined standards or policies, IMITS will define the enabling standards and/or policies.

To ensure innovation and a cycle of continuous improvement, Proponents will also be expected to identify new clinical and technology initiatives on an ongoing basis. Such initiatives are expected to be formulated from the Proponents' ongoing environmental scans that identify emerging issues, anticipated need and innovations in technology. Such initiatives will also be informed by the Health Organizations' determination of strategic alignment within the Health Organizations and with provincial initiatives and direction.

c. Design, Build, Integrate and Implement

Appendix D – Managed Services Submission contains the detailed response requirements.

The services required to design, build, integrate and implement the integrated clinical system encompass the Solution Design, Delivery and Evolution process noted in Diagram A-1.1. These services require the development and execution of the strategies, approaches and plans for all services (excluding procurement which is the responsibility of HSSBC Supply Chain) underpinning the full implementation life-cycle of an Integrated CIS Environment including, but not limited to:

- business analysis to support the clinical and technology requirements, definition and design of the *Cerner Millennium* system, including the security architecture and model;
- integration services that provide business analysis for the clinical requirements, design and configuration necessary to support interfacing the *Cerner Millennium* system with other information systems where required, including legacy systems and the PeopleSoft ERP solution;
- system and environment design, build and/or configuration;
- conversion which includes a definition of the strategy, approach and plans for decommissioning and archiving of and data migration from legacy clinical applications that are identified for replacement or conversion to the *Cerner Millennium* system;
- complete solution testing (unit through to end-user);
- complete production hand-over documentation to transition and support the Integrated CIS Environment;

- training which includes a learning strategy and plan, execution of the plan, development of role and workflow based training material for end users and super-user training programs;
- organizational change and communication management with a strategic emphasis to ensure commitment to standardized and optimized clinical and business processes on an ongoing basis; and
- post go-live support.

Proponents will also be required to provide the required project management services, including initiation and planning and status tracking/managing/reporting.

d. Transition Services

Appendix D – Managed Services Submission contains the detailed response requirements.

Proponents will be required to transition IMITS assets, services (and supporting processes), projects and people as specified in Appendix F - Economic Model and Pricing Submission, Section 1.3 Normalizing Assumptions.

e. Ongoing Management and Operations

Appendix D – Managed Services Submission contains the detailed response requirements.

Proponents will be required to provide the services associated with the high level processes of Operations and Customer Support per Diagram A-1.1. Proponents will be required to supply these services under a managed technology offering that provides for service level based system and infrastructure support and management.

In providing these services Proponents will also provide, but not be limited to, the following:

- provision of an initial business case for infrastructure standardization and consolidation followed by development and execution of an implementation approach;
- provision of Cerner certified standardized hardware for the *Cerner Millennium* system;
- provision of a application support help desk and tier-2 help desk services using systems and processes that integrate with the current line of business enterprise service management service desk;
- infrastructure management services for the hardware listed in Document #55; and
- application management services for the applications per Document #55 including:
 - application support and upgrades for the *Cerner Millennium* system;
 - interim management of any legacy clinical applications to be decommissioned; and
 - ongoing management of any remaining legacy clinical applications.

Unless agreed otherwise, the Health Organizations expect that a collaboration partner could own, operate, support, maintain and enhance the applications, including the associated IMITS business operations and system licensing, required in connection with the integrated clinical information system until such time as the Health Organizations repatriate or re-procure the assets and services comprising the solution for an Integrated CIS Environment.

f. Out of Scope

The systems and/or related operational functions in the table below are considered out of scope for the purpose of responding to this RFP. However, in the context of the longer term collaboration being sought, the Health Organizations reserve the right to transition items to being in-scope.

	Solution Replacement/ Implementation	Managed Technology and Application Support
Provincial solutions as articulated in the Provincial EHR roadmap available at: http://www.health.gov.bc.ca/ehealth/	Out of Scope	Out of Scope
Business solutions	Out of Scope	Out of Scope
Provincial initiatives currently in place for management and support of: <ul style="list-style-type: none"> • Network BC, for telecommunications; • Strategic Transformation and Mainframe Services (STMS), for the provincial data centre; and • Workplace Support Services, for desktops and Tier 1 support as represented by 'Infrastructure' in Diagrams 4 and 5. For details regarding the context of the items in the above provincial initiatives visit the site: http://www.lcs.gov.bc.ca/asd/alliance/summaries.asp <p>NOTE: Hardware functionality to support proposed solutions is in scope. Provision of physical data centres is not in scope.</p>	Out of Scope	Out of Scope
IMIT systems and operations of Provincial eHealth, BC Ambulance Services (BCAS), and Occupational Health & Safety Agency for Healthcare (OHSAH)	Out of Scope	Out of Scope

g. Clarification of Scope

With respect to Diagram A-1.1 and the Managed Services, the table below outlines items that are considered either out of scope or to be developed and/or delivered in collaboration or in conjunction with the successful Proponent. Proponents should note that in conjunction includes where each party may have a distinct role. Further Proponents should note that the Health Organizations expect IMITS to retain sole responsibility for all items with respect to IMITS activities that relate to other than the Managed Services. Health Organizations have been abbreviated as 'HO' in the table below.

	Scope for Managed Services
Opportunity Identification: Determining the strategic alignment of opportunities for the collaboration. Further, IMITS anticipates continuing with many of the activities within this process to maintain staff's expertise.	HO, IMITS and Successful Proponent
Architecture Development: The strategic responsibility for establishing and enforcing adherence to architecture standards.	HO and IMITS
<p>Strategy Development: While the successful Proponent will be responsible for clinical engagement, the roles and responsibilities pertaining to the strategic planning and prioritization and stakeholder relationships across the Health Organizations will be retained by IMITS.</p> <ul style="list-style-type: none"> • Develop stakeholder engagement plan • Establish prioritization process • Identify strategic priorities • Establish IMITS guiding principles • Establish key performance measures • Establish governance framework • Develop HR strategy • Establish IT organizational design 	<ul style="list-style-type: none"> • HO, IMITS and Successful Proponent • HO, IMITS and Successful Proponent • HO, IMITS and Successful Proponent • IMITS • HO, IMITS and Successful Proponent • HO, IMITS • HO and Successful Proponent • IMITS
<p>Management:</p> <ul style="list-style-type: none"> • Manage and report on metrics • Report general status • Establish contract and procurement management process • Manage IMITS priorities and strategies • Manage day-to-day budget (operating and capital) • Manage existing relationships • Manage & participate in stakeholder governance activities • Participation/advisory/oversight of project level architecture design 	<ul style="list-style-type: none"> • Successful Proponent • Successful Proponent • IMITS and Successful Proponent • IMITS • HO, IMITS and Successful Proponent • IMITS and Successful Proponent • HO, IMITS and Successful Proponent • HO, IMITS and Successful Proponent

EXHIBIT A-2
RESPONSE TO QUESTIONS DOCUMENT

Instructions: Use a separate Response to Questions Document if submitting a question that contains proprietary information. If the Response to Questions Document contains proprietary information enter the words "PROPRIETARY INFORMATION" in capital letters at the top of the Response to Questions Document. Any questions not marked as proprietary and the answers to those questions will be distributed to all Proponents. HSSBC retains the right to make the final decision whether a question contains proprietary information. Where HSSBC does not believe that a question contains proprietary information, HSSBC will advise the Proponent and provide the Proponent an opportunity to withdraw a question.

Response to Questions Document is to be submitted in accordance with RFP Section 3.2.

Reference	Proponent's Question	HSSBC's Response

[Proponents: Add additional rows if required.]

APPENDIX B
PROPOSAL SUBMISSION FORM

TO: Jeff Thom, Team Lead, Category Management IMIT

RE: HSSBC-00578

RE: Strategic Transformation of Clinical Information Systems

RE: Managed Services

1. Proponent Information

- (a) Proponent's registered legal business name and any other name under which it carries on business:

- (b) Proponent's address, telephone and facsimile numbers:

- (c) Name, address, telephone, e-mail and facsimile numbers of the Proponent's Contact:

- (d) Name, address, telephone, e-mail and facsimile numbers of the backup to the Proponent's Contact:

- (e) Whether the Proponent is a corporation, a partnership, a joint venture, an incorporated consortium or a consortium that is a partnership or other legally recognized entity:

- (f) Name(s) of each of the directors and officers where the Proponent is a corporation; each of the partners where the Proponent is a partnership; and applicable combinations of these when the Proponent is a joint venture, whichever applies:

- (g) Proponent Team Member Information (See Exhibit B-1 to this Proposal Submission Form)

- (h) Joint Venture Information (See Exhibit B-2 to this Proposal Submission Form)

2. Regulatory Matters

[Proponent to strike the provision not applicable to them.]

We confirm as follows:

- (a) With respect to the *Excise Tax Act*, we are either:
- (i) a Harmonized Sales Tax registrant for purposes of the *Excise Tax Act* and our HST registration number is _____;
- OR
- (ii) not a HST registrant for the purposes of the *Excise Tax Act*.

3. Draft Services Agreement

We agree to the non-negotiable provisions set out in the document titled *Form of Services Agreement – Non-Negotiable Provisions* included as Exhibit G-1.

4. Public Union Agreements

[Proponent to strike the provision not applicable to them.]

We are willing and able to transition any Public Sector union agreements relevant to the Managed Services to our organization, if required.

OR

We are unwilling and/or unable to transition any Public Sector union agreements relevant to the Managed Services to our organization.

5. Proposal

With respect to the above noted RFP, we confirm as follows:

- (i) capitalized terms used in clauses (ii) through (x) below shall have the meanings given thereto in the RFP Documents;
- (ii) we have examined the RFP Documents and confirm that we have received all pages of the RFP Documents;
- (iii) we have made any necessary inquiries with respect to Addenda issued by HSSBC and have ensured that we have received and examined all Addenda to the RFP Documents;
- (iv) our Proposal is based on the terms and conditions of the RFP Documents;
- (v) we acknowledge and accept the obligations set out in RFP Section 3.8;
- (vi) we acknowledge and accept the limit of liability set out in RFP Section 10.2;
- (vii) we acknowledge that, except as explicitly provided in RFP Section 3.8 and RFP Section 10.2, the submission of this Proposal creates no legal or contractual obligations or rights on HSSBC or the Proponent, all as set out in RFP Section 10.1;
- (viii) the prices contained in our Economic Model and Pricing Submission are based on the terms and conditions of the RFP Documents;
- (ix) we understand that any negotiations with HSSBC with respect to the Managed Services will assume that we will hold our prices submitted pursuant RFP Appendix F – Economic Model and Pricing Submission and that, in the event we do not hold our prices, HSSBC may, in its sole discretion, cease negotiations with us with respect to the Managed Services; and
- (x) having made all necessary inquiries of our insurers in respect of the insurance requirements set out in the Draft Services Agreement, we confirm that we are able to meet the insurance obligations as set out in the Draft Services Agreement and that our prices include the costs associated with such insurance obligations;

6. Conflict of Interest and Confidential Information

(i) We confirm that we do not have any actual or perceived conflict of interest or any other type of unfair advantage in submitting our Proposal or performing or observing the contractual obligations set out in the Draft Services Agreement, except to the extent that such conflict of interest or potential conflict of interest is disclosed in Attachment 2 to this Proposal Submission Form.

(ii) We confirm that we have not had access to HSSBC confidential information, other than the RFP Documents themselves, with respect to this RFP Process, except as disclosed as follows:

(1) Conflict of Interest

[Proponent to strike the provision not applicable to them.]

The following are existing or potential conflicts of interest:

1. _____
2. _____
3. _____

[Proponent to add more rows if necessary.]

OR

We confirm that we do not have any existing or potential conflicts of interest.

(2) Confidential Information

[Proponent to strike the provision not applicable to them.]

In addition to the RFP Documents, we have access to the following confidential information relating to the RFP Process.

1. _____
2. _____
3. _____

[Proponent to add more rows if necessary.]

OR

We confirm that we do not have access to any confidential information relating to the RFP Process other than the RFP Documents.

Signed by person or persons authorised to
bind the Proponent in accordance with RFP
Section 4.2

Print Name and Title of Person Signing

Signed by person or persons authorised to

bind the Proponent in accordance with RFP
Section 4.2

Print Name and Title of Person Signing

Signed by person or persons authorised to
bind the Proponent in accordance with RFP
Section 4.2

Print Name and Title of Person Signing

Signed by person or persons authorised to
bind the Proponent in accordance with RFP
Section 4.2

Print Name and Title of Person Signing

EXHIBIT B-1

PROPONENT TEAM MEMBER INFORMATION

Proponent is to provide the following information for each Proponent Team Member. Make copies of Exhibit B-2 as required.

1. Proponent Team Member's registered legal business name and any other name under which it carries on business.

2. Proponent Team Member's address, telephone and fax numbers.

3. Whether the Proponent Team Member is a corporation, a partnership, a joint venture, an incorporated consortium or a consortium that is a partnership or other legally recognized entity.

4. Name(s) of each of the directors and officers where the Proponent is a corporation, each of the partners where the Proponent is a partnership, and applicable combination of these when the Proponent is a joint venture, whichever applies.

EXHIBIT B-2
Joint Venture Information

1. General Information

Name of Person/Firm (List whether Sole Proprietor, Partnership or Corporation)	Role in Joint Venture	Representative Signing Proposal and Position of Representative
1.		
2.		
3.		
4.		
5.		

2. Attach Joint Venture Letter and Power of Attorney pursuant to RFP Section 3.11.2 for each joint venture participant.

APPENDIX C

EXECUTIVE SUMMARY

Proponents should provide an overview of their proposed strategy and approach for the transformation of the Health Organizations and IMITS (“**Proposed Solution**”), and explain how that Proposed Solution addresses the Health Organizations’ business challenges, risks and objectives for the planned scope of the initiative as outlined in Exhibit A-1 of this RFP by describing and explaining the information required in each of the sections below.

#	Requirement	Response
1	Describe your Proposed Solution for the transformed Health Organizations within the planned scope and how it contributes to the transformation objectives.	
2	Describe your high-level approach for achieving the Proposed Solution including transforming the current IMITS service delivery structure.	
3	Describe how your Proposed Solution addresses the Health Organizations’ needs during transformation, particularly for minimizing the impact on the Health Organizations and patients served.	
4	Explain your understanding of the business challenges and risks facing the Health Organizations and how your Proposed Solution addresses those business challenges and risks.	
5	Describe your proposed approach for transitioning services, including: <ul style="list-style-type: none"> a. provisioning the underlying infrastructure required for the Solution; and b. the initial transference of people, services and processes. 	
6	Describe how your Proposed Solution addresses ongoing management and operation of the Integrated CIS Environment.	
7	Outline how your Proposed Solution provides the needed flexibility and scalability to address future opportunities of growth within the Health Organizations, adjustments for unforeseen circumstances, and on-boarding of other Health Authorities.	
8	Briefly describe the roll the Proponent and each Proponent Team Member will play in delivery of the Managed Services as described by the Proponent in the Managed Services Submission.	

APPENDICES D TO H

The following appendices are posted to the Secure Data Room separately. Exhibits are posted with the relevant appendix.

- Appendix D Managed Services Submission
- Appendix E Risk Management Submission
- Appendix F Economic Model and Pricing Submission
- Appendix G Draft Services Agreement
- Appendix H Secure Data Room Documents List

**STRATEGIC TRANSFORMATION FOR CLINICAL INFORMATION SYSTEM
RFP # HSSBC-00578
AMENDMENT 3
15 MARCH 2012**

The Request for Proposals, # HSSBC-00578, Strategic Transformation for Clinical Information Systems (attached) has been amended as follows:

RFP Section 9 Contract Finalization

RFP Section 9.3 has been revised to replace the reference to Appendix F with a reference to Appendix G.

NOTE: THE ATTACHED RFP DOCUMENT INCORPORATES THE CHANGES FROM AMENDMENT # 1 (ISSUED 21 FEBRUARY 2012) , AMENDMENT # 2 (ISSUED 28 FEBRUARY 2012)) AND AMENDMENT # 3 (THIS AMENDMENT). PROPONENTS ARE TO USE THIS VERSION WHEN RESPONDING TO THE REQUEST FOR PROPOSALS.

REQUEST FOR PROPOSALS

FOR

STRATEGIC TRANSFORMATION FOR CLINICAL INFORMATION SYSTEMS

RFP NUMBER: HSSBC-00578

RFP ISSUE: February 15, 2012

PROPOSERS' MEETING
REGISTRATION: February 22, 2012

PROPOSERS' MEETING: February 28, 2012

PROPOSERS' RFP QUESTION
DEADLINE: March 21, 2012

RFP CLOSING: April 3, 2012 at 12:00 Noon Pacific Time

**PLEASE ENSURE THAT EACH PROPOSAL CONTAINS AN AUTHORISED
SIGNATURE(S) AT APPENDIX B**

AUTHORIZED CONTACT: Jeff Thom, Team Lead, Category Management IMIT

Email Address: Jeff.Thom@hssbc.ca

APPROVED BY: Frank Hale for Health Shared Services BC

**ALL INQUIRIES MUST BE SUBMITTED TO THE AUTHORIZED CONTACT USING
THE SECURE DATA ROOM**

REQUEST FOR PROPOSALS

1 General

- 1.1 HSSBC is issuing this directed Request for Proposal (“**RFP**”) to retain a service provider to provide goods and services (“**Managed Services**”) described in the RFP Data Sheet attached as Appendix A to this RFP for Provincial Health Services Authority, Vancouver Coastal Health Authority and Providence Health Care Society (each a “**Health Organization**”, collectively “**Health Organizations**”). The RFP number (“**RFP Number**”) and RFP name (“**RFP Name**”) is set out in the RFP Data Sheet attached as Appendix A to this RFP..
- 1.2 HSSBC intends to award the agreement through an open , fair and competitive RFP process. The RFP competition will be open to only those entities that prequalified to submit a response to the RFP pursuant to the Request for Prequalification (HSSBC-00432) issued on August 8, 2011 (“**RFPQ**”) as specified in the RFP Data Sheet.
- 1.3 The entities or joint ventures listed in the RFP Data Sheet have been prequalified (the “**Prequalified Parties**”) under the RFPQ and are invited to submit a proposal (the “**Proposal**”) in response to this RFP. In this RFP, individuals or firms that submit documents in response to this RFP are referred to as “**Proponents**” and each team member, if any, constituting a Proponent’s team is referred to as a “**Proponent Team Member**”. The entity or entities that are selected to be awarded the work are referred to as “**Successful Proponent(s)**”. For ease of reference, prospective respondents, whether or not they submit a response to this RFP, are also referred to as “**Proponents**”.
- 1.4 The process (“**RFP Process**”) to select a service provider for the purposes of the Managed Services will commence with the issuance of these RFP Documents and will terminate when HSSBC and the Successful Proponent enter into the Final Agreement.

2 Request for Proposals Documents

- 2.1 The Request for Proposals documents (the “**RFP Documents**”) are:
 - (a) this Request for Proposals;
 - (b) Appendix A – RFP Data Sheet, including any Exhibits;
 - (c) Appendix B – Proposal Submission Form, including any Exhibits;
 - (d) Appendix C – Executive Summary;
 - (e) Appendix D – Managed Services Submission, including any Exhibits;
 - (f) Appendix E – Risk Management Submission
 - (g) Appendix F – Economic Model and Pricing Submission including any Exhibits;

- (h) Appendix G – Draft Services Agreement (including all related schedules, exhibits and statements of work) (the “**Draft Services Agreement**”), including Exhibit G-1;
- (i) Appendix H – Secure Data Room Documents List; and
- (j) Addenda to the RFP Documents, if any.

2.2 The RFP Documents shall be read as a whole. The Appendices and Addenda, if any, constitute an integral part of this RFP and are incorporated by reference.

2.3 HSSBC will open a secure data room (“**Secure Data Room**”) where Proponents will find supplemental information about the Managed Services and copies of the RFP Documents, Addenda, Notices and Response to Questions Document. The universal resource locator (“**URL**”) for the Secure Data Room will be sent to the Proponent’s contact (“**Proponent’s Contact**”) identified in the Proponent’s Prequalification Submission after the Proponent’s Contact completes, signs and returns the Receipt Confirmation Form and the non-disclosure agreement (“**NDA**”) attached to the letter sent to the Proponent’s Contact by the “**Authorized Contact**” identified in the letter and in the RFP Data Sheet. Proponent’s Contact and any other individual from the Proponent’s or a Proponent Team Member’s organization that will require access to the documents contained in the Secure Data Room must sign a NDA and return the NDA to the Authorized Contact prior to receiving the password or accessing the information stored in the Secure Data Room. **Note: Reference to a document number in an Appendix or an Exhibit is a reference to a document in the Secure Data Room. A list of the documents in the Secure Data Room is found in Appendix H.**

2.4 Priority of Documents

- 2.4.1 Except as provided in RFP Section 2.4.2, if there are any inconsistencies between the terms, conditions and provisions of the RFP Documents, the RFP shall prevail over the Appendices to the RFP during the RFP Process.
- 2.4.2 If there is a conflict between the RFP and the RFP Data Sheet, the information in the RFP Data Sheet shall prevail over the RFP.

2.5 Distribution of Documents – Electronic Distribution

- 2.5.1 HSSBC will use the Secure Data Room to distribute all RFP Documents and supplemental information.
- 2.5.2 Each Proponent is solely responsible for making appropriate arrangements to access the RFP Documents and supplemental information through the Secure Data Room.

2.6 Information Provided by HSSBC

- 2.6.1 Each Proponent is solely responsible for conducting its own independent research, due diligence, and any other work or investigations and seeking any other independent advice necessary for the preparation of Proposals, negotiation or finalization of the Draft Agreement, and the subsequent delivery of all the Managed Services to be provided by the Successful Proponent. Nothing in the RFP Documents or in the Secure Data Room is intended to relieve the Proponents from forming their own opinions and conclusions with respect to the matters addressed in this RFP.

- 2.6.2 No guarantee, representation or warranty, express or implied, is made and no responsibility of any kind is accepted by HSSBC or its representatives for the completeness or accuracy of any information presented in the RFP Documents or the Secure Data Room during the RFP Process or during the term of the Final Agreement. HSSBC and its representatives shall not be liable to any person or entity as a result of the use of any information contained in the RFP Documents or in the Secure Data Room or otherwise provided by HSSBC or its representatives during the RFP Process or during the term of the Final Agreement.

3 THE RFP PROCESS

3.1 RFP Timetable

- 3.1.1 The deadline for the submission of Proposals (the “**RFP Closing**”) and other dates for the RFP Process are set out in the RFP Timetable (the “**RFP Timetable**”) included in the RFP Data Sheet. Where there is an inconsistency in a date appearing on the cover page of the RFP and a date in the RFP Timetable, the date in the RFP Timetable will prevail.
- 3.1.2 HSSBC may, without liability, cost or penalty and in its sole discretion amend the RFP Timetable,
- (a) for matters that are to take place on or before the RFP Closing, at any time prior to the RFP Closing; and
 - (b) for matters that are to take place after the RFP Closing, at any time during the RFP Process.
- 3.1.3 If HSSBC extends the RFP Closing, all obligations of Proponents will thereafter be subject to the extended deadline.

3.2 Questions and Communications Related to the RFP Documents

- 3.2.1 Proponents shall submit all questions and other communications regarding the RFP Documents and the RFP Process to the Authorized Contact using the Secure Data Room no later than the deadline for submission of questions (“**Proponents’ RFP Question Deadline**”) set out in the RFP Data Sheet. Questions should be submitted using the Response to Questions Document attached as Exhibit A-2 to Appendix A. Questions involving proprietary information are to be submitted in a separate Response to Questions Document. The words “Proprietary Information” should be entered in capital letters at the top of the Response to Questions Document containing proprietary information. If HSSBC determines that information identified as proprietary by the Proponent is not in fact proprietary, HSSBC will notify the Proponent and the Proponent will have the opportunity to withdraw the question.
- 3.2.2 HSSBC will provide the Proponents with written responses to questions that are submitted in accordance with this RFP Section 3.2 in a “**Response to Questions Document**”. HSSBC will post the Response to Questions Document in the Secure Data Room. Questions posted to the Secure Data Room prior to the Proponents’ RFP Question Deadline will be answered on the Friday of the week they are posted if received in the Secure Data Room prior to 3:00 p.m. on the Wednesday of that week. For clarity, questions posted prior to 3:00 p.m. Wednesday March 7 will be answered on Friday March 9.

- 3.2.3 The Response to Questions Document is not an RFP Document and does not amend the RFP Documents.
- 3.2.4 HSSBC will not attribute the questions in the Response to Questions Document to any person or entity. HSSBC may, in its sole discretion,
- (a) answer similar questions from various Proponents only once;
 - (b) edit the language of the questions for the purpose of clarity;
 - (c) determine whether a submitted question does in fact contain proprietary information;
 - (d) respond to questions containing proprietary information only to the Proponent submitting the proprietary information;
 - (e) respond to questions submitted after the RFP Question Deadline if HSSBC believes that such responses would be of assistance to the Proponents generally; and
 - (f) exclude submitted questions if they are ambiguous or incomprehensible.
- 3.2.5 It is each Proponent's responsibility to seek clarification from HSSBC of any matter it considers to be unclear in the RFP Documents and the Proponent may seek clarification in accordance with this RFP Section 3.2. None of HSSBC nor the Health Organizations shall be responsible for any misunderstanding by a Proponent of the RFP Documents, the RFP Process or the Managed Services.
- 3.2.6 HSSBC may, in its sole discretion, post notices ("**Notices**") to the Secure Data Room for the purpose of communicating to Proponents on issues of importance to the RFP Process.

3.3 Addenda/Changes to the RFP Documents

- 3.3.1 HSSBC may, in its sole discretion, amend or supplement the RFP Documents prior to the RFP Closing. HSSBC shall issue changes to the RFP Documents by Addenda only. No other statement, Response to Questions Document or Notice, whether oral or written, made by HSSBC or any HSSBC advisors, employees or representatives, including, for clarity, the Authorized Contact, or any other person, shall amend the RFP Documents. HSSBC may issue Addenda at any time. Addenda will be posted in the Secure Data Room.
- 3.3.2 Each Proponent is solely responsible for ensuring that it has received all Addenda issued by HSSBC. Proponents may, in writing, seek confirmation of the number of Addenda issued under this RFP from the Authorized Contact.

3.4 Proponents' Meeting

- 3.4.1 To assist Proponents in understanding the RFP and the RFP Process, HSSBC may conduct an information meeting (the "**Proponents' Meeting**") for all Proponents. Whether or not HSSBC will conduct a Proponents' Meeting is set out in the RFP Data Sheet. If HSSBC is conducting a Proponents' Meeting, the meeting will be held on the

date and at the time set out in the RFP Timetable and at the location set out in the RFP Data Sheet.

- 3.4.2 Attendance by Proponents at a Proponents' Meeting is not mandatory but, if one is held, Proponents are strongly encouraged to attend.
- 3.4.3 If HSSBC gives oral answers to questions at the Proponents' Meeting, these answers will not be considered final unless they are provided in response to written questions submitted by Proponents in accordance with RFP Section 3.3, which responses will be included in the Response to Questions Document.
- 3.4.4 If pre-registration for the Proponents' meeting is necessary, the deadline for registration ("**Proponents' Meeting Registration Deadline**") will be set out in the RFP Timetable and details regarding the registration process will be set out in the RFP Data Sheet.

3.5 Prohibited Contacts

- 3.5.1 Proponents and Proponent Team Members and their respective advisors, employees and representatives are prohibited from engaging in any form of political or other lobbying, of any kind whatsoever, to influence the outcome of the RFP Process.
- 3.5.2 Without limiting the generality of RFP Section 3.5.1 and without restricting a Party's ability to conduct business not directly related to the RFP Process, neither Proponents nor Proponent Team Members nor any of their respective advisors, employees or representatives shall contact or attempt to contact, either directly or indirectly, at any time during the RFP Process, any of the following persons or organizations on matters related to the RFP Process, the RFP Documents, or their Proposals:
 - (a) any member of the Evaluation Team;
 - (b) any advisor to HSSBC or the Evaluation Team;
 - (c) any employee or representative of,
 - (i) HSSBC;
 - (ii) Health Organizations; or
 - (iii) any other Health Authority.
 - (d) any consultant engaged by IMITS or Tech Services at HSSBC, Health Organizations or Health Authorities within British Columbia; or
 - (e) any directors, officers, employees, agents, representatives or consultants of any entity listed in RFP Sections 3.5.2(a) to 3.5.2(e) above.
- 3.5.3 If a Proponent or a Proponent Team Member or any of their respective advisors, employees or representatives, in the opinion of HSSBC, contravenes RFP Section 3.5.2, HSSBC may, in its sole discretion,
 - (a) take any action in accordance with RFP Section 7.2; or

- (b) impose conditions on the Proponent's or Proponent Team Member's continued participation in the RFP Process that HSSBC considers, in its sole discretion, to be appropriate.

For clarity, HSSBC is not obliged to take the actions set out in this RFP Section 3.5.3.

3.6 Media Releases, Public Disclosures, Public Announcements and Copyright

- 3.6.1 A Proponent shall not, and shall ensure that its Proponent Team Members, advisors, employees and representatives do not, issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, Internet or any other medium) that relates to the RFP Process, the RFP Documents or the Managed Services or any matters related thereto, without the prior written consent of HSSBC.
- 3.6.2 Neither the Proponents, the Proponent Team Members or any of their respective advisors, employees or representatives shall make any public comment, respond to questions in a public forum, or carry out any activities to either criticize another Proponent or Proposal or to publicly promote or advertise their own qualifications, interest in or participation in the RFP Process without HSSBC's prior written consent, which consent may be withheld, conditioned or delayed in HSSBC's sole discretion. Proponents, Proponent Team Members and their respective advisors, employees and representatives are permitted to state publicly that they are participating in the RFP Process, but shall not make formal public announcements identifying other Proponents without the prior written consent of HSSBC.
- 3.6.3 Proponents shall not use the name of HSSBC, a Health Organization or a Health Authority or any of HSSBC's, Health Organization's or a Health Authority's logos, designs, colours or registered trademarks and names used, owned or registered by HSSBC, a Health Organization or a Health Authority, except with the prior written consent of HSSBC.

3.7 Confidentiality and Disclosure Issues – Proponent Information

- 3.7.1 Proponent acknowledges that HSSBC, Health Organizations and Health Authorities are public bodies, and all information or materials supplied to or obtained or created by the Proponent are subject to the provisions of the *Freedom of Information and Protection of Privacy Act* (British Columbia) as amended from time to time (“**FIPPA**”) including orders and decisions made by the Office of the Information & Privacy Commissioner for British Columbia. The Proponent acknowledges and agrees that HSSBC, a Health Organization or a Health Authority may be required to disclose the terms of the Final Agreement and the Proponent's Proposal and any other information supplied in connection with or relating to the Final Agreement to the public in order to comply with Applicable Law and existing and future orders and decisions of the Office of the Information & Privacy Commissioner. The Proponent will to the extent required by Applicable Law, at all times hold, safeguard, use, disclose, document and manage personal information and all other information and records in accordance with Applicable Law including FIPPA, the policies of HSSBC, Health Organizations and Health Authorities and the provisions of the Privacy Schedule in the Draft Agreement attached to this RFP. Notwithstanding the generality of the foregoing, the Proponent acknowledges and agrees that HSSBC, a Health Organization or a Health Authority may, at its option, proactively disclose the terms of the Final Agreement to the public.

- 3.7.2 The Proponent agrees that HSSBC may disclose Proposals to members of the Evaluation Team and their advisors and HSSBC may,
- (a) make copies of the Proposal; and
 - (b) retain the Proposal.
- 3.7.3 HSSBC may disclose any information with respect to the Proponents, the Proponent Team Members, the Proposals and the RFP Process as required by the Applicable Law.
- 3.7.4 The Proponent shall not require HSSBC and Health Organizations or any of their representatives to sign a confidentiality agreement in respect of any step taken or information provided as part of this RFP Process.

3.8 HSSBC Confidentiality Issues

- 3.8.1 In this RFP, “**RFP Information**” shall mean all material, data, information or any item in any form, whether oral or written, including in electronic or hard-copy format, supplied by, obtained from or otherwise procured in any way, whether before or after the RFP Process, from HSSBC, Health Organizations, or Health Authorities in connection with the RFP Documents, or the Managed Services, except it does not include any item which,
- (a) is or becomes generally available to the public other than as a result of a disclosure resulting from a breach of this RFP Section 3.8;
 - (b) becomes available to the Proponent on a non-confidential basis from a source other than HSSBC, Health Organizations or Health Authorities so long as that source is not bound by a confidentiality agreement with respect to the information or otherwise prohibited from transmitting the information to the Proponent by a contractual, legal or fiduciary obligation; or
 - (c) the Proponent is able to demonstrate was known to it on a non-confidential basis before it was disclosed to the Proponent by HSSBC.
- 3.8.2 RFP Information,
- (a) shall remain the sole property of HSSBC, a Health Organization or a Health Authority and the Proponent shall maintain the confidentiality of such information except as required by Applicable Law;
 - (b) shall not be used by the Proponent for any purpose other than submitting a Proposal or performing obligations under any subsequent agreement with HSSBC relating to the Managed Services;
 - (c) shall not be disclosed by the Proponent to any person who is not involved in the Proponent’s preparation of its Proposal or in the performance of any subsequent agreement relating to HSSBC, a Health Organization or a Health Authority, as applicable, without prior written authorization from HSSBC;
 - (d) shall not be used in any way detrimental to HSSBC, a Health Organization or a Health Authority; and

- (e) if requested by HSSBC, shall be returned to the Authorized Contact or destroyed no later than ten (10) calendar days after such request is received in writing by the Proponent.
- 3.8.3 Each Proponent shall be responsible for any breach of the provisions of this RFP Section 3.8 by any person to whom it discloses the RFP Information.
- 3.8.4 Each Proponent acknowledges and agrees that a breach of the provisions of this RFP Section 3.8 would cause HSSBC, a Health Organization or a Health Authority and/or their related entities to suffer loss which could not be adequately compensated by damages, and that HSSBC, a Health Organization or a Health Authority and/or any related entity may, in addition to any other remedy or relief, enforce any of the provisions of this RFP Section 3.8 upon application to a court of competent jurisdiction without proof of actual damage to HSSBC, a Health Organization, a Health Authority or any related entity.
- 3.8.5 Notwithstanding RFP Section 10, the provisions of this RFP Section 3.8 shall be binding and shall survive any cancellation of this RFP and the conclusion of the RFP Process.
- 3.8.6 HSSBC may, in its sole discretion, require that Proponents execute legally binding confidentiality agreements, in a form and substance satisfactory to HSSBC.

3.9 Applicable Law and Attornment

- 3.9.1 This RFP and any agreement entered into pursuant to the RFP Process (the “**Final Agreement**”) shall be governed and construed in accordance with the laws of British Columbia and the applicable laws of Canada (the “**Applicable Law**”).
- 3.9.2 The Proponent agrees that,
 - (a) any action or proceeding relating to this RFP Process shall be brought in any court of competent jurisdiction in the Province of British Columbia and for that purpose each Party irrevocably and unconditionally attorns and submits to the jurisdiction of that British Columbia court;
 - (b) it irrevocably waives any right to and will not oppose any British Columbia action or proceeding relating to this RFP Process on any jurisdictional basis, including forum non conveniens; and
 - (c) it will not oppose the enforcement against it, in any other jurisdiction, of any judgement or order duly obtained from an British Columbia court as contemplated by this RFP Section 3.9.2(b).

3.10 Licences and Permits

- 3.10.1 If a Proponent is required by the Applicable Law to hold or obtain a licence, permit, consent or authorization to carry on an activity contemplated in its Proposal, neither acceptance of the Proposal nor execution of the Final Agreement shall be considered to be approval by HSSBC of carrying on such activity without the requisite licence, permit, consent or authorization.

3.11 Entities Permitted to Submit Proposals

- 3.11.1 A prequalification process preceded this RFP Process and, subject to RFP Section 1.3, only the Prequalified Parties are eligible to participate in this RFP Process. The prequalification documents submitted by each Prequalified Party in the prequalification process that preceded this RFP Process are referred to as a Prequalified Party's **"Prequalification Submission"**.
- 3.11.2 Each **"Joint Venture Proponent"** shall submit, as part of its Proposal, a written commitment, in the form of a letter duly executed by a responsible officer of each **"Joint Venture Participant"** that,
- (a) confirms each Joint Venture Participant's commitment to the joint venture and acceptance of the joint venture arrangements described in the Proposal in accordance with this RFP Section 3.11;
 - (b) confirms each Joint Venture Participant's willingness to provide a joint and several guarantee to HSSBC to underwrite the performance of the joint venture in respect of the Final Agreement; and
 - (c) identifies which Joint Venture Participant,
 - (i) will assume the leading role on behalf of the other Joint Venture Participants; and
 - (ii) will have the authority to bind or commit all Joint Venture Participants (the **"Participant in Charge"**).
 - (d) Each Joint Venture Participant shall demonstrate its authorization of the Participant in Charge by submitting a power of attorney signed by legally authorized signatories.
 - (e) If a Final Agreement is executed between HSSBC and a Joint Venture Proponent, the parent companies of the entities forming the Joint Venture Proponent shall jointly and severally guarantee the obligations of the Joint Venture Proponent under the Final Agreement. HSSBC may, in its sole discretion, also require parent companies of the entities forming the Joint Venture Proponent to be parties to the Final Agreement.

3.12 Proponents' Costs

- 3.12.1 The Proponent shall bear all costs and expenses incurred by the Proponent relating to any aspect of its participation in this RFP Process, including, without limitation, all costs and expenses related to the Proponent's involvement in,
- (a) the preparation, presentation and submission of its Proposal;
 - (b) due diligence and information gathering processes;
 - (c) attendance at any interviews or Proponents' Meeting(s);
 - (d) attendance at any site visits;

- (e) preparation of any prototypes or proof of concept demonstrations;
- (f) preparation of responses to questions or requests for clarification from HSSBC;
- (g) preparation of the Proponent's own questions during the clarification process; and
- (h) any discussion or negotiations with HSSBC regarding the Draft Agreement.

3.12.2 In no event shall HSSBC, Health Organizations, Health Authorities or any related entity be liable to pay any costs or expenses or to reimburse or compensate a Proponent under any circumstances, regardless of the conduct or outcome of the RFP Process.

3.13 Delay and Costs of Delay

3.13.1 The Proponent shall not hold HSSBC, Health Organizations, Health Authorities or any related entity liable for any error or omission in any part of the RFP Documents or RFP Information or for any delay or costs associated with delays in the RFP Process.

3.14 Clarification and Verification of Proponent's Proposal

3.14.1 HSSBC may,

- (a) require the Proponent to clarify the contents of its Proposal;
- (b) require the Proponent to submit supplementary documentation clarifying any matters contained in its Proposal; and
- (c) seek a Proponent's acknowledgement of an HSSBC interpretation of the Proponent's Proposal.

3.14.2 HSSBC is not obliged to seek clarification or verification of any aspect of a Proposal or any statement by a Proponent, including an ambiguity in a Proposal or in a statement made by a Proponent.

3.14.3 Any written information received by HSSBC from a Proponent pursuant to a request for clarification or verification from HSSBC as part of the RFP Process may, in HSSBC's discretion, be considered as an integral part of the Proposal.

3.14.4 HSSBC may, in its sole discretion, verify or clarify any statement or claim contained in any Proposal or made subsequently in any interview, presentation, or discussion. That verification or clarification may be made by whatever means that HSSBC deems appropriate and may include contacting the persons identified in the contact information provided by the Proponent and, in addition, contacting persons or entities other than those identified by any Proponent.

3.14.5 In submitting a Proposal, the Proponent is deemed to consent to HSSBC verifying or clarifying any information and requesting additional information from third parties regarding the Proponent, the Proponent Team Members (if any) and their respective directors, officers, shareholders or owners and any other person associated with the Proponent as HSSBC may determine.

- 3.14.6 HSSBC may, in its sole discretion, convene a meeting with one, some or all Proponents for the purposes of clarifying or verifying the contents of a Proponent's Proposal. Any written information received by HSSBC from a Proponent during a clarification/verification meeting may, in HSSBC's sole discretion, be considered as an integral part of the Proposal, even if such information should have been submitted as part of the Proponent's Proposal. Oral information received during a clarification/verification meeting may not be taken into account in the evaluation of the Proponent's Proposal unless it is confirmed in writing by the Proponent and submitted within twenty-four (24) hours of the conclusion of the clarification/verification meeting.

3.15 Changes to Proponents and Proponent Team Members

- 3.15.1 During the RFP Process, a Proponent shall not permit a Prequalified Proponent Change in the Proponent or any Identified Proponent Party without the prior written consent of HSSBC. For the purposes of this RFP, a **"Prequalified Proponent Change"** means:

- (a) an actual or proposed transaction that will result or has resulted in a change of majority Control or ownership of the Proponent or any Identified Proponent Party;
- (b) a change in circumstances that may materially adversely affect a Proponent or an Identified Proponent Party in a way which could impair the Proponent's or the Identified Proponent Party's ability to perform their respective obligations under or in connection with the Draft Agreement;
- (c) a change in relationship between the Proponent and any Identified Proponent Party whereby an Identified Proponent Party becomes the Proponent and the Proponent becomes an Identified Proponent Party;
- (d) the withdrawal of any of the Identified Proponent Parties and the proposed substitution of such person or entity; or
- (e) the proposed addition of any person or entity as an Identified Proponent Party.

For the purposes of this RFP Section 3.15, an **"Identified Proponent Party"** means any of the entities identified in the Proponent's Prequalification Submission, including for clarity, proposed subcontractors, key individuals or Joint Venture Participants.

- 3.15.2 If, prior to the RFP Closing, there is a Prequalified Proponent Change, the Proponent shall request the consent of HSSBC by notifying the Authorized Contact in writing as soon as possible and, in any event, no later than seven days prior to the RFP Closing. That notification shall clearly identify the Prequalified Proponent Change and provide details regarding the impact of the Prequalified Proponent Change on the Proponent or Identified Proponent Party, as applicable. In addition, in the event that the Prequalified Proponent Change involves the proposed substitution of an Identified Proponent Party, the Proponent shall include sufficient documentation to demonstrate that the proposed substitute would have met or exceeded any applicable criteria applied during the prequalification process that preceded this RFP Process.
- 3.15.3 In response to a notification in accordance with RFP Section 3.15.2, HSSBC may, in its sole discretion, provide the Proponent with instructions as to the type of information required by HSSBC to consider the Prequalified Proponent Change as well as the deadlines for submission of information that the Proponent must meet in order to have

its request considered by HSSBC. The Proponent shall provide any further documentation as may be reasonably requested by HSSBC to assess the impact of the Prequalified Proponent Change on the Proponent and any Identified Proponent Party, including in the case of a proposed substitution, the acceptability of the proposed substitute. If HSSBC, in its sole discretion, considers the Prequalified Proponent Change to be acceptable, HSSBC may consent to the Prequalified Proponent Change. HSSBC's consent to the Prequalified Proponent Change, however, may be subject to such terms and conditions as HSSBC may require. In the case of a proposed substitution of an Identified Proponent Party, if a Prequalified Proponent Change is not acceptable to HSSBC, the Proponent may propose an alternate substitute for review by HSSBC in the same manner as the first proposed substitute. HSSBC may, in its sole discretion, disallow any Prequalified Proponent Change and may disqualify a Proponent from further consideration in the RFP Process.

- 3.15.4 In the case of a Prequalified Proponent Change made by the Proponent without consent by HSSBC or a Prequalified Proponent Change after the RFP Closing, HSSBC may, in its sole discretion, disqualify the Proponent and terminate the Proponent's continued involvement in the RFP Process or allow the Proponent to continue under such terms and conditions as HSSBC, in its sole discretion, may require.
- 3.15.5 Regardless of whether a prequalification process has preceded this RFP Process, if, on or after the RFP Closing and prior to execution of the Final Agreement, there is a Post-Submission Proponent Change, then the Proponent shall promptly notify HSSBC in writing to the Authorized Contact. For the purposes of this RFP Section 3.15, a "**Post-Submission Proponent Change**" means:
- (a) an actual or proposed change of Control of the Proponent or a Proponent Team Member;
 - (b) a change in circumstances that may materially adversely affect a Proponent or a Proponent Team Member in a way which could impair the Proponent's or a Proponent Team Member's ability to perform their respective obligations under the Draft Agreement;
 - (c) a change in relationship between the Proponent and any Identified Proponent Party whereby an Identified Proponent Party becomes the Proponent and the Proponent becomes an Identified Proponent Party;
 - (d) the withdrawal of any Proponent Team Member and the proposed substitution of such person or entity; or
 - (e) the proposed addition of any person or entity as a Proponent Team Member.

In response to a notification in accordance with this RFP Section 3.15.5, HSSBC may, in its sole discretion, provide the Proponent with instructions as to the type of information required by HSSBC to consider the Post-Submission Proponent Change as well as the deadlines for submission of information that the Proponent must meet in order to have its request considered by HSSBC. The Proponent shall provide any further documentation as may be reasonably requested by HSSBC to assess the impact of the Post-Submission Proponent Change on the Proponent and any Proponent Team Member, including in the case of a proposed substitution, the acceptability of the proposed substitute. In the case of a proposed substitution of a Proponent Team Member, if a Post-Submission Proponent Change is not acceptable to

HSSBC, the Proponent may propose an alternate substitute for review by HSSBC in the same manner as the first proposed substitute. HSSBC may, in its sole discretion, refuse to accept a Post-Submission Proponent Change that occurs or is requested by the Proponent after the Submission Deadline and may, in its sole discretion, disqualify the Proponent from continuing in the RFP Process.

4 Format and Content of Proposal

4.1 Format

4.1.1 Proponents shall prepare their Proposals in accordance with and in the content and format requirements set out as follows:

- (a) a cover letter signed by an authorized signatory of the Proponent;
- (b) a completed Proposal Submission Form prepared in accordance with the requirements set out in Appendix B, including any Exhibits attached to Appendix B, if applicable;
- (c) a completed Executive Summary prepared in accordance with the requirements set out in Appendix C;
- (d) a completed Managed Services Submission prepared in accordance with the requirements set out in Appendix D, including any Exhibits attached to Appendix D;
- (e) a completed Risk Management Submission prepared in accordance with the requirements set out in Appendix E, including any Exhibits attached to Appendix E; and
- (f) an Economic Model and Pricing Submission prepared in accordance with the requirements set out in Appendix F, including any Exhibits attached to Appendix F.

4.1.2 In respect to sales and promotional material,

- (a) the Proponent shall not submit any pre-printed or electronic sales or promotional material; and
- (b) HSSBC will not evaluate pre-printed or electronic sales or promotional material.

4.1.3 Each Proponent shall,

- (a) examine all instructions, terms and conditions, forms and information in the RFP Documents and the Response to Questions Document; and
- (b) in a clear, concise and legible manner, complete and submit all documentation and information required by Appendices B, C, D, E and F to the RFP.

4.1.4 The Proponents are strongly encouraged to use formatting and a font size (12 point type is recommended) that is readable. Proponents should not change the numbering or order of the material within the Appendices.

- 4.1.5 Proponents should ensure their proposals are concise and do not include sales or promotional verbiage.

4.2 Proposal Submission Form

- 4.2.1 Each Proponent shall complete and sign the Proposal Submission Form attached as Appendix B of this RFP.

- 4.2.2 Proponents shall execute the Proposal Submission Form as follows:

- (a) in the case of a limited company, an authorized signing officer shall sign the Proposal Submission Form;
- (b) in the case of a partnership, a designated partner shall sign the Proposal Submission Form on behalf of all partners and have their signature witnessed; and
- (c) in the case of a joint venture, each Joint Venture Participant in the Joint Venture Proponent shall sign the Proposal Submission Form in accordance with the requirements of RFP Section 4.2.2(a) or 4.2.2(b), as applicable.

4.3 Executive Summary

- 4.3.1 The Proponent shall prepare and submit its Executive Summary in the format and containing the information set out in Appendix C to the RFP.

4.4 Contents of the Managed Services Submission

- 4.4.1 The Proponent shall prepare and submit its Managed Services Submission in the format and containing the information set out in Appendix D to the RFP.

4.5 Contents of the Risk Management Submission

- 4.5.1 The Proponent shall prepare and submit its Risk Management Submission in the format and containing the information set out in Appendix E to the RFP

4.6 Contents of the Economic Model and Pricing Submission

- 4.6.1 The Proponent shall prepare and submit its Economic Model and Pricing Submission in the format and containing the information set out in Appendix F to the RFP.

4.7 References and Past Performance Issues

- 4.7.1 If specified in the Proposal Submission Form, Proponents shall provide reference information. Unless otherwise set out in the Proposal Submission Form, all references shall be with respect to goods and/or services provided, as applicable, sometime during the five years immediately prior to the RFP Closing. The Proponent shall provide a minimum of three references, unless otherwise set out in the Proponent Submission Form.
- 4.7.2 HSSBC reserves the right to request reference information from a Proponent at any time during the RFP Process.

- 4.7.3 HSSBC may, in its sole discretion, confirm the Proponent's experience and ability to provide the Managed Services by contacting the Proponent's references. However, HSSBC is under no obligation to contact references submitted by any Proponent and may determine, in its sole discretion, how, and whether, the responses of references will be taken into account in the evaluation process.
- 4.7.4 If HSSBC has reliable information with respect to a Proponent's poor performance in providing goods and/or services, as applicable, HSSBC may take such past poor performance into account in its evaluation of the Proponent and the Proponent's Proposal.

4.8 Conflict of Interest

- 4.8.1 Each Proponent shall disclose any potential, perceived or actual conflict of interest of the Proponent or Proponent Team Members ("**Conflict of Interest**") to the Authorized Contact and in its Proposal Submission Form, in accordance with this RFP Section 4.8. HSSBC may, in its sole discretion, waive any Conflict of Interest or may impose conditions on a Proponent that require the management, mitigation and/or minimization of the Conflict of Interest.
- 4.8.2 Upon discovery of a Conflict of Interest, Proponents shall promptly disclose the Conflict of Interest in a written statement to the Authorized Contact. If HSSBC discovers a Proponent's failure to disclose a Conflict of Interest, HSSBC may disqualify the Proponent or terminate any Final Agreement awarded to that Proponent pursuant to this RFP Process.
- 4.8.3 If, in the sole discretion of HSSBC, a Proponent or Proponent Team Member is determined to have a Conflict of Interest that, in HSSBC's sole discretion, cannot be managed, mitigated or minimized, HSSBC may, in addition to any other remedies available at law or in equity, disqualify the Proposal submitted by the Proponent.

5 Submission of Proposals

- 5.1 Each Proponent shall submit its Proposal to the area of the Secure Data Room reserved for the Proponent.
- 5.2 Proponents shall place their Proposal in the Secure Data Room as follows:
- (a) The Proponents shall place the Cover Letter, the Executive Summary, the Proposal Submission Form, the Managed Services Submission and the Risk Management Submission in the area named "**Managed Services Submission**" within the area of the Secure Data Room reserved for the Proponent's response;
 - (b) The Proponents shall place the Economic Model and Pricing Submission in the area named "**Financial Model Submission**" within the area of the Secure Data Room reserved for the Proponent's response; and
 - (c) Proponents shall not submit Proposals by other methods, electronic or physical, unless specifically permitted in the RFP Data Sheet.

5.3 Withdrawal of Proposals

A Proponent may withdraw its Proposal only by giving written notice of an intention to withdraw to the Authorized Contact before the RFP Closing. Proponent is to use the Secure Data Room to provide their notice. HSSBC shall delete a Proposal from the Secure Data Room that has been withdrawn in accordance with this RFP Section 5.3.

5.4 Amendment of Proposals

Proponents may amend their Proposals after submission but only if the Proposal is amended and resubmitted before the RFP Closing in accordance with the following:

- (a) the Proponent shall withdraw its original Proposal by notifying the Authorized Contact in writing using the Secure Data Room;
- (b) HSSBC shall delete the Proponent's original Proposal from the Secure Data Room and notify the Proponent when this action is completed; and
- (c) the Proponent shall submit a revised fully complete replacement Proposal in accordance with the RFP Documents after receiving the notification in RFP Section 5.4(b) and no later than the RFP Closing; or
- (d) the Proponent shall advise Authorized Contact that they are withdrawing from the competition in accordance with Section 5.3..

5.5 Proposal Validity Period

- 5.5.1 Subject to the Proponent's right to withdraw before the RFP Closing, the Proponent's Proposal shall be irrevocable and shall remain in effect and open for acceptance for the number of days set out in the RFP Data Sheet after the RFP Closing (the "**Proposal Validity Period**").

5.6 One Proposal per Person or Entity

- 5.6.1 Except with HSSBC's prior written consent,
- (a) a person or entity shall submit or participate in only one Proposal either individually or as a Proponent Team Member; and
 - (b) no person or entity shall be a subcontractor of a Proponent while submitting a Proposal individually or as a Proponent Team Member in the same RFP Process.
- 5.6.2 If a person or entity submits or participates in more than one Proposal in contravention of RFP Section 5.6.1, HSSBC may, in its sole discretion, disqualify any or all of the Proposals submitted by that person or entity or in which that person or entity is a participant.

5.7 Two Solutions per Proposal

- 5.7.1 A Proponent may submit a maximum of two (2) solutions in their Proposal.

- 5.7.2 For each solution Proponent must complete a set consisting of a Proposal Submission Form, an Executive Summary, a Managed Services Submission, a Risk Management Submission, and an Economic Model and Pricing Submission.

6 RFP Evaluation

6.1 Evaluation Team

- 6.1.1 HSSBC will establish an evaluation team for the purpose of evaluating Proposals (the **"Evaluation Team"**).
- 6.1.2 HSSBC will delegate certain administrative functions related to the evaluation of Proposals to a separate team of individuals who are not members of the Evaluation Team.

6.2 Evaluation of Proposals

- 6.2.1 The Proponents' Proposals will be reviewed and evaluated by the Evaluation Team on the basis of the evaluation criteria set out in the RFP Data Sheet (the **"Evaluation Criteria"**).

6.3 Steps in the Evaluation Process

- 6.3.1 Step 1 – Compliance of Proposals with the RFP Documents

- (a) In Step 1, HSSBC will review the contents of the Proposal Submission Form, Managed Services Submission, Risk Management Submission, Economic Model and Pricing Submission, and other documents submitted by the Proponent in the Secure Data Room to determine whether the Proponent's Proposal is in compliance with the terms and conditions of the RFP Documents and the **"Mandatory Requirements"** as set out in the RFP Data Sheet. HSSBC will verify that all forms have been signed in accordance with this RFP and included in the Proponent's Proposal.
- (b) If in Step 1, or at any time during the RFP Process, in the sole discretion of HSSBC, a Proponent's Proposal does not comply with the requirements set out in the RFP Documents, HSSBC shall, without liability, cost or penalty, eliminate the Proposal and the Proposal shall not be given any further consideration. For purposes of this RFP, "comply" and "compliance" mean that the Proposal conforms to the requirements of the RFP Documents without material deviation or reservation. A "material deviation or reservation" is a statement or omission in the Proponent's Proposal,
- (i) that affects or could affect in any substantial way the scope, quality or performance of the Managed Services under the Final Agreement arising from the RFP Process; or
 - (ii) that results in a material component of an RFP requirement for the Proponent's Proposal (as set out in the RFP Documents) not being complied with.

- (c) The Proponent's submission is of a poor quality, but complete, Proposal shall not be considered a failure to comply but will affect the Proponent's Managed Services Score as defined in RFP Section 6.3.2(a).
- (d) For the purpose of clarity, each Proponent acknowledges and agrees that HSSBC's evaluation of compliance with the RFP Documents is not an evaluation of absolute compliance and that HSSBC may waive failures to comply that, in HSSBC's sole discretion, do not constitute a material deviation or reservation in accordance with RFP Section 6.3.1(b).

6.3.2 Step 2 – Review of the Submissions (Appendices D, E, F)

- (a) In Step 2, a subset of the Evaluation Team will review and score the Managed Services Submission of the Proposals (the "**Managed Services Score**"). Proponents must achieve a passing score on the Managed Services Submission (the "**Passing Score (Managed Services)**") and a passing score on the subset of the Managed Services Score referred to as Clinical and Technology Vision (the "**Passing Score (Clinical and Technology Vision)**") in order to be considered further in the evaluation process as set out in the RFP Data Sheet.
- (b) A subset of the Evaluation Team will review and score the Risk Management Submission of the Proposals (the "**Risk Management Score**"). Proponents must achieve a passing score on the Risk Management Submission (the "**Passing Score (Risk Management)**") in order to be considered further in the evaluation process as set out in the RFP Data Sheet.
- (c) A subset of the Evaluation Team will review and score the Economic Model and Pricing Submission of the Proposals (the "**Economic Model Score**").

6.3.3 Step 3 – Short-Listed Proponents

- (a) In Step 3, the Evaluation Team may, in its sole discretion, establish a short-list of Proponents (the "**Short-listed Proponents**") based on the total of the Managed Services Score, the Risk Management Score and the Economic Model Score of the Proponents.
- (b) If HSSBC short-lists Proponents, it will short-list Proponents with the highest total scores. The number of Short-Listed Proponents is at the sole discretion of HSSBC.
- (c) If HSSBC short-lists Proponents, only the Short-Listed Proponents will move to the next step of the Evaluation Process.

6.3.4 Step 4 – Interviews, Site Visits, Demonstrations and Presentations

- (a) In Step 4, HSSBC may, in its sole discretion, conduct interviews, demonstrations, site visits or presentations if set out in the RFP Data Sheet.
- (b) The evaluation of any interviews, presentations, demonstrations, site visits or presentations will be conducted in accordance with the process set out in the RFP Data Sheet.

- (c) Notwithstanding RFP Section 6.3.4(a) and RFP Section 6.3.4(b), HSSBC may conduct interviews, presentations, demonstrations, site visits or presentations with some or all Proponents, or may restrict participation to only Short-Listed Proponents.

6.3.5 Step 5 – Establishing a Final Proposal Score

- (a) The components of and the maximum attainable score that HSSBC will apply with respect to the calculation of the final proposal score (the “**Final Proposal Score**”) are set out in the RFP Data Sheet.
- (b) The score established based on RFP Section 6.3.5(a) shall be the Final Proposal Score.

6.3.6 Step 6 – Ranking the Proposals

- (a) In Step 6, the Evaluation Team will rank only those Proposals that have,
 - (i) met all requirements in Steps 1 through 5; and
 - (ii) have received a Passing Score (Clinical and Technology Vision), a Passing Score (Managed Services) and a Passing Score (Risk Management), if any, and, if applicable, any other passing score set out in the RFP Data Sheet,

and HSSBC will base the ranking on the Final Proposal Score.

7 HSSBC’s Discretion

7.1 HSSBC’s Discretion

7.1.1 HSSBC shall determine, in its sole discretion,

- (a) the membership of the Evaluation Team;
- (b) whether a Proposal is in compliance with the RFP Documents;
- (c) whether a failure to comply constitutes a material deviation or reservation;
- (d) the Managed Services Score of a Proposal;
- (e) which Proponents and how many Proponents, based on the evaluation process, will be Short-listed Proponents;
- (f) if applicable, the interview score of a Proponent;
- (g) the Economic Model Score of a Proposal;
- (h) the rankings of the Proposals; and
- (i) whether a Proposal or a Proponent,
 - (i) is disqualified; or

- (ii) will cease to be considered in the evaluation process.

7.1.2 HSSBC's discretion in determining compliance, ranking, shortlisting and disqualification is not limited or restricted in any way by the fact that a prequalification process has preceded this RFP Process.

7.2 Disqualification

7.2.1 HSSBC may, in its sole discretion, disqualify a Proposal or cancel its decision to identify a Proponent as a Successful Proponent at any time prior to the execution of the Final Agreement by HSSBC, if,

- (a) the Proposal is determined to be non-compliant pursuant to RFP Section 6.3.1;
- (b) the Proponent, including any of its Proponent Team Members, fails to cooperate in any attempt by HSSBC to clarify or verify any information provided by the Proponent in its Proposal;
- (c) the Proponent, including any of its Proponent Team Members, contravenes RFP Section 3.5, RFP Section 3.6 or RFP Section 5.6;
- (d) the Proponent, including any of its Proponent Team Members, fails to comply with the Applicable Law;
- (e) the Proposal contains false or misleading information or the Proponent or a Proponent Team Member provides false or misleading information in its interview (if an interview is conducted);
- (f) the Proposal, in the sole discretion of HSSBC, reveals a Conflict of Interest that cannot be managed, mitigated or minimized;
- (g) the Proponent or Proponent Team Member misrepresents any information provided in the Proposal;
- (h) there is evidence that the Proponent, any of its Proponent Team Members or any of their respective employees, agents, consultants, contractors, service providers or representatives colluded with one or more other Proponents, including other Proponent Team Members or any of its or their respective employees, agents, consultants, contractors, service providers or representatives in the preparation or submission of Proposals;
- (i) a Prequalified Proponent Change has occurred which has not been approved by HSSBC in accordance with RFP Section 3.15.3;
- (j) a Post-Submission Proponent Change has occurred which has not been approved by HSSBC in accordance with RFP Section 3.15.5;
- (k) the Proponent or any Proponent Team Member has breached any agreement with HSSBC;

- (l) the Proponent, including any of its Proponent Team Members, has been convicted of an offence in connection with, or any services rendered to HSSBC, a Health Organization, a Health Authority, or any Municipal, Provincial, State, or Federal Governments;
- (m) the Proponent or any Proponent Team Member has breached an agreement for goods or services or goods and services similar to the ones requested under this RFP with an entity other than HSSBC;
- (n) the Proponent or any Proponent Team Member was convicted of a criminal offence within the three years immediately prior to the RFP Closing;
- (o) the Proponent or any Proponent Team Member was found liable for a violation of applicable laws of British Columbia or Canada within the three years immediately prior to the RFP Closing;
- (p) a Proponent or any Proponent Team Member is, at the time of issuance of this RFP or any time during the RFP Process, engaged in ongoing litigation against HSSBC, a Health Organization or a Health Authority; or
- (q) a Proponent or any Proponent Team Member engages in any activity which, at the sole discretion of HSSBC, is contrary to the public interest or is harmful to the integrity or reputation of HSSBC, a Health Organization or a Health Authority.

8 Successful Proponents

- 8.1** HSSBC shall determine the Successful Proponent in accordance with the ranking of Proponents pursuant to RFP Section 6.3.6.
- 8.2** Notwithstanding anything else to the contrary in this RFP, if HSSBC, in its sole discretion, acting reasonably, is of the opinion that a Proponent has submitted a price that is too low to be sustainable and to ensure the delivery of the Managed Services in accordance with the Draft Agreement, HSSBC may decline to award a Final Agreement to that Proponent.

9 Agreement Finalization

- 9.1** HSSBC will notify the Successful Proponent, in writing, that it has been selected as a Successful Proponent.
- 9.2** At the time the Successful Proponent is notified pursuant to RFP Section 9.1, the Successful Proponent and HSSBC shall enter into discussions to finalize the Final Agreement.
- 9.3** After the selection of the Successful Proponent, if any, HSSBC may finalize the terms and conditions of the Final Agreement with the Successful Proponent, and, as part of that process, may, in its sole discretion, negotiate changes, amendments or modifications to the Successful Proponent's Proposal or the Draft Agreement.
- 9.4** Unless HSSBC initiates negotiations in accordance with RFP Section 9.3, each Successful Proponent shall sign the Final Agreement in the same form and substance as the Draft Services Agreement attached as Appendix G of this RFP.

9.5 The Successful Proponent shall, no later than ten (10) days after receipt of the Final Agreement or such later date as may be specified in written notice given by HSSBC,

- (a)** enter into and execute the Final Agreement; and
- (b)** submit to HSSBC a certificate of insurance which,
 - (i)** references the Final Agreement by name;
 - (ii)** confirms that the requirements set out in the Final Agreement have been met;
 - (iii)** sets out any pertinent exclusions contained in the policy or policies; and
 - (iv)** is otherwise acceptable to HSSBC.

9.6 Notification If Successful or Not

9.6.1 The Successful Proponent and unsuccessful Proponents shall be notified by HSSBC in writing as to their success or failure in the RFP Process.

9.7 Debriefing

9.7.1 Proponents may request a debriefing after receipt of a notification pursuant to RFP Section 9.6. All Proponent requests should be in writing to the Authorized Contact no later than 30 days of receipt of the notification. HSSBC will determine the format, timing and contents of the debriefing session.

9.8 Contractor Safety Evaluation

9.8.1 If specified in the RFP Data Sheet, the Successful Proponent shall provide the information set out in the RFP Data Sheet with respect to the Successful Proponent's health and safety policies and procedures, safety incidents and Workplace Safety and Insurance Board coverage prior to the deadline specified in the RFP Data Sheet (the "**Health and Safety Submission**").

9.8.2 HSSBC will review the Health and Safety Submission submitted in accordance with RFP Section 9.8.1 and determine whether, based on the information and documentation, a Successful Proponent satisfies HSSBC's requirements with respect to health and safety policies and procedures. HSSBC may require a Successful Proponent to clarify the contents of its Health and Safety Submission or submit supplementary documentation clarifying any matter contained in its Health and Safety Submission.

9.8.3 If a Successful Proponent fails to satisfy HSSBC's requirements in accordance with RFP Section 9.8.2, HSSBC may, in its sole discretion, disqualify the Successful Proponent from future participation in the RFP Process.

10 General Rights of HSSBC

10.1 HSSBC may, in its sole discretion and at any time during the RFP Process,

- (a)** reject any or all of the Proposals;

- (b) accept any Proposal;
- (c) if only one Proposal is received, elect to accept or reject it;
- (d) elect not to proceed with the RFP;
- (e) alter the RFP Timetable, the RFP Process or any other aspect of this RFP; and
- (f) cancel this RFP and subsequently advertise or call for new Proposals for the subject matter of this RFP.

10.2 If HSSBC determines that all or the majority of Proposals submitted are non-compliant, HSSBC may,

- (a) take any action in accordance with RFP Section 10.1; or
- (b) carry out a process whereby all Proponents are directed to correct the deficiencies in their Proposals for re-submission, without a change in their Financial Model Submission.

10.3 HSSBC shall not be liable for any expense, cost, loss or damage occurred or suffered by any Proponent, or any person connected with any Proponent, as a result of any action referred to in RFP Section 10.1 or RFP Section 10.2.

10.4 If a Successful Proponent fails or refuses to enter into and execute the Final Agreement and provide the documentation in accordance with RFP Section 9.5, HSSBC may, in its sole discretion, take any one or all of the following actions:

- (a) terminate all discussions to enter into the Final Agreement with that Successful Proponent and cancel its identification of a Proponent as a Successful Proponent;
- (b) select another Proponent to enter into the Final Agreement;
- (c) take any action in accordance with RFP Section 10.1; and
- (d) pursue any other remedy available to HSSBC under the Applicable Law.

10.5 HSSBC may, in its sole discretion, cancel its decision to enter into a Final Agreement with a Successful Proponent if,

- (a) HSSBC elects to exercise its discretion pursuant to RFP Section 7.2, RFP Section 10.1 or RFP Section 10.4;
- (b) a Prequalified Proponent Change or a Post-Submission Proponent Change has occurred in respect of the Successful Proponent which has not been approved by HSSBC in accordance with RFP Section 3.15.4 or RFP Section 3.15.6; or
- (c) any other material change has occurred with respect to the Successful Proponent's Proposal.

10.6 Limit on Liability

The Proponent, by submitting a Proposal, acknowledges and agrees that it shall not make any claim for any losses, costs, expenses, damages (or any similar losses) for any reason, relating to: this RFP Process; the Proponent's participation in, or failure to be invited to participate in, any phase of the RFP Process; the preparation of the Proponent's Proposal; the Proponent's engagement, to any extent whatsoever, with third parties in connection with this RFP Process; or relating to, in any manner whatsoever, the Final Contract (regardless of whether a Final Contract is ultimately awarded by HSSBC or not). If HSSBC (or the Health Organizations, the Health Authorities, the Government of British Columbia and any Ministry of the Government of British Columbia) is found at law to be liable for any reason whatsoever (in contract or in tort) for any losses, costs, expenses, damages (or any similar losses), then such any losses, costs, expenses, damages (or any similar losses) shall not, under any circumstances, exceed an amount that is the lesser of: (a) \$100,000 (CDN) or (b) an amount equivalent to reasonable costs incurred by the Proponent in preparing the Proponent's Proposal (including, for greater certainty, any third parties, subcontractors involved with the Proponent Proposal).

11 Extension of Contract to Other Healthcare Facilities

The Proponent must at the request of HSSBC, agree to extend the same price, terms and conditions contained in the Contract to other Health Authorities in British Columbia. . In addition, in recognition of the *New West Partnership Trade Agreement* which encourages trade, investment and labour mobility among the three Western Provinces, a Proponent must also, at the request of HSSBC agree to extend the same price, terms and conditions contained in the Contract to any of the Health Authorities or hospitals, health care agencies or facilities of such Health Authorities in the Provinces of Alberta or Saskatchewan.

12 Definitions

12.1 General

- 12.1.1 In this RFP, the singular shall include the plural and the plural shall include the singular, except where the context otherwise requires.
- 12.1.2 All references in this RFP to "discretion" or "sole discretion" means in the sole and absolute discretion of the party exercising the discretion; and
- 12.1.3 All references in this RFP to "includes" and "including" means "includes without limitation" and "including without limitation" respectively.

12.2 RFP Definitions

Whenever used in this RFP,

"Addendum" means a written addendum to the RFP Documents issued by HSSBC as set out in RFP Section 3.3;

"Applicable Law" is defined in RFP Section 3.9.1;

"Authorized Contact" means the contact person listed on the cover page of this RFP in respect of RFP Section 2.3;

"Conflict of Interest" is defined in RFP Section 4.8.1;

“Contract A” is defined in RFP Section 10.6;

“Control” means, with respect to any Person at any time, (i) holding, whether directly or indirectly, as owner or other beneficiary (other than solely as the beneficiary of an unrealized security interest) securities or ownership interests of that Person carrying votes or ownership interests sufficient to elect or appoint fifty percent (50%) or more of the individuals who are responsible for the supervision or management of that Person, or (ii) the exercise of de facto control of that Person, whether direct or indirect and whether through the ownership of securities or ownership interests or by contract, trust or otherwise;

“Draft Services Agreement” is defined in RFP Section 2.1(h);

“Economic Model Score” is defined in RFP Section 6.3.2(c);

“Economic Model Submission” means the form provided in Appendix F to the RFP;

“Evaluation Criteria” is defined in RFP Section 6.2.1;

“Evaluation Team” is defined in RFP Section 6.1.1;

“Final Agreement” is defined in RFP Section 3.9.1;

“Final Proposal Score” is defined in RFP Section 6.3.5(a);

“FIPPA” is defined in RFP Section 3.7.1;

“Health and Safety Submission” is defined in RFP Section 9.8.1;

“Health Organization” is defined in RFP Section 1.1;

“Identified Proponent Parties” is defined in RFP Section 3.15.1;

“Joint Venture Participant” is defined in RFP Section 3.11.2;

“Joint Venture Proponent” is defined in RFP Section 3.11.2;

“Managed Services” is defined in RFP Section 1.1;

“Managed Services Submission” means the form provided in Appendix D;

“Managed Services Score” is defined in RFP Section 6.3.2(a);

“Mandatory Requirements” is defined in RFP Section 6.3.1(a);

“NDA” is defined in RFP Section 2.3;

“Notices” is defined in RFP Section 3.2.6;

“Participant in Charge” is defined in RFP Section 3.11.2(c)(ii);

“Passing Score (Clinical and Technology Vision)” is defined in RFP Section 6.3.2(a);

“Passing Score (Managed Services)” is defined in RFP Section 6.3.2(a);

“Passing Score (Risk Management)” is defined in RFP Section 6.3.2(b);

“Person” means a natural person, firm, trust, partnership, limited partnership, company or corporation (with or without share capital), joint venture, sole proprietorship, governmental authority or other entity of any kind;

“Post-Submission Proponent Change” is defined in RFP Section 3.15.5;

“Prequalification Submission” is defined in RFP Section 3.11.1;

“Prequalified Parties” is defined in RFP Section 1.3;

“Prequalified Proponent Change” is defined in RFP Section 3.15.1;

“Proponent” is defined in RFP Section 1.3;

“Proponent Team Member” is defined in RFP Section 1.3;

“Proponent’s Contact” is defined in RFP Section 2.3;

“Proponents’ Meeting” is defined in RFP Section 3.4.1;

“Proponents’ Meeting Registration Deadline” is defined in RFP Section 3.4.4;

“Proponents’ RFP Question Deadline” is defined in RFP Section 3.2.1;

“Proposal” is defined in RFP Section 1.3;

“Proposal Validity Period” is defined in RFP Section 5.5.1;

“Proposed Solution” is defined in RFP Appendix B;

“Response to Questions Document” is defined in RFP Section 3.2.2;

“RFP” is defined in RFP Section 1.1;

“RFP Closing” is defined in RFP Section 3.1.1;

“RFP Documents” is defined in RFP Section 2.1;

“RFP Information” is defined in RFP Section 3.8.1;

“RFP Name” is defined in RFP Section 1.1;

“RFP Number” is defined in RFP Section 1.1;

“RFP Process” is defined in RFP Section 1.4;

“RFP Timetable” is defined in RFP Section 3.1.1;

“RFPQ” is defined in RFP Section 1.2;

“Risk Management Score” is defined in RFP Section 6.3.2(b);

“Risk Management Submission” means the form provided in Appendix E;

“Secure Data Room” is defined in RFP Section 2.3;

“Short-listed Proponents” is defined in RFP Section 6.3.3(a); and

“Successful Proponent” is defined in RFP Section 1.3.

“URL” is defined in RFP Section 2.3.

APPENDIX A BEGINS ON NEXT PAGE

APPENDIX A
RFP DATA SHEET

RFP SECTION REFERENCE AND DESCRIPTION	ITEM
RFP Section 1.1 – Managed Services	See Exhibit A-1 attached to this Appendix A.
RFP Section 1.1 – RFP Number and RFP Name	HSSBC-00578 Strategic Transformation for Clinical Information Systems
RFP Section 1.3 – Prequalified Parties	<p>The Prequalified Parties (Proponents and Proponent Team Members) for this directed RFP are:</p> <ul style="list-style-type: none"> ➤ Cerner Corporation (Proponent) <ul style="list-style-type: none"> ○ TELUS Communications Inc. ➤ CGI Information Systems and Management Consultants Inc. (Proponent) <ul style="list-style-type: none"> ○ Dell Canada Inc. ○ Knowledgegetech Inc. ➤ IBM Canada Ltd. (Proponent) <ul style="list-style-type: none"> ○ Deloitte Inc. ○ University of Pittsburgh Medical Centre ○ maxIT Healthcare LLC <p>Note: For greater clarity, Proponent Team Members will be considered subcontractors for the Draft Services Agreement.</p>
RFP Section 2.3 – Authorized Contact	<ul style="list-style-type: none"> • Jeff Thom, Team Lead, Category Management IMIT • E-Mail: jeff.thom@hssbc.ca
RFP Section 3.1 – RFP Timetable	<ul style="list-style-type: none"> • RFP Issue: February 15, 2012 • Proponents' Meeting Registration Deadline: February 22, 2012 at 12:00 Noon Pacific Time • Proponents' Meeting: February 28, 2012 • Proponents' RFP Question Deadline: March 21, 2012 at 3:00 p.m. Pacific Time • RFP Closing: April 3, 2012 at 12:00 Noon Pacific Time

RFP SECTION REFERENCE AND DESCRIPTION	ITEM																												
RFP Section 3.4.1 – Proponents’ Meeting	<ul style="list-style-type: none"> • HSSBC will be conducting a Proponents’ Meeting in Vancouver, British Columbia on the date set out for the meeting in the RFP Timetable. The time and location of the meeting will be posted in the Secure Data Room on or about February 21, 2012. • Proponents will be limited in the number of representatives that may attend the Proponents’ Meeting. The number of attendees each Proponent will be allowed to bring to the Proponents’ Meeting will be posted in the Secure Data Room on or about February 21, 2012. • Proponents who wish to attend the Proponent’s Meeting shall notify the Authorized Contact by email no later than the date and time set out for registration in the RFP Timetable. Proponents shall include the names and positions of all representatives that are expected to attend. 																												
RFP Section 5.5.1 – Proposal Validity Period	<ul style="list-style-type: none"> • The Proponent’s Proposal shall remain in effect and open for acceptance for 180 calendar days after the RFP Closing. 																												
RFP Section 6.2.1 – Evaluation Criteria	<table> <tr> <th data-bbox="540 982 1052 1014">EVALUATION CRITERIA</th><th data-bbox="1133 982 1252 1014">WEIGHT</th></tr> <tr> <td data-bbox="540 1035 1052 1066">• <u>Managed Services Submission:</u></td><td></td></tr> <tr> <td data-bbox="540 1087 1052 1119">Clinical and Technology Visions</td><td data-bbox="1198 1087 1235 1119">60</td></tr> <tr> <td data-bbox="540 1140 1052 1171">Design, Build, Integrate and Implement</td><td data-bbox="1198 1140 1235 1171">30</td></tr> <tr> <td data-bbox="540 1192 1052 1224">Transition</td><td data-bbox="1198 1192 1235 1224">15</td></tr> <tr> <td data-bbox="540 1245 1052 1276">Ongoing Management and Operations</td><td data-bbox="1198 1245 1235 1276">30</td></tr> <tr> <td data-bbox="540 1297 1052 1329">Managed Services Teams</td><td data-bbox="1198 1297 1235 1329">30</td></tr> <tr> <td data-bbox="540 1350 1052 1381">Governance</td><td data-bbox="1198 1350 1235 1381">15</td></tr> <tr> <td data-bbox="540 1402 1052 1434">Total</td><td data-bbox="1198 1402 1235 1434">180</td></tr> <tr> <td data-bbox="540 1455 1052 1486">• <u>Risk Management Submission</u></td><td data-bbox="1198 1455 1235 1486">24</td></tr> <tr> <td data-bbox="540 1507 1052 1539">• <u>Economic Model and Pricing Submission:</u></td><td></td></tr> <tr> <td data-bbox="540 1560 1052 1591">Economic Model</td><td data-bbox="1198 1560 1235 1591">60</td></tr> <tr> <td data-bbox="540 1612 1052 1644">Pricing Submission</td><td data-bbox="1198 1612 1235 1644">76</td></tr> <tr> <td data-bbox="540 1665 1052 1696">Total</td><td data-bbox="1198 1665 1235 1696">136</td></tr> </table>	EVALUATION CRITERIA	WEIGHT	• <u>Managed Services Submission:</u>		Clinical and Technology Visions	60	Design, Build, Integrate and Implement	30	Transition	15	Ongoing Management and Operations	30	Managed Services Teams	30	Governance	15	Total	180	• <u>Risk Management Submission</u>	24	• <u>Economic Model and Pricing Submission:</u>		Economic Model	60	Pricing Submission	76	Total	136
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Total	136																												

RFP SECTION REFERENCE AND DESCRIPTION	ITEM										
RFP Section 6.3.1 – Mandatory Requirements	<p><u>Mandatory Requirements</u></p> <p>Proposals not clearly demonstrating they meet the following mandatory requirements may, in the sole discretion of HSSBC, not be accepted for consideration:</p> <ul style="list-style-type: none"> • Proponent is willing and able to transition any Public Sector union agreements relevant to the Managed Services to their organization, if required, as stated in Appendix B Section 4; • Proposal received by RFP Closing; • Proposal written in English; and • Appendix B completed and signed by an authorized signatory of the Proponent and, if applicable, by each Joint Venture Participant. 										
RFP Section 6.3.2(a) Passing Score (Clinical and Technology Vision)	<ul style="list-style-type: none"> • The Passing Score (Clinical and Technology Vision) is 75%. 										
RFP Section 6.3.2(a) – Passing Score (Managed Services)	<ul style="list-style-type: none"> • The Passing Score (Managed Services) is 75%. 										
RFP Section 6.3.2(b) – Passing Score (Risk Management)	<ul style="list-style-type: none"> • The Passing Score (Risk Management) is 75%. 										
RFP Section 6.3.4 – Interviews, Demonstrations, Site Visits, and Presentations	<ul style="list-style-type: none"> • Dates and further information will be provided to Short-Listed Proponents along with the invitation to participate in the interview process. • The Proponent should ensure that following personnel are available to participate in the Proponent's interview: Executive Sponsor, Account Manager, Senior Solution Architect and Management Information Systems (MIS) Manager, as a minimum. 										
RFP Section 6.3.5 – Establishment of Final Proposal Score	<ul style="list-style-type: none"> • Final Proposal Score will be calculated using the following components: <table> <tr> <th></th><th>WEIGHT</th></tr> <tr> <td>➤ Managed Services Score</td><td>180</td></tr> <tr> <td>➤ Risk Management Score</td><td>24</td></tr> <tr> <td>➤ Economic Model & Pricing Submission Score</td><td><u>136</u></td></tr> <tr> <td>➤ Maximum attainable Final Proposal Score</td><td>340</td></tr> </table> 		WEIGHT	➤ Managed Services Score	180	➤ Risk Management Score	24	➤ Economic Model & Pricing Submission Score	<u>136</u>	➤ Maximum attainable Final Proposal Score	340
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➤ Economic Model & Pricing Submission Score	<u>136</u>										
➤ Maximum attainable Final Proposal Score	340										

EXHIBIT A-1

MANAGED SERVICES

1. OBJECTIVES

The primary objective of the Health Organizations in undertaking this RFP is to achieve a strategic transformation that will create a common, integrated, end-to-end clinical information system and environment (“Integrated CIS Environment”) that furthers the Health Organizations’ strategic plans and vision for better health and addresses the current challenges associated with disparate clinical systems. This is a strategy that has been approved and accepted by the Boards and Executive of the Health Organizations involved.

The goals of the envisaged strategic transformation are:

- rapid advancement of ‘best practice’ standardization and optimization of core clinical, business, research and intelligence systems and processes among the Health Organizations;
- accelerated implementation of a clinical data repository among the Health Organizations, with clinical decision support tools to support care providers with electronic clinical information;
- enabling clinical information sharing across the continuum of care and patient journey;
- enabling a cohesive, seamless solution across the continuum of healthcare among the Health Organizations; and
- at a minimum, achieving a health care automation ranking per the HIMSS Electronic Medical Record Adoption Model (HIMSS) of Stage 5+ within five years and Stage 7 within seven years across the Health Organizations.

This RFP is expected to achieve the above goals and objectives through the delivery of the Managed Services to the Health Organizations.

2. STRATEGIC TRANSFORMATION GUIDING PRINCIPLES

The CEOs of each of the Health Organizations have confirmed the following principles to guide the transformation:

- a. This project is a clinical transformation project supported by IMITS.
- b. Patient safety and quality are of paramount importance and will drive decisions.
- c. Change management, communications and project management principles will be used and implemented extensively.
- d. CEOs will make decisions based on what is best for the patient and on these Principles.
- e. All parties are committed to producing a single instance of the core system.
- f. Standardized protocols, order sets, clinical documentation, and key business processes, will be developed and used.
- g. The Cerner implementation will avoid customization.

- h. There will be no major changes to the basic code in the implementation at any of the three organizations. Minor configuration changes that do not result in any changes to code may be needed to accommodate site- specific needs. These must be approved in advance by the project management team. These changes must have no implications for future upgrades of the product.
- i. Technology infrastructure and standards will be consistent across the three Health Organizations.
- j. Timelines will be respected and each organization commits to delivering – on time, on budget, and within the scope. Resources will be committed to the project in order to achieve the implementation.
- k. Individuals and participating departments (e.g. MI, HIM, Pharmacy, Lab, IMITS, HSSBC Tech Services) are core to the effort and will work as an integrated team (Integrated Core Team).
- l. Dedicated roles will be in place in each organization to articulate the clinical needs and bridge with the Integrated Core Team.
- m. Risk assessments will be performed at key intervals of the program to identify risks/issues/costs/benefits and mitigation plans will be established. Risk assessments will be holistic and incorporate clinical practice, clinical operations, business process, applications, technology, engagement, funding and people.
- n. Rules of engagement will be developed and will guide the way individuals behave and work together.
- o. Discussions will be Values based. (Patients First, Honesty, Fairness, Best Value, Results Matter, Collaboration)
- p. All work products including project documents (e.g.: Statements of Work (SOW) developed both by the clinical transformation teams and by IMITS), will be reflective of these Principles.

3. ENVISAGED MODEL FOR MANAGED SERVICES

The model envisaged for the delivery of the Managed Services is one that:

- allows the Proponent to provide its expertise in architecting the business and supporting technical solution while collaborating with and being responsive to the Health Organizations' clinical and technical experts.
- allows the Proponent to be efficient and effective without the Health Organizations' involvement in the operational management of the Managed Services; and
- protects the security and privacy of personal information contained within the Integrated CIS Environment.

IMITS as the supporting department for the Health Organizations expects the Managed Services will be provided over a long term, possibly a ten to fifteen year period. As a result of the expected term of the relationship, the Health Organizations and IMITS anticipate that the model for the delivery of the Managed Services supports:

- mutual benefits to the Health Organizations and successful Proponent;
- innovation to control and achieve efficiencies in current costs and reinvestment of the savings to advance the adoption of an electronic health record;

- transition to a reduced cost, leading practice, service level based managed technology and managed application model; and
- overall flexibility to provide for the addition or removal of services within the planned scope and adjustments to such services as may be required due to planned, changing or unforeseen circumstances.

Within the arrangement the Health Organizations expect that IMITS will retain responsibility for, but not limited to:

- establishing and enforcing adherence to architecture standards;
- setting the standards, policies and guidelines relating to the planned scope of services including those relating to clinical services, privacy and security and records management;
- setting the strategy, direction and undertaking the clinical analytics function; and
- the relationships and/or agreements with any other health care organizations, including other Health Authorities within the Province of British Columbia, that may participate in the agreement resulting from this RFP.

4. COLLABORATION GUIDING PRINCIPLES

The guiding principles set out below have been developed by the Health Organizations to clearly communicate expectations and thus ensure the successful achievement of the Managed Services (referenced as 'Services' in the principles below) with the collaboration partner.

- **Enhance Capabilities and Effectiveness.** Services are to be provided in a manner that enhances the Health Organizations' ability to deliver high-quality, cost-effective services internally to its users with the bare minimum of interruptions in, and adverse impacts on, their delivery of such services. The quality of the Services and the technology utilized to provide the Services will be no less than consistent with the standards customarily observed by leading North American providers of the same or substantially similar services.
- **Reduce Costs.** Cost reduction is a key objective for the Health Organizations in securing Services from a service provider. The service provider will advise HSSBC of cost reduction opportunities and will, subject to a change process, implement such cost reduction opportunities. The service provider will also implement improved internal processes and methodologies in order to further reduce the overall cost of the Services to the Health Organizations and will report on same to the Health Organizations.
- **Improve Services.** The service provider will identify ways to improve the service levels and the functionality, quality, consistency, reliability, security and accuracy of the Services and will, subject to a change process, implement same. The service provider will also implement improved internal processes and methodologies in order to further improve the service levels and the functionality, quality, consistency, reliability, security and accuracy of the Services and will report on same to the Health Organizations.

- **Flexibility.** The service provider will be highly responsive and flexible to meet the Health Organizations' evolving requirements for Services and its obligations to third parties, and with respect to changes in technology and methods for providing the Services. Such flexibility will accommodate significant changes in: volumes of operation, scope of Services, service level requirements, service delivery models, architecture, regulatory or audit requirements, technology, and methods of achieving, monitoring and measuring service levels.
- **Effective Relationship.** The Health Organizations and the service provider each value the development of a close and effective working relationship and recognize that such a relationship will better facilitate the implementation and delivery of the Services and the achievement of the objectives of the Health Organizations.
- **Focus on Core Competencies.** By having the Services performed by the service provider and leveraging the service provider's core competencies, the service provider will enable the Health Organizations to focus more of their internal resources on strategy, providing services to their users and to improving the levels of service.
- **Measurement and Reporting.** The service provider will periodically, consistently and accurately measure the quality, quantity and cost-effectiveness of the Services using periodic reports, user surveys, benchmarking and pricing reviews and will provide the Health Organizations with detailed reports of Services performance.
- **Security and Privacy.** The service provider will identify ways to improve and, subject to a change process, will implement such improvements to the control and security of the Services. The service provider will use Canadian privacy and security industry best practices to protect the Health Organizations' data and environment.
- **Disaster Recovery.** The service provider will maintain and, where possible, improve, the Disaster Recovery Services provided by the Health Organizations.
- **Transition.** Transition activities, into, between and from Services are to be smooth and seamless, are to be performed in a cooperative manner (among the Health Organizations and their service providers), and to cause minimum disruptions to the Health Organizations and their users.
- **Environmental Requirements.** The service provider acknowledges the importance of environmental leadership. The service provider maintains a corporate environmental policy and the service provider will: (a) provide available reports to the Health Organizations on the direct and indirect environmental impacts of the Services; and (b) use all commercially reasonable efforts to reduce the environmental impacts of the Services (including GHG Emissions) in a manner consistent with the practices customarily observed by leading North American providers of services the same or substantially similar to the Services (or as may otherwise be required by the Health Organizations subject to a change process).

5. IMITS HIGH LEVEL PROCESSES

In support of the Lower Mainland Consolidation, IMITS had developed the diagram below to define the department's high level processes in support of its clients, the Health Organizations, and to establish a common understanding of such.

This diagram, Diagram A-1.1, is to provide Proponents with an understanding of the high level functions of IMITS and as a reference point in outlining the scope of the Managed Services.

Diagram A-1.1



6. SCOPE OF MANAGED SERVICES

a. Scope

The scope of the Managed Services is designed to achieve an Integrated CIS Environment through the provision of the following services:

- architect the clinical business solution and the technology solution required to enable and support the clinical business solution;
- design, build, integrate and implement the clinical and technology solutions;
- transition the IMITS assets, services, processes and people; and
- ongoing management and operation of the Integrated CIS Environments, including the remaining legacy systems.

The Health Organizations expect that the integrated clinical system solution and infrastructure is scalable and will support planned and unforeseen expansions in operations and the addition or participation of other health care organizations, including other health authorities.

Further, in the context of the anticipated long term collaboration and to foster ongoing clinical and technological innovation, the Health Organizations reserve the right to add additional requirements to the scope.

b. Clinical and Technology Visions

Appendix D – Managed Services Submission contains the detailed response requirements.

The Health Organizations have developed a clinical solution strategy which lays out a path for implementing a set of Cerner modules across each of the sites within the Health Organizations. This path, or roadmap, has been planned to achieve a ranking of HIMSS Stage 3 across all clinical service areas and Stage 4 to 5 in some clinical service settings.

The clinical and technology solution design services require either a new roadmap or improvements to the Health Organizations' existing roadmap to accelerate and ensure achievement of the following:

- standardization and optimization of clinical and operating processes;
- a transformed clinical information solution that is compliant with provincial and health industry standards and interoperable with provincial eHealth solutions; and
- at a minimum a health care automation ranking per the HIMSS of Stage 5+ within five years or less, and Stage 7 within seven years or less across PHSA, VCH and PHC.

In relation to Diagram A-1.1 above, these services align with the Opportunity Identification process. Proponents are expected, but not limited to merging their understandings of clinical needs, trends and emerging technologies and innovation to:

- For the in-scope applications, identify the clinical business solution including but not limited to the clinical users' experience with respect to information access, information processing and information retrieval, both 'on-site' and remotely;

- Translate the clinical business solution to define the technology and infrastructure solution required to support the business solution; and
- Provide a roadmap that achieves the Health Organizations' objectives and enables the defined clinical and technology solutions.

In providing these services, Proponents will be required to have a working understanding of the Canadian Health Industry standards including knowledge of Professional Practice standards.

Further, Proponents will be required to adhere to IMITS' architectural standards and technology policies, including for security. Where Proponent solutions involve new or emerging technologies for which IMITS may not have defined standards or policies, IMITS will define the enabling standards and/or policies.

To ensure innovation and a cycle of continuous improvement, Proponents will also be expected to identify new clinical and technology initiatives on an ongoing basis. Such initiatives are expected to be formulated from the Proponents' ongoing environmental scans that identify emerging issues, anticipated need and innovations in technology. Such initiatives will also be informed by the Health Organizations' determination of strategic alignment within the Health Organizations and with provincial initiatives and direction.

c. Design, Build, Integrate and Implement

Appendix D – Managed Services Submission contains the detailed response requirements.

The services required to design, build, integrate and implement the integrated clinical system encompass the Solution Design, Delivery and Evolution process noted in Diagram A-1.1. These services require the development and execution of the strategies, approaches and plans for all services (excluding procurement which is the responsibility of HSSBC Supply Chain) underpinning the full implementation life-cycle of an Integrated CIS Environment including, but not limited to:

- business analysis to support the clinical and technology requirements, definition and design of the *Cerner Millennium* system, including the security architecture and model;
- integration services that provide business analysis for the clinical requirements, design and configuration necessary to support interfacing the *Cerner Millennium* system with other information systems where required, including legacy systems and the PeopleSoft ERP solution;
- system and environment design, build and/or configuration;
- conversion which includes a definition of the strategy, approach and plans for decommissioning and archiving of and data migration from legacy clinical applications that are identified for replacement or conversion to the *Cerner Millennium* system;
- complete solution testing (unit through to end-user);
- complete production hand-over documentation to transition and support the Integrated CIS Environment;

- training which includes a learning strategy and plan, execution of the plan, development of role and workflow based training material for end users and super-user training programs;
- organizational change and communication management with a strategic emphasis to ensure commitment to standardized and optimized clinical and business processes on an ongoing basis; and
- post go-live support.

Proponents will also be required to provide the required project management services, including initiation and planning and status tracking/managing/reporting.

d. Transition Services

Appendix D – Managed Services Submission contains the detailed response requirements.

Proponents will be required to transition IMITS assets, services (and supporting processes), projects and people as specified in Appendix F - Economic Model and Pricing Submission, Section 1.3 Normalizing Assumptions.

e. Ongoing Management and Operations

Appendix D – Managed Services Submission contains the detailed response requirements.

Proponents will be required to provide the services associated with the high level processes of Operations and Customer Support per Diagram A-1.1. Proponents will be required to supply these services under a managed technology offering that provides for service level based system and infrastructure support and management.

In providing these services Proponents will also provide, but not be limited to, the following:

- provision of an initial business case for infrastructure standardization and consolidation followed by development and execution of an implementation approach;
- provision of Cerner certified standardized hardware for the *Cerner Millennium* system;
- provision of a application support help desk and tier-2 help desk services using systems and processes that integrate with the current line of business enterprise service management service desk;
- infrastructure management services for the hardware listed in Document #55; and
- application management services for the applications per Document #55 including:
 - application support and upgrades for the *Cerner Millennium* system;
 - interim management of any legacy clinical applications to be decommissioned; and
 - ongoing management of any remaining legacy clinical applications.

Unless agreed otherwise, the Health Organizations expect that a collaboration partner could own, operate, support, maintain and enhance the applications, including the associated IMITS business operations and system licensing, required in connection with the integrated clinical information system until such time as the Health Organizations repatriate or re-procure the assets and services comprising the solution for an Integrated CIS Environment.

f. Out of Scope

The systems and/or related operational functions in the table below are considered out of scope for the purpose of responding to this RFP. However, in the context of the longer term collaboration being sought, the Health Organizations reserve the right to transition items to being in-scope.

	Solution Replacement/ Implementation	Managed Technology and Application Support
Provincial solutions as articulated in the Provincial EHR roadmap available at: http://www.health.gov.bc.ca/ehealth/	Out of Scope	Out of Scope
Business solutions	Out of Scope	Out of Scope
Provincial initiatives currently in place for management and support of: <ul style="list-style-type: none"> • Network BC, for telecommunications; • Strategic Transformation and Mainframe Services (STMS), for the provincial data centre; and • Workplace Support Services, for desktops and Tier 1 support as represented by 'Infrastructure' in Diagrams 4 and 5. For details regarding the context of the items in the above provincial initiatives visit the site: http://www.lcs.gov.bc.ca/asd/alliance/summaries.asp NOTE: Hardware functionality to support proposed solutions is in scope. Provision of physical data centres is not in scope.	Out of Scope	Out of Scope
IMIT systems and operations of Provincial eHealth, BC Ambulance Services (BCAS), and Occupational Health & Safety Agency for Healthcare (OHSAH)	Out of Scope	Out of Scope

g. Clarification of Scope

With respect to Diagram A-1.1 and the Managed Services, the table below outlines items that are considered either out of scope or to be developed and/or delivered in collaboration or in conjunction with the successful Proponent. Proponents should note that in conjunction includes where each party may have a distinct role. Further Proponents should note that the Health Organizations expect IMITS to retain sole responsibility for all items with respect to IMITS activities that relate to other than the Managed Services. Health Organizations have been abbreviated as 'HO' in the table below.

	Scope for Managed Services
Opportunity Identification: Determining the strategic alignment of opportunities for the collaboration. Further, IMITS anticipates continuing with many of the activities within this process to maintain staff's expertise.	HO, IMITS and Successful Proponent
Architecture Development: The strategic responsibility for establishing and enforcing adherence to architecture standards.	HO and IMITS
<p>Strategy Development: While the successful Proponent will be responsible for clinical engagement, the roles and responsibilities pertaining to the strategic planning and prioritization and stakeholder relationships across the Health Organizations will be retained by IMITS.</p> <ul style="list-style-type: none"> • Develop stakeholder engagement plan • Establish prioritization process • Identify strategic priorities • Establish IMITS guiding principles • Establish key performance measures • Establish governance framework • Develop HR strategy • Establish IT organizational design 	<ul style="list-style-type: none"> • HO, IMITS and Successful Proponent • HO, IMITS and Successful Proponent • HO, IMITS and Successful Proponent • IMITS • HO, IMITS and Successful Proponent • HO, IMITS • HO and Successful Proponent • IMITS
<p>Management:</p> <ul style="list-style-type: none"> • Manage and report on metrics • Report general status • Establish contract and procurement management process • Manage IMITS priorities and strategies • Manage day-to-day budget (operating and capital) • Manage existing relationships • Manage & participate in stakeholder governance activities • Participation/advisory/oversight of project level architecture design 	<ul style="list-style-type: none"> • Successful Proponent • Successful Proponent • IMITS and Successful Proponent • IMITS • HO, IMITS and Successful Proponent • IMITS and Successful Proponent • HO, IMITS and Successful Proponent • HO, IMITS and Successful Proponent

EXHIBIT A-2
RESPONSE TO QUESTIONS DOCUMENT

Instructions: Use a separate Response to Questions Document if submitting a question that contains proprietary information. If the Response to Questions Document contains proprietary information enter the words "PROPRIETARY INFORMATION" in capital letters at the top of the Response to Questions Document. Any questions not marked as proprietary and the answers to those questions will be distributed to all Proponents. HSSBC retains the right to make the final decision whether a question contains proprietary information. Where HSSBC does not believe that a question contains proprietary information, HSSBC will advise the Proponent and provide the Proponent an opportunity to withdraw a question.

Response to Questions Document is to be submitted in accordance with RFP Section 3.2.

Reference	Proponent's Question	HSSBC's Response

[Proponents: Add additional rows if required.]

APPENDIX B
PROPOSAL SUBMISSION FORM

TO: Jeff Thom, Team Lead, Category Management IMIT

RE: HSSBC-00578

RE: Strategic Transformation of Clinical Information Systems

RE: Managed Services

1. Proponent Information

- (a) Proponent's registered legal business name and any other name under which it carries on business:

- (b) Proponent's address, telephone and facsimile numbers:

- (c) Name, address, telephone, e-mail and facsimile numbers of the Proponent's Contact:

- (d) Name, address, telephone, e-mail and facsimile numbers of the backup to the Proponent's Contact:

- (e) Whether the Proponent is a corporation, a partnership, a joint venture, an incorporated consortium or a consortium that is a partnership or other legally recognized entity:

- (f) Name(s) of each of the directors and officers where the Proponent is a corporation; each of the partners where the Proponent is a partnership; and applicable combinations of these when the Proponent is a joint venture, whichever applies:

- (g) Proponent Team Member Information (See Exhibit B-1 to this Proposal Submission Form)

- (h) Joint Venture Information (See Exhibit B-2 to this Proposal Submission Form)

2. Regulatory Matters

[Proponent to strike the provision not applicable to them.]

We confirm as follows:

- (a) With respect to the *Excise Tax Act*, we are either:
- (i) a Harmonized Sales Tax registrant for purposes of the *Excise Tax Act* and our HST registration number is _____;
- OR
- (ii) not a HST registrant for the purposes of the *Excise Tax Act*.

3. Draft Services Agreement

We agree to the non-negotiable provisions set out in the document titled *Form of Services Agreement – Non-Negotiable Provisions* included as Exhibit G-1.

4. Public Union Agreements

[Proponent to strike the provision not applicable to them.]

We are willing and able to transition any Public Sector union agreements relevant to the Managed Services to our organization, if required.

OR

We are unwilling and/or unable to transition any Public Sector union agreements relevant to the Managed Services to our organization.

5. Proposal

With respect to the above noted RFP, we confirm as follows:

- (i) capitalized terms used in clauses (ii) through (x) below shall have the meanings given thereto in the RFP Documents;
- (ii) we have examined the RFP Documents and confirm that we have received all pages of the RFP Documents;
- (iii) we have made any necessary inquiries with respect to Addenda issued by HSSBC and have ensured that we have received and examined all Addenda to the RFP Documents;
- (iv) our Proposal is based on the terms and conditions of the RFP Documents;
- (v) we acknowledge and accept the obligations set out in RFP Section 3.8;
- (vi) we acknowledge and accept the limit of liability set out in RFP Section 10.2;
- (vii) we acknowledge that, except as explicitly provided in RFP Section 3.8 and RFP Section 10.2, the submission of this Proposal creates no legal or contractual obligations or rights on HSSBC or the Proponent, all as set out in RFP Section 10.1;
- (viii) the prices contained in our Economic Model and Pricing Submission are based on the terms and conditions of the RFP Documents;
- (ix) we understand that any negotiations with HSSBC with respect to the Managed Services will assume that we will hold our prices submitted pursuant RFP Appendix F – Economic Model and Pricing Submission and that, in the event we do not hold our prices, HSSBC may, in its sole discretion, cease negotiations with us with respect to the Managed Services; and
- (x) having made all necessary inquiries of our insurers in respect of the insurance requirements set out in the Draft Services Agreement, we confirm that we are able to meet the insurance obligations as set out in the Draft Services Agreement and that our prices include the costs associated with such insurance obligations;

6. Conflict of Interest and Confidential Information

(i) We confirm that we do not have any actual or perceived conflict of interest or any other type of unfair advantage in submitting our Proposal or performing or observing the contractual obligations set out in the Draft Services Agreement, except to the extent that such conflict of interest or potential conflict of interest is disclosed in Attachment 2 to this Proposal Submission Form.

(ii) We confirm that we have not had access to HSSBC confidential information, other than the RFP Documents themselves, with respect to this RFP Process, except as disclosed as follows:

(1) Conflict of Interest

[Proponent to strike the provision not applicable to them.]

The following are existing or potential conflicts of interest:

1. _____
2. _____
3. _____

[Proponent to add more rows if necessary.]

OR

We confirm that we do not have any existing or potential conflicts of interest.

(2) Confidential Information

[Proponent to strike the provision not applicable to them.]

In addition to the RFP Documents, we have access to the following confidential information relating to the RFP Process.

1. _____
2. _____
3. _____

[Proponent to add more rows if necessary.]

OR

We confirm that we do not have access to any confidential information relating to the RFP Process other than the RFP Documents.

Signed by person or persons authorised to
bind the Proponent in accordance with RFP
Section 4.2

Print Name and Title of Person Signing

Signed by person or persons authorised to

bind the Proponent in accordance with RFP
Section 4.2

Print Name and Title of Person Signing

Signed by person or persons authorised to
bind the Proponent in accordance with RFP
Section 4.2

Print Name and Title of Person Signing

Signed by person or persons authorised to
bind the Proponent in accordance with RFP
Section 4.2

Print Name and Title of Person Signing

EXHIBIT B-1

PROPONENT TEAM MEMBER INFORMATION

Proponent is to provide the following information for each Proponent Team Member. Make copies of Exhibit B-2 as required.

1. Proponent Team Member's registered legal business name and any other name under which it carries on business.

2. Proponent Team Member's address, telephone and fax numbers.

3. Whether the Proponent Team Member is a corporation, a partnership, a joint venture, an incorporated consortium or a consortium that is a partnership or other legally recognized entity.

4. Name(s) of each of the directors and officers where the Proponent is a corporation, each of the partners where the Proponent is a partnership, and applicable combination of these when the Proponent is a joint venture, whichever applies.

EXHIBIT B-2
Joint Venture Information

1. General Information

Name of Person/Firm (List whether Sole Proprietor, Partnership or Corporation)	Role in Joint Venture	Representative Signing Proposal and Position of Representative
1.		
2.		
3.		
4.		
5.		

2. Attach Joint Venture Letter and Power of Attorney pursuant to RFP Section 3.11.2 for each joint venture participant.

APPENDIX C

EXECUTIVE SUMMARY

Proponents should provide an overview of their proposed strategy and approach for the transformation of the Health Organizations and IMITS (“**Proposed Solution**”), and explain how that Proposed Solution addresses the Health Organizations’ business challenges, risks and objectives for the planned scope of the initiative as outlined in Exhibit A-1 of this RFP by describing and explaining the information required in each of the sections below.

#	Requirement	Response
1	Describe your Proposed Solution for the transformed Health Organizations within the planned scope and how it contributes to the transformation objectives.	
2	Describe your high-level approach for achieving the Proposed Solution including transforming the current IMITS service delivery structure.	
3	Describe how your Proposed Solution addresses the Health Organizations’ needs during transformation, particularly for minimizing the impact on the Health Organizations and patients served.	
4	Explain your understanding of the business challenges and risks facing the Health Organizations and how your Proposed Solution addresses those business challenges and risks.	
5	Describe your proposed approach for transitioning services, including: <ul style="list-style-type: none"> a. provisioning the underlying infrastructure required for the Solution; and b. the initial transference of people, services and processes. 	
6	Describe how your Proposed Solution addresses ongoing management and operation of the Integrated CIS Environment.	
7	Outline how your Proposed Solution provides the needed flexibility and scalability to address future opportunities of growth within the Health Organizations, adjustments for unforeseen circumstances, and on-boarding of other Health Authorities.	
8	Briefly describe the roll the Proponent and each Proponent Team Member will play in delivery of the Managed Services as described by the Proponent in the Managed Services Submission.	

APPENDICES D TO H

The following appendices are posted to the Secure Data Room separately. Exhibits are posted with the relevant appendix.

- Appendix D Managed Services Submission
- Appendix E Risk Management Submission
- Appendix F Economic Model and Pricing Submission
- Appendix G Draft Services Agreement
- Appendix H Secure Data Room Documents List

**STRATEGIC TRANSFORMATION FOR CLINICAL INFORMATION SYSTEM
RFP # HSSBC-00578
AMENDMENT 4
28 MARCH 2012
EXTENSION OF RFP CLOSING DATE**

HSSBC recognizes that Proponents will require more time to review the answers posted in the Secure Data Room this week. To give Proponents an opportunity to assess the impact of the answers on their proposal and to complete modifications they determine are necessary, **HSSBC is extending the RFP Closing to April 10, 2012 at 12:00 Noon Pacific Time.** The remainder of the timelines stated in the Request for Proposal remain firm and will not be altered by this extension.

STRATEGIC TRANSFORMATION FOR CLINICAL INFORMATION SYSTEMS

RFP # HSSBC-00578

APPENDIX D

MANAGED SERVICES SUBMISSION

1. Managed Services

Specifically for each area of planned scope as outlined in Exhibit A-1 of the RFP, Proponents should elaborate on or provide the information requested in each of the sections below with respect to their Proposed Solution. In doing so, Proponents should ensure that their response captures all aspects of scope outlined in Exhibit A-1 of the RFP.

1.1. Clinical Vision

With respect to the clinical vision, the Health Organizations would like to understand:

- the knowledge of clinical needs, trends, emerging technologies and innovation (i.e. thought leadership) that the Proponent brings to the Health Organizations;
- the application of that thought leadership to articulate a clinical vision, in conjunction with the Health Organizations' clinical leadership, specifically for the Health Organizations' circumstances and objectives;
- a translation of that clinical vision to a solution strategy that defines a specific implementation path to transition from the in-scope legacy systems and build from the existing implemented Cerner modules to the desired future state; and
- how the thought leadership is specifically embodied within the resources (key people and processes) that the Proponents will provide to the Health Organizations for this component of the Managed Services.

Proponents should ensure they provide their clinical vision and solution strategy for the Health Organizations in a manner that is specific to the Health Organizations' circumstances, existing systems, business challenges, risks, and objectives for this component of the Managed Services as outlined in Exhibit A-1 of this RFP by describing and explaining the information required in each of the sections below.

In responding to this section, Proponents are required to complete Exhibit D-1, *Implementation Path*.

#	Requirement	Response
1.1.1	<p>Describe:</p> <ul style="list-style-type: none">a. Your view of the direction and trends in health care and information technology;b. How your proposed vision in 1.1.4 below incorporates such direction and trends; andc. Your approach and process for ensuring that the Health Organizations remain current with such direction and trends as they evolve and stabilize into standard practice. <p>Responses should not exceed 2,500 words.</p>	
1.1.2	<p>On an ongoing basis over the expected long term of the Managed Services, describe your approach to:</p> <ul style="list-style-type: none">a. Identifying opportunities for clinical and technological innovation and improvement for the Health Organizations' consideration; andb. Bringing such opportunities to fruition, including the approach to identifying benefits, creation of related	

	business cases etc.	
1.1.3	<p>Describe your approach to clinical engagement over the life of the initiative including:</p> <ul style="list-style-type: none"> a. Identifying any distinct stages over the life of the initiative; b. The strategies you will employ, including across distinct stages (if any have been identified) and to address the current differences across and within the Health Organizations; c. The processes you will follow to establish the vision in conjunction with the Health Organizations' clinical leadership. Ensure these processes address both the initial vision and any 'refresh' cycles to ensure the currency of the vision, including identifying the frequency of any 'refresh' cycles; and d. The communication and adoption plan for the vision to ensure a common understanding, awareness, and commitment by all clinicians. <p>Ensure your response addresses all elements of Opportunity Identification per Diagram A-1.1 in Exhibit A-1.</p>	
1.1.4	<p>Describe your proposed clinical vision, including but not limited to:</p> <ul style="list-style-type: none"> a. The clinical users' experience; b. How information access, input and retrieval is integrated with workflow; c. How clinicians can access, input and retrieve information at all points of care; and d. The technology/tools required to support the access, input, and retrieval of information. 	
1.1.5	<p>Complete Exhibit D-1 to propose an implementation path (or build on or improve the Health Organizations' current clinical solution strategy provided in Document #40) that achieves the Health Organizations' objectives and enables the clinical solution proposed in 1.1.4 above.</p> <p>By completing Exhibit D-1, your resulting roadmap for the solution strategy should note:</p> <ul style="list-style-type: none"> a. the Cerner modules that will be implemented/ functional elements to be delivered, including planned upgrades; b. additional integration or innovation that you may offer (e.g. community and physician office) to meet the Health Organizations' objectives relating to the HIMSS Electronic Medical Record Adoption Model; 	

	<ul style="list-style-type: none"> c. key milestones relating to the level of ranking achieved within the HIMSS Electronic Medical Record Adoption Model; and d. the mobile functionality for the Cerner environment that the proponent may offer. <p>Also provide a summary of your roadmap in the same format as Document #40.</p>	
1.1.6	<p>Explain the underlying rationale for the implementation approach that is reflected in the proposed roadmap (e.g. ordering of modules, sites etc.). Ensure that your response addresses:</p> <ul style="list-style-type: none"> a. how the Health Organizations will benefit from the approach, including but not limited to workflow, process and financial benefits; b. the key issues, challenges and risks of the approach and how they will be addressed and/or mitigated; and c. any critical success factors that you presume to be present in order to execute the approach and fulfill the roadmap. 	
1.1.7	<p>Identify and describe the clinical and patient benefits (over and above those identified in the HIMSS Electronic Medical Record Adoption Model) that will be realized by the proposed roadmap, including but not limited to early opportunities to improve the patient experience, and workflow, process and financial benefits.</p>	

1.2. Technology Vision

For this component of the Managed Services as outlined in Exhibit A-1 of this RFP, Proponents are expected to translate their clinical vision and solution strategy (detailed in 1.1 above) to define the supporting technology and infrastructure that is required by describing and explaining the information required in each of the sections below. Proponents should note that the Health Organizations require high availability with redundancy for fail-over capacity to handle both unplanned and planned downtime without any loss of data and impact on users.

#	Requirement	Response
1.2.1	Describe the key infrastructure and technology enablers that are required to support the clinical vision and solution strategy.	

1.2.2	<p>Provide and explain the infrastructure design and system context diagrams and specifications required to enable the clinical vision and solution strategy; include any interim states that may be required.</p> <p>Note that the response should provide the type of information and level of detail that is disclosed in the current state infrastructure design and system context diagrams.</p>	
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1.3. Design, Build, Integrate and Implement

For this component of the Managed Services as outlined in Exhibit A-1 of this RFP, Proponents are expected to activate the clinical and technology visions and solution strategies proposed in Sections 1.1 and 1.2. Such activation will require building on practical, past experiences in similar environments with multiple specialties, the development and execution of the strategies, approaches and plans for all activities that comprise the implementation life cycle.

By addressing each of the sections below, Proponents will be describing and explaining their approach to activate the *Cerner Millennium* system and supporting solutions (being legacy systems that are either decommissioned, interfaced or integrated), in a manner that standardizes data and processes, provides for ongoing adherence to such standardization and considers the data and application needs of research and teaching facilities.

#	Requirement	Response
1.3.1	<p>Describe your overall approach or methodology to design, build, integrate and implement the <i>Cerner Millennium</i> system, and supporting solutions (including legacy systems), across the Health Organizations to enable the desired transformation.</p> <p>Ensure that your response addresses, but is not limited to, your approach to ensuring the continuity of information access/retrieval for clinicians.</p>	
1.3.2	<p>Provide a project plan that specifically addresses this initiative, the current and future state systems, the in-progress projects, and the Health Organizations.</p> <p>Rather than one project plan, Proponents may provide 'component' plans where each component plan represents a specific initiative, implementation bundle, or any other form of separation that aligns with the Proponent's approach.</p> <p>Ensure that your project and/or component plan(s) is specific to this initiative and the information that has been provided and detailed rather than conceptual. For example, the plan(s) should reference the specific systems (their decommissioning or if they are not decommissioned their integration and/or interfacing)</p>	

	<p>and in-progress projects.</p> <p>Explain the key elements of your plan(s) and the underlying approach, including but not limited to:</p> <ol style="list-style-type: none"> the phases, activities, milestones and key deliverables or outputs that are proposed to achieve the design build, integration and implementation services that will enable the roadmap proposed in Section 1.1; transitioning and taking ownership of the in-progress projects; the cut-over strategy to enable continued uninterrupted delivery of Health Organization patient services; and identifying the key deliverables/outputs that are subject to the Health Organizations' approval and/or acceptance. <p>Note where component plans are proposed, each should be numbered, named and described in the context of its specific scope.</p>	
1.3.3	<p>Explain the specific elements of your plan(s) and approach (from Section 1.3.2) that foster clinical and administrative adoption and ongoing commitment to the solution resulting from the strategic transformation including, but not limited to:</p> <ol style="list-style-type: none"> the need to ensure standardization of clinical and administrative functions, processes and data, including whether the approach is premised on evidence based medicine; ensuring ongoing adherence to the standardization in (a) above by all stakeholder groups; the training approach for both end-user and any support resources; the communication approach for both end-user and any support resources; and the means and ways of providing go-live support during the stabilization period and the mechanisms to track and resolve issues. 	
1.3.4	<p>Provide your benefits evaluation framework and describe how it meets the four elements noted in the Document #72.</p> <p>Describe your proposed approach to:</p> <ol style="list-style-type: none"> measure and monitor user adoption and satisfaction, system performance, system quality, information quality, service quality; and identify benefits. <p>As part of your proposed approach as outlined above,</p>	

	please propose the appropriate measures and associated metrics.	
1.3.5	Describe your approach and plan to accommodate flexibility for end users to develop around the core <i>Cerner Millennium</i> system to meet needs such as informatics, while retaining the single instance and not impacting costs of support, maintenance and upgrades.	

1.4. Transition

For this component of the Managed Services, Proponents will be required to transition from IMITS to their organization, the IMITS assets, services, processes, and projects as more fully described in Appendix F, Economic Model and Pricing, Section 1.3 Normalizing Assumptions. Proponents will also be required to have the ability to transition the roles identified in the Appendix F.

By addressing each of the sections below, Proponents will be describing and explaining their approaches and plans for such transitions.

#	Requirement	Response
1.4.1	Specifically for the transition of people, provide and explain your approach and the key elements of a high-level project plan for the phases, activities and key deliverables pertaining to human resources and labour relations. Include a description of how the plan ensures continued uninterrupted delivery of Health Organization patient services.	
1.4.2	Describe how you will address the transition of existing collective agreements and include: a. Identification of the entity that will be responsible for holding the collective agreements on transition (Proponent or Proponent Team Member); and b. If the entity in (a) above is a Proponent Team Member, how the Proponent (being the ultimate responsible and contracting party with the Health Organizations on any subsequent contract) will factor in its responsibility.	
1.4.3	Specifically for the transition of people, describe the human resources and labour adjustment approach and activities including: a. services undertaken to affect the transition and provided to employees including, but not limited to placement and compensation to provide fair treatment and long-term expanded career opportunities; and	

	b. communications and orientation activities.	
1.4.4	Specifically for the transition of people (and processes and services as they may pertain to people), describe the challenges that are anticipated, including identification of potential labour issues, and how they will be addressed.	
1.4.5	Provide and explain your approach and the key elements of a high-level project plan for the phases, activities and key deliverables for the transfer of services, processes and legacy systems from IMITS. Include a description of how the plan ensures continued uninterrupted delivery of Health Organization patient services.	

1.5. Ongoing Management and Operations

For this element of the Managed Services, the Health Organizations seek customer support and ongoing management and operations of the Integrated CIS Environment under a managed technology offering that provides for service level based system and infrastructure support and management, including for legacy applications that are not decommissioned.

The Health Organizations also require these services to provide flexibility and scalability to address future opportunities of growth within the Health Organizations, adjustments for unforeseen circumstances, and the participation of other Health Authorities.

By addressing each of the sections below, Proponents will be describing and explaining their delivery models, structures and approaches to application life cycle management services.

#	Requirement	Response
1.5.1	Regarding the applications noted in Document #55 provide and explain your approach and the key elements of a high-level project plan for the phases, activities and key deliverables for: <ul style="list-style-type: none"> a. rationalizing the legacy clinical applications and interfaces to determine those to be retained and those to be decommissioned; b. legacy system/interface management and how it will be integrated into the support structures otherwise in place; and c. legacy data management, including any archiving strategies and/or use of augmenting technologies to accelerate value (e.g. improved user experience and adoption). 	
1.5.2	With respect to the ongoing management and operations define and describe the extent to which the following application life cycle management services are proposed, your delivery approach and delivery model, including engagement with the Health	

	<p>Organizations, and the quality measures that you would use for assessing each of the services.</p> <ul style="list-style-type: none"> a. Application Support including provision of Application Help Desk and Tier 2 support that is integrated with the current Workplace Support Services' Tier 1 support helpdesk , end-user access, incident, problem and change management, and approach to handling planned and unplanned downtimes. b. Application Environment Maintenance (applications and databases) including but not limited to preventative maintenance (including to avoid performance lags and unplanned outages), patch and package management, and vendor prescribed maintenance. Also discuss how your approach and model are designed to avoid risk and foster continuous improvement for the Health Organizations' environment. c. Application Configuration and Release Management, including enhancements, major and minor code upgrades including the proposed definition of such, and describe your approach to implementing upgrades. Indicate where your approach and delivery model are aligned with industry best practices. d. Application Environment Continuity including back ups, disaster recovery planning and actual recovery and restoration, and include your existing plan. e. Application Training including for users and technical staff 	
1.5.3	<p>With respect to the ongoing management and operations define and describe the extent to which the infrastructure lifecycle management services are proposed, your delivery approach, and your delivery model, including engagement with the Health Organizations, and the quality measures that you would use for assessing each of the service.</p> <p>Ensure your response also addresses how your model and approach ensure:</p> <ul style="list-style-type: none"> a. The currency of supporting technology, including responsiveness to changes in business process, reporting requirements, standards, policies and/or guidelines; b. The ability to support growth adjustments for unforeseen circumstances, and participation of other Health Authorities; and c. A contribution to cost reduction through innovation. 	

1.5.4	<p>With respect to the ongoing management and operations and service level agreements (SLAs) and service levels (SLs) provide your:</p> <ol style="list-style-type: none"> proposed SLs for the Health Organizations; and proposed approach, plan and timelines to introduce SLAs and SLs to the Health Organizations. <p>For clarification note:</p> <ul style="list-style-type: none"> IMITS has developed performance targets for end to end service: however, these do not fully translate to SLs and are still in the process of being fully implemented. The effective date for the SLs will be negotiated with the successful Proponent. 	
1.5.5	<p>With respect to the ongoing management and operations and the requirements for security and privacy, provide your standards, guidelines, policies, procedures, and plans for security and privacy protection as they pertain to:</p> <ol style="list-style-type: none"> the contractual obligations described in Appendix F – Draft Services Agreement; and <i>Freedom of Information Protection of Privacy Act</i> (BC). <p>Confirm your agreement and ability to meet the above requirements and describe how you meet the requirements. Note if you object to or are unable to meet a particular requirement and also where you may be exceeding a requirement.</p>	

2. Governance Structure and Processes

Given the broad scope of the services associated with the strategic transformation and the multiple entities and parties involved, the Health Organizations require that the collaboration relationship be guided by a governance framework. The primary objectives of the governance framework are to:

- Ensure the interests of all parties are reflected and met;
- Provide a standard structure or mechanism that supports establishing the requisite teams for management, oversight and delivery of the Managed Services;
- Monitor each of the Managed Services, and the associated driving objectives, to ensure their quality and achievement;
- Facilitate establishing a fact-based, repeatable reporting mechanism that goes well beyond traditional service level agreement (SLA) dashboard reporting to underlying issues;
- Establish clear lines of responsibilities and accountability for decision making to facilitate the delivery of each of the Managed Services and quickly resolve issues;

- Provide a standard communication channel so that both the successful Proponent and the Health Organizations receive consistent and relevant information;
- Provide a mechanism to support the requirement for both controlled and unplanned flexibility in the Managed Services; and
- Given the proposed long term of the collaboration, provide a mechanism to support ongoing innovation, modification, and possible extension of the collaboration to include other entities.

Considering the above, Proponents should explain the information required in each of the sections below as it pertains to their proposal to provide the Managed Services. Proponents should ensure that their responses address, as appropriate, both the internal structure amongst the Proponent Team Members and the structure proposed with the Health Organizations and/or IMITS.

Document #206 shows the current internal governance structure as agreed to by the CEOs of Health Organizations and IMITS. This structure will also apply to the strategic transformation. Proponents should ensure that their response aligns and/or interfaces with and incorporates this structure.

The Health Organizations will not accept any new governance structure being proposed but welcome suggestions that Proponents may have for improvements.

#	Requirement	Response
2.1	<p>Identify and describe the guiding principles for governance that support your proposed structure and processes to ensure alignment with the Health Organizations' existing governance structure.</p> <p>Explain how the guiding principles contribute to and mitigate the risks associated with:</p> <ul style="list-style-type: none"> a. maintaining a productive contractual relationship, both internally amongst the Proponent Team Members and with the Health Organizations and IMITS; b. achieving and monitoring the objectives of each of the Managed Services; c. balancing the needs of the different Health Organizations involved in this initiative; d. the multipartite involvement in the scope of the Managed Services as noted in Section 6(g) of Exhibit A-1 of the RFP; and e. ensuring clinical engagement. 	
2.2	<p>Describe and explain your proposed structure and processes, including how they will:</p> <ul style="list-style-type: none"> a. align or interface with the Health Organizations' existing governance structure; b. contribute to clarification of scope, responsibilities and accountabilities across the multiple parties reflected in Section 6(g) of Exhibit A-1 of the RFP; 	

	<p>c. operate, including development of strategic and tactical plans, development of new initiatives for ongoing clinical innovation, contractual management, service management, specific initiative management, operations, stakeholder management and to balance the needs of each of the Health Organizations; and</p> <p>d. support performance measures and evaluation of the collaboration and initiatives undertaken within it</p> <p>Note any modifications that you have for improvements to the Health Organizations' governance structure vis-à-vis benefiting the transformation.</p>	
2.3	<p>Identify and describe the committees within the proposed structure in Section 2.2 and include a terms of reference for each that describes:</p> <p>a. the proposed composition of each committee (Proponent, Proponent Team Member, Health Organizations, LMC Service Area, IMITS, HSSBC, etc), and where a clinical member is noted, the specific type and/or specialty required ;</p> <p>b. a description of the envisaged role, responsibility, and authority for decision making of the key positions and/or committees, including distinguishing between the lead Proponent and Proponent Team Members; and</p> <p>c. proposed meeting frequency.</p>	
2.4	<p>Describe the reporting that will be provided to support the measurement and evaluation of the:</p> <p>a. contractual relationship;</p> <p>b. service management;</p> <p>c. specific initiative management; and</p> <p>d. components of the economic model.</p> <p>Address this in table form, identifying:</p> <ul style="list-style-type: none"> • Report type/name • Description • Frequency of provision • Measures 	

2.5	Describe the approach and plan for benchmarking to validate the charges over the long term and the approach to addressing the results of such benchmarking.	
2.6	<p>Provide details of the Governance key resources you will dedicate to managing the ongoing business relationship internally amongst the Proponent Team Members and with the Health Organizations, IMITS and/or HSSBC including:</p> <ul style="list-style-type: none"> a. their 'home base' and the location from which their participation will be provided; b. their current roles and responsibilities within the Proponent's and/or Proponent Team Member organization and the roles and responsibilities they will have within this collaboration; c. a commitment that these key resources will be available through the balance of the RFP Process and through the first 2 years of the collaboration; and d. An indication of other customer accounts these resources may be responsible for during this collaboration. 	

3. Managed Services Teams

3.1. For each of the areas of Managed Services the Health Organizations require an understanding of the **KEY RESOURCES** that will be accountable for delivering and managing the Managed Services both initially and on an ongoing basis. This includes the following information:

- a. Identify each resource by name;
- b. Identify each resource's primary area of expertise (e.g. clinical, change management, technology, project management etc)
- c. Identify the Proponent or Proponent Team Member organization to which each resource belongs;
- d. Identify each resource's role, accountabilities and time period(s) and duration of involvement (e.g. initially, and if so the expected phases, or ongoing);
- e. Provide each resource's specific education and/or experience and clinical and/or technical knowledge base to demonstrate their ability to fulfill the identified role and responsibility;
- f. Include a minimum of three references for the experience cited in (e) above; and
- g. Note each resource's 'home base' and the location where services are proposed to be delivered from.

3.2. For each of the areas of Managed Services the Health Organizations also require an understanding of the expected involvement of the Health Organizations, LMC Service Area, IMITS and/or HSSBC. This includes the following information:

- a. definition of the roles required (and the associated organization), their accountability and expected time commitment;
- b. for each role, note the primary area of expertise, where applicable (e.g. clinical background, and id so the type and/or specialty, technical background, senior executive etc.);
- c. any key dependencies on the Health Organizations, LMC Service Area, IMITS, HSSBC and/or the identified roles; and
- d. a joint project structure that shows the organization of the proposed delivery team (yours and that expected from the Health Organizations).

Using the table below, provide the information required by Sections 3.1 and 3.2:

Managed Service	Response to Section 3.1	Response to Section 3.2
Clinical Vision	For example: a. Name: b. Area of expertise: c. Employing entity: d. Role, accountability, time period of involvement, duration: e. Relevant education/experience: f. References: g. Resource's home base and location of service delivery:	For example: a. Role (and associated organization), accountability, time commitment: b. Area of expertise: c. Key dependencies: d. Joint project structure:
Technical Vision		
Design, Build, Integrate and Implement		
Transition		
Ongoing Management and Operations		

STRATEGIC TRANSFORMATION FOR CLINICAL INFORMATION SYSTEMS

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APPENDIX E

RISK MANAGEMENT SUBMISSION

1. Risks

1.1. Introduction

The Health Organizations require a clear understanding of the risks involved with each Proposal. As such, Proponents are required to provide the following information.

1.2. Risk Management Principles and Approach

#	Requirement	Response
1.2.1	Describe the risk management principles and approaches for each of the following Managed Services categories: a) Clinical and Technical Vision Services b) Transition In Services c) Design, Build, Integrate and Implement Services d) Ongoing Management and Operations Services	
1.2.2	Describe the risk management principles and approaches to address the risks of a single instance of the CIS across the three Health Organizations.	
1.2.3	Describe the risk management principles and approach to address the economic and financial risks associated with the Proposal.	

1.3. Risk Registry

Proponents are required to complete the following risk registry tables by providing the following information:

- i. a description of the risk (column A);
- ii. a description of the event(s) that would cause the risk to manifest (column B);
- iii. the name of the party that bears the risk (column C);
- iv. the name of the party that manages the risk (column D);
- v. the risk mitigation strategies(column E);
- vi. the name of the party responsible for executing the mitigation strategy (column F), and
- vii. the impacts (financial and/or non-financial) to the party bearing the risk should the risk mitigation strategies not be properly executed (column G).

Proponents should provide the risks for each risk sub-category provided in the risk registry tables, and may insert rows in the tables to accommodate the risks. In addition, Proponents may also insert row in the tables to incorporate additional risk sub-categories, and the associated risks, not included in the risk registry tables.

Risk Registry Tables

1.0 Clinical and Technology Visions Risks

#	Risk Sub-Category	(A) Risk Description	(B) Cause of Risk	(C) Party Bearing Risk	(D) Party Managing Risk	(E) Risk Mitigation Strategy	(F) Party Executing Mitigation	(G) Risk Impact
1.1	Clinical Vision							
1.1.1								
1.1.2								
1.1.x	<i>Add rows if required</i>							
1.2	Clinical Engagement							
1.2.1								
1.2.2								
1.2.x	<i>Add rows if required</i>							
1.3	Sustaining currency of clinical vision							
1.3.1								
1.3.2								
1.3.x	<i>Add rows if required</i>							
1.4	Technical vision							
1.4.1								
1.4.2								
1.4.x	<i>Add rows if required</i>							
1.5	Sustaining currency of technical vision							
1.5.1								

1.5.2								
1.5.x	Add rows if required							
1.X	Add rows if required							

2.0 Transition in Risks

#	Risk Sub-Category	(A) Risk Description	(B) Cause of Risk	(C) Party Bearing Risk	(D) Party Managing Risk	(E) Risk Mitigation Strategy	(F) Party Executing Mitigation	(G) Risk Impact
2.1	Human Resource & Labour Relations							
2.1.1								
2.1.2								
2.1.x	Add rows if required							
2.2	Service and information continuity							
2.2.1								
2.2.2								
2.2.x	Add rows if required							
2.3	Legacy Applications							
2.3.1								
2.3.2								
2.3.x	Add rows if required							
2.X	Add rows if required							

3.0 Design, Build, Integrate and Implement Risks

#	Risk Sub-Category	(A) Risk Description	(B) Cause of Risk	(C) Party Bearing Risk	(D) Party Managing Risk	(E) Risk Mitigation Strategy	(F) Party Executing Mitigation	(G) Risk Impact
3.1	Change Management							
3.1.1								
3.1.2								
3.1.x	<i>Add rows if required</i>							
3.2	Process and data standardization, including within a single instance of the CIS across the three Health Organizations							
3.2.1								
3.2.2								
3.2.x	<i>Add rows if required</i>							
3.3	Process Redesign							
3.3.1								
3.3.2								
3.3.x	<i>Add rows if required</i>							
3.4	Design							
3.4.1								
3.4.2								
3.4.x	<i>Add rows if required</i>							
3.5	Privacy							

#	Risk Sub-Category	(A) Risk Description	(B) Cause of Risk	(C) Party Bearing Risk	(D) Party Managing Risk	(E) Risk Mitigation Strategy	(F) Party Executing Mitigation	(G) Risk Impact
3.5.1								
3.5.2								
3.5.x	<i>Add rows if required</i>							
3.6	Build							
3.6.1								
3.6.2								
3.6.x	<i>Add rows if required</i>							
3.7	Deployment							
3.7.1								
3.7.2								
3.7.x	<i>Add rows if required</i>							
3.8	Integration							
3.8.1								
3.8.2								
3.8.x								
3.9	Training/ Adoption							
3.9.1								
3.9.2								
3.9.x								
3.X	<i>Add rows if required</i>							

4.0 On-going Management and Operations Risks

#	Risk Sub-Category	(A) Risk Description	(B) Cause of Risk	(C) Party Bearing Risk	(D) Party Managing Risk	(E) Risk Mitigation Strategy	(F) Party Executing Mitigation	(G) Risk Impact
4.1	Technology							
4.1.1								
4.1.2								
4.1.x	<i>Add rows if required</i>							
4.2	Service Level							
4.2.1								
4.2.2								
4.2.x	<i>Add rows if required</i>							
4.3	Security							
4.3.1								
4.3.2								
4.3.x	<i>Add rows if required</i>							
4.4	Privacy							
4.4.1								
4.4.2								
4.4.x	<i>Add rows if required</i>							
4.5	Service Scalability							
4.5.1								
4.5.2								
4.5.x	<i>Add rows if</i>							

#	Risk Sub-Category	(A) Risk Description	(B) Cause of Risk	(C) Party Bearing Risk	(D) Party Managing Risk	(E) Risk Mitigation Strategy	(F) Party Executing Mitigation	(G) Risk Impact
	<i>required</i>							
4.X	<i>Add rows if required</i>							

5.0 Economic and Financial Risks

#	Risk Sub-Category	(A) Risk Description	(B) Cause of Risk	(C) Party Bearing Risk	(D) Party Managing Risk	(E) Risk Mitigation Strategy	(F) Party Executing Mitigation	(G) Risk Impact
5.0	Economic Benefits							
5.1.1								
5.1.2								
5.1.x	<i>Add rows if required</i>							
5.2	Investments							
5.2.1								
5.2.2								
5.2.x	<i>Add rows if required</i>							
5.3	Pricing							
5.3.1								
5.3.2								
5.3.x	<i>Add rows if required</i>							
5.X	<i>Add rows if required</i>							

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APPENDIX F
ECONOMIC MODEL AND PRICING SUBMISSION

Economic Model and Pricing Submission

1.1. Introduction

The Health Organizations expect that a collaboration partner will provide the Managed Service services in connection with the Integrated CIS Environment from the Services Start Date until such time as the Health Organizations repatriate or re-procure the services and related assets comprising the solution for the Managed Services.

Proponents are required to complete the following:

1. Section 1.2 Economic Model, and
2. Section 1.3 Pricing Submission, including Exhibit F-1.

In proposing a long-term economic model, and in addition to the stated Objectives in Exhibit A-1 and financial Challenges and Risks identified in Document #94, Proponents should also consider the following financial objectives required by the Health Organizations throughout the Term:

1. Demonstration of value for money;
2. Financial transparency into Managed Services prices, pricing components and cost drivers;
3. Budget certainty within fiscal years and visibility into future year prices;
4. Achievement of on-going cost savings from innovation and productivity gains;
5. Flexibility to handle permanent and temporary changes in scale and scope;
6. On-going risk management, including the quantification of risks with clearly defined accountability for each risk;
7. Capacity and willingness to invest in the development and implementation of the Integrated CIS to address the Health Organization funding challenges, and
8. Provide equal or improved service quality as of the Services Start Date, while improving service quality over the Term.

Further, Proponents' economic model should address the following Health Organizations requirements:

1. Service delivery model where pricing is clearly linked to services consumed or completed project milestones, with the Proponent making the necessary on-going investments to deliver the proposed services;
2. Sales and lease back of existing CIS assets that transfers the ownership of Health Organization CIS assets to the Proponent for the duration of the Initial Term, with the assets transferring back to the Health Organization at zero costs at the expiry of the Initial Term;
3. On-going financial adjustments (e.g. inflation adjustments, credits, rebates, discounts, true-ups...etc.) need to aligned with the Health Organizations fiscal years and budgeting cycle, and
4. Proponents are required to ensure that the proposed economic model and pricing submission clearly aligns with the proposed Managed Services, roadmaps, and project plans, with the same level of detail as proposed in the response to Appendix D – Managed Services Submission.

1.2. Economic Model

Considering the above, Proponents should describe their proposed economic model by responding to the following requirements in each of the sections below.

#	Requirement	Response
1.2.1.	<p>Describe the proposed economic model and supporting rationale for such a model for each of the proposed Managed Services within the following categories:</p> <ol style="list-style-type: none"> Transition Services Clinical and Technology Vision Services Design, Build, Integrate and Implement Services, Ongoing Management and Operations Services. <p>In addition, identify and describe the specific features of the proposed economic model that address:</p> <ol style="list-style-type: none"> the eight objectives listed above, in Section 1.1 Introduction, throughout the Term. The Objectives in Exhibit A-1. The financial Challenges and Risks identified in Document #94. 	
1.2.2.	<p>Describe all investments (e.g. transition costs, sale/lease-back, innovation fund, infrastructure, facilities, hardware, software, etc.) required to deliver the proposed Managed Services.</p> <p>For each investment listed above, identify the party making each investment (i.e. the Service Provider or the Health Organizations), and the corresponding dollar amounts to be investment by each party.</p> <p>Responses to a) and b) are to be provided within Exhibit F-1.</p> <p>For each investment provide:</p> <ol style="list-style-type: none"> the associated dollar amount and timing of the investment; and the proposed recovery mechanism, timing of such recovery and associated dollar amounts. 	
1.2.3.	Describe the proposed the pricing models for each proposed Managed Service, including	

	<p>but not limited to:</p> <ul style="list-style-type: none"> a. the underlying drivers that may impact pricing, and how pricing may be impacted as a result of changes in the drivers; b. how the services pricing and pricing components will be impacted by changes in scale (e.g. extension of the agreement to other Health Authorities) and scope. c. the approach and plan for addressing changes to the underlying drivers; d. any commitments and constraints that are part of the proposed pricing (e.g. volume floors and/or ceiling). <p>Refer to Exhibit F-1 for a list of the price components.</p>	
1.2.4.	<p>Notwithstanding Normalizing Assumption #1, if a Proponent desires to present an alternative contract term:</p> <ul style="list-style-type: none"> a. describe that alternative contract term; b. The benefits to the Health Organizations; and c. The impact on the proposed Managed Services prices and other financial deal components <p>Note: further pricing details in response to b) and c) are to be provided within Exhibit F-1.</p>	
1.2.5.	<p>Notwithstanding Normalizing Assumption #6, describe the proposed approach for handling the cost of inflation after month 24 of the Term by listing the services and pricing components that are to be adjusted for inflation and the mechanism for such an adjustment.</p> <p>Refer to Exhibit F-1 "Pricing" worksheets for a list of the price components.</p>	
1.2.6.	<p>Notwithstanding the payment terms described in Section 17.8 of Schedule G, describe alternative payments terms available to HSSBC and the associated discounts that would apply.</p> <p>In addition, describe the preferred payment mechanism and associated discounts available to HSSBC for use of such mechanism.</p>	
1.2.7.	<p>Identify and describe the potential barriers to achieving the proposed economic model and</p>	

	the approach to address such barriers.	
1.2.8.	<p>Describe the approach to repatriate both the assets and service (either to HSSBC or to another Service Provider) in a manner that is efficient and ensures the continued uninterrupted delivery of Health Organization patient services.</p> <p>Describe the costs the Health Organizations would be responsible for in the event of:</p> <ul style="list-style-type: none"> a. Expiry of Initial Term b. Termination by HSSBC due to Service Provider Default, c. Termination by HSSBC for convenience, or d. Termination for Force Majeure Event 	

1.3. Pricing Submission

Proponents are required to submit their proposed pricing for all proposed Managed Services by completing Exhibit F-1 Economic Model Template (filename: RFP HSSBC-00578 Exhibit F-1 Economic Model.xls). Proponents are to follow the instructions contained within the Exhibit F-1.

When developing the proposed pricing, Proponents are to take into account Appendix G - Draft Services Agreement, and the Normalizing Modelling Assumptions listed below.

1.3.1. Normalizing Modelling Assumptions

The following normalizing assumptions are provided to Proponents solely to guide the preparation of their cost models and subsequent Pricing Submission for the purpose of evaluating comparable Proposals.

NOTE: All capitalized terms are as defined in Appendix G - Draft Services Agreement, Schedule 1 Definitions.

General Modelling Assumptions:

1. Prices for the proposed Managed Services become effective on the Services Start Date of October 1, 2012 and remain in effect for the Initial Term for 10 years.
2. All pricing should exclude HST.
3. Proponents are to include 4% growth per year in infrastructure (e.g. storage capacity, network bandwidth, processing capacity, etc.) needs over the Term.
4. For modelling purposes, the agreement will not be extended to other Health Authorities during the Initial Term.
5. Prices provided for first 24 months of the Initial Term are considered best and final.
6. For modelling purposes, exclude inflation adjustments from Managed Services prices for months 25 to the end of the Initial Term.
7. A full time equivalent resource will be equivalent to 1957.5 hours per years.

Human Resources and Associated Cost Modelling Assumptions:

8. Proponent will be responsible for all Transferred Employees and the associated costs and liabilities of the Transferred Employees as of Services Start Date. Refer to Document #71 for a list and costs for the Transferred Employees.
9. Transferred Employees will remain at the current HSSBC Facilities for the first 90 days of the Initial Term. During this 90 day period, these HSSBC Facilities will be provided to the Proponent at no charge; thereafter, Proponents are responsible for paying for all costs associated with the office facilities used by the Transferred Employees.
10. Transferred Employees will continue to have use of their current office technology (e.g. desktop computers, laptops, office telephones, cell phones, printers, copiers...etc.) for the first 90 days of the Initial Term. During this 90 day period, the costs associated with the Transferred Employees current office technology will be the responsibility of the Health Organizations; thereafter, Proponents are responsible for paying for all associated office technology costs used by the Transferred Employees.

Services Modelling Assumptions:

11. Pricing should be reflective of the service levels being proposed in Appendix D Section 1.5.4.
12. As of the Services Start Date, the Proponent will be responsible for the delivery and costs associated with the In-Flight Projects listed in Document #170.
13. As of the Services Start Date, for the applications listed in Document #55, Proponents will be responsible for providing the following proposed services (as further defined in Appendix D Section 1.5.2):
 - Application Support (including Tier 2 support)
 - Application Environment Maintenance
 - Application Configuration and Release Management
 - Application Environment Continuity
 - Application Training

Hardware Modelling Assumptions:

14. As of the Service Start Date, the Proponent will be responsible for managing all hardware supporting Cerner and the legacy applications, including HSSBC Hardware. Hardware is listed in Document #55.
15. Proponents are responsible for refreshing the HSSBC Hardware supporting the in-scope clinical applications. The costs associated with purchasing and installing the new hardware, and decommissioning and disposing of the HSSBC Hardware being refreshed will be the responsibility of the Service Provider. The new hardware will be Service Provider Hardware.
16. Service Providers will refresh all supporting technology throughout the Term.
17. Any proposed refresh of HSSBC Hardware will not require the Health Organizations to write-off assets.

Third Party Contracts Modelling Assumptions:

18. As of the Service Start Date, the Proponent is responsible for the HSSBC Assigned Contracts and associated costs listed in Document #172.

Data Centre Facilities and Network Modelling Assumptions:

19. The Kamloops Data Centre will represent the Proponents primary data centre site for the Managed Services.
20. The Kamloops Data Centre will be available to the Proponent as of the Services Start Date.
21. Service Provider Hardware will be refreshed by the Proponent into the Kamloops Data Centre.
22. Proponents will be responsible for all aspects and costs associated with standing up the necessary equipment, cages and LAN within the Kamloops Data Centre.
23. Proponents will be able to remotely manage the hardware located in the Kamloops Data Centre.
24. Proponents are to include in their pricing the costs associated with a separate network which connects to the Kamloops Data Centre.
25. Proponents are to include in their pricing the costs associated with providing a solution with high availability and redundancy for fail-over capacity to handle both unplanned and planned downtime without any loss of data and impact on users.

Sales and Leaseback of CIS Assets Modelling Assumptions:

26. A single sale and leaseback transaction for the CIS assets will be transacted on the Service Start Date based on the net book value information provided in Document #89.

Other Modelling Assumptions:

27. For each proposed Managed Services that involves personal information, the Proponent will conduct a Privacy Impact Assessment, as described in Document #171.

SERVICES AGREEMENT

by and between

**PROVINCIAL HEALTH SERVICES AUTHORITY,
VANCOUVER COASTAL HEALTH AUTHORITY, by
its agent Health Shared Services British Columbia**

AND

[SERVICE PROVIDER]

[DATE]

CONFIDENTIAL

Important Note: This Services Agreement represents the form of agreement (general terms and conditions) upon which Provincial Health Services Authority, through its division HSSBC, intends to enter into contracts with third party service providers for its complex commercial arrangements.

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SERVICES AGREEMENT

This Agreement is entered into as of *[Insert Date]* (the “**Effective Date**”) by and between **Provincial Health Services Authority (“PHSA”)**, **Vancouver Coastal Health Authority**, by its agent **Health Shared Services British Columbia**, a division of the Provincial Health Services Authority (“**HSSBC**”) and *[Insert Name of Service Provider]* (“**Service Provider**”).

RECITALS

- A.** On August 8, 2011, PHSA, through its division HSSBC, issued a Request for Prequalification for Strategic Transformation for Clinical Information Systems (RFPQ # HSSBC-00432) (“**RFPQ**”), pursuant to which HSSBC prequalified prospective service providers to provide the transformation services and ongoing managed services described in the RFPQ, to HSSBC and the Health Organizations;
- B.** On February 15, 2012, PHSA, through its division HSSBC, issued a subsequent directed Request for Proposal HSSBC-00578 (“**RFP**”) for the purposes of selecting an experienced and qualified service provider to provide the Services;
- C.** The Service Provider submitted to HSSBC a proposal dated *[Insert Date]* (the “**Service Provider Proposal**”), and represented to HSSBC that it has the expertise, personnel, products, services and skills required to meet the requirements of HSSBC as reflected in the RFP;
- D.** In reliance on representations made by Service Provider in the Service Provider Proposal and subsequent discussions, on *[Insert Date]* HSSBC selected Service Provider over other prospective service providers to provide HSSBC and the Health Organizations with the Services; and
- E.** HSSBC and Service Provider want to specify the terms and conditions under which Service Provider will provide such Services to HSSBC.

NOW THEREFORE in consideration of the representations, warranties, promises and covenants contained herein, and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1 GUIDING PRINCIPLES

1.1 Guiding Principles

The principles identified below (“**Guiding Principles**”) are intended to provide a general introduction to this Agreement by way of setting out the principles that the Parties have determined to be important to ensure the success of their relationship. The Guiding Principles are not intended to expand the scope of the Parties’ obligations hereunder or to alter the plain meaning of the terms and conditions of this Agreement. However, if any term or condition of this Agreement is ambiguous or unclear or does not address a particular circumstance, such term or condition will be interpreted and construed with a view to giving effect to the Guiding Principles.

- (1) **Enhance Capabilities and Effectiveness.** Services will be provided by Service Provider to HSSBC in a manner that enhances HSSBC’s ability to deliver high-quality, cost-effective services internally within HSSBC and to its users with the bare minimum of interruptions in, and adverse impacts on, HSSBC’s delivery of such services. The quality of the Services and the technology utilized by Service Provider to provide the Services

will be no less than consistent with the standards customarily observed by leading North American providers of the same or substantially similar services.

- (2) **Reduce Costs.** Cost reduction is a key objective for HSSBC in securing Services from Service Provider. Service Provider will advise HSSBC of cost reduction opportunities and will, subject to the Change Process, implement such cost reduction opportunities. Service Provider will also implement improved internal processes and methodologies in order to further reduce the overall cost of the Services to HSSBC and will report on same to HSSBC.
- (3) **Improve Services.** Service Provider will identify ways to improve the service levels and the functionality, quality, consistency, reliability, security and accuracy of the Services and will, subject to the Change Process, implement same. Service Provider will also implement improved internal processes and methodologies in order to further improve the service levels and the functionality, quality, consistency, reliability, security and accuracy of the Services and will report on same to HSSBC.
- (4) **Flexibility.** Service Provider will be highly responsive and flexible to meet HSSBC's evolving requirements for Services and its obligations to third parties, and with respect to changes in technology and methods for providing the Services. Without limiting the generality of the foregoing, such flexibility will accommodate significant changes in: volumes of operation, scope of Services, service level requirements, service delivery models, architecture, regulatory or audit requirements, technology, and methods of achieving, monitoring and measuring service levels.
- (5) **Effective Relationship.** HSSBC and Service Provider each value the development of a close and effective working relationship between the Parties and recognize that such a relationship will better facilitate the implementation and delivery of the Services and the achievement of the objectives of this Agreement.
- (6) **Focus on Core Competencies.** By having the Services performed by the Service Provider and leveraging Service Provider's core competencies, Service Provider will enable HSSBC to focus more of its internal resources on strategy, providing services to its users and to improving the levels of service.
- (7) **Measurement and Reporting.** Service Provider will periodically, consistently and accurately measure the quality, quantity and cost-effectiveness of the Services using periodic reports, user surveys, benchmarking and pricing reviews and will provide HSSBC with detailed reports of Services performance.
- (8) **Security and Privacy.** Service Provider will identify ways to improve and, subject to the Change Process, will implement such improvements to the control and security of the Services. Service Provider will use Canadian privacy and security industry best practices to protect the HSSBC Data and the HSSBC environment.
- (9) **Disaster Recovery.** Service Provider will maintain and, where possible, improve, the Disaster Recovery Services provided hereunder to HSSBC and its users.
- (10) **Transition.** Transition activities, into, between and from Services are to be smooth and seamless, are to be performed in a cooperative manner (among HSSBC and its service providers), and to cause minimum disruptions to HSSBC and their users.

- (11) **Environmental Requirements.** The Service Provider acknowledges the importance of environmental leadership. The Service Provider maintains a corporate environmental policy and the Service Provider will: (a) provide available reports to HSSBC on the direct and indirect environmental impacts of the Services; and (b) use all commercially reasonable efforts to reduce the environmental impacts of the Services (including GHG Emissions) in a manner consistent with the practices customarily observed by leading North American providers of services the same or substantially similar to the Services (or as may otherwise be required by HSSBC subject to the Change Process).

ARTICLE 2 INTERPRETATION

2.1 Defined Terms

Unless the context otherwise requires, or unless otherwise defined in the particular Section or Schedule of this Agreement, all terms with an initial capital letter used in this Agreement (including the Recitals) will be interpreted in accordance with the definitions given to such terms in Schedule A (*Definitions*) of this Agreement.

2.2 Articles, Sections and Headings

The division of this Agreement into Articles, Sections, subsections, paragraphs and Schedules, and the insertion of headings and an index are for convenience of reference only and will not affect the construction or interpretation of this Agreement. The Schedules attached to this Agreement form part of this Agreement. Unless otherwise specified herein, any reference herein to an Article, Section, subsection, paragraph or Schedule refers to the specified Article, Section, subsection or paragraph of, or Schedule to this Agreement. In this Agreement, the terms “this Agreement”, “hereof”, “herein”, “hereunder” and similar expressions refer to this Agreement and not to any particular part, Article, Section, subsection, paragraph or other provision hereof.

2.3 Number and Gender

In this Agreement, words importing the singular will include the plural and vice versa and words importing one gender will include all genders, unless the context otherwise requires.

2.4 Inclusion

Where the word “include”, “includes” or “including” is used in this Agreement, it means “include”, “includes” or “including”, in each case, “without limitation”.

2.5 Discretion

Where the words “discretion” or “option”, or such similar words are used in this Agreement with respect to HSSBC or the Service Provider, such words shall be deemed to mean such party’s sole and absolute discretion or option.

2.6 Consents and Approvals

- (1) **No Additional Obligations.** If either Party consents to or approves: (a) the content of any plan, manual or document prepared in whole or in part by the other Party; (b) the taking of any action by the other Party; or (c) any matter, in accordance with the provisions of this Agreement, the mere making or granting of such consent or approval

will not, in and of itself, impose any additional obligations or liabilities upon the Party making or granting such consent or approval.

- (2) **Withholding or Delay.** Except to the extent a contrary intention is expressly set forth in this Agreement, whenever a Party is to provide its approval of or consent to an action, condition or event, such approval or consent will not be unreasonably withheld or delayed.

2.7 Business Days

Any reference herein to “days”, that does not refer to Business Days, is a reference to days. Unless otherwise specified herein, whenever any payment to be made or action to be taken hereunder is required to be made or taken on a day other than a Business Day, such payment will be made or action taken on the next following Business Day.

2.8 Computation of Time Periods

Unless otherwise specified herein, in the computation of a period of time from a specified date to a later date, the word “from” means “from and including” and the words “to” and “until” mean “to but excluding”. Unless otherwise specified herein, all references to any time of day will refer to the time of day in British Columbia.

2.9 Time of Essence

Time will be of the essence in this Agreement.

2.10 Currency

Unless otherwise specified, all dollar amounts referred to herein are expressed in Canadian dollars.

2.11 Accounting Terms

All accounting terms not specifically defined in this Agreement will be construed in accordance with Canadian Public Sector Accounting Standards, consistently applied.

2.12 Priority

- (1) **Conflict with Schedules.** If there is any apparent conflict or inconsistency between the provisions set forth in the body of this Agreement and the provisions set forth in any Schedule, the provisions set forth in the body of this Agreement will prevail.
- (2) **Exception.** Notwithstanding the provisions of Section 2.12(1) above, Schedule A (*Definitions*) and Schedule L (*Privacy and Security*), shall take precedence over the other Schedules to this Agreement.

2.13 Statutory References

Any reference in this Agreement to a statute should be deemed to refer to the statute and any regulations thereunder (in force at the Effective Date), as may be subsequently amended or replaced, from time to time.

2.14 Schedules

The following Schedules are attached to and form part of this Agreement:

Schedule A	Definitions
Schedule B	Transition In Plan - Framework
Schedule C	List of In-Flight Projects
Schedule D	Managed Services
Schedule E	Change Process Forms
Schedule F	Service Levels
Schedule G	Governance Service Levels
Schedule H	Governance
Schedule I	Benchmarking
Schedule J	Transition Out Plan
Schedule K	Technology
Schedule L	Privacy and Security
Schedule M	Form of Guarantees
Schedule N	Termination
Schedule O	Form of Certificate of Insurance
Schedule P	Dispute Resolution Process
Schedule Q	HSSBC Policies and Procedures
Schedule R	Permitted Service Locations
Schedule S	List of Reports
Schedule T	HSSBC Authorized Users
Schedule U	HSSBC Supplied Hardware
Schedule V	Service Provider Supplied Hardware
Schedule W	HSSBC Assigned Contracts
Schedule X	HSSBC Retained Contracts
Schedule Y	Service Provider Supplied Software
Schedule Z	Service Provider Contracts
Schedule AA	HSSBC Service Locations
Schedule BB	Service Provider Key Personnel
Schedule CC	Approved Subcontractors
Schedule DD	Fees
Schedule EE	Form of Invoice
Schedule FF	Corporate Organizational Chart
Schedule GG	Additional Remedies of HSSBC

ARTICLE 3 TRANSITION

3.1 Transition

The Service Provider will perform Transition In Services as set out in the Transition In Plan, and such other services as may be required in order to transfer responsibility and accountability for the provision of the Managed Services to the Service Provider (the “**Transition**”), with effect on the Service Start Date. The Transition In Plan shall set out the detailed resources, tasks, timelines, responsibilities, dependencies, Critical Milestones, Deliverables and acceptance testing procedures, if any, required to complete the Transition.

3.2 Transition In Plan

- (1) **Preparation of Transition In Plan.** No later than [●] (●) days after the Effective Date, the Service Provider will provide a first draft of the Transition In Plan to HSSBC, which will comply the framework and requirements set out in Schedule B (*Transition In Plan - Framework*). Within five (5) days after delivering the first draft of the Transition In Plan to HSSBC, the Service Provider will review the Transition In Plan with HSSBC to identify any gaps or areas where additional work may be required. The Service Provider will incorporate into the final Transition In Plan all reasonable comments provided by HSSBC.
- (2) **Final Transition In Plan.** No later than [●] (●) days after the Effective Date, the Service Provider will provide the final Transition In Plan to HSSBC. The Service Provider will implement the Transition In Plan to effect the transparent, seamless, orderly and uninterrupted transition of the then existing services comprising Managed Services from the manner in which HSSBC delivered and such services prior to the Effective Date to the manner in which the Managed Services are to be provided in accordance with this Agreement.

3.3 Progress Reports

Service Provider will provide to the HSSBC Contract Executive a weekly written report as to the progress of completion of the activities contained in the Transition In Plan until each of Service Provider's responsibilities thereunder has been completed. Such reports will be in a format and include such detail as HSSBC may reasonably request.

3.4 Conduct of the Transition

The Service Provider will be responsible for the overall management of the Transition and shall use commercially reasonable efforts to minimize disruption to HSSBC's business operations where reasonably practicable. The Service Provider and HSSBC will each perform the respective tasks required of it by the Transition In Plan and will each use commercially reasonable efforts to complete such tasks in accordance with the Transition In Plan's schedule for the completion of such tasks. HSSBC will cooperate with the Service Provider and provide to the Service Provider resources, information and other input reasonably requested by the Service Provider to effect the Transition in accordance with the Transition In Plan.

3.5 Completion of the Transition In Plan

If the Transition In Plan has not been completed as of the Services Start Date, then the Service Provider will assume financial responsibility for the provision of the Services on and after the Service Start Date until the Transition In Plan is completed. The Services Provider will:

- (1) reimburse HSSBC for any and all costs and expenses incurred by HSSBC to continue the provision of the services (including, without limitation, fees and expenses under any Third Party Contracts and costs of HSSBC's personnel and subcontractors) or, in HSSBC's discretion, HSSBC may set off any such fees, costs and expenses against the Fees, if any, due under the Agreement; and
- (2) unless otherwise agreed by the Parties in writing, perform the Services in accordance with the Service Levels from and after the Compliance Date.

The Service Provider will not be required to assume financial responsibility for the Services as described in this Section 3.5 to the extent Service Provider's performance is excused due to a Force Majeure Event or to the extent that there is a delay in the Transition that is caused by or requested by HSSBC.

3.6 Consequences of Failure to Complete the Transition In Plan

- (1) **Determining Cause of Delay.** If the Transition In Plan is not completed on the Services Start Date and the Parties are unable to agree upon which Party caused the delay, then the matter of fault for purposes of determining whether the delay was caused by one Party or the other, will be deemed to be a Dispute and will be determined in accordance with the Dispute Resolution Process under Article 24 (*Dispute Resolution*). For greater clarification, no Party will be deemed to have failed to perform its obligations under the Transition In Plan where such performance is dependent upon the performance by the other Party of that other Party's obligations under the Transition In Plan, in circumstances where that other Party has failed to so perform.
- (2) **Termination for Failure to Complete Transition In Plan.** If the Service Provider fails to complete all components of the Transition In Plan within ninety (90) days after the Services Start Date, or such other period as the Parties mutually agree in writing, and HSSBC has not waived the completion of such outstanding components, then HSSBC may, in its discretion, terminate this Agreement for cause.

3.7 In-Flight Projects

As part of the Transition, the Service Provider will assume responsibility for completing the In-Flight Projects set forth in Schedule C (*List of In-Flight Projects*) of this Agreement, which have not been completed as of the Service Start Date. Any and all terms and conditions relating to the Service Provider assuming responsibility for the In-Flight Projects will be set forth in Schedule C (*List of In-Flight Projects*). The In-Flight Project Fees payable by HSSBC to the Service Provider for the completion of the In-Flight Projects will be set out in Schedule DD (*Fees*).

ARTICLE 4 SERVICES

4.1 Provision of Services

In consideration for the payment of the Fees by HSSBC to the Service Provider, the Service Provider will perform for, and provide to, HSSBC all of the services, functions, responsibilities or tasks provided for in this Agreement, including:

- (1) the Transition In Services, as more particularly described in the Transition In Plan for the Health Organizations receiving Services on the Services Start Date and, as may be agreed in writing, for Health Facilities contemplated in Section 4.7 of this Agreement;
- (2) the Managed Services, as more particularly described in Schedule D (*Managed Services*);
- (3) the Transition Out Services set forth in Article 19 and pursuant to Schedule J (*Transition Out Plan*); and
- (4) any additional services which are to be performed by Service Provider pursuant to the Change Process,

as such services may evolve or be supplemented, enhanced, modified or replaced from time to time in accordance with the terms of this Agreement (collectively, the “**Services**”).

4.2 Service Inclusions

If any services, functions, responsibilities or tasks not specifically described in this Agreement are required for the proper performance of any of the Services and are inherent in or incidental to the performance of, or are usually performed by experienced and competent service providers as part of, services comparable to the Services, such additional services, functions, responsibilities and tasks will be deemed to be implied by and included within the scope of the Services to the same extent and in the same manner as if specifically described in this Agreement.

4.3 Roles and Responsibilities

The specific roles and responsibilities of the Service Provider and HSSBC will be set out in the Services schedules attached to this Agreement.

4.4 Non-exclusivity

HSSBC is not precluded by this Agreement from obtaining services from any other provider that may be similar or identical to the Services, and may also obtain services which are outside the scope of the Services from either Service Provider or any other provider.

4.5 Service Locations

Unless otherwise agreed by HSSBC, the Services will be performed by Service Provider at and from the locations set forth in Schedule R (*Permitted Service Locations*) (the “**Permitted Service Locations**”). If Service Provider recommends that any Services be performed at a location other than the Permitted Service Locations, the Service Provider will obtain the prior written approval of HSSBC for the performance of those Services from such other location. HSSBC’s approval of locations other than Permitted Service Locations will not be unreasonably withheld provided that HSSBC is satisfied that the Services will be performed in compliance with this Agreement, all Applicable Laws, and appropriate safeguards will otherwise meet all of HSSBC’s reasonable requirements.

4.6 Operations Manual

- (1) **Development of Operations Manual.** The Service Provider will develop and continuously update a detailed, HSSBC-specific, operations manual that includes the contents specified in Section 4.6(2) (the “**Operations Manual**”). Service Provider will deliver (electronically and in hard copy) the Operations Manual to HSSBC for its review, comments and approval within [●] (●) days following the Service Start Date. The Service Provider will incorporate all of HSSBC’s reasonable comments and suggestions into the Operations Manual and will deliver an updated draft of the Operations Manual to HSSBC for its review, comments and approval. Thereafter, the Service Provider will periodically (but not less often than quarterly) update the Operations Manual to reflect changes in the operations or procedures described therein. All such updates to the Operations Manual will be provided to HSSBC for its prior review, comments and approval.
- (2) **Operational Manual Content.** The Operations Manual will describe how the Services will be performed and will act as a guide to HSSBC with respect to the Services. The Operations Manual will describe, among other things:

- (a) the manner in which Service Provider will provide the Services hereunder, including the equipment and software being used or to be used, the documentation (including, operations manuals, user guides, specifications, and authorized user support) that provide further details of such activities;
- (b) Incident, Problem, and Issue procedures;
- (c) operational change process;
- (d) activities the Service Provider will undertake in order to provide the Services including, where appropriate, direction, supervision, monitoring, staffing, quality assurance, reporting, planning, governance and oversight activities;
- (e) the specific measures, if any, taken to comply with all Applicable Laws.

In no event will the Operations Manual be interpreted as an amendment to this Agreement or so as to relieve Service Provider of any of its performance obligations under this Agreement.

4.7 Extension of Agreement to Health Authorities

HSSBC may, at its option and upon not less than sixty (60) days written notice to Service Provider, extend the scope of this Agreement and the right to purchase Services to any of its existing or future hospitals or health care facilities or agencies or to other health authorities in British Columbia or to hospitals or health care facilities or agencies governed by or affiliated with such other health authorities that are not, as of the Effective Date purchasers of Services under this Agreement (collectively, the “**Health Facilities**”). Any such extension of the Agreement and the right to purchase Services from Service Provider will be on the same terms contained herein, including pricing as set forth in Schedule DD (*Fees*). Any such extension of the Agreement is at the discretion of HSSBC and such Health Facilities. For greater certainty, the Health Facilities are not required to participate in the Agreement and may elect to pursue other solutions if their specific requirements are not met by this Agreement. In the event that HSSBC exercises such option under this Section 4.7, the Service Provider will, within ninety (90) days of receipt of notice from HSSBC of HSSBC’s intention to exercise such option, enter into such agreements with HSSBC or such Health Facilities as may be reasonably required to give effect to this Section 4.7. HSSBC and the Health Facilities will at all times have the right to tender their requirements in order to ensure they receive optimum products, services and pricing. Any such tendering will be without prejudice to the HSSBC’s option to extend the scope of this Agreement and the right to purchase the Service Provider’s Services to any of the Health Facilities.

ARTICLE 5 SERVICE LEVELS AND SERVICE LEVEL REPORTING

5.1 Services Standards Generally

Except as expressly provided herein, at all times during the Term and, for certainty, any Transition Out Period, the Service Provider will perform all Services hereunder:

- (1) in accordance with, and in such a manner as to meet or exceed, the applicable SLAs, SLOs and Specifications;
- (2) in a manner consistent with industry standards;
- (3) in accordance with the HSSBC Policies and Procedures; and

- (4) in accordance with the Operations Manual.

5.2 General

For each Managed Service category, Schedule F (*Service Levels*) sets forth certain Service Levels that will be used to measure the Service Provider's performance of the Managed Services under this Agreement. The Service Provider agrees that its performance of the Managed Services will meet or exceed such Service Levels, subject to the limitations and in accordance with the provisions set forth in this Agreement and in Schedule F (*Service Levels*).

5.3 SLAs/SLOs

The Service Levels are comprised of:

- (1) SLAs with respect to which there are financial consequences for the Service Provider's failure to meet or exceed a SLA; and
- (2) SLOs which are performance measures and indicators of the Service Provider's performance under the Agreement but with respect to which there are no financial consequences.

5.4 Governance Service Levels

The Service Levels set forth in Schedule G (*Governance Service Levels*) (collectively the "**Governance Service Levels**") pertain to certain contract administration, governance and administrative process matters. For the purposes of this Agreement, a report of the Service Provider's performance as measured by the Governance Service Levels shall be included in the information provided to HSSBC executives for the purpose of completing the Satisfaction Surveys.

5.5 Service Level Monitoring

From and after the Services Start Date, the Service Provider will establish and maintain in place, at all times, appropriate policies and procedures to monitor and evaluate the achievement of the Service Levels during the applicable Measurement Intervals, including the maintenance of a Service Level log in order to permit the Service Provider and HSSBC, to evaluate achieved and failed SLAs and SLOs and to satisfy the reporting obligations under this Agreement.

5.6 Service Level Reporting

The Service Provider will measure its performance against the SLAs and SLOs in accordance with the methodologies specified in Schedule F (*Service Levels*) and will provide a detailed, comprehensive report of its performance against the SLAs and SLOs during the applicable Reporting Period ("**Service Level Reports**") by the tenth (10th) day following the end of each Measurement Interval. The format for such Service Level Reports will be determined by HSSBC in accordance with Section 5.7. For any SLA or SLO failures that occur in Measurement Intervals, the Service Provider will promptly report such failures in the month such failure occurs. Service Provider will meet with HSSBC at monthly, or more frequently if requested by HSSBC, to review the Service Level Reports and the Service Provider's actual performance against the SLAs and SLOs and the Service Provider will recommend remedial actions to Resolve any performance deficiencies.

5.7 Service Level Reports

The Service Provider will provide the Service Level Reports, in electronic and hard copy format if requested by HSSBC, to HSSBC on a monthly basis by the tenth (10th) day of the month. In addition, the

Service Provider will promptly inform HSSBC of any deficiencies, omissions or irregularities in Service Provider's performance of the Services that come to Service Provider's attention.

5.8 Failure to Meet SLAs/Root-Cause Analysis

Promptly, and in any case no later than two (2) days after the earlier of:

- (a) the Service Provider's discovery of a failure to provide any of the Services in accordance with applicable SLAs; or
- (b) the Service Provider's receipt of a notice from HSSBC regarding such failure to provide any of the Services in accordance with applicable SLAs,

the Service Provider will notify HSSBC of the failure and the Service Provider will promptly commence to perform a Root-Cause Analysis to identify the cause of such failure and provide HSSBC with a written report detailing the cause of, and procedure for correcting, such failure.

The correction of any failure to provide any of the Services in accordance with the SLAs will be performed in accordance with the time frames set forth in Schedule F (*Service Levels*), entirely at Service Provider's expense.

5.9 SLA Credits

The Service Provider acknowledges and agrees that should the Service Provider fail to achieve a SLA ("**SLA Failure**"), as more particularly described in Schedule F (*Service Levels*), HSSBC shall be entitled to receive a SLA Credit for such corresponding SLA Failure, as a genuine pre-determined estimate of HSSBC's damages regarding such Service Provider failure and in lieu of other remedies available to HSSBC. HSSBC may, in its discretion, set off the amount of any such SLA Credit against the Fees, if any, due under the Agreement.

5.10 SLA Relief

If HSSBC (or a subcontractor, agent or third party provided by HSSBC which is not managed by Service Provider) is the cause of the Service Provider's failure to meet a SLA, such failure shall not constitute a SLA Failure and, to the extent the Service Provider is not able to provide a Workaround for the failure, HSSBC will be responsible for the reasonable costs of remedying such failure. Service Provider will promptly notify HSSBC of any circumstance of which Service Provider is aware that is likely to give rise to a SLA Failure. For purposes of this Section 5.10, a pre-existing condition of any systems owned by HSSBC but maintained by Service Provider hereunder will not be deemed a contributing cause of any failure.

5.11 Review of Service Levels

The Parties expect that Service Provider's performance relative to the Service Levels will improve over time and agree that Service Levels may be added, removed or otherwise changed to reflect changes to the Services and to HSSBC's business requirements. Accordingly, commencing as of the beginning of the second Contract Year, and at least once annually thereafter, HSSBC and Service Provider will review the Service Levels and the continuous improvement of the Services, and discuss potential changes to the Service Levels. In no event will the Service Levels be made less favourable to HSSBC as a result of such reviews, unless agreed by HSSBC in writing.

5.12 Changes to Service Levels

(1) Changes to SLA Weighting Factors

HSSBC will have the right, in its discretion, commencing at the scheduled completion date of the Transition In Plan and, not more often than once every six (6) months thereafter, on ninety (90) days prior written notice to Service Provider, to change the SLA Weighting Factors amongst the SLAs.

(2) Annual Adjustments to Service Levels

As of the Effective Date, the Expected Service Level for each Service category will be equal to the Minimum Service Level for such Service category. Effective as of the start of the second and each subsequent Contract Year, the Expected Service Level for each Service category will be reviewed by the Parties and may be reset to equal a more rigorous Service Level pursuant to the Change Process.

(3) Additions of or Changes to Service Levels

HSSBC will also have the right in its discretion, commencing after the scheduled completion date of the Transition In Plan, and not more often than once every six (6) months thereafter, after consultation with Service Provider and on ninety (90) days prior written notice to Service Provider, to:

- (a) add or remove one or more Service Levels;
- (b) convert one or more SLOs into SLAs;
- (c) convert one or more SLAs into SLOs; and/or
- (d) make changes to the service levels set forth in one or more Service Levels,

(all of which are collectively referred to as the “**SLA/SLO Changes**”).

The Fee implications, if any, of the SLA/SLO Changes will be calculated on a net basis and will equal the net amount of the increases and reductions in costs reasonably expected to result from all of such changes, taken in the aggregate, and with respect to:

- (i) SLAs, such additional costs will be limited to those reasonably required in order for Service Provider to reliably meet new or more rigorous SLAs; and
- (ii) SLOs, such additional costs will be limited to those reasonably required in order for Service Provider to reasonably consistently meet new or more rigorous SLOs (while recognizing that there are no SLA Credits (or Fee Reductions) associated with a failure to meet such SLOs).

With respect to removals or reductions in Service Levels, the cost reductions will reflect the costs that Service Provider is, acting diligently, reasonably able to avoid as a result of the removal and/or reductions in the Service Levels.

The Change Process will be used for the purpose of documenting the required Changes and providing HSSBC with a detailed, cost-based, justification of the reasonableness of the proposed

increases and reductions in Fees associated with the SLA/SLO Changes, and potentially for HSSBC to make further adjustments to the SLA/SLO Changes. HSSBC will have the right to escalate any Dispute with respect to the reasonableness of the changes to the Fees proposed by Service Provider in respect of the SLA/SLO Changes, through the Dispute Resolution Process. All additions of new Service Levels and any other changes to Service Levels or Fee Reductions will be reflected in Schedule DD (*Fees*) and Schedule F (*Service Levels*).

5.13 Satisfaction Surveys

No later than the [●] anniversary of the Services Start Date, and on an annual basis thereafter during the Term of the Agreement, the Service Provider and HSSBC shall jointly conduct, for each Managed Service category, a satisfaction survey designed to capture internal end-user perceptions in respect of the quality, value and delivery of the applicable Managed Services. Results of each survey will be reviewed with HSSBC by the Service Provider. If such results indicate a material dissatisfaction with Managed Services, the Service Provider shall prepare and implement a remedial plan to correct the affected Managed Services (Services where a material dissatisfaction is identified) and to prevent reoccurrence of the problem provided that:

- (a) a copy of the remedial plan shall be provided to HSSBC for review and comment prior to its implementation; and
- (b) if the affected Managed Services have not been corrected within six (6) months following the completion of the survey that triggered the remedial plan, the problems associated with the affected Managed Services will automatically be included as a topic for the Governance Process.

5.14 Authorized User Satisfaction and Communication

In addition to the satisfaction survey in Section 5.13 above, Service Provider will conduct general semi-annual Authorized User satisfaction surveys in accordance with this Section 5.14 and the Authorized User satisfaction survey requirements set forth in Schedule G (*Governance Service Levels*). The proposed Authorized User satisfaction surveys (including the underlying instrument(s), methodology and survey plan) will be subject to HSSBC's review, comments and approval and will cover a representative sample of the Authorized Users including, as a separate sample category, senior management of HSSBC. HSSBC will provide reasonable assistance to Service Provider to: (a) identify the appropriate sample of Authorized Users; (b) distribute the surveys; and (c) encourage participation by such Authorized Users in order to obtain meaningful results. Service Provider will report the results of the surveys separately from each of the Authorized Users or groups of Authorized Users as may be specified by HSSBC, and the Service Provider Contract Executive will review the results of each survey with HSSBC within thirty (30) days following the mutually agreed deadline for completion and return of the survey. During each such review session, Service Provider will submit an Authorized User communication plan to HSSBC for its review and approval that will include, at a minimum, updates to the Authorized Users regarding the results of the satisfaction surveys. Not later than thirty (30) days following each review session, the Service Provider will provide to HSSBC an action plan for addressing any problem areas identified in the survey results. The Parties will, after the first Contract Year, review the effectiveness of the Authorized User satisfaction surveys and Authorized User communications and make any changes, including possible changes to increase the frequency of the Authorized User satisfaction surveys to quarterly surveys, if the Parties determine that such changes would enhance the value of such Authorized User satisfaction surveys.

5.15 Benchmarking

Upon written notice to the Service Provider, HSSBC may, at its option, initiate Benchmarking of the Fees for the Managed Services and the Service Levels pursuant to and in accordance with the terms and conditions set forth in Schedule I (*Benchmarking*).

ARTICLE 6 HARDWARE, CONTRACTS, AND FACILITIES

6.1 HSSBC Hardware

- (1) **HSSBC Hardware.** All HSSBC Hardware will be owned or leased by HSSBC. During the Term, HSSBC will be responsible for replacing, from time to time, all HSSBC Hardware that is no longer current or in appropriate working order for its intended purpose as determined by HSSBC.
- (2) **Management of HSSBC Hardware.** From and after the Service Start Date until the earlier of the end of the Term or the replacement of such HSSBC Hardware, Service Provider will be responsible for managing, maintaining and repairing all such HSSBC Hardware and all replacements of, and additions to, such HSSBC Hardware. The HSSBC Hardware list in Schedule U (*HSSBC Supplied Hardware*) will be regularly updated to include any replacement and additional HSSBC-owned or leased Hardware (all of which will thereafter be deemed to be HSSBC Hardware), which may be provided by HSSBC for Service Provider to use in providing the Services.
- (3) **Ownership of HSSBC Hardware.** While it is not anticipated that any HSSBC Hardware will be located at locations other than HSSBC Service Locations, notwithstanding the location of any HSSBC Hardware, or the failure to list any item of HSSBC Hardware in Schedule U (*HSSBC Supplied Hardware*), all right, title and interest in and to such HSSBC Hardware will, as between the Parties, be and remain in HSSBC, and Service Provider will have no title or ownership interest in such HSSBC Hardware.
- (4) **HSSBC Hardware at Service Provider Location.** In the event that any HSSBC Hardware (whether owned or leased) is located at locations other than HSSBC Service Locations, Service Provider will provide HSSBC with reasonable access to HSSBC Hardware located at a Service Provider or other facility, and, notwithstanding any contrary terms that may be contained herein, will be responsible for all costs and expenses associated with the maintenance or repair of any such HSSBC Hardware or any part thereof damaged by Service Provider, Service Provider Personnel, Subcontractors, agents or invitees (excluding HSSBC). Service Provider will ensure that all HSSBC Hardware located at a Service Provider or other facility is clearly marked as HSSBC property. With the advice of HSSBC, Service Provider will prepare and maintain at Service Provider's cost and expense any Service Provider or other facility in which HSSBC Hardware will be installed in accordance with the manufacturers' specifications and all applicable codes, statutes, regulations and standards. Service Provider will bear the risk of loss of or damage to any HSSBC Hardware that is under Service Provider's care, custody and control.

6.2 Service Provider Hardware

- (1) **Service Provider Hardware.** It is anticipated that Service Provider will own or lease all equipment used by Service Provider to provide the Services from locations other than

HSSBC Service Locations. Notwithstanding the location of Service Provider Hardware at a HSSBC Service Location, and unless otherwise provided under Section 18.8, as between the Parties, all right, title and interest in and to any such Service Provider Hardware will be and remain with Service Provider, and HSSBC will not have any title or ownership interest in the Service Provider Hardware. Service Provider will be responsible for managing, maintaining, repairing, and replacing all Service Provider Hardware.

- (2) **Location of Service Provider Hardware at HSSBC Service Locations.** While it is not anticipated that Service Provider will install any Service Provider Hardware at any HSSBC Service Location, in the event that the Parties agree to install any Service Provider Hardware at a HSSBC Service Location to provide the Services, Service Provider will prepare and maintain at Service Provider's cost and expense the HSSBC Service Location in which Service Provider Hardware will be installed in accordance with the manufacturers' specifications and all applicable codes, statutes, regulations and standards. Office space, furnishings, storage space, and assets installed or operated on HSSBC premises, and supplies allocated, are provided "AS IS, WHERE IS," and are to be used exclusively for performance of Services for HSSBC.
- (3) **Installation of Service Provider Hardware.** Service Provider will arrange for, and will be responsible for the transportation and installation of any Service Provider Hardware that the Parties have agreed, in accordance with Section 6.2(2), may be located at a HSSBC Service Location. If HSSBC relocates any HSSBC Service Location in which any such Service Provider Hardware is installed, HSSBC will be responsible for the relocation costs relating to such Service Provider Hardware. If Service Provider requests the relocation of any such Service Provider Hardware, Service Provider will be responsible for the relocation costs relating to such Service Provider Hardware.
- (4) **Maintenance of Service Provider Hardware.** Service Provider will be responsible for maintaining all Service Provider Hardware in any HSSBC Service Location; provided, however, that HSSBC will be responsible for all costs and expenses of repair or replacement to correct any damage to Service Provider Hardware or any part thereof (reasonable wear and tear excepted) caused by HSSBC, or one of its employees, agents or invitees (exclusive of Service Provider, Service Provider Personnel, Subcontractors, agents and their invitees).

6.3 Third Party Contracts

- (1) **HSSBC Assigned Contracts**
 - (a) *List of Assigned Contracts.* The Assigned Contracts listed in Schedule W (*HSSBC Assigned Contracts*) will be assigned from HSSBC to Service Provider as of the applicable Service Start Date. The Fees account for and reflect any additional costs to Service Provider resulting from the assignment of the Assigned Contracts to Service Provider from the applicable Service Start Date and also reflect the net cost savings to HSSBC which are to result from the assignment of the Assigned Contracts to Service Provider. HSSBC will be entitled to deduct from the Fees any amounts paid by HSSBC directly to Third Parties under Assigned Contracts in respect of periods after the applicable Service Start Date.

- (b) *Notices and Contents.* HSSBC and Service Provider will cooperate to provide any notices and to obtain any Consents from Third Parties required to effect the assignment of the Assigned Contracts on the applicable Service Start Date and use commercially reasonable efforts to promptly complete such assignment. If, notwithstanding such efforts, an Assigned Contract is not assigned to Service Provider within six (6) months from the applicable Service Start Date, then Service Provider will agree to a Change Order in which: (1) the Fees are decreased by the amount of HSSBC's costs under such Assigned Contract; and (2) such Assigned Contract ceases to be an Assigned Contract and instead becomes a Retained Contract.
- (c) *Responsibility for Costs.* Subject to Section 6.3(1)(b), the Service Provider is responsible for all costs associated with the Assigned Contracts, including any ongoing expenses, maintenance fees, and/or support fees pursuant to the Assigned Contracts.
- (d) *Termination/Expiry of Assigned Contracts.* Subject to Section 6.5 (relating to Critical Contracts), Service Provider, in consultation with HSSBC, may decide to terminate one or more of the Assigned Contracts. During the Term, where an Assigned Contract has expired or is terminated, Service Provider will be responsible for continuing to provide the services previously provided under such Assigned Contract, which services may be provided by the Service Provider or a Subcontractor. If required, a transition period will be planned for each such Assigned Contract. Service Provider will, with the co-operation of HSSBC, perform an orderly transition of the services provided under such Assigned Contract from the previous service provider and will ensure that such transition is seamless, transparent and non-disruptive to HSSBC and its Authorized Users.

(2) **HSSBC Retained Contracts**

- (a) *Retained Contracts.* The Retained Contracts listed in Schedule X (*HSSBC Retained Contracts*) will all be retained by HSSBC (or the applicable Health Organization, as the case may be). Unless otherwise expressly provided in this Agreement, HSSBC will be responsible for all payments to be made under the Retained Contracts. HSSBC will, with the reasonable assistance of Service Provider, take all actions reasonably necessary to obtain any Consents from Third Parties that are required for HSSBC to disclose the Retained Contracts to Service Provider and for Service Provider to lawfully access, operate, maintain and use (at or from any location where Services are to be provided) the applicable Software and/or Hardware contemplated in the Retained Contract as may be applicable. Service Provider will not use any such Software and/or Hardware for any purpose other than the provision of Services to HSSBC under this Agreement. Until any such required consents are obtained, HSSBC will permit Service Provider to act as HSSBC's agent solely for purposes of using the benefits and rights granted under such Retained Contracts to the extent required for Service Provider to provide the Services. Nothing contained in this Agreement will require either Party to violate the proprietary rights of any Third Party with respect to any Software or Hardware.
- (b) *Service Provider Management.* HSSBC will determine which of the Retained Contracts it wishes to have managed by Service Provider and will identify such contracts as the Managed Contracts on Schedule X (*HSSBC Retained Contracts*).

HSSBC and Service Provider will cooperate to provide any notices or to obtain any Consents from Third Parties required to allow Service Provider to manage the Managed Contracts. If HSSBC, acting reasonably, is unable to obtain any such Consents, the Contract will remain a Retained Contract, and HSSBC and Service Provider will negotiate in good faith the steps to be taken to minimize the impact of the lack of Consent and to co-operate to develop alternative approaches that would not necessitate obtaining the applicable Consent.

- (c) *Service Provider Compliance.* Service Provider agrees to comply with all applicable terms of each Managed Contract and any applicable notice or Consent. Subject to the terms of the Managed Contracts and any applicable notices and Consents, HSSBC hereby appoints Service Provider, from and after the applicable Service Start Date, to act during the Term as the single point of contact for operational matters pertaining to such Managed Contracts, and HSSBC promptly will notify all appropriate Third Parties of such appointment. HSSBC may at any time exercise reasonable control over Service Provider's actions with respect to such Third Parties as it relates to the Managed Contracts and the provision of Services. Subject to the terms of the Managed Contracts and any applicable notices and Consents, Service Provider will administer the day to day interface with the contracting Third Parties of the Managed Contracts, from and after the applicable Service Start Date.
- (d) *Notification of Failure.* Service Provider will promptly notify HSSBC of any breach, or misuse or fraud arising in connection with any Managed Contract of which the Service Provider becomes aware and will cooperate with HSSBC to cure, prevent or stay any such breach, misuse or fraud. If a Third Party does not fulfil, or Service Provider believes that a Third Party may not fulfil, its contractual obligations under a Managed Contract, Service Provider will, in a reasonable and timely fashion, notify HSSBC and recommend to HSSBC, with the appropriate justification, reasonable accommodations or remedial steps that Service Provider deems necessary in order that the applicable Service Levels will continue to be met despite such Third Party's failure to perform its obligations under the Managed Contract.
- (e) *Updating of Managed Contracts for Registered Users.* Service Provider will assist HSSBC to optimize its licensing of the Managed Contracts, will immediately remove from any lists of named or registered users, any HSSBC Personnel who: (i) cease to be employed by HSSBC or its Affiliates; (ii) cease to work for the business unit which uses the applicable Managed Contract; or (iii) otherwise no longer require access to such Managed Contract, and will ensure that HSSBC is in compliance with applicable licensing conditions.

(3) **Service Provider Contracts - Software**

The cost of any license, installation, Maintenance, Support and upgrade fees with respect to any Service Provider-Licensed Third Party Software and any Service Provider-Owned Software will be deemed to be included in the Fees.

6.4 Maintenance

- (1) **Maintenance and Support.** Service Provider will Maintain and Support all Hardware and Software, and such Maintenance will be included in the Fees. Service Provider will use commercially reasonable efforts to schedule all non-emergency Maintenance in advance and in such a way as to prevent any failure to provide the Services in accordance with the terms of this Agreement.
- (2) **Retained Contract Exception.** Except with respect to the services which are to be provided under the Retained Contracts, Service Provider will, at Service Provider's expense, ensure that the HSSBC Hardware are covered by maintenance contracts which are no less comprehensive than those employed by or on behalf of HSSBC prior to the Effective Date, with nationally recognized leading providers of such maintenance services.

6.5 Critical Contracts

Service Provider will not:

- (a) acquire or lease from a Third Party or any Affiliate of Service Provider, or provide (including through any internal financing arrangements) itself, any Hardware;
- (b) use to provide the Services any software (other than the software used as of the Service Start Date); or
- (c) enter into, renew, supplement, amend or modify, any Contract (other than Contracts included in this Article 6),

where such Hardware, Software or Critical Contract to the provision of the Services, without the prior written consent of HSSBC (through the Change Process). The Service Provider will not be liable for any failure to provide the Services as otherwise required pursuant to this Agreement to the extent that Service Provider's ability to provide such services is affected by HSSBC unreasonably delaying or withholding consent as contemplated by this Section 6.5. For clarity, for the purposes of this Agreement, a piece of Hardware, Software or a Contract, is "**Critical**" to the provision of the Services where such Hardware, Software or Contract is Dedicated and either: (i) the acquisition cost of the Hardware or Software or total payment obligation under the Contract exceeds (or would exceed in the case where Service Provider provides or internally finances such Hardware or Software itself) \$5,000; (ii) the Hardware, Software or products or services provided under the Contract are not generally commercially available; or (iii) the Hardware or Contract is otherwise specifically identified as being critical pursuant to the Change Process.

6.6 Assignment of Contracts Executed After Services Start Date

Service Provider will use all reasonable efforts to ensure that any Contract executed by Service Provider after the Service Start Date (including leases for Hardware, licences for Software and any real property leases) will be transferable or assignable to HSSBC or its designee at any time upon notice without any additional charge or expense.

6.7 Asset and Contract Information

At the time that any Hardware, Software or Contract is acquired, leased, provided, entered into, renewed, supplemented, amended or modified in connection with the Services as provided for in this Article 6, Service Provider will specify through the Change Process:

- (1) whether or not such Hardware, Software or the products or services provided under such Contract are required for the provision of the Services;
- (2) whether or not such Hardware, Software or the products or services provided under such Contract will be Dedicated to the provision of the Services throughout the Term;
- (3) whether or not such Hardware, Software or the products or services provided under such Contract are generally commercially available, and if not, what alternative hardware, software or products or services are generally commercially available along with the then current cost of acquiring such upon the expiration of the Term or termination of this Agreement;
- (4) for each such Contract (including Contracts for the lease of Hardware or licence of Software) whether such Contract is transferable or assignable to HSSBC or its designee, and if so on what terms (for example, notice requirements and transfer charges or costs, if any);
- (5) the acquisition cost and payment or purchase option obligations (including depreciation schedules) in respect of such Hardware, Software or Contract, in order that HSSBC will be able to reasonably understand its potential obligations in the event it is required or exercises its option to acquire or assume such Hardware, Software or Contract in accordance with Section 18.8 upon the expiration of the Term or early termination of the Agreement; and
- (6) any amendments required to ensure that Schedule Y (*Service Provider Supplied Hardware*) contains a full and accurate list and description of all Hardware, Schedule Y (*Service Provider Supplied Software*) contains a full and accurate list and description of all Software and Schedule Z (*Service Provider Contracts*) contains a full and accurate list and description of all Contracts.

6.8 Use of HSSBC Facilities

- (1) *Use of HSSBC Facilities.* Subject to the availability of appropriate space, HSSBC will make reasonably necessary space and furnishings (the “**HSSBC Facilities**”) available to Service Provider’s On-site Dedicated Personnel who are performing Services at HSSBC Service Locations throughout the Term and will maintain HSSBC Facilities in areas and at a level similar to that which it maintains for its own employees performing similar work.
- (2) *HSSBC Facilities “AS IS”.* The HSSBC Facilities and the office space, furnishings and assets installed or operated at HSSBC Facilities and supplies allocated, are provided “AS IS, WHERE IS,” and the are to be used exclusively for performance of Services for HSSBC. Any office supplies and furnishings (other than existing, basic office furnishings) for use of the On-site Dedicated Personnel are the exclusive responsibility of Service Provider.

- (3) *Service Provider Improvements.* Service Provider will be entitled to make improvements to any space where On-site Dedicated Personnel are performing Services on-site at a HSSBC Service Location, provided that: (i) such improvements will have been previously approved in writing by HSSBC (which approval may be withheld in HSSBC's discretion); (ii) such improvements will be made at no cost to HSSBC; (iii) any Subcontractors used by Service Provider to perform such improvements will have been approved in writing by HSSBC; (iv) HSSBC will be granted, without further consideration, all rights of ownership in such improvements; and (v) such improvements are subject to the terms of Section 6.8(4).
- (4) *Other Facility-Related Obligations.* Except as expressly provided in this Agreement, Service Provider will use HSSBC Facilities for the sole and exclusive purpose of providing the Services. Use of such facilities by Service Provider does not constitute a leasehold interest in favour of Service Provider. Service Provider will use HSSBC Facilities in a reasonable and efficient manner. Service Provider, Service Provider Personnel and Subcontractors will keep HSSBC Facilities clean and in good order, will not commit or permit waste or damage to such facilities, and will not use such facilities for any unlawful purpose or act. Service Provider will comply, and will cause its Service Provider Personnel and Subcontractors to comply, with all Applicable Laws, all Contracts relating to HSSBC Facilities (copies or relevant excerpts of which will be provided to Service Provider in hard copy or electronic form) and all HSSBC Policies and Procedures that relate to access to and/or use of the HSSBC Facilities, including procedures for the physical security of HSSBC Facilities. Service Provider will not make any improvements or changes involving structural, mechanical, or electrical alterations to HSSBC Facilities without HSSBC's prior written approval. When HSSBC Facilities are no longer required for performance of the Services and if requested by HSSBC, Service Provider will return such facilities to HSSBC in substantially the same condition as when Service Provider began use of such facilities, subject to reasonable wear and tear. Service Provider will not cause the breach of any lease Contracts governing use of HSSBC Facilities.
- (5) *Specific Hardware and Carrier Charges.* Except as otherwise expressly provided herein, Service Provider will provide and will in all respects be responsible for all hardware, software and services required or used by Service Provider to provide the Services, including telephone and modem lines, telephones, computers and peripheral devices, computer connections and network access, and Service Provider will be responsible for all usage-based carrier charges incurred by Service Provider Personnel and all usage-based carrier charges incurred to provide a telecommunications link between Service Provider and HSSBC Facilities.

6.9 No Liens

To the extent that any HSSBC Hardware or other assets of HSSBC are located at a Permitted Service Location (other than an HSSBC Facility), the Service Provider covenants and agrees to protect and keep free, all assets of HSSBC used in the provision of the Services from any and all liens, claims, liabilities, security interests, encumbrances, pledges, mortgages or charges of any kind arising through the Service Provider or as a result of the performance by the Service Provider of the Services (each a "**Lien**"). If any such Lien is filed, then the Service Provider will immediately notify HSSBC by providing a copy of the Lien claim. The Service Provider shall cause such Lien to be satisfied or otherwise discharged within ten (10) Business Days. If any such Lien is filed or otherwise imposed, and the Service Provider does not cause such Lien to be released and discharged forthwith, then HSSBC has the right, but not the obligation, to pay all sums necessary to obtain such release and discharge or otherwise cause the Lien to

be removed to the satisfaction of HSSBC from funds retained from payment then due or thereafter to become due as Fees payable to the Service Provider.

ARTICLE 7 CHANGE PROCESS

7.1 HSSBC Initiation of Change Process.

HSSBC may initiate the Change Process at any time, and from time to time, during the Term and any Transition Out Period, by completing and delivering to Service Provider a request for a Change (“**Change Request**”) in the form attached as Schedule E (*Change Process Forms*). Each Change Request shall be signed by the HSSBC Contract Executive, or his or her designee.

HSSBC may solicit a response from the Service Provider and other prospective providers to perform services (for clarity, the price to be charged for such services not currently set forth in Schedule DD (*Fees*)). Where HSSBC wishes to obtain a proposal for such services or otherwise requires a Change to the Services from the Service Provider under this Agreement, HSSBC will provide the Service Provider with a Change Request. HSSBC may make a Change (including increases or decreases) to the Services, including to:

- (a) the scope, content or description of the Service in this Agreement; or
- (b) other contractual obligations relating to the provision of the Services,

by following the Change Process. The Service Provider may not implement any such change without HSSBC’s prior written consent, which may be withheld in HSSBC’s discretion.

7.2 Content of Change Request.

The Change Request shall specify all of the proposed changes in sufficient detail to enable evaluation by the Service Provider.

7.3 Service Provider Initiation of Change Process & Response to Change Request.

Within ten (10) Business Days following the date of Service Provider’s receipt of a Change Request, or at Service Provider’s own initiative, Service Provider shall provide HSSBC with a change proposal (“**Change Proposal**”) in the form attached as Schedule E (*Change Process Forms*) that contains the following:

- (1) a description of any:
 - (a) Change to the Services;
 - (b) additional Services;
 - (c) change to the terms of the Agreement;
 - (d) additions to, removal of, or changes to any SLAs or SLOs;
 - (e) work which is to be performed; or
 - (f) other Changes, in each case as requested in or required by the Change Request;

- (2) the roles and responsibilities of the Parties with respect to such Changes or work;
- (3) if applicable, the Deliverables required by or to be prepared in connection with the Change Request;
- (4) categories of personnel required to complete any additional work required by the Change Request;
- (5) if applicable, an implementation plan and the timeframe for performance with Critical Milestones;
- (6) if applicable, completion and acceptance criteria for any work or Deliverables required by the Change Request;
- (7) if applicable, the ownership and licensing terms of any software, hardware or other materials to be developed or supplied under the Change Proposal;
- (8) if applicable, the resources reasonably required to perform the requested work and any additional fees and/or costs which may reasonably be required to perform such work;
- (9) if applicable, the schedule, applicable milestones and method of payment; and
- (10) if applicable, any additional continuing Fees that would apply.

Each Change Proposal shall be signed by the Service Provider's Contract Executive or his or her designees. In respect of any proposed Change Request, Service Provider shall provide reasonable assistance to HSSBC with respect to HSSBC's assessment and approval thereof, the development of HSSBC's requirements and work-plans, and any re-scoping required by HSSBC.

7.4 Implications of Changes on Fees

The Fee implications, if any, set out in the Change Proposal shall be calculated on a net basis and shall equal the net amount of the increases and reductions in costs reasonably expected to result from the proposed Changes, taken in the aggregate. Where additional obligations are to be imposed on Service Provider, any increase to the Fees set out in the Change Proposal shall be limited to those costs reasonably required in order for Service Provider to meet such new obligations. Where Service Provider's previous obligations are to be removed or reduced, the reduced Fees set out in the Change Proposal shall reflect the costs that Service Provider is, acting diligently, reasonably able to avoid as a result of the removal and/or reductions in the obligations. If any changes to the Fees are proposed in a Change Proposal, such Change Proposal shall contain a detailed, cost-based, justification of the reasonableness of the proposed increases and reductions in Fees.

7.5 Complex Change Request

In the case of a large or complex Change Request, HSSBC may agree that Service Provider will promptly provide to HSSBC a high level summary of the above information for HSSBC's consideration. After such consideration, HSSBC may request Service Provider to provide a detailed Change Proposal, which shall be prepared and delivered within ten (10) Business Days of such request.

7.6 Acceptance of Change Proposal.

In order to be effective and the services described therein to be provided and incorporated into the Services, the Change Proposal must be accepted and signed by the HSSBC Contract Executive, or any other Person designated by the HSSBC Contract Executive in writing from time to time. Such agreed Change Proposal thereby becomes a Change Order pursuant to the Agreement. HSSBC's acceptance or rejection of any Change Proposal shall be in its discretion. If Service Provider reasonably believes that the rejection of the Change Proposal will have an unavoidable, material negative impact on the Services, Service Provider will notify HSSBC of such belief and of a proposed work-around to avoid such impact.

7.7 Change Proposal Fees

Service Provider's proposed fees for performing the work described in each Change Proposal will be competitive, commercially reasonable and calculated in the manner (fixed price, time and materials, or otherwise) requested by HSSBC. The fees will, in each case, be based upon the Service Rates or such lower rates as may be offered by Service Provider to HSSBC to ensure the competitiveness of the services to be provided under the Change Order.

ARTICLE 8 CONTRACT MANAGEMENT

8.1 Governance

The Parties' relationship management and governance under this Agreement will be in accordance with the procedures, roles and responsibilities set out in Schedule H (*Governance*).

8.2 Management Functions

From time-to-time as requested by HSSBC and in order to administer certain functional aspects of the Parties' relationship, each Party will designate appropriate, qualified individual(s) to address various subject matters including performance and process management, architecture and technology management, finance/contract management, enterprise standards management, sourcing relationship management, quality assurance management, business unit management, and transition management, with such roles and responsibilities of these individuals as may be determined by the Parties at such time.

ARTICLE 9 PERSONNEL

9.1 Service Provider Key Personnel

- (1) **Designation of Service Provider Key Personnel.** Each of the Service Provider Key Personnel is designated on, and will have the general responsibility assigned to such person as set forth in Schedule BB (*Service Provider Key Personnel*).
- (2) **Changes to Service Provider Key Personnel.** Schedule BB (*Service Provider Key Personnel*) may be modified from time-to-time in accordance with this Agreement and will be deemed modified upon any approved replacement or substitution of a new person for any Service Provider Key Personnel.
- (3) **HSSBC Approval Right.** Prior to the assignment, hiring or designation of any person to fill the position or perform the duties provided by any Service Provider Key Personnel, HSSBC will have the right to interview such person and approve the selection of such

person to fill the position or perform the duties provided by the Service Provider Key Personnel to be replaced.

- (4) **Knowledge Backup.** Service Provider will ensure that all Service Provider Key Personnel have at least one designated individual as his or her core knowledge backup, Service Provider acknowledges that cross-sharing of knowledge is critical to minimizing the potential impact to HSSBC if any of the Service Provider Key Personnel become unavailable for any reason.

9.2 Service Provider Personnel

The Service Provider will, at all times during the Term, employ sufficient personnel of the Service Provider (including both employees and independent contractors of the Service Provider), and the Service Provider will ensure that sufficient personnel (including both employees and independent contractors), are employed by its Subcontractors, to perform the Services in accordance with the terms and conditions of this Agreement including, without limitation, the Service Levels. At least once per Contract Year, but not more than twice per Contract Year, and upon thirty (30) days prior written notice of such a request by HSSBC, Service Provider will provide HSSBC with a written list of all Principally Dedicated Service Provider Personnel, and the contents of such written list will include, the employees' titles, names, dates of placement, assignment addresses, principal duties and responsibilities. Service Provider will, upon receiving a request from HSSBC, make available to HSSBC the resume of any Service Provider Personnel and such other documents reasonably requested by HSSBC relating to the educational and professional background of such Service Provider Personnel.

In addition, the Service Provider will ensure that Service Provider Personnel, who spend sixty percent (60%) or more of their time providing the Services ("**Principally Dedicated**") give HSSBC priority over all of Service Provider's other customers.

9.3 Removal/Replacement of Service Provider Key Personnel

All Service Provider Key Personnel will be assigned to perform the Services on such basis (for example, full time assignment or otherwise) as set opposite such Service Provider Key Personnel in Schedule BB (*Service Provider Key Personnel*) and to ensure that the Services contemplated hereunder are provided in an efficient and timely manner. The Service Provider shall not transfer, reassign or otherwise re-deploy any Service Provider Key Personnel from performance of Service Provider's duties under this Agreement, except in the case of a leave of absence or termination, for the period set opposite such Service Provider Key Personnel's name in Schedule BB (*Service Provider Key Personnel*). If any one of the Service Provider Key Personnel becomes incapacitated, takes a leave of absence, employment with Service Provider (or any of Service Provider's Affiliates or is terminated or is transferred, reassigned or redeployed with the consent of HSSBC, Service Provider will provide HSSBC with as much advance notice as is feasible under the circumstances, will promptly consult with HSSBC with respect to an appropriate replacement and will promptly ensure that such Service Provider Key Personnel's function is competently performed on an interim basis, to allow the Parties sufficient time to establish a longer term solution. Service Provider will promptly identify potential candidates to replace such Service Provider Key Personnel. Service Provider will replace such person with another person, approved by HSSBC, that possesses comparable experience and training as the Service Provider Key Personnel and has sufficient knowledge and expertise to perform the Services in accordance with this Agreement. For purposes of this Section 9.3, the movement of Service Provider Key Personnel from the employ of Service Provider to an Affiliate of Service Provider will be considered a reassignment requiring HSSBC's consent and not a cessation of employment. To the extent feasible, Service Provider will provide HSSBC with advance notice and will consult with HSSBC concerning, and prior to, the replacement of Service Provider Key

Personnel. Service Provider will use commercially reasonable efforts to promptly identify proposed candidates in the event of any sudden departure of any Service Provider Key Personnel.

9.4 Removal of Service Provider Personnel by HSSBC

Notwithstanding anything contained in this Agreement to the contrary, if HSSBC believes that the performance or conduct of any Person employed or retained by Service Provider to perform Service Provider's obligations under this Agreement (including Service Provider Key Personnel) is unsatisfactory for any reason or is not in compliance with the provisions of this Agreement, HSSBC will so notify Service Provider in writing and Service Provider will promptly address the performance or conduct of such Person, or, at HSSBC's request, acting reasonably, promptly replace such Person with another Person acceptable to HSSBC and with sufficient knowledge and expertise to perform the Services in accordance with this Agreement. Service Provider will respond to any such request within five (5) Business Days of receiving notice from HSSBC, and will provide any replacement required within fifteen (15) Business Days of receiving HSSBC's request to replace such Person. HSSBC will not be responsible for any relocation expenses arising from any relocation activities involved in Service Provider complying with this Section 9.4 or any other term or condition of this Agreement.

9.5 Replacement Personnel

Any and all proposed replacement personnel under this Article 9 will be:

- (a) "qualified," meaning that the proposed replacement personnel will possess comparable experience and training as the Service Provider Personnel or Service Provider Key Personnel, as the case may be, to be replaced and has sufficient knowledge and expertise to perform the Services in accordance with this Agreement; and
- (b) the replacement personnel will work with the replaced Service Provider Key Personnel during a mutually agreed transition period, the duration of which will be determined based on the duties and responsibilities of the person to be replaced, and all costs and expenses associated with educating and training the replacement personnel will be borne by Service Provider. Without limiting the generality of the foregoing, such transition period for the Service Provider Contract Executive will be at least one (1) month in length. In addition, provided that the replaced Service Provider Key Personnel remains employed by Service Provider, such individual will continue to be available by telephone to answer any HSSBC-related questions.

9.6 In-Scope and Selected Employees

In the event that any HSSBC Personnel are being transferred to Service Provider as part of the business agreement between the Parties, such transfer will be completed in accordance with terms and conditions set out in a Master Transfer Agreement between the Parties and dated the Effective Date.

9.7 Criminal Records Check

- (1) ***Criminal Records Review Act*** - The Service Provider shall demonstrate to HSSBC that it has complied with the requirements of the *Criminal Records Review Act* ("CRRA"). A criminal record check under the CRRA is in addition to other criminal record check requirements set forth in this Agreement or otherwise established by the Service Provider for its employees. The Service Provider will also ensure that any individual who is determined to be a risk to children or vulnerable adults under the CRRA will not have access to or work with children or vulnerable adults at any such HSSBC Facility. The

Service Provider shall ensure that its criminal record checks are kept current and up to date at all times and if requested by HSSBC confirm the currency of such criminal record checks, in writing.

- (2) **CPIC Level 2** - All Service Provider Personnel (including for certainty, Service Provider Key Personnel) will, prior to their assignment to perform Services, be subject to security clearances by Service Provider (a criminal records check using Canadian Police Identification Centre (CPIC) Level 2 query) consistent with any applicable policies and/or practices as may be requested and/or approved by HSSBC, from time to time. All costs and expenses associated with providing, equipping and retaining Service Provider Personnel are included within the Fees.

9.8 Minimum Proficiency Levels

In addition to Service Provider Key Personnel, Service Provider will provide and make available such Service Provider Personnel as are required to fully and properly perform all of Service Provider's obligations under this Agreement.

Service Provider Personnel will have experience, training and expertise sufficient to perform Service Provider's obligations under this Agreement including Service Provider's obligations with respect to the Service Levels. In the event HSSBC believes any such person does not possess the indicated level of experience and expertise, HSSBC may request removal of such person pursuant to Section 9.4 and/or withhold payment of disputed amounts relating to time and materials work performed inefficiently or in a substandard manner.

9.9 Training

Service Provider will provide, and cause its Subcontractors to provide, all such training to the Service Provider Personnel (and for greater certainty, the Subcontractors personnel) as may be necessary for them to perform all of Service Provider's duties under this Agreement (including technical training as well as training regarding applicable administrative matters such as training regarding applicable HSSBC Policies and Procedures and the Privacy Requirements).

9.10 Supervision and Conduct of Service Provider Personnel

- (1) Neither the Service Provider nor the Service Provider Personnel, Subcontractors or agents of Service Provider are or will be deemed to be employees of HSSBC. Service Provider or, with respect to Persons who work for a Subcontractor, the applicable Subcontractor(s), will be responsible for their own staff assigned to provide Services, and, subject to this Article 9, Service Provider (directly or through Subcontractors) will have the sole right to direct and control the management of such staff.
- (2) HSSBC will have no direct or indirect liability to any Service Provider Personnel or other Persons who work for Service Provider or Subcontractors. Without limiting the foregoing, Service Provider and its Subcontractors will, as applicable, in respect of Persons who work for Service Provider or Subcontractors:
 - (a) determine and pay all applicable wages and salaries, including applicable overtime and other premium pay;
 - (b) provide healthcare, retirement and other benefits, as it deems necessary or desirable;

- (c) comply with Applicable Laws, including income tax and employment tax withholding laws;
 - (d) comply with all Applicable Laws governing the relationship between Service Provider or Subcontractors and their respective employees, including laws relating to accommodation of disabilities, equal pay, provision of leave (for example, jury duty, etc.), unlawful discrimination, as well as wage and hour requirements;
 - (e) comply with all workers' compensation insurance coverage Applicable Laws;
 - (f) file all applicable reports with federal, provincial, state and local agencies and authorities as required by Applicable Law;
 - (g) maintain all required employment records, including personnel and medical files consistent with Applicable Laws and customary business practices; and
 - (h) comply with all applicable equal employment opportunity Applicable Laws.
- (3) While at or on an HSSBC Facility or otherwise at the premises of HSSBC, the Service Provider, the Subcontractors and the Service Provider Personnel will:
- (a) conduct themselves in a businesslike manner; and
 - (b) comply with the applicable HSSBC Policies and Procedures; and
 - (c) to the extent that notice of same is given by HSSBC to Service Provider, all other applicable rules and requests of HSSBC including those relating to safety and health and personal, professional and ethical conduct (including those contained in HSSBC's employee manuals and written policies and procedures) as may be required for such locations.

ARTICLE 10 USE OF SUBCONTRACTORS

10.1 Use of Subcontractors

The Service Provider acknowledges and agrees that it is the prime contractor for the Services under this Agreement and, notwithstanding that the Service Provider may enter into Subcontracts with Subcontractors to perform certain of the Services, the Service Provider shall remain solely responsible for all of its obligations under this Agreement. The Service Provider shall be liable for any and all defaults or delays caused by any Subcontractor as though such acts, omissions, defaults or delays were caused by the Service Provider.

10.2 Approval of Key Subcontractors

Service Provider will not perform or provide the Services through Subcontractors without the prior written consent of the HSSBC as to the selection of the Subcontractor, which consent may be withheld by HSSBC in its discretion. Notwithstanding the foregoing, HSSBC hereby consents to the use by Service Provider of the Subcontractors identified in Schedule CC (*Approved Subcontractors*). Service Provider will ensure that each Subcontractor has obtained and maintains all licenses required in connection with the Services for which such Subcontractor is responsible. Service Provider agrees that it will continue

throughout the Term to retain the Subcontractors identified as “**Key Subcontractors**” in Schedule CC (*Approved Subcontractors*) and that such Persons will continue to provide the Services initially provided, unless Service Provider wishes to provide the Services itself or has obtained HSSBC’s prior written consent to any changes, which consent may be withheld in HSSBC’s discretion.

10.3 Subcontractor Information

Service Provider will, prior to seeking HSSBC’s consents, pursuant to Section 10.2 provide HSSBC with a written notice specifying the components of the Services to be provided by the Subcontractor, the scope of the proposed subcontract, and the identity and qualifications of the proposed Subcontractor. At HSSBC’s request, Service Provider will forward to HSSBC a description of the scope and material terms (other than financial) of the subcontract or proposed subcontract.

10.4 Liability and Replacement

In no event will Service Provider be relieved of its obligations under this Agreement as a result of its use of any Subcontractor, Affiliate, employee or agent to perform the Services or such obligation. Unless expressly provided in this Agreement, or unless otherwise required by the context, Service Provider will cause its Subcontractors to comply with each obligation hereunder of Service Provider (whether or not such obligation is expressly stated hereunder to apply to Subcontractors) and Service Provider will be liable for any failure of its Subcontractors to comply with such obligations. Service Provider will supervise the activities and performance of each Subcontractor, Affiliate, employee or agent and will be liable for any act or failure to act by such Subcontractor, Affiliate, employee or agent to the same extent as if the act or failure was committed by Service Provider. If HSSBC determines that the performance or conduct of any Subcontractor is unsatisfactory, HSSBC may notify Service Provider of its determination in writing, indicating the reasons therefor, in which event Service Provider promptly will take all necessary actions to remedy the performance or conduct of such Subcontractor or, subject to the terms of Section 10.2, replace such Subcontractor by another Third Party or by Service Provider Personnel.

10.5 Direct Agreements

Upon expiration of the Term or termination of the Agreement for any reason, HSSBC will have the unfettered right to enter into direct Contracts with any Subcontractors. Service Provider represents, warrants, and covenants to HSSBC that its arrangements with such Subcontractors will not in any way prohibit or restrict such Subcontractors from entering into direct Contracts with HSSBC.

ARTICLE 11 BUSINESS REQUIREMENTS STRATEGY

11.1 General

HSSBC will retain the exclusive right and authority to set HSSBC’s business strategies and to determine, alter, and define any or all of HSSBC’s requirements and operational and business processes and procedures. HSSBC will consult with Service Provider to inform Service Provider, in advance, of material changes in HSSBC’s requirements and business processes relating to the Services. Service Provider will actively participate in any of the foregoing as HSSBC requests and will, if requested, provide HSSBC with advice, information and assistance in identifying and defining projects and future requirements to meet HSSBC’s objectives.

11.2 Specific Retained Responsibilities

Without limiting the generality of Section 11.1, HSSBC will retain exclusive authority, discretion and rights of approval with respect to the following:

- (1) considering opportunities to reduce the costs of the Services suggested by Service Provider (and Service Provider will use commercially reasonable efforts to suggest such opportunities) and making decisions with respect to the implementation of Changes to exploit such opportunities (whether identified by Service Provider or HSSBC); and
- (2) overseeing the delivery of Services, the development of Service Levels, service specifications and standards; the performance of Benchmarking; selection of suppliers; security requirements; prioritization, and service conflict resolution among Authorized Users; and general operational management guidelines;
- (3) HSSBC will have the right, in its discretion, to approve or deny any Change Proposals in accordance with the applicable Change Process.
- (4) HSSBC will retain exclusive authority, discretion and rights of approval with respect to performing validation and verification activities in relation to key Changes and operational processes.
- (5) HSSBC will have the right to review and accept or reject all components, Deliverables and systems to be provided by Service Provider to HSSBC under this Agreement, in accordance with the applicable documents issued thereunder respecting work to be performed by Service Provider.

[Insert other retained responsibilities as may be appropriate in the circumstances.]

ARTICLE 12 INTELLECTUAL PROPERTY RIGHTS AND LICENSES

12.1 HSSBC-Owned Materials

Other than Service Provider's pre-existing or independently developed: (a) report formats, or (b) Service Provider Custom Software (together "**Service Provider Tools**") used in the provision of the Services, HSSBC will be the owner of all newly created Intellectual Property Rights in the Deliverables and Derivative Works created with respect to the Deliverables including, without limitation, the Custom Developed Applications Software and all Derivative Works created with respect to such Custom Developed Applications Software (collectively, the "**HSSBC-Developed Deliverables**"), unless otherwise agreed to by the Parties in a Change Order.

Nothing in this Agreement affects HSSBC's ownership of all rights, title and interest including, without limitation, Intellectual Property Rights in and to:

- (a) HSSBC-Developed Deliverables and all Derivative Works thereto;
- (b) Data and Modified Data;
- (c) HSSBC Proprietary Software and all Derivative Works thereto; or
- (d) HSSBC Licensed Software

(collectively, the "**HSSBC-Owned Materials**").

HSSBC makes no grant to Service Provider of any ownership interests, Intellectual Property Rights or other rights in the HSSBC-Owned Materials, except for the limited licenses expressly set forth herein. HSSBC retains all other rights in and to the HSSBC-Owned Materials that are not expressly licensed or granted to Service Provider under this Agreement. Service Provider acknowledges that the Parties do not intend Service Provider to be, and in no event will Service Provider be deemed to be, a joint owner or joint author of any of the Intellectual Property Rights in any HSSBC-Owned Materials.

12.2 Service Provider-Owned Software

Nothing in this Agreement affects Service Provider's ownership of all rights, title and interest, including Intellectual Property Rights, in and to:

- (a) Service Provider Tools and all Derivative Works thereto; and
 - (b) the Service Provider Commercial Software and all Derivative Works thereto
- (collectively, the "**Service Provider-Owned Software**").

Service Provider makes no grant to HSSBC of any ownership interests, Intellectual Property Rights or other rights in the Service Provider-Owned Software, except for the licenses and rights in and to the Service Provider-Owned Software expressly set forth herein or in the applicable commercial license. Service Provider retains all other rights not expressly licensed or granted to HSSBC under this Agreement. HSSBC acknowledges that the Parties do not intend HSSBC to be, and in no event will HSSBC be deemed to be, a joint owner or joint author of any of the Intellectual Property Rights in the Service Provider-Owned Software.

12.3 Service Provider Perpetual Licenses to HSSBC

Where Service Provider Tools are embedded or embodied in any HSSBC-Owned Materials delivered by Service Provider to HSSBC, Service Provider hereby grants to HSSBC a perpetual, non-exclusive, fully-paid up, worldwide, transferable, sub-licensable and assignable (subject to transferees, sublicenses and assignees agreeing to be bound by the restrictions in this license and applicable confidentiality restrictions as set forth in Section 13.10 in relation to any Service Provider Confidential Information) right and license, to use, copy, distribute, modify, translate and create derivative works (including without limitation Derivative Works) of such embedded Service Provider Tools, as embedded or embodied in the HSSBC-Owned Materials as delivered, for the purpose of HSSBC exercising its rights of ownership in the applicable HSSBC-Owned Materials.

12.4 Assignment of any Ownership Rights in HSSBC-Owned Materials

Service Provider hereby assigns and will assign, and will cause its Subcontractors and Service Provider Personnel to assign, to HSSBC or its designee, immediately upon their creation, all of their rights, title and interest including without limitation copyright in and to the HSSBC-Owned Materials, that Service Provider or its Subcontractors or Service Provider Personnel have, or may have, authored during the Term, without further consideration, free from any claims, royalties or liens. Service Provider will also obtain waivers of any author's moral rights in such HSSBC-Owned Materials in favour of HSSBC, its assignees, licensees and designees.

Service Provider will obtain similar written assignments and waivers from all Subcontractors and Service Provider Personnel who will perform any Services, so as to ensure HSSBC's ownership of the HSSBC-Owned Materials as provided herein, and will not commence the deployment of any such Subcontractor

or Service Provider Personnel until such a written assignment and waiver has been obtained from such Subcontractor or Service Provider Personnel and delivered to Service Provider.

12.5 HSSBC Licenses to Service Provider

During the Term, HSSBC hereby grants to Service Provider a non-exclusive, fully-paid up, non-transferable right and license, to use, copy, limited, modify, translate and create Derivative Works of the HSSBC-Owned Materials for the sole purpose of delivering the Services to HSSBC. In connection therewith, the following provisions will apply:

- (a) the foregoing rights granted to Service Provider do not give Service Provider the right, and Service Provider is not authorized, to market any HSSBC-Owned Materials or Derivative Works thereto or to authorize any other Person to market or use any HSSBC-Owned Materials or Derivative Works thereto (other than Subcontractors who require the same for purposes of, and in connection with, the delivery of the Services to HSSBC);
- (b) Service Provider will not be permitted to use any HSSBC-Owned Materials or any Derivative Works thereto for the benefit of any other Person without the prior written consent of HSSBC, provided that Service Provider will have the right to authorize its Subcontractors to use HSSBC-Owned Materials solely for the purpose of providing the Services pursuant to, and in accordance with, the terms of this Agreement; and
- (c) the foregoing rights will terminate upon the termination or expiry of this Agreement, which ever is the later.

12.6 Further Assurances and Co-operation

The Parties will co-operate with each other and execute such other documents as may be appropriate to achieve the objectives in this Article 12.

Each Party will execute and deliver, and will cause its subcontractors and employees to execute and deliver, any and all Intellectual Property Rights applications, assignments and other documents that the other Party requests for protecting the ownership rights granted or otherwise recognized under this Article 12 to the requesting Party. Each Party will have the full and sole power to prosecute such applications and to take all other action concerning such rights, and the other Party will co-operate, at the requesting Party's expense, in the preparation and prosecution of all such applications.

12.7 Disclosure and Delivery

During the Term, Service Provider will promptly and fully disclose in writing and deliver to HSSBC all HSSBC-Owned Materials made, created, developed, procured or arising under or as a result of this Agreement, which delivery will include without limitation both source code and object code and all available user manuals and documentation.

12.8 HSSBC Data

- (1) **Access to Data.** Service Provider may access HSSBC Data solely to the extent Service Provider requires access to such data to provide the Services in accordance with the terms of this Agreement. Service Provider may only access and process HSSBC Data in connection herewith or as directed by HSSBC in writing and may not otherwise modify

HSSBC Data, merge it with other data, commercially exploit it or engage in any practice or activity that may in any manner adversely affect the integrity, security or confidentiality of such data, other than as specifically permitted herein or as directed by HSSBC in writing. Nothing in this Agreement affects HSSBC's ownership of all rights, title, and interest, including Intellectual Property Rights, in and to the HSSBC Data and in and to any Derivative Works therefrom (collectively, the "**Data and Modified Data**").

- (2) **Service Provider Assignment.** Service Provider hereby assigns and will assign, and will cause its Subcontractors and Service Provider Personnel to assign, to HSSBC or its designee, all of their rights, title and interest including newly created copyright in and to the Data and Modified Data, that Service Provider or its Subcontractors or Service Provider Personnel have, may have or obtain, without further consideration, free from any claim, royalties, lien for balance due, or rights of retention thereto on the part of Service Provider. Service Provider will also obtain waivers of any author's moral rights in such Data and Modified Data in favour of HSSBC, its assignees, licensees and designees.
- (3) **Waivers.** Service Provider will obtain similar written undertakings and waivers from all Subcontractors and Service Provider Personnel who will perform any Services, so as to ensure HSSBC's ownership of the Data and Modified Data as provided herein, and will not commence the deployment of any such Sub-contractor or Service Provider Personnel until such a written undertaking and waiver has been obtained from such Subcontractor or Service Provider Personnel and delivered to Service Provider. Service Provider acknowledges that the Parties do not intend Service Provider to be a joint owner of any Intellectual Property Rights in the Data and Modified Data and that Service Provider will in no event be deemed the joint author of any Data and Modified Data. HSSBC will have unrestricted access to all Service Provider materials, premises and computer files containing the Data and Modified Data. The Parties will co-operate with each other and execute such other documents as may be appropriate to achieve the objectives in this Section 12.8.

12.9 Infringement

If either Party receives a notice of infringement, request for disclosure, subpoena, or other inquiry with respect to any matter under this Article 12, then such Party will, as soon as practical, notify the other Party in writing and the matter will be dealt with in accordance with Article 21. Neither Party will respond to such notices, requests, subpoenas or inquiries, or disclose the other Party's Confidential Information to third parties, without first so notifying the other Party in writing (to the extent possible).

12.10 Co-operation

If at any time HSSBC brings, or investigates the possibility of bringing, any claim against any Person for infringement of any Intellectual Property Right of HSSBC, including misappropriation of trade secrets and misuse of confidential information (including without limitation, Data and Modified Data), then Service Provider, upon the request and at the expense of HSSBC, will provide reasonable cooperation and assistance to HSSBC in the investigation or pursuit of such claim, subject to Service Provider's confidentiality obligations to Affiliates and Third Parties.

12.11 Use of Names and Trademarks

Neither Party will have the right to use, reproduce or display and will not use, reproduce or display, the name of the other Party or any of its officials or employees, or logos or trade-marks in any manner

without the prior written consent of the other Party, which consent may be withheld in such other Party's discretion.

ARTICLE 13

PRIVACY, SECURITY AND CONFIDENTIALITY

13.1 Security

- (1) **General.** Service Provider will provide the Services utilizing security technologies and techniques which are at least as secure as the security standards that HSSBC observed as of the Effective Date, and as may be set out in the HSSBC Policies and Procedures regarding security. If HSSBC requires that different or additional security requirements, policies or procedures be implemented by Service Provider during the Term of this Agreement, HSSBC and Service Provider will, through the Change Process, identify and implement such different or additional security measures.
- (2) **Security Warranties.** Service Provider warrants and undertakes that, as part of the Services provided to HSSBC, it will take, implement and maintain the technical and organizational security procedures and measures set out in Schedule L (*Privacy and Security*) and in the HSSBC Policies and Procedures to preserve the security and confidentiality of personal data processed by it and protect such personal data against unauthorized or unlawful disclosure, access or processing, accidental loss, destruction or damage. Service Provider will implement such other technical and organizational security procedures and measures as may be required or directed by HSSBC from time to time, in accordance with the Change Process, including, at HSSBC's request, providing relevant assistance to HSSBC to devise appropriate technical and organization measures. To the extent such assistance can be provided by personnel dedicated to the performance of the Services, such assistance will be provided without additional charge or fee. By executing this Agreement, HSSBC appoints Service Provider as a data processor of HSSBC Data. As a processor of such data, Service Provider will process HSSBC Data as specified herein. Service Provider may perform such processing as it reasonably considers necessary or appropriate to perform the Services. Upon expiration of the Term or termination of the Agreement, HSSBC will (if necessary) give the data protection authority prompt notice of the termination of the appointment of Service Provider as HSSBC's data processor.

13.2 Privacy – General

- (1) **Privacy Requirements.** The Service Provider will, at all times, ensure that the Service Provider Personnel, and to the extent applicable in accordance with the provisions of Schedule L (*Privacy and Security*) its Subcontractors, comply with the obligations and requirements, the Privacy Requirements, set forth in Schedule L (*Privacy and Security*), as such are amended from time to time in accordance with this Agreement.
- (2) **Foreign Disclosure Orders.** The Service Provider expressly acknowledges and agrees that it is subject to the laws of British Columbia and the laws of Canada applicable in British Columbia with respect to this Agreement and the performance of the Service Provider's obligations under this Agreement, and it is not subject to Foreign Disclosure Laws including, without limitation, any orders, directives, rulings, requirements, judgments, injunctions, awards or decrees, decisions, or other requirements issued pursuant to any Foreign Disclosure Laws, or any directions or requests from any Affiliate of the Service Provider in respect of the same (each a "**Disclosure Order**"). The Service

Provider will immediately inform HSSBC if the Service Provider receives a Disclosure Order. Upon receipt of a Disclosure Order, the Service Provider will not disclose any Personal Information in response thereto and the Service Provider will at all times act in accordance with the terms and conditions of this Agreement including, without limitation, the Privacy Requirements. Any breach of this Section will be a material breach under this Agreement. The provisions of this Section represent a lawful restriction on the Service Provider, being a Person governed by the laws of British Columbia and the laws of Canada applicable in British Columbia. The Service Provider will flow through the requirements of this Section to any Access Subcontractors, to apply to the Access Subcontractors, mutatis mutandis.

- (3) **Service Provider Corporate Structure.** As of the Effective Date, the corporate organizational chart, indicating all shareholdings to the ultimate indirect shareholder (other than the shareholdings of a public company listed on a recognized stock exchange) of the Service Provider (each a “**Corporate Organizational Chart**”), are as set forth in Schedule FF (*Corporate Organizational Chart*). Throughout the Term, the Service Provider will provide HSSBC with an updated Corporate Organizational Chart from time to time forthwith upon any changes being made thereto. Unless agreed otherwise by HSSBC, for so long as the Service Provider has, or could have, disclosure or use of, or access to any Personal Information in connection with the performance of the Services under this Agreement, the Service Provider will be and remain under the direct Corporate Control of a Canadian Entity, and any failure of the Service Provider to remain so controlled will be deemed to be a material breach under this Agreement and will give rise to the right of HSSBC to terminate this Agreement.
- (4) **Canadian Controlled Entities.** Throughout the Term, the Service Provider, the Performance Guarantor and the Subcontractors that are corporations, partnerships, limited partnerships, or other similar entities that are incorporated or created under the laws of Canada or under the laws of any province of Canada (each a “**Canadian Entity**”), and that the Service Provider Personnel (which includes, for clarity, Subcontractor personnel) and Subcontractors who are individuals are not Foreign Employed Individuals. Unless agreed otherwise by HSSBC, and for so long as any Service Provider Personnel, (which includes, for clarity, Subcontractor personnel) personnel and Subcontractors who are individuals has or could have any access to, or use or disclosure of, any Personal Information in connection with the performance of the Services under this Agreement, the Service Provider will ensure that:
 - (a) in the case of Subcontractors who are individuals, the Subcontractor are not, and do not become, a Foreign Employed Individual; and
 - (b) in all other cases, the Subcontractors are and remain a Canadian Entity, and unless otherwise approved by HSSBC, a Canadian Entity that is Corporately Controlled by a Canadian Entity or by individuals who are not Foreign Employed Individuals.
- (5) **Trans-border Data Flows.** Service Provider will not transfer outside the Permitted Service Locations in Canada or provide access to any other HSSBC Data from outside the Permitted Service Locations in Canada, without HSSBC’s prior written consent.
- (6) **Service Provider as a Data Processor.** Service Provider understands and acknowledges that, to the extent that performance of its obligations hereunder involves or necessitates the processing of Personal Information from HSSBC, it will act only on instructions and

directions from HSSBC, consistent with Service Provider's obligations set out in this Agreement. Service Provider will comply promptly with all such instructions and directions received by Service Provider from HSSBC from time to time. Service Provider undertakes not to disclose Personal Information to any Third Party in any circumstances other than at HSSBC's specific written request or in compliance with all Applicable Laws. Service Provider also undertakes to co-operate with HSSBC with respect to the provision of such additional documentation of Service Provider's obligations under this Agreement as may assist HSSBC to comply with Privacy Laws.

- (7) **Personal Information Subject Right of Access and Rectification.** If either Party is required to provide information to an individual regarding that individual's Personal Information, the other Party will reasonably co-operate with the requesting Party in providing such information to the full extent necessary to comply with Privacy Laws, and where a request by an individual is made directly to a Party with respect to Personal Information provided by the other Party, it will as soon as reasonably practicable notify the other Party upon receipt of a request (whether oral or in writing) from such an individual providing sufficient details and information as are required by the providing Party to comply with its obligations under Privacy Laws. In the case of Personal Information provided by HSSBC, if further to such a request any Personal Information must be rectified, Service Provider undertakes to amend such Personal Information as instructed by HSSBC, to the extent that Service Provider has the necessary access rights.

13.3 Information Access

- (1) Prior to performing any Services, Service Provider will ensure that all of its Service Provider Personnel and Subcontractors who may have access to the HSSBC Data and/or the HSSBC-Owned Materials (and in particular, the Personal Information) have executed agreements with Service Provider under which such Service Provider Personnel and Subcontractors have agreed to protect the confidentiality, privacy and security of the confidential information of HSSBC in a manner which is no less rigorous than that required of Service Provider under this Agreement.
- (2) Service Provider will, upon request by HSSBC, provide HSSBC with appropriate evidence (for example, copies of specimen provisions) and assurances (for example, confirmations of execution, without names) regarding compliance by Service Provider Personnel and Subcontractors with the confidentiality and security obligations set forth herein.
- (3) Except with respect to HSSBC Confidential Information, and the obligations applicable thereto which are set forth in Section 13.7, Service Provider will comply and will cause the Service Provider Personnel and Subcontractors to comply with all HSSBC Policies and Procedures that may be provided by HSSBC and reviewed and clarified by the Parties from time-to-time, regarding data access, privacy and security, including those prohibiting or restricting remote access to, use and disclosure of HSSBC systems and data. Notwithstanding anything to the contrary herein, any material changes to HSSBC Policies and Procedures that impact the services, will be implemented using the Change Process.
- (4) HSSBC will authorize, and Service Provider will issue, any necessary information-access mechanisms, including access IDs and passwords, and Service Provider agrees that the same will be used only by the Service Provider Personnel to whom they are issued and who have a need to access HSSBC Data. Service Provider will provide to such personnel

only such level of access as is necessary to perform the tasks and functions for which such personnel are responsible.

- (5) Service Provider will from time-to-time, upon request from HSSBC, but (absent exceptional circumstances) no more frequently than quarterly, provide HSSBC with an updated list of those Service Provider Personnel having access to HSSBC's systems, software, and data, and the level of such access. Computer data and software, including HSSBC Data, provided by HSSBC or accessed (or accessible) by Service Provider Personnel (which includes, for clarity, Subcontractor personnel), will be accessed, collected and used by such personnel only to the extent required in order for Service Provider to perform its obligations hereunder, and will not otherwise be used or exploited by Service Provider or its Subcontractors in any manner whatsoever.
- (6) Without limiting any other rights or remedies available under this Agreement, at law or in equity, a material breach by Service Provider or Service Provider Personnel, agents or Subcontractors of the provisions of this Article 13 may result in HSSBC restricting the offending personnel from access to HSSBC computer systems or HSSBC Data and/or the termination of this Agreement for cause in accordance with the provisions of Section 18.5. It is Service Provider's obligation and responsibility to maintain and ensure the confidentiality, privacy and security of HSSBC Data in accordance with the terms of this Agreement.

13.4 Personal Information Protection.

- (1) To the extent that a Party provides access or transfers to the other Party (including the other Party's employees, agents, Affiliates and subcontractors (including Subcontractors)) any Personal Information pursuant to this Agreement, the other Party will, and will ensure that its employees, agents, Affiliates and subcontractors, including, for the Service Provider, the Subcontractors:
 - (a) not use such Personal Information for any purpose other than fulfilling its obligations or exercising its rights under the Agreement;
 - (b) not disclose such Personal Information to any Person other than as expressly permitted by the Party providing the Personal Information or as required or permitted by Applicable Laws;
 - (c) immediately refer to the providing Party any individual who contacts the receiving Party (or any of the receiving Party's employees, agents, Affiliates or subcontractors (including Subcontractors)) seeking access or correction to or with any inquiries or complaints about their Personal Information as such Personal Information may relate to the Agreement, and immediately notify the providing Party regarding any such request, inquiry or complaint;
 - (d) throughout the Term of the Agreement and Transition Out, and without limiting Section 13.1, use security measures as specified in this Agreement to protect such Personal Information against unauthorized access, disclosure, copying, use, or modification, and immediately inform the providing Party of any accidental or unauthorized access, disclosure, copying, use, or modification of such Personal Information;

- (e) upon termination or expiry of the Agreement and upon completion of Transition Out, immediately return to the providing Party or, at the direction of the providing Party, dispose of all Personal Information relating to the Agreement using the measures specified in this Agreement or agreed to by the Parties at that time;
- (f) designate an individual to handle all aspects of the Agreement that relate to the handling of Personal Information;
- (g) not subcontract, assign or delegate its obligations with respect to Personal Information under this Agreement without the express consent of the providing Party; and
- (h) to the extent that Service Provider may in fulfilling its obligations under this Agreement, collect, use or disclose Personal Information that has not been provided to it directly by HSSBC, Service Provider will ensure that such Personal Information is collected, used and disclosed in accordance with the HSSBC Policies and Procedures, and will otherwise comply with the obligations set forth in this Section 13.4.

13.5 Background Checks

- (1) If Service Provider assigns Persons (whether employees, subcontractors (including Subcontractors) or agents) to perform work at any HSSBC site or to have access to any sensitive HSSBC Data, Service Provider will conduct a background check on all such Persons consistent with HSSBC's current practices and review the results of the background check of each Person to verify that the Person meets Service Provider's standards for employment before presenting the results of the background check to HSSBC and requesting that HSSBC grant access to any such Person to any HSSBC site or sensitive HSSBC Data.
- (2) No Person will have access to any HSSBC site or sensitive HSSBC Data prior to delivery of the written background check to HSSBC and HSSBC's approval of such Person. HSSBC will be permitted, at its sole option, to refuse access of any Person to any HSSBC site or facility. Such background check will include, as required under Section 9.7, CPIC Level 2 clearance, and be in the form generally used by Service Provider in its initial hiring of employees or contracting for contractors (including Subcontractors and agents) or, as applicable, during the employment screening process, including credit history and employment history.
- (3) Service Provider will use all commercially reasonable efforts to obtain all releases, waivers or permissions required for the release of such information to HSSBC. Prior to presenting any Person to HSSBC, with verification on an annual basis, Service Provider's human resources manager for this Agreement will certify that the background check required by this Section 13.5 has been conducted with respect to all Persons assigned by Service Provider to perform work at any HSSBC site or to access any sensitive HSSBC Data.

13.6 Other Policies

Except with respect to HSSBC Confidential Information, and the obligations applicable thereto which are set forth in Section 13.7, Service Provider will, and will cause the Service Provider Personnel (including

Subcontractors) and agents to, abide by all applicable HSSBC Policies and Procedures that may be provided by HSSBC in writing as the same may be clarified by the Parties from time-to-time, including rules and requirements for the protection of premises, materials, equipment and personnel and patients. Notwithstanding anything to the contrary herein, any Changes to HSSBC Policies and Procedures are to be implemented using the Change Process.

13.7 HSSBC Confidential Information – Non-Disclosure

- (1) Subject to the provisions of Article 12, all HSSBC Confidential Information will, as between the Parties, be deemed the sole property of HSSBC and will be used by Service Provider and the Service Provider Personnel (including Subcontractors) solely for the purposes of performing Service Provider's obligations under this Agreement, and, except as permitted under Section 13.9, is not to be collected or used except as provided for in this Agreement and is not to be published, transmitted, released or disclosed by Service Provider or its Subcontractors to any other Person without the prior written consent of HSSBC, which consent HSSBC may withhold in its discretion.
- (2) Except where this Agreement specifies that a higher standard will apply, to ensure compliance with subsection (1), above, Service Provider will use the same standard of care to prevent disclosure of the HSSBC Confidential Information as it uses to prevent disclosure of Service Provider's own information of a similar nature, but in no event less than a reasonable degree of care.

13.8 Disclosure Requests

Except as otherwise specified in this Agreement, any and all requests for copies of or access to, or disclosure of, any HSSBC Confidential Information will be promptly submitted to HSSBC for disposition.

13.9 Permitted Disclosures

Service Provider will require each of its Service Provider Personnel and Subcontractors providing Services hereunder or otherwise having access, in whatever form or function, to the HSSBC Confidential Information, to execute, prior to any such activity or access, an agreement in substance providing not less than the standard of protection of HSSBC Confidential Information as set out in this Agreement. Service Provider will provide HSSBC with appropriate evidence and assurances regarding compliance by Service Provider Personnel and Subcontractors with the confidentiality obligations set forth herein. Service Provider may disclose HSSBC Confidential Information only to those of such Service Provider Personnel and Subcontractors who have a need to know such HSSBC Confidential Information in order to perform their duties under this Agreement, and only to the extent reasonably necessary. Regardless of the form of any Contract executed with Service Provider Personnel, contractors (including Subcontractors) and agents, Service Provider will retain liability for all breaches of this Section 13.7 and for the related acts or omissions of its officers, Service Provider Personnel and Subcontractors, and the like, including the unauthorized use or disclosure of HSSBC Confidential Information, by its officers, Service Provider Personnel and Subcontractors, and the like.

13.10 Service Provider Confidential Information

HSSBC may disclose Service Provider Confidential Information only to its Service Provider Personnel who have a need to know such Service Provider Confidential Information, and only to the extent reasonably necessary. Except as otherwise specifically provided in this Agreement, HSSBC may not publish, transmit, release or disclose Service Provider Confidential Information to Third Parties unless it

obtains the prior written consent of Service Provider. HSSBC will use the same care to prevent disclosure of the Service Provider Confidential Information as it uses to prevent disclosure of its own information of a similar nature, but in no event less than a reasonable degree of care.

13.11 Legally Required Disclosures

The Receiving Party may disclose the Confidential Information of the Disclosing Party to the extent disclosure is based on the good faith written opinion of the Receiving Party's legal counsel that disclosure is required by Applicable Law or by order of a court of competent jurisdiction or governmental agency with jurisdiction; provided, however, that the Receiving Party will give advance notice of such requested disclosure and legal opinion to the Disclosing Party prior to any such disclosure and will use all commercially reasonable efforts to obtain a protective order or otherwise protect the confidentiality of the Disclosing Party's Confidential Information. Notwithstanding the foregoing, the Disclosing Party reserves the right to obtain a protective order or otherwise protect the confidentiality of such Confidential Information. For purposes of this Section 13.11, a Receiving Party's internal legal counsel may act as such party's legal counsel.

13.12 Notification and Mitigation

In the event of any impermissible disclosure, loss or destruction of Confidential Information, the Receiving Party will immediately notify the Disclosing Party and take all reasonable steps to mitigate any potential harm or further disclosure, loss or destruction of such Confidential Information.

13.13 Return of Confidential Information

- (1) **Expiration or Termination.** Upon the expiration of the Term or termination of this Agreement, and at any other time upon written request by the Disclosing Party, the Receiving Party promptly will return to the Disclosing Party all Confidential Information (and all copies thereof) of the Disclosing Party then in its possession or control. In addition, unless the Disclosing Party otherwise consents in writing, the Receiving Party also will deliver to the Disclosing Party or, if requested by the Disclosing Party, will delete or destroy, any copies, duplicates, summaries, abstracts or representations of any such Confidential Information or any part thereof, in whatever form, then in the possession or control of the Receiving Party. Service Provider's obligations under this Article 13 will survive until five (5) years after the date upon which Service Provider provides a certificate which certifies the return or destruction of all HSSBC Confidential Information received, created or stored by Service Provider under this Agreement.
- (2) **Certificate.** The certificate certifying the return or destruction of all HSSBC Confidential Information survives the termination of this Agreement without limit. HSSBC's obligations under this Article 13 will survive until five (5) years after the date upon which HSSBC provides a certificate which certifies the return or destruction of all Service Provider Confidential Information received, created or stored by HSSBC under this Agreement. The certificate certifying the return or destruction of all Service Provider Confidential Information would survive the termination of this Agreement without limit.
- (3) **Survival of Confidentiality Obligation.** To the extent that any Confidential Information in the possession or control of the Receiving Party cannot be returned, deleted or destroyed, then the obligations of the Receiving Party under this Article 13 shall survive indefinitely, notwithstanding any other provision of this Agreement.

13.14 Injunctive Relief

If the Receiving Party or anyone acting on its behalf or operating under its control, including employees, Subcontractors and Third Parties, publishes, transmits, releases, discloses or uses any Confidential Information of the Disclosing Party in violation of this Article 13, or if the Disclosing Party anticipates that the Receiving Party may violate or continue to violate any restriction set forth in this Article 13, then the Disclosing Party will have the right to have the provisions of this Article 13 specifically enforced by any court having equity jurisdiction, without being required to post bond or other security and without having to prove the inadequacy of available remedies at law, it being acknowledged and agreed that any such violation will, unless the other party demonstrates to the contrary, cause irreparable harm to the Disclosing Party which will not be compensable by monetary damages alone and, accordingly, the Disclosing Party will, in addition to other available legal or equitable remedies, be entitled to seek an immediate injunction or other affirmative relief restraining the violating Person from committing or continuing to commit a violation without such constituting an election of remedies. A Party may avail itself of injunctive relief in addition and without prejudice to any other remedies available to it.

13.15 Residuals Protection

Subject to compliance with all applicable intellectual property laws, neither Party will be restricted from using in its business the Residuals retained in the unaided memories of its employees who have had access to Service Provider Confidential Information or HSSBC Confidential Information (as the case may be) under this Agreement.

13.16 Intellectual Property Rights Not Affected

Nothing in this Article 13 will affect or prevent the transfer or exercise of any Intellectual Property Rights assigned or licensed pursuant to Article 12.

ARTICLE 14 TECHNOLOGY MANAGEMENT

14.1 General

Service Provider will provide the technology management and security Services described in this Article 14, Article 13 and Schedule L (*Privacy and Security*). Service Provider will obtain HSSBC's prior written consent before acquiring, maintaining, upgrading or replacing any asset that is used by Service Provider to satisfy its obligations hereunder if such acquisition, maintenance, upgrade or replacement could result in a material change in the cost, method, manner, types or levels of Services that are then being provided to HSSBC.

14.2 Technology Upgrades and Enhancements

Unless otherwise agreed in writing, Service Provider will, as part of Support, maintain the Hardware and Software at a level of currency which is no less than the level of currency set forth in Schedule K (*Technology*). Service Provider will notify HSSBC as soon as Hardware and Software upgrades and enhancements become available from their respective vendors, and the Parties thereafter will co-ordinate implementation of such upgrades and enhancements. Service Provider will schedule all such upgrades and replacements in consultation with HSSBC in advance and in such a way as to prevent any interruption or disruption of, or diminution in, the nature or level of any portion of the Services.

14.3 Future Research, Development and Industry Studies

Service Provider will furnish HSSBC with access to all relevant existing and future research and development resources, such as published materials and industry studies conducted for or by Service Provider, that are relevant to the Services being provided to HSSBC and that might assist HSSBC in setting the HSSBC Policies and Procedures. The Service Provider Contract Executive also will advise HSSBC of all matters of a material nature that he or she believes would be helpful to HSSBC in setting or revising the HSSBC Policies and Procedures.

14.4 Service Compatibility

Service Provider will ensure that all services, equipment, networks, software, enhancements, upgrades, modifications and resources, including those provided by HSSBC (collectively, the “**Resources**”) utilized by Service Provider or approved by Service Provider for utilization by HSSBC in connection with the Services, will at all times be successfully integrated and interfaced, and will be compatible with the services, equipment, networks, software, enhancements, upgrades, modifications and resources that are being provided to, recommended to or approved for use by Third Party service providers (collectively, the “**Third-Party Resources**”). Further, Service Provider will ensure that none of the Services or items provided to HSSBC by Service Provider will be adversely affected by, or will adversely affect, those of any such Third Party providers, whether as to functionality, speed, Service Levels, interconnectivity, reliability, availability, performance, response times or similar measures. To the extent that any interfaces need to be developed or modified in order for the Resources to integrate successfully, and be compatible with, the Third-Party Resources, Service Provider will develop or modify such interfaces as part of the Services, pursuant to the applicable Change Process. In the event of any dispute as to whether a particular defect, malfunction or difficulty with respect to the Services was caused by Resources or by Third-Party Resources, Service Provider will be responsible for correcting at its cost, such defect, malfunction or difficulty, except to the extent that Service Provider can demonstrate, to HSSBC’s satisfaction, by means of a Root-Cause Analysis, that the cause was not due to Resources. In addition, Service Provider will co-operate with all Third Party service providers of HSSBC to co-ordinate its provision of the Services with the services and systems of such Third Party service providers. Subject to reasonable confidentiality requirements, such co-operation, will include providing:

- (1) applicable written information concerning any or all of the systems, data, computing environment, and technology direction used in providing the Services;
- (2) reasonable assistance and support services to such Third Party providers;
- (3) access to systems and architecture configurations of Service Provider to the extent reasonably required for the activities of such Third Party providers; and
- (4) access to and use of the Resources.

In addition, Service Provider will co-operate with all Third Party service providers of HSSBC to co-ordinate its provision of the Services with the services and systems of such Third Party service providers. Subject to reasonable confidentiality requirements, such co-operation, will include providing: (a) applicable written information concerning any or all of the standards or specifications applicable to the systems, data, computing environment, and technology direction used in providing the Services; (b) reasonable assistance and support services to such Third Party providers; (c) access to systems and architecture configurations of Service Provider to the extent reasonably required for the activities of such Third Party providers; and (d) access to and use of the Resources.

ARTICLE 15 LEGAL COMPLIANCE

15.1 Compliance with Applicable Laws

Service Provider will perform its obligations hereunder in compliance with all Applicable Laws. Service Provider will use all commercially reasonable efforts to assist HSSBC, as required or as requested by HSSBC in writing, so that HSSBC can comply with all Applicable Laws, including in the event of an audit initiated by a regulator or otherwise under Applicable Laws. HSSBC will, through the Change Process, implement any changes required by changes to Applicable Laws which relate specifically to HSSBC and affect the manner in which the Services are to be performed. No provision of this Agreement will have any force or effect if it would cause a violation of any Applicable Laws, or would require any consent or approval (other than those which have been obtained) to prevent any such violation, but any such provision will be replaced, to the extent possible, by a provision which achieves the same business objectives in a manner which complies with Applicable Laws.

15.2 Service Provider Permits, Licenses and Assistance

Except as otherwise provided in this Agreement, Service Provider will obtain and maintain, and will cause its Subcontractors to obtain and maintain, at no cost to HSSBC, all Consents, permits, and forms of documentation required in order to comply with all Applicable Laws applicable to Service Provider or its Subcontractors in connection with the performance of the Services and Service Provider's obligations hereunder. HSSBC reserves the right to reasonably request and review all such Consents and permits prior to the commencement of any Services hereunder. If requested, HSSBC will co-operate with Service Provider, at Service Provider's cost and expense, to obtain any such Consents and permits. Similarly, Service Provider will provide reasonable assistance to HSSBC in HSSBC's attempt to fully comply with any Applicable Laws concerning data and privacy protection, including any obligation of HSSBC to certify or respond to any data protection or privacy authority regarding such matters. To the extent such assistance can be provided using Dedicated resources, such assistance will be provided without additional charge or fee. HSSBC may request further assistance in accordance with the Change Process.

15.3 Specific Laws and Agreements

The Parties acknowledge that they have taken reasonable efforts to cause this Agreement and the Services as described herein to be compliant with the Applicable Laws. Without limiting Section 15.1 (*Compliance with Applicable Laws*), at all times during the Term, the Service Provider will comply with and will cause the Service Provider Personnel and Subcontractors to comply with the following in the performance of the Services:

- (1) ***Financial Administration Act and Budget Transparency and Accountability Act.*** HSSBC is required to comply with the requirements of the *Financial Administration Act* (British Columbia) and *Budget Transparency and Accountability Act* (British Columbia) regarding the maintenance of financial records, the reporting of financial results, and similar financial matters. The Service Provider shall use all reasonable efforts to comply with the requirements of the *Financial Administration Act* (British Columbia) and the *Budget Transparency and Accountability Act* (British Columbia), to the extent such act would apply to the performance of the Services by HSSBC internally, and shall assist HSSBC as necessary to ensure that HSSBC is in compliance with the requirements of the *Financial Administration Act* (British Columbia) and the *Budget Transparency and Accountability Act* (British Columbia) with respect to the performance of the Services;
- (2) ***North American Free Trade Agreement.*** The Service Provider agrees on its own behalf, and on behalf of its Affiliates, successors and assigns, to waive any and all rights that it may have under the North American Free Trade Agreement, including, but not limited to, all rights under North American Free Trade Agreement Chapter Eleven. The Service Provider specifically acknowledges and agrees that this waiver precludes any of the Service Provider, or its Affiliates, Subcontractors and their respective successors or

permitted assigns, from providing their consent to arbitration under North American Free Trade Agreement Article 1121 and from thereby commencing or assisting in any claim under Section B of North American Free Trade Agreement Chapter Eleven concerning any dispute arising out of or relating to this Agreement;

- (3) ***Trade Agreements Generally.*** The Service Provider acknowledges that HSSBC (and, for greater certainty, the Health Organizations) is subject to certain trade agreements including the following: Agreement on Internal Trade and the New West Partnership Trade Agreement. The Service Provider shall use all reasonable efforts to comply with the requirements requested by HSSBC, to the extent applicable to the performance of the Services, and shall assist HSSBC as necessary to ensure that HSSBC is in compliance with the requirements of such trade agreements with respect to the performance of the Services; and
- (4) ***e-Health Personal Health Information Access and Protection of Privacy Act.*** The Service Provider acknowledges that HSSBC (which for greater certainty, includes the Health Organizations) are subject to the *e-Health Personal Health Information Access and Protection of Privacy Act* (British Columbia), and that they may from time to time be required to provide information in accordance with the requirements of such legislation. In performing its Services, the Service Provider shall comply with all requirements of the e-Health Act and any applicable policies and directives.

15.4 Provincial and Federal Privacy Legislation

Service Provider acknowledges that HSSBC Confidential Information may include Personal Information. Service Provider will ensure that it, its agents, Affiliates and Subcontractors will perform the Services in compliance with the provisions of this Agreement, including the technological, organizational and physical measures for protection of Personal Information set out in the HSSBC Policies and Procedures and Schedule L (*Privacy and Security*). HSSBC will ensure that such Personal Information within its control is collected, used and disclosed with the knowledge and consent of the individual to whom the Personal Information relates in accordance with Applicable Laws. If Service Provider believes that Personal Information has been subject to unauthorized access, Service Provider will provide prompt written notice to HSSBC (and in any event, within twenty-four (24) hours). If HSSBC reasonably determines that actions must be taken to comply with any Privacy Laws, Service Provider will fully co-operate with HSSBC to achieve such compliance and, where such actions must be taken as a result of any failure of Service Provider or any of its Service Provider Personnel, Affiliates or Subcontractors to comply with this Section 15.4, all such compliance related activities by Service Provider will be performed at Service Provider's sole cost and expense. Service Provider will be liable for damages suffered by HSSBC as a result of such failure. Nothing contained herein will be deemed to release Service Provider from its indemnification obligations as set forth in Sections 21.3 and 21.4 of this Agreement.

Service Provider will comply with all Applicable Laws in connection with the collection, storage, use, processing and/or disclosure of Personal Information by Service Provider pursuant to its obligations under this Agreement, to the extent applicable to Service Provider in connection with this Agreement. Service Provider will oblige its Service Provider Personnel, Affiliates, and Subcontractors (if any) to comply with Privacy Laws applicable to the Services and to undertake in writing only to collect, process or use any data containing Personal Information received from HSSBC for purposes of providing the Services and not to make data containing Personal Information received from HSSBC available to any Third Parties.

ARTICLE 16

RECORDKEEPING AND AUDIT RIGHTS

16.1 Record Keeping

In addition to any obligations that Service Provider may, apart from this Agreement, have to collect and maintain records, Service Provider will, as part of the Services, collect, maintain and retain:

- (1) utilizing generally accepted accounting principles in accordance with the *International Financial Reporting Standards* or any successor standard, consistently applied, complete and accurate records and books of account with respect to this Agreement and the Services, including all records related to the Fees and Sales Taxes invoiced to HSSBC under this Agreement and all Fee Reductions;
- (2) all records and copies of any correspondence relating to any actual or threatened claim, suit or proceeding with any third party relating to this Agreement, the Services or the Dedicated Hardware;
- (3) all records documenting Service Provider's compliance with HSSBC Policies and Procedures applicable to the Services, and compliance with security and confidentiality obligations and operational procedures applicable to this Agreement or the Services;
- (4) records and reports relating to changes made through the Change Process and any other changes made to the Hardware, Software or Services; and
- (5) records, measurements and reports pertaining to performance of the Services including those relating to Incident Management, Problem Management, and Dispute Resolution Process, Service volumes and Service Level Reports and, to the extent reasonably available, all documentation used to create such records, measurements and reports,

(all such records, measurements, reports, correspondence and documentation are herein referred to as the “**Retained Records**”).

16.2 Retention of Records

Service Provider will retain each of the Retained Records until:

- (1) the delivery of same to HSSBC (or its designees); or
- (2) the later to occur of:
 - (a) the time period or time periods set forth below with respect to such Retained Records;
 - (b) any time period for which Service Provider is required to retain such Retained Records pursuant to applicable Service Provider record retention policies;
 - (c) any time period for which Service Provider is required to retain such Retained Records pursuant to Applicable Laws; and
 - (d) one (1) year following the final resolution of all audits or the full and final resolution of any dispute, litigation or threatened litigation to which such Retained Records relate. The minimum time periods, referred to in part (i) of the

preceding sentence, for which Retained Records must be retained by Service Provider for not less than seven (7) years from the date of its creation or for such longer period as may be required pursuant to applicable Service Provider record retention policies. The Retained Records referred to in this Agreement will constitute Service Provider Confidential Information. The Retained Records referred to in Sections 16.1(3) to 16.1(5), other than information which does not specifically relate to HSSBC or the Services, will constitute HSSBC Confidential Information, but HSSBC will, unless otherwise required by Applicable Law, only use such information in connection with its requirements for or the performance of the Services, and will treat any pricing information that may be included in the Retained Records as Confidential Information of Service Provider. Without limiting any of the foregoing, all Retained Records and the procedures used to collect, maintain and report such Retained Records, will be performed in accordance with the standards customarily observed by leading North American providers of services that are the same or substantially similar to the Services, will facilitate the reconciliation and aggregation of all data contained in the Retained Records on a standardized and centralized platform where reasonable, and will comply with the confidentiality and nondisclosure provisions set forth in this Agreement.

16.3 Availability of Records

During the retention periods referred to in Section 16.2 above, HSSBC (and its designees) shall have the right, during normal Business Hours, to examine and to obtain from Service Provider copies of extracts from the Retained Records pertaining to this Agreement, the Services or HSSBC other than Retained Records relating to Service Provider's pricing methodologies or to the actual or budgeted costs or expenses incurred by Service Provider in providing the Services (provided that HSSBC will be entitled to have access to and to copy all Retained Records relating to Pass-Through Expenses). At the end of the retention periods referred to in Section 16.1, above, unless otherwise directed by HSSBC, Service Provider will at no additional charge deliver to HSSBC (or its designee) in an appropriate electronic form the Retained Records referred to in Sections 16.1(3) to 16.1(5) and Service Provider may, at its option, destroy the Retained Records referred to in Sections 16.1(1) and 16.1(2).

16.4 Operational Audits

HSSBC and/or HSSBC's external auditors or representatives shall have the right, at any time during the Term and for twelve (12) months thereafter, upon reasonable notice to Service Provider, to perform operational, compliance and security audits with respect to Service Provider's performance of its obligations hereunder in order to permit HSSBC to:

- (1) verify the adequacy and operation of internal control procedures, including those relating to security, and other key attributes of the Services;
- (2) verify Service Provider's reports, including Service Level Reports;
- (3) verify Service Provider's compliance with the HSSBC Policies and Procedures applicable under this Agreement; and
- (4) verify compliance with the other provisions of this Agreement.

Service Provider will, at its expense, grant HSSBC, and/or external auditors or representatives on HSSBC's behalf, full and complete access to and right to obtain copies of the Retained Records (subject

to the exceptions for any pricing methodologies, costs and expenses referred to in Section 16.3 above) and reasonable access to Service Provider's facilities, systems and personnel as may be required in order for HSSBC to ascertain any facts relative to Service Provider's performance of its obligations hereunder. The Service Provider will, at its expense, promptly provide HSSBC and/or external auditors or representatives on HSSBC's behalf with such information and assistance as may reasonably be requested by HSSBC in connection with such audits; provided, however, that the Parties will endeavour to ensure that such assistance is provided in such a way that it does not interfere with Service Provider's performance of the Services. Service Provider will, at its expense, promptly remedy any inadequacy or deficiency, which is identified as a result of an operational audit, of Service Provider to perform its obligations hereunder. If an operational audit discloses a material breach by Service Provider of its obligations under this Agreement, Service Provider will promptly remedy such breach and reimburse HSSBC for the out-of-pocket costs incurred by HSSBC in connection with such audit.

16.5 Financial Audits

HSSBC and/or HSSBC's external auditors or representatives shall have the right, at any time during the Term and for twelve (12) months thereafter, upon reasonable notice to Service Provider, to perform financial audits with respect to Service Provider's performance of its obligations hereunder and in connection therewith will have the right to examine and to obtain from Service Provider copies of extracts from the Retained Records (subject to the exceptions for any pricing methodologies, or the costs and expenses referred to in Section 16.3 above) to the extent necessary to verify any amounts paid or payable hereunder. Such auditors will be provided with such access to such personnel and systems as may be reasonably required to confirm the accuracy of Service Provider's invoices, documents, and other information (including accuracy of Service Level reporting) supporting such invoices, and any pricing adjustment computations. All such audits will be conducted during Business Hours, upon reasonable notice, and will include access to all proprietary and confidential information of Service Provider to the extent reasonably necessary to comply with the provisions of this Section 16.5. The Service Provider will promptly refund any overcharges identified as a result of a financial audit to HSSBC with interest at ● percent (●) per annum. If any such audit reveals that Service Provider has overcharged HSSBC by ● percent (●) or more during the period (as determined prior to the commencement of the audit) to which the audit relates, Service Provider will reimburse HSSBC for HSSBC's Out-of-Pocket Expenses incurred in connection with such audit.

16.6 Audit Reports

No less often than once during each consecutive twelve (12) month period during the Term, Service Provider will, as part of the Services and at no additional charge to HSSBC, provide a copy of the SAS70 Americas Type 2 audit report (which for greater certainty includes a Canadian Institute of Chartered Accountants CICA Section 5900 report) or a successor or similar report, prepared by the auditor of Service Provider or one of its Affiliates for the internal purposes of Service Provider and its Affiliates, with respect to the Service Provider service delivery centres including the Permitted Service Locations. Service Provider agrees that it will regularly, no less frequently than annually, consult with HSSBC concerning such reports both generally and with respect to the scope of such review, including the determination of the control objectives and control assertions associated with each report. In addition, following the completion of Transition, HSSBC will be entitled to have performed at its own expense, in accordance with Section 16.4, its own SAS 70 or CICA 5900 audit or successor or similar audit in respect of the Services or the facilities used to provide the Services.

16.7 Audit Frequency

HSSBC may perform the audits referred to in Sections 16.4 and 16.5 and a SAS 70 or CICA 5900 together as a single combined audit in order to minimize the cost and disruption to Service Provider's

operations. Absent exceptional circumstances, HSSBC may perform such audit only once during each consecutive twelve (12) month period during the Term, but for greater certainty, HSSBC will have no obligation to perform such an audit. Exceptional circumstances which may merit an additional audit (or audits) include possible changes to Applicable Laws or regulations which contemplate such an audit, requirements to confirm that deficiencies identified in a previous audit have been rectified, or evidence of significant discrepancies in invoices or reports delivered by Service Provider or other significant discrepancies. HSSBC will endeavour to have any audits performed pursuant to this Article 16 carried out in a manner so as to avoid auditing the performance of same functions for the same period of time more than once.

16.8 Subcontractors Records

- (1) **Approval of New Subcontractors.** HSSBC will, when considering the approval of a potential Subcontractor proposed by Service Provider pursuant to Section 10.1, consider HSSBC's reasonable requirements for such potential Subcontractor to retain records, provide HSSBC with access to such retained records and provide HSSBC with such audit rights as it may reasonably require in view of the Services to be performed by such proposed Subcontractor. As a general rule, HSSBC will principally require rights to audit with respect to operational, compliance and security matters which may be relevant to the Services provided by the Subcontractor and will not use its audit rights in an effort to discover Service Provider's costs (other than with respect to Pass-Through Expenses) and will not require retention, access or audit rights with respect to Subcontractors providing Services which are not material to HSSBC.
- (2) **Reasonable Assistance.** Service Provider will, upon request by HSSBC, provide reasonable assistance to HSSBC in the exercise of any rights that HSSBC may have to either access information retained by a Subcontractor or to audit such Subcontractor.

ARTICLE 17 FEES AND PAYMENT TERMS

17.1 Fees - General

As the financial consideration for all of the Services to be performed by Service Provider hereunder and for all of the tasks, services, licenses, assignments, representations, warranties and obligations of Service Provider, HSSBC will pay to Service Provider the amounts set forth in Schedule DD (*Fees*) this Agreement or as agreed pursuant to the Change Process (the "**Fees**"). Except as otherwise expressly stated in this Agreement, HSSBC will not pay Service Provider any additional fees, assessments, reimbursements or expenses for labour and general business expenses (including travel, meals, and overhead expenses) for the Services and other obligations of Service Provider hereunder.

17.2 Transition In Services Fees

For and in consideration of Service Provider's provision of the Transition In Services pursuant to the terms of the Transition In Plan, HSSBC will pay to Service Provider the Fees (the "**Transition In Services Fees**") for the Transition In Services specified in Schedule DD (*Fees*).

17.3 Managed Services Fees

For and in consideration of Service Provider's provision of the Managed Services pursuant to the terms of Schedule D (Managed Services) and Section 4.2, HSSBC will pay to Service Provider the Fees (the "**Managed Services Fees**") for the Managed Services specified in Schedule DD (*Fees*).

17.4 Taxes

- (1) All Fees payable to Service Provider hereunder will be inclusive of and Service Provider will be responsible for paying all Taxes imposed by any domestic or foreign taxing authority in respect of the hardware, software and other goods or services consumed or acquired by Service Provider in the provision of the Services, any Intellectual Property Rights licenses, and assignments provided by Service Provider to HSSBC hereunder, including any sales, use, income, property, capital, excise, value-added, services, withholding, consumption, telecommunication, access or other taxes (collectively, the “**Service Provider Taxes**”).
- (2) HSSBC will be responsible for all Taxes in connection with HSSBC’s receipt of the Services (other than Service Provider Taxes and those for which HSSBC is exempt under Applicable Laws), including any sales, use, excise, value-added, services or consumption taxes.
- (3) Service Provider’s invoices will state applicable Taxes owed by HSSBC, if any. The Parties will also work together to segregate all payments or charges on the invoice under this Agreement into three payment streams: (1) those for taxable services; (2) those for non-taxable services; (3) Pass-Through Expenses. Service Provider and HSSBC agree to cooperate reasonably with the other to determine HSSBC’s tax liability on Service Provider’s charges.

17.5 Pass-Through Expenses

Pass-Through Expenses are to be paid by Service Provider on behalf of HSSBC on an out-of-pocket expenses basis. Prior to paying any Pass-Through Expenses on behalf of HSSBC, Service Provider will review the invoice charges to determine whether such charges are reasonable, proper and valid and should be paid and will provide HSSBC with a reasonable opportunity to review the invoice to confirm Service Provider’s determination. Following such review by the Parties, Service Provider will pay the amounts due. HSSBC will pay the Service Provider the amount of any Pass-Through Expenses in accordance with the provisions of Section 17.8.

17.6 Financial Responsibility For Own Costs

Except as may otherwise be provided for in this Agreement or agreed between the Parties, each Party will be responsible for all of the costs and expenses which it incurs and the management responsibilities that are associated with the performance by it of its obligations under this Agreement.

17.7 Right of Set-Off

HSSBC may set off against Fees: (1) any and all amounts otherwise payable to Service Provider under this Agreement pursuant to any of the provisions hereof; (2) any and all amounts owed by Service Provider to HSSBC including SLA Credits under this Agreement; and (3) any and all third party costs to HSSBC arising from Service Provider’s breach of the Agreement. Within twenty (20) days following any such set off, HSSBC will provide to Service Provider a written accounting of such set-off and a written statement of the reasons therefor.

17.8 Invoices and Payment

- (1) On the last day of each month during the Term, the Service Provider will submit its monthly invoice for Fees to HSSBC in respect of the Services provided during the month

(and reflecting any adjustments required to be made in respect of the preceding month). Each monthly invoice will be in the form attached as Schedule EE (*Form of Invoice*).

- (2) Any proposed changes to the monthly invoice format will be approved by HSSBC in advance of such changes. All invoices will be subject to HSSBC's review prior to payment.
- (3) Amounts payable by HSSBC under this Agreement may, at HSSBC's option, be paid to Service Provider by wire transfer or electronic funds transfer. Overdue invoices will be subject to interest at a rate of ● (●%) per annum on overdue amounts
- (4) Unless subject to a dispute as provided in Section 17.9, invoices are due and payable by HSSBC within thirty (30) days after receipt of such invoice, provided that the invoice complies with the requirements of this Agreement.

17.9 Disputed Amounts

Subject to and in accordance with the provisions of this Section 17.9, HSSBC may withhold payment of any portion of a Service Provider invoice that HSSBC in good faith disputes as due or owing (including any such payment under a Service Provider invoice in respect of which HSSBC asserts a right of set-off pursuant to Section 17.7). In such case, HSSBC will pay any undisputed amounts and provide to Service Provider a written explanation of the basis for the Dispute as to the disputed amounts. The failure of HSSBC to pay a disputed invoice, or to pay the disputed part of an invoice, will not constitute a breach or default by HSSBC, so long as HSSBC complies with the provisions of this Section 17.9. Any dispute relating to amounts owed by a Party hereunder will be considered a Dispute. All of Service Provider's obligations under this Agreement will continue unabated during any Dispute Resolution Process.

17.10 Pro Ration

All periodic charges payable under this Agreement will be computed on a calendar month basis and will be pro rated for any partial month.

17.11 Service Provider Travel and Living Expenses

Any and all travel and living expenses incurred by the Service Provider in connection with the Services, for which the Service Provider will seek reimbursement from the HSSBC, must comply with the HSSBC Travel and Living Expenses Guidelines.

ARTICLE 18 TERM AND TERMINATION

18.1 Initial Term

This Agreement will become effective on the Effective Date and the delivery of the Services (or a Service) will commence on the Service Start Date. Unless extended as provided in Section 18.2 or terminated earlier in accordance with Section 18.4 or otherwise under the terms of this Agreement, this Agreement will continue for an initial term ending on the [●] anniversary of the Effective Date (the "**Initial Term**").

18.2 Renewal Terms

HSSBC will have the right in its discretion, to extend the Initial Term with respect to all Services for [●] (●) year renewal term(s) (a “**Renewal Term**”) by providing written notice in accordance with the terms of Section 25.3 to Service Provider of HSSBC’s desire to extend this Agreement for the applicable Renewal Term no later than [●] (●) days prior to the end of the Initial Term. At HSSBC’s request, the Parties will meet within [●] (●) days of Service Provider’s receipt of HSSBC’s notice to proceed with a Renewal Term to negotiate modifications to the terms of this Agreement. If such negotiations are not requested or if the negotiations do not result in an agreement on different terms, the then-existing terms and conditions of this Agreement will remain unchanged and in full force and effect during each such Renewal Term.

18.3 Annual Review

Commencing at the end of the first Contract Year and for the Term of this Agreement, HSSBC and Service Provider will meet no later than thirty (30) days prior to each anniversary of the Contract Year to review the status of the performance of the Agreement and to discuss any modifications to the terms of this Agreement which may be mutually agreed by the Parties. Unless the Parties agree to make any such modifications during such thirty (30) day period, the then-existing terms and conditions of this Agreement will remain unchanged and in full force and effect.

18.4 Early Termination

(1) For Convenience

HSSBC will have the right to terminate this Agreement or one or more Services for convenience upon [●] (●) prior written notice to Service Provider and upon payment of the Termination Fee by HSSBC to the Service Provider. In the event of such termination for convenience, no amount of the Termination Fee will be payable by HSSBC until after successful completion of the performance of the Transition Out Services. The Parties acknowledge and agree that the Termination Fee constitutes a reasonable pre-estimate of damages and not a penalty. Such Termination Fee will be calculated on a straight line declining balance starting on the [●] month anniversary of the Effective Date and going to zero on the [●] month anniversary of the Effective Date.

(2) Termination for Force Majeure Event

(a) HSSBC Force Majeure Events. In the event of:

- (i) a Force Majeure Event occurs with respect to HSSBC;
- (ii) such Force Majeure Event substantially prevents, inhibits or frustrates HSSBC’s ability to receive the Services from Service Provider under circumstances when Service Provider is otherwise able to provide the Services to HSSBC; and
- (iii) such Force Majeure Event continues for ten (10) consecutive days or more, or for fifteen (15) consecutive or non-consecutive days or more during any thirty (30) day period,

then HSSBC will have the right to terminate the Services affected by the Force Majeure Event or, if the Services affected by the Force Majeure Event comprise a substantial

majority of the Services, HSSBC will have the right to terminate this Agreement by delivering to Service Provider a Termination Notice specifying the Termination Date; provided, however, that Service Provider will remain obligated to perform the Transition Out Services until such obligations have been fulfilled. During such period, subject to Service Provider mitigation of costs, HSSBC will remain obligated to pay the Fees to Service Provider in accordance with the terms of this Agreement until such Services are terminated in accordance with this Section and thereafter will pay for such Transition Out Services as are provided after the termination of this Agreement. HSSBC and Service Provider will take the other actions and HSSBC will make such further payments as are provided for in Section 18.8 but HSSBC will otherwise have no further liability or obligation to Service Provider under this Agreement. Any termination pursuant to this Section 18.4(2)(a) will not constitute a termination for convenience or for cause, and HSSBC will in no event be required to pay a Termination Fee to Service Provider with respect to any such termination.

- (b) **Service Provider Force Majeure Events.** In the event of a Force Majeure Event substantially prevents, hinders, or delays Service Provider's performance of all or any portion of the Services for ten (10) consecutive days or more, or for fifteen (15) consecutive or non-consecutive days or more during any thirty (30) day period, thereby causing an adverse impact on HSSBC's business operations, then:
- (i) with HSSBC's reasonable co-operation, to the extent that Service Provider determines HSSBC's cooperation to be necessary, Service Provider at its sole cost and expense immediately will procure the affected Services from an alternate provider, and thereafter provide such Services to HSSBC through the use of the alternate provider until Service Provider is able to resume performance of the affected Services in accordance with the terms of this Agreement, provided that Service Provider's obligations under this subsection (i) will continue for a period that will not exceed one-hundred eighty (180) days, and during such period, provided that Service Provider has continued to deliver the affected Services (whether itself or through an alternative provider), HSSBC will remain obligated to pay the Fees to Service Provider in accordance with the terms of this Agreement;
 - (ii) once the affected Services have been stabilized with the alternate provider, Service Provider will be obligated to provide such Services to HSSBC through the alternate provider in accordance with the SLAs and other terms of this Agreement; and
 - (iii) notwithstanding the foregoing, if Service Provider is unable to provide the Services either itself or through an alternate Service Provider within ten (10) days following commencement of the Force Majeure Event, or the one-hundred eighty (180) day time period described in subsection (i) above expires without Service Provider having resumed performance of the affected Services in accordance with the terms of this Agreement, then HSSBC will have the right to terminate, perform, or request that a third party perform, the Services affected by the Force Majeure Event, and, if the Services affected by the Force Majeure Event comprise a substantial majority of the Services, HSSBC will have the right to terminate this Agreement by delivering to Service Provider a

Termination Notice specifying the Termination Date; provided, however, that Service Provider will remain obligated to perform the Transition Out Services until such obligations have been fulfilled. HSSBC will remain obligated to pay for Transition Out Services as are provided after the termination of this Agreement. HSSBC and Service Provider will take the other actions and HSSBC will make such further payments as are provided for in Section 18.8 but HSSBC will otherwise have no further liability or obligation to Service Provider under this Agreement.

Any termination pursuant to this Section (2) will not constitute a termination for convenience nor cause, and HSSBC will in no event be required to pay any or the entire Termination Fee to Service Provider with respect to any such termination.

For greater certainty, this Section (2) does not affect Service Provider's obligation to provide Disaster Recovery Services in accordance with this Agreement, provided that such Force Majeure Event does not prevent Service Provider from providing such Disaster Recovery Services by creating circumstances other than those contemplated by the Disaster Recovery Services.

18.5 Events of Default

The following events will constitute “**Events of Default**”, and the occurrence of any one (1) or more of such Events of Default will constitute a material breach of this Agreement in respect of which HSSBC will have the rights and remedies set forth in this Agreement:

- (1) Service Provider's material breach of any warranty if such breach is not curable, or if such breach is curable but not cured by the Service Provider within the time frames, if any, specified in this Agreement for curing any such breach, or if none is specified elsewhere in this Agreement, then within thirty (30) days, in each case following receipt of written notice from HSSBC of such breach;
- (2) Service Provider fails to maintain insurance coverage as specified in Section 23.1, provided that such failure is not cured by Service Provider within thirty (30) days following receipt of written notice of such failure;
- (3) Service Provider, the Performance Guarantor or Financial Guarantor files a voluntary petition in bankruptcy or insolvency or will petition for reorganization under any bankruptcy or insolvency law;
- (4) an involuntary petition in bankruptcy or a receiving order is given against Service Provider the Performance Guarantor or Financial Guarantor under the *Bankruptcy and Insolvency Act*, as amended, or the comparable law of any other jurisdiction (and such is not dismissed within ten (10) days);
- (5) there will be entered an order, judgment or decree by a court of competent jurisdiction, upon the application of a creditor, approving a petition seeking reorganization or appointing a receiver, trustee or liquidator of all or a substantial part of Service Provider's (or the Performance Guarantor's or Financial Guarantor's) assets and such order, judgment or decree continues in effect for a period of thirty (30) consecutive days;
- (6) Service Provider, the Performance Guarantor or Financial Guarantor makes an assignment of all or substantially all of its assets for the benefit of creditors, or Service

Provider's Board of Directors takes any corporate action by in furtherance of the above action;

- (7) the Service Provider, the Performance Guarantor or Financial Guarantor ceases or threatens to cease carrying on business;
- (8) the Service Provider assigns this Agreement contrary to the provisions of Section 25.2;
- (9) a Service Provider SLA Termination Event;
- (10) if Service Provider fails to fulfill any of its obligations in **Schedule L (Privacy Requirements)** in any material respect (which may arise from a single failure to fulfill one of more sections of Schedule L or multiple failures to perform one of more sections) where such failure relates to a specific Section or Sections of **Schedule L (Privacy Requirements)** that states that the Service Provider shall have no cure period therefore or, where a cure period is specified in the specific Section or Sections of **Schedule L (Privacy Requirements)**, the Service Provider fails to so cure such failure after notice in writing;
 - (a) any:
 - (i) disclosure of Personal Information (other than pursuant to a Disclosure Order) contrary to the *Freedom of Information and Protection of Privacy Act* (British Columbia); or
 - (ii) storing or allowing access to Personal Information outside of Canada or British Columbia contrary to the *Freedom of Information and Protection of Privacy Act* (British Columbia); or
 - (iii) using the Personal Information contrary to the permitted use thereof as per the terms of this Agreement and the provisions of the *Freedom of Information and Protection of Privacy Act* (British Columbia);

provided that before HSSBC exercises its right under this Agreement for any disclosure of Personal Information under this Subsection 18.5(11), HSSBC shall have regard to all of the surrounding circumstances, the nature and significance of the breach, whether such breach is an isolated occurrence and the bearing thereof on the significance of the breach;

- (11) a Change in Control of the Service Provider, the Performance Guarantor or Financial Guarantor without the prior approval of HSSBC; or
- (12) a Party's material breach of any of its obligations under this Agreement that is not cured within thirty (30) days following receipt of written notice from the other Party of such breach.

18.6 Rights and Remedies of HSSBC Upon Default of Service Provider

Upon the occurrence of an Event of Default by or with respect to Service Provider, subject to the terms of Article 21, HSSBC will be entitled to any or all of the following remedies:

- (1) subject to HSSBC's rights as set forth below in this Section 18.6, to terminate some of the Services or this Agreement, provided however, that Service Provider will remain obligated to perform the Transition Out Services hereunder until they are fulfilled;
- (2) seek to recover direct, provable damages from Service Provider;
- (3) if applicable, obtain the additional rights and remedies set forth in Section 24.2; or
- (4) any additional remedies that may be set forth in this Agreement, Schedule GG (*Additional Remedies of HSSBC*) or in any Schedule or Addendum.

For clarity, HSSBC will in no event be required to pay any amount of the Termination Fee to Service Provider with respect to any termination pursuant to this Section 18.6.

18.7 HSSBC Events of Default

HSSBC shall be in material breach of its obligations under this Agreement if HSSBC fails to pay, when due, the amount of any Fees that:

- (1) exceeds an amount that is equal to two (2) months Fees for Managed Services and;
- (2) is not subject to Dispute (pursuant to HSSBC's right of dispute under Section 17.10) and HSSBC fails to remedy such failure within thirty (30) days of HSSBC's receipt of a written notice from the Service Provider to HSSBC of such failure. Such Service Provider notice under this Section 18.7 shall set forth, in reasonable detail, the failure and the amount of the required payment by HSSBC. Notwithstanding the termination of this Agreement by the Service Provider as a result of a HSSBC material breach, the Service Provider shall provide to HSSBC the Transition Out Services, as set forth in Article 19, provided that prior to providing such Transition Out Services, the Service Provider and HSSBC mutually agree upon payment terms for such Transition Out Services.

18.8 Effects of Termination

Upon the expiration of the Term or any termination of this Agreement:

(1) Return of Property

Unless otherwise provided in this Agreement or the Transition Out Plan, each Party will return to the other Party, within thirty (30) days of the expiration of the Term or termination of this Agreement, all property or materials of the other Party and its clients in the possession or control of such Party or its Subcontractors that is not Confidential Information (the return of which is provided for in Section 13.13).

(2) Principally Dedicated Employees and Severance

Upon any expiry or termination of this Agreement, HSSBC will have the right, in its discretion, to offer employment to any Service Provider employee who is, at the time of such termination or expiration, Principally Dedicated to the provision of the Services. Service Provider will make commercially reasonable efforts to assist HSSBC to ensure a smooth and orderly transition of any such Principally Dedicated employee, including using commercially reasonable efforts to provide HSSBC and its designee (if any) with (i) access to employee records, (ii) interviews of employees

and (iii) feedback from Service Provider regarding performance and competency of employees, prior to HSSBC making any offers of employment.

(3) **HSSBC Rights to Acquire Service Provider Assets**

- (a) Notwithstanding anything else herein, in any circumstance in which Service Provider is entitled to recover from HSSBC the Net Book Value or unamortized cost of Hardware, Software or other Contracts upon the termination of this Agreement, HSSBC will have the option of acquiring (to the extent feasible) Service Provider's rights in such Hardware, Software or other Contracts in consideration for the Net Book Value or unamortized cost thereof.
- (b) For purposes of this Section 18.8(3), the "**Net Book Value**" of the Dedicated Hardware will be the reasonable arm's length price for which Service Provider acquires the Dedicated Hardware new, depreciated on a straight line basis over a period determined in accordance with Service Provider's corporate accounting practices but not to exceed four (4) years. Within thirty (30) days of the end of each calendar quarter, Service Provider will provide to HSSBC a report showing the original Net Book Value and depreciation schedule for the Dedicated Hardware acquired during such quarter. If HSSBC can demonstrate (with at least two (2) competitive quotes for the same Dedicated Hardware), within thirty (30) days of receiving such information, that HSSBC would be able to obtain any such Dedicated Hardware new in the market in the same time frame for a lower price, the original "Net Book Value" for such Dedicated Hardware will be deemed to be such lower price.
- (c) Within thirty (30) days of the end of each calendar year, Service Provider will provide to HSSBC a report showing the original Net Book Value and depreciation schedule (including the then-current Net Book Value) of the Dedicated Hardware. The information related to the Net Book Value and its calculation will be considered out of scope for any audit provisions stated in this Agreement. If any such Dedicated Hardware has a Net Book Value of zero (i.e. has been fully depreciated) then the payment for such asset will be one (1) dollar.

(4) **Third Party Materials**

Service Provider will use commercially reasonable efforts to assist HSSBC in identifying and obtaining licenses on the best commercial terms for Third Party off-the-shelf tools, documentation and materials proprietary to Third Parties used by Service Provider in the provision of the Services.

(5) **Outstanding Payments**

Upon the expiration of the Term or any termination of this Agreement, HSSBC will, within thirty (30) days of receipt of the Service Providers final invoice, pay to Service Provider all outstanding Fees which are due and payable (and not otherwise the subject of a Dispute under Section 17.5), and the Parties will use commercially reasonable efforts to promptly settle any outstanding Disputes with respect to any outstanding Fees in accordance with the Dispute Resolution Process.

18.9 Non-Exclusive Remedies

The remedies provided in this Article 18 and elsewhere in this Agreement are neither exclusive nor mutually exclusive, and subject to the limitation of liability provisions in this Agreement, the Parties will be entitled to any and all such remedies, and any and all other remedies that may be available to the Parties at law or in equity, by statute or otherwise, individually or in any combination thereof.

18.10 Survival

Unless otherwise provided in this Agreement, the following provisions (including the obligations of HSSBC and the Service Provider under the Agreement) shall survive the expiration or termination of this Agreement: Section 2.6, Section 2.12, Section 3.6, Section 5.9, Section 10.5, Sections 17.4 – 17.6 and Section 17.7 -17.9, Section 18.5 – 18.6 and Section 18.8 – 18.10, Section 20.2 and Section 20.3, Section 25.1, Section 25.4, Section 25.6, Section 25.8, Section 25.10 - 25.13 and Article 12, Article 13, Article 16, Article 18, Article 21 and Article 24.

ARTICLE 19 TRANSITION OUT SERVICES

19.1 General Obligations

Upon any expiration of the Term or termination of this Agreement, or termination of any Services provided hereunder, Service Provider will provide Transition Out Services in accordance with the Transition Out Plan. Without restricting the generality of the foregoing, Service Provider will:

- (1) co-operate with HSSBC and any HSSBC designee (collectively, the “**Replacement Service Provider**”), including promptly taking all steps required to assist HSSBC in effecting a complete transitioning out;
- (2) provide to HSSBC and the Replacement Service Provider all information and professional services related to the Services as needed for effecting a complete transitioning out, including data conversion and interface specifications;
- (3) provide for the prompt and orderly conclusion of all work, as HSSBC may direct, including completion or partial completion of all Services including Support, documentation of work in process, and measures to provide an orderly transition to HSSBC and the Replacement Service Provider; and
- (4) accomplish the other obligations described in this Article 19, the Transition Out Plan.

Prior to the Termination Date, all Transition Out Services will be performed, to the maximum extent possible, as part of the Services which are included in the Fees. The Parties will work together and cooperate in good faith to redeploy the Service Provider resources, who were previously used to perform the Services, to instead provide the Transition Out Services with a view to minimizing the cost of any additional Service Provider resources and, as a result, the cost to HSSBC. Any additional Service Provider resources which are required to perform the Transition Out Services will be provided for reasonable rates which are not to exceed the Services Rates. Transition Out Service provided after the Termination Date will be provided for reasonable rates which are not to exceed the Services Rates and will be provided in cooperation with HSSBC Personnel and such other personnel as HSSBC may specify. Service Provider’s obligation to provide the Services will not cease until all assets, Contracts and employee transfers, if any, and other obligations of Service Provider set forth in this Article 19 and Article 18 and the Transition Out Services contemplated in the Transition Out Plan have been fully performed. HSSBC’s obligations set forth in this Article 19 will not cease until the end of the Transition Out Period. Service Provider will implement the Transition Out Plan to effect the transparent, seamless,

orderly and uninterrupted transition of the Services from the manner in which Service Provider delivered the Services throughout the Term of this Agreement and prior to the Transition Out Period to the manner in which Services will be provided by the Replacement Service Provider after the Transition Out Period.

19.2 Transition Out Period

Service Provider will provide the Transition Out Services during the period (the “**Transition Out Period**”) commencing on the earlier of:

- (1) the date designated by HSSBC in connection with expiration of the Term; or
- (2) the Termination Date specified in any Termination Notice provided by one Party to the other Party pursuant to Article 18 (unless the non-terminating Party in good faith disputes such termination),

and continuing until the date (the “**Expiration Date**”) that is the later of:

- (3) either
 - (a) twelve (12) months after the expiration of the Term, in the case of paragraph (a) above; or
 - (b) eighteen (18) months after the date specified in paragraph (b), in the case of paragraph (b) above; and
 - (c) the date upon which all assets, Contracts and employee transfers, if any, and other obligations of Service Provider set forth in this Article 19 and Article 18 and the Transition Out Services contemplated in the Transition Out Plan have been fully performed.

19.3 Specific Obligations

Transition Out Services will include, without limitation, the performance of the specific obligations described in this Section 19.3 and in the Transition Out Plan.

- (1) **List of Items.** Service Provider will, as soon as reasonably possible following the Transition Notice Date, but in no event more than ten (10) Business Days thereafter, provide to HSSBC a complete and accurate list of all items that will be subject to transfer to HSSBC or the Replacement Service Provider, as provided in Section 18.8.

- (2) **Full Co-operation, Information and Knowledge Transfer.** During the Transition Out Period, the Parties will co-operate fully with one another to facilitate a smooth transition of the Services from Service Provider and its Subcontractors to HSSBC and the Replacement Service Provider. Service Provider will provide such co-operation both before and after the Expiration Date, and such co-operation will include, without limitation, provision of full, complete, detailed, and sufficient information (including all information then being utilized by Service Provider with respect to programs, tools, utilities and resources used to provide the Services) and knowledge transfer with respect to all such information in order to enable HSSBC's and the Replacement Service Provider's personnel (or that of Third Parties) to fully assume, become self-reliant with respect to, and continue without interruption, the provision of the Services. Service Provider will co-operate with HSSBC and all of HSSBC's other service providers to provide a smooth transitioning out, with no unnecessary interruption of Services, no unnecessary adverse impact on the provision of Services or HSSBC's activities and no unnecessary interruption of, or unnecessary adverse impact on, any services provided to HSSBC by Third Parties.
- (3) **Transfer of Assets.** Service Provider will, if and as requested by HSSBC as part of the Transition Out Services, convey to the Replacement Service Provider, as HSSBC directs, from among those assets used by Service Provider to provide the Services, such assets as HSSBC agrees to purchase pursuant to Section 18.8.
- (4) **Delivery of Documentation and Data.** If and as requested by HSSBC, Service Provider will deliver to HSSBC and the Replacement Service Provider all documentation and data related to Service Provider's provision of the Services, including the HSSBC Data, as well as all procedures, standards and operating schedules (including the Operations Manual), held by Service Provider.
- (5) **Hiring of Employees.**
- (a) *List of Employees.* Service Provider will, as soon as reasonably possible following the Transition Notice Date, but in no event more than ten (10) Business Days thereafter, provide to HSSBC a complete and accurate list of all Service Provider Service Provider Personnel who were Principally Dedicated in providing the Services during the six (6) month period preceding the Transition Notice Date.
- (b) *Service Provider Co-operation.* Service Provider will co-operate with and assist (and will cause its Subcontractors to co-operate with and assist) HSSBC and the Replacement Service Provider in offering, and HSSBC and the Replacement Service Provider will have the right to solicit for employment and offer, employment to any or all Service Provider Personnel who were Principally Dedicated in providing the Services during the six (6) month period preceding the Transition Notice Date, whether or not such offers are made at the time of, after or in anticipation of the Expiration Date.
- (c) *Employee Benefits.* Except as provided in Section 18.8(2), Service Provider will be solely responsible for and will pay to any employees of Service Provider who are hired by HSSBC or the Replacement Service Provider, all vacation pay, pension contributions and other benefits to the date of transition to HSSBC or the Replacement Service Provider, and Service Provider will be responsible for Severance Costs, if any are payable pursuant to Service Provider's standard

policies and at minimum as required by Applicable Laws in respect of employees terminated or otherwise not retained by Service Provider, and, except as provided in Section 18.8(2), will cause relevant Subcontractors to pay all vacation pay, pension contributions and other benefits to the date of transition to HSSBC or the Replacement Service Provider to any such employee of a Subcontractor who is hired by HSSBC or its designee, if any are payable pursuant to such Subcontractors' standard policies and at minimum as required by Applicable Laws.

- (d) *Release from Restrictive Covenants.* Service Provider will release (and will cause its Subcontractors to release) from any restrictive covenants including non-compete and non-disclosure agreements, any of the employees hired by HSSBC or by the Replacement Service Provider. Service Provider will not (and will ensure that its employees and Subcontractors do not) in any manner communicate disparaging information about HSSBC or the Replacement Service Provider, or any of their employees, to transitioning employees or existing employees of HSSBC or the Replacement Service Provider. The Parties will each use commercially reasonable efforts to mitigate the costs associated with the termination and severance of Principally Dedicated employees upon termination of the Services, or expiry of this Agreement, (but will not, as part of such efforts, be required to either hire or retain such employees).

19.4 Preparation for Transition Out

- (1) **Complete Documentation.** In addition to and as part of the Operations Manual, at all times during the Term, Service Provider will provide to HSSBC complete information, including complete documentation, in accordance with the processes, standards and methodologies to be implemented by Service Provider, for all Services, software (including applications developed as part of the Services) and hardware, that is sufficient to enable HSSBC and the Replacement Service Provider, to fully assume the provision of the Services to HSSBC.
- (2) **Maintenance of Assets.** Service Provider will, throughout the Term and throughout the Transition Out Period, maintain all of the hardware, software, systems, networks, technologies and assets utilized in providing Services to HSSBC (including Dedicated Hardware), in good condition and in such locations and configurations as to be readily identifiable and transferable or capable of transition back to HSSBC or its designees in accordance with the provisions of this Agreement. In addition, Service Provider will insure such hardware, software, systems, networks, technologies and assets in accordance with the requirements of 23.1. Service Provider will, throughout the Term and throughout the Transition Out Period, maintain all Dedicated Contracts in force and without breach thereof by Service Provider.
- (3) **Advance Written Consents.** Service Provider will, for all licenses, leases and Contracts relevant to the provision of the Services, obtain from the relevant parties advance written Consents to the conveyance or assignment of such licenses, leases and other Contracts to HSSBC and the Replacement Service Provider as part of the Transition Out Services. Service Provider will, as part of the Transition Out Services, effect the conveyance or assignment of such licenses, leases and other contracts to HSSBC and/or the Replacement Service Provider prior to the Expiration Date. Service Provider will also obtain for HSSBC the right, upon completion of the Transition Out Services, to obtain Maintenance (including all enhancements and upgrades) and support with respect to the

assets that are the subject of such licenses, leases and Contracts at the price at which, and for so long as, such maintenance and support is made commercially available to other customers of the respective licensors, lessors and contracting parties.

ARTICLE 20 REPRESENTATIONS, WARRANTIES AND COVENANTS

20.1 Service Provider Representations, Warranties and Covenants

The Service Provider represents, warrants and covenants as follows to HSSBC, as of the date of this Agreement and (except as otherwise noted) throughout the Term, and acknowledges and confirms that HSSBC is relying upon such representations, warranties and covenants in entering into of this Agreement:

(1) Legal and Corporate Authority of Service Provider

- (a) it is a corporation incorporated under the laws of ●, and is qualified and registered to transact business in all locations where the performance of its obligations hereunder would require such qualification;
- (b) it has all necessary corporate power, capacity and legal authority to enter into, execute and deliver the Agreement and to perform its obligations hereunder, and the Agreement has been duly executed and delivered by the Service Provider and constitutes a legal, valid and binding obligation of the Service Provider enforceable against the Service Provider in accordance with its terms, subject to applicable bankruptcy, insolvency and other laws of general application limiting the enforceability of creditors' rights, and to the fact that specific performance and injunctive relief are equitable remedies available only in the discretion of the court;
- (c) the execution and performance of this Agreement by Service Provider will not violate any Applicable Laws and will not breach any Contract, court order, judgment or decree to which Service Provider is a party or by which it is bound;
- (d) it has, and promises that it will maintain in effect, all governmental licenses and permits necessary for it to provide the Services contemplated by this Agreement;
- (e) it owns or leases and promises that it will own or lease, free and clear of all liens and encumbrances, other than security interests of Service Provider's lenders, all right, title, and interest in and to the tangible property and technology and the like that Service Provider intends to use or uses to provide the Services (other than the HSSBC Hardware), and in and to the related Intellectual Property Rights, or has received appropriate licenses, leases or other rights from Third Parties to permit such use; and
- (f) this Agreement constitutes a valid, binding, and enforceable obligation of Service Provider.

(2) Legal and Corporate Authority of Guarantors

Each of the Performance Guarantor and the Financial Guarantor:

- (a) are corporations incorporated under the laws of ● and ● respectively, are qualified and registered to transact business in all locations where the performance of its obligations hereunder would require such qualification;
- (b) have all necessary corporate power, capacity and legal authority to enter into, execute and deliver the Performance Guarantee and the Financial Guarantee, as applicable, and to perform its obligations thereunder, and each of the Performance Guarantee and the Financial Guarantee have been duly executed and delivered by the Performance Guarantor and the Financial Guarantor, as the case may be, and constitutes a legal, valid and binding obligation of the Performance Guarantor and the Financial Guarantor, as the case may be, enforceable against the Performance Guarantor and the Financial Guarantor, as the case may be, in accordance with its terms, subject to applicable bankruptcy, insolvency and other laws of general application limiting the enforceability of creditors' rights, and to the fact that specific performance and injunctive relief are equitable remedies available only in the discretion of the court; and
- (c) this Agreement constitutes a valid, binding, and enforceable obligation of the Performance Guarantor and the Financial Guarantor.

With respect to the Performance Guarantor, the Performance Guarantor has, and promises that it will maintain in effect, all governmental licenses and permits necessary for it to provide the Services contemplated by this Agreement, as the performance guarantor of the Service Provider, if necessary.

(3) Violations

Service Provider represents and warrants to HSSBC that it is not, and covenants that it will not be, in violation of any Applicable Laws to which it is subject, and has not failed, and will not fail, to obtain any licenses, permits, franchises or other governmental authorizations necessary for the ownership of its properties or the conduct of its business, which violation or failure, either individually or in the aggregate, could reasonably be expected to have a material adverse effect on its business, the consummation of the transactions contemplated by this Agreement, or the performance of its obligations hereunder.

(4) Performance of the Services

Service Provider represents and warrants to HSSBC that it has the skills, resources and expertise to provide and will provide all Services in accordance with the terms of this Agreement. Without limiting the generality of the foregoing, Service Provider represents and warrants to HSSBC that Service Provider will use all commercially reasonable efforts to reduce the environmental impacts of the Services and that all Services will be provided in a timely, professional and workmanlike manner, in each case consistent with the standards of quality and integrity customarily observed by leading North American providers of services that are the same or similar to the Services provided, however, that where this Agreement specifies a particular standard or criteria for performance, including applicable SLAs, this warranty is not intended to and does not diminish that standard or criteria for performance.

(5) Viruses and Disabling Devices

Service Provider will implement and use standards of practice customarily observed by leading North American providers of services that are the same or similar to the Services to identify,

screen, and prevent, and not introduce, any Disabling Device in hardware, software, or other information technology services utilized by Service Provider, HSSBC or any Third Party in connection with the Services. A “**Disabling Device**” is any virus, timer, clock, counter, time lock, time bomb, Trojan horse, worms, file infectors, boot sector infectors or limiting design, instruction or routine and surveillance software or routines or data gathering or collecting software or devices that could, if triggered, erase data or programming, have an adverse impact on the Services, cause the hardware, software or resources to become inoperable or otherwise incapable of being used in the full manner for which such hardware, software or resources were intended to be used, or that collect data or information. However, for greater certainty, Disabling Devices do not include either software keys used in industry or disabling code used to temporarily disable a section of code while a patch or fix is being applied. To the extent that any Service Provider supplied Services involve protection features designed to prevent copying, or intentionally to prevent the use of such software or other software routines or hardware components which are designed to prevent unauthorized access, to disable or erase software or data, or to perform other like actions, Service Provider will provide HSSBC with the necessary key, password or other means such that it will have access and use of same.

(6) Loss of Data / Breach of Backup Obligation

If any HSSBC Data is lost or damaged, Service Provider will use commercially reasonable efforts to assist HSSBC to recover such lost HSSBC Data, provided that:

- (a) if the HSSBC Data is lost or damaged without fault of the Service Provider and despite the diligent performance by Service Provider of its obligations under this Agreement, HSSBC will be responsible for the costs reasonably incurred by Service Provider in assisting HSSBC in the recovery and/or restoration of the lost or damaged data (to the extent that such costs are not already included in the Fees); and
- (b) if the HSSBC Data is lost or damaged as a result of the fault of the Service Provider, the Service Provider will, at its expense, perform or re-perform the Services to recover the lost or damaged data using the last available back-up copy preceding the loss or damage and recreate the lost or damaged data which was not backed up, with the reasonable assistance of HSSBC, using such alternative data as HSSBC may make available.

(7) Conflicts of Interest

- (a) *No Financial Interest.* Service Provider represents and warrants to HSSBC that neither Service Provider nor any of its Affiliates operating in the Permitted Service Locations, nor any employee of either, has, will have, or will acquire, any contractual, financial, business or other interest or advantage, direct or indirect, that would materially conflict with Service Provider’s performance of its duties and responsibilities to HSSBC under this Agreement or otherwise create an appearance of impropriety with respect to this Agreement; and Service Provider will promptly inform HSSBC of any such interest of which Service Provider becomes aware.
- (b) *No Abuse of Authority or Information for Financial Gain.* Service Provider represents and warrants to HSSBC that neither Service Provider nor any of its Affiliates operating in the Permitted Service Locations, nor any employee of either, directly or indirectly, has used or will use the authority, or any HSSBC

Confidential Information, provided or to be provided under this Agreement to improperly obtain financial gain, advantage or benefit for Service Provider, any of its Affiliates, or any of their employees.

- (c) *No Influence.* Service Provider represents and warrants to HSSBC that neither Service Provider nor any of its Affiliates, nor any employee of either, directly or indirectly, has offered an undisclosed inducement that would provide a financial gain, advantage or benefit to, or could otherwise be expected to influence an employee or representative of HSSBC.
- (d) *No Collusion.* Service Provider represents and warrants to HSSBC that the prices presented in the Service Provider Proposal were arrived at independently, without consultation, communication or agreement with any other proposer for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Service Provider to any other proposer; and no attempt was made by Service Provider to induce any other Person to submit or not to submit a proposal for the purpose of restricting competition.

(8) Condition

Service Provider represents and warrants to HSSBC that it now possesses, and covenants that it will maintain throughout the Term, the resources necessary to comply with the requirements of this Agreement. If Service Provider experiences a change in its condition or circumstances that could reasonably be expected to materially adversely affect its ability to perform its obligations under this Agreement, then it will promptly notify, and in any event within two (2) Business Days, HSSBC of such change.

(9) Litigation and Service of Process

Service Provider represents and warrants to HSSBC that as of the Effective Date there is no actual, pending or anticipated claim, suit or proceeding involving Service Provider or its Affiliates that could reasonably be expected to have a material adverse effect on the ability of Service Provider or its Affiliates to perform its or their obligations under this Agreement including actions pertaining to the proprietary rights described in Article 12. Service Provider will notify HSSBC, within fifteen (15) days of Service Provider's knowledge of any such actual or anticipated claim, suit or proceeding. In addition, Service Provider will either notify HSSBC, within fifteen (15) days of Service Provider becoming aware of any actual or anticipated claim, suit or proceeding involving a subcontractor that could reasonably be expected to have a material adverse effect on the ability of such subcontractor to perform its obligations in connection with the Services or Service Provider will take appropriate action to ensure that delivery of the Services is not adversely affected by such claim, suit or proceeding. Without limiting the further terms of Section 13.11, Service Provider will notify HSSBC, within forty-eight (48) hours, if process is served on Service Provider in connection with this Agreement, including any subpoena or court order for Service Provider's records, and will send a written notice of the service together with a copy of the same to HSSBC within seventy-two (72) hours of such service.

(10) Proprietary Rights Infringement

Service Provider represents, warrants and covenants to HSSBC that:

- (a) the performance of the Services and Service Provider's obligations hereunder (except if such performance is expressly specified and directed by HSSBC);

- (b) the grant or provision of licenses by Service Provider herein;
- (c) the assignment or obtaining of assignments of Intellectual Property Rights by Service Provider herein;
- (d) the use of any services, techniques or products (except with respect to techniques or products developed by HSSBC) provided or used by or on behalf of Service Provider to provide the Services,

do not and will not infringe upon, violate or misappropriate any Third Party's Intellectual Property Rights in any of the jurisdictions in which the Services are being performed. Any infringement contrary to this Section 20.1(10) will be addressed in accordance with Article 12.

(11) Information Furnished to HSSBC

Service Provider represents and warrants to HSSBC that:

- (a) all information, statements and facts furnished by Service Provider to HSSBC in the Service Provider Proposal, all documents provided by Service Provider to HSSBC as supplements to the Service Provider Proposal (including the written answers by Service Provider to HSSBC in response to questions developed by HSSBC as a result of its analysis of the Service Provider Proposal) provided prior to the Effective Date and all the information made a part of this Agreement;
- (b) all representations and warranties made by Service Provider that are contained in this Agreement or that may be contained in any Schedule or other document that may comprise this Agreement,

are true, accurate, and complete, and contain no untrue statement of a material fact, nor omit any material fact necessary to make such information, statements, facts, representations or warranties, not misleading.

(12) Completeness of Due Diligence Activities

Service Provider acknowledges that it has been provided with sufficient access to HSSBC Facilities, information and personnel, and has had sufficient time in which to conduct and perform a thorough due diligence of HSSBC's operations and business requirements and HSSBC's assets currently used by HSSBC in currently providing such services. In light of the foregoing, Service Provider will not seek any adjustment in the Fees based on any incorrect assumptions made by Service Provider in arriving at the Fees, except to the extent that such assumptions have been confirmed by HSSBC in this Agreement.

20.2 Service Provider Parent Guarantee

Service Provider Parent has provided a Service Provider Parent Guarantee in the form attached hereto as Schedule M (*Form of Guarantees*).

20.3 Warranty Disclaimer

- (1) **HSSBC - No Warranty**

HSSBC does not make any representation or warranty, express or implied, with respect to the Services or any component thereof; and all hardware, software, networks, and items made available or conveyed by HSSBC to Service Provider under this Agreement are made available or conveyed to Service Provider “**AS IS, WHERE IS AND WITH ALL FAULTS,**” and there are no guarantees, representations, warranties or conditions of any kind express or implied, including warranties with respect to condition, capabilities, attributes, uninterrupted or error free operation, merchantability, quality or fitness for a particular purpose and those arising by statute or otherwise, or from a course of dealing or usage of trade, except HSSBC hereby confirms that the Hardware owned or leased by HSSBC and the Software owned or licensed by HSSBC is being used in the day-to-day business and operations of HSSBC.

(2) **General Warranty Disclaimer**

EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, NEITHER PARTY MAKES OR GIVES ANY REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WARRANTIES AS TO UNINTERRUPTED OR ERROR FREE OPERATION, MERCHANTABILITY, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING BY STATUTE OR OTHERWISE, OR FROM A COURSE OF DEALING OR USAGE OF TRADE.

**ARTICLE 21
INDEMNIFICATION AND LIMITATION OF LIABILITY**

21.1 General Intent

Each Party will be liable to the other Party for any damages that may be properly and lawfully awarded against a Party in favour of the other Party under the terms of, or in connection to this Agreement. The Service Provider and HSSBC agree that monetary damages may not be a sufficient remedy for any breach of this Agreement, and each of the Service Provider and HSSBC shall be entitled to seek equitable relief, including injunctive relief and specific performance in the event of a breach of this Agreement, to the extent that such remedy is available to a Party in accordance with Applicable Laws. For greater clarification, the provisions of this Section are not intended to in any way interfere or otherwise limit the jurisdiction of any arbitrators appointed or otherwise engaged pursuant to the provisions of Article 24 (*Dispute Resolution Process*).

21.2 Indemnification by HSSBC

HSSBC shall indemnify and save harmless the Service Provider and its Subcontractors and their respective directors, officers, employees, advisors, agents and representatives (the “**Service Provider Indemnified Parties**”) to the fullest extent permitted by law, from and against any and all Claims suffered or incurred by any of them arising as a result of or in connection with any of the following (except and to the extent such Claims are suffered or incurred as a result of the comparative fault of the Service Provider Indemnified Parties):

- (1) from the death of or bodily injury to any third party or any employee of the Service Provider or its Affiliates to the extent caused by the negligent or willful misconduct of HSSBC;
- (2) from the loss of or damage to any tangible personal property or real property of the Service Provider or property of any third party to the extent caused by the negligence or willful misconduct of HSSBC;

- (3) the failure of HSSBC to perform its obligations under the Assigned Contracts prior to the assignment thereof from HSSBC to the Service Provider;
- (4) except where prevented by Applicable Law, Claims brought directly by HSSBC or a Health Organization against the Service Provider that are related directly or indirectly to the Services or this Agreement; and
- (5) for the purposes of Subsections 21.2(1) and (3), the term “**Claims**” shall be limited to:
 - (a) all damages that a court finally awards to a third party for such claim and any defence costs; or
 - (b) subject to the provisions of Section 21.6, the amount of any settlement agreed to by the Indemnified Party.

21.3 Indemnification by the Service Provider

Without duplication of any liquidated damages to be paid by the Service Provider to HSSBC hereunder, the Service Provider shall indemnify and save harmless HSSBC and HSSBC’s directors, officers, employees, advisors, agents and representatives (the “**HSSBC Indemnified Parties**”) to the fullest extent permitted by law, from and against any and all Claims are suffered or incurred by any of them arising as a result of or in connection with any of the following (except to the extent such Claims suffered or incurred as a result of the comparative fault of HSSBC Indemnified Parties):

- (1) any third party Claim relating to the failure of the Service Provider to perform its obligations under any license, lease or other agreement:
 - (a) between the Service Provider and a third party, including Subcontractors and landlords,
 - (b) assigned by the Service Provider to HSSBC or to an alternate service provider in connection with the termination of this Agreement, but only with respect to any Claims that arise from or relate to the period prior to the assignment thereof by the Service Provider to HSSBC or the Alternative Service Provider,

that arises as a result of HSSBC receiving Services under this Agreement;

- (2) the Service Provider failing to fulfill its obligations in Schedule L (*Privacy and Security*) in any material respect (which may arise from a single failure to fulfill one or more sections of the Schedule R (*Permitted Service Locations*) or multiple failures to perform one or more sections) including any failure by the Service Provider to ensure that its Personnel and Subcontractors comply with the provisions of Schedule L (*Privacy and Security*) to the extent applicable to them;
- (3) the failure of the Service Provider to pay and discharge any Taxes for which the Service Provider is responsible pursuant to this Agreement and Applicable Laws, provided that nothing in this Agreement shall impose on the Service Provider any obligation or liability with respect to any Taxes for which its Subcontractors may be responsible at law;
- (4) negligence of the Service Provider, Service Provider Personnel or Subcontractors in connection with the performance of the Services;

- (5) the death of or bodily injury to any third party or to any employee of HSSBC to the extent caused by the willful misconduct or, negligence of the Service Provider, its Personnel or its Subcontractors or External Personnel in connection with the performance of the Services;
- (6) the loss of or damage to any tangible personal property and real property of HSSBC or any third party, to the extent caused by the negligence or willful misconduct of the Service Provider, its Personnel or its Subcontractors or External Personnel in connection with the performance of the Services; and
- (7) any claim, proceeding or action taken or initiated by a Service Provider Affiliate in breach of Section 15.3 (*North American Free Trade Agreement*), Article 24 (*Dispute Resolution*) or Section 25.12 (*Governing Law and Venue*).

For the purposes of Subsections 21.3(1), (5) and (7), the term “**Claims**” shall be limited to:

- (8) all damages that a court finally awards to a third party for such claim and any defence costs; or
- (9) subject to the provisions of Section 21.6, the amount of any settlement agreed to by the Indemnified Party.

For greater clarification, when calculating the amount of any “Claim” by HSSBC under this Agreement, shall include as a direct claim, Claims incurred by HSSBC arising out of or relating to the Services.

For greater clarification, the Service Provider shall not be required to indemnify HSSBC Indemnified Parties under this Section in respect of an event giving rise to termination by HSSBC for which the Parties have agreed to pay liquidated damages under the provisions of this Agreement.

21.4 Service Provider Intellectual Property Indemnification

Subject to Section 21.6, the Service Provider shall indemnify and save harmless HSSBC Indemnified Parties from and against any and all Claims suffered or incurred by any of them arising as a result of, or in connection with, any actual or alleged infringement of the patents or copyrights of a third party or the violation of the rights of a third party in respect of its trade secrets by the Deliverables, any Service Provider Owned Software, Service Provider Hardware or Service Provider Licensed Third Party Software (collectively, the “**Service Provider Intellectual Property**”) or any Derivative Works from any Service Provider Intellectual Property, HSSBC-Owned Materials or Third Party Software, provided, used or made by the Service Provider or any of its Subcontractors or Affiliates in the course of performing the Services (collectively, the “**Service Provider Indemnified Materials**”), provided that the Service Provider shall have no liability under this Section for any Claims that arise as a result of:

- (1) HSSBC’s combination, operation, or use of the Service Provider Indemnified Materials with products or data not provided by the Service Provider and not set forth in the relevant Specifications for such Service Provider Intellectual Property, or the use of any Software in other than their specified operating environment;
- (2) a Derivative Work made by HSSBC or HSSBC’s employees of Subcontractors or Affiliates to the Service Provider Indemnified Materials, except to the extent such Derivative Work was made at the instruction of or with the consent of the Service Provider or its Affiliates or Subcontractors;

- (3) the use by the Service Provider of any HSSBC Owned Material or Third Party Software provided to the Service Provider by HSSBC, except to the extent that such infringement is caused by a Derivative Work of the same made by the Service Provider (or any of its Affiliates or Subcontractors);
- (4) the compliance by the Service Provider with any Specification specified by HSSBC if the infringement or violation would not have occurred but for compliance with that Specification; or
- (5) any Claims in respect of which HSSBC is required to indemnify the Service Provider Indemnified Parties pursuant to Section 21.5.

For the purposes of this Section 21.4, the term “**Claims**” shall be limited to:

- (6) all damages that a court finally awards to a third party for such claim and any defence costs; or
- (7) subject to the provisions of Section 21.6, the amount of any settlement agreed to by the Indemnified Party.

Without limiting or otherwise restricting the Service Provider’s liability and obligations to HSSBC in respect of the foregoing, if HSSBC’s use of any Service Provider Indemnified Materials provided or otherwise made available by the Service Provider to HSSBC pursuant to this Agreement is found to be infringing the patents or copyrights of a third party or violating the trade secret rights of a third party or, in the Service Provider’s reasonable judgment is likely to be found to be infringing or in violation, then the Service Provider may (at its option and expense) either procure for HSSBC the right to continue using such Service Provider Indemnified Materials, or replace or modify such Service Provider Indemnified Materials to make its continued use non-infringing while providing substantially the same functionality.

21.5 HSSBC Intellectual Property Indemnification

Subject to Section 21.6, HSSBC shall indemnify and save harmless the Service Provider Indemnified Parties from and against any and all Claims suffered or incurred by any of them arising as a result of, or in connection with, the actual or alleged infringement of the patents and copyrights of a third party or the violation of the rights of a third party in respect of its trade secrets by HSSBC Owned Material or any Derivative Work created by HSSBC or any of its subcontractors to any Service Provider Intellectual Property or HSSBC Owned Material or Third Party Software (collectively the “**HSSBC Indemnified Materials**”), provided that HSSBC shall have no liability under this Section for any Claims that arise as a result of:

- (1) a Derivative Work made by the Service Provider or any of its Subcontractors or Affiliates to HSSBC Indemnified Materials;
- (2) the use by the Service Provider of HSSBC Indemnified Materials provided to the Service Provider by HSSBC to the extent that such infringement is caused by a Derivative Work of the same created by the Service Provider (or any of its Subcontractors or Affiliates); or
- (3) any Claims in respect of which the Service Provider is required to indemnify HSSBC Indemnified Parties pursuant to Section 21.4.

For the purposes of this Section 21.5, the term “Claims” shall be limited to:

- (4) all damages that a court finally awards to a third party for such claim and any defence costs; or
- (5) subject to the provisions of Section 21.6, the amount of any settlement agreed to by the Indemnified Party.

Without limiting or otherwise restricting HSSBC's liability and obligation to the Service Provider in respect of the foregoing, if use of any HSSBC Indemnified Materials provided or otherwise made available by HSSBC to the Service Provider pursuant to this Agreement is found to be infringing the patents or copyrights of a third party or violating the trade secret rights of a third party or, in HSSBC's reasonable judgment it is likely to be found to be infringing or in violation, then HSSBC may (at its option and expense), either procure for the Service Provider the right to continue using such HSSBC Indemnified Materials, or replace or modify such HSSBC Indemnified Materials to make its continued use non-infringing while providing substantially the same functionality.

21.6 Third Party Claim Process

- (1) If the Indemnified Party intends to seek indemnification under this Article from the Indemnifying Party in respect of any third party Claims, then the Indemnified Party shall promptly give the Indemnifying Party written notice of such Claims for indemnification, such notice to be given as soon as practicable following the commencement of any action by a third party; provided, however, that the failure of an Indemnified Party to give the Indemnifying Party such prompt notice shall not relieve the Indemnifying Party of its obligations under this Agreement, except to the extent that such failure results in a material prejudice to the Indemnifying Party's defence to such Claims;
- (2) If the Indemnifying Party receives a notice of any Claim pursuant to paragraph (a) above, then:
 - (a) where the Indemnifying Party is HSSBC, then the Service Provider may permit HSSBC to defend and control the defence of the Service Provider against such Claim at HSSBC's expense and HSSBC will pay such costs, damages and legal fees that a court finally awards or are included in a settlement agreed to by HSSBC, as are in proportion to HSSBC's comparative fault in causing such amounts;
 - (b) where the Indemnifying Party is the Service Provider, then HSSBC may permit the Service Provider to defend and control the defence of HSSBC against such Claim at the Service Provider's expense and the Service Provider will pay such costs, damages and legal fees that a court finally awards or are included in a settlement agreed to by the Service Provider, as are in proportion to the Service Provider's comparative fault in causing such amounts;
 - (c) the Indemnified Party shall cooperate in all reasonable respects with the Indemnifying Party and its counsel in the defence, and may reasonably participate but, for greater clarification, not take control or conduct of such defence at its own expense through its separate legal counsel or otherwise; and
 - (d) if the defendants in any such action include both the Indemnified Party and the Indemnifying Party, and the Indemnified Party shall have reasonably concluded that there may be legal defences available to it which are different from or additional to those available to the Indemnifying Party, then the Indemnified

Party shall have the right to select separate counsel, the cost of which shall be at the Indemnified Party's expense, to assert such legal defences or to otherwise participate in the defence of such action on behalf of the Indemnified Party; and

- (3) To the extent that the Indemnified Party has not permitted the Indemnifying Party to control its defence of the Claim pursuant to Subsection 21.9(2)(a) or 21.6(2)(b) above, then the Indemnified Party shall not settle any Claim for which it may seek indemnification from the Indemnifying Party pursuant to this Section, without consultation with the Indemnifying Party. Notwithstanding such consultation, the Indemnified Party shall have the right to settle such Claim provided, however, that if the Indemnified Party has reached a bona fide settlement agreement with the plaintiff(s) in any such action and the Indemnifying Party disputes:

- (a) the settlement amount; or
- (b) the proportion of the Indemnifying Party's comparative fault in causing such settlement amount,

(collectively, the "**Disputed Matters**")

then, the Disputed Matters shall be resolved in accordance with the provisions of Article 24 (*Dispute Resolution Process*) of this Agreement. For greater clarification, the Disputed Matters shall not include the Indemnified Party's decision to settle any Claim. All settlements of Claims subject to indemnification under this Article 21 shall include an appropriate non-disclosure agreement with the plaintiff(s), prohibiting the disclosure of the terms of such settlement by the plaintiff(s).

21.7 Mitigation

Each Party has a duty to mitigate the Claims that would otherwise be recoverable from the other Party pursuant to this Agreement by taking appropriate and reasonable actions to reduce or limit the amount of such Claims.

21.8 Limitation

The Parties acknowledge and agree that Sections 21.2, 21.3, 21.4, 21.5 and 21.6 contain the Parties entire liability with respect to third party Claims. For certainty, neither the Service Provider nor the Service Provider Personnel, Subcontractors or Affiliates, or the Service Provider, Subcontractor or Affiliates respective officers, and directors have any liability under this Agreement, regardless of the basis of the claim (including breach, negligence, misrepresentation, or other contract or tort claim), for claims for damages made against HSSBC by third parties, except for the Service Provider's obligation to indemnify HSSBC pursuant to this Article 21.

21.9 Limitation of Liability

- (1) Subject to 21.9(2) and 21.9(3), neither Party nor their respective subcontractors (including, for the Service Provider, the Subcontractors), Affiliates, directors, officers, employees, or agents shall be liable for any special, incidental, punitive, indirect or consequential damages arising out of or in connection with the Services provided under this Agreement including, but not limited to, lost revenue, lost profits, replacement goods, loss of technology rights or services, loss of data, or interruption or loss of use of Software or any portion thereof, even if foreseeable or if the Service Provider or HSSBC

have been advised of the possibility of such damages, and regardless of the basis on which the other Party is entitled to claim (including breach, negligence, misrepresentation, or other contract or tort claim).

- (2) The provisions of Section 21.9(1) shall not exclude the following:
- (a) consequential damages arising as a result of the wrongful disclosure of HSSBC Confidential Information as a result of the Service Provider's breach of its obligations pursuant to Section 13.6;
 - (b) the Service Provider's obligations to indemnify for third party Claims pursuant to Sections 21.3 and 21.4; and
 - (c) HSSBC's obligations to indemnify for third party Claims pursuant to Sections 21.2 and 21.5,

provided that a Party's entire liability for consequential damages as set out in this Section 21.9(2) shall not exceed ● dollars (\$●) per occurrence and shall not exceed ● dollars (\$●) in the aggregate for all claims and causes of action (collectively, the "**Consequential Damage Cap**"). This Consequential Damage Cap shall apply to all Claims regardless of the form of action, whether in contract, tort (including negligence), strict liability, or otherwise.

- (3) The provisions of Section 21.9(1) shall not apply to HSSBC's failure to pay any amounts owing to the Service Provider under this Agreement (including amounts owing for Services rendered or services that would have been rendered but for HSSBC's breach of this Agreement).
- (4) Subject to Section 21.9(2), the entire liability of the Service Provider (if any) to HSSBC, and that of its Subcontractors, Affiliates', employees', officers' and directors', relating to or arising from this Agreement, other than pursuant to the indemnities granted under Subsection 21.3(3) and Section 21.4 (the "**Excluded Claims**"), shall be limited to any actual, direct damages and shall not exceed ● dollars (\$●) which amount the Parties acknowledge represents the projected six (6) months average monthly Fees over the Term of the Agreement calculated as of the Effective Date (the "**Direct Damage Cap**"). This Direct Damage Cap shall apply (other than with respect to the Excluded Claims) irrespective of the nature of the cause of action, demand or action including any breach of contract, negligence, tort, misrepresentation, or any other legal theory. If and when the Direct Damage Cap is reached as a result of Claims, then the Parties may, subject to mutual agreement, increase the amount of the aggregate Direct Damage Cap for all claims and causes of actions, to an amount equal to ● dollars (\$●), which amount the Parties acknowledge represents the projected twelve (12) months average monthly Fees over the Term of the Agreement calculated as of the Effective Date, and if the Parties are unable to so agree within sixty (60) days of a request by one Party to the other to reset the amount of the Direct Damage Cap, then HSSBC shall be entitled to terminate this Agreement without payment of a termination fee, in which case, the provisions of Article 19 (*Transition Out Services*) shall apply.
- (5) Each Party agrees that it shall not assert any Claims from the other Party until such Claims aggregate an amount equal to ● dollars (\$●), at which time, the Party seeking the Claims from the other (in accordance with the terms of this Agreement) shall be entitled

to claim all such Claims. This Section 21.9(5) shall not apply to the indemnity granted by the Service Provider under Section 21.3(2)

- (6) Notwithstanding the foregoing, liability to HSSBC in respect of lost or destroyed data shall be limited to circumstances where data is lost solely as a result of the Service Provider's negligence in the performance of the Services, and in such event, the Service Provider's liability shall be limited to using reasonable efforts to restore such data from the last available back up. For certainty, this Section 21.9(6) shall not relieve the Service Provider of its obligations pursuant to Schedule L (*Privacy and Security*).
- (7) Notwithstanding the foregoing paragraphs, nothing in this Section shall entitle either Party to Claims in respect of amounts already paid to that Party pursuant to Section 5.9 and Schedule N (*Termination Fees*).

21.10 Service Provider Guarantees.

Concurrently with the signing of this Agreement, the Service Provider will provide to HSSBC a duly executed performance guarantee and financial guarantee, in the form attached as Schedule M (*Form of Guarantees*).

ARTICLE 22 FORCE MAJEURE

22.1 Force Majeure

No Party shall be in breach of this Agreement where its failure to perform or its delay in performing any obligation is due to a cause beyond its reasonable control, including any Force Majeure Event.

22.2 Delay in Payment

A Force Majeure Event may result in a delay in any payment owing under this Agreement being made within the timeframes required in this Agreement; however, any monies subject to a delay in payment will remain owing to the other Party.

22.3 Extension of Performance

Each Party shall notify the other promptly and in writing of any failure to perform or delay in performing due to a Force Majeure Event, and shall provide an estimate as soon as practicable of the time when the obligation will be performed. Subject to Section 18.4(2), the time for performing the obligation shall be extended for a period of time equal to the period of delay resulting from such a cause. Without restricting the generality of the foregoing, whenever an actual or potential labour dispute is delaying or threatens to delay the performance of Services, the Service Provider shall promptly notify HSSBC in writing. Such notice shall include all relevant information concerning the dispute and its background.

22.4 HSSBC Recourse to Third Parties

During each such Force Majeure Event, HSSBC may, in HSSBC's discretion, and without incurring any liability, seek to have its requirements (which would otherwise be met hereunder) met by or through a third party or third parties.

22.5 Work Around Plans

When requested by HSSBC, the Service Provider shall deliver, within ten (10) Business Days of receipt of a request, a description in a form satisfactory to HSSBC of work-around plans including any means that the Service Provider will use to overcome a Force Majeure Event, and shall endeavour to prevent any further similar Force Majeure Event. Upon receipt of approval in writing by HSSBC, which shall not be unreasonably withheld, the Service Provider shall implement such work-around plans.

22.6 Costs of Work Around

The Parties, both acting reasonably, shall agree on an equitable manner of sharing:

- (1) the costs associated with the development and implementation of any work-around plans; and
- (2) any third party expenses incurred with respect to such work-around plans, prior to incurring any such third party expenses.

ARTICLE 23 INSURANCE

23.1 Insurance

The Service Provider shall procure and maintain at all times during the Term of this Agreement, at its own expense and without reimbursement from HSSBC, the following insurance policies which may be provided by way of an umbrella or excess policy and which shall be underwritten by insurers licensed to carry on insurance business in Canada:

- (1) **Commercial General Liability.** Commercial general liability insurance protecting against Claims of bodily injury (including death) and property damage which may arise out of the performance of the Services by the Service Provider or otherwise under this Agreement, in an amount not less than ● dollars (\$●) inclusive per occurrence. The policy(s) shall include coverage for non-owned automobile liability, personal injury liability, employer's liability, blanket contractual liability coverage, broad form property damage coverage and coverage for products and completed operations. The policy(s) shall contain a cross-liability clause, a waiver of subrogation in favour of HSSBC, and include HSSBC as an additional insured. In the event the Service Provider receives a notice of cancellation of coverage or a notice of material change from its insurer and such is reasonably expected to disrupt coverage required under this section, the Service Provider will provide prompt notice of such to HSSBC and in any event will provide such notice within seventy-two (72) hours of the receipt of such notice from its insurer; and
- (2) **Errors & Omissions Liability.** Errors and omissions liability insurance protecting against Claims arising out of any error or omission by the Service Provider in the provision of the Services, in an amount not less than ● dollars (\$●). In the event the Service Provider receives a notice of cancellation of coverage or a notice of material change from its insurer and such is reasonably expected to disrupt coverage required under this section, the Service Provider will provide prompt notice of such to HSSBC and in any event will provide such notice within seventy-two (72) hours of the receipt of such notice from its insurer.

23.2 Certificate of Insurance

The Service Provider shall provide HSSBC with evidence of all required insurance in the form attached as Schedule O (*Form of Certificate of Insurance*) within thirty (30) days after the Effective Date, and upon the reasonable request of HSSBC from time to time but not more frequently than annually. The Service Provider shall not cancel any of the required insurance policies set out or contemplated in this Article 22 without thirty (30) days prior written notice to HSSBC unless such cancelled insurance policy is replaced with a replacement insurance policy of the same kind and type, and in an equal or greater amount.

23.3 Adequacy of Insurance

The Service Provider acknowledges that any requirement for insurance under this Agreement shall not constitute a representation by HSSBC that the amount or type of insurance required is adequate, and the Service Provider acknowledges and agrees that it is solely responsible for obtaining and maintaining its own policies of insurance in such amounts as the Service Provider determines to be appropriate and adequate, subject to the minimum requirements set out in this Article 22.

ARTICLE 24 DISPUTE RESOLUTION

24.1 Dispute Resolution Process

The Parties agree to endeavour: (i) to resolve Incidents through Incident Management and Problems through Problem Management (in each case as provided for under this Agreement); and (ii) to resolve any unresolved Issues or Disputes using the Dispute resolution procedures set out in Schedule P (*Dispute Resolution Process*) (“**Dispute Resolution Process**”). Notwithstanding the foregoing, any Issue or Dispute involving a third party will be resolved by the Parties, acting reasonably, in consultation and negotiations with such third party and will not, unless the third party agrees in writing to participate in and be bound by the results of such arbitration, be subject to escalation to arbitration as provided for in Schedule P (*Dispute Resolution Process*).

24.2 Equitable Relief

Notwithstanding anything contained in the Agreement to the contrary, the Parties will be entitled to seek injunctive or other equitable relief from a court of competent jurisdiction whenever the facts or circumstances would permit a Party to seek such relief.

ARTICLE 25 MISCELLANEOUS

25.1 Third-Party Beneficiaries

This Agreement is an agreement between the Parties and, except for the HSSBC Indemnified Parties and the Service Provider Indemnified Parties for which HSSBC and Service Provider can act on their behalf, confers no rights upon any of such Parties’ employees, agents, or contractors, or upon any other Person.

25.2 Assignment

Except for subcontracting permitted under the terms of Article 10 and any assignment or transfer by HSSBC to an Authorized User, neither Party will assign, transfer or delegate its duties under this Agreement, in whole or in part, whether by operation of law or otherwise, without the prior written consent of the other Party, which will not be unreasonably withheld. Any assignment in contravention of

this Section 25.2 (i.e., without the consent of the other Party) will be null and void ab initio. Subject to all other provisions herein contained, this Agreement will be binding on the Parties and their successors and permitted assigns. Notwithstanding the foregoing, the assigning Party will remain liable for the performance of the assigned or delegated obligations hereunder.

25.3 Notices

Unless specifically provided otherwise in this Agreement, including through the Governance Process, wherever any notice, communication, demand, invoice, approval or other document is required or permitted to be given, sent or delivered by one Party to another under this Agreement, then it will be in writing and may be delivered personally, by facsimile or PDF or sent by a recognized courier service (and for greater clarification, no notice, demand or approval required or permitted to be given under this Agreement will be, or be deemed to be, effective or delivered if given by email). Any such notice, communication, demand, invoice, approval or other document so personally delivered or sent by facsimile or courier will be deemed to be given when actually received and will be addressed as follows:

To **HSSBC**:

Health Shares Services British Columbia
700-1380 Burrard Street
Vancouver, British Columbia
V6Z 2H3

Attn:

Fax: (604) 875-7365

To the **Service Provider**:

[Insert contact details]

Either Party may change its address or facsimile number for notices upon giving prior written notice of the change to the other Party in the manner provided above.

25.4 Relationship Between the Parties

Neither Party (nor any employee, subcontractor (including, for the Service Provider, the Subcontractors) or agent thereof) will be deemed or otherwise considered a representative, agent, employee, partner or joint venturer of the other. Further, neither Party (nor any employee, subcontractor (including, for the Service Provider, the Subcontractors) or agent thereof) will have the authority to enter into any contract, nor to assume any liability, on behalf of the other Party, nor to bind or commit the other Party in any manner, except as expressly provided in this Agreement.

25.5 Counterparts; Faxed Signatures

This Agreement may be executed in duplicate counterparts, each of which will be deemed an original and both of which together, when delivered by facsimile, PDF or otherwise, will constitute one and the same instrument. The Parties hereby adopt as original any signatures received via facsimile or PDF.

25.6 Public Announcements

- (1) The Service Provider will not, without the prior written consent of HSSBC, issue any such press release or make any public announcement to a third party that include a factual description of any of the Services, information about the Services, this Agreement or relationship between the Service Provider and HSSBC provided, however, that the Service Provider may, without such consent, make such disclosure if the same is required by Applicable Law, any stock exchange on which any of the securities of the Service Provider are listed or posted for trading, or any securities commission or other similar regulatory authority having jurisdiction over the Service Provider, and if such disclosure is required. The Service Provider in making any such disclosure will use all commercially reasonable efforts to give prior oral or written notice to the others, and if such prior notice is not possible, to give such notice immediately following the making of such disclosure. Either Party may include the other Party's name on its employee bulletin boards, in its list of customers or service providers and in the experience section of proposals to third parties, in internal business planning documents and in its, or its Affiliate's, annual report to shareholders or annual information form and whenever otherwise required by reason of legal, accounting or regulatory requirements.
- (2) The Service Provider will consult HSSBC before issuing any press release or making any other public announcement with respect to this Agreement or the transactions contemplated hereby (other than any promotional or marketing material of such Party which merely identifies HSSBC as a customer or service provider).

25.7 Effect of Certificates

All certificates provided under this Agreement by an officer or director of a Party will be provided in that Person's capacity as an officer or director of such Party, and not in that Person's personal capacity, and no such officer or director will incur any personal liability to any Party under or as a result of such certificate.

25.8 Expenses

Each Party will bear all expenses paid or incurred by it in connection with the planning, negotiation and consummation of this Agreement.

25.9 Entire Agreement

This Agreement sets forth the entire agreement between the Parties with respect to the matters referred to herein and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral. There are no conditions, covenants, agreements, representations, warranties or other provisions, express or implied, collateral, statutory or otherwise, relating to the subject matter contained herein other than those set forth in or referred to in this Agreement. The Non-Disclosure and Confidentiality Agreement between the Parties dated [●], will be terminated, superseded and replaced by this Agreement, provided that all Confidential Information provided thereunder will be deemed to be Confidential Information under this Agreement, and the Non-Disclosure and Confidentiality Agreement will survive with respect to the remedies available in respect of any breach of such agreement which occurred prior to the Effective Date.

25.10 Fully Negotiated Agreement

The Parties agree that all of the provisions of this Agreement have been fully negotiated, that neither of them will be deemed the drafter of this Agreement and that, in construing this Agreement in case of any claim that any provision hereof may be ambiguous, no such provision will be construed in favour of one Party on the ground that such provision was drafted by the other Party.

25.11 Severability

If any provision of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, that provision will be deemed stricken with respect to that jurisdiction and the remainder of this Agreement will continue in full force and effect insofar as it remains a workable instrument to accomplish the original intent and purposes of the Parties, and, if possible, the Parties will act in good faith to replace the severed provision with a valid and enforceable provision that reflects the intention of the Parties with respect to the severed provision.

25.12 Governing Law and Venue

This Agreement will be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the Parties will be governed by, the laws of the Province of British Columbia and the federal laws of Canada applicable therein, without giving effect to conflicts of laws principles. Subject to the dispute resolution provisions in Article 24, each Party hereby irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of such Province and all courts competent to hear appeals therefrom and each Party irrevocably accepts and submits to the sole and exclusive jurisdiction of such courts, generally and unconditionally with respect to any action, suit or proceeding brought by or against it by the other Party. Except as hereafter provided in this Section 25.12, neither Party will bring any legal action, suit or proceeding in any way arising out of or relating to this agreement in any other court or in any other jurisdiction and will not assert any claim, whether as an original action or as a counterclaim or otherwise, against the other in any other court or jurisdiction. Each Party irrevocably waives and agrees not to assert, by way of motion, as a defence or otherwise, any objection that it may now or hereafter have to the venue of any of the aforesaid actions, suits or proceedings in the courts referred to above, and further waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper, or that this Agreement or the subject matter hereof or thereof may not be enforced in or by such court. As the only exception to the above, if a Party is entitled to seek injunctive or other equitable relief which is not available in the venue specified in this Section 25.12, this Section will not be deemed to be a bar to the Party seeking such relief if such relief is wholly non-monetary injunctive or other equitable relief. The terms of this Section 25.12 will apply regardless of the country of origin of any Dispute. Further, each of the Parties agrees that any judgment rendered by a provincial or federal court located in Canada is a valid and binding judgment, entitled to recognition and enforcement in and by any court, tribunal, judge, jury or other body exercising judicial functions located in the country of the applicable Party, including, in the case of Service Provider, the Service Provider Parent (collectively, a “**Local Court**”). Each Party agrees that any such judgment may be entered into evidence in any suit, action or proceeding commenced in any Local Court and hereby irrevocably waives and agrees not to assert, by way of motion, as a defence or otherwise, any objection that it may now or hereafter have relating to the validity of any such judgment and its introduction into evidence in any suit, action or proceeding in any Local Court, and further irrevocably waives and agrees not to plead or claim in any such suit, action or proceeding that the judgment may not be recognized or enforced by such Local Court. Either Party may seek interim measures of protection, including but not limited to interim injunctive relief, in a court of competent jurisdiction located in the Province of British Columbia. The Parties consent and agree to the jurisdiction of the courts mentioned in this paragraph, and waive any and

all objections to such forums, including but not limited to objections based on improper venue or inconvenient forum.

25.13 Appropriation

Notwithstanding any other provision of this Agreement, the payment of money by the HSSBC to the Service Provider under this Agreement is subject to:

- (1) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act* (British Columbia), to enable HSSBC to make that payment; and
- (2) Treasury Board, as defined in the *Financial Administration Act* (British Columbia), not having controlled or limited, under the *Financial Administration Act* (British Columbia), expenditure under any appropriation referred to in paragraph (1) above.

25.14 Amendments and Waivers

No amendment or waiver of any provision of this Agreement will be binding on any Party unless consented to in writing by such Party. Except as provided under the Change Process, Service Provider expressly agrees that all amendments to this Agreement executed by the Parties after the Effective Date must be signed by a Vice President or a higher-level officer of HSSBC and a representative of Service Provider in order to be effective (and all amendments so signed will be effective and binding on the Parties). No waiver of any provision of this Agreement will constitute a waiver of any other provisions, nor will any waiver constitute a continuing waiver, unless otherwise expressly provided therein.

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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**HEALTH SHARED SERVICES
BRITISH COLUMBIA ON BEHALF OF
PROVINCIAL HEALTH SERVICES
AUTHORITY AND AS AGENT FOR
VANCOUVER COASTAL HEALTH
AUTHORITY**

[SERVICE PROVIDER]:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SCHEDULE A DEFINITIONS

“Access Provisioning” means granting and revoking access, as authorized by HSSBC.

“Access Subcontractor” means a Subcontractor that has or could have access to or Custody of Personal Information in the course of performing Services.

“Affiliate” means, from time to time, as to any Person, any other Person that, at the relevant time, directly or indirectly controls, is controlled by, or is under common control with, such Person, whether through ownership of voting securities or otherwise. For this purpose, and without limiting the foregoing, any Person that holds, directly or indirectly, the beneficial or equitable ownership of 50% or more of the capital stock (or other ownership interests, if not a corporation) of such other Person will be deemed to control such other Person.

“Agreement” means this Services Agreement, the recitals hereto and all Schedules, attachments, appendices, addenda and other documents attached hereto or incorporated herein by reference, as amended from time-to-time in accordance with the provisions hereof.

“Applicable Laws” means all statutes, laws, by-laws, rules, binding policies, regulations, codes, ordinances, orders, restrictions and requirements of governmental, regulatory or other authorities having jurisdiction, and all amendments thereto, at any time and from time to time in force including all laws and regulations relating to export of technology and the collection, storage, disclosure, dissemination, transfer and use of data, including privacy laws, and laws relating to reduction of reporting on the direct and indirect environmental impacts of the Services. In the case of Service Provider, Applicable Laws are laws that apply to Service Provider as a provider of services that are the same or similar to the Services.

“Assigned Accounts” has the meaning set forth in Section 24 of Schedule L (*Privacy and Security*).

“Assigned Contracts” means the Existing Contracts listed in Schedule W (*HSSBC Assigned Contracts*).

“At-Risk Amount” means, as the context may indicate or require, the applicable Monthly At-Risk Amount and/or the applicable Critical Milestone At-Risk Amount.

“Authorized Service Provider Personnel” has the meaning set forth in Section 31 of Schedule L (*Privacy and Security*).

“Authorized Users” means the HSSBC including, for greater certainty, the Health Organizations, and their respective employees, directors, agents, and those entities and individuals identified in Schedule T (*HSSBC Authorized Users*) and their respective authorized employees and agents, in each case who are authorized by HSSBC to use the Services.

“Benchmarking” means the objective measurement and comparison process (using available industry standards) as set out in Schedule I (*Benchmarking*).

“Business Day” means any day, which is not a Saturday, Sunday or statutory holiday in Vancouver, British Columbia.

“Business Hours” means • am to • pm Pacific Time on a Business Day.

“Canadian Entity” has the meaning set forth in Section 13.2(4).

“Change” means the addition, modification or removal of Services, Hardware, Software and/or documentation, under this Agreement, as approved pursuant to the Change Process.

“Change in Control” means: (a) any transaction or combination of transactions as a result of which either a Person or a group of Persons that customarily has acted in concert and that presently is in control of a Party ceases to be in control of such Party; (b) the sale, transfer, exchange or other disposition (including disposition in full or partial dissolution) of fifty percent (50%) or more of the beneficial ownership (as defined in Rule 13(d) of the *Securities Exchange Act* of 1934) of the voting power of a Party, or of the assets of such Party that constitute a substantial or material business segment of such Party; or (c) with respect to Service Provider, the unit, division or operating group of Service Provider that is responsible in providing the Services to HSSBC is sold, transferred or otherwise experiences a change in ownership or control.

“Change Order” means an agreed Change Proposal entered into by the Parties in accordance with this Agreement.

“Change Process” means the process for controlling Changes in a controlled manner enabling approved Changes with minimum disruption as more particularly set forth in Article 7 and Schedule E (*Change Process Forms*).

“Change Proposal” means a Change proposal in the form set forth in Section 7.3 describing services or work that Service Provider proposes be performed.

“Change Request” means a Change request in the form set forth in Section 7.1 requesting the performance of services or work that is not being performed by Service Provider at a particular time or change to the Services.

“Claims” means any and all claims, legal or other proceedings, suits, actions, causes of action, losses, damages, liabilities, costs and expenses (whether accrued, actual, contingent, latent or otherwise), and all reasonable legal fees suffered or incurred by a Person.

“Closure” means the actual closing of an Incident record within the Incident management tool after the verification of the Incident Resolution, the completion of Root-Cause Analysis and the identification of the root cause of the Incident (as appropriate).

“Compliance Date” means, with respect to an SLA, the compliance date for such SLA identified in Schedule F (*Service Levels*).

“Confidential Information” means HSSBC Confidential Information or Service Provider Confidential Information, as the case may be.

“Confidentiality Covenants” has the meaning set forth in Section 33 of Schedule L (*Privacy and Security*).

“Consents” means consents, approvals, acknowledgements, licenses, permissions and authorizations.

“Consequential Damage Cap” has the meaning set forth in Section 12.9 (1).

“Contract Executive” means, as applicable the HSSBC Contract Executive or the Service Provider Contract Executive, and “Contract Executives” means both the HSSBC Contract Executive and the Service Provider Contract Executive.

“Contract Year” means a year during the Term that begins on the Effective Date or any anniversary thereof.

“Contracts” means any and all agreements, covenants, indentures, contracts, leases, deeds of trust, licences, options, undertakings, instruments or commitments, whether oral or written.

“Control” has the meaning set forth in Section 2 of Schedule L (*Privacy and Security*).

“Corporate Control” of a corporation or other entity is directly held by a Person where securities of the corporation or other entity to which are attached 50% or more of the votes that may be cast to elect directors or persons acting in a similar capacity of the corporation or other entity are directly held, other than by way of security only, by or for the benefit of such Person, and **“Corporately Controlled”** has corresponding meaning.

“Corporate Organizational Chart” has the meaning set forth in Section 13.2(3).

“CPIC” means Canadian Police Identification Centre.

“Critical” has the meaning set forth in Section 6.5.

“Critical Milestone At-Risk Amount” means, in respect of the Transition, twenty-two percent (22%) of the Transition In Services Fees.

“Critical Milestones” means those milestones, activities, actions and the achievement of certain objectives under this Agreement which are identified as Critical Milestones pursuant to this Agreement, Schedule B (*Transition In Plan - Framework*), Schedule F (*Service Levels*), or elsewhere in or pursuant to this Agreement.

“CRA” has the meaning set forth in Section 9.7(1).

“Custody” means to have physical possession and immediate responsibility for the safe-keeping and preservation.

“Custom Developed Applications Software” means the software applications which relate specifically to HSSBC’s business that are developed by or on behalf of Service Provider pursuant to this Agreement in accordance with the Change Process.

“Data and Modified Data” has the meaning set forth in Section 12.8.

“Dedicated” means, with respect to any asset (including Hardware and Software), Contract, product, service or premises used in connection with or to provide the Services, that such asset, Contract, product, service or premises is used or dedicated exclusively for the provision of the Services, subject to any minor overflow work.

“Deliverable” means any tangible or intangible document, system, software or material which is produced, created, provided, delivered or made available by Service Provider to HSSBC under this Agreement, including any source code or object code, specifications, technical information, data or reports.

“Derivative Works” means any and all revisions, modifications, changes, translations, abridgements, compilations, condensations or expansions of the applicable underlying work or any form in which that work may be recast, transformed or adapted, together with all documentation and instructions relating to

such revisions, modifications, changes, translations, abridgements, compilations, condensations or expansions, made during the Term or the Transition Out Period.

“**Direct Damage Cap**” has the meaning set forth in Section 12.9 (4).

“**Disabling Device**” has the meaning set forth in Section 20.1(5).

“**Disaster Recovery Services**” means the disaster recovery services as more particularly described in Schedule D (*Managed Services*).

“**Disclosing Party**” means the Party that has disclosed Confidential Information to the other Party.

“**Disclosure Order**” has the meaning set forth in Section 13.2(2).

“**Dispute**” means any Issue which is escalated to the Executive Committee for resolution in accordance with the Dispute Resolution Process.

“**Dispute Resolution Process**” has the meaning set forth in Section 24.1.

“**Disputed Matters**” has the meaning set forth in Section 21.6 (3).

“**Effective Date**” has the meaning set forth in the opening paragraph of the Agreement.

“**Emergency Change**” means a Change that needs to be implemented immediately to mitigate risk of loss, damage or other adverse consequence to HSSBC’s business.

“**Events of Default**” means any of the events described in Section 18.5.

“**Excluded Claims**” has the meaning set forth in Section 12.9 (4).

“**Executive Committee**” has the meaning set forth in Schedule H (*Governance*).

“**Existing Contracts**” means the Contracts between HSSBC and Third Parties which were used by HSSBC to obtain services similar to or relating to the Services prior to the Effective Date.

“**Expected Service Level**” means, for each Service category, the expected level of performance as set out in the definition of the Service category and as altered in accordance with Section 5.12.

“**Expiration Date**” has the meaning set forth in Section 19.2.

“**External Confidentiality Covenants**” has the meaning set forth in Section 34 of Schedule L (*Privacy and Security*).

“**Fee Reductions**” means the dollar amount by which the Fees will be reduced based on the Service Provider’s failure to achieve any SLA. All SLA related Fee Reductions shall be calculated in accordance with Schedule F (*Service Levels*).

“**Fees**” has the meaning set forth in Section 17.1.

“**Financial Guarantee**” means the guarantee entered into by the Financial Guarantor as contemplated by this Agreement, in the form set forth in Schedule M (*Form of Guarantees*).

“**Financial Guarantor**” means *[Insert name of financial guarantor]*.

“FOIPPA” means the *Freedom of Information and Protection of Privacy Act* (British Columbia).

“Force Majeure Event” means an act of God, act of governmental body or military authority, fire, explosion, flood, earthquake, epidemic, riot or civil disturbance, war, terrorism, sabotage, insurrections, blockades, embargoes, storms or other similar events that are beyond the reasonable control of the affected Party. In addition, with respect to HSSBC, any foreign government trade action or Canadian government legislation, Applicable Law or amendment having significant effect on the ability of HSSBC to continue its business, will be deemed a Force Majeure Event. Notwithstanding the foregoing, “Force Majeure Event” expressly excludes:

- (a) any event that Service Provider could have prevented if it had performed system testing required to be performed pursuant to this Agreement or necessary to provide the Services;
- (b) any event caused by a single point of failure where Service Provider was obligated under this Agreement to provide fault tolerant Services;
- (c) any Service Provider strike, walkout or labour shortage; and/or
- (d) any non-performance of a Service Provider Affiliate or Subcontractor, regardless of cause (unless due to a Force Majeure Event).

“Foreign Disclosure Laws” means any laws, statutes, by-laws, treaty, directive, policy having the force of law, order, judgment, injunction, award, decree or other similar matter of any government, legislature (or similar body), court, governmental department, commission, board, bureau, agency, instrumentality, province, state, territory, association, county, municipality, city, town or other political of governmental jurisdiction, whether not or in the future constituted, outside of Canada, that may require, request, or otherwise demand access, use or disclosure of Personal Information, whether to intercept or obstruct terrorism, or for any other reason.

“Foreign Employed Individuals” means individuals who have entered into an employment agreement or other similar agreement for the provision of personal services thereunder, whether express or implied by law, with a Person that is not a Canadian Entity.

“GHG Emissions” means green house gas emissions (calculated in terms of the CO₂ equivalent volume of the gas for non-CO₂ emissions) in tons.

“Governance Process” has the meaning set forth in Schedule H (*Governance*).

“Governance Service Levels” has the meaning set forth in Section 5.4.

“Guarantors” means the Performance Guarantor and the Financial Guarantor and “Guarantor” means either one of them as applicable.

“Guiding Principles” has the meaning set forth in Section 1.1.

“Hardware” means the HSSBC Hardware, the Service Provider Hardware and all of the hardware listed in Schedule U (*HSSBC Supplied Hardware*) and Schedule Y (*Service Provider Supplied Hardware*), as such Schedules may be amended from time to time, and all other hardware that is required to provide the Services, together with all replacements therefor and all incidental and ancillary components, connecting equipment, peripherals, media, firmware and embedded software and instructions but, for greater certainty does not include equipment used to provide heating, lighting, ventilation, air conditioning or

electrical power at premises owned or leased by HSSBC. The requirements for Hardware may be modified from time to time through the Change Process.

“Health Facilities” has the meaning set forth in Section 4.7.

“Health Organization” means Provincial Health Services Authority, Vancouver Coastal Health Authority, Providence Health Care Society and such other health organizations in the Province of British Columbia that may receive and use any of the Services over the Term.

“HSSBC” has the meaning set forth in the opening paragraph of the Agreement and, for the purposes of this Agreement shall include the Health Organizations that may receive and use any of the Services provided hereunder or be involved in the performance of any of the obligations of HSSBC hereunder, all of which will for all purposes of this Agreement be represented exclusively by HSSBC.

“HSSBC Confidential Information” means all records, data and information of HSSBC that is disclosed to Service Provider or any of its employees, contractors (including Subcontractors) or agents, whether in tangible, intangible or oral form, and whether in written form or readable by machine, including, without limitation:

- (a) all HSSBC Data;
- (b) HSSBC-Owned Materials;
- (c) all financial information, personnel information, business information, client information, reports, documents, correspondence, plans and specifications relating to HSSBC or its Authorized Users;
- (d) all technical information, materials, data, reports, programs, documentation, diagrams, developed by or for HSSBC or its Authorized Users;
- (e) any information that HSSBC or any of its Authorized Users identifies to Service Provider as confidential by a stamp or other similar notice; and
- (f) all other records, data or information collected, received, stored or transmitted in any manner connected with the provision of Services hereunder which by its nature or the circumstances under which it is disclosed ought reasonably to be considered as confidential to HSSBC.

HSSBC Confidential Information will not include information that Service Provider can demonstrate was: (a) at the time of disclosure to Service Provider, in the public domain; (b) after disclosure to Service Provider, published or otherwise made a part of the public domain through no fault of Service Provider; (c) received, after disclosure by HSSBC to Service Provider, from a Third Party who had a lawful right to disclose such information to Service Provider free from any obligation of confidentiality; or (d) independently developed by Service Provider without reference to HSSBC Confidential Information or (e) disclosed by HSSBC to a Third Party without obligation of confidentiality. For purposes of this provision, information is in the public domain if it is generally known (through no fault of Service Provider) to Third Parties who are not subject to nondisclosure restrictions with respect to such information.

“HSSBC Contract Executive” has the meaning set forth in Schedule H (*Governance*).

“HSSBC Data” means, in or on any media or in any form: (a) all data that is in the possession of HSSBC or any Authorized User, and all data concerning or indexing such data, all data relating to the operations and business of HSSBC and (b) all records, data, files, input materials, reports, forms and other items that may be received, computed, developed, used or stored by Service Provider or any of its employees, Subcontractors or agents from, for or on behalf of HSSBC or any Authorized User.

“HSSBC-Developed Deliverables” has the meaning sent forth in Section 12.1;

“HSSBC Email System” has the meaning set forth in Section 24 of Schedule L (*Privacy and Security*).

“HSSBC Facilities” has the meaning set forth in Section 6.8.

“HSSBC Hardware” means all Hardware owned, leased or otherwise held by HSSBC that is used or required in connection with the performance of the Managed Services, including the Hardware listed in Schedule U (*HSSBC Supplied Hardware*) and all replacements of and additions to such Hardware, but excluding the Service Provider Hardware.

“HSSBC Indemnified Materials” has the meaning set forth in Section 21.5.

“HSSBC Indemnified Parties” has the meaning set forth in Section 21.3.

“HSSBC Licensed Software” means the Third Party Software for which HSSBC has a license to use.

“HSSBC-Owned Materials” has the meaning set forth in Section 12.1.

“HSSBC Personnel” means the personnel and independent contractors of HSSBC (including for greater certainty, the personnel and independent contractors of a Health Organization, as the case may be).

“HSSBC Policies and Procedures” means the policies, standards, procedures and practices of HSSBC set forth in Schedule Q (*HSSBC Policies and Procedures*), as such policies and procedures may be amended from time to time by HSSBC using the Change Process.

“HSSBC Proprietary Software” means the software owned by HSSBC, including object and source code versions, and any documentation and any derivative works or interfaces relating to the foregoing created by or on behalf of HSSBC from time to time, but excluding Third Party Software.

“HSSBC Satisfaction SLAs” means the SLAs identified in Schedule H (*Governance*) as the HSSBC Satisfaction SLAs.

“HSSBC Satisfaction Surveys” means all satisfaction surveys set out in Schedule H (*Governance*).

“HSSBC Service Delivery Managers” has the meaning set forth in Schedule H (*Governance*).

“HSSBC Service Locations” means the locations listed in Schedule AA (*HSSBC Service Locations*) as such list may be amended from time to time by HSSBC using the Change Process.

“Incident” means any event which is not part of the standard operation of the Service and which causes, or may cause, an interruption or a reduction of the quality of a Service. HSSBC will determine the Incident severity level of each Incident.

“Incident Management” means the process required to restore normal service operation as quickly as possible and minimize the adverse impact of an Incident on business operations, thus ensuring that the

agreed to levels of service quality and availability are maintained. The Incident Management process includes the following: (i) Incident detection and recording; (ii) Incident classification and initial support; (iii) Incident investigation and diagnosis; (iv) Incident Resolution and recovery; (v) Incident closure; and (vi) Incident ownership, monitoring, tracking and communication.

“Incident Resolution” means the point at which Service Provider has responded to an Incident and Service Provider has either: (a) fully restored the Service affected by the Incident; or (b) implemented a Workaround to restore the functionality of the service affected by the Incident. In both cases, the Incident is not resolved until HSSBC has been satisfied that it has been resolved.

“Indemnified Party” means either: (1) HSSBC, in the case of Claims, suits or proceedings subject to indemnification by Service Provider under Section 21.3, or (2) Service Provider, in the case of Claims, suits or proceedings subject to indemnification by HSSBC under Section 21.2.

“Indemnifying Party” means: (1) Service Provider, in the case of Claims, suits or proceedings subject to indemnification by Service Provider under Section 21.3, or (2) HSSBC, in the case of Claims, suits or proceedings subject to indemnification by HSSBC under Section 21.2.

“In-Flight Project” means those projects described in Schedule C (*In-Flight Projects*).

“In-Flight Project Fees” means the fees payable by HSSBC to the Service Provider for the In-Flight Projects, as set forth in Schedule DD (*Fees*).

“Initial Term” has the meaning set forth in Section 18.1.

“Intellectual Property Rights” means any and all copyrights, copyright registrations and applications therefore, moral rights, patents, patent applications, trade-marks, trade-mark registrations and applications thereof, industrial designs, industrial design applications, inventions, processes, trade secrets, integrated circuit topographies and integrated circuit topography applications and other industrial or intellectual property anywhere in the world, whether or not registered or registrable.

“Issue” means any issue or dispute arising under or relating to this Agreement, including those that relate to any of the following:

- (a) an alleged failure by either Party to perform its obligations under this Agreement (including a failure of Service Provider to resolve an Incident or a Problem as provided for in this Agreement to the satisfaction of both Parties);
- (b) a request for products, services or resources, where the Parties disagree whether such products, services or resources are within the scope of the Services (and therefore included in the Fees) or otherwise within the scope of this Agreement or the Change Process;
- (c) Fees or the prices proposed to be charged by Service Provider to HSSBC for any Services under this Agreement (including any services that HSSBC has requested be provided through the Change Process or the adjustments to Fees resulting from any modification or termination of any Services, including to any Service Levels);
- (d) a disagreement as to the responsibilities either Party has under this Agreement;
- (e) any other disagreement or dispute related to the interpretation or construction of this Agreement; and/or

- (f) any other issue or dispute arising under this Agreement,

with the exception of the following:

- (g) any Incident or Problem to the extent that it has been addressed and resolved to the full satisfaction of both Parties;
- (h) any issue or dispute to the extent that it has been escalated to the Executive Committee for resolution and thereby deemed to be a Dispute; and/or
- (i) any issue or dispute to the extent that it has been resolved by injunctive or equitable relief as provided for in Section 24.2.

“**IT**” means information technology.

“**Key Subcontractors**” has the meaning set forth in Section 10.2.

“**Known Error**” means a condition identified by the successful Root-Cause Analysis of a Problem, and the subsequent development of a solution or a Workaround.

“**Lien**” has the meaning set forth in Section 6.9.

“**Local Court**” has the meaning set forth in Section 25.12.

“**Maintain**” or “**Maintenance**” means, with respect to Service Provider’s obligations under this Agreement, service, support, repair, upgrading and replacement activities conducted in accordance with applicable Specifications and the provisions of the Agreement and any applicable Retained Contract or Assigned Contract.

“**Managed Contracts**” means the Retained Contracts listed in Schedule X (*HSSBC Retained Contracts*) and identified therein as being managed by Service Provider.

“**Managed Services**” means, collectively, the services described in Schedule D (*Managed Services*)

“**Managed Service Fees**” has the meaning set forth in Section 17.3.

“**Measurement Interval**” means, with respect to a SLA or SLO, as the case may be, the period over which compliance with such SLA or SLO is measured (for example, one (1) month, one (1) year, etc.). This factor takes into consideration the impact of continuous outage. For example, a monthly SLA measurement interval for a ninety-nine percent (99%) minimum performance for a 24x7 system with eight hours of weekly planned downtime would allow 6.4 hours of a continuous outage, with no other outages during the calendar month. A weekly interval would only allow 1.6 hours of a continuous outage. The Measurement Intervals are set forth in Schedule F (*Service Levels*) and will be updated as SLAs or SLOs, as the case may be, are added or amended pursuant to Sections 5.11 and 5.12. The Measurement Interval for each SLA or SLO will commence on the Compliance Date.

“**Minimum Service Level**” means, for each Service category, the minimal level of performance required as set out in the definition of the Service category.

“**Monthly At-Risk Amount**” means twenty-two percent (22%) of the portion of the Fees to be paid by HSSBC to Service Provider in respect of the calendar month for which applicable Fee Reductions are being calculated in respect of an SLA.

“**Net Book Value**” has the meaning set forth in Section 18.8(3).

“**On-site Dedicated Personnel**” means Service Provider Personnel assigned to perform Service Provider’s obligations under this Agreement at the HSSBC Facilities.

“**Operations Manual**” has the meaning set forth in Section 4.6.

“**Out-of-Pocket Expenses**” means the reasonable and actual out-of-pocket expenses incurred by a Party, but, for greater certainty, does not include such Party’s overhead cost or any administrative fee or other mark-up.

“**Party**” means either HSSBC or Service Provider, as the context requires, and “**Parties**” means both HSSBC and Service Provider.

“**Pass-Through Expenses**” means Out-of-Pocket Expenses relating to reasonable travel and living expenses incurred by Service Provider Personnel in accordance with this Agreement.

“**Performance Guarantee**” means the guarantee entered into by the Performance Guarantor as contemplated by this Agreement, in the form set forth in Schedule M (*Form of Guarantees*).

“**Performance Guarantor**” means *[Insert name of performance guarantor]*.

“**Permitted Purpose**” has the meaning set forth in Section 6 of Schedule L (*Privacy and Security*).

“**Permitted Service Locations**” has the meaning set forth in Section 4.5.

“**Person**” means any natural person, corporation, limited liability company, limited liability partnership, general partnership, limited partnership, trust, association, governmental organization or agency, political subdivision, body politic or other legal person or entity of any kind, legally constituted.

“**Personal Information**” means information about an identifiable individual as more particularly defined in FIPPA.

“**PHSA**” has the meaning set forth in the opening paragraph of the Agreement.

“**Principally Dedicated**” has the meaning set forth in Section 9.1(4).

“**Privacy Laws**” means all Federal, provincial and territorial legislation, regulations, and decisions, as amended or supplemented from time to time, now in force or that may in the future come into force in Canada governing the protection of personal information in the private and public sector, applicable to Service Provider or to HSSBC in relation to the Services or obligations under this Agreement, and includes the *Freedom of Information and Protection of Privacy Act* (FIPPA), *Personal Information Protection Act* (British Columbia).

“**Privacy Requirements**” has the meaning set forth in Section 1 of Schedule L (*Privacy and Security*).

“**Problem**” means a condition identified as a result of multiple Incidents that exhibits common symptoms, or a single significant Incident for which the cause is unknown but the impact is significant.

“**Problem Management**” means the process for performing a Root-Cause Analysis of the Incident or Incidents and then initiating actions to resolve or correct the situation. The Problem Management process is both reactive and proactive. The reactive Problem Management focuses on solving problems in

response to one or more Incidents. Proactive Problem Management focuses on identifying and solving Problems and Known Errors to eliminate future Incidents, all in a manner which minimizes any business impact on HSSBC. Problem Management includes: (i) trend analysis with respect to Incidents; (ii) effectively targeting support for Root-Cause Analysis and resolution; and (iii) communication with respect Problems and Problem Management to HSSBC to and within HSSBC. The Problem Management process is intended to reduce the number and severity of Incidents and Problems on the business, and report it in documentation to be available to the Service Desk.

“**Receiving Party**” means the Party that has received Confidential Information from the other Party.

“**Renewal Term**” has the meaning set forth in Section 18.2.

“**Replacement Service Provider**” has the meaning set forth in Section 19.1(1).

“**Reporting Period**” means all reports are provided on a monthly basis, within three (3) Business Days of the close of the calendar month, unless stated otherwise.

“**Residuals**” means general knowledge, skill and experience, and any ideas, concepts, or know-how, of a technical nature that are within the scope of the Recipient’s information technology operations and are used, acquired, or developed in the course of providing or receiving the Services.

“**Resolve**” means to repair, replace, reconfigure, reinstall, re-route, or otherwise provide a complete solution to an Incident that returns the system and/or Authorized User(s) to non-degraded full functionality. Implementing a Workaround is typically a partial or temporary resolution.

“**Resources**” has the meaning set forth in Section 14.4.

“**Retained Contracts**” means the Existing Contracts listed in Schedule X (*HSSBC Retained Contracts*).

“**Retained Records**” has the meaning set forth in Section 16.1.

“**RFP**” has the meaning set forth in Recital B.

“**RFPQ**” has the meaning set forth in Recital A.

“**Root-Cause Analysis**” means the performance of an analysis on Incidents and Problems including failure to meet or exceed a SLA, to identify the root cause of such Incidents and Problems, including failure to meet or exceed a SLA, and to develop and recommend to HSSBC a complete solution to avoid and/or Resolve such Incidents and/or Problems in the future.

“**Sales Taxes**” means commodity, value-add and sales taxes applicable by law to, and payable by HSSBC on, the Services and any goods provided hereunder, but excludes any taxes on the income, personnel, property or other assets which are used by Service Provider in connection with the Services.

“**SAS70**” means the American Institute of Certified Public Accountants statement on auditing standards number 70.

“**Satisfaction Survey**” means the satisfaction surveys of the HSSBC users regarding the Services.

“**Secured Databases**” has the meaning set forth in Section 20 of Schedule L (*Privacy and Security*).

“**Secured Equipment**” has the meaning set forth in Section 21 of Schedule L (*Privacy and Security*).

“**Secured Media**” has the meaning set forth in Section 26 of Schedule L (*Privacy and Security*).

“**Services**” has the meaning set forth in Section 4.1.

“**Service Desk**” means the help desk for Authorized Users of the Services as described in Schedule D (*Managed Services*).

“**Service Levels**” means, as the context may imply or require, SLAs and/or SLOs.

“**Service Level Reports**” has the meaning set forth in Section 5.6.

“**Service Provider**” means [●], and includes its successors and permitted assigns.

“**Service Provider Commercial Software**” means the software that is used by Service Provider in connection with providing Services, which is owned or developed by Service Provider or any of its Affiliates and is made available commercially to third parties.

“**Service Provider Confidential Information**” means records, data, and information that is either marked or identified as “confidential” or by its nature or the circumstances under which it is disclosed ought reasonably to be considered as confidential to Service Provider, that is obtained by HSSBC from Service Provider or its Affiliates or Subcontractors in connection with this Agreement, including, without limitation

- (a) all statistical information, personnel information, and business plans relating to Service Provider; and
- (b) all technical information, materials, data, reports, programs, documentation, diagrams, not developed by Service Provider specifically for HSSBC.

Service Provider Confidential Information will not include any HSSBC Confidential Information or information that HSSBC can demonstrate was: (a) at the time of disclosure to HSSBC, in the public domain; (b) after disclosure to HSSBC, published or otherwise made a part of the public domain through no fault of HSSBC; (c) in the possession of HSSBC at the time of disclosure to it and HSSBC was not then under an obligation of confidentiality with respect thereto; (d) received, after disclosure by Service Provider to HSSBC, from a Third Party who had a lawful right to disclose such information to HSSBC free from any obligation of confidentiality; (e) independently developed by HSSBC without reference to Service Provider Confidential Information or (f) disclosed by Service Provider to a Third Party without obligation of confidentiality. For purposes of this provision, information is in the public domain if it is generally known (through no fault of HSSBC) to Third Parties that are not subject to nondisclosure restrictions with respect to such information.

“**Service Provider Contract Executive**” has the meaning set forth in Schedule H (*Governance*).

“**Service Provider Custom Software**” means software already owned by Service Provider as of the date of, and independent from, this Agreement, which is not generally licensed by Service Provider, as licensor, to others, as licensee, on commercially available terms, and that is used in the provision of the Services; for the purposes of clarity, Service Provider Custom Software excludes HSSBC-Owned Materials and Third Party Software.

“**Service Provider Hardware**” means any equipment owned, leased or otherwise held by Service Provider that is used by Service Provider in providing the Services, including the Hardware listed in Schedule V (*Service Provider Supplied Hardware*), but excluding the HSSBC Hardware.

“Service Provider Indemnified Materials” has the meaning set forth in Section 21.4.

“Service Provider Indemnified Parties” has the meaning set forth in Section 21.2.

“Service Provider Intellectual Property” has the meaning set forth in Section 21.4.

“Service Provider Key Personnel” means the personnel of Service Provider and its Subcontractors who are so designated in Schedule BB (*Service Provider Key Personnel*), as amended from time to time in accordance with Article 9.

“Service Provider-Licensed Third Party Software” means software that is owned by a Third Party and licensed by Service Provider or any of its Affiliates that HSSBC agrees Service Provider can use to provide the Services, together with all supporting documentation, media and related materials provided therewith.

“Service Provider-Owned Software” has the meaning set forth in Section 12.2.

“Service Provider Parent” means [●], and includes its successors and permitted assigns.

“Service Provider Parent Guarantee” means the guarantee, in the form attached hereto as Schedule M (*Form of Guarantees*), provided by Service Provider Parent of the due and punctual performance of all of the obligations of Service Provider under this Agreement.

“Service Provider Personnel” means Service Provider Key Personnel, and all other personnel assigned by Service Provider or its Subcontractors to perform Service Provider’s obligations under this Agreement including, for greater certainty, independent contractors of the Service Provider or Subcontractors. For clarification, where they Service Provider will cause Service Provider Personnel to provide Services, carry out a task or an obligation, or otherwise, as the case may be, the Subcontractor will cause its personnel and independent contractors to provide such Services, carry out such task or such obligation, or otherwise, as the case may be.

“Service Provider Proposal” has the meaning set forth in Recital C.

“Service Provider Service Delivery Managers” has the meaning set forth in Schedule H (*Governance*).

“Service Provider Taxes” has the meaning set forth in Section 17.4(1).

“Service Provider Tools” has the meaning set forth in Section 12.1.

“Service Rates” means the hourly service rates set forth in Schedule DD (*Fees*) as such rates may be adjusted.

“Service Start Date” means the date on which Service Provider begins to provide a particular Service as set forth in the Transition In Plan (as such date may be amended by agreement of the Parties). For greater certainty, there may be a different Service Start Date for each Service. The Service Start Date will refer to a particular Service, or to the first Service Start Date of the Services, as the context requires.

“Services” has the meaning set forth in Section 4.1.

“Severance Costs” means, in relation to an employee, costs related to employee severance and notice entitlements that arise under applicable employment standards legislation and at common law, excluding such costs arising from extraordinary payments due and owing to an employee upon termination of

employment by virtue of the unlawful or improper conduct of the current employing Party or any contract between the current employing Party and the employee where those costs materially exceed the employee's entitlements under applicable legislation and at common law.

"SLA" means a service level requirement, including those service level requirements set out in Schedule F (*Service Levels*).

"SLA Credit" has the meaning set forth in Schedule F (*Service Levels*).

"SLA Failure" has the meaning set forth in Section 5.9.

"SLA/SLO Changes" has the meaning set forth in Section 5.12.

"SLA Reporting Interval" means, with respect to an SLA, the SLA Reporting Interval set forth in Schedule F (*Service Levels*) which corresponds to that SLA (as SLAs may be added or amended pursuant to Sections 5.11 and 5.12).

"SLA Termination Event" has the meaning set forth in Schedule F (*Service Levels*).

"SLA Weighting Factor" means, with respect to an SLA, the SLA Weighting Factor set forth in Schedule F (*Service Levels*) which corresponds to that SLA (as such factors may be added to or amended pursuant to Sections 5.11 and 5.12).

"SLO" means a service performance standard that is not identified as an SLA, and includes service performance standard which is specifically identified as an SLO in this Agreement.

"Software" means all of the software listed in the Schedules, and other incidental or related software used in connection therewith, as such software may be modified, supplemented or replaced through the Change Process or as a result of Support.

"Specifications" means the functional and technical requirements as: (a) set forth in applicable HSSBC documentation, and (b) specified by applicable Software and/or Hardware manufacturers, providers or licensors.

"Store" or **"Storage"** has the meaning set forth in Section 18 of Schedule L (*Privacy and Security*).

"Subcontractor" means, subject to the terms of Sections 10.1 and 16.8, any Person other than Service Provider or its employees, including any consultant, that provides Services to HSSBC pursuant to a Contract with, or on behalf of, Service Provider.

"Support" means such services as are required to sustain the operation of the Hardware and Software and the performance of the Services, including (i) the Maintenance and management of the applicable Software and Hardware as generally performed by or on behalf of HSSBC on or before the Service Start Date and as may be modified in accordance with this Agreement and/or the Change Process, including setting up and managing user IDs and passwords, changing authorization tables, Access Provisioning and reporting; (ii) changes that need to be implemented on a timely basis to mitigate risk of loss, damage or other adverse consequence to HSSBC's business and includes Emergency Changes; (iii) reactive changes performed to correct reported faults impacting the normal operation or compliance to Specifications including restoring to regular usage and functionality; and (iv) changes for the purpose of preventing Incidents or Problems before they occur.

"System Logs" has the meaning set forth in Section 28 of Schedule L (*Privacy and Security*).

“**Tax(es)**” means goods, services, sales, harmonized sales, commodity, use, excise, value-added, services, withholding, consumption, employment, capital, access, payroll (including other employment-related taxes and source deductions) and other taxes.

“**Term**” means the period of time from the Effective Date until the termination of this Agreement during or at the end of the Initial Term or any Renewal Terms.

“**Termination Date**” means 11:59 p.m., Vancouver time on the specified date of termination, as specified in a Termination Notice.

“**Termination Fee**” means the applicable amount, determined as of the Termination Date, as set forth in Schedule DD (*Fees*).

“**Termination Notice**” means a written notice of termination as required under this Agreement.

“**Third Party**” means a Person or entity other than the Parties, their Affiliates or any director, employee or agent of any of the Parties or their Affiliates.

“**Third-Party Resources**” has the meaning set forth in Section 14.4.

“**Third Party Software**” means any software that is subject to a license from a third party Person or an Affiliate of Service Provider, other than “shrink wrap” or “click wrap” Software that is generally commercially available, that is required for use by Service Provider in providing the Services under this Agreement; for the purposes of clarity, Third Party Software excludes HSSBC-Owned Materials and Service Provider Custom Software.

“**Transition**” has the meaning set forth in Section 3.1.

“**Transition Assistance**” means all activities and tasks that are necessary to conduct a successful transition of the Services from Service Provider to HSSBC and/or the Replacement Service Provider and to perform the obligations set forth in Article 19 of this Agreement. Transition Assistance includes all activities and tasks specified in the Transition Out Plan.

“**Transition In Plan**” means the transition in plan agreed to by the Parties and attached as part of Schedule B (*Transition In Plan - Framework*).

“**Transition In Services**” means those transition in services as more particularly described in Article 3 and the Transition In Plan.

“**Transition In Services Fees**” has the meaning set forth in Section 17.2.

“**Transition Notice Date**” means (a) in the case of expiry of this Agreement, the date designated by HSSBC in connection with expiration of the Term and, (b) in the case of termination of this Agreement, the date on which Termination Notice is received by the non-terminating Party.

“**Transition Out Period**” has the meaning set forth in Section 19.2.

“**Transition Out Plan**” means the transition out plan agreed to by the Parties and attached as part of Schedule J (*Transition Out Plan*).

“**Transition Out Services**” means the termination assistance services as more particularly described in Article 19 and the Transition Out Plan, and includes Transition Assistance.

“US Service Provider Personnel” has the meaning set forth in Section 37 of Schedule L (*Privacy and Security*).

“Workaround” means a change made to restore the functionality of the service affected by an Incident. A Workaround is typically a temporary solution that Service Provider or HSSBC can implement in the event of an Incident, or the failure of Service Provider to meet a SLA, as a method of restoring full Service or process functionality that allows the affected system(s) and/or process(es) to deliver to HSSBC the desired level of business operations functionality until a permanent solution can be implemented.

SERVICES AGREEMENT

by and between

**PROVINCIAL HEALTH SERVICES AUTHORITY,
VANCOUVER COASTAL HEALTH AUTHORITY, by
its agent Health Shared Services British Columbia**

AND

[SERVICE PROVIDER]

[DATE]

CONFIDENTIAL

Important Note: This Services Agreement represents the form of agreement (general terms and conditions) upon which Provincial Health Services Authority, through its division HSSBC, intends to enter into contracts with third party service providers for its complex commercial arrangements.

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SERVICES AGREEMENT

This Agreement is entered into as of *[Insert Date]* (the “**Effective Date**”) by and between **Provincial Health Services Authority (“PHSA”)**, **Vancouver Coastal Health Authority**, by its agent **Health Shared Services British Columbia**, a division of the Provincial Health Services Authority (“**HSSBC**”) and *[Insert Name of Service Provider]* (“**Service Provider**”).

RECITALS

- A.** On August 8, 2011, PHSA, through its division HSSBC, issued a Request for Prequalification for Strategic Transformation for Clinical Information Systems (RFPQ # HSSBC-00432) (“**RFPQ**”), pursuant to which HSSBC prequalified prospective service providers to provide the transformation services and ongoing managed services described in the RFPQ, to HSSBC and the Health Organizations;
- B.** On February 15, 2012, PHSA, through its division HSSBC, issued a subsequent directed Request for Proposal HSSBC-00578 (“**RFP**”) for the purposes of selecting an experienced and qualified service provider to provide the Services;
- C.** The Service Provider submitted to HSSBC a proposal dated *[Insert Date]* (the “**Service Provider Proposal**”), and represented to HSSBC that it has the expertise, personnel, products, services and skills required to meet the requirements of HSSBC as reflected in the RFP;
- D.** In reliance on representations made by Service Provider in the Service Provider Proposal and subsequent discussions, on *[Insert Date]* HSSBC selected Service Provider over other prospective service providers to provide HSSBC and the Health Organizations with the Services; and
- E.** HSSBC and Service Provider want to specify the terms and conditions under which Service Provider will provide such Services to HSSBC.

NOW THEREFORE in consideration of the representations, warranties, promises and covenants contained herein, and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1 GUIDING PRINCIPLES

1.1 Guiding Principles

The principles identified below (“**Guiding Principles**”) are intended to provide a general introduction to this Agreement by way of setting out the principles that the Parties have determined to be important to ensure the success of their relationship. The Guiding Principles are not intended to expand the scope of the Parties’ obligations hereunder or to alter the plain meaning of the terms and conditions of this Agreement. However, if any term or condition of this Agreement is ambiguous or unclear or does not address a particular circumstance, such term or condition will be interpreted and construed with a view to giving effect to the Guiding Principles.

- (1) **Enhance Capabilities and Effectiveness.** Services will be provided by Service Provider to HSSBC in a manner that enhances HSSBC’s ability to deliver high-quality, cost-effective services internally within HSSBC and to its users with the bare minimum of interruptions in, and adverse impacts on, HSSBC’s delivery of such services. The quality of the Services and the technology utilized by Service Provider to provide the Services

will be no less than consistent with the standards customarily observed by leading North American providers of the same or substantially similar services.

- (2) **Reduce Costs.** Cost reduction is a key objective for HSSBC in securing Services from Service Provider. Service Provider will advise HSSBC of cost reduction opportunities and will, subject to the Change Process, implement such cost reduction opportunities. Service Provider will also implement improved internal processes and methodologies in order to further reduce the overall cost of the Services to HSSBC and will report on same to HSSBC.
- (3) **Improve Services.** Service Provider will identify ways to improve the service levels and the functionality, quality, consistency, reliability, security and accuracy of the Services and will, subject to the Change Process, implement same. Service Provider will also implement improved internal processes and methodologies in order to further improve the service levels and the functionality, quality, consistency, reliability, security and accuracy of the Services and will report on same to HSSBC.
- (4) **Flexibility.** Service Provider will be highly responsive and flexible to meet HSSBC's evolving requirements for Services and its obligations to third parties, and with respect to changes in technology and methods for providing the Services. Without limiting the generality of the foregoing, such flexibility will accommodate significant changes in: volumes of operation, scope of Services, service level requirements, service delivery models, architecture, regulatory or audit requirements, technology, and methods of achieving, monitoring and measuring service levels.
- (5) **Effective Relationship.** HSSBC and Service Provider each value the development of a close and effective working relationship between the Parties and recognize that such a relationship will better facilitate the implementation and delivery of the Services and the achievement of the objectives of this Agreement.
- (6) **Focus on Core Competencies.** By having the Services performed by the Service Provider and leveraging Service Provider's core competencies, Service Provider will enable HSSBC to focus more of its internal resources on strategy, providing services to its users and to improving the levels of service.
- (7) **Measurement and Reporting.** Service Provider will periodically, consistently and accurately measure the quality, quantity and cost-effectiveness of the Services using periodic reports, user surveys, benchmarking and pricing reviews and will provide HSSBC with detailed reports of Services performance.
- (8) **Security and Privacy.** Service Provider will identify ways to improve and, subject to the Change Process, will implement such improvements to the control and security of the Services. Service Provider will use Canadian privacy and security industry best practices to protect the HSSBC Data and the HSSBC environment.
- (9) **Disaster Recovery.** Service Provider will maintain and, where possible, improve, the Disaster Recovery Services provided hereunder to HSSBC and its users.
- (10) **Transition.** Transition activities, into, between and from Services are to be smooth and seamless, are to be performed in a cooperative manner (among HSSBC and its service providers), and to cause minimum disruptions to HSSBC and their users.

- (11) **Environmental Requirements.** The Service Provider acknowledges the importance of environmental leadership. The Service Provider maintains a corporate environmental policy and the Service Provider will: (a) provide available reports to HSSBC on the direct and indirect environmental impacts of the Services; and (b) use all commercially reasonable efforts to reduce the environmental impacts of the Services (including GHG Emissions) in a manner consistent with the practices customarily observed by leading North American providers of services the same or substantially similar to the Services (or as may otherwise be required by HSSBC subject to the Change Process).

ARTICLE 2 INTERPRETATION

2.1 Defined Terms

Unless the context otherwise requires, or unless otherwise defined in the particular Section or Schedule of this Agreement, all terms with an initial capital letter used in this Agreement (including the Recitals) will be interpreted in accordance with the definitions given to such terms in Schedule A (*Definitions*) of this Agreement.

2.2 Articles, Sections and Headings

The division of this Agreement into Articles, Sections, subsections, paragraphs and Schedules, and the insertion of headings and an index are for convenience of reference only and will not affect the construction or interpretation of this Agreement. The Schedules attached to this Agreement form part of this Agreement. Unless otherwise specified herein, any reference herein to an Article, Section, subsection, paragraph or Schedule refers to the specified Article, Section, subsection or paragraph of, or Schedule to this Agreement. In this Agreement, the terms “this Agreement”, “hereof”, “herein”, “hereunder” and similar expressions refer to this Agreement and not to any particular part, Article, Section, subsection, paragraph or other provision hereof.

2.3 Number and Gender

In this Agreement, words importing the singular will include the plural and vice versa and words importing one gender will include all genders, unless the context otherwise requires.

2.4 Inclusion

Where the word “include”, “includes” or “including” is used in this Agreement, it means “include”, “includes” or “including”, in each case, “without limitation”.

2.5 Discretion

Where the words “discretion” or “option”, or such similar words are used in this Agreement with respect to HSSBC or the Service Provider, such words shall be deemed to mean such party’s sole and absolute discretion or option.

2.6 Consents and Approvals

- (1) **No Additional Obligations.** If either Party consents to or approves: (a) the content of any plan, manual or document prepared in whole or in part by the other Party; (b) the taking of any action by the other Party; or (c) any matter, in accordance with the provisions of this Agreement, the mere making or granting of such consent or approval

will not, in and of itself, impose any additional obligations or liabilities upon the Party making or granting such consent or approval.

- (2) **Withholding or Delay.** Except to the extent a contrary intention is expressly set forth in this Agreement, whenever a Party is to provide its approval of or consent to an action, condition or event, such approval or consent will not be unreasonably withheld or delayed.

2.7 Business Days

Any reference herein to “days”, that does not refer to Business Days, is a reference to days. Unless otherwise specified herein, whenever any payment to be made or action to be taken hereunder is required to be made or taken on a day other than a Business Day, such payment will be made or action taken on the next following Business Day.

2.8 Computation of Time Periods

Unless otherwise specified herein, in the computation of a period of time from a specified date to a later date, the word “from” means “from and including” and the words “to” and “until” mean “to but excluding”. Unless otherwise specified herein, all references to any time of day will refer to the time of day in British Columbia.

2.9 Time of Essence

Time will be of the essence in this Agreement.

2.10 Currency

Unless otherwise specified, all dollar amounts referred to herein are expressed in Canadian dollars.

2.11 Accounting Terms

All accounting terms not specifically defined in this Agreement will be construed in accordance with Canadian Public Sector Accounting Standards, consistently applied.

2.12 Priority

- (1) **Conflict with Schedules.** If there is any apparent conflict or inconsistency between the provisions set forth in the body of this Agreement and the provisions set forth in any Schedule, the provisions set forth in the body of this Agreement will prevail.
- (2) **Exception.** Notwithstanding the provisions of Section 2.12(1) above, Schedule A (*Definitions*) and Schedule L (*Privacy and Security*), shall take precedence over the other Schedules to this Agreement.

2.13 Statutory References

Any reference in this Agreement to a statute should be deemed to refer to the statute and any regulations thereunder (in force at the Effective Date), as may be subsequently amended or replaced, from time to time.

2.14 Schedules

The following Schedules are attached to and form part of this Agreement:

Schedule A	Definitions
Schedule B	Transition In Plan - Framework
Schedule C	List of In-Flight Projects
Schedule D	Managed Services
Schedule E	Change Process Forms
Schedule F	Service Levels
Schedule G	Governance Service Levels
Schedule H	Governance
Schedule I	Benchmarking
Schedule J	Transition Out Plan
Schedule K	Technology
Schedule L	Privacy and Security
Schedule M	Form of Guarantees
Schedule N	Termination
Schedule O	Form of Certificate of Insurance
Schedule P	Dispute Resolution Process
Schedule Q	HSSBC Policies and Procedures
Schedule R	Permitted Service Locations
Schedule S	List of Reports
Schedule T	HSSBC Authorized Users
Schedule U	HSSBC Supplied Hardware
Schedule V	Service Provider Supplied Hardware
Schedule W	HSSBC Assigned Contracts
Schedule X	HSSBC Retained Contracts
Schedule Y	Service Provider Supplied Software
Schedule Z	Service Provider Contracts
Schedule AA	HSSBC Service Locations
Schedule BB	Service Provider Key Personnel
Schedule CC	Approved Subcontractors
Schedule DD	Fees
Schedule EE	Form of Invoice
Schedule FF	Corporate Organizational Chart
Schedule GG	Additional Remedies of HSSBC

ARTICLE 3 TRANSITION

3.1 Transition

The Service Provider will perform Transition In Services as set out in the Transition In Plan, and such other services as may be required in order to transfer responsibility and accountability for the provision of the Managed Services to the Service Provider (the “**Transition**”), with effect on the Service Start Date. The Transition In Plan shall set out the detailed resources, tasks, timelines, responsibilities, dependencies, Critical Milestones, Deliverables and acceptance testing procedures, if any, required to complete the Transition.

3.2 Transition In Plan

- (1) **Preparation of Transition In Plan.** No later than [●] (●) days after the Effective Date, the Service Provider will provide a first draft of the Transition In Plan to HSSBC, which will comply the framework and requirements set out in Schedule B (*Transition In Plan - Framework*). Within five (5) days after delivering the first draft of the Transition In Plan to HSSBC, the Service Provider will review the Transition In Plan with HSSBC to identify any gaps or areas where additional work may be required. The Service Provider will incorporate into the final Transition In Plan all reasonable comments provided by HSSBC.
- (2) **Final Transition In Plan.** No later than [●] (●) days after the Effective Date, the Service Provider will provide the final Transition In Plan to HSSBC. The Service Provider will implement the Transition In Plan to effect the transparent, seamless, orderly and uninterrupted transition of the then existing services comprising Managed Services from the manner in which HSSBC delivered and such services prior to the Effective Date to the manner in which the Managed Services are to be provided in accordance with this Agreement.

3.3 Progress Reports

Service Provider will provide to the HSSBC Contract Executive a weekly written report as to the progress of completion of the activities contained in the Transition In Plan until each of Service Provider's responsibilities thereunder has been completed. Such reports will be in a format and include such detail as HSSBC may reasonably request.

3.4 Conduct of the Transition

The Service Provider will be responsible for the overall management of the Transition and shall use commercially reasonable efforts to minimize disruption to HSSBC's business operations where reasonably practicable. The Service Provider and HSSBC will each perform the respective tasks required of it by the Transition In Plan and will each use commercially reasonable efforts to complete such tasks in accordance with the Transition In Plan's schedule for the completion of such tasks. HSSBC will cooperate with the Service Provider and provide to the Service Provider resources, information and other input reasonably requested by the Service Provider to effect the Transition in accordance with the Transition In Plan.

3.5 Completion of the Transition In Plan

If the Transition In Plan has not been completed as of the Services Start Date, then the Service Provider will assume financial responsibility for the provision of the Services on and after the Service Start Date until the Transition In Plan is completed. The Services Provider will:

- (1) reimburse HSSBC for any and all costs and expenses incurred by HSSBC to continue the provision of the services (including, without limitation, fees and expenses under any Third Party Contracts and costs of HSSBC's personnel and subcontractors) or, in HSSBC's discretion, HSSBC may set off any such fees, costs and expenses against the Fees, if any, due under the Agreement; and
- (2) unless otherwise agreed by the Parties in writing, perform the Services in accordance with the Service Levels from and after the Compliance Date.

The Service Provider will not be required to assume financial responsibility for the Services as described in this Section 3.5 to the extent Service Provider's performance is excused due to a Force Majeure Event or to the extent that there is a delay in the Transition that is caused by or requested by HSSBC.

3.6 Consequences of Failure to Complete the Transition In Plan

- (1) **Determining Cause of Delay.** If the Transition In Plan is not completed on the Services Start Date and the Parties are unable to agree upon which Party caused the delay, then the matter of fault for purposes of determining whether the delay was caused by one Party or the other, will be deemed to be a Dispute and will be determined in accordance with the Dispute Resolution Process under Article 24 (*Dispute Resolution*). For greater clarification, no Party will be deemed to have failed to perform its obligations under the Transition In Plan where such performance is dependent upon the performance by the other Party of that other Party's obligations under the Transition In Plan, in circumstances where that other Party has failed to so perform.
- (2) **Termination for Failure to Complete Transition In Plan.** If the Service Provider fails to complete all components of the Transition In Plan within ninety (90) days after the Services Start Date, or such other period as the Parties mutually agree in writing, and HSSBC has not waived the completion of such outstanding components, then HSSBC may, in its discretion, terminate this Agreement for cause.

3.7 In-Flight Projects

As part of the Transition, the Service Provider will assume responsibility for completing the In-Flight Projects set forth in Schedule C (*List of In-Flight Projects*) of this Agreement, which have not been completed as of the Service Start Date. Any and all terms and conditions relating to the Service Provider assuming responsibility for the In-Flight Projects will be set forth in Schedule C (*List of In-Flight Projects*). The In-Flight Project Fees payable by HSSBC to the Service Provider for the completion of the In-Flight Projects will be set out in Schedule DD (*Fees*).

ARTICLE 4 SERVICES

4.1 Provision of Services

In consideration for the payment of the Fees by HSSBC to the Service Provider, the Service Provider will perform for, and provide to, HSSBC all of the services, functions, responsibilities or tasks provided for in this Agreement, including:

- (1) the Transition In Services, as more particularly described in the Transition In Plan for the Health Organizations receiving Services on the Services Start Date and, as may be agreed in writing, for Health Facilities contemplated in Section 4.7 of this Agreement;
- (2) the Managed Services, as more particularly described in Schedule D (*Managed Services*);
- (3) the Transition Out Services set forth in Article 19 and pursuant to Schedule J (*Transition Out Plan*); and
- (4) any additional services which are to be performed by Service Provider pursuant to the Change Process,

as such services may evolve or be supplemented, enhanced, modified or replaced from time to time in accordance with the terms of this Agreement (collectively, the “**Services**”).

4.2 Service Inclusions

If any services, functions, responsibilities or tasks not specifically described in this Agreement are required for the proper performance of any of the Services and are inherent in or incidental to the performance of, or are usually performed by experienced and competent service providers as part of, services comparable to the Services, such additional services, functions, responsibilities and tasks will be deemed to be implied by and included within the scope of the Services to the same extent and in the same manner as if specifically described in this Agreement.

4.3 Roles and Responsibilities

The specific roles and responsibilities of the Service Provider and HSSBC will be set out in the Services schedules attached to this Agreement.

4.4 Non-exclusivity

HSSBC is not precluded by this Agreement from obtaining services from any other provider that may be similar or identical to the Services, and may also obtain services which are outside the scope of the Services from either Service Provider or any other provider.

4.5 Service Locations

Unless otherwise agreed by HSSBC, the Services will be performed by Service Provider at and from the locations set forth in Schedule R (*Permitted Service Locations*) (the “**Permitted Service Locations**”). If Service Provider recommends that any Services be performed at a location other than the Permitted Service Locations, the Service Provider will obtain the prior written approval of HSSBC for the performance of those Services from such other location. HSSBC’s approval of locations other than Permitted Service Locations will not be unreasonably withheld provided that HSSBC is satisfied that the Services will be performed in compliance with this Agreement, all Applicable Laws, and appropriate safeguards will otherwise meet all of HSSBC’s reasonable requirements.

4.6 Operations Manual

- (1) **Development of Operations Manual.** The Service Provider will develop and continuously update a detailed, HSSBC-specific, operations manual that includes the contents specified in Section 4.6(2) (the “**Operations Manual**”). Service Provider will deliver (electronically and in hard copy) the Operations Manual to HSSBC for its review, comments and approval within [●] (●) days following the Service Start Date. The Service Provider will incorporate all of HSSBC’s reasonable comments and suggestions into the Operations Manual and will deliver an updated draft of the Operations Manual to HSSBC for its review, comments and approval. Thereafter, the Service Provider will periodically (but not less often than quarterly) update the Operations Manual to reflect changes in the operations or procedures described therein. All such updates to the Operations Manual will be provided to HSSBC for its prior review, comments and approval.
- (2) **Operational Manual Content.** The Operations Manual will describe how the Services will be performed and will act as a guide to HSSBC with respect to the Services. The Operations Manual will describe, among other things:

- (a) the manner in which Service Provider will provide the Services hereunder, including the equipment and software being used or to be used, the documentation (including, operations manuals, user guides, specifications, and authorized user support) that provide further details of such activities;
- (b) Incident, Problem, and Issue procedures;
- (c) operational change process;
- (d) activities the Service Provider will undertake in order to provide the Services including, where appropriate, direction, supervision, monitoring, staffing, quality assurance, reporting, planning, governance and oversight activities;
- (e) the specific measures, if any, taken to comply with all Applicable Laws.

In no event will the Operations Manual be interpreted as an amendment to this Agreement or so as to relieve Service Provider of any of its performance obligations under this Agreement.

4.7 Extension of Agreement to Health Authorities

HSSBC may, at its option and upon not less than sixty (60) days written notice to Service Provider, extend the scope of this Agreement and the right to purchase Services to any of its existing or future hospitals or health care facilities or agencies or to other health authorities in British Columbia or to hospitals or health care facilities or agencies governed by or affiliated with such other health authorities that are not, as of the Effective Date purchasers of Services under this Agreement (collectively, the “**Health Facilities**”). Any such extension of the Agreement and the right to purchase Services from Service Provider will be on the same terms contained herein, including pricing as set forth in Schedule DD (*Fees*). Any such extension of the Agreement is at the discretion of HSSBC and such Health Facilities. For greater certainty, the Health Facilities are not required to participate in the Agreement and may elect to pursue other solutions if their specific requirements are not met by this Agreement. In the event that HSSBC exercises such option under this Section 4.7, the Service Provider will, within ninety (90) days of receipt of notice from HSSBC of HSSBC’s intention to exercise such option, enter into such agreements with HSSBC or such Health Facilities as may be reasonably required to give effect to this Section 4.7. HSSBC and the Health Facilities will at all times have the right to tender their requirements in order to ensure they receive optimum products, services and pricing. Any such tendering will be without prejudice to the HSSBC’s option to extend the scope of this Agreement and the right to purchase the Service Provider’s Services to any of the Health Facilities.

ARTICLE 5 SERVICE LEVELS AND SERVICE LEVEL REPORTING

5.1 Services Standards Generally

Except as expressly provided herein, at all times during the Term and, for certainty, any Transition Out Period, the Service Provider will perform all Services hereunder:

- (1) in accordance with, and in such a manner as to meet or exceed, the applicable SLAs, SLOs and Specifications;
- (2) in a manner consistent with industry standards;
- (3) in accordance with the HSSBC Policies and Procedures; and

- (4) in accordance with the Operations Manual.

5.2 General

For each Managed Service category, Schedule F (*Service Levels*) sets forth certain Service Levels that will be used to measure the Service Provider's performance of the Managed Services under this Agreement. The Service Provider agrees that its performance of the Managed Services will meet or exceed such Service Levels, subject to the limitations and in accordance with the provisions set forth in this Agreement and in Schedule F (*Service Levels*).

5.3 SLAs/SLOs

The Service Levels are comprised of:

- (1) SLAs with respect to which there are financial consequences for the Service Provider's failure to meet or exceed a SLA; and
- (2) SLOs which are performance measures and indicators of the Service Provider's performance under the Agreement but with respect to which there are no financial consequences.

5.4 Governance Service Levels

The Service Levels set forth in Schedule G (*Governance Service Levels*) (collectively the "**Governance Service Levels**") pertain to certain contract administration, governance and administrative process matters. For the purposes of this Agreement, a report of the Service Provider's performance as measured by the Governance Service Levels shall be included in the information provided to HSSBC executives for the purpose of completing the Satisfaction Surveys.

5.5 Service Level Monitoring

From and after the Services Start Date, the Service Provider will establish and maintain in place, at all times, appropriate policies and procedures to monitor and evaluate the achievement of the Service Levels during the applicable Measurement Intervals, including the maintenance of a Service Level log in order to permit the Service Provider and HSSBC, to evaluate achieved and failed SLAs and SLOs and to satisfy the reporting obligations under this Agreement.

5.6 Service Level Reporting

The Service Provider will measure its performance against the SLAs and SLOs in accordance with the methodologies specified in Schedule F (*Service Levels*) and will provide a detailed, comprehensive report of its performance against the SLAs and SLOs during the applicable Reporting Period ("**Service Level Reports**") by the tenth (10th) day following the end of each Measurement Interval. The format for such Service Level Reports will be determined by HSSBC in accordance with Section 5.7. For any SLA or SLO failures that occur in Measurement Intervals, the Service Provider will promptly report such failures in the month such failure occurs. Service Provider will meet with HSSBC at monthly, or more frequently if requested by HSSBC, to review the Service Level Reports and the Service Provider's actual performance against the SLAs and SLOs and the Service Provider will recommend remedial actions to Resolve any performance deficiencies.

5.7 Service Level Reports

The Service Provider will provide the Service Level Reports, in electronic and hard copy format if requested by HSSBC, to HSSBC on a monthly basis by the tenth (10th) day of the month. In addition, the

Service Provider will promptly inform HSSBC of any deficiencies, omissions or irregularities in Service Provider's performance of the Services that come to Service Provider's attention.

5.8 Failure to Meet SLAs/Root-Cause Analysis

Promptly, and in any case no later than two (2) days after the earlier of:

- (a) the Service Provider's discovery of a failure to provide any of the Services in accordance with applicable SLAs; or
- (b) the Service Provider's receipt of a notice from HSSBC regarding such failure to provide any of the Services in accordance with applicable SLAs,

the Service Provider will notify HSSBC of the failure and the Service Provider will promptly commence to perform a Root-Cause Analysis to identify the cause of such failure and provide HSSBC with a written report detailing the cause of, and procedure for correcting, such failure.

The correction of any failure to provide any of the Services in accordance with the SLAs will be performed in accordance with the time frames set forth in Schedule F (*Service Levels*), entirely at Service Provider's expense.

5.9 SLA Credits

The Service Provider acknowledges and agrees that should the Service Provider fail to achieve a SLA ("**SLA Failure**"), as more particularly described in Schedule F (*Service Levels*), HSSBC shall be entitled to receive a SLA Credit for such corresponding SLA Failure, as a genuine pre-determined estimate of HSSBC's damages regarding such Service Provider failure and in lieu of other remedies available to HSSBC. HSSBC may, in its discretion, set off the amount of any such SLA Credit against the Fees, if any, due under the Agreement.

5.10 SLA Relief

If HSSBC (or a subcontractor, agent or third party provided by HSSBC which is not managed by Service Provider) is the cause of the Service Provider's failure to meet a SLA, such failure shall not constitute a SLA Failure and, to the extent the Service Provider is not able to provide a Workaround for the failure, HSSBC will be responsible for the reasonable costs of remedying such failure. Service Provider will promptly notify HSSBC of any circumstance of which Service Provider is aware that is likely to give rise to a SLA Failure. For purposes of this Section 5.10, a pre-existing condition of any systems owned by HSSBC but maintained by Service Provider hereunder will not be deemed a contributing cause of any failure.

5.11 Review of Service Levels

The Parties expect that Service Provider's performance relative to the Service Levels will improve over time and agree that Service Levels may be added, removed or otherwise changed to reflect changes to the Services and to HSSBC's business requirements. Accordingly, commencing as of the beginning of the second Contract Year, and at least once annually thereafter, HSSBC and Service Provider will review the Service Levels and the continuous improvement of the Services, and discuss potential changes to the Service Levels. In no event will the Service Levels be made less favourable to HSSBC as a result of such reviews, unless agreed by HSSBC in writing.

5.12 Changes to Service Levels

(1) Changes to SLA Weighting Factors

HSSBC will have the right, in its discretion, commencing at the scheduled completion date of the Transition In Plan and, not more often than once every six (6) months thereafter, on ninety (90) days prior written notice to Service Provider, to change the SLA Weighting Factors amongst the SLAs.

(2) Annual Adjustments to Service Levels

As of the Effective Date, the Expected Service Level for each Service category will be equal to the Minimum Service Level for such Service category. Effective as of the start of the second and each subsequent Contract Year, the Expected Service Level for each Service category will be reviewed by the Parties and may be reset to equal a more rigorous Service Level pursuant to the Change Process.

(3) Additions of or Changes to Service Levels

HSSBC will also have the right in its discretion, commencing after the scheduled completion date of the Transition In Plan, and not more often than once every six (6) months thereafter, after consultation with Service Provider and on ninety (90) days prior written notice to Service Provider, to:

- (a) add or remove one or more Service Levels;
- (b) convert one or more SLOs into SLAs;
- (c) convert one or more SLAs into SLOs; and/or
- (d) make changes to the service levels set forth in one or more Service Levels,

(all of which are collectively referred to as the “**SLA/SLO Changes**”).

The Fee implications, if any, of the SLA/SLO Changes will be calculated on a net basis and will equal the net amount of the increases and reductions in costs reasonably expected to result from all of such changes, taken in the aggregate, and with respect to:

- (i) SLAs, such additional costs will be limited to those reasonably required in order for Service Provider to reliably meet new or more rigorous SLAs; and
- (ii) SLOs, such additional costs will be limited to those reasonably required in order for Service Provider to reasonably consistently meet new or more rigorous SLOs (while recognizing that there are no SLA Credits (or Fee Reductions) associated with a failure to meet such SLOs).

With respect to removals or reductions in Service Levels, the cost reductions will reflect the costs that Service Provider is, acting diligently, reasonably able to avoid as a result of the removal and/or reductions in the Service Levels.

The Change Process will be used for the purpose of documenting the required Changes and providing HSSBC with a detailed, cost-based, justification of the reasonableness of the proposed

increases and reductions in Fees associated with the SLA/SLO Changes, and potentially for HSSBC to make further adjustments to the SLA/SLO Changes. HSSBC will have the right to escalate any Dispute with respect to the reasonableness of the changes to the Fees proposed by Service Provider in respect of the SLA/SLO Changes, through the Dispute Resolution Process. All additions of new Service Levels and any other changes to Service Levels or Fee Reductions will be reflected in Schedule DD (*Fees*) and Schedule F (*Service Levels*).

5.13 Satisfaction Surveys

No later than the [●] anniversary of the Services Start Date, and on an annual basis thereafter during the Term of the Agreement, the Service Provider and HSSBC shall jointly conduct, for each Managed Service category, a satisfaction survey designed to capture internal end-user perceptions in respect of the quality, value and delivery of the applicable Managed Services. Results of each survey will be reviewed with HSSBC by the Service Provider. If such results indicate a material dissatisfaction with Managed Services, the Service Provider shall prepare and implement a remedial plan to correct the affected Managed Services (Services where a material dissatisfaction is identified) and to prevent reoccurrence of the problem provided that:

- (a) a copy of the remedial plan shall be provided to HSSBC for review and comment prior to its implementation; and
- (b) if the affected Managed Services have not been corrected within six (6) months following the completion of the survey that triggered the remedial plan, the problems associated with the affected Managed Services will automatically be included as a topic for the Governance Process.

5.14 Authorized User Satisfaction and Communication

In addition to the satisfaction survey in Section 5.13 above, Service Provider will conduct general semi-annual Authorized User satisfaction surveys in accordance with this Section 5.14 and the Authorized User satisfaction survey requirements set forth in Schedule G (*Governance Service Levels*). The proposed Authorized User satisfaction surveys (including the underlying instrument(s), methodology and survey plan) will be subject to HSSBC's review, comments and approval and will cover a representative sample of the Authorized Users including, as a separate sample category, senior management of HSSBC. HSSBC will provide reasonable assistance to Service Provider to: (a) identify the appropriate sample of Authorized Users; (b) distribute the surveys; and (c) encourage participation by such Authorized Users in order to obtain meaningful results. Service Provider will report the results of the surveys separately from each of the Authorized Users or groups of Authorized Users as may be specified by HSSBC, and the Service Provider Contract Executive will review the results of each survey with HSSBC within thirty (30) days following the mutually agreed deadline for completion and return of the survey. During each such review session, Service Provider will submit an Authorized User communication plan to HSSBC for its review and approval that will include, at a minimum, updates to the Authorized Users regarding the results of the satisfaction surveys. Not later than thirty (30) days following each review session, the Service Provider will provide to HSSBC an action plan for addressing any problem areas identified in the survey results. The Parties will, after the first Contract Year, review the effectiveness of the Authorized User satisfaction surveys and Authorized User communications and make any changes, including possible changes to increase the frequency of the Authorized User satisfaction surveys to quarterly surveys, if the Parties determine that such changes would enhance the value of such Authorized User satisfaction surveys.

5.15 Benchmarking

Upon written notice to the Service Provider, HSSBC may, at its option, initiate Benchmarking of the Fees for the Managed Services and the Service Levels pursuant to and in accordance with the terms and conditions set forth in Schedule I (*Benchmarking*).

ARTICLE 6 HARDWARE, CONTRACTS, AND FACILITIES

6.1 HSSBC Hardware

- (1) **HSSBC Hardware.** All HSSBC Hardware will be owned or leased by HSSBC. During the Term, HSSBC will be responsible for replacing, from time to time, all HSSBC Hardware that is no longer current or in appropriate working order for its intended purpose as determined by HSSBC.
- (2) **Management of HSSBC Hardware.** From and after the Service Start Date until the earlier of the end of the Term or the replacement of such HSSBC Hardware, Service Provider will be responsible for managing, maintaining and repairing all such HSSBC Hardware and all replacements of, and additions to, such HSSBC Hardware. The HSSBC Hardware list in Schedule U (*HSSBC Supplied Hardware*) will be regularly updated to include any replacement and additional HSSBC-owned or leased Hardware (all of which will thereafter be deemed to be HSSBC Hardware), which may be provided by HSSBC for Service Provider to use in providing the Services.
- (3) **Ownership of HSSBC Hardware.** While it is not anticipated that any HSSBC Hardware will be located at locations other than HSSBC Service Locations, notwithstanding the location of any HSSBC Hardware, or the failure to list any item of HSSBC Hardware in Schedule U (*HSSBC Supplied Hardware*), all right, title and interest in and to such HSSBC Hardware will, as between the Parties, be and remain in HSSBC, and Service Provider will have no title or ownership interest in such HSSBC Hardware.
- (4) **HSSBC Hardware at Service Provider Location.** In the event that any HSSBC Hardware (whether owned or leased) is located at locations other than HSSBC Service Locations, Service Provider will provide HSSBC with reasonable access to HSSBC Hardware located at a Service Provider or other facility, and, notwithstanding any contrary terms that may be contained herein, will be responsible for all costs and expenses associated with the maintenance or repair of any such HSSBC Hardware or any part thereof damaged by Service Provider, Service Provider Personnel, Subcontractors, agents or invitees (excluding HSSBC). Service Provider will ensure that all HSSBC Hardware located at a Service Provider or other facility is clearly marked as HSSBC property. With the advice of HSSBC, Service Provider will prepare and maintain at Service Provider's cost and expense any Service Provider or other facility in which HSSBC Hardware will be installed in accordance with the manufacturers' specifications and all applicable codes, statutes, regulations and standards. Service Provider will bear the risk of loss of or damage to any HSSBC Hardware that is under Service Provider's care, custody and control.

6.2 Service Provider Hardware

- (1) **Service Provider Hardware.** It is anticipated that Service Provider will own or lease all equipment used by Service Provider to provide the Services from locations other than

HSSBC Service Locations. Notwithstanding the location of Service Provider Hardware at a HSSBC Service Location, and unless otherwise provided under Section 18.8, as between the Parties, all right, title and interest in and to any such Service Provider Hardware will be and remain with Service Provider, and HSSBC will not have any title or ownership interest in the Service Provider Hardware. Service Provider will be responsible for managing, maintaining, repairing, and replacing all Service Provider Hardware.

- (2) **Location of Service Provider Hardware at HSSBC Service Locations.** While it is not anticipated that Service Provider will install any Service Provider Hardware at any HSSBC Service Location, in the event that the Parties agree to install any Service Provider Hardware at a HSSBC Service Location to provide the Services, Service Provider will prepare and maintain at Service Provider's cost and expense the HSSBC Service Location in which Service Provider Hardware will be installed in accordance with the manufacturers' specifications and all applicable codes, statutes, regulations and standards. Office space, furnishings, storage space, and assets installed or operated on HSSBC premises, and supplies allocated, are provided "AS IS, WHERE IS," and are to be used exclusively for performance of Services for HSSBC.
- (3) **Installation of Service Provider Hardware.** Service Provider will arrange for, and will be responsible for the transportation and installation of any Service Provider Hardware that the Parties have agreed, in accordance with Section 6.2(2), may be located at a HSSBC Service Location. If HSSBC relocates any HSSBC Service Location in which any such Service Provider Hardware is installed, HSSBC will be responsible for the relocation costs relating to such Service Provider Hardware. If Service Provider requests the relocation of any such Service Provider Hardware, Service Provider will be responsible for the relocation costs relating to such Service Provider Hardware.
- (4) **Maintenance of Service Provider Hardware.** Service Provider will be responsible for maintaining all Service Provider Hardware in any HSSBC Service Location; provided, however, that HSSBC will be responsible for all costs and expenses of repair or replacement to correct any damage to Service Provider Hardware or any part thereof (reasonable wear and tear excepted) caused by HSSBC, or one of its employees, agents or invitees (exclusive of Service Provider, Service Provider Personnel, Subcontractors, agents and their invitees).

6.3 Third Party Contracts

- (1) **HSSBC Assigned Contracts**
 - (a) *List of Assigned Contracts.* The Assigned Contracts listed in Schedule W (*HSSBC Assigned Contracts*) will be assigned from HSSBC to Service Provider as of the applicable Service Start Date. The Fees account for and reflect any additional costs to Service Provider resulting from the assignment of the Assigned Contracts to Service Provider from the applicable Service Start Date and also reflect the net cost savings to HSSBC which are to result from the assignment of the Assigned Contracts to Service Provider. HSSBC will be entitled to deduct from the Fees any amounts paid by HSSBC directly to Third Parties under Assigned Contracts in respect of periods after the applicable Service Start Date.

- (b) *Notices and Contents.* HSSBC and Service Provider will cooperate to provide any notices and to obtain any Consents from Third Parties required to effect the assignment of the Assigned Contracts on the applicable Service Start Date and use commercially reasonable efforts to promptly complete such assignment. If, notwithstanding such efforts, an Assigned Contract is not assigned to Service Provider within six (6) months from the applicable Service Start Date, then Service Provider will agree to a Change Order in which: (1) the Fees are decreased by the amount of HSSBC's costs under such Assigned Contract; and (2) such Assigned Contract ceases to be an Assigned Contract and instead becomes a Retained Contract.
- (c) *Responsibility for Costs.* Subject to Section 6.3(1)(b), the Service Provider is responsible for all costs associated with the Assigned Contracts, including any ongoing expenses, maintenance fees, and/or support fees pursuant to the Assigned Contracts.
- (d) *Termination/Expiry of Assigned Contracts.* Subject to Section 6.5 (relating to Critical Contracts), Service Provider, in consultation with HSSBC, may decide to terminate one or more of the Assigned Contracts. During the Term, where an Assigned Contract has expired or is terminated, Service Provider will be responsible for continuing to provide the services previously provided under such Assigned Contract, which services may be provided by the Service Provider or a Subcontractor. If required, a transition period will be planned for each such Assigned Contract. Service Provider will, with the co-operation of HSSBC, perform an orderly transition of the services provided under such Assigned Contract from the previous service provider and will ensure that such transition is seamless, transparent and non-disruptive to HSSBC and its Authorized Users.

(2) HSSBC Retained Contracts

- (a) *Retained Contracts.* The Retained Contracts listed in Schedule X (*HSSBC Retained Contracts*) will all be retained by HSSBC (or the applicable Health Organization, as the case may be). Unless otherwise expressly provided in this Agreement, HSSBC will be responsible for all payments to be made under the Retained Contracts. HSSBC will, with the reasonable assistance of Service Provider, take all actions reasonably necessary to obtain any Consents from Third Parties that are required for HSSBC to disclose the Retained Contracts to Service Provider and for Service Provider to lawfully access, operate, maintain and use (at or from any location where Services are to be provided) the applicable Software and/or Hardware contemplated in the Retained Contract as may be applicable. Service Provider will not use any such Software and/or Hardware for any purpose other than the provision of Services to HSSBC under this Agreement. Until any such required consents are obtained, HSSBC will permit Service Provider to act as HSSBC's agent solely for purposes of using the benefits and rights granted under such Retained Contracts to the extent required for Service Provider to provide the Services. Nothing contained in this Agreement will require either Party to violate the proprietary rights of any Third Party with respect to any Software or Hardware.
- (b) *Service Provider Management.* HSSBC will determine which of the Retained Contracts it wishes to have managed by Service Provider and will identify such contracts as the Managed Contracts on Schedule X (*HSSBC Retained Contracts*).

HSSBC and Service Provider will cooperate to provide any notices or to obtain any Consents from Third Parties required to allow Service Provider to manage the Managed Contracts. If HSSBC, acting reasonably, is unable to obtain any such Consents, the Contract will remain a Retained Contract, and HSSBC and Service Provider will negotiate in good faith the steps to be taken to minimize the impact of the lack of Consent and to co-operate to develop alternative approaches that would not necessitate obtaining the applicable Consent.

- (c) *Service Provider Compliance.* Service Provider agrees to comply with all applicable terms of each Managed Contract and any applicable notice or Consent. Subject to the terms of the Managed Contracts and any applicable notices and Consents, HSSBC hereby appoints Service Provider, from and after the applicable Service Start Date, to act during the Term as the single point of contact for operational matters pertaining to such Managed Contracts, and HSSBC promptly will notify all appropriate Third Parties of such appointment. HSSBC may at any time exercise reasonable control over Service Provider's actions with respect to such Third Parties as it relates to the Managed Contracts and the provision of Services. Subject to the terms of the Managed Contracts and any applicable notices and Consents, Service Provider will administer the day to day interface with the contracting Third Parties of the Managed Contracts, from and after the applicable Service Start Date.
- (d) *Notification of Failure.* Service Provider will promptly notify HSSBC of any breach, or misuse or fraud arising in connection with any Managed Contract of which the Service Provider becomes aware and will cooperate with HSSBC to cure, prevent or stay any such breach, misuse or fraud. If a Third Party does not fulfil, or Service Provider believes that a Third Party may not fulfil, its contractual obligations under a Managed Contract, Service Provider will, in a reasonable and timely fashion, notify HSSBC and recommend to HSSBC, with the appropriate justification, reasonable accommodations or remedial steps that Service Provider deems necessary in order that the applicable Service Levels will continue to be met despite such Third Party's failure to perform its obligations under the Managed Contract.
- (e) *Updating of Managed Contracts for Registered Users.* Service Provider will assist HSSBC to optimize its licensing of the Managed Contracts, will immediately remove from any lists of named or registered users, any HSSBC Personnel who: (i) cease to be employed by HSSBC or its Affiliates; (ii) cease to work for the business unit which uses the applicable Managed Contract; or (iii) otherwise no longer require access to such Managed Contract, and will ensure that HSSBC is in compliance with applicable licensing conditions.

(3) **Service Provider Contracts - Software**

The cost of any license, installation, Maintenance, Support and upgrade fees with respect to any Service Provider-Licensed Third Party Software and any Service Provider-Owned Software will be deemed to be included in the Fees.

6.4 Maintenance

- (1) **Maintenance and Support.** Service Provider will Maintain and Support all Hardware and Software, and such Maintenance will be included in the Fees. Service Provider will use commercially reasonable efforts to schedule all non-emergency Maintenance in advance and in such a way as to prevent any failure to provide the Services in accordance with the terms of this Agreement.
- (2) **Retained Contract Exception.** Except with respect to the services which are to be provided under the Retained Contracts, Service Provider will, at Service Provider's expense, ensure that the HSSBC Hardware are covered by maintenance contracts which are no less comprehensive than those employed by or on behalf of HSSBC prior to the Effective Date, with nationally recognized leading providers of such maintenance services.

6.5 Critical Contracts

Service Provider will not:

- (a) acquire or lease from a Third Party or any Affiliate of Service Provider, or provide (including through any internal financing arrangements) itself, any Hardware;
- (b) use to provide the Services any software (other than the software used as of the Service Start Date); or
- (c) enter into, renew, supplement, amend or modify, any Contract (other than Contracts included in this Article 6),

where such Hardware, Software or Critical Contract to the provision of the Services, without the prior written consent of HSSBC (through the Change Process). The Service Provider will not be liable for any failure to provide the Services as otherwise required pursuant to this Agreement to the extent that Service Provider's ability to provide such services is affected by HSSBC unreasonably delaying or withholding consent as contemplated by this Section 6.5. For clarity, for the purposes of this Agreement, a piece of Hardware, Software or a Contract, is "**Critical**" to the provision of the Services where such Hardware, Software or Contract is Dedicated and either: (i) the acquisition cost of the Hardware or Software or total payment obligation under the Contract exceeds (or would exceed in the case where Service Provider provides or internally finances such Hardware or Software itself) \$5,000; (ii) the Hardware, Software or products or services provided under the Contract are not generally commercially available; or (iii) the Hardware or Contract is otherwise specifically identified as being critical pursuant to the Change Process.

6.6 Assignment of Contracts Executed After Services Start Date

Service Provider will use all reasonable efforts to ensure that any Contract executed by Service Provider after the Service Start Date (including leases for Hardware, licences for Software and any real property leases) will be transferable or assignable to HSSBC or its designee at any time upon notice without any additional charge or expense.

6.7 Asset and Contract Information

At the time that any Hardware, Software or Contract is acquired, leased, provided, entered into, renewed, supplemented, amended or modified in connection with the Services as provided for in this Article 6, Service Provider will specify through the Change Process:

- (1) whether or not such Hardware, Software or the products or services provided under such Contract are required for the provision of the Services;
- (2) whether or not such Hardware, Software or the products or services provided under such Contract will be Dedicated to the provision of the Services throughout the Term;
- (3) whether or not such Hardware, Software or the products or services provided under such Contract are generally commercially available, and if not, what alternative hardware, software or products or services are generally commercially available along with the then current cost of acquiring such upon the expiration of the Term or termination of this Agreement;
- (4) for each such Contract (including Contracts for the lease of Hardware or licence of Software) whether such Contract is transferable or assignable to HSSBC or its designee, and if so on what terms (for example, notice requirements and transfer charges or costs, if any);
- (5) the acquisition cost and payment or purchase option obligations (including depreciation schedules) in respect of such Hardware, Software or Contract, in order that HSSBC will be able to reasonably understand its potential obligations in the event it is required or exercises its option to acquire or assume such Hardware, Software or Contract in accordance with Section 18.8 upon the expiration of the Term or early termination of the Agreement; and
- (6) any amendments required to ensure that Schedule Y (*Service Provider Supplied Hardware*) contains a full and accurate list and description of all Hardware, Schedule Y (*Service Provider Supplied Software*) contains a full and accurate list and description of all Software and Schedule Z (*Service Provider Contracts*) contains a full and accurate list and description of all Contracts.

6.8 Use of HSSBC Facilities

- (1) *Use of HSSBC Facilities.* Subject to the availability of appropriate space, HSSBC will make reasonably necessary space and furnishings (the “**HSSBC Facilities**”) available to Service Provider’s On-site Dedicated Personnel who are performing Services at HSSBC Service Locations throughout the Term and will maintain HSSBC Facilities in areas and at a level similar to that which it maintains for its own employees performing similar work.
- (2) *HSSBC Facilities “AS IS”.* The HSSBC Facilities and the office space, furnishings and assets installed or operated at HSSBC Facilities and supplies allocated, are provided “AS IS, WHERE IS,” and the are to be used exclusively for performance of Services for HSSBC. Any office supplies and furnishings (other than existing, basic office furnishings) for use of the On-site Dedicated Personnel are the exclusive responsibility of Service Provider.

- (3) *Service Provider Improvements.* Service Provider will be entitled to make improvements to any space where On-site Dedicated Personnel are performing Services on-site at a HSSBC Service Location, provided that: (i) such improvements will have been previously approved in writing by HSSBC (which approval may be withheld in HSSBC's discretion); (ii) such improvements will be made at no cost to HSSBC; (iii) any Subcontractors used by Service Provider to perform such improvements will have been approved in writing by HSSBC; (iv) HSSBC will be granted, without further consideration, all rights of ownership in such improvements; and (v) such improvements are subject to the terms of Section 6.8(4).
- (4) *Other Facility-Related Obligations.* Except as expressly provided in this Agreement, Service Provider will use HSSBC Facilities for the sole and exclusive purpose of providing the Services. Use of such facilities by Service Provider does not constitute a leasehold interest in favour of Service Provider. Service Provider will use HSSBC Facilities in a reasonable and efficient manner. Service Provider, Service Provider Personnel and Subcontractors will keep HSSBC Facilities clean and in good order, will not commit or permit waste or damage to such facilities, and will not use such facilities for any unlawful purpose or act. Service Provider will comply, and will cause its Service Provider Personnel and Subcontractors to comply, with all Applicable Laws, all Contracts relating to HSSBC Facilities (copies or relevant excerpts of which will be provided to Service Provider in hard copy or electronic form) and all HSSBC Policies and Procedures that relate to access to and/or use of the HSSBC Facilities, including procedures for the physical security of HSSBC Facilities. Service Provider will not make any improvements or changes involving structural, mechanical, or electrical alterations to HSSBC Facilities without HSSBC's prior written approval. When HSSBC Facilities are no longer required for performance of the Services and if requested by HSSBC, Service Provider will return such facilities to HSSBC in substantially the same condition as when Service Provider began use of such facilities, subject to reasonable wear and tear. Service Provider will not cause the breach of any lease Contracts governing use of HSSBC Facilities.
- (5) *Specific Hardware and Carrier Charges.* Except as otherwise expressly provided herein, Service Provider will provide and will in all respects be responsible for all hardware, software and services required or used by Service Provider to provide the Services, including telephone and modem lines, telephones, computers and peripheral devices, computer connections and network access, and Service Provider will be responsible for all usage-based carrier charges incurred by Service Provider Personnel and all usage-based carrier charges incurred to provide a telecommunications link between Service Provider and HSSBC Facilities.

6.9 No Liens

To the extent that any HSSBC Hardware or other assets of HSSBC are located at a Permitted Service Location (other than an HSSBC Facility), the Service Provider covenants and agrees to protect and keep free, all assets of HSSBC used in the provision of the Services from any and all liens, claims, liabilities, security interests, encumbrances, pledges, mortgages or charges of any kind arising through the Service Provider or as a result of the performance by the Service Provider of the Services (each a “**Lien**”). If any such Lien is filed, then the Service Provider will immediately notify HSSBC by providing a copy of the Lien claim. The Service Provider shall cause such Lien to be satisfied or otherwise discharged within ten (10) Business Days. If any such Lien is filed or otherwise imposed, and the Service Provider does not cause such Lien to be released and discharged forthwith, then HSSBC has the right, but not the obligation, to pay all sums necessary to obtain such release and discharge or otherwise cause the Lien to

be removed to the satisfaction of HSSBC from funds retained from payment then due or thereafter to become due as Fees payable to the Service Provider.

ARTICLE 7 CHANGE PROCESS

7.1 HSSBC Initiation of Change Process.

HSSBC may initiate the Change Process at any time, and from time to time, during the Term and any Transition Out Period, by completing and delivering to Service Provider a request for a Change (“**Change Request**”) in the form attached as Schedule E (*Change Process Forms*). Each Change Request shall be signed by the HSSBC Contract Executive, or his or her designee.

HSSBC may solicit a response from the Service Provider and other prospective providers to perform services (for clarity, the price to be charged for such services not currently set forth in Schedule DD (*Fees*)). Where HSSBC wishes to obtain a proposal for such services or otherwise requires a Change to the Services from the Service Provider under this Agreement, HSSBC will provide the Service Provider with a Change Request. HSSBC may make a Change (including increases or decreases) to the Services, including to:

- (a) the scope, content or description of the Service in this Agreement; or
- (b) other contractual obligations relating to the provision of the Services,

by following the Change Process. The Service Provider may not implement any such change without HSSBC’s prior written consent, which may be withheld in HSSBC’s discretion.

7.2 Content of Change Request.

The Change Request shall specify all of the proposed changes in sufficient detail to enable evaluation by the Service Provider.

7.3 Service Provider Initiation of Change Process & Response to Change Request.

Within ten (10) Business Days following the date of Service Provider’s receipt of a Change Request, or at Service Provider’s own initiative, Service Provider shall provide HSSBC with a change proposal (“**Change Proposal**”) in the form attached as Schedule E (*Change Process Forms*) that contains the following:

- (1) a description of any:
 - (a) Change to the Services;
 - (b) additional Services;
 - (c) change to the terms of the Agreement;
 - (d) additions to, removal of, or changes to any SLAs or SLOs;
 - (e) work which is to be performed; or
 - (f) other Changes, in each case as requested in or required by the Change Request;

- (2) the roles and responsibilities of the Parties with respect to such Changes or work;
- (3) if applicable, the Deliverables required by or to be prepared in connection with the Change Request;
- (4) categories of personnel required to complete any additional work required by the Change Request;
- (5) if applicable, an implementation plan and the timeframe for performance with Critical Milestones;
- (6) if applicable, completion and acceptance criteria for any work or Deliverables required by the Change Request;
- (7) if applicable, the ownership and licensing terms of any software, hardware or other materials to be developed or supplied under the Change Proposal;
- (8) if applicable, the resources reasonably required to perform the requested work and any additional fees and/or costs which may reasonably be required to perform such work;
- (9) if applicable, the schedule, applicable milestones and method of payment; and
- (10) if applicable, any additional continuing Fees that would apply.

Each Change Proposal shall be signed by the Service Provider's Contract Executive or his or her designees. In respect of any proposed Change Request, Service Provider shall provide reasonable assistance to HSSBC with respect to HSSBC's assessment and approval thereof, the development of HSSBC's requirements and work-plans, and any re-scoping required by HSSBC.

7.4 Implications of Changes on Fees

The Fee implications, if any, set out in the Change Proposal shall be calculated on a net basis and shall equal the net amount of the increases and reductions in costs reasonably expected to result from the proposed Changes, taken in the aggregate. Where additional obligations are to be imposed on Service Provider, any increase to the Fees set out in the Change Proposal shall be limited to those costs reasonably required in order for Service Provider to meet such new obligations. Where Service Provider's previous obligations are to be removed or reduced, the reduced Fees set out in the Change Proposal shall reflect the costs that Service Provider is, acting diligently, reasonably able to avoid as a result of the removal and/or reductions in the obligations. If any changes to the Fees are proposed in a Change Proposal, such Change Proposal shall contain a detailed, cost-based, justification of the reasonableness of the proposed increases and reductions in Fees.

7.5 Complex Change Request

In the case of a large or complex Change Request, HSSBC may agree that Service Provider will promptly provide to HSSBC a high level summary of the above information for HSSBC's consideration. After such consideration, HSSBC may request Service Provider to provide a detailed Change Proposal, which shall be prepared and delivered within ten (10) Business Days of such request.

7.6 Acceptance of Change Proposal.

In order to be effective and the services described therein to be provided and incorporated into the Services, the Change Proposal must be accepted and signed by the HSSBC Contract Executive, or any other Person designated by the HSSBC Contract Executive in writing from time to time. Such agreed Change Proposal thereby becomes a Change Order pursuant to the Agreement. HSSBC's acceptance or rejection of any Change Proposal shall be in its discretion. If Service Provider reasonably believes that the rejection of the Change Proposal will have an unavoidable, material negative impact on the Services, Service Provider will notify HSSBC of such belief and of a proposed work-around to avoid such impact.

7.7 Change Proposal Fees

Service Provider's proposed fees for performing the work described in each Change Proposal will be competitive, commercially reasonable and calculated in the manner (fixed price, time and materials, or otherwise) requested by HSSBC. The fees will, in each case, be based upon the Service Rates or such lower rates as may be offered by Service Provider to HSSBC to ensure the competitiveness of the services to be provided under the Change Order.

ARTICLE 8 CONTRACT MANAGEMENT

8.1 Governance

The Parties' relationship management and governance under this Agreement will be in accordance with the procedures, roles and responsibilities set out in Schedule H (*Governance*).

8.2 Management Functions

From time-to-time as requested by HSSBC and in order to administer certain functional aspects of the Parties' relationship, each Party will designate appropriate, qualified individual(s) to address various subject matters including performance and process management, architecture and technology management, finance/contract management, enterprise standards management, sourcing relationship management, quality assurance management, business unit management, and transition management, with such roles and responsibilities of these individuals as may be determined by the Parties at such time.

ARTICLE 9 PERSONNEL

9.1 Service Provider Key Personnel

- (1) **Designation of Service Provider Key Personnel.** Each of the Service Provider Key Personnel is designated on, and will have the general responsibility assigned to such person as set forth in Schedule BB (*Service Provider Key Personnel*).
- (2) **Changes to Service Provider Key Personnel.** Schedule BB (*Service Provider Key Personnel*) may be modified from time-to-time in accordance with this Agreement and will be deemed modified upon any approved replacement or substitution of a new person for any Service Provider Key Personnel.
- (3) **HSSBC Approval Right.** Prior to the assignment, hiring or designation of any person to fill the position or perform the duties provided by any Service Provider Key Personnel, HSSBC will have the right to interview such person and approve the selection of such

person to fill the position or perform the duties provided by the Service Provider Key Personnel to be replaced.

- (4) **Knowledge Backup.** Service Provider will ensure that all Service Provider Key Personnel have at least one designated individual as his or her core knowledge backup, Service Provider acknowledges that cross-sharing of knowledge is critical to minimizing the potential impact to HSSBC if any of the Service Provider Key Personnel become unavailable for any reason.

9.2 Service Provider Personnel

The Service Provider will, at all times during the Term, employ sufficient personnel of the Service Provider (including both employees and independent contractors of the Service Provider), and the Service Provider will ensure that sufficient personnel (including both employees and independent contractors), are employed by its Subcontractors, to perform the Services in accordance with the terms and conditions of this Agreement including, without limitation, the Service Levels. At least once per Contract Year, but not more than twice per Contract Year, and upon thirty (30) days prior written notice of such a request by HSSBC, Service Provider will provide HSSBC with a written list of all Principally Dedicated Service Provider Personnel, and the contents of such written list will include, the employees' titles, names, dates of placement, assignment addresses, principal duties and responsibilities. Service Provider will, upon receiving a request from HSSBC, make available to HSSBC the resume of any Service Provider Personnel and such other documents reasonably requested by HSSBC relating to the educational and professional background of such Service Provider Personnel.

In addition, the Service Provider will ensure that Service Provider Personnel, who spend sixty percent (60%) or more of their time providing the Services ("**Principally Dedicated**") give HSSBC priority over all of Service Provider's other customers.

9.3 Removal/Replacement of Service Provider Key Personnel

All Service Provider Key Personnel will be assigned to perform the Services on such basis (for example, full time assignment or otherwise) as set opposite such Service Provider Key Personnel in Schedule BB (*Service Provider Key Personnel*) and to ensure that the Services contemplated hereunder are provided in an efficient and timely manner. The Service Provider shall not transfer, reassign or otherwise re-deploy any Service Provider Key Personnel from performance of Service Provider's duties under this Agreement, except in the case of a leave of absence or termination, for the period set opposite such Service Provider Key Personnel's name in Schedule BB (*Service Provider Key Personnel*). If any one of the Service Provider Key Personnel becomes incapacitated, takes a leave of absence, employment with Service Provider (or any of Service Provider's Affiliates or is terminated or is transferred, reassigned or redeployed with the consent of HSSBC, Service Provider will provide HSSBC with as much advance notice as is feasible under the circumstances, will promptly consult with HSSBC with respect to an appropriate replacement and will promptly ensure that such Service Provider Key Personnel's function is competently performed on an interim basis, to allow the Parties sufficient time to establish a longer term solution. Service Provider will promptly identify potential candidates to replace such Service Provider Key Personnel. Service Provider will replace such person with another person, approved by HSSBC, that possesses comparable experience and training as the Service Provider Key Personnel and has sufficient knowledge and expertise to perform the Services in accordance with this Agreement. For purposes of this Section 9.3, the movement of Service Provider Key Personnel from the employ of Service Provider to an Affiliate of Service Provider will be considered a reassignment requiring HSSBC's consent and not a cessation of employment. To the extent feasible, Service Provider will provide HSSBC with advance notice and will consult with HSSBC concerning, and prior to, the replacement of Service Provider Key

Personnel. Service Provider will use commercially reasonable efforts to promptly identify proposed candidates in the event of any sudden departure of any Service Provider Key Personnel.

9.4 Removal of Service Provider Personnel by HSSBC

Notwithstanding anything contained in this Agreement to the contrary, if HSSBC believes that the performance or conduct of any Person employed or retained by Service Provider to perform Service Provider's obligations under this Agreement (including Service Provider Key Personnel) is unsatisfactory for any reason or is not in compliance with the provisions of this Agreement, HSSBC will so notify Service Provider in writing and Service Provider will promptly address the performance or conduct of such Person, or, at HSSBC's request, acting reasonably, promptly replace such Person with another Person acceptable to HSSBC and with sufficient knowledge and expertise to perform the Services in accordance with this Agreement. Service Provider will respond to any such request within five (5) Business Days of receiving notice from HSSBC, and will provide any replacement required within fifteen (15) Business Days of receiving HSSBC's request to replace such Person. HSSBC will not be responsible for any relocation expenses arising from any relocation activities involved in Service Provider complying with this Section 9.4 or any other term or condition of this Agreement.

9.5 Replacement Personnel

Any and all proposed replacement personnel under this Article 9 will be:

- (a) "qualified," meaning that the proposed replacement personnel will possess comparable experience and training as the Service Provider Personnel or Service Provider Key Personnel, as the case may be, to be replaced and has sufficient knowledge and expertise to perform the Services in accordance with this Agreement; and
- (b) the replacement personnel will work with the replaced Service Provider Key Personnel during a mutually agreed transition period, the duration of which will be determined based on the duties and responsibilities of the person to be replaced, and all costs and expenses associated with educating and training the replacement personnel will be borne by Service Provider. Without limiting the generality of the foregoing, such transition period for the Service Provider Contract Executive will be at least one (1) month in length. In addition, provided that the replaced Service Provider Key Personnel remains employed by Service Provider, such individual will continue to be available by telephone to answer any HSSBC-related questions.

9.6 In-Scope and Selected Employees

In the event that any HSSBC Personnel are being transferred to Service Provider as part of the business agreement between the Parties, such transfer will be completed in accordance with terms and conditions set out in a Master Transfer Agreement between the Parties and dated the Effective Date.

9.7 Criminal Records Check

- (1) ***Criminal Records Review Act*** - The Service Provider shall demonstrate to HSSBC that it has complied with the requirements of the *Criminal Records Review Act* ("CRRA"). A criminal record check under the CRRA is in addition to other criminal record check requirements set forth in this Agreement or otherwise established by the Service Provider for its employees. The Service Provider will also ensure that any individual who is determined to be a risk to children or vulnerable adults under the CRRA will not have access to or work with children or vulnerable adults at any such HSSBC Facility. The

Service Provider shall ensure that its criminal record checks are kept current and up to date at all times and if requested by HSSBC confirm the currency of such criminal record checks, in writing.

- (2) **CPIC Level 2** - All Service Provider Personnel (including for certainty, Service Provider Key Personnel) will, prior to their assignment to perform Services, be subject to security clearances by Service Provider (a criminal records check using Canadian Police Identification Centre (CPIC) Level 2 query) consistent with any applicable policies and/or practices as may be requested and/or approved by HSSBC, from time to time. All costs and expenses associated with providing, equipping and retaining Service Provider Personnel are included within the Fees.

9.8 Minimum Proficiency Levels

In addition to Service Provider Key Personnel, Service Provider will provide and make available such Service Provider Personnel as are required to fully and properly perform all of Service Provider's obligations under this Agreement.

Service Provider Personnel will have experience, training and expertise sufficient to perform Service Provider's obligations under this Agreement including Service Provider's obligations with respect to the Service Levels. In the event HSSBC believes any such person does not possess the indicated level of experience and expertise, HSSBC may request removal of such person pursuant to Section 9.4 and/or withhold payment of disputed amounts relating to time and materials work performed inefficiently or in a substandard manner.

9.9 Training

Service Provider will provide, and cause its Subcontractors to provide, all such training to the Service Provider Personnel (and for greater certainty, the Subcontractors personnel) as may be necessary for them to perform all of Service Provider's duties under this Agreement (including technical training as well as training regarding applicable administrative matters such as training regarding applicable HSSBC Policies and Procedures and the Privacy Requirements).

9.10 Supervision and Conduct of Service Provider Personnel

- (1) Neither the Service Provider nor the Service Provider Personnel, Subcontractors or agents of Service Provider are or will be deemed to be employees of HSSBC. Service Provider or, with respect to Persons who work for a Subcontractor, the applicable Subcontractor(s), will be responsible for their own staff assigned to provide Services, and, subject to this Article 9, Service Provider (directly or through Subcontractors) will have the sole right to direct and control the management of such staff.
- (2) HSSBC will have no direct or indirect liability to any Service Provider Personnel or other Persons who work for Service Provider or Subcontractors. Without limiting the foregoing, Service Provider and its Subcontractors will, as applicable, in respect of Persons who work for Service Provider or Subcontractors:
 - (a) determine and pay all applicable wages and salaries, including applicable overtime and other premium pay;
 - (b) provide healthcare, retirement and other benefits, as it deems necessary or desirable;

- (c) comply with Applicable Laws, including income tax and employment tax withholding laws;
 - (d) comply with all Applicable Laws governing the relationship between Service Provider or Subcontractors and their respective employees, including laws relating to accommodation of disabilities, equal pay, provision of leave (for example, jury duty, etc.), unlawful discrimination, as well as wage and hour requirements;
 - (e) comply with all workers' compensation insurance coverage Applicable Laws;
 - (f) file all applicable reports with federal, provincial, state and local agencies and authorities as required by Applicable Law;
 - (g) maintain all required employment records, including personnel and medical files consistent with Applicable Laws and customary business practices; and
 - (h) comply with all applicable equal employment opportunity Applicable Laws.
- (3) While at or on an HSSBC Facility or otherwise at the premises of HSSBC, the Service Provider, the Subcontractors and the Service Provider Personnel will:
- (a) conduct themselves in a businesslike manner; and
 - (b) comply with the applicable HSSBC Policies and Procedures; and
 - (c) to the extent that notice of same is given by HSSBC to Service Provider, all other applicable rules and requests of HSSBC including those relating to safety and health and personal, professional and ethical conduct (including those contained in HSSBC's employee manuals and written policies and procedures) as may be required for such locations.

ARTICLE 10 USE OF SUBCONTRACTORS

10.1 Use of Subcontractors

The Service Provider acknowledges and agrees that it is the prime contractor for the Services under this Agreement and, notwithstanding that the Service Provider may enter into Subcontracts with Subcontractors to perform certain of the Services, the Service Provider shall remain solely responsible for all of its obligations under this Agreement. The Service Provider shall be liable for any and all defaults or delays caused by any Subcontractor as though such acts, omissions, defaults or delays were caused by the Service Provider.

10.2 Approval of Key Subcontractors

Service Provider will not perform or provide the Services through Subcontractors without the prior written consent of the HSSBC as to the selection of the Subcontractor, which consent may be withheld by HSSBC in its discretion. Notwithstanding the foregoing, HSSBC hereby consents to the use by Service Provider of the Subcontractors identified in Schedule CC (*Approved Subcontractors*). Service Provider will ensure that each Subcontractor has obtained and maintains all licenses required in connection with the Services for which such Subcontractor is responsible. Service Provider agrees that it will continue

throughout the Term to retain the Subcontractors identified as “**Key Subcontractors**” in Schedule CC (*Approved Subcontractors*) and that such Persons will continue to provide the Services initially provided, unless Service Provider wishes to provide the Services itself or has obtained HSSBC’s prior written consent to any changes, which consent may be withheld in HSSBC’s discretion.

10.3 Subcontractor Information

Service Provider will, prior to seeking HSSBC’s consents, pursuant to Section 10.2 provide HSSBC with a written notice specifying the components of the Services to be provided by the Subcontractor, the scope of the proposed subcontract, and the identity and qualifications of the proposed Subcontractor. At HSSBC’s request, Service Provider will forward to HSSBC a description of the scope and material terms (other than financial) of the subcontract or proposed subcontract.

10.4 Liability and Replacement

In no event will Service Provider be relieved of its obligations under this Agreement as a result of its use of any Subcontractor, Affiliate, employee or agent to perform the Services or such obligation. Unless expressly provided in this Agreement, or unless otherwise required by the context, Service Provider will cause its Subcontractors to comply with each obligation hereunder of Service Provider (whether or not such obligation is expressly stated hereunder to apply to Subcontractors) and Service Provider will be liable for any failure of its Subcontractors to comply with such obligations. Service Provider will supervise the activities and performance of each Subcontractor, Affiliate, employee or agent and will be liable for any act or failure to act by such Subcontractor, Affiliate, employee or agent to the same extent as if the act or failure was committed by Service Provider. If HSSBC determines that the performance or conduct of any Subcontractor is unsatisfactory, HSSBC may notify Service Provider of its determination in writing, indicating the reasons therefor, in which event Service Provider promptly will take all necessary actions to remedy the performance or conduct of such Subcontractor or, subject to the terms of Section 10.2, replace such Subcontractor by another Third Party or by Service Provider Personnel.

10.5 Direct Agreements

Upon expiration of the Term or termination of the Agreement for any reason, HSSBC will have the unfettered right to enter into direct Contracts with any Subcontractors. Service Provider represents, warrants, and covenants to HSSBC that its arrangements with such Subcontractors will not in any way prohibit or restrict such Subcontractors from entering into direct Contracts with HSSBC.

ARTICLE 11 BUSINESS REQUIREMENTS STRATEGY

11.1 General

HSSBC will retain the exclusive right and authority to set HSSBC’s business strategies and to determine, alter, and define any or all of HSSBC’s requirements and operational and business processes and procedures. HSSBC will consult with Service Provider to inform Service Provider, in advance, of material changes in HSSBC’s requirements and business processes relating to the Services. Service Provider will actively participate in any of the foregoing as HSSBC requests and will, if requested, provide HSSBC with advice, information and assistance in identifying and defining projects and future requirements to meet HSSBC’s objectives.

11.2 Specific Retained Responsibilities

Restricted and Confidential – HSSBC Services Agreement

Without limiting the generality of Section 11.1, HSSBC will retain exclusive authority, discretion and rights of approval with respect to the following:

- (1) considering opportunities to reduce the costs of the Services suggested by Service Provider (and Service Provider will use commercially reasonable efforts to suggest such opportunities) and making decisions with respect to the implementation of Changes to exploit such opportunities (whether identified by Service Provider or HSSBC); and
- (2) overseeing the delivery of Services, the development of Service Levels, service specifications and standards; the performance of Benchmarking; selection of suppliers; security requirements; prioritization, and service conflict resolution among Authorized Users; and general operational management guidelines;
- (3) HSSBC will have the right, in its discretion, to approve or deny any Change Proposals in accordance with the applicable Change Process.
- (4) HSSBC will retain exclusive authority, discretion and rights of approval with respect to performing validation and verification activities in relation to key Changes and operational processes.
- (5) HSSBC will have the right to review and accept or reject all components, Deliverables and systems to be provided by Service Provider to HSSBC under this Agreement, in accordance with the applicable documents issued thereunder respecting work to be performed by Service Provider.

[Insert other retained responsibilities as may be appropriate in the circumstances.]

ARTICLE 12 INTELLECTUAL PROPERTY RIGHTS AND LICENSES

12.1 HSSBC-Owned Materials

Other than Service Provider's pre-existing or independently developed: (a) report formats, or (b) Service Provider Custom Software (together "**Service Provider Tools**") used in the provision of the Services, HSSBC will be the owner of all newly created Intellectual Property Rights in the Deliverables and Derivative Works created with respect to the Deliverables including, without limitation, the Custom Developed Applications Software and all Derivative Works created with respect to such Custom Developed Applications Software (collectively, the "**HSSBC-Developed Deliverables**"), unless otherwise agreed to by the Parties in a Change Order.

Nothing in this Agreement affects HSSBC's ownership of all rights, title and interest including, without limitation, Intellectual Property Rights in and to:

- (a) HSSBC-Developed Deliverables and all Derivative Works thereto;
- (b) Data and Modified Data;
- (c) HSSBC Proprietary Software and all Derivative Works thereto; or
- (d) HSSBC Licensed Software

(collectively, the "**HSSBC-Owned Materials**").

HSSBC makes no grant to Service Provider of any ownership interests, Intellectual Property Rights or other rights in the HSSBC-Owned Materials, except for the limited licenses expressly set forth herein. HSSBC retains all other rights in and to the HSSBC-Owned Materials that are not expressly licensed or granted to Service Provider under this Agreement. Service Provider acknowledges that the Parties do not intend Service Provider to be, and in no event will Service Provider be deemed to be, a joint owner or joint author of any of the Intellectual Property Rights in any HSSBC-Owned Materials.

12.2 Service Provider-Owned Software

Nothing in this Agreement affects Service Provider's ownership of all rights, title and interest, including Intellectual Property Rights, in and to:

- (a) Service Provider Tools and all Derivative Works thereto; and
 - (b) the Service Provider Commercial Software and all Derivative Works thereto
- (collectively, the “**Service Provider-Owned Software**”).

Service Provider makes no grant to HSSBC of any ownership interests, Intellectual Property Rights or other rights in the Service Provider-Owned Software, except for the licenses and rights in and to the Service Provider-Owned Software expressly set forth herein or in the applicable commercial license. Service Provider retains all other rights not expressly licensed or granted to HSSBC under this Agreement. HSSBC acknowledges that the Parties do not intend HSSBC to be, and in no event will HSSBC be deemed to be, a joint owner or joint author of any of the Intellectual Property Rights in the Service Provider-Owned Software.

12.3 Service Provider Perpetual Licenses to HSSBC

Where Service Provider Tools are embedded or embodied in any HSSBC-Owned Materials delivered by Service Provider to HSSBC, Service Provider hereby grants to HSSBC a perpetual, non-exclusive, fully-paid up, worldwide, transferable, sub-licensable and assignable (subject to transferees, sublicenses and assignees agreeing to be bound by the restrictions in this license and applicable confidentiality restrictions as set forth in Section 13.10 in relation to any Service Provider Confidential Information) right and license, to use, copy, distribute, modify, translate and create derivative works (including without limitation Derivative Works) of such embedded Service Provider Tools, as embedded or embodied in the HSSBC-Owned Materials as delivered, for the purpose of HSSBC exercising its rights of ownership in the applicable HSSBC-Owned Materials.

12.4 Assignment of any Ownership Rights in HSSBC-Owned Materials

Service Provider hereby assigns and will assign, and will cause its Subcontractors and Service Provider Personnel to assign, to HSSBC or its designee, immediately upon their creation, all of their rights, title and interest including without limitation copyright in and to the HSSBC-Owned Materials, that Service Provider or its Subcontractors or Service Provider Personnel have, or may have, authored during the Term, without further consideration, free from any claims, royalties or liens. Service Provider will also obtain waivers of any author's moral rights in such HSSBC-Owned Materials in favour of HSSBC, its assignees, licensees and designees.

Service Provider will obtain similar written assignments and waivers from all Subcontractors and Service Provider Personnel who will perform any Services, so as to ensure HSSBC's ownership of the HSSBC-Owned Materials as provided herein, and will not commence the deployment of any such Subcontractor

or Service Provider Personnel until such a written assignment and waiver has been obtained from such Subcontractor or Service Provider Personnel and delivered to Service Provider.

12.5 HSSBC Licenses to Service Provider

During the Term, HSSBC hereby grants to Service Provider a non-exclusive, fully-paid up, non-transferable right and license, to use, copy, limited, modify, translate and create Derivative Works of the HSSBC-Owned Materials for the sole purpose of delivering the Services to HSSBC. In connection therewith, the following provisions will apply:

- (a) the foregoing rights granted to Service Provider do not give Service Provider the right, and Service Provider is not authorized, to market any HSSBC-Owned Materials or Derivative Works thereto or to authorize any other Person to market or use any HSSBC-Owned Materials or Derivative Works thereto (other than Subcontractors who require the same for purposes of, and in connection with, the delivery of the Services to HSSBC);
- (b) Service Provider will not be permitted to use any HSSBC-Owned Materials or any Derivative Works thereto for the benefit of any other Person without the prior written consent of HSSBC, provided that Service Provider will have the right to authorize its Subcontractors to use HSSBC-Owned Materials solely for the purpose of providing the Services pursuant to, and in accordance with, the terms of this Agreement; and
- (c) the foregoing rights will terminate upon the termination or expiry of this Agreement, which ever is the later.

12.6 Further Assurances and Co-operation

The Parties will co-operate with each other and execute such other documents as may be appropriate to achieve the objectives in this Article 12.

Each Party will execute and deliver, and will cause its subcontractors and employees to execute and deliver, any and all Intellectual Property Rights applications, assignments and other documents that the other Party requests for protecting the ownership rights granted or otherwise recognized under this Article 12 to the requesting Party. Each Party will have the full and sole power to prosecute such applications and to take all other action concerning such rights, and the other Party will co-operate, at the requesting Party's expense, in the preparation and prosecution of all such applications.

12.7 Disclosure and Delivery

During the Term, Service Provider will promptly and fully disclose in writing and deliver to HSSBC all HSSBC-Owned Materials made, created, developed, procured or arising under or as a result of this Agreement, which delivery will include without limitation both source code and object code and all available user manuals and documentation.

12.8 HSSBC Data

- (1) **Access to Data.** Service Provider may access HSSBC Data solely to the extent Service Provider requires access to such data to provide the Services in accordance with the terms of this Agreement. Service Provider may only access and process HSSBC Data in connection herewith or as directed by HSSBC in writing and may not otherwise modify

HSSBC Data, merge it with other data, commercially exploit it or engage in any practice or activity that may in any manner adversely affect the integrity, security or confidentiality of such data, other than as specifically permitted herein or as directed by HSSBC in writing. Nothing in this Agreement affects HSSBC's ownership of all rights, title, and interest, including Intellectual Property Rights, in and to the HSSBC Data and in and to any Derivative Works therefrom (collectively, the "**Data and Modified Data**").

- (2) **Service Provider Assignment.** Service Provider hereby assigns and will assign, and will cause its Subcontractors and Service Provider Personnel to assign, to HSSBC or its designee, all of their rights, title and interest including newly created copyright in and to the Data and Modified Data, that Service Provider or its Subcontractors or Service Provider Personnel have, may have or obtain, without further consideration, free from any claim, royalties, lien for balance due, or rights of retention thereto on the part of Service Provider. Service Provider will also obtain waivers of any author's moral rights in such Data and Modified Data in favour of HSSBC, its assignees, licensees and designees.
- (3) **Waivers.** Service Provider will obtain similar written undertakings and waivers from all Subcontractors and Service Provider Personnel who will perform any Services, so as to ensure HSSBC's ownership of the Data and Modified Data as provided herein, and will not commence the deployment of any such Sub-contractor or Service Provider Personnel until such a written undertaking and waiver has been obtained from such Subcontractor or Service Provider Personnel and delivered to Service Provider. Service Provider acknowledges that the Parties do not intend Service Provider to be a joint owner of any Intellectual Property Rights in the Data and Modified Data and that Service Provider will in no event be deemed the joint author of any Data and Modified Data. HSSBC will have unrestricted access to all Service Provider materials, premises and computer files containing the Data and Modified Data. The Parties will co-operate with each other and execute such other documents as may be appropriate to achieve the objectives in this Section 12.8.

12.9 Infringement

If either Party receives a notice of infringement, request for disclosure, subpoena, or other inquiry with respect to any matter under this Article 12, then such Party will, as soon as practical, notify the other Party in writing and the matter will be dealt with in accordance with Article 21. Neither Party will respond to such notices, requests, subpoenas or inquiries, or disclose the other Party's Confidential Information to third parties, without first so notifying the other Party in writing (to the extent possible).

12.10 Co-operation

If at any time HSSBC brings, or investigates the possibility of bringing, any claim against any Person for infringement of any Intellectual Property Right of HSSBC, including misappropriation of trade secrets and misuse of confidential information (including without limitation, Data and Modified Data), then Service Provider, upon the request and at the expense of HSSBC, will provide reasonable cooperation and assistance to HSSBC in the investigation or pursuit of such claim, subject to Service Provider's confidentiality obligations to Affiliates and Third Parties.

12.11 Use of Names and Trademarks

Neither Party will have the right to use, reproduce or display and will not use, reproduce or display, the name of the other Party or any of its officials or employees, or logos or trade-marks in any manner

without the prior written consent of the other Party, which consent may be withheld in such other Party's discretion.

ARTICLE 13 PRIVACY, SECURITY AND CONFIDENTIALITY

13.1 Security

- (1) **General.** Service Provider will provide the Services utilizing security technologies and techniques which are at least as secure as the security standards that HSSBC observed as of the Effective Date, and as may be set out in the HSSBC Policies and Procedures regarding security. If HSSBC requires that different or additional security requirements, policies or procedures be implemented by Service Provider during the Term of this Agreement, HSSBC and Service Provider will, through the Change Process, identify and implement such different or additional security measures.
- (2) **Security Warranties.** Service Provider warrants and undertakes that, as part of the Services provided to HSSBC, it will take, implement and maintain the technical and organizational security procedures and measures set out in Schedule L (*Privacy and Security*) and in the HSSBC Policies and Procedures to preserve the security and confidentiality of personal data processed by it and protect such personal data against unauthorized or unlawful disclosure, access or processing, accidental loss, destruction or damage. Service Provider will implement such other technical and organizational security procedures and measures as may be required or directed by HSSBC from time to time, in accordance with the Change Process, including, at HSSBC's request, providing relevant assistance to HSSBC to devise appropriate technical and organization measures. To the extent such assistance can be provided by personnel dedicated to the performance of the Services, such assistance will be provided without additional charge or fee. By executing this Agreement, HSSBC appoints Service Provider as a data processor of HSSBC Data. As a processor of such data, Service Provider will process HSSBC Data as specified herein. Service Provider may perform such processing as it reasonably considers necessary or appropriate to perform the Services. Upon expiration of the Term or termination of the Agreement, HSSBC will (if necessary) give the data protection authority prompt notice of the termination of the appointment of Service Provider as HSSBC's data processor.

13.2 Privacy – General

- (1) **Privacy Requirements.** The Service Provider will, at all times, ensure that the Service Provider Personnel, and to the extent applicable in accordance with the provisions of Schedule L (*Privacy and Security*) its Subcontractors, comply with the obligations and requirements, the Privacy Requirements, set forth in Schedule L (*Privacy and Security*), as such are amended from time to time in accordance with this Agreement.
- (2) **Foreign Disclosure Orders.** The Service Provider expressly acknowledges and agrees that it is subject to the laws of British Columbia and the laws of Canada applicable in British Columbia with respect to this Agreement and the performance of the Service Provider's obligations under this Agreement, and it is not subject to Foreign Disclosure Laws including, without limitation, any orders, directives, rulings, requirements, judgments, injunctions, awards or decrees, decisions, or other requirements issued pursuant to any Foreign Disclosure Laws, or any directions or requests from any Affiliate of the Service Provider in respect of the same (each a "**Disclosure Order**"). The Service

Provider will immediately inform HSSBC if the Service Provider receives a Disclosure Order. Upon receipt of a Disclosure Order, the Service Provider will not disclose any Personal Information in response thereto and the Service Provider will at all times act in accordance with the terms and conditions of this Agreement including, without limitation, the Privacy Requirements. Any breach of this Section will be a material breach under this Agreement. The provisions of this Section represent a lawful restriction on the Service Provider, being a Person governed by the laws of British Columbia and the laws of Canada applicable in British Columbia. The Service Provider will flow through the requirements of this Section to any Access Subcontractors, to apply to the Access Subcontractors, mutatis mutandis.

- (3) **Service Provider Corporate Structure.** As of the Effective Date, the corporate organizational chart, indicating all shareholdings to the ultimate indirect shareholder (other than the shareholdings of a public company listed on a recognized stock exchange) of the Service Provider (each a “**Corporate Organizational Chart**”), are as set forth in Schedule FF (*Corporate Organizational Chart*). Throughout the Term, the Service Provider will provide HSSBC with an updated Corporate Organizational Chart from time to time forthwith upon any changes being made thereto. Unless agreed otherwise by HSSBC, for so long as the Service Provider has, or could have, disclosure or use of, or access to any Personal Information in connection with the performance of the Services under this Agreement, the Service Provider will be and remain under the direct Corporate Control of a Canadian Entity, and any failure of the Service Provider to remain so controlled will be deemed to be a material breach under this Agreement and will give rise to the right of HSSBC to terminate this Agreement.
- (4) **Canadian Controlled Entities.** Throughout the Term, the Service Provider, the Performance Guarantor and the Subcontractors that are corporations, partnerships, limited partnerships, or other similar entities that are incorporated or created under the laws of Canada or under the laws of any province of Canada (each a “**Canadian Entity**”), and that the Service Provider Personnel (which includes, for clarity, Subcontractor personnel) and Subcontractors who are individuals are not Foreign Employed Individuals. Unless agreed otherwise by HSSBC, and for so long as any Service Provider Personnel, (which includes, for clarity, Subcontractor personnel) personnel and Subcontractors who are individuals has or could have any access to, or use or disclosure of, any Personal Information in connection with the performance of the Services under this Agreement, the Service Provider will ensure that:
 - (a) in the case of Subcontractors who are individuals, the Subcontractor are not, and do not become, a Foreign Employed Individual; and
 - (b) in all other cases, the Subcontractors are and remain a Canadian Entity, and unless otherwise approved by HSSBC, a Canadian Entity that is Corporately Controlled by a Canadian Entity or by individuals who are not Foreign Employed Individuals.
- (5) **Trans-border Data Flows.** Service Provider will not transfer outside the Permitted Service Locations in Canada or provide access to any other HSSBC Data from outside the Permitted Service Locations in Canada, without HSSBC’s prior written consent.
- (6) **Service Provider as a Data Processor.** Service Provider understands and acknowledges that, to the extent that performance of its obligations hereunder involves or necessitates the processing of Personal Information from HSSBC, it will act only on instructions and

directions from HSSBC, consistent with Service Provider's obligations set out in this Agreement. Service Provider will comply promptly with all such instructions and directions received by Service Provider from HSSBC from time to time. Service Provider undertakes not to disclose Personal Information to any Third Party in any circumstances other than at HSSBC's specific written request or in compliance with all Applicable Laws. Service Provider also undertakes to co-operate with HSSBC with respect to the provision of such additional documentation of Service Provider's obligations under this Agreement as may assist HSSBC to comply with Privacy Laws.

- (7) **Personal Information Subject Right of Access and Rectification.** If either Party is required to provide information to an individual regarding that individual's Personal Information, the other Party will reasonably co-operate with the requesting Party in providing such information to the full extent necessary to comply with Privacy Laws, and where a request by an individual is made directly to a Party with respect to Personal Information provided by the other Party, it will as soon as reasonably practicable notify the other Party upon receipt of a request (whether oral or in writing) from such an individual providing sufficient details and information as are required by the providing Party to comply with its obligations under Privacy Laws. In the case of Personal Information provided by HSSBC, if further to such a request any Personal Information must be rectified, Service Provider undertakes to amend such Personal Information as instructed by HSSBC, to the extent that Service Provider has the necessary access rights.

13.3 Information Access

- (1) Prior to performing any Services, Service Provider will ensure that all of its Service Provider Personnel and Subcontractors who may have access to the HSSBC Data and/or the HSSBC-Owned Materials (and in particular, the Personal Information) have executed agreements with Service Provider under which such Service Provider Personnel and Subcontractors have agreed to protect the confidentiality, privacy and security of the confidential information of HSSBC in a manner which is no less rigorous than that required of Service Provider under this Agreement.
- (2) Service Provider will, upon request by HSSBC, provide HSSBC with appropriate evidence (for example, copies of specimen provisions) and assurances (for example, confirmations of execution, without names) regarding compliance by Service Provider Personnel and Subcontractors with the confidentiality and security obligations set forth herein.
- (3) Except with respect to HSSBC Confidential Information, and the obligations applicable thereto which are set forth in Section 13.7, Service Provider will comply and will cause the Service Provider Personnel and Subcontractors to comply with all HSSBC Policies and Procedures that may be provided by HSSBC and reviewed and clarified by the Parties from time-to-time, regarding data access, privacy and security, including those prohibiting or restricting remote access to, use and disclosure of HSSBC systems and data. Notwithstanding anything to the contrary herein, any material changes to HSSBC Policies and Procedures that impact the services, will be implemented using the Change Process.
- (4) HSSBC will authorize, and Service Provider will issue, any necessary information-access mechanisms, including access IDs and passwords, and Service Provider agrees that the same will be used only by the Service Provider Personnel to whom they are issued and who have a need to access HSSBC Data. Service Provider will provide to such personnel

only such level of access as is necessary to perform the tasks and functions for which such personnel are responsible.

- (5) Service Provider will from time-to-time, upon request from HSSBC, but (absent exceptional circumstances) no more frequently than quarterly, provide HSSBC with an updated list of those Service Provider Personnel having access to HSSBC's systems, software, and data, and the level of such access. Computer data and software, including HSSBC Data, provided by HSSBC or accessed (or accessible) by Service Provider Personnel (which includes, for clarity, Subcontractor personnel), will be accessed, collected and used by such personnel only to the extent required in order for Service Provider to perform its obligations hereunder, and will not otherwise be used or exploited by Service Provider or its Subcontractors in any manner whatsoever.
- (6) Without limiting any other rights or remedies available under this Agreement, at law or in equity, a material breach by Service Provider or Service Provider Personnel, agents or Subcontractors of the provisions of this Article 13 may result in HSSBC restricting the offending personnel from access to HSSBC computer systems or HSSBC Data and/or the termination of this Agreement for cause in accordance with the provisions of Section 18.5. It is Service Provider's obligation and responsibility to maintain and ensure the confidentiality, privacy and security of HSSBC Data in accordance with the terms of this Agreement.

13.4 Personal Information Protection.

- (1) To the extent that a Party provides access or transfers to the other Party (including the other Party's employees, agents, Affiliates and subcontractors (including Subcontractors)) any Personal Information pursuant to this Agreement, the other Party will, and will ensure that its employees, agents, Affiliates and subcontractors, including, for the Service Provider, the Subcontractors:
 - (a) not use such Personal Information for any purpose other than fulfilling its obligations or exercising its rights under the Agreement;
 - (b) not disclose such Personal Information to any Person other than as expressly permitted by the Party providing the Personal Information or as required or permitted by Applicable Laws;
 - (c) immediately refer to the providing Party any individual who contacts the receiving Party (or any of the receiving Party's employees, agents, Affiliates or subcontractors (including Subcontractors)) seeking access or correction to or with any inquiries or complaints about their Personal Information as such Personal Information may relate to the Agreement, and immediately notify the providing Party regarding any such request, inquiry or complaint;
 - (d) throughout the Term of the Agreement and Transition Out, and without limiting Section 13.1, use security measures as specified in this Agreement to protect such Personal Information against unauthorized access, disclosure, copying, use, or modification, and immediately inform the providing Party of any accidental or unauthorized access, disclosure, copying, use, or modification of such Personal Information;

- (e) upon termination or expiry of the Agreement and upon completion of Transition Out, immediately return to the providing Party or, at the direction of the providing Party, dispose of all Personal Information relating to the Agreement using the measures specified in this Agreement or agreed to by the Parties at that time;
- (f) designate an individual to handle all aspects of the Agreement that relate to the handling of Personal Information;
- (g) not subcontract, assign or delegate its obligations with respect to Personal Information under this Agreement without the express consent of the providing Party; and
- (h) to the extent that Service Provider may in fulfilling its obligations under this Agreement, collect, use or disclose Personal Information that has not been provided to it directly by HSSBC, Service Provider will ensure that such Personal Information is collected, used and disclosed in accordance with the HSSBC Policies and Procedures, and will otherwise comply with the obligations set forth in this Section 13.4.

13.5 Background Checks

- (1) If Service Provider assigns Persons (whether employees, subcontractors (including Subcontractors) or agents) to perform work at any HSSBC site or to have access to any sensitive HSSBC Data, Service Provider will conduct a background check on all such Persons consistent with HSSBC's current practices and review the results of the background check of each Person to verify that the Person meets Service Provider's standards for employment before presenting the results of the background check to HSSBC and requesting that HSSBC grant access to any such Person to any HSSBC site or sensitive HSSBC Data.
- (2) No Person will have access to any HSSBC site or sensitive HSSBC Data prior to delivery of the written background check to HSSBC and HSSBC's approval of such Person. HSSBC will be permitted, at its sole option, to refuse access of any Person to any HSSBC site or facility. Such background check will include, as required under Section 9.7, CPIC Level 2 clearance, and be in the form generally used by Service Provider in its initial hiring of employees or contracting for contractors (including Subcontractors and agents) or, as applicable, during the employment screening process, including credit history and employment history.
- (3) Service Provider will use all commercially reasonable efforts to obtain all releases, waivers or permissions required for the release of such information to HSSBC. Prior to presenting any Person to HSSBC, with verification on an annual basis, Service Provider's human resources manager for this Agreement will certify that the background check required by this Section 13.5 has been conducted with respect to all Persons assigned by Service Provider to perform work at any HSSBC site or to access any sensitive HSSBC Data.

13.6 Other Policies

Except with respect to HSSBC Confidential Information, and the obligations applicable thereto which are set forth in Section 13.7, Service Provider will, and will cause the Service Provider Personnel (including

Subcontractors) and agents to, abide by all applicable HSSBC Policies and Procedures that may be provided by HSSBC in writing as the same may be clarified by the Parties from time-to-time, including rules and requirements for the protection of premises, materials, equipment and personnel and patients. Notwithstanding anything to the contrary herein, any Changes to HSSBC Policies and Procedures are to be implemented using the Change Process.

13.7 HSSBC Confidential Information – Non-Disclosure

- (1) Subject to the provisions of Article 12, all HSSBC Confidential Information will, as between the Parties, be deemed the sole property of HSSBC and will be used by Service Provider and the Service Provider Personnel (including Subcontractors) solely for the purposes of performing Service Provider's obligations under this Agreement, and, except as permitted under Section 13.9, is not to be collected or used except as provided for in this Agreement and is not to be published, transmitted, released or disclosed by Service Provider or its Subcontractors to any other Person without the prior written consent of HSSBC, which consent HSSBC may withhold in its discretion.
- (2) Except where this Agreement specifies that a higher standard will apply, to ensure compliance with subsection (1), above, Service Provider will use the same standard of care to prevent disclosure of the HSSBC Confidential Information as it uses to prevent disclosure of Service Provider's own information of a similar nature, but in no event less than a reasonable degree of care.

13.8 Disclosure Requests

Except as otherwise specified in this Agreement, any and all requests for copies of or access to, or disclosure of, any HSSBC Confidential Information will be promptly submitted to HSSBC for disposition.

13.9 Permitted Disclosures

Service Provider will require each of its Service Provider Personnel and Subcontractors providing Services hereunder or otherwise having access, in whatever form or function, to the HSSBC Confidential Information, to execute, prior to any such activity or access, an agreement in substance providing not less than the standard of protection of HSSBC Confidential Information as set out in this Agreement. Service Provider will provide HSSBC with appropriate evidence and assurances regarding compliance by Service Provider Personnel and Subcontractors with the confidentiality obligations set forth herein. Service Provider may disclose HSSBC Confidential Information only to those of such Service Provider Personnel and Subcontractors who have a need to know such HSSBC Confidential Information in order to perform their duties under this Agreement, and only to the extent reasonably necessary. Regardless of the form of any Contract executed with Service Provider Personnel, contractors (including Subcontractors) and agents, Service Provider will retain liability for all breaches of this Section 13.7 and for the related acts or omissions of its officers, Service Provider Personnel and Subcontractors, and the like, including the unauthorized use or disclosure of HSSBC Confidential Information, by its officers, Service Provider Personnel and Subcontractors, and the like.

13.10 Service Provider Confidential Information

HSSBC may disclose Service Provider Confidential Information only to its Service Provider Personnel who have a need to know such Service Provider Confidential Information, and only to the extent reasonably necessary. Except as otherwise specifically provided in this Agreement, HSSBC may not publish, transmit, release or disclose Service Provider Confidential Information to Third Parties unless it

obtains the prior written consent of Service Provider. HSSBC will use the same care to prevent disclosure of the Service Provider Confidential Information as it uses to prevent disclosure of its own information of a similar nature, but in no event less than a reasonable degree of care.

13.11 Legally Required Disclosures

The Receiving Party may disclose the Confidential Information of the Disclosing Party to the extent disclosure is based on the good faith written opinion of the Receiving Party's legal counsel that disclosure is required by Applicable Law or by order of a court of competent jurisdiction or governmental agency with jurisdiction; provided, however, that the Receiving Party will give advance notice of such requested disclosure and legal opinion to the Disclosing Party prior to any such disclosure and will use all commercially reasonable efforts to obtain a protective order or otherwise protect the confidentiality of the Disclosing Party's Confidential Information. Notwithstanding the foregoing, the Disclosing Party reserves the right to obtain a protective order or otherwise protect the confidentiality of such Confidential Information. For purposes of this Section 13.11, a Receiving Party's internal legal counsel may act as such party's legal counsel.

13.12 Notification and Mitigation

In the event of any impermissible disclosure, loss or destruction of Confidential Information, the Receiving Party will immediately notify the Disclosing Party and take all reasonable steps to mitigate any potential harm or further disclosure, loss or destruction of such Confidential Information.

13.13 Return of Confidential Information

- (1) **Expiration or Termination.** Upon the expiration of the Term or termination of this Agreement, and at any other time upon written request by the Disclosing Party, the Receiving Party promptly will return to the Disclosing Party all Confidential Information (and all copies thereof) of the Disclosing Party then in its possession or control. In addition, unless the Disclosing Party otherwise consents in writing, the Receiving Party also will deliver to the Disclosing Party or, if requested by the Disclosing Party, will delete or destroy, any copies, duplicates, summaries, abstracts or representations of any such Confidential Information or any part thereof, in whatever form, then in the possession or control of the Receiving Party. Service Provider's obligations under this Article 13 will survive until five (5) years after the date upon which Service Provider provides a certificate which certifies the return or destruction of all HSSBC Confidential Information received, created or stored by Service Provider under this Agreement.
- (2) **Certificate.** The certificate certifying the return or destruction of all HSSBC Confidential Information survives the termination of this Agreement without limit. HSSBC's obligations under this Article 13 will survive until five (5) years after the date upon which HSSBC provides a certificate which certifies the return or destruction of all Service Provider Confidential Information received, created or stored by HSSBC under this Agreement. The certificate certifying the return or destruction of all Service Provider Confidential Information would survive the termination of this Agreement without limit.
- (3) **Survival of Confidentiality Obligation.** To the extent that any Confidential Information in the possession or control of the Receiving Party cannot be returned, deleted or destroyed, then the obligations of the Receiving Party under this Article 13 shall survive indefinitely, notwithstanding any other provision of this Agreement.

13.14 Injunctive Relief

If the Receiving Party or anyone acting on its behalf or operating under its control, including employees, Subcontractors and Third Parties, publishes, transmits, releases, discloses or uses any Confidential Information of the Disclosing Party in violation of this Article 13, or if the Disclosing Party anticipates that the Receiving Party may violate or continue to violate any restriction set forth in this Article 13, then the Disclosing Party will have the right to have the provisions of this Article 13 specifically enforced by any court having equity jurisdiction, without being required to post bond or other security and without having to prove the inadequacy of available remedies at law, it being acknowledged and agreed that any such violation will, unless the other party demonstrates to the contrary, cause irreparable harm to the Disclosing Party which will not be compensable by monetary damages alone and, accordingly, the Disclosing Party will, in addition to other available legal or equitable remedies, be entitled to seek an immediate injunction or other affirmative relief restraining the violating Person from committing or continuing to commit a violation without such constituting an election of remedies. A Party may avail itself of injunctive relief in addition and without prejudice to any other remedies available to it.

13.15 Residuals Protection

Subject to compliance with all applicable intellectual property laws, neither Party will be restricted from using in its business the Residuals retained in the unaided memories of its employees who have had access to Service Provider Confidential Information or HSSBC Confidential Information (as the case may be) under this Agreement.

13.16 Intellectual Property Rights Not Affected

Nothing in this Article 13 will affect or prevent the transfer or exercise of any Intellectual Property Rights assigned or licensed pursuant to Article 12.

ARTICLE 14 TECHNOLOGY MANAGEMENT

14.1 General

Service Provider will provide the technology management and security Services described in this Article 14, Article 13 and Schedule L (*Privacy and Security*). Service Provider will obtain HSSBC's prior written consent before acquiring, maintaining, upgrading or replacing any asset that is used by Service Provider to satisfy its obligations hereunder if such acquisition, maintenance, upgrade or replacement could result in a material change in the cost, method, manner, types or levels of Services that are then being provided to HSSBC.

14.2 Technology Upgrades and Enhancements

Unless otherwise agreed in writing, Service Provider will, as part of Support, maintain the Hardware and Software at a level of currency which is no less than the level of currency set forth in Schedule K (*Technology*). Service Provider will notify HSSBC as soon as Hardware and Software upgrades and enhancements become available from their respective vendors, and the Parties thereafter will co-ordinate implementation of such upgrades and enhancements. Service Provider will schedule all such upgrades and replacements in consultation with HSSBC in advance and in such a way as to prevent any interruption or disruption of, or diminution in, the nature or level of any portion of the Services.

14.3 Future Research, Development and Industry Studies

Service Provider will furnish HSSBC with access to all relevant existing and future research and development resources, such as published materials and industry studies conducted for or by Service Provider, that are relevant to the Services being provided to HSSBC and that might assist HSSBC in setting the HSSBC Policies and Procedures. The Service Provider Contract Executive also will advise HSSBC of all matters of a material nature that he or she believes would be helpful to HSSBC in setting or revising the HSSBC Policies and Procedures.

14.4 Service Compatibility

Service Provider will ensure that all services, equipment, networks, software, enhancements, upgrades, modifications and resources, including those provided by HSSBC (collectively, the “**Resources**”) utilized by Service Provider or approved by Service Provider for utilization by HSSBC in connection with the Services, will at all times be successfully integrated and interfaced, and will be compatible with the services, equipment, networks, software, enhancements, upgrades, modifications and resources that are being provided to, recommended to or approved for use by Third Party service providers (collectively, the “**Third-Party Resources**”). Further, Service Provider will ensure that none of the Services or items provided to HSSBC by Service Provider will be adversely affected by, or will adversely affect, those of any such Third Party providers, whether as to functionality, speed, Service Levels, interconnectivity, reliability, availability, performance, response times or similar measures. To the extent that any interfaces need to be developed or modified in order for the Resources to integrate successfully, and be compatible with, the Third-Party Resources, Service Provider will develop or modify such interfaces as part of the Services, pursuant to the applicable Change Process. In the event of any dispute as to whether a particular defect, malfunction or difficulty with respect to the Services was caused by Resources or by Third-Party Resources, Service Provider will be responsible for correcting at its cost, such defect, malfunction or difficulty, except to the extent that Service Provider can demonstrate, to HSSBC’s satisfaction, by means of a Root-Cause Analysis, that the cause was not due to Resources. In addition, Service Provider will co-operate with all Third Party service providers of HSSBC to co-ordinate its provision of the Services with the services and systems of such Third Party service providers. Subject to reasonable confidentiality requirements, such co-operation, will include providing:

- (1) applicable written information concerning any or all of the systems, data, computing environment, and technology direction used in providing the Services;
- (2) reasonable assistance and support services to such Third Party providers;
- (3) access to systems and architecture configurations of Service Provider to the extent reasonably required for the activities of such Third Party providers; and
- (4) access to and use of the Resources.

In addition, Service Provider will co-operate with all Third Party service providers of HSSBC to co-ordinate its provision of the Services with the services and systems of such Third Party service providers. Subject to reasonable confidentiality requirements, such co-operation, will include providing: (a) applicable written information concerning any or all of the standards or specifications applicable to the systems, data, computing environment, and technology direction used in providing the Services; (b) reasonable assistance and support services to such Third Party providers; (c) access to systems and architecture configurations of Service Provider to the extent reasonably required for the activities of such Third Party providers; and (d) access to and use of the Resources.

ARTICLE 15 LEGAL COMPLIANCE

15.1 Compliance with Applicable Laws

Service Provider will perform its obligations hereunder in compliance with all Applicable Laws. Service Provider will use all commercially reasonable efforts to assist HSSBC, as required or as requested by HSSBC in writing, so that HSSBC can comply with all Applicable Laws, including in the event of an audit initiated by a regulator or otherwise under Applicable Laws. HSSBC will, through the Change Process, implement any changes required by changes to Applicable Laws which relate specifically to HSSBC and affect the manner in which the Services are to be performed. No provision of this Agreement will have any force or effect if it would cause a violation of any Applicable Laws, or would require any consent or approval (other than those which have been obtained) to prevent any such violation, but any such provision will be replaced, to the extent possible, by a provision which achieves the same business objectives in a manner which complies with Applicable Laws.

15.2 Service Provider Permits, Licenses and Assistance

Except as otherwise provided in this Agreement, Service Provider will obtain and maintain, and will cause its Subcontractors to obtain and maintain, at no cost to HSSBC, all Consents, permits, and forms of documentation required in order to comply with all Applicable Laws applicable to Service Provider or its Subcontractors in connection with the performance of the Services and Service Provider's obligations hereunder. HSSBC reserves the right to reasonably request and review all such Consents and permits prior to the commencement of any Services hereunder. If requested, HSSBC will co-operate with Service Provider, at Service Provider's cost and expense, to obtain any such Consents and permits. Similarly, Service Provider will provide reasonable assistance to HSSBC in HSSBC's attempt to fully comply with any Applicable Laws concerning data and privacy protection, including any obligation of HSSBC to certify or respond to any data protection or privacy authority regarding such matters. To the extent such assistance can be provided using Dedicated resources, such assistance will be provided without additional charge or fee. HSSBC may request further assistance in accordance with the Change Process.

15.3 Specific Laws and Agreements

The Parties acknowledge that they have taken reasonable efforts to cause this Agreement and the Services as described herein to be compliant with the Applicable Laws. Without limiting Section 15.1 (*Compliance with Applicable Laws*), at all times during the Term, the Service Provider will comply with and will cause the Service Provider Personnel and Subcontractors to comply with the following in the performance of the Services:

- (1) ***Financial Administration Act and Budget Transparency and Accountability Act.*** HSSBC is required to comply with the requirements of the *Financial Administration Act* (British Columbia) and *Budget Transparency and Accountability Act* (British Columbia) regarding the maintenance of financial records, the reporting of financial results, and similar financial matters. The Service Provider shall use all reasonable efforts to comply with the requirements of the *Financial Administration Act* (British Columbia) and the *Budget Transparency and Accountability Act* (British Columbia), to the extent such act would apply to the performance of the Services by HSSBC internally, and shall assist HSSBC as necessary to ensure that HSSBC is in compliance with the requirements of the *Financial Administration Act* (British Columbia) and the *Budget Transparency and Accountability Act* (British Columbia) with respect to the performance of the Services;
- (2) ***North American Free Trade Agreement.*** The Service Provider agrees on its own behalf, and on behalf of its Affiliates, successors and assigns, to waive any and all rights that it may have under the North American Free Trade Agreement, including, but not limited to, all rights under North American Free Trade Agreement Chapter Eleven. The Service Provider specifically acknowledges and agrees that this waiver precludes any of the Service Provider, or its Affiliates, Subcontractors and their respective successors or

permitted assigns, from providing their consent to arbitration under North American Free Trade Agreement Article 1121 and from thereby commencing or assisting in any claim under Section B of North American Free Trade Agreement Chapter Eleven concerning any dispute arising out of or relating to this Agreement;

- (3) ***Trade Agreements Generally.*** The Service Provider acknowledges that HSSBC (and, for greater certainty, the Health Organizations) is subject to certain trade agreements including the following: Agreement on Internal Trade and the New West Partnership Trade Agreement. The Service Provider shall use all reasonable efforts to comply with the requirements requested by HSSBC, to the extent applicable to the performance of the Services, and shall assist HSSBC as necessary to ensure that HSSBC is in compliance with the requirements of such trade agreements with respect to the performance of the Services; and
- (4) ***e-Health Personal Health Information Access and Protection of Privacy Act.*** The Service Provider acknowledges that HSSBC (which for greater certainty, includes the Health Organizations) are subject to the *e-Health Personal Health Information Access and Protection of Privacy Act* (British Columbia), and that they may from time to time be required to provide information in accordance with the requirements of such legislation. In performing its Services, the Service Provider shall comply with all requirements of the e-Health Act and any applicable policies and directives.

15.4 Provincial and Federal Privacy Legislation

Service Provider acknowledges that HSSBC Confidential Information may include Personal Information. Service Provider will ensure that it, its agents, Affiliates and Subcontractors will perform the Services in compliance with the provisions of this Agreement, including the technological, organizational and physical measures for protection of Personal Information set out in the HSSBC Policies and Procedures and Schedule L (*Privacy and Security*). HSSBC will ensure that such Personal Information within its control is collected, used and disclosed with the knowledge and consent of the individual to whom the Personal Information relates in accordance with Applicable Laws. If Service Provider believes that Personal Information has been subject to unauthorized access, Service Provider will provide prompt written notice to HSSBC (and in any event, within twenty-four (24) hours). If HSSBC reasonably determines that actions must be taken to comply with any Privacy Laws, Service Provider will fully co-operate with HSSBC to achieve such compliance and, where such actions must be taken as a result of any failure of Service Provider or any of its Service Provider Personnel, Affiliates or Subcontractors to comply with this Section 15.4, all such compliance related activities by Service Provider will be performed at Service Provider's sole cost and expense. Service Provider will be liable for damages suffered by HSSBC as a result of such failure. Nothing contained herein will be deemed to release Service Provider from its indemnification obligations as set forth in Sections 21.3 and 21.4 of this Agreement.

Service Provider will comply with all Applicable Laws in connection with the collection, storage, use, processing and/or disclosure of Personal Information by Service Provider pursuant to its obligations under this Agreement, to the extent applicable to Service Provider in connection with this Agreement. Service Provider will oblige its Service Provider Personnel, Affiliates, and Subcontractors (if any) to comply with Privacy Laws applicable to the Services and to undertake in writing only to collect, process or use any data containing Personal Information received from HSSBC for purposes of providing the Services and not to make data containing Personal Information received from HSSBC available to any Third Parties.

ARTICLE 16
RECORDKEEPING AND AUDIT RIGHTS

16.1 Record Keeping

In addition to any obligations that Service Provider may, apart from this Agreement, have to collect and maintain records, Service Provider will, as part of the Services, collect, maintain and retain:

- (1) utilizing generally accepted accounting principles in accordance with the *International Financial Reporting Standards* or any successor standard, consistently applied, complete and accurate records and books of account with respect to this Agreement and the Services, including all records related to the Fees and Sales Taxes invoiced to HSSBC under this Agreement and all Fee Reductions;
- (2) all records and copies of any correspondence relating to any actual or threatened claim, suit or proceeding with any third party relating to this Agreement, the Services or the Dedicated Hardware;
- (3) all records documenting Service Provider's compliance with HSSBC Policies and Procedures applicable to the Services, and compliance with security and confidentiality obligations and operational procedures applicable to this Agreement or the Services;
- (4) records and reports relating to changes made through the Change Process and any other changes made to the Hardware, Software or Services; and
- (5) records, measurements and reports pertaining to performance of the Services including those relating to Incident Management, Problem Management, and Dispute Resolution Process, Service volumes and Service Level Reports and, to the extent reasonably available, all documentation used to create such records, measurements and reports,

(all such records, measurements, reports, correspondence and documentation are herein referred to as the “**Retained Records**”).

16.2 Retention of Records

Service Provider will retain each of the Retained Records until:

- (1) the delivery of same to HSSBC (or its designees); or
- (2) the later to occur of:
 - (a) the time period or time periods set forth below with respect to such Retained Records;
 - (b) any time period for which Service Provider is required to retain such Retained Records pursuant to applicable Service Provider record retention policies;
 - (c) any time period for which Service Provider is required to retain such Retained Records pursuant to Applicable Laws; and
 - (d) one (1) year following the final resolution of all audits or the full and final resolution of any dispute, litigation or threatened litigation to which such Retained Records relate. The minimum time periods, referred to in part (i) of the

preceding sentence, for which Retained Records must be retained by Service Provider for not less than seven (7) years from the date of its creation or for such longer period as may be required pursuant to applicable Service Provider record retention policies. The Retained Records referred to in this Agreement will constitute Service Provider Confidential Information. The Retained Records referred to in Sections 16.1(3) to 16.1(5), other than information which does not specifically relate to HSSBC or the Services, will constitute HSSBC Confidential Information, but HSSBC will, unless otherwise required by Applicable Law, only use such information in connection with its requirements for or the performance of the Services, and will treat any pricing information that may be included in the Retained Records as Confidential Information of Service Provider. Without limiting any of the foregoing, all Retained Records and the procedures used to collect, maintain and report such Retained Records, will be performed in accordance with the standards customarily observed by leading North American providers of services that are the same or substantially similar to the Services, will facilitate the reconciliation and aggregation of all data contained in the Retained Records on a standardized and centralized platform where reasonable, and will comply with the confidentiality and nondisclosure provisions set forth in this Agreement.

16.3 Availability of Records

During the retention periods referred to in Section 16.2 above, HSSBC (and its designees) shall have the right, during normal Business Hours, to examine and to obtain from Service Provider copies of extracts from the Retained Records pertaining to this Agreement, the Services or HSSBC other than Retained Records relating to Service Provider's pricing methodologies or to the actual or budgeted costs or expenses incurred by Service Provider in providing the Services (provided that HSSBC will be entitled to have access to and to copy all Retained Records relating to Pass-Through Expenses). At the end of the retention periods referred to in Section 16.1, above, unless otherwise directed by HSSBC, Service Provider will at no additional charge deliver to HSSBC (or its designee) in an appropriate electronic form the Retained Records referred to in Sections 16.1(3) to 16.1(5) and Service Provider may, at its option, destroy the Retained Records referred to in Sections 16.1(1) and 16.1(2).

16.4 Operational Audits

HSSBC and/or HSSBC's external auditors or representatives shall have the right, at any time during the Term and for twelve (12) months thereafter, upon reasonable notice to Service Provider, to perform operational, compliance and security audits with respect to Service Provider's performance of its obligations hereunder in order to permit HSSBC to:

- (1) verify the adequacy and operation of internal control procedures, including those relating to security, and other key attributes of the Services;
- (2) verify Service Provider's reports, including Service Level Reports;
- (3) verify Service Provider's compliance with the HSSBC Policies and Procedures applicable under this Agreement; and
- (4) verify compliance with the other provisions of this Agreement.

Service Provider will, at its expense, grant HSSBC, and/or external auditors or representatives on HSSBC's behalf, full and complete access to and right to obtain copies of the Retained Records (subject

to the exceptions for any pricing methodologies, costs and expenses referred to in Section 16.3 above) and reasonable access to Service Provider's facilities, systems and personnel as may be required in order for HSSBC to ascertain any facts relative to Service Provider's performance of its obligations hereunder. The Service Provider will, at its expense, promptly provide HSSBC and/or external auditors or representatives on HSSBC's behalf with such information and assistance as may reasonably be requested by HSSBC in connection with such audits; provided, however, that the Parties will endeavour to ensure that such assistance is provided in such a way that it does not interfere with Service Provider's performance of the Services. Service Provider will, at its expense, promptly remedy any inadequacy or deficiency, which is identified as a result of an operational audit, of Service Provider to perform its obligations hereunder. If an operational audit discloses a material breach by Service Provider of its obligations under this Agreement, Service Provider will promptly remedy such breach and reimburse HSSBC for the out-of-pocket costs incurred by HSSBC in connection with such audit.

16.5 Financial Audits

HSSBC and/or HSSBC's external auditors or representatives shall have the right, at any time during the Term and for twelve (12) months thereafter, upon reasonable notice to Service Provider, to perform financial audits with respect to Service Provider's performance of its obligations hereunder and in connection therewith will have the right to examine and to obtain from Service Provider copies of extracts from the Retained Records (subject to the exceptions for any pricing methodologies, or the costs and expenses referred to in Section 16.3 above) to the extent necessary to verify any amounts paid or payable hereunder. Such auditors will be provided with such access to such personnel and systems as may be reasonably required to confirm the accuracy of Service Provider's invoices, documents, and other information (including accuracy of Service Level reporting) supporting such invoices, and any pricing adjustment computations. All such audits will be conducted during Business Hours, upon reasonable notice, and will include access to all proprietary and confidential information of Service Provider to the extent reasonably necessary to comply with the provisions of this Section 16.5. The Service Provider will promptly refund any overcharges identified as a result of a financial audit to HSSBC with interest at ● percent (●) per annum. If any such audit reveals that Service Provider has overcharged HSSBC by ● percent (●) or more during the period (as determined prior to the commencement of the audit) to which the audit relates, Service Provider will reimburse HSSBC for HSSBC's Out-of-Pocket Expenses incurred in connection with such audit.

16.6 Audit Reports

No less often than once during each consecutive twelve (12) month period during the Term, Service Provider will, as part of the Services and at no additional charge to HSSBC, provide a copy of the SAS70 Americas Type 2 audit report (which for greater certainty includes a Canadian Institute of Chartered Accountants CICA Section 5900 report) or a successor or similar report, prepared by the auditor of Service Provider or one of its Affiliates for the internal purposes of Service Provider and its Affiliates, with respect to the Service Provider service delivery centres including the Permitted Service Locations. Service Provider agrees that it will regularly, no less frequently than annually, consult with HSSBC concerning such reports both generally and with respect to the scope of such review, including the determination of the control objectives and control assertions associated with each report. In addition, following the completion of Transition, HSSBC will be entitled to have performed at its own expense, in accordance with Section 16.4, its own SAS 70 or CICA 5900 audit or successor or similar audit in respect of the Services or the facilities used to provide the Services.

16.7 Audit Frequency

HSSBC may perform the audits referred to in Sections 16.4 and 16.5 and a SAS 70 or CICA 5900 together as a single combined audit in order to minimize the cost and disruption to Service Provider's

operations. Absent exceptional circumstances, HSSBC may perform such audit only once during each consecutive twelve (12) month period during the Term, but for greater certainty, HSSBC will have no obligation to perform such an audit. Exceptional circumstances which may merit an additional audit (or audits) include possible changes to Applicable Laws or regulations which contemplate such an audit, requirements to confirm that deficiencies identified in a previous audit have been rectified, or evidence of significant discrepancies in invoices or reports delivered by Service Provider or other significant discrepancies. HSSBC will endeavour to have any audits performed pursuant to this Article 16 carried out in a manner so as to avoid auditing the performance of same functions for the same period of time more than once.

16.8 Subcontractors Records

- (1) **Approval of New Subcontractors.** HSSBC will, when considering the approval of a potential Subcontractor proposed by Service Provider pursuant to Section 10.1, consider HSSBC's reasonable requirements for such potential Subcontractor to retain records, provide HSSBC with access to such retained records and provide HSSBC with such audit rights as it may reasonably require in view of the Services to be performed by such proposed Subcontractor. As a general rule, HSSBC will principally require rights to audit with respect to operational, compliance and security matters which may be relevant to the Services provided by the Subcontractor and will not use its audit rights in an effort to discover Service Provider's costs (other than with respect to Pass-Through Expenses) and will not require retention, access or audit rights with respect to Subcontractors providing Services which are not material to HSSBC.
- (2) **Reasonable Assistance.** Service Provider will, upon request by HSSBC, provide reasonable assistance to HSSBC in the exercise of any rights that HSSBC may have to either access information retained by a Subcontractor or to audit such Subcontractor.

ARTICLE 17 FEES AND PAYMENT TERMS

17.1 Fees - General

As the financial consideration for all of the Services to be performed by Service Provider hereunder and for all of the tasks, services, licenses, assignments, representations, warranties and obligations of Service Provider, HSSBC will pay to Service Provider the amounts set forth in Schedule DD (*Fees*) this Agreement or as agreed pursuant to the Change Process (the "**Fees**"). Except as otherwise expressly stated in this Agreement, HSSBC will not pay Service Provider any additional fees, assessments, reimbursements or expenses for labour and general business expenses (including travel, meals, and overhead expenses) for the Services and other obligations of Service Provider hereunder.

17.2 Transition In Services Fees

For and in consideration of Service Provider's provision of the Transition In Services pursuant to the terms of the Transition In Plan, HSSBC will pay to Service Provider the Fees (the "**Transition In Services Fees**") for the Transition In Services specified in Schedule DD (*Fees*).

17.3 Managed Services Fees

For and in consideration of Service Provider's provision of the Managed Services pursuant to the terms of Schedule D (Managed Services) and Section 4.2, HSSBC will pay to Service Provider the Fees (the "**Managed Services Fees**") for the Managed Services specified in Schedule DD (*Fees*).

17.4 Taxes

- (1) All Fees payable to Service Provider hereunder will be inclusive of and Service Provider will be responsible for paying all Taxes imposed by any domestic or foreign taxing authority in respect of the hardware, software and other goods or services consumed or acquired by Service Provider in the provision of the Services, any Intellectual Property Rights licenses, and assignments provided by Service Provider to HSSBC hereunder, including any sales, use, income, property, capital, excise, value-added, services, withholding, consumption, telecommunication, access or other taxes (collectively, the “**Service Provider Taxes**”).
- (2) HSSBC will be responsible for all Taxes in connection with HSSBC’s receipt of the Services (other than Service Provider Taxes and those for which HSSBC is exempt under Applicable Laws), including any sales, use, excise, value-added, services or consumption taxes.
- (3) Service Provider’s invoices will state applicable Taxes owed by HSSBC, if any. The Parties will also work together to segregate all payments or charges on the invoice under this Agreement into three payment streams: (1) those for taxable services; (2) those for non-taxable services; (3) Pass-Through Expenses. Service Provider and HSSBC agree to cooperate reasonably with the other to determine HSSBC’s tax liability on Service Provider’s charges.

17.5 Pass-Through Expenses

Pass-Through Expenses are to be paid by Service Provider on behalf of HSSBC on an out-of-pocket expenses basis. Prior to paying any Pass-Through Expenses on behalf of HSSBC, Service Provider will review the invoice charges to determine whether such charges are reasonable, proper and valid and should be paid and will provide HSSBC with a reasonable opportunity to review the invoice to confirm Service Provider’s determination. Following such review by the Parties, Service Provider will pay the amounts due. HSSBC will pay the Service Provider the amount of any Pass-Through Expenses in accordance with the provisions of Section 17.8.

17.6 Financial Responsibility For Own Costs

Except as may otherwise be provided for in this Agreement or agreed between the Parties, each Party will be responsible for all of the costs and expenses which it incurs and the management responsibilities that are associated with the performance by it of its obligations under this Agreement.

17.7 Right of Set-Off

HSSBC may set off against Fees: (1) any and all amounts otherwise payable to Service Provider under this Agreement pursuant to any of the provisions hereof; (2) any and all amounts owed by Service Provider to HSSBC including SLA Credits under this Agreement; and (3) any and all third party costs to HSSBC arising from Service Provider’s breach of the Agreement. Within twenty (20) days following any such set off, HSSBC will provide to Service Provider a written accounting of such set-off and a written statement of the reasons therefor.

17.8 Invoices and Payment

- (1) On the last day of each month during the Term, the Service Provider will submit its monthly invoice for Fees to HSSBC in respect of the Services provided during the month

(and reflecting any adjustments required to be made in respect of the preceding month). Each monthly invoice will be in the form attached as Schedule EE (*Form of Invoice*).

- (2) Any proposed changes to the monthly invoice format will be approved by HSSBC in advance of such changes. All invoices will be subject to HSSBC's review prior to payment.
- (3) Amounts payable by HSSBC under this Agreement may, at HSSBC's option, be paid to Service Provider by wire transfer or electronic funds transfer. Overdue invoices will be subject to interest at a rate of ● (●%) per annum on overdue amounts
- (4) Unless subject to a dispute as provided in Section 17.9, invoices are due and payable by HSSBC within thirty (30) days after receipt of such invoice, provided that the invoice complies with the requirements of this Agreement.

17.9 Disputed Amounts

Subject to and in accordance with the provisions of this Section 17.9, HSSBC may withhold payment of any portion of a Service Provider invoice that HSSBC in good faith disputes as due or owing (including any such payment under a Service Provider invoice in respect of which HSSBC asserts a right of set-off pursuant to Section 17.7). In such case, HSSBC will pay any undisputed amounts and provide to Service Provider a written explanation of the basis for the Dispute as to the disputed amounts. The failure of HSSBC to pay a disputed invoice, or to pay the disputed part of an invoice, will not constitute a breach or default by HSSBC, so long as HSSBC complies with the provisions of this Section 17.9. Any dispute relating to amounts owed by a Party hereunder will be considered a Dispute. All of Service Provider's obligations under this Agreement will continue unabated during any Dispute Resolution Process.

17.10 Pro Ration

All periodic charges payable under this Agreement will be computed on a calendar month basis and will be pro rated for any partial month.

17.11 Service Provider Travel and Living Expenses

Any and all travel and living expenses incurred by the Service Provider in connection with the Services, for which the Service Provider will seek reimbursement from the HSSBC, must comply with the HSSBC Travel and Living Expenses Guidelines.

ARTICLE 18 TERM AND TERMINATION

18.1 Initial Term

This Agreement will become effective on the Effective Date and the delivery of the Services (or a Service) will commence on the Service Start Date. Unless extended as provided in Section 18.2 or terminated earlier in accordance with Section 18.4 or otherwise under the terms of this Agreement, this Agreement will continue for an initial term ending on the [●] anniversary of the Effective Date (the "**Initial Term**").

18.2 Renewal Terms

HSSBC will have the right in its discretion, to extend the Initial Term with respect to all Services for [●] (●) year renewal term(s) (a “**Renewal Term**”) by providing written notice in accordance with the terms of Section 25.3 to Service Provider of HSSBC’s desire to extend this Agreement for the applicable Renewal Term no later than [●] (●) days prior to the end of the Initial Term. At HSSBC’s request, the Parties will meet within [●] (●) days of Service Provider’s receipt of HSSBC’s notice to proceed with a Renewal Term to negotiate modifications to the terms of this Agreement. If such negotiations are not requested or if the negotiations do not result in an agreement on different terms, the then-existing terms and conditions of this Agreement will remain unchanged and in full force and effect during each such Renewal Term.

18.3 Annual Review

Commencing at the end of the first Contract Year and for the Term of this Agreement, HSSBC and Service Provider will meet no later than thirty (30) days prior to each anniversary of the Contract Year to review the status of the performance of the Agreement and to discuss any modifications to the terms of this Agreement which may be mutually agreed by the Parties. Unless the Parties agree to make any such modifications during such thirty (30) day period, the then-existing terms and conditions of this Agreement will remain unchanged and in full force and effect.

18.4 Early Termination

(1) For Convenience

HSSBC will have the right to terminate this Agreement or one or more Services for convenience upon [●] (●) prior written notice to Service Provider and upon payment of the Termination Fee by HSSBC to the Service Provider. In the event of such termination for convenience, no amount of the Termination Fee will be payable by HSSBC until after successful completion of the performance of the Transition Out Services. The Parties acknowledge and agree that the Termination Fee constitutes a reasonable pre-estimate of damages and not a penalty. Such Termination Fee will be calculated on a straight line declining balance starting on the [●] month anniversary of the Effective Date and going to zero on the [●] month anniversary of the Effective Date.

(2) Termination for Force Majeure Event

(a) HSSBC Force Majeure Events. In the event of:

- (i) a Force Majeure Event occurs with respect to HSSBC;
- (ii) such Force Majeure Event substantially prevents, inhibits or frustrates HSSBC’s ability to receive the Services from Service Provider under circumstances when Service Provider is otherwise able to provide the Services to HSSBC; and
- (iii) such Force Majeure Event continues for ten (10) consecutive days or more, or for fifteen (15) consecutive or non-consecutive days or more during any thirty (30) day period,

then HSSBC will have the right to terminate the Services affected by the Force Majeure Event or, if the Services affected by the Force Majeure Event comprise a substantial

majority of the Services, HSSBC will have the right to terminate this Agreement by delivering to Service Provider a Termination Notice specifying the Termination Date; provided, however, that Service Provider will remain obligated to perform the Transition Out Services until such obligations have been fulfilled. During such period, subject to Service Provider mitigation of costs, HSSBC will remain obligated to pay the Fees to Service Provider in accordance with the terms of this Agreement until such Services are terminated in accordance with this Section and thereafter will pay for such Transition Out Services as are provided after the termination of this Agreement. HSSBC and Service Provider will take the other actions and HSSBC will make such further payments as are provided for in Section 18.8 but HSSBC will otherwise have no further liability or obligation to Service Provider under this Agreement. Any termination pursuant to this Section 18.4(2)(a) will not constitute a termination for convenience or for cause, and HSSBC will in no event be required to pay a Termination Fee to Service Provider with respect to any such termination.

- (b) **Service Provider Force Majeure Events.** In the event of a Force Majeure Event substantially prevents, hinders, or delays Service Provider's performance of all or any portion of the Services for ten (10) consecutive days or more, or for fifteen (15) consecutive or non-consecutive days or more during any thirty (30) day period, thereby causing an adverse impact on HSSBC's business operations, then:
- (i) with HSSBC's reasonable co-operation, to the extent that Service Provider determines HSSBC's cooperation to be necessary, Service Provider at its sole cost and expense immediately will procure the affected Services from an alternate provider, and thereafter provide such Services to HSSBC through the use of the alternate provider until Service Provider is able to resume performance of the affected Services in accordance with the terms of this Agreement, provided that Service Provider's obligations under this subsection (i) will continue for a period that will not exceed one-hundred eighty (180) days, and during such period, provided that Service Provider has continued to deliver the affected Services (whether itself or through an alternative provider), HSSBC will remain obligated to pay the Fees to Service Provider in accordance with the terms of this Agreement;
 - (ii) once the affected Services have been stabilized with the alternate provider, Service Provider will be obligated to provide such Services to HSSBC through the alternate provider in accordance with the SLAs and other terms of this Agreement; and
 - (iii) notwithstanding the foregoing, if Service Provider is unable to provide the Services either itself or through an alternate Service Provider within ten (10) days following commencement of the Force Majeure Event, or the one-hundred eighty (180) day time period described in subsection (i) above expires without Service Provider having resumed performance of the affected Services in accordance with the terms of this Agreement, then HSSBC will have the right to terminate, perform, or request that a third party perform, the Services affected by the Force Majeure Event, and, if the Services affected by the Force Majeure Event comprise a substantial majority of the Services, HSSBC will have the right to terminate this Agreement by delivering to Service Provider a

Termination Notice specifying the Termination Date; provided, however, that Service Provider will remain obligated to perform the Transition Out Services until such obligations have been fulfilled. HSSBC will remain obligated to pay for Transition Out Services as are provided after the termination of this Agreement. HSSBC and Service Provider will take the other actions and HSSBC will make such further payments as are provided for in Section 18.8 but HSSBC will otherwise have no further liability or obligation to Service Provider under this Agreement.

Any termination pursuant to this Section (2) will not constitute a termination for convenience nor cause, and HSSBC will in no event be required to pay any or the entire Termination Fee to Service Provider with respect to any such termination.

For greater certainty, this Section (2) does not affect Service Provider's obligation to provide Disaster Recovery Services in accordance with this Agreement, provided that such Force Majeure Event does not prevent Service Provider from providing such Disaster Recovery Services by creating circumstances other than those contemplated by the Disaster Recovery Services.

18.5 Events of Default

The following events will constitute “**Events of Default**”, and the occurrence of any one (1) or more of such Events of Default will constitute a material breach of this Agreement in respect of which HSSBC will have the rights and remedies set forth in this Agreement:

- (1) Service Provider's material breach of any warranty if such breach is not curable, or if such breach is curable but not cured by the Service Provider within the time frames, if any, specified in this Agreement for curing any such breach, or if none is specified elsewhere in this Agreement, then within thirty (30) days, in each case following receipt of written notice from HSSBC of such breach;
- (2) Service Provider fails to maintain insurance coverage as specified in Section 23.1, provided that such failure is not cured by Service Provider within thirty (30) days following receipt of written notice of such failure;
- (3) Service Provider, the Performance Guarantor or Financial Guarantor files a voluntary petition in bankruptcy or insolvency or will petition for reorganization under any bankruptcy or insolvency law;
- (4) an involuntary petition in bankruptcy or a receiving order is given against Service Provider the Performance Guarantor or Financial Guarantor under the *Bankruptcy and Insolvency Act*, as amended, or the comparable law of any other jurisdiction (and such is not dismissed within ten (10) days);
- (5) there will be entered an order, judgment or decree by a court of competent jurisdiction, upon the application of a creditor, approving a petition seeking reorganization or appointing a receiver, trustee or liquidator of all or a substantial part of Service Provider's (or the Performance Guarantor's or Financial Guarantor's) assets and such order, judgment or decree continues in effect for a period of thirty (30) consecutive days;
- (6) Service Provider, the Performance Guarantor or Financial Guarantor makes an assignment of all or substantially all of its assets for the benefit of creditors, or Service

Provider's Board of Directors takes any corporate action by in furtherance of the above action;

- (7) the Service Provider, the Performance Guarantor or Financial Guarantor ceases or threatens to cease carrying on business;
- (8) the Service Provider assigns this Agreement contrary to the provisions of Section 25.2;
- (9) a Service Provider SLA Termination Event;
- (10) if Service Provider fails to fulfill any of its obligations in **Schedule L** (*Privacy Requirements*) in any material respect (which may arise from a single failure to fulfill one of more sections of Schedule L or multiple failures to perform one of more sections) where such failure relates to a specific Section or Sections of **Schedule L** (*Privacy Requirements*) that states that the Service Provider shall have no cure period therefore or, where a cure period is specified in the specific Section or Sections of **Schedule L** (*Privacy Requirements*), the Service Provider fails to so cure such failure after notice in writing;
 - (a) any:
 - (i) disclosure of Personal Information (other than pursuant to a Disclosure Order) contrary to the *Freedom of Information and Protection of Privacy Act* (British Columbia); or
 - (ii) storing or allowing access to Personal Information outside of Canada or British Columbia contrary to the *Freedom of Information and Protection of Privacy Act* (British Columbia); or
 - (iii) using the Personal Information contrary to the permitted use thereof as per the terms of this Agreement and the provisions of the *Freedom of Information and Protection of Privacy Act* (British Columbia);

provided that before HSSBC exercises its right under this Agreement for any disclosure of Personal Information under this Subsection 18.5(11), HSSBC shall have regard to all of the surrounding circumstances, the nature and significance of the breach, whether such breach is an isolated occurrence and the bearing thereof on the significance of the breach;

- (11) a Change in Control of the Service Provider, the Performance Guarantor or Financial Guarantor without the prior approval of HSSBC; or
- (12) a Party's material breach of any of its obligations under this Agreement that is not cured within thirty (30) days following receipt of written notice from the other Party of such breach.

18.6 Rights and Remedies of HSSBC Upon Default of Service Provider

Upon the occurrence of an Event of Default by or with respect to Service Provider, subject to the terms of Article 21, HSSBC will be entitled to any or all of the following remedies:

- (1) subject to HSSBC's rights as set forth below in this Section 18.6, to terminate some of the Services or this Agreement, provided however, that Service Provider will remain obligated to perform the Transition Out Services hereunder until they are fulfilled;
- (2) seek to recover direct, provable damages from Service Provider;
- (3) if applicable, obtain the additional rights and remedies set forth in Section 24.2; or
- (4) any additional remedies that may be set forth in this Agreement, Schedule GG (*Additional Remedies of HSSBC*) or in any Schedule or Addendum.

For clarity, HSSBC will in no event be required to pay any amount of the Termination Fee to Service Provider with respect to any termination pursuant to this Section 18.6.

18.7 HSSBC Events of Default

HSSBC shall be in material breach of its obligations under this Agreement if HSSBC fails to pay, when due, the amount of any Fees that:

- (1) exceeds an amount that is equal to two (2) months Fees for Managed Services and;
- (2) is not subject to Dispute (pursuant to HSSBC's right of dispute under Section 17.10) and HSSBC fails to remedy such failure within thirty (30) days of HSSBC's receipt of a written notice from the Service Provider to HSSBC of such failure. Such Service Provider notice under this Section 18.7 shall set forth, in reasonable detail, the failure and the amount of the required payment by HSSBC. Notwithstanding the termination of this Agreement by the Service Provider as a result of a HSSBC material breach, the Service Provider shall provide to HSSBC the Transition Out Services, as set forth in Article 19, provided that prior to providing such Transition Out Services, the Service Provider and HSSBC mutually agree upon payment terms for such Transition Out Services.

18.8 Effects of Termination

Upon the expiration of the Term or any termination of this Agreement:

(1) Return of Property

Unless otherwise provided in this Agreement or the Transition Out Plan, each Party will return to the other Party, within thirty (30) days of the expiration of the Term or termination of this Agreement, all property or materials of the other Party and its clients in the possession or control of such Party or its Subcontractors that is not Confidential Information (the return of which is provided for in Section 13.13).

(2) Principally Dedicated Employees and Severance

Upon any expiry or termination of this Agreement, HSSBC will have the right, in its discretion, to offer employment to any Service Provider employee who is, at the time of such termination or expiration, Principally Dedicated to the provision of the Services. Service Provider will make commercially reasonable efforts to assist HSSBC to ensure a smooth and orderly transition of any such Principally Dedicated employee, including using commercially reasonable efforts to provide HSSBC and its designee (if any) with (i) access to employee records, (ii) interviews of employees

and (iii) feedback from Service Provider regarding performance and competency of employees, prior to HSSBC making any offers of employment.

(3) HSSBC Rights to Acquire Service Provider Assets

- (a) Notwithstanding anything else herein, in any circumstance in which Service Provider is entitled to recover from HSSBC the Net Book Value or unamortized cost of Hardware, Software or other Contracts upon the termination of this Agreement, HSSBC will have the option of acquiring (to the extent feasible) Service Provider's rights in such Hardware, Software or other Contracts in consideration for the Net Book Value or unamortized cost thereof.
- (b) For purposes of this Section 18.8(3), the “**Net Book Value**” of the Dedicated Hardware will be the reasonable arm's length price for which Service Provider acquires the Dedicated Hardware new, depreciated on a straight line basis over a period determined in accordance with Service Provider's corporate accounting practices but not to exceed four (4) years. Within thirty (30) days of the end of each calendar quarter, Service Provider will provide to HSSBC a report showing the original Net Book Value and depreciation schedule for the Dedicated Hardware acquired during such quarter. If HSSBC can demonstrate (with at least two (2) competitive quotes for the same Dedicated Hardware), within thirty (30) days of receiving such information, that HSSBC would be able to obtain any such Dedicated Hardware new in the market in the same time frame for a lower price, the original “Net Book Value” for such Dedicated Hardware will be deemed to be such lower price.
- (c) Within thirty (30) days of the end of each calendar year, Service Provider will provide to HSSBC a report showing the original Net Book Value and depreciation schedule (including the then-current Net Book Value) of the Dedicated Hardware. The information related to the Net Book Value and its calculation will be considered out of scope for any audit provisions stated in this Agreement. If any such Dedicated Hardware has a Net Book Value of zero (i.e. has been fully depreciated) then the payment for such asset will be one (1) dollar.

(4) Third Party Materials

Service Provider will use commercially reasonable efforts to assist HSSBC in identifying and obtaining licenses on the best commercial terms for Third Party off-the-shelf tools, documentation and materials proprietary to Third Parties used by Service Provider in the provision of the Services.

(5) Outstanding Payments

Upon the expiration of the Term or any termination of this Agreement, HSSBC will, within thirty (30) days of receipt of the Service Providers final invoice, pay to Service Provider all outstanding Fees which are due and payable (and not otherwise the subject of a Dispute under Section 17.5), and the Parties will use commercially reasonable efforts to promptly settle any outstanding Disputes with respect to any outstanding Fees in accordance with the Dispute Resolution Process.

18.9 Non-Exclusive Remedies

The remedies provided in this Article 18 and elsewhere in this Agreement are neither exclusive nor mutually exclusive, and subject to the limitation of liability provisions in this Agreement, the Parties will be entitled to any and all such remedies, and any and all other remedies that may be available to the Parties at law or in equity, by statute or otherwise, individually or in any combination thereof.

18.10 Survival

Unless otherwise provided in this Agreement, the following provisions (including the obligations of HSSBC and the Service Provider under the Agreement) shall survive the expiration or termination of this Agreement: Section 2.6, Section 2.12, Section 3.6, Section 5.9, Section 10.5, Sections 17.4 – 17.6 and Section 17.7 -17.9, Section 18.5 – 18.6 and Section 18.8 – 18.10, Section 20.2 and Section 20.3, Section 25.1, Section 25.4, Section 25.6, Section 25.8, Section 25.10 - 25.13 and Article 12, Article 13, Article 16, Article 18, Article 21 and Article 24.

ARTICLE 19 TRANSITION OUT SERVICES

19.1 General Obligations

Upon any expiration of the Term or termination of this Agreement, or termination of any Services provided hereunder, Service Provider will provide Transition Out Services in accordance with the Transition Out Plan. Without restricting the generality of the foregoing, Service Provider will:

- (1) co-operate with HSSBC and any HSSBC designee (collectively, the “**Replacement Service Provider**”), including promptly taking all steps required to assist HSSBC in effecting a complete transitioning out;
- (2) provide to HSSBC and the Replacement Service Provider all information and professional services related to the Services as needed for effecting a complete transitioning out, including data conversion and interface specifications;
- (3) provide for the prompt and orderly conclusion of all work, as HSSBC may direct, including completion or partial completion of all Services including Support, documentation of work in process, and measures to provide an orderly transition to HSSBC and the Replacement Service Provider; and
- (4) accomplish the other obligations described in this Article 19, the Transition Out Plan.

Prior to the Termination Date, all Transition Out Services will be performed, to the maximum extent possible, as part of the Services which are included in the Fees. The Parties will work together and cooperate in good faith to redeploy the Service Provider resources, who were previously used to perform the Services, to instead provide the Transition Out Services with a view to minimizing the cost of any additional Service Provider resources and, as a result, the cost to HSSBC. Any additional Service Provider resources which are required to perform the Transition Out Services will be provided for reasonable rates which are not to exceed the Services Rates. Transition Out Service provided after the Termination Date will be provided for reasonable rates which are not to exceed the Services Rates and will be provided in cooperation with HSSBC Personnel and such other personnel as HSSBC may specify. Service Provider’s obligation to provide the Services will not cease until all assets, Contracts and employee transfers, if any, and other obligations of Service Provider set forth in this Article 19 and Article 18 and the Transition Out Services contemplated in the Transition Out Plan have been fully performed. HSSBC’s obligations set forth in this Article 19 will not cease until the end of the Transition Out Period. Service Provider will implement the Transition Out Plan to effect the transparent, seamless,

orderly and uninterrupted transition of the Services from the manner in which Service Provider delivered the Services throughout the Term of this Agreement and prior to the Transition Out Period to the manner in which Services will be provided by the Replacement Service Provider after the Transition Out Period.

19.2 Transition Out Period

Service Provider will provide the Transition Out Services during the period (the “**Transition Out Period**”) commencing on the earlier of:

- (1) the date designated by HSSBC in connection with expiration of the Term; or
- (2) the Termination Date specified in any Termination Notice provided by one Party to the other Party pursuant to Article 18 (unless the non-terminating Party in good faith disputes such termination),

and continuing until the date (the “**Expiration Date**”) that is the later of:

- (3) either
 - (a) twelve (12) months after the expiration of the Term, in the case of paragraph (a) above; or
 - (b) eighteen (18) months after the date specified in paragraph (b), in the case of paragraph (b) above; and
 - (c) the date upon which all assets, Contracts and employee transfers, if any, and other obligations of Service Provider set forth in this Article 19 and Article 18 and the Transition Out Services contemplated in the Transition Out Plan have been fully performed.

19.3 Specific Obligations

Transition Out Services will include, without limitation, the performance of the specific obligations described in this Section 19.3 and in the Transition Out Plan.

- (1) **List of Items.** Service Provider will, as soon as reasonably possible following the Transition Notice Date, but in no event more than ten (10) Business Days thereafter, provide to HSSBC a complete and accurate list of all items that will be subject to transfer to HSSBC or the Replacement Service Provider, as provided in Section 18.8.

- (2) **Full Co-operation, Information and Knowledge Transfer.** During the Transition Out Period, the Parties will co-operate fully with one another to facilitate a smooth transition of the Services from Service Provider and its Subcontractors to HSSBC and the Replacement Service Provider. Service Provider will provide such co-operation both before and after the Expiration Date, and such co-operation will include, without limitation, provision of full, complete, detailed, and sufficient information (including all information then being utilized by Service Provider with respect to programs, tools, utilities and resources used to provide the Services) and knowledge transfer with respect to all such information in order to enable HSSBC's and the Replacement Service Provider's personnel (or that of Third Parties) to fully assume, become self-reliant with respect to, and continue without interruption, the provision of the Services. Service Provider will co-operate with HSSBC and all of HSSBC's other service providers to provide a smooth transitioning out, with no unnecessary interruption of Services, no unnecessary adverse impact on the provision of Services or HSSBC's activities and no unnecessary interruption of, or unnecessary adverse impact on, any services provided to HSSBC by Third Parties.
- (3) **Transfer of Assets.** Service Provider will, if and as requested by HSSBC as part of the Transition Out Services, convey to the Replacement Service Provider, as HSSBC directs, from among those assets used by Service Provider to provide the Services, such assets as HSSBC agrees to purchase pursuant to Section 18.8.
- (4) **Delivery of Documentation and Data.** If and as requested by HSSBC, Service Provider will deliver to HSSBC and the Replacement Service Provider all documentation and data related to Service Provider's provision of the Services, including the HSSBC Data, as well as all procedures, standards and operating schedules (including the Operations Manual), held by Service Provider.
- (5) **Hiring of Employees.**
 - (a) *List of Employees.* Service Provider will, as soon as reasonably possible following the Transition Notice Date, but in no event more than ten (10) Business Days thereafter, provide to HSSBC a complete and accurate list of all Service Provider Service Provider Personnel who were Principally Dedicated in providing the Services during the six (6) month period preceding the Transition Notice Date.
 - (b) *Service Provider Co-operation.* Service Provider will co-operate with and assist (and will cause its Subcontractors to co-operate with and assist) HSSBC and the Replacement Service Provider in offering, and HSSBC and the Replacement Service Provider will have the right to solicit for employment and offer, employment to any or all Service Provider Personnel who were Principally Dedicated in providing the Services during the six (6) month period preceding the Transition Notice Date, whether or not such offers are made at the time of, after or in anticipation of the Expiration Date.
 - (c) *Employee Benefits.* Except as provided in Section 18.8(2), Service Provider will be solely responsible for and will pay to any employees of Service Provider who are hired by HSSBC or the Replacement Service Provider, all vacation pay, pension contributions and other benefits to the date of transition to HSSBC or the Replacement Service Provider, and Service Provider will be responsible for Severance Costs, if any are payable pursuant to Service Provider's standard

policies and at minimum as required by Applicable Laws in respect of employees terminated or otherwise not retained by Service Provider, and, except as provided in Section 18.8(2), will cause relevant Subcontractors to pay all vacation pay, pension contributions and other benefits to the date of transition to HSSBC or the Replacement Service Provider to any such employee of a Subcontractor who is hired by HSSBC or its designee, if any are payable pursuant to such Subcontractors' standard policies and at minimum as required by Applicable Laws.

- (d) *Release from Restrictive Covenants.* Service Provider will release (and will cause its Subcontractors to release) from any restrictive covenants including non-compete and non-disclosure agreements, any of the employees hired by HSSBC or by the Replacement Service Provider. Service Provider will not (and will ensure that its employees and Subcontractors do not) in any manner communicate disparaging information about HSSBC or the Replacement Service Provider, or any of their employees, to transitioning employees or existing employees of HSSBC or the Replacement Service Provider. The Parties will each use commercially reasonable efforts to mitigate the costs associated with the termination and severance of Principally Dedicated employees upon termination of the Services, or expiry of this Agreement, (but will not, as part of such efforts, be required to either hire or retain such employees).

19.4 Preparation for Transition Out

- (1) **Complete Documentation.** In addition to and as part of the Operations Manual, at all times during the Term, Service Provider will provide to HSSBC complete information, including complete documentation, in accordance with the processes, standards and methodologies to be implemented by Service Provider, for all Services, software (including applications developed as part of the Services) and hardware, that is sufficient to enable HSSBC and the Replacement Service Provider, to fully assume the provision of the Services to HSSBC.
- (2) **Maintenance of Assets.** Service Provider will, throughout the Term and throughout the Transition Out Period, maintain all of the hardware, software, systems, networks, technologies and assets utilized in providing Services to HSSBC (including Dedicated Hardware), in good condition and in such locations and configurations as to be readily identifiable and transferable or capable of transition back to HSSBC or its designees in accordance with the provisions of this Agreement. In addition, Service Provider will insure such hardware, software, systems, networks, technologies and assets in accordance with the requirements of 23.1. Service Provider will, throughout the Term and throughout the Transition Out Period, maintain all Dedicated Contracts in force and without breach thereof by Service Provider.
- (3) **Advance Written Consents.** Service Provider will, for all licenses, leases and Contracts relevant to the provision of the Services, obtain from the relevant parties advance written Consents to the conveyance or assignment of such licenses, leases and other Contracts to HSSBC and the Replacement Service Provider as part of the Transition Out Services. Service Provider will, as part of the Transition Out Services, effect the conveyance or assignment of such licenses, leases and other contracts to HSSBC and/or the Replacement Service Provider prior to the Expiration Date. Service Provider will also obtain for HSSBC the right, upon completion of the Transition Out Services, to obtain Maintenance (including all enhancements and upgrades) and support with respect to the

assets that are the subject of such licenses, leases and Contracts at the price at which, and for so long as, such maintenance and support is made commercially available to other customers of the respective licensors, lessors and contracting parties.

**ARTICLE 20
REPRESENTATIONS, WARRANTIES AND COVENANTS**

20.1 Service Provider Representations, Warranties and Covenants

The Service Provider represents, warrants and covenants as follows to HSSBC, as of the date of this Agreement and (except as otherwise noted) throughout the Term, and acknowledges and confirms that HSSBC is relying upon such representations, warranties and covenants in entering into of this Agreement:

(1) Legal and Corporate Authority of Service Provider

- (a) it is a corporation incorporated under the laws of ●, and is qualified and registered to transact business in all locations where the performance of its obligations hereunder would require such qualification;
- (b) it has all necessary corporate power, capacity and legal authority to enter into, execute and deliver the Agreement and to perform its obligations hereunder, and the Agreement has been duly executed and delivered by the Service Provider and constitutes a legal, valid and binding obligation of the Service Provider enforceable against the Service Provider in accordance with its terms, subject to applicable bankruptcy, insolvency and other laws of general application limiting the enforceability of creditors' rights, and to the fact that specific performance and injunctive relief are equitable remedies available only in the discretion of the court;
- (c) the execution and performance of this Agreement by Service Provider will not violate any Applicable Laws and will not breach any Contract, court order, judgment or decree to which Service Provider is a party or by which it is bound;
- (d) it has, and promises that it will maintain in effect, all governmental licenses and permits necessary for it to provide the Services contemplated by this Agreement;
- (e) it owns or leases and promises that it will own or lease, free and clear of all liens and encumbrances, other than security interests of Service Provider's lenders, all right, title, and interest in and to the tangible property and technology and the like that Service Provider intends to use or uses to provide the Services (other than the HSSBC Hardware), and in and to the related Intellectual Property Rights, or has received appropriate licenses, leases or other rights from Third Parties to permit such use; and
- (f) this Agreement constitutes a valid, binding, and enforceable obligation of Service Provider.

(2) Legal and Corporate Authority of Guarantors

Each of the Performance Guarantor and the Financial Guarantor:

- (a) are corporations incorporated under the laws of ● and ● respectively, are qualified and registered to transact business in all locations where the performance of its obligations hereunder would require such qualification;
- (b) have all necessary corporate power, capacity and legal authority to enter into, execute and deliver the Performance Guarantee and the Financial Guarantee, as applicable, and to perform its obligations thereunder, and each of the Performance Guarantee and the Financial Guarantee have been duly executed and delivered by the Performance Guarantor and the Financial Guarantor, as the case may be, and constitutes a legal, valid and binding obligation of the Performance Guarantor and the Financial Guarantor, as the case may be, enforceable against the Performance Guarantor and the Financial Guarantor, as the case may be, in accordance with its terms, subject to applicable bankruptcy, insolvency and other laws of general application limiting the enforceability of creditors' rights, and to the fact that specific performance and injunctive relief are equitable remedies available only in the discretion of the court; and
- (c) this Agreement constitutes a valid, binding, and enforceable obligation of the Performance Guarantor and the Financial Guarantor.

With respect to the Performance Guarantor, the Performance Guarantor has, and promises that it will maintain in effect, all governmental licenses and permits necessary for it to provide the Services contemplated by this Agreement, as the performance guarantor of the Service Provider, if necessary.

(3) Violations

Service Provider represents and warrants to HSSBC that it is not, and covenants that it will not be, in violation of any Applicable Laws to which it is subject, and has not failed, and will not fail, to obtain any licenses, permits, franchises or other governmental authorizations necessary for the ownership of its properties or the conduct of its business, which violation or failure, either individually or in the aggregate, could reasonably be expected to have a material adverse effect on its business, the consummation of the transactions contemplated by this Agreement, or the performance of its obligations hereunder.

(4) Performance of the Services

Service Provider represents and warrants to HSSBC that it has the skills, resources and expertise to provide and will provide all Services in accordance with the terms of this Agreement. Without limiting the generality of the foregoing, Service Provider represents and warrants to HSSBC that Service Provider will use all commercially reasonable efforts to reduce the environmental impacts of the Services and that all Services will be provided in a timely, professional and workmanlike manner, in each case consistent with the standards of quality and integrity customarily observed by leading North American providers of services that are the same or similar to the Services provided, however, that where this Agreement specifies a particular standard or criteria for performance, including applicable SLAs, this warranty is not intended to and does not diminish that standard or criteria for performance.

(5) Viruses and Disabling Devices

Service Provider will implement and use standards of practice customarily observed by leading North American providers of services that are the same or similar to the Services to identify,

screen, and prevent, and not introduce, any Disabling Device in hardware, software, or other information technology services utilized by Service Provider, HSSBC or any Third Party in connection with the Services. A “**Disabling Device**” is any virus, timer, clock, counter, time lock, time bomb, Trojan horse, worms, file infectors, boot sector infectors or limiting design, instruction or routine and surveillance software or routines or data gathering or collecting software or devices that could, if triggered, erase data or programming, have an adverse impact on the Services, cause the hardware, software or resources to become inoperable or otherwise incapable of being used in the full manner for which such hardware, software or resources were intended to be used, or that collect data or information. However, for greater certainty, Disabling Devices do not include either software keys used in industry or disabling code used to temporarily disable a section of code while a patch or fix is being applied. To the extent that any Service Provider supplied Services involve protection features designed to prevent copying, or intentionally to prevent the use of such software or other software routines or hardware components which are designed to prevent unauthorized access, to disable or erase software or data, or to perform other like actions, Service Provider will provide HSSBC with the necessary key, password or other means such that it will have access and use of same.

(6) Loss of Data / Breach of Backup Obligation

If any HSSBC Data is lost or damaged, Service Provider will use commercially reasonable efforts to assist HSSBC to recover such lost HSSBC Data, provided that:

- (a) if the HSSBC Data is lost or damaged without fault of the Service Provider and despite the diligent performance by Service Provider of its obligations under this Agreement, HSSBC will be responsible for the costs reasonably incurred by Service Provider in assisting HSSBC in the recovery and/or restoration of the lost or damaged data (to the extent that such costs are not already included in the Fees); and
- (b) if the HSSBC Data is lost or damaged as a result of the fault of the Service Provider, the Service Provider will, at its expense, perform or re-perform the Services to recover the lost or damaged data using the last available back-up copy preceding the loss or damage and recreate the lost or damaged data which was not backed up, with the reasonable assistance of HSSBC, using such alternative data as HSSBC may make available.

(7) Conflicts of Interest

- (a) *No Financial Interest.* Service Provider represents and warrants to HSSBC that neither Service Provider nor any of its Affiliates operating in the Permitted Service Locations, nor any employee of either, has, will have, or will acquire, any contractual, financial, business or other interest or advantage, direct or indirect, that would materially conflict with Service Provider’s performance of its duties and responsibilities to HSSBC under this Agreement or otherwise create an appearance of impropriety with respect to this Agreement; and Service Provider will promptly inform HSSBC of any such interest of which Service Provider becomes aware.
- (b) *No Abuse of Authority or Information for Financial Gain.* Service Provider represents and warrants to HSSBC that neither Service Provider nor any of its Affiliates operating in the Permitted Service Locations, nor any employee of either, directly or indirectly, has used or will use the authority, or any HSSBC

Confidential Information, provided or to be provided under this Agreement to improperly obtain financial gain, advantage or benefit for Service Provider, any of its Affiliates, or any of their employees.

- (c) *No Influence.* Service Provider represents and warrants to HSSBC that neither Service Provider nor any of its Affiliates, nor any employee of either, directly or indirectly, has offered an undisclosed inducement that would provide a financial gain, advantage or benefit to, or could otherwise be expected to influence an employee or representative of HSSBC.
- (d) *No Collusion.* Service Provider represents and warrants to HSSBC that the prices presented in the Service Provider Proposal were arrived at independently, without consultation, communication or agreement with any other proposer for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Service Provider to any other proposer; and no attempt was made by Service Provider to induce any other Person to submit or not to submit a proposal for the purpose of restricting competition.

(8) Condition

Service Provider represents and warrants to HSSBC that it now possesses, and covenants that it will maintain throughout the Term, the resources necessary to comply with the requirements of this Agreement. If Service Provider experiences a change in its condition or circumstances that could reasonably be expected to materially adversely affect its ability to perform its obligations under this Agreement, then it will promptly notify, and in any event within two (2) Business Days, HSSBC of such change.

(9) Litigation and Service of Process

Service Provider represents and warrants to HSSBC that as of the Effective Date there is no actual, pending or anticipated claim, suit or proceeding involving Service Provider or its Affiliates that could reasonably be expected to have a material adverse effect on the ability of Service Provider or its Affiliates to perform its or their obligations under this Agreement including actions pertaining to the proprietary rights described in Article 12. Service Provider will notify HSSBC, within fifteen (15) days of Service Provider's knowledge of any such actual or anticipated claim, suit or proceeding. In addition, Service Provider will either notify HSSBC, within fifteen (15) days of Service Provider becoming aware of any actual or anticipated claim, suit or proceeding involving a subcontractor that could reasonably be expected to have a material adverse effect on the ability of such subcontractor to perform its obligations in connection with the Services or Service Provider will take appropriate action to ensure that delivery of the Services is not adversely affected by such claim, suit or proceeding. Without limiting the further terms of Section 13.11, Service Provider will notify HSSBC, within forty-eight (48) hours, if process is served on Service Provider in connection with this Agreement, including any subpoena or court order for Service Provider's records, and will send a written notice of the service together with a copy of the same to HSSBC within seventy-two (72) hours of such service.

(10) Proprietary Rights Infringement

Service Provider represents, warrants and covenants to HSSBC that:

- (a) the performance of the Services and Service Provider's obligations hereunder (except if such performance is expressly specified and directed by HSSBC);

- (b) the grant or provision of licenses by Service Provider herein;
- (c) the assignment or obtaining of assignments of Intellectual Property Rights by Service Provider herein;
- (d) the use of any services, techniques or products (except with respect to techniques or products developed by HSSBC) provided or used by or on behalf of Service Provider to provide the Services,

do not and will not infringe upon, violate or misappropriate any Third Party's Intellectual Property Rights in any of the jurisdictions in which the Services are being performed. Any infringement contrary to this Section 20.1(10) will be addressed in accordance with Article 12.

(11) Information Furnished to HSSBC

Service Provider represents and warrants to HSSBC that:

- (a) all information, statements and facts furnished by Service Provider to HSSBC in the Service Provider Proposal, all documents provided by Service Provider to HSSBC as supplements to the Service Provider Proposal (including the written answers by Service Provider to HSSBC in response to questions developed by HSSBC as a result of its analysis of the Service Provider Proposal) provided prior to the Effective Date and all the information made a part of this Agreement;
- (b) all representations and warranties made by Service Provider that are contained in this Agreement or that may be contained in any Schedule or other document that may comprise this Agreement,

are true, accurate, and complete, and contain no untrue statement of a material fact, nor omit any material fact necessary to make such information, statements, facts, representations or warranties, not misleading.

(12) Completeness of Due Diligence Activities

Service Provider acknowledges that it has been provided with sufficient access to HSSBC Facilities, information and personnel, and has had sufficient time in which to conduct and perform a thorough due diligence of HSSBC's operations and business requirements and HSSBC's assets currently used by HSSBC in currently providing such services. In light of the foregoing, Service Provider will not seek any adjustment in the Fees based on any incorrect assumptions made by Service Provider in arriving at the Fees, except to the extent that such assumptions have been confirmed by HSSBC in this Agreement.

20.2 Service Provider Parent Guarantee

Service Provider Parent has provided a Service Provider Parent Guarantee in the form attached hereto as Schedule M (*Form of Guarantees*).

20.3 Warranty Disclaimer

- (1) **HSSBC - No Warranty**

HSSBC does not make any representation or warranty, express or implied, with respect to the Services or any component thereof; and all hardware, software, networks, and items made available or conveyed by HSSBC to Service Provider under this Agreement are made available or conveyed to Service Provider “**AS IS, WHERE IS AND WITH ALL FAULTS,**” and there are no guarantees, representations, warranties or conditions of any kind express or implied, including warranties with respect to condition, capabilities, attributes, uninterrupted or error free operation, merchantability, quality or fitness for a particular purpose and those arising by statute or otherwise, or from a course of dealing or usage of trade, except HSSBC hereby confirms that the Hardware owned or leased by HSSBC and the Software owned or licensed by HSSBC is being used in the day-to-day business and operations of HSSBC.

(2) General Warranty Disclaimer

EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, NEITHER PARTY MAKES OR GIVES ANY REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WARRANTIES AS TO UNINTERRUPTED OR ERROR FREE OPERATION, MERCHANTABILITY, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING BY STATUTE OR OTHERWISE, OR FROM A COURSE OF DEALING OR USAGE OF TRADE.

**ARTICLE 21
INDEMNIFICATION AND LIMITATION OF LIABILITY**

21.1 General Intent

Each Party will be liable to the other Party for any damages that may be properly and lawfully awarded against a Party in favour of the other Party under the terms of, or in connection to this Agreement. The Service Provider and HSSBC agree that monetary damages may not be a sufficient remedy for any breach of this Agreement, and each of the Service Provider and HSSBC shall be entitled to seek equitable relief, including injunctive relief and specific performance in the event of a breach of this Agreement, to the extent that such remedy is available to a Party in accordance with Applicable Laws. For greater clarification, the provisions of this Section are not intended to in any way interfere or otherwise limit the jurisdiction of any arbitrators appointed or otherwise engaged pursuant to the provisions of Article 24 (*Dispute Resolution Process*).

21.2 Indemnification by HSSBC

HSSBC shall indemnify and save harmless the Service Provider and its Subcontractors and their respective directors, officers, employees, advisors, agents and representatives (the “**Service Provider Indemnified Parties**”) to the fullest extent permitted by law, from and against any and all Claims suffered or incurred by any of them arising as a result of or in connection with any of the following (except and to the extent such Claims are suffered or incurred as a result of the comparative fault of the Service Provider Indemnified Parties):

- (1) from the death of or bodily injury to any third party or any employee of the Service Provider or its Affiliates to the extent caused by the negligent or willful misconduct of HSSBC;
- (2) from the loss of or damage to any tangible personal property or real property of the Service Provider or property of any third party to the extent caused by the negligence or willful misconduct of HSSBC;

- (3) the failure of HSSBC to perform its obligations under the Assigned Contracts prior to the assignment thereof from HSSBC to the Service Provider;
- (4) except where prevented by Applicable Law, Claims brought directly by HSSBC or a Health Organization against the Service Provider that are related directly or indirectly to the Services or this Agreement; and
- (5) for the purposes of Subsections 21.2(1) and (3), the term “**Claims**” shall be limited to:
 - (a) all damages that a court finally awards to a third party for such claim and any defence costs; or
 - (b) subject to the provisions of Section 21.6, the amount of any settlement agreed to by the Indemnified Party.

21.3 Indemnification by the Service Provider

Without duplication of any liquidated damages to be paid by the Service Provider to HSSBC hereunder, the Service Provider shall indemnify and save harmless HSSBC and HSSBC’s directors, officers, employees, advisors, agents and representatives (the “**HSSBC Indemnified Parties**”) to the fullest extent permitted by law, from and against any and all Claims are suffered or incurred by any of them arising as a result of or in connection with any of the following (except to the extent such Claims suffered or incurred as a result of the comparative fault of HSSBC Indemnified Parties):

- (1) any third party Claim relating to the failure of the Service Provider to perform its obligations under any license, lease or other agreement:
 - (a) between the Service Provider and a third party, including Subcontractors and landlords,
 - (b) assigned by the Service Provider to HSSBC or to an alternate service provider in connection with the termination of this Agreement, but only with respect to any Claims that arise from or relate to the period prior to the assignment thereof by the Service Provider to HSSBC or the Alternative Service Provider,

that arises as a result of HSSBC receiving Services under this Agreement;

- (2) the Service Provider failing to fulfill its obligations in Schedule L (*Privacy and Security*) in any material respect (which may arise from a single failure to fulfill one or more sections of the Schedule R (*Permitted Service Locations*) or multiple failures to perform one or more sections) including any failure by the Service Provider to ensure that its Personnel and Subcontractors comply with the provisions of Schedule L (*Privacy and Security*) to the extent applicable to them;
- (3) the failure of the Service Provider to pay and discharge any Taxes for which the Service Provider is responsible pursuant to this Agreement and Applicable Laws, provided that nothing in this Agreement shall impose on the Service Provider any obligation or liability with respect to any Taxes for which its Subcontractors may be responsible at law;
- (4) negligence of the Service Provider, Service Provider Personnel or Subcontractors in connection with the performance of the Services;

- (5) the death of or bodily injury to any third party or to any employee of HSSBC to the extent caused by the willful misconduct or, negligence of the Service Provider, its Personnel or its Subcontractors or External Personnel in connection with the performance of the Services;
- (6) the loss of or damage to any tangible personal property and real property of HSSBC or any third party, to the extent caused by the negligence or willful misconduct of the Service Provider, its Personnel or its Subcontractors or External Personnel in connection with the performance of the Services; and
- (7) any claim, proceeding or action taken or initiated by a Service Provider Affiliate in breach of Section 15.3 (*North American Free Trade Agreement*), Article 24 (*Dispute Resolution*) or Section 25.12 (*Governing Law and Venue*).

For the purposes of Subsections 21.3(1), (5) and (7), the term “**Claims**” shall be limited to:

- (8) all damages that a court finally awards to a third party for such claim and any defence costs; or
- (9) subject to the provisions of Section 21.6, the amount of any settlement agreed to by the Indemnified Party.

For greater clarification, when calculating the amount of any “Claim” by HSSBC under this Agreement, shall include as a direct claim, Claims incurred by HSSBC arising out of or relating to the Services.

For greater clarification, the Service Provider shall not be required to indemnify HSSBC Indemnified Parties under this Section in respect of an event giving rise to termination by HSSBC for which the Parties have agreed to pay liquidated damages under the provisions of this Agreement.

21.4 Service Provider Intellectual Property Indemnification

Subject to Section 21.6, the Service Provider shall indemnify and save harmless HSSBC Indemnified Parties from and against any and all Claims suffered or incurred by any of them arising as a result of, or in connection with, any actual or alleged infringement of the patents or copyrights of a third party or the violation of the rights of a third party in respect of its trade secrets by the Deliverables, any Service Provider Owned Software, Service Provider Hardware or Service Provider Licensed Third Party Software (collectively, the “**Service Provider Intellectual Property**”) or any Derivative Works from any Service Provider Intellectual Property, HSSBC-Owned Materials or Third Party Software, provided, used or made by the Service Provider or any of its Subcontractors or Affiliates in the course of performing the Services (collectively, the “**Service Provider Indemnified Materials**”), provided that the Service Provider shall have no liability under this Section for any Claims that arise as a result of:

- (1) HSSBC’s combination, operation, or use of the Service Provider Indemnified Materials with products or data not provided by the Service Provider and not set forth in the relevant Specifications for such Service Provider Intellectual Property, or the use of any Software in other than their specified operating environment;
- (2) a Derivative Work made by HSSBC or HSSBC’s employees of Subcontractors or Affiliates to the Service Provider Indemnified Materials, except to the extent such Derivative Work was made at the instruction of or with the consent of the Service Provider or its Affiliates or Subcontractors;

- (3) the use by the Service Provider of any HSSBC Owned Material or Third Party Software provided to the Service Provider by HSSBC, except to the extent that such infringement is caused by a Derivative Work of the same made by the Service Provider (or any of its Affiliates or Subcontractors);
- (4) the compliance by the Service Provider with any Specification specified by HSSBC if the infringement or violation would not have occurred but for compliance with that Specification; or
- (5) any Claims in respect of which HSSBC is required to indemnify the Service Provider Indemnified Parties pursuant to Section 21.5.

For the purposes of this Section 21.4, the term “**Claims**” shall be limited to:

- (6) all damages that a court finally awards to a third party for such claim and any defence costs; or
- (7) subject to the provisions of Section 21.6, the amount of any settlement agreed to by the Indemnified Party.

Without limiting or otherwise restricting the Service Provider’s liability and obligations to HSSBC in respect of the foregoing, if HSSBC’s use of any Service Provider Indemnified Materials provided or otherwise made available by the Service Provider to HSSBC pursuant to this Agreement is found to be infringing the patents or copyrights of a third party or violating the trade secret rights of a third party or, in the Service Provider’s reasonable judgment is likely to be found to be infringing or in violation, then the Service Provider may (at its option and expense) either procure for HSSBC the right to continue using such Service Provider Indemnified Materials, or replace or modify such Service Provider Indemnified Materials to make its continued use non-infringing while providing substantially the same functionality.

21.5 HSSBC Intellectual Property Indemnification

Subject to Section 21.6, HSSBC shall indemnify and save harmless the Service Provider Indemnified Parties from and against any and all Claims suffered or incurred by any of them arising as a result of, or in connection with, the actual or alleged infringement of the patents and copyrights of a third party or the violation of the rights of a third party in respect of its trade secrets by HSSBC Owned Material or any Derivative Work created by HSSBC or any of its subcontractors to any Service Provider Intellectual Property or HSSBC Owned Material or Third Party Software (collectively the “**HSSBC Indemnified Materials**”), provided that HSSBC shall have no liability under this Section for any Claims that arise as a result of:

- (1) a Derivative Work made by the Service Provider or any of its Subcontractors or Affiliates to HSSBC Indemnified Materials;
- (2) the use by the Service Provider of HSSBC Indemnified Materials provided to the Service Provider by HSSBC to the extent that such infringement is caused by a Derivative Work of the same created by the Service Provider (or any of its Subcontractors or Affiliates); or
- (3) any Claims in respect of which the Service Provider is required to indemnify HSSBC Indemnified Parties pursuant to Section 21.4.

For the purposes of this Section 21.5, the term “Claims” shall be limited to:

- (4) all damages that a court finally awards to a third party for such claim and any defence costs; or
- (5) subject to the provisions of Section 21.6, the amount of any settlement agreed to by the Indemnified Party.

Without limiting or otherwise restricting HSSBC's liability and obligation to the Service Provider in respect of the foregoing, if use of any HSSBC Indemnified Materials provided or otherwise made available by HSSBC to the Service Provider pursuant to this Agreement is found to be infringing the patents or copyrights of a third party or violating the trade secret rights of a third party or, in HSSBC's reasonable judgment it is likely to be found to be infringing or in violation, then HSSBC may (at its option and expense), either procure for the Service Provider the right to continue using such HSSBC Indemnified Materials, or replace or modify such HSSBC Indemnified Materials to make its continued use non-infringing while providing substantially the same functionality.

21.6 Third Party Claim Process

- (1) If the Indemnified Party intends to seek indemnification under this Article from the Indemnifying Party in respect of any third party Claims, then the Indemnified Party shall promptly give the Indemnifying Party written notice of such Claims for indemnification, such notice to be given as soon as practicable following the commencement of any action by a third party; provided, however, that the failure of an Indemnified Party to give the Indemnifying Party such prompt notice shall not relieve the Indemnifying Party of its obligations under this Agreement, except to the extent that such failure results in a material prejudice to the Indemnifying Party's defence to such Claims;
- (2) If the Indemnifying Party receives a notice of any Claim pursuant to paragraph (a) above, then:
 - (a) where the Indemnifying Party is HSSBC, then the Service Provider may permit HSSBC to defend and control the defence of the Service Provider against such Claim at HSSBC's expense and HSSBC will pay such costs, damages and legal fees that a court finally awards or are included in a settlement agreed to by HSSBC, as are in proportion to HSSBC's comparative fault in causing such amounts;
 - (b) where the Indemnifying Party is the Service Provider, then HSSBC may permit the Service Provider to defend and control the defence of HSSBC against such Claim at the Service Provider's expense and the Service Provider will pay such costs, damages and legal fees that a court finally awards or are included in a settlement agreed to by the Service Provider, as are in proportion to the Service Provider's comparative fault in causing such amounts;
 - (c) the Indemnified Party shall cooperate in all reasonable respects with the Indemnifying Party and its counsel in the defence, and may reasonably participate but, for greater clarification, not take control or conduct of such defence at its own expense through its separate legal counsel or otherwise; and
 - (d) if the defendants in any such action include both the Indemnified Party and the Indemnifying Party, and the Indemnified Party shall have reasonably concluded that there may be legal defences available to it which are different from or additional to those available to the Indemnifying Party, then the Indemnified

Party shall have the right to select separate counsel, the cost of which shall be at the Indemnified Party's expense, to assert such legal defences or to otherwise participate in the defence of such action on behalf of the Indemnified Party; and

- (3) To the extent that the Indemnified Party has not permitted the Indemnifying Party to control its defence of the Claim pursuant to Subsection 21.9(2)(a) or 21.6(2)(b) above, then the Indemnified Party shall not settle any Claim for which it may seek indemnification from the Indemnifying Party pursuant to this Section, without consultation with the Indemnifying Party. Notwithstanding such consultation, the Indemnified Party shall have the right to settle such Claim provided, however, that if the Indemnified Party has reached a bona fide settlement agreement with the plaintiff(s) in any such action and the Indemnifying Party disputes:

- (a) the settlement amount; or
- (b) the proportion of the Indemnifying Party's comparative fault in causing such settlement amount,

(collectively, the “**Disputed Matters**”)

then, the Disputed Matters shall be resolved in accordance with the provisions of Article 24 (*Dispute Resolution Process*) of this Agreement. For greater clarification, the Disputed Matters shall not include the Indemnified Party's decision to settle any Claim. All settlements of Claims subject to indemnification under this Article 21 shall include an appropriate non-disclosure agreement with the plaintiff(s), prohibiting the disclosure of the terms of such settlement by the plaintiff(s).

21.7 Mitigation

Each Party has a duty to mitigate the Claims that would otherwise be recoverable from the other Party pursuant to this Agreement by taking appropriate and reasonable actions to reduce or limit the amount of such Claims.

21.8 Limitation

The Parties acknowledge and agree that Sections 21.2, 21.3, 21.4, 21.5 and 21.6 contain the Parties entire liability with respect to third party Claims. For certainty, neither the Service Provider nor the Service Provider Personnel, Subcontractors or Affiliates, or the Service Provider, Subcontractor or Affiliates respective officers, and directors have any liability under this Agreement, regardless of the basis of the claim (including breach, negligence, misrepresentation, or other contract or tort claim), for claims for damages made against HSSBC by third parties, except for the Service Provider's obligation to indemnify HSSBC pursuant to this Article 21.

21.9 Limitation of Liability

- (1) Subject to 21.9(2) and 21.9(3), neither Party nor their respective subcontractors (including, for the Service Provider, the Subcontractors), Affiliates, directors, officers, employees, or agents shall be liable for any special, incidental, punitive, indirect or consequential damages arising out of or in connection with the Services provided under this Agreement including, but not limited to, lost revenue, lost profits, replacement goods, loss of technology rights or services, loss of data, or interruption or loss of use of Software or any portion thereof, even if foreseeable or if the Service Provider or HSSBC

have been advised of the possibility of such damages, and regardless of the basis on which the other Party is entitled to claim (including breach, negligence, misrepresentation, or other contract or tort claim).

- (2) The provisions of Section 21.9(1) shall not exclude the following:
- (a) consequential damages arising as a result of the wrongful disclosure of HSSBC Confidential Information as a result of the Service Provider's breach of its obligations pursuant to Section 13.6;
 - (b) the Service Provider's obligations to indemnify for third party Claims pursuant to Sections 21.3 and 21.4; and
 - (c) HSSBC's obligations to indemnify for third party Claims pursuant to Sections 21.2 and 21.5,

provided that a Party's entire liability for consequential damages as set out in this Section 21.9(2) shall not exceed ● dollars (\$●) per occurrence and shall not exceed ● dollars (\$●) in the aggregate for all claims and causes of action (collectively, the "**Consequential Damage Cap**"). This Consequential Damage Cap shall apply to all Claims regardless of the form of action, whether in contract, tort (including negligence), strict liability, or otherwise.

- (3) The provisions of Section 21.9(1) shall not apply to HSSBC's failure to pay any amounts owing to the Service Provider under this Agreement (including amounts owing for Services rendered or services that would have been rendered but for HSSBC's breach of this Agreement).
- (4) Subject to Section 21.9(2), the entire liability of the Service Provider (if any) to HSSBC, and that of its Subcontractors, Affiliates', employees', officers' and directors', relating to or arising from this Agreement, other than pursuant to the indemnities granted under Subsection 21.3(3) and Section 21.4 (the "**Excluded Claims**"), shall be limited to any actual, direct damages and shall not exceed ● dollars (\$●) which amount the Parties acknowledge represents the projected six (6) months average monthly Fees over the Term of the Agreement calculated as of the Effective Date (the "**Direct Damage Cap**"). This Direct Damage Cap shall apply (other than with respect to the Excluded Claims) irrespective of the nature of the cause of action, demand or action including any breach of contract, negligence, tort, misrepresentation, or any other legal theory. If and when the Direct Damage Cap is reached as a result of Claims, then the Parties may, subject to mutual agreement, increase the amount of the aggregate Direct Damage Cap for all claims and causes of actions, to an amount equal to ● dollars (\$●), which amount the Parties acknowledge represents the projected twelve (12) months average monthly Fees over the Term of the Agreement calculated as of the Effective Date, and if the Parties are unable to so agree within sixty (60) days of a request by one Party to the other to reset the amount of the Direct Damage Cap, then HSSBC shall be entitled to terminate this Agreement without payment of a termination fee, in which case, the provisions of Article 19 (*Transition Out Services*) shall apply.
- (5) Each Party agrees that it shall not assert any Claims from the other Party until such Claims aggregate an amount equal to ● dollars (\$●), at which time, the Party seeking the Claims from the other (in accordance with the terms of this Agreement) shall be entitled

to claim all such Claims. This Section 21.9(5) shall not apply to the indemnity granted by the Service Provider under Section 21.3(2)

- (6) Notwithstanding the foregoing, liability to HSSBC in respect of lost or destroyed data shall be limited to circumstances where data is lost solely as a result of the Service Provider's negligence in the performance of the Services, and in such event, the Service Provider's liability shall be limited to using reasonable efforts to restore such data from the last available back up. For certainty, this Section 21.9(6) shall not relieve the Service Provider of its obligations pursuant to Schedule L (*Privacy and Security*).
- (7) Notwithstanding the foregoing paragraphs, nothing in this Section shall entitle either Party to Claims in respect of amounts already paid to that Party pursuant to Section 5.9 and Schedule N (*Termination Fees*).

21.10 Service Provider Guarantees.

Concurrently with the signing of this Agreement, the Service Provider will provide to HSSBC a duly executed performance guarantee and financial guarantee, in the form attached as Schedule M (*Form of Guarantees*).

ARTICLE 22 FORCE MAJEURE

22.1 Force Majeure

No Party shall be in breach of this Agreement where its failure to perform or its delay in performing any obligation is due to a cause beyond its reasonable control, including any Force Majeure Event.

22.2 Delay in Payment

A Force Majeure Event may result in a delay in any payment owing under this Agreement being made within the timeframes required in this Agreement; however, any monies subject to a delay in payment will remain owing to the other Party.

22.3 Extension of Performance

Each Party shall notify the other promptly and in writing of any failure to perform or delay in performing due to a Force Majeure Event, and shall provide an estimate as soon as practicable of the time when the obligation will be performed. Subject to Section 18.4(2), the time for performing the obligation shall be extended for a period of time equal to the period of delay resulting from such a cause. Without restricting the generality of the foregoing, whenever an actual or potential labour dispute is delaying or threatens to delay the performance of Services, the Service Provider shall promptly notify HSSBC in writing. Such notice shall include all relevant information concerning the dispute and its background.

22.4 HSSBC Recourse to Third Parties

During each such Force Majeure Event, HSSBC may, in HSSBC's discretion, and without incurring any liability, seek to have its requirements (which would otherwise be met hereunder) met by or through a third party or third parties.

22.5 Work Around Plans

When requested by HSSBC, the Service Provider shall deliver, within ten (10) Business Days of receipt of a request, a description in a form satisfactory to HSSBC of work-around plans including any means that the Service Provider will use to overcome a Force Majeure Event, and shall endeavour to prevent any further similar Force Majeure Event. Upon receipt of approval in writing by HSSBC, which shall not be unreasonably withheld, the Service Provider shall implement such work-around plans.

22.6 Costs of Work Around

The Parties, both acting reasonably, shall agree on an equitable manner of sharing:

- (1) the costs associated with the development and implementation of any work-around plans; and
- (2) any third party expenses incurred with respect to such work-around plans, prior to incurring any such third party expenses.

ARTICLE 23 INSURANCE

23.1 Insurance

The Service Provider shall procure and maintain at all times during the Term of this Agreement, at its own expense and without reimbursement from HSSBC, the following insurance policies which may be provided by way of an umbrella or excess policy and which shall be underwritten by insurers licensed to carry on insurance business in Canada:

- (1) **Commercial General Liability.** Commercial general liability insurance protecting against Claims of bodily injury (including death) and property damage which may arise out of the performance of the Services by the Service Provider of otherwise under this Agreement, in an amount not less than ● dollars (\$●) inclusive per occurrence. The policy(s) shall include coverage for non-owned automobile liability, personal injury liability, employer's liability, blanket contractual liability coverage, broad form property damage coverage and coverage for products and completed operations. The policy(s) shall contain a cross-liability clause, a waiver of subrogation in favour of HSSBC, and include HSSBC as an additional insured. In the event the Service Provider receives a notice of cancellation of coverage or a notice of material change from its insurer and such is reasonably expected to disrupt coverage required under this section, the Service Provider will provide prompt notice of such to HSSBC and in any event will provide such notice within seventy-two (72) hours of the receipt of such notice from its insurer; and
- (2) **Errors & Omissions Liability.** Errors and omissions liability insurance protecting against Claims arising out of any error or omission by the Service Provider in the provision of the Services, in an amount not less than ● dollars (\$●). In the event the Service Provider receives a notice of cancellation of coverage or a notice of material change from its insurer and such is reasonably expected to disrupt coverage required under this section, the Service Provider will provide prompt notice of such to HSSBC and in any event will provide such notice within seventy-two (72) hours of the receipt of such notice from its insurer.

23.2 Certificate of Insurance

The Service Provider shall provide HSSBC with evidence of all required insurance in the form attached as Schedule O (*Form of Certificate of Insurance*) within thirty (30) days after the Effective Date, and upon the reasonable request of HSSBC from time to time but not more frequently than annually. The Service Provider shall not cancel any of the required insurance policies set out or contemplated in this Article 22 without thirty (30) days prior written notice to HSSBC unless such cancelled insurance policy is replaced with a replacement insurance policy of the same kind and type, and in an equal or greater amount.

23.3 Adequacy of Insurance

The Service Provider acknowledges that any requirement for insurance under this Agreement shall not constitute a representation by HSSBC that the amount or type of insurance required is adequate, and the Service Provider acknowledges and agrees that it is solely responsible for obtaining and maintaining its own policies of insurance in such amounts as the Service Provider determines to be appropriate and adequate, subject to the minimum requirements set out in this Article 22.

ARTICLE 24 DISPUTE RESOLUTION

24.1 Dispute Resolution Process

The Parties agree to endeavour: (i) to resolve Incidents through Incident Management and Problems through Problem Management (in each case as provided for under this Agreement); and (ii) to resolve any unresolved Issues or Disputes using the Dispute resolution procedures set out in Schedule P (*Dispute Resolution Process*) (“**Dispute Resolution Process**”). Notwithstanding the foregoing, any Issue or Dispute involving a third party will be resolved by the Parties, acting reasonably, in consultation and negotiations with such third party and will not, unless the third party agrees in writing to participate in and be bound by the results of such arbitration, be subject to escalation to arbitration as provided for in Schedule P (*Dispute Resolution Process*).

24.2 Equitable Relief

Notwithstanding anything contained in the Agreement to the contrary, the Parties will be entitled to seek injunctive or other equitable relief from a court of competent jurisdiction whenever the facts or circumstances would permit a Party to seek such relief.

ARTICLE 25 MISCELLANEOUS

25.1 Third-Party Beneficiaries

This Agreement is an agreement between the Parties and, except for the HSSBC Indemnified Parties and the Service Provider Indemnified Parties for which HSSBC and Service Provider can act on their behalf, confers no rights upon any of such Parties’ employees, agents, or contractors, or upon any other Person.

25.2 Assignment

Except for subcontracting permitted under the terms of Article 10 and any assignment or transfer by HSSBC to an Authorized User, neither Party will assign, transfer or delegate its duties under this Agreement, in whole or in part, whether by operation of law or otherwise, without the prior written consent of the other Party, which will not be unreasonably withheld. Any assignment in contravention of

this Section 25.2 (i.e., without the consent of the other Party) will be null and void ab initio. Subject to all other provisions herein contained, this Agreement will be binding on the Parties and their successors and permitted assigns. Notwithstanding the foregoing, the assigning Party will remain liable for the performance of the assigned or delegated obligations hereunder.

25.3 Notices

Unless specifically provided otherwise in this Agreement, including through the Governance Process, wherever any notice, communication, demand, invoice, approval or other document is required or permitted to be given, sent or delivered by one Party to another under this Agreement, then it will be in writing and may be delivered personally, by facsimile or PDF or sent by a recognized courier service (and for greater clarification, no notice, demand or approval required or permitted to be given under this Agreement will be, or be deemed to be, effective or delivered if given by email). Any such notice, communication, demand, invoice, approval or other document so personally delivered or sent by facsimile or courier will be deemed to be given when actually received and will be addressed as follows:

To **HSSBC**:

Health Shares Services British Columbia
700-1380 Burrard Street
Vancouver, British Columbia
V6Z 2H3

Attn:

Fax: (604) 875-7365

To the **Service Provider**:

[Insert contact details]

Either Party may change its address or facsimile number for notices upon giving prior written notice of the change to the other Party in the manner provided above.

25.4 Relationship Between the Parties

Neither Party (nor any employee, subcontractor (including, for the Service Provider, the Subcontractors) or agent thereof) will be deemed or otherwise considered a representative, agent, employee, partner or joint venturer of the other. Further, neither Party (nor any employee, subcontractor (including, for the Service Provider, the Subcontractors) or agent thereof) will have the authority to enter into any contract, nor to assume any liability, on behalf of the other Party, nor to bind or commit the other Party in any manner, except as expressly provided in this Agreement.

25.5 Counterparts; Faxed Signatures

This Agreement may be executed in duplicate counterparts, each of which will be deemed an original and both of which together, when delivered by facsimile, PDF or otherwise, will constitute one and the same instrument. The Parties hereby adopt as original any signatures received via facsimile or PDF.

25.6 Public Announcements

- (1) The Service Provider will not, without the prior written consent of HSSBC, issue any such press release or make any public announcement to a third party that include a factual description of any of the Services, information about the Services, this Agreement or relationship between the Service Provider and HSSBC provided, however, that the Service Provider may, without such consent, make such disclosure if the same is required by Applicable Law, any stock exchange on which any of the securities of the Service Provider are listed or posted for trading, or any securities commission or other similar regulatory authority having jurisdiction over the Service Provider, and if such disclosure is required. The Service Provider in making any such disclosure will use all commercially reasonable efforts to give prior oral or written notice to the others, and if such prior notice is not possible, to give such notice immediately following the making of such disclosure. Either Party may include the other Party's name on its employee bulletin boards, in its list of customers or service providers and in the experience section of proposals to third parties, in internal business planning documents and in its, or its Affiliate's, annual report to shareholders or annual information form and whenever otherwise required by reason of legal, accounting or regulatory requirements.
- (2) The Service Provider will consult HSSBC before issuing any press release or making any other public announcement with respect to this Agreement or the transactions contemplated hereby (other than any promotional or marketing material of such Party which merely identifies HSSBC as a customer or service provider).

25.7 Effect of Certificates

All certificates provided under this Agreement by an officer or director of a Party will be provided in that Person's capacity as an officer or director of such Party, and not in that Person's personal capacity, and no such officer or director will incur any personal liability to any Party under or as a result of such certificate.

25.8 Expenses

Each Party will bear all expenses paid or incurred by it in connection with the planning, negotiation and consummation of this Agreement.

25.9 Entire Agreement

This Agreement sets forth the entire agreement between the Parties with respect to the matters referred to herein and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral. There are no conditions, covenants, agreements, representations, warranties or other provisions, express or implied, collateral, statutory or otherwise, relating to the subject matter contained herein other than those set forth in or referred to in this Agreement. The Non-Disclosure and Confidentiality Agreement between the Parties dated [●], will be terminated, superseded and replaced by this Agreement, provided that all Confidential Information provided thereunder will be deemed to be Confidential Information under this Agreement, and the Non-Disclosure and Confidentiality Agreement will survive with respect to the remedies available in respect of any breach of such agreement which occurred prior to the Effective Date.

25.10 Fully Negotiated Agreement

The Parties agree that all of the provisions of this Agreement have been fully negotiated, that neither of them will be deemed the drafter of this Agreement and that, in construing this Agreement in case of any claim that any provision hereof may be ambiguous, no such provision will be construed in favour of one Party on the ground that such provision was drafted by the other Party.

25.11 Severability

If any provision of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, that provision will be deemed stricken with respect to that jurisdiction and the remainder of this Agreement will continue in full force and effect insofar as it remains a workable instrument to accomplish the original intent and purposes of the Parties, and, if possible, the Parties will act in good faith to replace the severed provision with a valid and enforceable provision that reflects the intention of the Parties with respect to the severed provision.

25.12 Governing Law and Venue

This Agreement will be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the Parties will be governed by, the laws of the Province of British Columbia and the federal laws of Canada applicable therein, without giving effect to conflicts of laws principles. Subject to the dispute resolution provisions in Article 24, each Party hereby irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of such Province and all courts competent to hear appeals therefrom and each Party irrevocably accepts and submits to the sole and exclusive jurisdiction of such courts, generally and unconditionally with respect to any action, suit or proceeding brought by or against it by the other Party. Except as hereafter provided in this Section 25.12, neither Party will bring any legal action, suit or proceeding in any way arising out of or relating to this agreement in any other court or in any other jurisdiction and will not assert any claim, whether as an original action or as a counterclaim or otherwise, against the other in any other court or jurisdiction. Each Party irrevocably waives and agrees not to assert, by way of motion, as a defence or otherwise, any objection that it may now or hereafter have to the venue of any of the aforesaid actions, suits or proceedings in the courts referred to above, and further waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper, or that this Agreement or the subject matter hereof or thereof may not be enforced in or by such court. As the only exception to the above, if a Party is entitled to seek injunctive or other equitable relief which is not available in the venue specified in this Section 25.12, this Section will not be deemed to be a bar to the Party seeking such relief if such relief is wholly non-monetary injunctive or other equitable relief. The terms of this Section 25.12 will apply regardless of the country of origin of any Dispute. Further, each of the Parties agrees that any judgment rendered by a provincial or federal court located in Canada is a valid and binding judgment, entitled to recognition and enforcement in and by any court, tribunal, judge, jury or other body exercising judicial functions located in the country of the applicable Party, including, in the case of Service Provider, the Service Provider Parent (collectively, a “**Local Court**”). Each Party agrees that any such judgment may be entered into evidence in any suit, action or proceeding commenced in any Local Court and hereby irrevocably waives and agrees not to assert, by way of motion, as a defence or otherwise, any objection that it may now or hereafter have relating to the validity of any such judgment and its introduction into evidence in any suit, action or proceeding in any Local Court, and further irrevocably waives and agrees not to plead or claim in any such suit, action or proceeding that the judgment may not be recognized or enforced by such Local Court. Either Party may seek interim measures of protection, including but not limited to interim injunctive relief, in a court of competent jurisdiction located in the Province of British Columbia. The Parties consent and agree to the jurisdiction of the courts mentioned in this paragraph, and waive any and

all objections to such forums, including but not limited to objections based on improper venue or inconvenient forum.

25.13 Appropriation

Notwithstanding any other provision of this Agreement, the payment of money by the HSSBC to the Service Provider under this Agreement is subject to:

- (1) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act* (British Columbia), to enable HSSBC to make that payment; and
- (2) Treasury Board, as defined in the *Financial Administration Act* (British Columbia), not having controlled or limited, under the *Financial Administration Act* (British Columbia), expenditure under any appropriation referred to in paragraph (1) above.

25.14 Amendments and Waivers

No amendment or waiver of any provision of this Agreement will be binding on any Party unless consented to in writing by such Party. Except as provided under the Change Process, Service Provider expressly agrees that all amendments to this Agreement executed by the Parties after the Effective Date must be signed by a Vice President or a higher-level officer of HSSBC and a representative of Service Provider in order to be effective (and all amendments so signed will be effective and binding on the Parties). No waiver of any provision of this Agreement will constitute a waiver of any other provisions, nor will any waiver constitute a continuing waiver, unless otherwise expressly provided therein.

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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**HEALTH SHARED SERVICES
BRITISH COLUMBIA ON BEHALF OF
PROVINCIAL HEALTH SERVICES
AUTHORITY AND AS AGENT FOR
VANCOUVER COASTAL HEALTH
AUTHORITY**

[SERVICE PROVIDER]:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**SCHEDULE A
DEFINITIONS**

“Access Provisioning” means granting and revoking access, as authorized by HSSBC.

“Access Subcontractor” means a Subcontractor that has or could have access to or Custody of Personal Information in the course of performing Services.

“Affiliate” means, from time to time, as to any Person, any other Person that, at the relevant time, directly or indirectly controls, is controlled by, or is under common control with, such Person, whether through ownership of voting securities or otherwise. For this purpose, and without limiting the foregoing, any Person that holds, directly or indirectly, the beneficial or equitable ownership of 50% or more of the capital stock (or other ownership interests, if not a corporation) of such other Person will be deemed to control such other Person.

“Agreement” means this Services Agreement, the recitals hereto and all Schedules, attachments, appendices, addenda and other documents attached hereto or incorporated herein by reference, as amended from time-to-time in accordance with the provisions hereof.

“Applicable Laws” means all statutes, laws, by-laws, rules, binding policies, regulations, codes, ordinances, orders, restrictions and requirements of governmental, regulatory or other authorities having jurisdiction, and all amendments thereto, at any time and from time to time in force including all laws and regulations relating to export of technology and the collection, storage, disclosure, dissemination, transfer and use of data, including privacy laws, and laws relating to reduction of reporting on the direct and indirect environmental impacts of the Services. In the case of Service Provider, Applicable Laws are laws that apply to Service Provider as a provider of services that are the same or similar to the Services.

“Assigned Accounts” has the meaning set forth in Section 24 of Schedule L (*Privacy and Security*).

“Assigned Contracts” means the Existing Contracts listed in Schedule W (*HSSBC Assigned Contracts*).

“At-Risk Amount” means, as the context may indicate or require, the applicable Monthly At-Risk Amount and/or the applicable Critical Milestone At-Risk Amount.

“Authorized Service Provider Personnel” has the meaning set forth in Section 31 of Schedule L (*Privacy and Security*).

“Authorized Users” means the HSSBC including, for greater certainty, the Health Organizations, and their respective employees, directors, agents, and those entities and individuals identified in Schedule T (*HSSBC Authorized Users*) and their respective authorized employees and agents, in each case who are authorized by HSSBC to use the Services.

“Benchmarking” means the objective measurement and comparison process (using available industry standards) as set out in Schedule I (*Benchmarking*).

“Business Day” means any day, which is not a Saturday, Sunday or statutory holiday in Vancouver, British Columbia.

“Business Hours” means • am to • pm Pacific Time on a Business Day.

“Canadian Entity” has the meaning set forth in Section 13.2(4).

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“Change” means the addition, modification or removal of Services, Hardware, Software and/or documentation, under this Agreement, as approved pursuant to the Change Process.

“Change in Control” means: (a) any transaction or combination of transactions as a result of which either a Person or a group of Persons that customarily has acted in concert and that presently is in control of a Party ceases to be in control of such Party; (b) the sale, transfer, exchange or other disposition (including disposition in full or partial dissolution) of fifty percent (50%) or more of the beneficial ownership (as defined in Rule 13(d) of the *Securities Exchange Act* of 1934) of the voting power of a Party, or of the assets of such Party that constitute a substantial or material business segment of such Party; or (c) with respect to Service Provider, the unit, division or operating group of Service Provider that is responsible in providing the Services to HSSBC is sold, transferred or otherwise experiences a change in ownership or control.

“Change Order” means an agreed Change Proposal entered into by the Parties in accordance with this Agreement.

“Change Process” means the process for controlling Changes in a controlled manner enabling approved Changes with minimum disruption as more particularly set forth in Article 7 and Schedule E (*Change Process Forms*).

“Change Proposal” means a Change proposal in the form set forth in Section 7.3 describing services or work that Service Provider proposes be performed.

“Change Request” means a Change request in the form set forth in Section 7.1 requesting the performance of services or work that is not being performed by Service Provider at a particular time or change to the Services.

“Claims” means any and all claims, legal or other proceedings, suits, actions, causes of action, losses, damages, liabilities, costs and expenses (whether accrued, actual, contingent, latent or otherwise), and all reasonable legal fees suffered or incurred by a Person.

“Closure” means the actual closing of an Incident record within the Incident management tool after the verification of the Incident Resolution, the completion of Root-Cause Analysis and the identification of the root cause of the Incident (as appropriate).

“Compliance Date” means, with respect to an SLA, the compliance date for such SLA identified in Schedule F (*Service Levels*).

“Confidential Information” means HSSBC Confidential Information or Service Provider Confidential Information, as the case may be.

“Confidentiality Covenants” has the meaning set forth in Section 33 of Schedule L (*Privacy and Security*).

“Consents” means consents, approvals, acknowledgements, licenses, permissions and authorizations.

“Consequential Damage Cap” has the meaning set forth in Section 12.9 (1).

“Contract Executive” means, as applicable the HSSBC Contract Executive or the Service Provider Contract Executive, and “Contract Executives” means both the HSSBC Contract Executive and the Service Provider Contract Executive.

“**Contract Year**” means a year during the Term that begins on the Effective Date or any anniversary thereof.

“**Contracts**” means any and all agreements, covenants, indentures, contracts, leases, deeds of trust, licences, options, undertakings, instruments or commitments, whether oral or written.

“**Control**” has the meaning set forth in Section 2 of Schedule L (*Privacy and Security*).

“**Corporate Control**” of a corporation or other entity is directly held by a Person where securities of the corporation or other entity to which are attached 50% or more of the votes that may be cast to elect directors or persons acting in a similar capacity of the corporation or other entity are directly held, other than by way of security only, by or for the benefit of such Person, and “**Corporately Controlled**” has corresponding meaning.

“**Corporate Organizational Chart**” has the meaning set forth in Section 13.2(3).

“**CPIC**” means Canadian Police Identification Centre.

“**Critical**” has the meaning set forth in Section 6.5.

“**Critical Milestone At-Risk Amount**” means, in respect of the Transition, twenty-two percent (22%) of the Transition In Services Fees.

“**Critical Milestones**” means those milestones, activities, actions and the achievement of certain objectives under this Agreement which are identified as Critical Milestones pursuant to this Agreement, Schedule B (*Transition In Plan - Framework*), Schedule F (*Service Levels*), or elsewhere in or pursuant to this Agreement.

“**CRRA**” has the meaning set forth in Section 9.7(1).

“**Custody**” means to have physical possession and immediate responsibility for the safe-keeping and preservation.

“**Custom Developed Applications Software**” means the software applications which relate specifically to HSSBC’s business that are developed by or on behalf of Service Provider pursuant to this Agreement in accordance with the Change Process.

“**Data and Modified Data**” has the meaning set forth in Section 12.8.

“**Dedicated**” means, with respect to any asset (including Hardware and Software), Contract, product, service or premises used in connection with or to provide the Services, that such asset, Contract, product, service or premises is used or dedicated exclusively for the provision of the Services, subject to any minor overflow work.

“**Deliverable**” means any tangible or intangible document, system, software or material which is produced, created, provided, delivered or made available by Service Provider to HSSBC under this Agreement, including any source code or object code, specifications, technical information, data or reports.

“**Derivative Works**” means any and all revisions, modifications, changes, translations, abridgements, compilations, condensations or expansions of the applicable underlying work or any form in which that work may be recast, transformed or adapted, together with all documentation and instructions relating to

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such revisions, modifications, changes, translations, abridgements, compilations, condensations or expansions, made during the Term or the Transition Out Period.

“**Direct Damage Cap**” has the meaning set forth in Section 12.9 (4).

“**Disabling Device**” has the meaning set forth in Section 20.1(5).

“**Disaster Recovery Services**” means the disaster recovery services as more particularly described in Schedule D (*Managed Services*).

“**Disclosing Party**” means the Party that has disclosed Confidential Information to the other Party.

“**Disclosure Order**” has the meaning set forth in Section 13.2(2).

“**Dispute**” means any Issue which is escalated to the Executive Committee for resolution in accordance with the Dispute Resolution Process.

“**Dispute Resolution Process**” has the meaning set forth in Section 24.1.

“**Disputed Matters**” has the meaning set forth in Section 21.6 (3).

“**Effective Date**” has the meaning set forth in the opening paragraph of the Agreement.

“**Emergency Change**” means a Change that needs to be implemented immediately to mitigate risk of loss, damage or other adverse consequence to HSSBC’s business.

“**Events of Default**” means any of the events described in Section 18.5.

“**Excluded Claims**” has the meaning set forth in Section 12.9 (4).

“**Executive Committee**” has the meaning set forth in Schedule H (*Governance*).

“**Existing Contracts**” means the Contracts between HSSBC and Third Parties which were used by HSSBC to obtain services similar to or relating to the Services prior to the Effective Date.

“**Expected Service Level**” means, for each Service category, the expected level of performance as set out in the definition of the Service category and as altered in accordance with Section 5.12.

“**Expiration Date**” has the meaning set forth in Section 19.2.

“**External Confidentiality Covenants**” has the meaning set forth in Section 34 of Schedule L (*Privacy and Security*).

“**Fee Reductions**” means the dollar amount by which the Fees will be reduced based on the Service Provider’s failure to achieve any SLA. All SLA related Fee Reductions shall be calculated in accordance with Schedule F (*Service Levels*).

“**Fees**” has the meaning set forth in Section 17.1.

“**Financial Guarantee**” means the guarantee entered into by the Financial Guarantor as contemplated by this Agreement, in the form set forth in Schedule M (*Form of Guarantees*).

“**Financial Guarantor**” means *[Insert name of financial guarantor]*.

“**FOIPPA**” means the *Freedom of Information and Protection of Privacy Act* (British Columbia).

“**Force Majeure Event**” means an act of God, act of governmental body or military authority, fire, explosion, flood, earthquake, epidemic, riot or civil disturbance, war, terrorism, sabotage, insurrections, blockades, embargoes, storms or other similar events that are beyond the reasonable control of the affected Party. In addition, with respect to HSSBC, any foreign government trade action or Canadian government legislation, Applicable Law or amendment having significant effect on the ability of HSSBC to continue its business, will be deemed a Force Majeure Event. Notwithstanding the foregoing, “Force Majeure Event” expressly excludes:

- (a) any event that Service Provider could have prevented if it had performed system testing required to be performed pursuant to this Agreement or necessary to provide the Services;
- (b) any event caused by a single point of failure where Service Provider was obligated under this Agreement to provide fault tolerant Services;
- (c) any Service Provider strike, walkout or labour shortage; and/or
- (d) any non-performance of a Service Provider Affiliate or Subcontractor, regardless of cause (unless due to a Force Majeure Event).

“**Foreign Disclosure Laws**” means any laws, statutes, by-laws, treaty, directive, policy having the force of law, order, judgment, injunction, award, decree or other similar matter of any government, legislature (or similar body), court, governmental department, commission, board, bureau, agency, instrumentality, province, state, territory, association, county, municipality, city, town or other political of governmental jurisdiction, whether not or in the future constituted, outside of Canada, that may require, request, or otherwise demand access, use or disclosure of Personal Information, whether to intercept or obstruct terrorism, or for any other reason.

“**Foreign Employed Individuals**” means individuals who have entered into an employment agreement or other similar agreement for the provision of personal services thereunder, whether express or implied by law, with a Person that is not a Canadian Entity.

“**GHG Emissions**” means green house gas emissions (calculated in terms of the CO₂ equivalent volume of the gas for non-CO₂ emissions) in tons.

“**Governance Process**” has the meaning set forth in Schedule H (*Governance*).

“**Governance Service Levels**” has the meaning set forth in Section 5.4.

“**Guarantors**” means the Performance Guarantor and the Financial Guarantor and “Guarantor” means either one of them as applicable.

“**Guiding Principles**” has the meaning set forth in Section 1.1.

“**Hardware**” means the HSSBC Hardware, the Service Provider Hardware and all of the hardware listed in Schedule U (*HSSBC Supplied Hardware*) and Schedule Y (*Service Provider Supplied Hardware*), as such Schedules may be amended from time to time, and all other hardware that is required to provide the Services, together with all replacements therefor and all incidental and ancillary components, connecting equipment, peripherals, media, firmware and embedded software and instructions but, for greater certainty does not include equipment used to provide heating, lighting, ventilation, air conditioning or

electrical power at premises owned or leased by HSSBC. The requirements for Hardware may be modified from time to time through the Change Process.

“**Health Facilities**” has the meaning set forth in Section 4.7.

“**Health Organization**” means Provincial Health Services Authority, Vancouver Coastal Health Authority, Providence Health Care Society and such other health organizations in the Province of British Columbia that may receive and use any of the Services over the Term.

“**HSSBC**” has the meaning set forth in the opening paragraph of the Agreement and, for the purposes of this Agreement shall include the Health Organizations that may receive and use any of the Services provided hereunder or be involved in the performance of any of the obligations of HSSBC hereunder, all of which will for all purposes of this Agreement be represented exclusively by HSSBC.

“**HSSBC Confidential Information**” means all records, data and information of HSSBC that is disclosed to Service Provider or any of its employees, contractors (including Subcontractors) or agents, whether in tangible, intangible or oral form, and whether in written form or readable by machine, including, without limitation:

- (a) all HSSBC Data;
- (b) HSSBC-Owned Materials;
- (c) all financial information, personnel information, business information, client information, reports, documents, correspondence, plans and specifications relating to HSSBC or its Authorized Users;
- (d) all technical information, materials, data, reports, programs, documentation, diagrams, developed by or for HSSBC or its Authorized Users;
- (e) any information that HSSBC or any of its Authorized Users identifies to Service Provider as confidential by a stamp or other similar notice; and
- (f) all other records, data or information collected, received, stored or transmitted in any manner connected with the provision of Services hereunder which by its nature or the circumstances under which it is disclosed ought reasonably to be considered as confidential to HSSBC.

HSSBC Confidential Information will not include information that Service Provider can demonstrate was: (a) at the time of disclosure to Service Provider, in the public domain; (b) after disclosure to Service Provider, published or otherwise made a part of the public domain through no fault of Service Provider; (c) received, after disclosure by HSSBC to Service Provider, from a Third Party who had a lawful right to disclose such information to Service Provider free from any obligation of confidentiality; or (d) independently developed by Service Provider without reference to HSSBC Confidential Information or (e) disclosed by HSSBC to a Third Party without obligation of confidentiality. For purposes of this provision, information is in the public domain if it is generally known (through no fault of Service Provider) to Third Parties who are not subject to nondisclosure restrictions with respect to such information.

“**HSSBC Contract Executive**” has the meaning set forth in Schedule H (*Governance*).

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“HSSBC Data” means, in or on any media or in any form: (a) all data that is in the possession of HSSBC or any Authorized User, and all data concerning or indexing such data, all data relating to the operations and business of HSSBC and (b) all records, data, files, input materials, reports, forms and other items that may be received, computed, developed, used or stored by Service Provider or any of its employees, Subcontractors or agents from, for or on behalf of HSSBC or any Authorized User.

“HSSBC-Developed Deliverables” has the meaning set forth in Section 12.1;

“HSSBC Email System” has the meaning set forth in Section 24 of Schedule L (*Privacy and Security*).

“HSSBC Facilities” has the meaning set forth in Section 6.8.

“HSSBC Hardware” means all Hardware owned, leased or otherwise held by HSSBC that is used or required in connection with the performance of the Managed Services, including the Hardware listed in Schedule U (*HSSBC Supplied Hardware*) and all replacements of and additions to such Hardware, but excluding the Service Provider Hardware.

“HSSBC Indemnified Materials” has the meaning set forth in Section 21.5.

“HSSBC Indemnified Parties” has the meaning set forth in Section 21.3.

“HSSBC Licensed Software” means the Third Party Software for which HSSBC has a license to use.

“HSSBC-Owned Materials” has the meaning set forth in Section 12.1.

“HSSBC Personnel” means the personnel and independent contractors of HSSBC (including for greater certainty, the personnel and independent contractors of a Health Organization, as the case may be).

“HSSBC Policies and Procedures” means the policies, standards, procedures and practices of HSSBC set forth in Schedule Q (*HSSBC Policies and Procedures*), as such policies and procedures may be amended from time to time by HSSBC using the Change Process.

“HSSBC Proprietary Software” means the software owned by HSSBC, including object and source code versions, and any documentation and any derivative works or interfaces relating to the foregoing created by or on behalf of HSSBC from time to time, but excluding Third Party Software.

“HSSBC Satisfaction SLAs” means the SLAs identified in Schedule H (*Governance*) as the HSSBC Satisfaction SLAs.

“HSSBC Satisfaction Surveys” means all satisfaction surveys set out in Schedule H (*Governance*).

“HSSBC Service Delivery Managers” has the meaning set forth in Schedule H (*Governance*).

“HSSBC Service Locations” means the locations listed in Schedule AA (*HSSBC Service Locations*) as such list may be amended from time to time by HSSBC using the Change Process.

“Incident” means any event which is not part of the standard operation of the Service and which causes, or may cause, an interruption or a reduction of the quality of a Service. HSSBC will determine the Incident severity level of each Incident.

“Incident Management” means the process required to restore normal service operation as quickly as possible and minimize the adverse impact of an Incident on business operations, thus ensuring that the

agreed to levels of service quality and availability are maintained. The Incident Management process includes the following: (i) Incident detection and recording; (ii) Incident classification and initial support; (iii) Incident investigation and diagnosis; (iv) Incident Resolution and recovery; (v) Incident closure; and (vi) Incident ownership, monitoring, tracking and communication.

“Incident Resolution” means the point at which Service Provider has responded to an Incident and Service Provider has either: (a) fully restored the Service affected by the Incident; or (b) implemented a Workaround to restore the functionality of the service affected by the Incident. In both cases, the Incident is not resolved until HSSBC has been satisfied that it has been resolved.

“Indemnified Party” means either: (1) HSSBC, in the case of Claims, suits or proceedings subject to indemnification by Service Provider under Section 21.3, or (2) Service Provider, in the case of Claims, suits or proceedings subject to indemnification by HSSBC under Section 21.2.

“Indemnifying Party” means: (1) Service Provider, in the case of Claims, suits or proceedings subject to indemnification by Service Provider under Section 21.3, or (2) HSSBC, in the case of Claims, suits or proceedings subject to indemnification by HSSBC under Section 21.2.

“In-Flight Project” means those projects described in Schedule C (*In-Flight Projects*).

“In-Flight Project Fees” means the fees payable by HSSBC to the Service Provider for the In-Flight Projects, as set forth in Schedule DD (*Fees*).

“Initial Term” has the meaning set forth in Section 18.1.

“Intellectual Property Rights” means any and all copyrights, copyright registrations and applications therefore, moral rights, patents, patent applications, trade-marks, trade-mark registrations and applications thereof, industrial designs, industrial design applications, inventions, processes, trade secrets, integrated circuit topographies and integrated circuit topography applications and other industrial or intellectual property anywhere in the world, whether or not registered or registrable.

“Issue” means any issue or dispute arising under or relating to this Agreement, including those that relate to any of the following:

- (a) an alleged failure by either Party to perform its obligations under this Agreement (including a failure of Service Provider to resolve an Incident or a Problem as provided for in this Agreement to the satisfaction of both Parties);
- (b) a request for products, services or resources, where the Parties disagree whether such products, services or resources are within the scope of the Services (and therefore included in the Fees) or otherwise within the scope of this Agreement or the Change Process;
- (c) Fees or the prices proposed to be charged by Service Provider to HSSBC for any Services under this Agreement (including any services that HSSBC has requested be provided through the Change Process or the adjustments to Fees resulting from any modification or termination of any Services, including to any Service Levels);
- (d) a disagreement as to the responsibilities either Party has under this Agreement;
- (e) any other disagreement or dispute related to the interpretation or construction of this Agreement; and/or

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- (f) any other issue or dispute arising under this Agreement,

with the exception of the following:

- (g) any Incident or Problem to the extent that it has been addressed and resolved to the full satisfaction of both Parties;
- (h) any issue or dispute to the extent that it has been escalated to the Executive Committee for resolution and thereby deemed to be a Dispute; and/or
- (i) any issue or dispute to the extent that it has been resolved by injunctive or equitable relief as provided for in Section 24.2.

“**IT**” means information technology.

“**Key Subcontractors**” has the meaning set forth in Section 10.2.

“**Known Error**” means a condition identified by the successful Root-Cause Analysis of a Problem, and the subsequent development of a solution or a Workaround.

“**Lien**” has the meaning set forth in Section 6.9.

“**Local Court**” has the meaning set forth in Section 25.12.

“**Maintain**” or “**Maintenance**” means, with respect to Service Provider’s obligations under this Agreement, service, support, repair, upgrading and replacement activities conducted in accordance with applicable Specifications and the provisions of the Agreement and any applicable Retained Contract or Assigned Contract.

“**Managed Contracts**” means the Retained Contracts listed in Schedule X (*HSSBC Retained Contracts*) and identified therein as being managed by Service Provider.

“**Managed Services**” means, collectively, the services described in Schedule D (*Managed Services*)

“**Managed Service Fees**” has the meaning set forth in Section 17.3.

“**Measurement Interval**” means, with respect to a SLA or SLO, as the case may be, the period over which compliance with such SLA or SLO is measured (for example, one (1) month, one (1) year, etc.). This factor takes into consideration the impact of continuous outage. For example, a monthly SLA measurement interval for a ninety-nine percent (99%) minimum performance for a 24x7 system with eight hours of weekly planned downtime would allow 6.4 hours of a continuous outage, with no other outages during the calendar month. A weekly interval would only allow 1.6 hours of a continuous outage. The Measurement Intervals are set forth in Schedule F (*Service Levels*) and will be updated as SLAs or SLOs, as the case may be, are added or amended pursuant to Sections 5.11 and 5.12. The Measurement Interval for each SLA or SLO will commence on the Compliance Date.

“**Minimum Service Level**” means, for each Service category, the minimal level of performance required as set out in the definition of the Service category.

“**Monthly At-Risk Amount**” means twenty-two percent (22%) of the portion of the Fees to be paid by HSSBC to Service Provider in respect of the calendar month for which applicable Fee Reductions are being calculated in respect of an SLA.

“Net Book Value” has the meaning set forth in Section 18.8(3).

“On-site Dedicated Personnel” means Service Provider Personnel assigned to perform Service Provider’s obligations under this Agreement at the HSSBC Facilities.

“Operations Manual” has the meaning set forth in Section 4.6.

“Out-of-Pocket Expenses” means the reasonable and actual out-of-pocket expenses incurred by a Party, but, for greater certainty, does not include such Party’s overhead cost or any administrative fee or other mark-up.

“Party” means either HSSBC or Service Provider, as the context requires, and **“Parties”** means both HSSBC and Service Provider.

“Pass-Through Expenses” means Out-of-Pocket Expenses relating to reasonable travel and living expenses incurred by Service Provider Personnel in accordance with this Agreement.

“Performance Guarantee” means the guarantee entered into by the Performance Guarantor as contemplated by this Agreement, in the form set forth in Schedule M (*Form of Guarantees*).

“Performance Guarantor” means *[Insert name of performance guarantor]*.

“Permitted Purpose” has the meaning set forth in Section 6 of Schedule L (*Privacy and Security*).

“Permitted Service Locations” has the meaning set forth in Section 4.5.

“Person” means any natural person, corporation, limited liability company, limited liability partnership, general partnership, limited partnership, trust, association, governmental organization or agency, political subdivision, body politic or other legal person or entity of any kind, legally constituted.

“Personal Information” means information about an identifiable individual as more particularly defined in FIPPA.

“PHSA” has the meaning set forth in the opening paragraph of the Agreement.

“Principally Dedicated” has the meaning set forth in Section 9.1(4).

“Privacy Laws” means all Federal, provincial and territorial legislation, regulations, and decisions, as amended or supplemented from time to time, now in force or that may in the future come into force in Canada governing the protection of personal information in the private and public sector, applicable to Service Provider or to HSSBC in relation to the Services or obligations under this Agreement, and includes the *Freedom of Information and Protection of Privacy Act* (FIPPA), *Personal Information Protection Act* (British Columbia).

“Privacy Requirements” has the meaning set forth in Section 1 of Schedule L (*Privacy and Security*).

“Problem” means a condition identified as a result of multiple Incidents that exhibits common symptoms, or a single significant Incident for which the cause is unknown but the impact is significant.

“Problem Management” means the process for performing a Root-Cause Analysis of the Incident or Incidents and then initiating actions to resolve or correct the situation. The Problem Management process is both reactive and proactive. The reactive Problem Management focuses on solving problems in

response to one or more Incidents. Proactive Problem Management focuses on identifying and solving Problems and Known Errors to eliminate future Incidents, all in a manner which minimizes any business impact on HSSBC. Problem Management includes: (i) trend analysis with respect to Incidents; (ii) effectively targeting support for Root-Cause Analysis and resolution; and (iii) communication with respect Problems and Problem Management to HSSBC to and within HSSBC. The Problem Management process is intended to reduce the number and severity of Incidents and Problems on the business, and report it in documentation to be available to the Service Desk.

“Receiving Party” means the Party that has received Confidential Information from the other Party.

“Renewal Term” has the meaning set forth in Section 18.2.

“Replacement Service Provider” has the meaning set forth in Section 19.1(1).

“Reporting Period” means all reports are provided on a monthly basis, within three (3) Business Days of the close of the calendar month, unless stated otherwise.

“Residuals” means general knowledge, skill and experience, and any ideas, concepts, or know-how, of a technical nature that are within the scope of the Recipient’s information technology operations and are used, acquired, or developed in the course of providing or receiving the Services.

“Resolve” means to repair, replace, reconfigure, reinstall, re-route, or otherwise provide a complete solution to an Incident that returns the system and/or Authorized User(s) to non-degraded full functionality. Implementing a Workaround is typically a partial or temporary resolution.

“Resources” has the meaning set forth in Section 14.4.

“Retained Contracts” means the Existing Contracts listed in Schedule X (*HSSBC Retained Contracts*).

“Retained Records” has the meaning set forth in Section 16.1.

“RFP” has the meaning set forth in Recital B.

“RFPQ” has the meaning set forth in Recital A.

“Root-Cause Analysis” means the performance of an analysis on Incidents and Problems including failure to meet or exceed a SLA, to identify the root cause of such Incidents and Problems, including failure to meet or exceed a SLA, and to develop and recommend to HSSBC a complete solution to avoid and/or Resolve such Incidents and/or Problems in the future.

“Sales Taxes” means commodity, value-add and sales taxes applicable by law to, and payable by HSSBC on, the Services and any goods provided hereunder, but excludes any taxes on the income, personnel, property or other assets which are used by Service Provider in connection with the Services.

“SAS70” means the American Institute of Certified Public Accountants statement on auditing standards number 70.

“Satisfaction Survey” means the satisfaction surveys of the HSSBC users regarding the Services.

“Secured Databases” has the meaning set forth in Section 20 of Schedule L (*Privacy and Security*).

“Secured Equipment” has the meaning set forth in Section 21 of Schedule L (*Privacy and Security*).

“Secured Media” has the meaning set forth in Section 26 of Schedule L (*Privacy and Security*).

“Services” has the meaning set forth in Section 4.1.

“Service Desk” means the help desk for Authorized Users of the Services as described in Schedule D (*Managed Services*).

“Service Levels” means, as the context may imply or require, SLAs and/or SLOs.

“Service Level Reports” has the meaning set forth in Section 5.6.

“Service Provider” means [●], and includes its successors and permitted assigns.

“Service Provider Commercial Software” means the software that is used by Service Provider in connection with providing Services, which is owned or developed by Service Provider or any of its Affiliates and is made available commercially to third parties.

“Service Provider Confidential Information” means records, data, and information that is either marked or identified as “confidential” or by its nature or the circumstances under which it is disclosed ought reasonably to be considered as confidential to Service Provider, that is obtained by HSSBC from Service Provider or its Affiliates or Subcontractors in connection with this Agreement, including, without limitation

- (a) all statistical information, personnel information, and business plans relating to Service Provider; and
- (b) all technical information, materials, data, reports, programs, documentation, diagrams, not developed by Service Provider specifically for HSSBC.

Service Provider Confidential Information will not include any HSSBC Confidential Information or information that HSSBC can demonstrate was: (a) at the time of disclosure to HSSBC, in the public domain; (b) after disclosure to HSSBC, published or otherwise made a part of the public domain through no fault of HSSBC; (c) in the possession of HSSBC at the time of disclosure to it and HSSBC was not then under an obligation of confidentiality with respect thereto; (d) received, after disclosure by Service Provider to HSSBC, from a Third Party who had a lawful right to disclose such information to HSSBC free from any obligation of confidentiality; (e) independently developed by HSSBC without reference to Service Provider Confidential Information or (f) disclosed by Service Provider to a Third Party without obligation of confidentiality. For purposes of this provision, information is in the public domain if it is generally known (through no fault of HSSBC) to Third Parties that are not subject to nondisclosure restrictions with respect to such information.

“Service Provider Contract Executive” has the meaning set forth in Schedule H (*Governance*).

“Service Provider Custom Software” means software already owned by Service Provider as of the date of, and independent from, this Agreement, which is not generally licensed by Service Provider, as licensor, to others, as licensee, on commercially available terms, and that is used in the provision of the Services; for the purposes of clarity, Service Provider Custom Software excludes HSSBC-Owned Materials and Third Party Software.

“Service Provider Hardware” means any equipment owned, leased or otherwise held by Service Provider that is used by Service Provider in providing the Services, including the Hardware listed in Schedule V (*Service Provider Supplied Hardware*), but excluding the HSSBC Hardware.

“Service Provider Indemnified Materials” has the meaning set forth in Section 21.4.

“Service Provider Indemnified Parties” has the meaning set forth in Section 21.2.

“Service Provider Intellectual Property” has the meaning set forth in Section 21.4.

“Service Provider Key Personnel” means the personnel of Service Provider and its Subcontractors who are so designated in Schedule BB (*Service Provider Key Personnel*), as amended from time to time in accordance with Article 9.

“Service Provider-Licensed Third Party Software” means software that is owned by a Third Party and licensed by Service Provider or any of its Affiliates that HSSBC agrees Service Provider can use to provide the Services, together with all supporting documentation, media and related materials provided therewith.

“Service Provider-Owned Software” has the meaning set forth in Section 12.2.

“Service Provider Parent” means [●], and includes its successors and permitted assigns.

“Service Provider Parent Guarantee” means the guarantee, in the form attached hereto as Schedule M (*Form of Guarantees*), provided by Service Provider Parent of the due and punctual performance of all of the obligations of Service Provider under this Agreement.

“Service Provider Personnel” means Service Provider Key Personnel, and all other personnel assigned by Service Provider or its Subcontractors to perform Service Provider’s obligations under this Agreement including, for greater certainty, independent contractors of the Service Provider or Subcontractors. For clarification, where they Service Provider will cause Service Provider Personnel to provide Services, carry out a task or an obligation, or otherwise, as the case may be, the Subcontractor will cause its personnel and independent contractors to provide such Services, carry out such task or such obligation, or otherwise, as the case may be.

“Service Provider Proposal” has the meaning set forth in Recital C.

“Service Provider Service Delivery Managers” has the meaning set forth in Schedule H (*Governance*).

“Service Provider Taxes” has the meaning set forth in Section 17.4(1).

“Service Provider Tools” has the meaning set forth in Section 12.1.

“Service Rates” means the hourly service rates set forth in Schedule DD (*Fees*) as such rates may be adjusted.

“Service Start Date” means the date on which Service Provider begins to provide a particular Service as set forth in the Transition In Plan (as such date may be amended by agreement of the Parties). For greater certainty, there may be a different Service Start Date for each Service. The Service Start Date will refer to a particular Service, or to the first Service Start Date of the Services, as the context requires.

“Services” has the meaning set forth in Section 4.1.

“Severance Costs” means, in relation to an employee, costs related to employee severance and notice entitlements that arise under applicable employment standards legislation and at common law, excluding such costs arising from extraordinary payments due and owing to an employee upon termination of

employment by virtue of the unlawful or improper conduct of the current employing Party or any contract between the current employing Party and the employee where those costs materially exceed the employee's entitlements under applicable legislation and at common law.

"SLA" means a service level requirement, including those service level requirements set out in Schedule F (*Service Levels*).

"SLA Credit" has the meaning set forth in Schedule F (*Service Levels*).

"SLA Failure" has the meaning set forth in Section 5.9.

"SLA/SLO Changes" has the meaning set forth in Section 5.12.

"SLA Reporting Interval" means, with respect to an SLA, the SLA Reporting Interval set forth in Schedule F (*Service Levels*) which corresponds to that SLA (as SLAs may be added or amended pursuant to Sections 5.11 and 5.12).

"SLA Termination Event" has the meaning set forth in Schedule F (*Service Levels*).

"SLA Weighting Factor" means, with respect to an SLA, the SLA Weighting Factor set forth in Schedule F (*Service Levels*) which corresponds to that SLA (as such factors may be added to or amended pursuant to Sections 5.11 and 5.12).

"SLO" means a service performance standard that is not identified as an SLA, and includes service performance standard which is specifically identified as an SLO in this Agreement.

"Software" means all of the software listed in the Schedules, and other incidental or related software used in connection therewith, as such software may be modified, supplemented or replaced through the Change Process or as a result of Support.

"Specifications" means the functional and technical requirements as: (a) set forth in applicable HSSBC documentation, and (b) specified by applicable Software and/or Hardware manufacturers, providers or licensors.

"Store" or **"Storage"** has the meaning set forth in Section 18 of Schedule L (*Privacy and Security*).

"Subcontractor" means, subject to the terms of Sections 10.1 and 16.8, any Person other than Service Provider or its employees, including any consultant, that provides Services to HSSBC pursuant to a Contract with, or on behalf of, Service Provider.

"Support" means such services as are required to sustain the operation of the Hardware and Software and the performance of the Services, including (i) the Maintenance and management of the applicable Software and Hardware as generally performed by or on behalf of HSSBC on or before the Service Start Date and as may be modified in accordance with this Agreement and/or the Change Process, including setting up and managing user IDs and passwords, changing authorization tables, Access Provisioning and reporting; (ii) changes that need to be implemented on a timely basis to mitigate risk of loss, damage or other adverse consequence to HSSBC's business and includes Emergency Changes; (iii) reactive changes performed to correct reported faults impacting the normal operation or compliance to Specifications including restoring to regular usage and functionality; and (iv) changes for the purpose of preventing Incidents or Problems before they occur.

"System Logs" has the meaning set forth in Section 28 of Schedule L (*Privacy and Security*).

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“**Tax(es)**” means goods, services, sales, harmonized sales, commodity, use, excise, value-added, services, withholding, consumption, employment, capital, access, payroll (including other employment-related taxes and source deductions) and other taxes.

“**Term**” means the period of time from the Effective Date until the termination of this Agreement during or at the end of the Initial Term or any Renewal Terms.

“**Termination Date**” means 11:59 p.m., Vancouver time on the specified date of termination, as specified in a Termination Notice.

“**Termination Fee**” means the applicable amount, determined as of the Termination Date, as set forth in Schedule DD (*Fees*).

“**Termination Notice**” means a written notice of termination as required under this Agreement.

“**Third Party**” means a Person or entity other than the Parties, their Affiliates or any director, employee or agent of any of the Parties or their Affiliates.

“**Third-Party Resources**” has the meaning set forth in Section 14.4.

“**Third Party Software**” means any software that is subject to a license from a third party Person or an Affiliate of Service Provider, other than “shrink wrap” or “click wrap” Software that is generally commercially available, that is required for use by Service Provider in providing the Services under this Agreement; for the purposes of clarity, Third Party Software excludes HSSBC-Owned Materials and Service Provider Custom Software.

“**Transition**” has the meaning set forth in Section 3.1.

“**Transition Assistance**” means all activities and tasks that are necessary to conduct a successful transition of the Services from Service Provider to HSSBC and/or the Replacement Service Provider and to perform the obligations set forth in Article 19 of this Agreement. Transition Assistance includes all activities and tasks specified in the Transition Out Plan.

“**Transition In Plan**” means the transition in plan agreed to by the Parties and attached as part of Schedule B (*Transition In Plan - Framework*).

“**Transition In Services**” means those transition in services as more particularly described in Article 3 and the Transition In Plan.

“**Transition In Services Fees**” has the meaning set forth in Section 17.2.

“**Transition Notice Date**” means (a) in the case of expiry of this Agreement, the date designated by HSSBC in connection with expiration of the Term and, (b) in the case of termination of this Agreement, the date on which Termination Notice is received by the non-terminating Party.

“**Transition Out Period**” has the meaning set forth in Section 19.2.

“**Transition Out Plan**” means the transition out plan agreed to by the Parties and attached as part of Schedule J (*Transition Out Plan*).

“**Transition Out Services**” means the termination assistance services as more particularly described in Article 19 and the Transition Out Plan, and includes Transition Assistance.

“US Service Provider Personnel” has the meaning set forth in Section 37 of Schedule L (*Privacy and Security*).

“Workaround” means a change made to restore the functionality of the service affected by an Incident. A Workaround is typically a temporary solution that Service Provider or HSSBC can implement in the event of an Incident, or the failure of Service Provider to meet a SLA, as a method of restoring full Service or process functionality that allows the affected system(s) and/or process(es) to deliver to HSSBC the desired level of business operations functionality until a permanent solution can be implemented.

SCHEDULE L

PRIVACY AND SECURITY

to

SERVICES AGREEMENT

by and between

**HEALTH SHARED SERVICES BRITISH COLUMBIA, VANCOUVER
COASTAL HEALTH AUTHORITY, BY ITS AGENT HEALTH SHARED
SERVICES BRITISH COLUMBIA**

and

[SERVICE PROVIDER]

[DATE]

Important Note: This Privacy and Security Schedule forms part of the form of Services Agreement. The Services Agreement represents the form of agreement (general terms and conditions) upon which Provincial Health Services Authority, through its division HSSBC, intends to enter into contracts with third party service providers for its complex commercial arrangements.

1. General Purpose

The purpose of this **Schedule L** (*Privacy and Security*) and Appendix A hereto is to set forth the obligations of Service Provider relating to the protection of Personal Information to ensure that Personal Information is not accessed, collected, used or disclosed by Service Provider in connection with performing the Services, other than as may be permitted under Applicable Laws (including Privacy Laws and the *e-Health Act*) and, subject to compliance with Applicable Laws: (i) in the ordinary course of providing the Services, provided such disclosure is within Canada; (ii) as set out in Article 13 (*Privacy, Security and Confidentiality*) of the Agreement; (iii) as may be directed by HSSBC under Section 5 of this Schedule; (iv) strictly in accordance with Appendix A hereto; or (v) strictly in accordance with policies or procedures expressly set forth in this Schedule or in the HSSBC Policies and Procedures, including those policies implemented through the Change Process (collectively, the “**Privacy Requirements**”).

2. Acknowledgements

The Parties acknowledge that:

- (a) HSSBC (including, for greater certainty, the Health Organizations) is a “public body” (as that term is defined in FIPPA), are each regulated by FIPPA and each owe duties and obligations of privacy with regard to the use, collection, disclosure, storage and disposal of Personal Information obtained by it;
- (b) HSSBC may have Custody and/or Control of Personal Information;
- (c) Service Provider is a “service provider” (as that term is defined in FIPPA) and is subject to certain obligations under FIPPA;
- (d) Personal Information includes (i) information that HSSBC (including, for greater certainty, the Health Organizations) are obligated to protect pursuant to privacy legislation, (ii) highly sensitive confidential information, and (iii) health personal information, including clinical patient information;
- (e) in connection with providing the Services, Service Provider will have the ability to access Personal Information and Service Provider may obtain such access and may obtain Custody or Control (as defined below) of Personal Information;
- (f) HSSBC (including, for greater certainty, the Health Organizations) have Control and/or Custody of Personal Information in order that HSSBC (including, for greater certainty, the Health Organizations) may serve the public;
- (g) Personal Information is collected, used, disclosed and otherwise managed by HSSBC (including, for greater certainty, the Health Organizations) on behalf of the public;
- (h) this Schedule is premised on the commitment of HSSBC (including, for greater certainty, the Health Organizations) as owners and controllers of Personal Information, and Service Provider’s commitment as a service provider to HSSBC (including, for greater certainty, the Health Organizations), to maintain the privacy and security of Personal Information; and

- (i) nothing in this Schedule shall require Service Provider or any Subcontractor to act contrary to Applicable Laws.

For the purposes of this **Schedule L (Privacy and Security)**, “**Control**” means, as between the Parties, the power or authority to manage, restrict, regulate or administer the use or disclosure of Personal Information.

3. Service Provider Commitment

In order to protect Personal Information that is accessed by or in the Custody of, or that may come under the Control of, Service Provider, HSSBC requires Service Provider’s commitment, and Service Provider has committed, to comply with the Privacy Requirements. Service Provider shall develop and maintain policies and procedures specific to the privacy and security of the Personal Information as described in this **Schedule L (Privacy and Security)**, including those listed in or required under Appendix B (*Privacy Management Plan*) hereto, and Service Provider will maintain current policies and procedures that will, at all times, be consistent with the Agreement and this **Schedule L (Privacy and Security)**. In developing the policies and procedures required under this Section, Service Provider shall review and, where it deems appropriate, incorporate into such Service Provider policies and procedures, language from HSSBC’s policies relating to the privacy and security of Personal Information, as those policies are provided to Service Provider as part of HSSBC Policies and Procedures.

Service Provider shall have an ongoing obligation to monitor and detect any failure in its performance of its obligations under Schedule L or the performance of the Service Provider Personnel and Subcontractors. Service Provider shall promptly report any such failure to HSSBC and in the case of any material failure shall report same within 24 hours. Service Provider will diligently and promptly correct any failure it detects or otherwise becomes aware of, including from HSSBC. For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations in this paragraph in any material respect there shall be no cure period.

4. Conflicts

Notwithstanding the provisions of Section 2.12(1) of the Agreement (*Priority*), if there is a conflict with or inconsistency between the provisions of this **Schedule L (Privacy and Security)** and the provisions of the Agreement or the provisions of this **Schedule L (Privacy and Security)** any other Schedule attached to the Agreement, then the provisions of this **Schedule L (Privacy and Security)** shall govern. If there is a conflict with or inconsistency between the provisions of the main body of this **Schedule L (Privacy and Security)** and the provisions of Appendix A hereto, then the provisions of the main body of this **Schedule L (Privacy and Security)** shall govern.

5. Directives

HSSBC may at any time, issue a directive to amend these Privacy Requirements upon reasonable prior written notice (under the circumstances) to Service Provider. Such amendments shall be implemented in accordance with the Change Process.

6. Access to Personal Information

Service Provider acknowledges that, in connection with providing the Services, Service Provider and its Subcontractors will have the ability to access Personal Information and, through such access, may obtain Custody or Control of Personal Information under the Custody and/or Control of HSSBC (including, for

greater certainty, the Health Organizations). To the extent that Service Provider accesses Personal Information, Service Provider shall:

- (a) only provide or enable access to Personal Information in Canada, as permitted by Applicable Laws and as necessary for the provision of the Services in the manner and to the extent provided in the Agreement (the “**Permitted Purpose**”); and
- (b) not provide or enable access to Personal Information for any period of time that is longer than required for the completion of a specific Service in accordance with a Permitted Purpose.

Service Provider acknowledges that the manner of the Services may enable Service Provider Personnel (which includes, for greater certainty, Subcontractor personnel) to access Personal Information that may not be strictly necessary for any particular Permitted Purpose. Service Provider shall, to the greatest extent possible, restrict access to Personal Information to Authorized Service Provider Personnel (defined below) who need such access in order to perform the specific Services relevant and necessary for that particular Permitted Purpose and shall, to the greatest extent possible, restrict such access to the time necessary to complete those specific Services.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect and such failure results in access contrary to the Agreement there shall be no cure period. Otherwise a cure period of 14 days will apply.

7. Non-Disclosure of Personal Information

Service Provider shall not disclose Personal Information to any Person for any reason other than as permitted in accordance with Applicable Laws (including Privacy Laws and the *e-Health Act*) and, subject to complying with Applicable Laws: (i) for a Permitted Purpose; and (ii) as contemplated pursuant to Article 13 (*Privacy, Security and Confidentiality*) of the Agreement. Without limiting the generality of the foregoing, Service Provider shall not disclose any Personal Information pursuant to a Disclosure Order, as more expressly limited pursuant to Article 13 (*Privacy, Security and Confidentiality*) of the Agreement.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect no cure period will apply.

8. Anticipatory Disclosure of Personal Information

Where HSSBC determines, acting reasonably, that there is a risk that Personal Information may be disclosed contrary to the terms of the Agreement or this **Schedule L** (*Privacy and Security*), then HSSBC will have the right, as a first step, to require that Service Provider immediately suspend or revoke the right of access to any network or system containing Personal Information by any Authorized Service Provider Personnel posing such risk that Personal Information may be disclosed. For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations in this paragraph in any material respect a cure period of 7 days will apply.

Thereafter, if HSSBC deems it necessary, HSSBC will have the right to do either or both of the following:

- (a) to proceed to court in respect of such potential disclosure; and/or
- (b) to require that Service Provider immediately temporarily replace any Service Provider Personnel in order to allow HSSBC to take all actions necessary to prevent such disclosure, provided that: (i) such replacement personnel shall have the same or substantially similar qualifications as the Service Provider Personnel being temporarily replaced, and where no such replacement personnel is available, HSSBC shall have the right to appoint a monitor to observe such Service Provider Personnel; and (ii) HSSBC's right to temporarily replace or monitor any Service Provider Personnel shall be restricted to the acts and limited to the time period reasonably necessary to prevent such disclosure. HSSBC shall give Service Provider written notice of any temporary replacement or monitoring of Service Provider Personnel under this Section and in such notice shall specify the circumstances and grounds upon which HSSBC is relying in exercising its rights hereunder, in sufficient detail to enable Service Provider to assess and respond to the same. Notwithstanding the foregoing, any such response from Service Provider shall not entitle Service Provider to prevent HSSBC from exercising its rights under this paragraph (b) (it being acknowledged by the Parties that Service Provider shall be entitled to bring its response forward through the dispute resolution process set forth in Article 24 (*Dispute Resolution*) of the Agreement should Service Provider reasonably believe that HSSBC did not have proper grounds for exercising its rights under this paragraph). For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations in this paragraph in any material respect and thereby prevents HSSBC from exercising its rights under this paragraph (b) a cure period of 7 days will apply.

Where HSSBC intends to exercise its rights under Section 8(b) above, then HSSBC shall, prior to such exercise, provide to the **[Insert Senior Executive]** of Service Provider as set out in **Schedule BB** (*Service Provider Key Service Provider Personnel*) or the next most senior individual in an Service Provider Key Service Provider Personnel a written notice that contains:

- (a) the basis for belief that there is a risk that Personal Information may be disclosed by Service Provider or its Subcontractors contrary to the terms of the Agreement;
- (b) the period, if any, during which Service Provider may attempt to reasonably prevent the disclosure or remedy the risk;
- (c) the general course of action that HSSBC proposes to take and any powers provided for in the Agreement, including this Schedule L (*Privacy and Security*) that HSSBC proposes to exercise; and
- (d) the expected length of time that this action is anticipated to take.

Upon receipt of such notice Service Provider shall notify HSSBC's Privacy Officer or, in that person's absence, any HSSBC senior executive designated by such person of the actions that Service Provider will take to prevent the disclosure or remedy the risk where given the opportunity to do so.

Notwithstanding the foregoing, nothing in this Section or otherwise in the Agreement will limit or prevent HSSBC from taking all actions necessary or required, including directing Service Provider to take actions necessary or required, to prevent or reduce the risk of the disclosure of Personal Information or to remedy the risk, as HSSBC may be required to take under Applicable Law or pursuant to a direction or order issued by the Commissioner.

9. Compliance Certificate

Within three months after the end of each calendar year during the Term, Service Provider shall deliver to HSSBC an annual compliance certificate signed by a senior executive of Service Provider and confirming, to the best of that senior executive's knowledge and belief, having made reasonable inquiry, including inquiry of the *[Insert Senior Executive]*, the individual responsible for monitoring and enforcing privacy and security measures designated by Service Provider under Section 30(c) of this **Schedule L (Privacy and Security)** and any other relevant Service Provider Personnel, and (b) all Subcontractors that have the ability to access Personal Information, Service Provider's and such Subcontractors' compliance with Article 13 (*Privacy, Security and Confidentiality*) and this **Schedule L (Privacy and Security)** and any other similar obligations contained in the provisions of the Agreement, subject to any issues identified by Service Provider in a schedule to that certificate.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations in this Section in any material respect a cure period of 14 days will apply.

The Parties shall review each compliance certificate at the *[Insert level of governance]* within three months of the date of delivery of such certificate.

10. Flow Down of Requirements

The obligations of Service Provider contained in the following Sections of these Privacy Requirements shall be flowed down by Service Provider to any Subcontractors, to the extent applicable to each Subcontractor given the nature of the Services provided by it: 6, 7, 9, 11, 12, 13 (unless agreed otherwise by HSSBC through the Governance Process on a case by case basis where Service Provider can demonstrate to the satisfaction of HSSBC that a particular Subcontractor has adequate training and security measures in place), 14(a), 15, 16, 17, 18(a) - (c) (unless agreed otherwise by HSSBC through the Governance Process on a case by case basis where Service Provider can demonstrate to the satisfaction of HSSBC that a Subcontractor has adequate security standards in place), 18(e) - 18(k), 19, 20, 21, 22, 23, 24, 25, 26, 28(a) -28(d), 30, 31, and 32 (as applicable to Subcontractors), 34 (as applicable to Subcontractors), 36 37, 39, 40 (to the extent applicable), 42 (provided that notice is given by the Subcontractor to Service Provider and from Service Provider to HSSBC), and 44. For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect a cure period of 14 days will apply.

11. Ownership and Control of Personal Information

HSSBC (and, for clarity, the respective Health Organizations, as applicable) shall be and remain the exclusive owners of all right, title and interest in and to all Personal Information and shall be and remain in complete Control of the Personal Information. No access to or Custody of Personal Information by Service Provider or any other Person as contemplated in the Agreement or this **Schedule L (Privacy and Security)** shall be construed in any manner as providing Control or any other rights with respect to such Personal Information.

12. Privacy Management Plan

Service Provider shall prior to the Services Start Date develop plans, policies and procedures specific to privacy and security as described in Appendix B (*Privacy Management Plan*) to this **Schedule L (Privacy and Security)** and that include protocols and procedures to be followed:

- (a) upon Service Provider having access to, or the ability to access, Personal Information, regardless of whether Service Provider has, or has had, actual access to Personal Information at the date such plans, policies and procedures are developed;
- (b) for the removal of any Secured Database (defined below), Supported Client Device or Secure Media (defined below) from any location as permitted by the Agreement or this **Schedule L** (*Privacy and Security*), including the development and maintenance of secure transportation protocols; and
- (c) upon any use or disclosure of Personal Information contrary to the provisions of the Agreement or this **Schedule L** (*Privacy and Security*).

Service Provider shall maintain such plans, policies and procedures and make them available for review by HSSBC upon the request of HSSBC from time to time. Service Provider shall not implement any material change to any such plans, policies or procedures without the prior written consent of HSSBC, which consent may be arbitrarily withheld.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

13. Training

Service Provider shall, and shall cause its Subcontractors to, maintain training plans and provide training that includes training of the Service Provider Personnel (which includes, for clarity, Subcontractor personnel) in the following:

- (a) aspects of privacy and security, including those set forth in these Privacy Requirements, as may be appropriate to their job function;
- (b) in respect of any Service Provider Personnel (including, for greater certainty, Subcontractor personnel) performing desk-side support services, policies relating to workstation access supervised by representatives of HSSBC (including, for greater certainty, the Health Organizations) unauthorized access, collection, creation, reproduction, use, storage, release, disposal, and disclosure of Personal Information;
- (c) the obligations that such Persons have directly to HSSBC with respect to the protection of Personal Information, if any, pursuant to FIPPA;
- (d) any requirement pursuant to FIPPA that there shall be no adverse consequences to such Persons in respect of such obligations;
- (e) in respect of any Authorized Service Provider Personnel relevant aspects of access, collection, storage, release, disposal and security of Personal Information as appropriate; and
- (f) the hotline established by HSSBC (telephone number 604.♦) pursuant to FIPPA in order that Service Provider Personnel (including, for greater certainty, Subcontractor

personnel) can notify HSSBC directly in the event of any unauthorized disclosure or potential unauthorized disclosure of Personal Information.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this paragraph in any material respect a cure period of 14 days will apply.

Service Provider shall provide, and shall cause Subcontractors to provide, refresher training in respect of the foregoing on an annual basis or where necessary to implement material changes in the applicable policies or procedures. Service Provider shall, and shall cause its Subcontractors to, develop and maintain staff manuals that detail the security and privacy procedures that are applicable to all Service Provider Personnel (including, for greater certainty, Subcontractor personnel), as applicable. Such staff manuals shall be developed in accordance with, and incorporate, the recommendations contained in Privacy Impact Assessments/Threat and Risk Assessments conducted pursuant to Section 14 below. For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations under this paragraph in any material respect a cure period of 30 days will apply.

14. Privacy Impact Assessments/Threat and Risk Assessments

During the Term of the Agreement, Service Provider shall conduct a threat and risk assessment in accordance with Section 16 below:

- (a) at each Service Provider Permitted Service Location prior to the provision of Services at or from that location, and for each Service Provider controlled area of an HSSBC Facility prior to the provision of Services at or from that location, in all cases using a checklist derived by Service Provider from ISO27002;
- (b) prior to any material change in Service Provider's procedures, applications or technology relating to or used in connection with the Services; and
- (c) promptly in the event of a security incident caused by Service Provider or a Subcontractor involving one or more hardware products (including any server, Supported Client Device or external storage device) containing, or that may contain, Personal Information.

HSSBC shall have the right to review the results of all threat and risk assessments undertaken by Service Provider and to disclose such results to specific Health Organizations, as determined by HSSBC.

In addition to the foregoing in this Section, to the extent required and upon request by HSSBC, Service Provider shall work cooperatively with HSSBC (including, for greater certainty, the Health Organizations) and shall assist HSSBC (including, for greater certainty, the Health Organizations) by providing technical information relating to its threat and risk assessments, based on the standards contained in ISO27002, for use in the preparation of a Privacy Impact Assessment by HSSBC (including, for greater certainty, the Health Organizations) to the acquisition of the Services.

With respect to Section 14(a) above, Service Provider will not implement any material change in the procedures, applications or technology relating to or used in connection with the Services unless and until the threat and risk assessments have been completed to the satisfaction of HSSBC (including, for greater certainty, the Health Organizations), each acting reasonably. Notwithstanding the foregoing, (a) HSSBC (including, for greater certainty, the Health Organizations) have the right to conduct, at their own

expense, their own Privacy Impact Assessments in respect of the foregoing; and (b) HSSBC has the right, at its own expense, to conduct its own security audits under Article 16 (*Record Keeping and Audit Rights*) of the Agreement in respect of the foregoing and to share the results of those audits with the specific Health Organizations as determined by HSSBC.

15. Testing and Development Work

Service Provider shall not access or use Personal Information or personally identifiable data of HSSBC or any member of the Health Organizations for any non-production purpose including, without limitation, application testing, development, maintenance and training environments.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees if it fails to fulfil its obligations above in this paragraph in any material respect no cure period will apply.

16. Risk Assessment

Periodically throughout the Term and also if directed to do so by the Commissioner for British Columbia (either directly or through a directive or order issued to the Ministry of Health, HSSBC or a member of the Health Organizations), Service Provider shall conduct a threat and risk assessment using a checklist derived by Service Provider from ISO27002 (as revised and replaced from time to time). For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails in any material respect to commence a threat and risk assessment in the manner required in this paragraph within 7 days after written notice from HSSBC instructing Service Provider to do so no further cure period will apply.

Service Provider shall provide a copy of the results of each threat and risk assessment to HSSBC prior to the implementation of any material technology changes or material business transformation changes. For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations in this Section in any material respect a cure period of 7 days will apply.

Notwithstanding the foregoing, HSSBC shall have the right to conduct, at its own expense, its own risk and control reviews or other security reviews to its satisfaction. Any such risk and control reviews or other security reviews shall be considered as audits carried out pursuant to and subject to the provisions of Article 16 (*Record Keeping and Audit Rights*) of the Agreement and shall in no way limit or otherwise diminish Service Provider's obligation to comply with the Privacy Requirements and the provisions of the Agreement. HSSBC shall have the right to disclose the results of any threat and risk assessment conducted under this Section (whether by Service Provider or HSSBC) to the Commissioner, the Ministry of Health, the Health Organizations and any other Person that HSSBC determines has a need to review such assessment.

17. Removal of Personal Information

Service Provider acknowledges that the Authorized Service Provider Personnel shall at no time be provided with the authority to remove Personal Information from any HSSBC Facility unless the purpose for such removal is expressly authorized elsewhere in these Privacy Requirements or in the Agreement (including in Appendix B (*Privacy Management Plan*) to this **Schedule L** (*Privacy and Security*)) or as otherwise agreed between the Parties.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 7 days will apply. With respect to the foregoing cure period, which such is available, for purposes of information which has been wrongfully removed from an HSSBC Facility, such a cure shall be accomplished by the return or destruction of such information (as instructed by HSSBC).

18. Security Generally

To the extent Service Provider accesses Personal Information, Service Provider shall make arrangements to maintain the security and integrity of Personal Information that is in its Custody or that may come under its Control by protecting that Personal Information against such risks as unauthorized (including accidental) access, collection, use, duplication, modification, disclosure, storage or disposal. In particular, Service Provider shall:

- (a) establish and maintain security arrangements consistent with the codes of practice for information security management outlined in ISO27002 (as revised and replaced from time to time);
- (b) meet or exceed the security policies, standards, guidelines and practices expressly set forth in this Schedule or other HSSBC Policies and Procedures, including those implemented through the Change Process;
- (c) assess and adopt privacy and security enhancing technologies and cryptographic controls over the Term to improve security and restrict access to Personal Information to Authorized Service Provider Personnel, as approved and implemented in accordance with the Change Process;
- (d) follow directives from HSSBC from time to time with respect to security requirements in accordance with the Change Process;
- (e) have in place for Service Provider's networks used to provide Services all necessary network controls and other network security to maintain the level of security required for the Personal Information being handled;
- (f) require that any access to Personal Information be limited to a Permitted Purpose, be subject to compliance with Applicable Laws, and be limited to the time necessary to complete that Permitted Purpose;
- (g) require that any storage of Personal Information in the Custody or under the Control of Service Provider be at all times in Canada and in accordance with the terms of the Agreement;
- (h) to the extent that Personal Information may be Stored by Service Provider or a Subcontractor, require that such Personal Information be removed from Service Provider's or its Subcontractors' systems, physical storage areas, storage devices (including removable media, back-up media and materials) upon the Termination of the Agreement, within an agreed period of time, and in accordance with the termination provisions under Article 19 (*Transition Out Services*) of the Agreement;

- (i) require that the equipment and telecommunications facilities used by Service Provider or its Subcontractors in the delivery of the Services (that are owned by or otherwise in the custody or control of Service Provider or its Subcontractors) that host, transmit, Store or otherwise make available or provide access to any Personal Information are located in Canada and are secured by, for example, an electronic card access system, combination lock, lock and key, or other similar physical security measure, where “**Store**” or “**Storage**” means storage of Personal Information except for storage on a temporary basis such as caching for ephemeral or immediate processing purposes;
- (j) require the currency of critical software installed on Service Provider’s computers such as installation of patches and virus software updates on a timely basis, and the proactive monitoring of vendor alert services; and
- (k) actively manage the Services and monitor Authorized Service Provider Personnel, including performing random spot checks periodically throughout the Term as set out in the Service Provider Privacy Management Plan, to prevent and detect security breaches such as unauthorized access to Personal Information, and incorporate procedures to require that all access to Personal Information is given only to Authorized Service Provider Personnel, and to promptly revoke access to any such Persons when no longer required.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

19. Physical and Environmental Security

Service Provider shall develop, maintain and enforce policies that require, throughout the Term, that:

- (a) all access to Service Provider Permitted Service Locations is restricted and monitored. In addition to the other obligations set forth in the Agreement and these Privacy Requirements, Service Provider shall require that all Service Provider Permitted Service Locations have adequate physical security controls such as keys, entry cards or other similar controls; and
- (b) Authorized Service Provider Personnel are prohibited from bringing into or removing from any HSSBC Facilities any hardware that contains or may contain Personal Information or electronic data storage devices that may be used to copy or transport any Personal Information, (i) except as set forth in Section 17 (*Removal of Personal Information*) above, and (ii) except that Service Provider shall have the right to bring into or remove from an HSSBC Facility hardware or electronic data storage devices in connection with the performance of Services pursuant to the following Schedules under the Agreement and as otherwise agreed:
 - (i) **[Insert Schedules as appropriate.]**

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal

Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

20. Secured Databases

Service Provider shall develop, maintain and enforce policies, standards and guidelines relating to Service Provider controlled systems that Store Personal Information (“**Secured Databases**”). Secured Databases do not include workstations or systems that have access to but do not Store Personal Information, except as agreed to by both Parties. Service Provider’s policy shall:

- (a) require that no Personal Information be stored by Authorized Service Provider Personnel on laptops, PDAs, or any other mobile computing devices unless authorized under or pursuant to the terms of the Agreement or otherwise approved in writing by HSSBC;
- (b) identify all Secured Databases including, where applicable, serial numbers;
- (c) protect Secured Databases in accordance with the authentications standards set forth in Section 23 (*Authentication Standards*) below;
- (d) require that an Service Provider firewall is in place between Service Provider owned and operated networks storing Secured Databases and other networks;
- (e) except as expressly set forth in this **Schedule L** (*Privacy and Security*) of the Agreement, provide that there shall be no remote access to any Secured Databases;
- (f) require that Secured Databases not be removed from Service Provider Permitted Service Locations except as permitted pursuant to Section 17 (*Removal of Personal Information*) of this Schedule or the provisions of the Agreement;
- (g) require that all Secured Databases not have any active writeable/recordable removable data storage devices (such as floppy drives, CD or DVD burners), and that all USB or other ports to which external storage devices (such as external hard drives, memory sticks or CD ROMs) may be connected be disabled for such use, except where required to perform the Services such as:
 - (i) for authorized back-up of Personal Information,
 - (ii) for the purposes of software updates, maintenance and emergency maintenance and where the Authorized Service Provider Personnel performing such software updates, maintenance and emergency maintenance use a personal computer, terminal or laptop that is subject to HSSBC’s usage and security policies and that it equipped with the most current security features and software as required by HSSBC’s policies (for greater clarity, “usage” of the personal computer, terminal or laptop will be limited to Authorized Service Provider Personnel and shall be restricted by credentials, including password or other user identification that is equivalent to the legal signature of Authorized Service Provider Personnel, protected using physical security measures that prohibit use of the media or access to the Personal Information contained thereon, and the Personal Information contained thereon shall be encrypted using cryptography that meets or exceeds the adopted cryptography standards of HSSBC as of the Effective Date;

- (h) require that all storage devices used in Secured Databases or otherwise containing Personal Information will be disabled prior to removal from the facilities where such storage devices are located and destroyed (using secure destruction and disposal mechanisms) strictly in accordance with policies or procedures expressly set forth in this Schedule or other HSSBC Policies and Procedures, including those implemented through the Change Process. For greater clarity, Service Provider shall not redeploy storage devices used in Secured Databases or otherwise containing Personal Information; and
- (i) require that any processing systems used to provide the Services that are shared with other clients of Service Provider or any Subcontractor are partitioned in such a way to allow only Authorized Service Provider Personnel to access any Personal Information.

For the purposes of this **Schedule L (Privacy and Security)**, “**remote access**” means, with respect to Secured Databases, access to Secured Databases by Authorized Service Provider Personnel from any location outside of the networks protected by Service Provider and as specifically approved in writing by HSSBC.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. A cure period of 14 days will apply.

21. Secured Equipment

Service Provider shall develop, maintain and enforce policies, standards and guidelines relating to Service Provider controlled Equipment that Stores Personal Information (“**Secured Equipment**”). Secured Equipment does not include workstations or systems that have access to but do not Store Personal Information, except as agreed to by both Parties. Service Provider’s policy shall:

- (a) require that no Personal Information is stored by Authorized Service Provider Personnel on laptops, PDAs, or any other mobile computing devices unless authorized under or pursuant to the terms of the Agreement or otherwise approved by HSSBC;
- (b) protect Secured Equipment in accordance with the authentications standards set forth in Section 23 (*Authentication Standards*) below;
- (c) require that an Service Provider firewall is in place between Service Provider owned and operated networks using Secured Equipment and other networks; and
- (d) require that any processing systems used to provide the Services that are shared with other clients of Service Provider or any Subcontractor are partitioned in such a way to allow only Authorized Service Provider Personnel to access any Personal Information.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

22. Desktop Computer/Mobile Devices

Service Provider shall develop, maintain and enforce policies, standards and guidelines relating to desktop computers. Service Provider's policy shall:

- (a) require that remote access to any desktop computer be limited to access for a Permitted Purpose, subject to requirements of Applicable Laws;
- (b) require that desktop computers shall not be removed from HSSBC Facilities by Service Provider Service Provider Personnel or any other Service Provider employee or independent contractor, except as permitted pursuant to Section 17 (*Removal of Personal Information*) of this Schedule or the provisions of the Agreement and except that Service Provider shall have the right to bring into or remove from an HSSBC Facility hardware products (including a Supported Client Device or external storage device) in connection with the execution of the Services pursuant to the following Schedules under the Agreement and as otherwise agreed:
 - (i) **[Insert Schedule as appropriate.]**
- (c) require that all fixed internal storage devices used in desktop computers or otherwise containing Personal Information be disabled and "locked down" by Service Provider Personnel prior to removal from an HSSBC Facility; and
- (d) where a fixed internal storage device used in a desktop computer or otherwise containing Personal Information is to be destroyed by Service Provider at the instruction of HSSBC or a member of the Health Organizations, require that all such devices be destroyed using secure destruction and disposal mechanisms (such as by the use of tools, including hammers, band saws or drills, so as to make the device no longer usable and the data on that device unreadable) and otherwise strictly in accordance with policies or procedures expressly set forth in this **Schedule L** (*Privacy and Security*) or other HSSBC Policies and Procedures, including those implemented through the Change Process.

If Service Provider acquires possession of any portable or external storage devices (*e.g.*, external hard drives, memory sticks, CD-ROMs) of HSSBC, any member of the Health Organizations or any HA User in the course of providing the Services, then Service Provider shall not remove any such device until an authorized representative of HSSBC or the applicable member of the Health Organizations, as the case may be, is present and upon removal Service Provider shall immediately deliver such device to that authorized representative.

For the purposes of this **Schedule L** (*Privacy and Security*), "**remote access**" means, with respect to desktop computers, access to desktop computers by Authorized Service Provider Personnel from any location outside of the HSSBC Facilities where that desktop computer is located and as specifically approved by HSSBC.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

23. Authentication Standards

Service Provider shall develop, maintain and enforce policies, standards and guidelines that require of all systems controlled by Service Provider and used to provide Services under the Agreement:

- (a) credentials and other mechanisms, including passwords and access codes, to restrict access to Personal Information;
- (b) strong and unique user IDs and credentials, including passwords and access codes, assigned to individual Authorized Service Provider Personnel;
- (c) power-on and screen-saver passwords and session time-outs (as appropriate);
- (d) strong authentication, credential and password rules and standards, including standards relating to character length and time-expiry of passwords, strictly in accordance with policies or procedures expressly set forth in Service Provider policies; and
- (e) other similar measures.

Service Provider shall be responsible for the actions of the Service Provider Personnel (which includes, for clarity, Subcontractor personnel) under this **Schedule L** (*Privacy and Security*) and otherwise with respect to the Privacy Requirements, including all loss or damage suffered or incurred by HSSBC or any member of the Health Organizations resulting from or relating to:

- (a) the loss or disclosure of any password, user ID, access code or other credentials of or assigned to any Service Provider Personnel;
- (b) all activities performed, or any failure to perform such activities, under its passwords, user IDs, access codes or other credentials.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

24. Internet/Email

- (a) Effective as of the Services Start Date, HSSBC shall establish and assign email accounts (the “**Assigned Accounts**”) on the internal email system of HSSBC or of a Health Authority (the “**HSSBC Email System**”) for each Authorized Service Provider Personnel in connection with the performance of the Services. Any and all email communication containing Personal Information shall be communicated by Service Provider within the HSSBC’s Email System using the Assigned Accounts only. If HSSBC communicates Personal Information to Service Provider using an Service Provider email address (for

example, XXX.com), then Service Provider shall be deemed not to be in breach of Sections 6(a) and (b) (*Access to Personal Information*), and 26 (*Transmission and Back-ups of Personal Information*), of these Privacy Requirements, nor is it an Event of Termination pursuant to Section 18.5(11) (*Events of Termination*) of the Agreement. In addition, in the event HSSBC communicates Personal Information to Service Provider using an Service Provider email address and the actual recipient of the email is not an Authorized Service Provider Personnel, then Service Provider shall be deemed not to be in breach of Sections 31 (*Limiting Access to Authorized Service Provider Personnel*) or Section 36 (*Security Clearances*) of these Privacy Requirements on the basis that such Service Provider employee has not entered into a Service Provider Personnel Agreement or undergone the required security clearance. However, for greater certainty, all other provisions of the Agreement and these Privacy Requirements relating to the disclosure and use of Personal Information shall continue to apply.

- (b) Service Provider shall develop, maintain and enforce policies, standards and guidelines relating to Service Provider's receipt of email from HSSBC or a member of the Health Organizations containing Personal Information and the transmission of email containing Personal Information, which policies, standards and guidelines shall require that any Personal Information contained in such email will not be disclosed to any Person other than HSSBC or a member of the Health Organizations unless the disclosure is:
 - (i) permitted under Article 13 (*Privacy, Security and Confidentiality*) of the Agreement or these Privacy Requirements;
 - (ii) necessary for the ordinary performance of the Services in accordance with the Agreement or as otherwise approved by HSSBC in writing; and
 - (iii) permitted in accordance with FIPPA, and for purposes thereof, Service Provider shall comply with FIPPA with respect to that Personal Information to the extent such Act applies to Service Provider as a "service provider" as defined in such Act.

Without limiting the generality of the foregoing, Service Provider shall not disclose any Personal Information contained in an email sent from HSSBC or a member of the Health Organizations to Service Provider via an Service Provider email address pursuant to a Disclosure Order, as more expressly described in Article 13 (*Privacy, Security and Confidentiality*) of the Agreement.

- (c) The Parties acknowledge that email communication may result in Personal Information being temporarily stored on laptops or personal digital assistants ("PDAs") used by the Authorized Service Provider Personnel, which laptops and PDAs will not be required to be maintained at HSSBC Facilities or Service Provider Permitted Service Locations (notwithstanding the provisions of Section 6(a) or (b) (*Access to Personal Information*) or Section 17 (*Removal of Personal Information*) or Section 19 (*Physical and Environmental Security*) above).

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

25. Wireless Network Controls

Service Provider may use wireless networks owned or operated by it for the performance of the Services, provided that no such wireless network shall connect to or otherwise access any network owned or operated by HSSBC or a member of the Health Organizations. To the extent Service Provider or a Subcontractor accesses Personal Information, Service Provider shall not, and shall ensure that its Subcontractors do not, transmit any Personal Information over a wireless network that is not owned or operated by HSSBC or any member of the Health Organizations.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

26. Transmission and Back-ups of Personal Information

Service Provider shall develop, maintain and enforce policies, standards and guidelines that require that throughout the Term all individual items of hardware or storage media that Store Personal Information that are permitted or required, pursuant to the Agreement or to these Privacy Requirements, to be removed from either Service Provider Permitted Service Locations or HSSBC Facilities (“**Secured Media**”), may only be removed for purposes such as off-site back-up and business continuity, destruction or at the express direction of HSSBC in writing. Access to Secured Media shall be restricted by credentials, including password, protected using physical security measures that prohibit use of the media or access to the Personal Information contained thereon, and the Personal Information contained thereon shall be encrypted using cryptography that meets or exceeds the adopted cryptography standards of HSSBC as of the Effective Date.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

27. Intentionally Deleted

28. System Logs

Service Provider shall design and implement for the purpose of audit and investigation by HSSBC a system to record and maintain all user access records/logs (“**System Logs**”) for all Service Provider Personnel who (i) access devices, or (ii) access any Service Provider systems that have access to or that may enable a user to access Personal Information. Service Provider shall require that Service Provider developed applications that have access to or enable a user to access Personal Information shall conform to paragraphs (a) - (c) below, and that any applications delivered to Service Provider that support an audit trail shall continue to have such support.

With respect to each desktop computer, the System Logs shall, at a minimum, automatically record the identity of the Service Provider Personnel accessing that device and the time of such Service Provider Personnel’s logon to and log-off from that device. With respect to any Service Provider systems that have access to or that may enable a user to access Personal Information, the Systems Logs shall, at a minimum, automatically record the following:

- (a) the time of each data entry, modification, and duplication of Personal Information and the user ID performing the function;
- (b) the time at which Personal Information is accessed and the identity of the Service Provider Personnel gaining the access;
- (c) the identity of the Service Provider Personnel and the time of such Service Provider Personnel's logon to and log-off from Secured Databases, devices and/or Secured Equipment, VPN login and logout time/date, IP addresses of Authorized Service Provider Personnel having remote access, IP addresses assigned to each Authorized Service Provider Personnel from the VPN address pool, connection time and packet information; and
- (d) logs of individuals who access any Service Provider Permitted Service Location (such as sign-in logs, whether paper or electronically based).

Service Provider shall not modify or erase any System Logs stored on desktop computers except at the written instruction of HSSBC and shall make information from such logs, whether relating to an individual desktop computer or to multiple desktop computers, available to HSSBC in a timely manner as HSSBC may reasonably request from time to time for audit, investigation and spot check by HSSBC. Service Provider shall retain all System Logs relating to Service Provider systems that have access to or that may enable a user to access Personal Information for a minimum of two years unless otherwise agreed to in writing by HSSBC and shall make information from such logs available to HSSBC in a timely manner as HSSBC may reasonably request from time to time for audit, investigation and spot check by HSSBC.

The Parties acknowledge that as technology evolves during the Term of the Agreement, there may be other data that HSSBC will require Service Provider to log as part of the System Logs.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

29. Notification

Service Provider shall develop, maintain and enforce policies, standards and guidelines that require that Service Provider systems that Store or that may enable access to Personal Information have mechanisms in place to provide notification to a Person or Persons designated by HSSBC in the event of specific irregular actions such as unauthorized access, security malfunction, irregular access, large scale copying or other similar activities with respect to Personal Information. For the purposes thereof, Service Provider shall require that its Subcontractors report any such irregular actions to Service Provider, and Service Provider shall report the same forthwith to HSSBC in accordance with the foregoing.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations in this Section in any material respect a cure period of 30 days will apply.

30. Organizational Security

Service Provider shall throughout the Term:

- (a) have clearly defined security roles and responsibilities within Service Provider in the form of organization charts and role descriptions for specialized security personnel;
- (b) ensure appropriate security requirements and confidentiality and non-disclosure obligations are included in all of its Subcontractor contracts entered into in connection with providing the Services;
- (c) have a designated Privacy, Security and Compliance Officer, who is not a US Service Provider Personnel (defined below), responsible for monitoring and enforcing privacy and security measures and who is responsible for overseeing the implementation Directives of HSSBC relating to the Privacy Requirements; and
- (d) have an individual who is not a US Service Provider Personnel (defined below) act in administrator roles with elevated access privileges, such as Systems Administrator, Network Administrator, Database Administrator, Security Administrator or Applications Administrator or other similar positions.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations in this Section in any material respect results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

31. Limiting Access to Authorized Service Provider Personnel

Service Provider shall require that all individuals who have access or who may obtain access to Personal Information:

- (a) are Service Provider Personnel who are employees of Service Provider who have entered into a Confidentiality Covenant (as defined below) or Subcontractor personnel of a Subcontractor who have entered into an agreement as contemplated in Section 0 (*External Confidentiality Covenant*) of this **Schedule L (Privacy and Security)**;
- (b) are not US Service Provider Personnel; and
- (c) have a need to know or to have access to the Personal Information in order to perform their job tasks (provided that such job tasks are in furtherance of the Services and are not inconsistent with the terms or the purpose of these Privacy Requirements),

(“**Authorized Service Provider Personnel**”).

Service Provider shall create and deliver to HSSBC a complete and accurate list of all Service Provider Personnel (which includes, for clarity, Subcontractor personnel) who will or may have access to or obtain Custody of any Personal Information in connection with providing Services under the Agreement as at the

Effective Date. From time to time during the Term, Service Provider will provide HSSBC with prompt written notice of any changes to or the departure or cessation of employment of any such Service Provider Personnel (which includes, for clarity, Subcontractor personnel).

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect and such failure results in results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 will apply.

32. Monitoring of Telephone Calls

To the extent and for so long as Service Provider has a telephone monitoring system in place, Service Provider shall require that any Personal Information obtained from such monitoring is:

- (a) not Stored at or accessed from any location outside of Canada; and
- (b) only used by or disclosed to Authorized Service Provider Personnel. Service Provider shall maintain and enforce policies that prohibit the use or disclosure of any sensitive monitored information by its Authorized Service Provider Personnel.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations in this Section in any material respect results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

33. Service Provider Personnel Confidentiality Covenant

All Service Provider Personnel who have access to, or who have the ability to access, Personal Information shall be required to sign confidentiality covenants directly with Service Provider in a form approved by HSSBC (the “**Confidentiality Covenants**”). The Confidentiality Covenants shall contain non-disclosure obligations along with express obligations to advise Service Provider directly in the event that the Person becomes aware of any disclosure or potential disclosure of Personal Information. Service Provider shall not permit any Service Provider Personnel to engage in any activities with respect to the Services or the Agreement nor have any access to Personal Information until such time as a Confidentiality Covenant has been signed and delivered by the Service Provider Personnel to Service Provider. Upon the request of HSSBC, Service Provider shall confirm, in writing, to HSSBC that all Service Provider Personnel who require access to Personal Information have signed a Confidentiality Covenant. The form of Confidentiality Covenant in effect at the Effective Date is attached as Appendix C to this **Schedule L** (*Privacy and Security*). Any change in the form of a Confidentiality Covenant implemented after the Effective Date shall be implemented in accordance with the Change Process. Service Provider shall cause all Service Provider Personnel to reconfirm in writing their Confidentiality Covenants on an annual basis.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

34. Subcontractor Personnel Confidentiality Covenant

All Subcontractor personnel who have access to, or who have the ability to access, Personal Information shall be required to sign external confidentiality covenants directly with the Subcontractor in a form approved by HSSBC (the “**External Confidentiality Covenants**”). The External Confidentiality Covenants shall contain non-disclosure obligations along with express obligations to advise the Subcontractor directly in the event that the Subcontractor personnel becomes aware of any disclosure or potential disclosure of Personal Information. Service Provider shall not permit any such Subcontractor personnel to have any access to any Supported Client Device or any other system that has or may permit access to Personal Information until such time as that Subcontractor personnel have signed an External Confidentiality Covenant and all such signed agreements have been delivered to Service Provider. At the request of HSSBC, Service Provider shall confirm, in writing to HSSBC that all Subcontractor personnel who have access or who may obtain access to Personal Information have signed an External Confidentiality Covenant. The form of External Confidentiality Covenants in effect at the Effective Date is attached as Appendix D to this **Schedule L** (*Privacy and Security*). Any change in the form of External Confidentiality Covenants implemented after the Effective Date will be implemented in accordance with the Change Process. Service Provider shall require that all Subcontractor personnel who are required by this paragraph to sign External Confidentiality Covenants to reconfirm in writing their External Confidentiality Covenants on an annual basis.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

35. Precedence of Service Provider Personnel Agreements/Whistleblower Protection

Service Provider shall include in its employee agreements with the Service Provider Personnel or supplement its employee agreements with the Service Provider Personnel with the specific language with respect to privacy and confidentiality of the Personal Information, which language may take the form of a unilateral agreement by Service Provider to the Service Provider Personnel. The language in the attached Appendix C (*Confidentiality Covenants*) shall provide for precedence pertaining to the obligation to protect privacy and confidentiality of Personal Information over any agreement that Service Provider has with the Service Provider Personnel.

Service Provider will not dismiss, suspend, demote, discipline, harass or otherwise disadvantage Service Provider Personnel (including, for greater certainty, Authorized Service Provider Personnel), or deny that Service Provider Personnel (including, for greater certainty, Authorized Service Provider Personnel) a benefit, because the individual acting in good faith and on the basis of reasonable belief:

- (a) has notified the minister responsible for FIPPA and HSSBC of a foreign demand for disclosure;

- (b) has otherwise disclosed to HSSBC that Service Provider has contravened or is about to contravene FIPPA or the e-Health Act;
- (c) has done or stated an intention of doing anything that that is required to be done in order to avoid having any Person contravene FIPPA or the e-Health Act;
- (d) has refused to do or stated an intention of refusing to do anything that is in contravention of FIPPA or the e-Health Act; or
- (e) Service Provider believes that Service Provider Personnel (including, for greater certainty, Authorized Service Provider Personnel), will do anything described above in Sections 35(a) - (d).

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

36. Security Clearances

Service Provider shall perform or cause to be performed security clearances for all Service Provider Personnel (which includes, for clarity, Subcontractor personnel) who have access to, or who have the ability to access, Personal Information in the course of performing the Services prior to the first time at which Service Provider provides such Service Provider Personnel (which includes, for clarity, Subcontractor personnel) with the ability to access Personal Information. For the purposes of this **Schedule L (Privacy and Security)**, the term “security clearance” means a check of criminal records using a CPIC Level 2 query.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations in this Section in any material respect a cure period of 14 days will apply.

37. US Service Provider Personnel

Subject to Applicable Laws, Service Provider shall not provide Service Provider Personnel (and, for clarity, shall not authorize or permit Subcontractors to provide Subcontractor personnel), who are US Service Provider Personnel with any access to Personal Information at any time unless expressly approved in advance by HSSBC in writing pursuant to the terms of the Agreement or otherwise. Where US Service Provider Personnel are required for the performance of the Services, Service Provider shall provide dummy data to the extent possible, such as by replacing Personal Information (such as names, phone numbers, addresses and personal health information details) with identifiers, or utilizing other means as reasonably directed by HSSBC. Any approved US Service Provider Personnel shall only access Personal Information from a location within Canada approved by HSSBC or a member of the Health Organizations. Under no circumstances shall any US Service Provider Personnel have remote access to Personal Information except from a location within Canada and for a Permitted Purpose, subject to compliance with Applicable Laws. “**US Service Provider Personnel**” means any Service Provider Key Personnel, and all other personnel assigned by Service Provider or its Subcontractors to perform Service Provider’s obligations under this Agreement including, for greater certainty, independent contractors of the Service Provider or Subcontractors, who have or have entered into an employment agreement (whether express or implied by law) with a Person of the United States of America.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations in this Section in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

38. Paramountcy of Obligation to Protect Personal Information

Service Provider acknowledges that its applicable policies, education and training of Authorized Service Provider Personnel, shall reflect the obligations of the Service Provider Personnel pursuant to the Confidentiality Covenants and shall require that the applicable policies, education and training of Authorized Service Provider Personnel by Subcontractors reflect the obligations of the Subcontractor personnel pursuant to the External Confidentiality Covenants (as applicable), which may require them to act in a manner that is contrary to the interests of Service Provider or a Subcontractor (for example, because the fulfillment of such obligations may result in remedies being assessed against Service Provider under the terms of the Agreement). The Parties shall not, throughout the Term:

- (a) discipline or discourage Authorized Service Provider Personnel from acting in accordance with:
 - (i) provisions of the Confidentiality Covenants or the External Confidentiality Covenants pertaining to the protection of the privacy and confidentiality of the Personal information, or
 - (ii) Service Provider's obligations to HSSBC (including, for greater certainty, the Health Organizations) pursuant to these Privacy Requirements as implemented in accordance with Appendix B to this **Schedule L** (*Privacy Management Plan*); or
- (b) impose or permit to be imposed on any Authorized Service Provider Personnel any obligation that is inconsistent with or that materially adversely affects his or her ability to fulfill:
 - (i) his or her obligations pursuant to Confidentiality Covenants or External Confidentiality Covenants (as applicable), or
 - (ii) Service Provider's obligations to HSSBC (including, for greater certainty, the Health Organizations) pursuant to these Privacy Requirements as implemented in accordance with Appendix B to this **Schedule L** (*Privacy Management Plan*).

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations in this Section in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

39. Data Sharing

Except as may be permitted under Applicable Laws or as may be provided otherwise under the Agreement or the Transaction Documents, or as may be explicitly approved by HSSBC through the Governance Process, under no circumstances shall Service Provider enter into any relationship,

contractual or otherwise, with any other Person involving data sharing or data access with respect to Personal Information.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations in this Section in any material respect results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

40. Collection of Personal Information

Except as may be provided otherwise in the Agreement or as may otherwise be directed by HSSBC in writing pursuant to the Governance Process, Service Provider shall not collect or create any Personal Information in the performance of the Services (other than Personal Information that is necessary for the performance of Service Provider's obligations). Except as otherwise contemplated or permitted in the Transaction Documents, Service Provider shall:

- (a) collect such Personal Information directly from the Person to whom the Personal Information relates;
- (b) inform the Person from whom Service Provider collects Personal Information:
 - (i) the purpose for collecting the information,
 - (ii) the legal authority for collecting the information,
 - (iii) that Service Provider is collecting the information on behalf of HSSBC or a member of the Health Organizations, and
 - (iv) the title, business address and business telephone number of the Person designated by HSSBC to answer questions about Service Provider's collection of such Personal Information; and
- (c) make every reasonable effort to ensure the accuracy and completeness of Personal Information collected by Service Provider in respect of the Services.

This Section does not apply to personal information in respect of Service Provider Personnel (which includes, for clarity, Subcontractor personnel) or other employees of suppliers used in the ordinary course of Service Provider's business except to the extent that the same constitutes Personal Information of such person other than in their role as an employee as contemplated above.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations in this Section in any material respect a cure period of 14 days will apply.

41. Complaints and Investigations

Subject to the provisions of Section 5 (*Directives*) above, in the event of a dispute between either Service Provider and an individual, or HSSBC or a member of the Health Organizations and an individual, or an investigation or other proceeding before a Commissioner or other institution or authority, concerning the access, collection, use, disclosure, or otherwise in respect of Personal Information, Service Provider will, upon the request of HSSBC, defend and advocate the lawfulness of Service Provider's Personal

Information access and handling practices and its policies and procedures and, at HSSBC's cost and expense, those policies and procedures of HSSBC, through all available means of dispute resolution as provided for by Applicable Laws, all in cooperation with HSSBC.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations in this Section in any material respect a cure period of 14 days will apply.

42. Non-Compliance Reports

Service Provider shall, as soon as possible, and in any event within 24 hours, report to HSSBC any known breach of the requirements of these Privacy Requirements, disclosure of Personal Information, potential disclosure of Personal Information or other risk with respect to the disclosure of Personal Information. If for any reason Service Provider does not comply, or anticipates that it will be unable to comply, with a term of these Privacy Requirements in any respect, then Service Provider shall promptly notify HSSBC of the particulars of such non-compliance or anticipated non-compliance, and the steps that Service Provider proposes to take to address, or prevent recurrence of, the non-compliance or anticipated non-compliance. If Service Provider fails to take steps to address, or prevent recurrence of, the non-compliance or anticipated non-compliance or if such steps proposed by Service Provider are not adequate to enable Service Provider to comply with these Privacy Requirements, in HSSBC's discretion, then such failure shall be a breach of the Agreement and HSSBC shall have all rights and remedies under the Agreement.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

43. FIPPA Investigations

Service Provider acknowledges that under FIPPA, the Commissioner has the power to obtain information and evidence from Persons other than HSSBC (including, for greater certainty, the Health Organizations) in the course of conducting an investigation or an inquiry under that Act. Accordingly, Service Provider shall provide, and shall cause its Subcontractors to provide, reasonable cooperation to HSSBC with respect to investigations or inquiries of the Commissioner under FIPPA in connection with any information related to the Agreement that the Commissioner is entitled to obtain under such Act.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations in this Section in any material respect a cure period of 7 days will apply.

44. Prohibition Against Foreign Affiliates

Service Provider shall, and shall cause its Subcontractors that have access to, or that have the ability to access, Personal Information, to prohibit or otherwise restrict their foreign Affiliates from accessing any Personal Information and require that such Personal Information is at all times in the custody of a Canadian entity, except as may be expressly permitted otherwise under the terms of the Agreement or these Privacy Requirements.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations in this Section in any material respect and

such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

45. Intentionally Deleted.

46. Indemnification and Limitation of Liability

Any Claims, disputes, procedures or otherwise arising out of this Schedule or the Parties' requirements under the Privacy Requirements, or the disclosure of Personal Information, shall be governed by the provisions Article 21 (*Indemnification and Limitation of Liability*) of the Agreement.

47. Changes

Any changes, amendments, updates, modifications, revisions, replacements or supplements in or to the Privacy Requirements, including:

- (a) the form of the Confidentiality Covenants or the External Confidentiality Covenants;
- (b) information security management codes of practice, as outlined in ISO27002 (as amended from time to time); or
- (c) the HSSBC Policies and Procedures or other policies of HSSBC, including those implemented through the Change Process,

that have a material adverse impact on Service Provider's responsibilities under the Agreement will be implemented in accordance with the Change Process.

Appendix A

PROVINCIAL HEALTH SERVICES AUTHORITY PRIVACY PROTECTION SCHEDULE Custody and Control of Data

1. Purpose

The purpose of this Schedule is to: (a) enable the Customer to comply with its statutory obligations under the *Act* with respect to personal information; and (b) ensure that the Service Provider is aware of and complies with its statutory obligations under the *Act* with respect to personal information.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations in this Appendix in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

2. Definitions

“*Act*” means the *Freedom of Information and Protection of Privacy Act* (British Columbia), as amended from time to time.

“*Associate*” has the meaning specified in the *Act*.

“*Authorized Site*” means Service Provider’s head office in British Columbia or at such other location in Canada as may be approved in writing by the Customer.

“*Agreement*” means the Agreement to which the Schedule is appended.

“*Commissioner*” means the BC Information and Commissioner appointed under the *Act*.

“*Conflicting Foreign Order*” means any order, subpoena, directive, ruling, judgement, injunction, award or decree, decision, request or other requirement issued from a foreign court, agency of a foreign state or other authority outside Canada or any foreign legislation the compliance with which would likely render the Customer or its employees in non-compliance with the *Act*.

“*Contact Information*” means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual.

“*Customer*” means HSSBC and the Health Organizations.

“*Foreign Access Conditions*” means:

- (i) the Service Provider must ensure that such access is limited to temporary access and storage for the minimum time necessary for the Permitted Purpose; and

- (ii) if such access is for the Permitted Purpose of data recovery, the Service Provider must ensure such access is limited to access and storage only after the system failure has occurred.

“Permitted Purpose” means access to Records containing Personal Information that is necessary for:

- (i) installing, implementing, maintaining, repairing, trouble-shooting or upgrading an electronic system used by the Customer or by the Service Provider to provide services to the Customer pursuant to the Agreement, or any equipment that includes an electronic system used by the Customer or by the Service Provider to provide services to the Customer pursuant to the Agreement; or
- (ii) recovery of data (including Personal Information) undertaken following the failure of an electronic system used by the Customer or by the Service Provider to provide services to the Customer.

“Personal Information” means recorded information about an identifiable individual, other than contact information, collected or created by the Service Provider or otherwise held on behalf of the Service Provider as a result of the Agreement or any previous agreement between the Customer and the Service Provider dealing with the same subject matter as the Agreement but excluding any such information that, if this Schedule did not apply to it, would not be under the “control of a public body” within the meaning of the Act.

“Service Provider Personnel” means any employees, agents, representatives or Associates of the Service Provider who provide the Services or to whom access is made available to Personal Information for the purposes of fulfilling the Service Provider’s obligations under the Agreement.

“Access Agreement” means an agreement between Service Provider Personnel and the Service Provider requiring the security of Personal Information.

“Record” includes books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information, including Personal Information, is recorded or stored by graphic, electronic, mechanical or other means, but does not include a computer program or any other mechanism that produces records.

“Service Provider” means Service Provider.

“Schedule” means this Privacy Schedule, as may be amended from time to time.

3. Interpretation

In this Schedule, references to sections by number are to sections of this Schedule unless otherwise specified in this Schedule.

4. Service Provider Subject to the Act

- (a) The Service Provider must in relation to Personal Information comply with: (a) the requirements of the Act applicable to the Service Provider, including any applicable order of the Commissioner under the Act; and (b) any direction given by the Customer under

this Schedule. If the Customer learns of a Commissioner order applicable to the Service Provider's services, it will notify the Service Provider.

- (b) The Service Provider acknowledges that it is familiar with the requirements of the Act governing Personal Information that are applicable to it as a service provider.

5. Collection of Personal Information

- (a) Unless the Agreement otherwise specifies or the Customer otherwise directs in writing, the Service Provider may only collect, create or hold, on behalf of the Customer, Personal Information that is necessary for the performance of the Service Provider's obligations, or the exercise of the Service Provider's rights, under the Agreement.
- (b) The Service Provider may only collect Personal Information if expressly authorized by the Agreement. Where authorized to do so, and unless the Agreement otherwise specifies or the Customer otherwise directs in writing, the Service Provider shall: (i) collect Personal Information directly from the individual the information is about; and (ii) tell an individual from whom the Service Provider collects Personal Information the purpose for collecting it; the legal authority for collecting it; and the title, business address and business telephone number of the person designated by the Customer to answer questions about the Service Provider's collection of Personal Information.

6. Accuracy of Personal Information

Where applicable to the Services provided by the Service Provider pursuant to the Agreement, the Service Provider shall make every reasonable effort to ensure the accuracy and completeness of any Personal Information that comes into their custody pursuant to this Agreement and which may be used by the Service Provider or the Customer to make a decision that directly affects the individual the information is about.

7. Receiving Requests for Access or Correction to Personal Information

If a request is received under the Act for access to, or correction of, Records that are in the custody of the Service Provider but under the control of the Customer, the Service Provider must promptly advise the person to make the request to the Customer and if the Customer has advised the Service Provider of the name or title and contact information of an official of the Customer to whom such requests are to be made, the Service Provider must also promptly provide that official's name or title and contact information to the person making the request. The Service Provider must provide the Records to the Customer for management by the Customer's Information and Privacy Officer. This shall occur within a reasonable time frame to enable the Customer to comply with the Act. If a request is permitted by the Act, the Service Provider shall be responsible for providing the Records at the Service provider's expense to the Customer. If the Service Provider is expressly authorized by the Agreement to manage the request for correction of records, the Service Provider shall do so in accordance with Section 8 of this schedule.

8. Correction of Personal Information

The Service Provider may only correct Personal Information if expressly authorized by the Agreement. Where authorized to do so, and unless the Agreement otherwise specifies or the Customer otherwise directs in writing:

- (a) Within 5 business days of receiving a written direction from the Customer to correct or annotate any Personal Information, the Service Provider must annotate or correct the information in accordance with the direction.
- (b) When issuing a written direction under paragraph (a), the Customer must advise the Service Provider of the date the correction request to which the direction relates was received by the Customer in order that the Service Provider may comply.
- (c) Within 5 business days of correcting or annotating any Personal Information, the Service Provider must provide the corrected or annotated information to any party to whom, within one year prior to the date the correction request was made to the Customer, the Service Provider disclosed the information being corrected or annotated.

9. Control of and Rights in the Record

All right, title and interest in, and control and custody of, all Records shall remain with the Customer. No interest or any right respecting the Record, other than as expressly set out herein, is granted to the Service Provider under this Schedule, by implication or otherwise. If Personal Information is collected by the Service Provider and transmitted to the Customer, such Personal Information is deemed to be under the control of the Customer.

10. Access to and Use of Personal Information

- (a) The Service Provider is hereby granted temporary access to Personal Information pursuant to the terms and conditions of this Schedule, for the sole and express purpose of fulfilling its obligations under the Agreement and for no other use or purpose except as required to comply with any Canadian statutory or other legal requirement, including an Order of a Canadian Court, although any disclosure of Personal Information remains subject to Section 12 of this Schedule. The Service Provider shall not copy or reproduce any written materials containing Personal Information without the Customer's prior written consent. Notwithstanding the foregoing, the Service Provider may access Records containing Personal Information for a Permitted Purpose. However, if Records containing Personal Information are disclosed outside of Canada or accessed from outside of Canada, the Service Provider must comply with the Foreign Access Conditions.
- (b) The Service Provider shall not take any action to obtain access of any kind to any Personal Information from any location outside of Canada except for a Permitted Purpose or as permitted by the Act and then only subject to the Foreign Access Conditions and such other processes and access controls as may be imposed by the Customer.
- (c) Except as otherwise permitted under this Schedule, the Service Provider shall not remove, physically, electronically or in other manner whatsoever from the authorized premises of the Customer, any Personal Information, without the Customer's prior written consent. Except as otherwise permitted under this Schedule, the Service Provider shall not store any Personal Information or permitted back-up copies of the Personal Information off-site unless expressly authorized by Customer. Where authorized, Service Provider must store back-up records off-site in Canada under conditions that are the same as or better than on-site storage conditions for original Records.

- (d) The Service Provider will ensure that only Service Provider Personnel who have entered into a Access Agreement may access the Personal Information. Unless approved by the Customer, the Service Provider may not enter into any form of a Personal Information sharing relationship with any other party.

11. Return or Destruction of the Record Upon Request

- (a) Unless the Agreement otherwise specifies, the Service provider must retain Personal Information until directed by the Customer in writing to dispose of it or deliver it as specified in the direction. Upon the request of the Customer for any reason whatsoever, and unless required to do otherwise in order to comply with any Canadian statutory or other legal requirement, including an Order of a Canadian Court, although any disclosure of Personal Information remains subject to Section 12 of this Schedule, the Service Provider shall deliver to the Customer or destroy promptly, according to the Customer's instructions, all documents or other Records in any form or format whatsoever in the Service Provider's possession constituting or based upon Personal Information and shall confirm that delivery or destruction to the Customer in writing. If, for any reason, the Service Provider fails to return or destroy any Record in accordance with this Section 11, the Service Provider's obligations pursuant to this Schedule will continue in full force and effect.
- (b) In the event of destruction of electronic Personal Information by the Service Provider, the following instructions shall be adhered to:
 - (i) Personal Information erasure may be accomplished by software erasure (where feasible) or by physical destruction of the media;
 - (ii) Software erasure must be at a minimum to US DoD standard 5220.22-M (this standard is achievable through a number of products such as Norton WipeInfo);
 - (iii) Physical destruction of paper media can be done by burning, by cross-cut shredding, or by pulping;
 - (iv) Physical destruction of disc media can be done by use of tools such as hammers, band saws, or drills in order to render the device no longer useable; and
 - (v) Some media such as diskettes can be run through a degausser in order to render them no longer readable.

12. Disclosure to Third Parties

Except as specifically permitted by the Customer in writing, the Service Provider shall not disclose and shall not allow any Service Provider Personnel to disclose in any manner whatsoever any Personal Information to any person, firm or corporation without the prior written consent of the Customer. The Service Provider agrees that such consent shall only be provided if such disclosure is permitted under the Act and the third party agrees, in writing, to be bound by the Act. If the Service Provider or anyone to whom the Service Provider transmits Personal Information pursuant to a Permitted Purpose, becomes legally compelled or otherwise receives a demand to disclose Personal Information other than as permitted by the Act, including without limitation pursuant to any Conflicting Foreign Order, the Service Provider will not do so unless: (a) the Customer has been notified; (b) the parties have appeared before a

Canadian Court; and (c) the Court has ordered the disclosure. Unauthorized disclosure is subject to penalties under the Act.

13. Privacy Representative

If required by the Customer, immediately upon execution of the Agreement the Service Provider shall appoint a representative to be responsible for the Service Provider's compliance with this Schedule and the Act (the "**Privacy Representative**"). The Service Provider shall grant its Privacy Representative sufficient authority to communicate and execute documents on behalf of the Service Provider as may be required from time to time for this purpose. The Service Provider shall promptly provide the Customer with the name of its Privacy Representative and shall promptly notify the Customer of any change of its Privacy Representative.

14. Notice of Breach

- (a) If for any reason the Service Provider does not comply, or anticipates that it will be unable to comply, with a provision in this Schedule in any respect, the Service Provider must promptly notify the Customer of the particulars of the non-compliance or anticipated non-compliance and what steps it proposes to take to address, or prevent recurrence of the non-compliance or anticipated non-compliance.
- (b) The Service Provider shall notify the Customer immediately of the disclosure of Personal Information to any person or entity not authorized by the Agreement to have such Personal Information, including full details of such disclosure. The Service Provider shall co-operate with the Customer in preventing the recurrence of such disclosure and to the extent feasible, in recovering the disclosed Personal Information, including any copies thereof.

15. Service Provider Personnel Bound by the Act

- (a) The Service Provider and the Customer hereby further acknowledge and agree that in order to fulfill its obligations under the Agreement or in connection with a Permitted Purpose it may be necessary for the Service Provider to grant to Service Provider Personnel access to Personal Information. The Service Provider hereby agrees that:
 - (i) it shall only make Personal Information available to Service Provider Personnel to the extent it is necessary for the purpose of fulfilling the Service Provider's obligations under the Agreement and for a Permitted Purpose;
 - (ii) it shall not make Personal Information available to any Service Provider Personnel while any such persons are physically located outside of Canada, except for a Permitted Purpose under the Foreign Access Conditions or as permitted by the Act;
 - (iii) if and whenever requested by the Customer, the Service Provider shall cause each of the Service Provider Personnel providing services on behalf of the Service Provider under the Agreement to enter into an Access Agreement, in a form and substance acceptable to the Customer wherein the Service Provider Personnel agree, among other things, to comply with the requirements of all applicable laws including in particular the requirements of the Act as if that person were originally bound by the Act; and

- (iv) the Customer is granted the right to demand that the Service Provider Personnel who breached the obligation be removed from the provision of services pursuant to the Agreement.

The Service Provider shall be required to renew and refresh any or all such agreements from time to time at the reasonable request of the Customer.

- (b) The Service Provider shall properly advise each of the Service Provider Personnel providing services under the Agreement of the requirements of the Service Provider under this Schedule and the Act. If requested by the Customer, the Service Provider shall provide and conduct specific ongoing training for all such individuals in form and substance reasonably satisfactory to the Customer. The Service Provider acknowledges its obligations and, to the extent legally permissible, will address any non-compliance with this Agreement, by their staff, at their discretion.
- (c) Intentionally Deleted.
- (d) The Service Provider shall, upon request by Customer, provide a copy of the access agreement to the Customer.

16. Subcontractors

Any reference to the Service Provider in this Schedule includes any subcontractor or agent retained by the Service Provider to perform obligations under the Agreement and the Service Provider must ensure that any such subcontractors and agents comply with this Schedule.

17. Intentionally Deleted

18. Intentionally Deleted

19. Termination

- (a) Upon the expiration or earlier termination of the Agreement, the Service Provider shall promptly return to the Customer or destroy promptly, according to the Customer's instructions, all Records in the Service Provider's possession pursuant to the Agreement, whether created by the Service Provider or by others, constituting or based upon Personal Information and shall confirm that delivery or destruction to the Customer in writing.
- (b) In the event of a change to the Act or any other applicable privacy legislation or the issuance of a directive or policy by the government of the Province of British Columbia or a finding or report by the Commissioner, such that the Customer reasonably considers that the terms and conditions of the Agreement for the protection of Personal Information are deficient, the Customer and the Service Provider will enter into good faith negotiations in an effort to cure any deficiency and agree to new or amended terms of the Agreement such that it is no longer deficient. Should such negotiations fail, the Customer may terminate all or any portion of the Agreement in accordance with the termination requirements in the Agreement, upon provision of written notice to the Service Provider or upon such other future date as the Customer may specify in writing in such notice.

20. No Withholding

The Service Provider shall not be entitled to, and hereby waives any and all right to, withhold any Personal Information from the Customer to enforce any alleged payment obligation or in connection with any dispute relating to the terms of the Agreement or any other matter between the Customer and the Service Provider.

21. Investigation

The Service Provider shall co-operate with any Customer investigation of a complaint that the Customer's Personal Information has been used contrary to the *Act* or this Schedule.

22. Storage and Access to Personal Information

The Service Provider shall maintain Personal Information only at an Authorized Site. Except in relation to a Permitted Purpose under Foreign Access Conditions, no services that require access to Personal Information shall be provided or performed by the Service Provider in any location outside Canada and no Personal Information may be stored, transmitted or otherwise made available in any manner or accessed from outside Canada and no person outside Canada shall have access in any manner to Personal Information except as expressly approved by the Customer in writing. The Service Provider will notify the Customer prior to changing the Authorized Site.

23. Segregation of Data

The Service Provider shall take reasonable steps to ensure that all Personal Information is securely segregated from any information owned by the Service Provider or third parties, including access barriers, physical segregation, password authorization and public key encryption systems. The Service Provider must store Personal Information on agreed-upon media using techniques enabling access only by authorized persons, including encryption and compression of Personal Information. The Service Provider must encrypt Personal Information held on portable storage devices, including laptops.

24. Protection of Personal Information

The Service Provider must protect Personal Information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal, including any expressly set out in the Agreement.

25. Paramountcy

- (a) The Service Provider must comply with the provisions of this Schedule despite any conflicting provision of this Agreement or, subject to section 25 (b), the law of any jurisdiction outside Canada or any conflicting Foreign Order.
- (b) Nothing in this Schedule requires the Service Provider to contravene the law of any jurisdiction outside Canada unless such contravention is required to comply with the *Act*.
- (c) The Service Provider acknowledges that the Customer is subject to the *Act*.
- (d) The Service Provider shall immediately inform the Customer if the Service Provider or any of the Service Provider Personnel receive any Conflicting Foreign Order.

26. Survival

The obligations of the Service Provider in this Schedule will survive the termination of the agreement.

27. Amendment

Upon enactment of any British Columbia law or regulation or amendment to such law or regulation affecting the use or disclosure of Personal Information, or the publication of any decision of a British Columbia court relating to such law or regulation, or the publication of any interpretive policy or opinion of any government agency charged with the enforcement of any such law or regulation, the Customer, by written notice to the Service Provider, may specify the amendment of this Schedule in such manner as the Customer reasonably determines necessary to comply with such law or regulation to the extent such law or regulation is directly applicable and enforceable against the Service Provider. This provision is additional to any rights of the Customer to terminate pursuant to Section 19(b) of this Schedule.

28. Inconsistency

If a provision of the Agreement (including any direction given by the Customer under this Schedule) conflicts with a requirement of the Act or an applicable order of the Commissioner under the Act, the conflicting provision of the Agreement (or direction) will be inoperative to the extent of the conflict. Where in the Customer's reasonable opinion, there is ambiguity regarding whether a provision conflicts, the conflicting provision will be inoperative to the extent determined by the Customer. The Service Provider must comply with the provisions of this Schedule despite any conflicting provision of this Agreement or the law of any jurisdiction outside Canada.

Appendix B

Service Provider PRIVACY MANAGEMENT PLAN

Appendix C

CONFIDENTIALITY COVENANTS AND ACCESS AGREEMENT

BACKGROUND

Pursuant to a contract (“**Contract**”) entered into among **Provincial Health Services Authority**, as well as **Vancouver Coastal Health Authority**, by its agent, **Health Shared Services British Columbia, a division of Provincial Health Services Authority (“HSSBC”)** and **[Insert Name of Service Provider]** (“**Service Provider**”) for the provision of **[Insert description of services]**, Service Provider will be providing services to HSSBC. In providing services to HSSBC, Service Provider will have the ability to access, and may access or obtain custody of, personal information that is in the custody or under the control of HSSBC, the provincial health authorities in British Columbia and any of the various facilities and affiliated companies owned, controlled or financed by any of them, including highly sensitive health personal information, and other confidential information (the “**HSSBC Data**”), and Service Provider is obligated to ensure the privacy, confidentiality and security of the Health Organizations Data.

DEFINITION

“**Foreign Disclosure Laws**” means any laws, statutes, by-laws, treaty, directive, policy having the force of law, order, judgment, injunction, award, decree or other similar matter of any government, legislature (or similar body), court, governmental department, commission, board, bureau, agency, instrumentality, province, state, territory, association, county, municipality, city, town or other political of governmental jurisdiction, whether not or in the future constituted, outside of Canada, that may require, request, or otherwise demand access, use or disclosure of personal information, whether to intercept or obstruct terrorism, or for any other reason.

COVENANT

I, the undersigned, acknowledge that upon my employment with Service Provider it will be a condition of my access to HSSBC Data that I maintain the confidentiality and security of HSSBC Data and report any breach or suspected breach of confidentiality or security and any wrongdoing or suspected wrongdoing of which I am or become aware.

I, the undersigned, covenant that upon my employment with Service Provider:

1. I will access and deal with HSSBC Data: (a) only to the extent expressly required in order for me to perform my regular employment duties with Service Provider and so as to permit Service Provider to fulfil its obligations to HSSBC under the Contract; and (b) in strict accordance with the written policies and processes that have been agreed to between Service Provider and HSSBC, to the extent that the same have been delivered or made available to me, including all Service Provider policies that expressly prohibit any disclosure of HSSBC Data pursuant to Foreign Disclosure Laws (collectively, the “**Privacy Requirements**”).
2. I will not disclose any HSSBC Data except as clearly permitted or provided for by the Privacy Requirements.
3. In the event that I know or suspect that Service Provider or any other person or organization has accessed or disclosed or intends to access or disclose any HSSBC Data in any manner that is not

permitted by, or that is inconsistent with, the provisions of the Privacy Requirements (a “**Breach**”), I will:

- (a) not take any action to assist Service Provider or any other person in committing the Breach or that might otherwise permit or provide for the furtherance of the Breach, even if instructed to do so by Service Provider or by any other person; and
 - (b) immediately notify the Privacy Officer for HSSBC of the Breach by calling telephone number 604.♦ (the “**Hotline**”) and cooperate with HSSBC by providing all relevant information regarding the details of the Breach.
4. Where I have any questions as to whether a Breach has occurred, I will call the Hotline. I will be deemed to be in compliance with my obligations under this Confidentiality Covenant where I follow any direction that I receive from HSSBC through the Hotline.
5. I am aware that under the *Freedom of Information and Protection of Privacy Act* (British Columbia) (“**FIPPA**”), there are certain obligations placed on me as an employee of “service provider” and, in particular, an obligation to provide notice to HSSBC of any foreign demand for disclosure of personal information.
6. I am aware that FIPPA also provides for “whistle blower” protection for those who report incidents relating to foreign demands for disclosure, which requires, among other things, that an employer not discipline an employee because the employee, acting in good faith and on the basis of reasonable belief, has notified the commissioner under FIPPA of an unauthorized disclosure of personal information or has notified the minister responsible under FIPPA of a foreign demand for disclosure.
7. I acknowledge and agree that my obligations to Service Provider pursuant to this Confidentiality Covenant take priority over any agreement with or commitment to any other party (including Service Provider) that is inconsistent with this Confidentiality Covenant.
8. I acknowledge and agree that, if I leave the employ of Service Provider, I will not disclose to any person any HSSBC Data nor take with me any HSSBC Data received during the course of my employment with Service Provider.
9. I will, on an annual basis or as otherwise requested by HSSBC or Service Provider, reconfirm my commitments in respect of the Health Organizations Data.

I acknowledge that, upon my employment with Service Provider, my failure to comply with the provisions of this Confidentiality Covenant will be cause for and may result in disciplinary action up to and including, where necessary, my dismissal from Service Provider.

IN WITNESS WHEREOF I have executed this Confidentiality Covenant as of the ____ day of _____, 20____.

SIGNED, SEALED and DELIVERED by ♦ in)
the presence of:)

_____)
Signature)

_____)
Print Name)

_____)
Address)

_____)
Occupation)

_____)
♦

Appendix D

EXTERNAL CONFIDENTIALITY COVENANT AND ACCESS AGREEMENT

BACKGROUND

Pursuant to a contract (“**Contract**”) entered into among **Provincial Health Services Authority**, as well as **Vancouver Coastal Health Authority**, by its agent, **Health Shared Services British Columbia, a division of Provincial Health Services Authority**, (“**HSSBC**”) and *[Insert Name of Service Provider]* (“**Service Provider**”) for the provision of *[Insert description of services]*, Service Provider will be providing services to HSSBC. In providing services to HSSBC, Service Provider may be given or otherwise obtain access to or custody over personal information that is under the control of HSSBC, the provincial health authorities in British Columbia and any of the various facilities and affiliated companies owned, controlled or financed by any of them (the “**HSSBC**”), including highly sensitive health personal information, and other confidential information (the “**HSSBC Data**”), and Service Provider is obligated to ensure the privacy, confidentiality and security of the HSSBC Data. I am currently employed by *[Insert name of Subcontractor]* (the “**Company**”) and I have been advised that the Company will provide services to Service Provider as a subcontractor and that, in providing such services to one or more of HSSBC (including, for greater certainty, the Health Organizations), the Company will have the ability to access, and may access or obtain custody of, personal information that is under the control of HSSBC (whether directly or indirectly through Service Provider), including HSSBC Data.

DEFINITION

“**Foreign Disclosure Laws**” means any laws, statutes, by-laws, treaty, directive, policy having the force of law, order, judgment, injunction, award, decree or other similar matter of any government, legislature (or similar body), court, governmental department, commission, board, bureau, agency, instrumentality, province, state, territory, association, county, municipality, city, town or other political of governmental jurisdiction, whether not or in the future constituted, outside of Canada, that may require, request, or otherwise demand access, use or disclosure of personal information, whether to intercept or obstruct terrorism, or for any other reason.

COVENANT

I, the undersigned, acknowledge that upon my employment with the Company it will be a condition of my access to HSSBC Data that I maintain the confidentiality and security of HSSBC Data and report any breach or suspected breach of confidentiality or security and any wrongdoing or suspected wrongdoing of which I am aware.

I, the undersigned, covenant that upon my employment with the Company:

1. I will access and deal with HSSBC Data only: (a) to the extent expressly required in order for me to perform my regular employment duties with the Company and so as to permit the Company to fulfil its obligations to Service Provider; and (b) in strict accordance with the written policies and processes that have been agreed to between Service Provider and HSSBC, to the extent that the same have been delivered or made available to me, including all Service Provider policies that expressly prohibit any disclosure of HSSBC Data pursuant to Foreign Disclosure Laws (collectively, the “**Privacy Requirements**”).

2. I will not disclose any HSSBC Data except as clearly permitted or provided for by the Privacy **Requirements**.
3. In the event that I know or suspect that the Company or any other person or organization has accessed or disclosed or intends to access or disclose any HSSBC Data in any manner that is not permitted by, or that is inconsistent with, the provisions of the Privacy **Requirements** (a “**Breach**”), I will:
 - (a) not take any action to assist the Company or any other person in committing the Breach or that might otherwise permit or provide for the furtherance of the Breach, even if instructed to do so by the Company or by any other person; and
 - (b) immediately notify the Privacy Officer for HSSBC of the Breach by calling telephone number 604.♦ (the “**Hotline**”) and cooperate with HSSBC by providing all relevant information regarding the details of the Breach.
4. Where I have any questions as to whether a Breach has occurred, I will call the Hotline. I will be deemed to be in compliance with my obligations under this External Confidentiality Covenant where I follow any direction that I receive from HSSBC through the Hotline.
5. I am aware that under the *Freedom of Information and Protection of Privacy Act* (British Columbia) (“**FIPPA**”), there are certain obligations placed on me as an employee of a “service provider” and, in particular, an obligation to provide notice to HSSBC of any foreign demand for disclosure of personal information.
6. I am aware that FIPPA also provides for “whistle blower” protection for those who report incidents relating to foreign demands for disclosure, which requires, among other things, that an employer not discipline an employee because the employee, acting in good faith and on the basis of reasonable belief, has notified the commissioner under FIPPA of an unauthorized disclosure of personal information or has notified the minister responsible under FIPPA of a foreign demand for disclosure.
7. I acknowledge and agree that my obligations to the Company pursuant to this External Confidentiality Covenant take priority over any agreement with or commitment to any other party (including the Company) that is inconsistent with this External Confidentiality Covenant.
8. I acknowledge and agree that, if I leave the employ of the Company, I will not disclose to any person any HSSBC Data nor take with me any HSSBC Data received during the course of my employment with the Company.
9. I will, on an annual basis or as otherwise requested by HSSBC or the Company, reconfirm my commitments in respect of the HSSBC Data.

I acknowledge that, upon my employment with the Company, my failure to comply with the provisions of this External Confidentiality Covenant will be cause for and may result in disciplinary action up to and including, where necessary, my dismissal from the Company.

IN WITNESS WHEREOF I have executed this External Confidentiality Covenant as of the ____ day of _____, 20____.

SIGNED, SEALED and DELIVERED by ♦ in)
the presence of:)

_____)
Signature)

_____)
Print Name)

_____)
Address)

_____)
Occupation)

_____)
♦

SCHEDULE L

PRIVACY AND SECURITY

to

SERVICES AGREEMENT

by and between

**HEALTH SHARED SERVICES BRITISH COLUMBIA, VANCOUVER
COASTAL HEALTH AUTHORITY, BY ITS AGENT HEALTH SHARED
SERVICES BRITISH COLUMBIA**

and

[SERVICE PROVIDER]

[DATE]

Important Note: This Privacy and Security Schedule forms part of the form of Services Agreement. The Services Agreement represents the form of agreement (general terms and conditions) upon which Provincial Health Services Authority, through its division HSSBC, intends to enter into contracts with third party service providers for its complex commercial arrangements.

1. General Purpose

The purpose of this **Schedule L** (*Privacy and Security*) and Appendix A hereto is to set forth the obligations of Service Provider relating to the protection of Personal Information to ensure that Personal Information is not accessed, collected, used or disclosed by Service Provider in connection with performing the Services, other than as may be permitted under Applicable Laws (including Privacy Laws and the *e-Health Act*) and, subject to compliance with Applicable Laws: (i) in the ordinary course of providing the Services, provided such disclosure is within Canada; (ii) as set out in Article 13 (*Privacy, Security and Confidentiality*) of the Agreement; (iii) as may be directed by HSSBC under Section 5 of this Schedule; (iv) strictly in accordance with Appendix A hereto; or (v) strictly in accordance with policies or procedures expressly set forth in this Schedule or in the HSSBC Policies and Procedures, including those policies implemented through the Change Process (collectively, the “**Privacy Requirements**”).

2. Acknowledgements

The Parties acknowledge that:

- (a) HSSBC (including, for greater certainty, the Health Organizations) is a “public body” (as that term is defined in FIPPA), are each regulated by FIPPA and each owe duties and obligations of privacy with regard to the use, collection, disclosure, storage and disposal of Personal Information obtained by it;
- (b) HSSBC may have Custody and/or Control of Personal Information;
- (c) Service Provider is a “service provider” (as that term is defined in FIPPA) and is subject to certain obligations under FIPPA;
- (d) Personal Information includes (i) information that HSSBC (including, for greater certainty, the Health Organizations) are obligated to protect pursuant to privacy legislation, (ii) highly sensitive confidential information, and (iii) health personal information, including clinical patient information;
- (e) in connection with providing the Services, Service Provider will have the ability to access Personal Information and Service Provider may obtain such access and may obtain Custody or Control (as defined below) of Personal Information;
- (f) HSSBC (including, for greater certainty, the Health Organizations) have Control and/or Custody of Personal Information in order that HSSBC (including, for greater certainty, the Health Organizations) may serve the public;
- (g) Personal Information is collected, used, disclosed and otherwise managed by HSSBC (including, for greater certainty, the Health Organizations) on behalf of the public;
- (h) this Schedule is premised on the commitment of HSSBC (including, for greater certainty, the Health Organizations) as owners and controllers of Personal Information, and Service Provider’s commitment as a service provider to HSSBC (including, for greater certainty, the Health Organizations), to maintain the privacy and security of Personal Information; and

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- (i) nothing in this Schedule shall require Service Provider or any Subcontractor to act contrary to Applicable Laws.

For the purposes of this **Schedule L** (*Privacy and Security*), “**Control**” means, as between the Parties, the power or authority to manage, restrict, regulate or administer the use or disclosure of Personal Information.

3. Service Provider Commitment

In order to protect Personal Information that is accessed by or in the Custody of, or that may come under the Control of, Service Provider, HSSBC requires Service Provider’s commitment, and Service Provider has committed, to comply with the Privacy Requirements. Service Provider shall develop and maintain policies and procedures specific to the privacy and security of the Personal Information as described in this **Schedule L** (*Privacy and Security*), including those listed in or required under Appendix B (*Privacy Management Plan*) hereto, and Service Provider will maintain current policies and procedures that will, at all times, be consistent with the Agreement and this **Schedule L** (*Privacy and Security*). In developing the policies and procedures required under this Section, Service Provider shall review and, where it deems appropriate, incorporate into such Service Provider policies and procedures, language from HSSBC’s policies relating to the privacy and security of Personal Information, as those policies are provided to Service Provider as part of HSSBC Policies and Procedures.

Service Provider shall have an ongoing obligation to monitor and detect any failure in its performance of its obligations under Schedule L or the performance of the Service Provider Personnel and Subcontractors. Service Provider shall promptly report any such failure to HSSBC and in the case of any material failure shall report same within 24 hours. Service Provider will diligently and promptly correct any failure it detects or otherwise becomes aware of, including from HSSBC. For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations in this paragraph in any material respect there shall be no cure period.

4. Conflicts

Notwithstanding the provisions of Section 2.12(1) of the Agreement (*Priority*), if there is a conflict with or inconsistency between the provisions of this **Schedule L** (*Privacy and Security*) and the provisions of the Agreement or the provisions of this **Schedule L** (*Privacy and Security*) any other Schedule attached to the Agreement, then the provisions of this **Schedule L** (*Privacy and Security*) shall govern. If there is a conflict with or inconsistency between the provisions of the main body of this **Schedule L** (*Privacy and Security*) and the provisions of Appendix A hereto, then the provisions of the main body of this **Schedule L** (*Privacy and Security*) shall govern.

5. Directives

HSSBC may at any time, issue a directive to amend these Privacy Requirements upon reasonable prior written notice (under the circumstances) to Service Provider. Such amendments shall be implemented in accordance with the Change Process.

6. Access to Personal Information

Service Provider acknowledges that, in connection with providing the Services, Service Provider and its Subcontractors will have the ability to access Personal Information and, through such access, may obtain Custody or Control of Personal Information under the Custody and/or Control of HSSBC (including, for

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greater certainty, the Health Organizations). To the extent that Service Provider accesses Personal Information, Service Provider shall:

- (a) only provide or enable access to Personal Information in Canada, as permitted by Applicable Laws and as necessary for the provision of the Services in the manner and to the extent provided in the Agreement (the “**Permitted Purpose**”); and
- (b) not provide or enable access to Personal Information for any period of time that is longer than required for the completion of a specific Service in accordance with a Permitted Purpose.

Service Provider acknowledges that the manner of the Services may enable Service Provider Personnel (which includes, for greater certainty, Subcontractor personnel) to access Personal Information that may not be strictly necessary for any particular Permitted Purpose. Service Provider shall, to the greatest extent possible, restrict access to Personal Information to Authorized Service Provider Personnel (defined below) who need such access in order to perform the specific Services relevant and necessary for that particular Permitted Purpose and shall, to the greatest extent possible, restrict such access to the time necessary to complete those specific Services.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect and such failure results in access contrary to the Agreement there shall be no cure period. Otherwise a cure period of 14 days will apply.

7. Non-Disclosure of Personal Information

Service Provider shall not disclose Personal Information to any Person for any reason other than as permitted in accordance with Applicable Laws (including Privacy Laws and the *e-Health Act*) and, subject to complying with Applicable Laws: (i) for a Permitted Purpose; and (ii) as contemplated pursuant to Article 13 (*Privacy, Security and Confidentiality*) of the Agreement. Without limiting the generality of the foregoing, Service Provider shall not disclose any Personal Information pursuant to a Disclosure Order, as more expressly limited pursuant to Article 13 (*Privacy, Security and Confidentiality*) of the Agreement.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect no cure period will apply.

8. Anticipatory Disclosure of Personal Information

Where HSSBC determines, acting reasonably, that there is a risk that Personal Information may be disclosed contrary to the terms of the Agreement or this **Schedule L** (*Privacy and Security*), then HSSBC will have the right, as a first step, to require that Service Provider immediately suspend or revoke the right of access to any network or system containing Personal Information by any Authorized Service Provider Personnel posing such risk that Personal Information may be disclosed. For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations in this paragraph in any material respect a cure period of 7 days will apply.

Thereafter, if HSSBC deems it necessary, HSSBC will have the right to do either or both of the following:

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- (a) to proceed to court in respect of such potential disclosure; and/or
- (b) to require that Service Provider immediately temporarily replace any Service Provider Personnel in order to allow HSSBC to take all actions necessary to prevent such disclosure, provided that: (i) such replacement personnel shall have the same or substantially similar qualifications as the Service Provider Personnel being temporarily replaced, and where no such replacement personnel is available, HSSBC shall have the right to appoint a monitor to observe such Service Provider Personnel; and (ii) HSSBC's right to temporarily replace or monitor any Service Provider Personnel shall be restricted to the acts and limited to the time period reasonably necessary to prevent such disclosure. HSSBC shall give Service Provider written notice of any temporary replacement or monitoring of Service Provider Personnel under this Section and in such notice shall specify the circumstances and grounds upon which HSSBC is relying in exercising its rights hereunder, in sufficient detail to enable Service Provider to assess and respond to the same. Notwithstanding the foregoing, any such response from Service Provider shall not entitle Service Provider to prevent HSSBC from exercising its rights under this paragraph (b) (it being acknowledged by the Parties that Service Provider shall be entitled to bring its response forward through the dispute resolution process set forth in Article 24 (*Dispute Resolution*) of the Agreement should Service Provider reasonably believe that HSSBC did not have proper grounds for exercising its rights under this paragraph). For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations in this paragraph in any material respect and thereby prevents HSSBC from exercising its rights under this paragraph (b) a cure period of 7 days will apply.

Where HSSBC intends to exercise its rights under Section 8(b) above, then HSSBC shall, prior to such exercise, provide to the ***[Insert Senior Executive]*** of Service Provider as set out in **Schedule BB** (*Service Provider Key Service Provider Personnel*) or the next most senior individual in an Service Provider Key Service Provider Personnel a written notice that contains:

- (a) the basis for belief that there is a risk that Personal Information may be disclosed by Service Provider or its Subcontractors contrary to the terms of the Agreement;
- (b) the period, if any, during which Service Provider may attempt to reasonably prevent the disclosure or remedy the risk;
- (c) the general course of action that HSSBC proposes to take and any powers provided for in the Agreement, including this Schedule L (*Privacy and Security*) that HSSBC proposes to exercise; and
- (d) the expected length of time that this action is anticipated to take.

Upon receipt of such notice Service Provider shall notify HSSBC's Privacy Officer or, in that person's absence, any HSSBC senior executive designated by such person of the actions that Service Provider will take to prevent the disclosure or remedy the risk where given the opportunity to do so.

Notwithstanding the foregoing, nothing in this Section or otherwise in the Agreement will limit or prevent HSSBC from taking all actions necessary or required, including directing Service Provider to take actions necessary or required, to prevent or reduce the risk of the disclosure of Personal Information or to remedy the risk, as HSSBC may be required to take under Applicable Law or pursuant to a direction or order issued by the Commissioner.

9. Compliance Certificate

Within three months after the end of each calendar year during the Term, Service Provider shall deliver to HSSBC an annual compliance certificate signed by a senior executive of Service Provider and confirming, to the best of that senior executive's knowledge and belief, having made reasonable inquiry, including inquiry of the *[Insert Senior Executive]*, the individual responsible for monitoring and enforcing privacy and security measures designated by Service Provider under Section 30(c) of this **Schedule L (Privacy and Security)** and any other relevant Service Provider Personnel, and (b) all Subcontractors that have the ability to access Personal Information, Service Provider's and such Subcontractors' compliance with Article 13 (*Privacy, Security and Confidentiality*) and this **Schedule L (Privacy and Security)** and any other similar obligations contained in the provisions of the Agreement, subject to any issues identified by Service Provider in a schedule to that certificate.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations in this Section in any material respect a cure period of 14 days will apply.

The Parties shall review each compliance certificate at the *[Insert level of governance]* within three months of the date of delivery of such certificate.

10. Flow Down of Requirements

The obligations of Service Provider contained in the following Sections of these Privacy Requirements shall be flowed down by Service Provider to any Subcontractors, to the extent applicable to each Subcontractor given the nature of the Services provided by it: 6, 7, 9, 11, 12, 13 (unless agreed otherwise by HSSBC through the Governance Process on a case by case basis where Service Provider can demonstrate to the satisfaction of HSSBC that a particular Subcontractor has adequate training and security measures in place), 14(a), 15, 16, 17, 18(a) - (c) (unless agreed otherwise by HSSBC through the Governance Process on a case by case basis where Service Provider can demonstrate to the satisfaction of HSSBC that a Subcontractor has adequate security standards in place), 18(e) - 18(k), 19, 20, 21, 22, 23, 24, 25, 26, 28(a) -28(d), 30, 31, and 32 (as applicable to Subcontractors), 34 (as applicable to Subcontractors), 36 37, 39, 40 (to the extent applicable), 42 (provided that notice is given by the Subcontractor to Service Provider and from Service Provider to HSSBC), and 44. For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect a cure period of 14 days will apply.

11. Ownership and Control of Personal Information

HSSBC (and, for clarity, the respective Health Organizations, as applicable) shall be and remain the exclusive owners of all right, title and interest in and to all Personal Information and shall be and remain in complete Control of the Personal Information. No access to or Custody of Personal Information by Service Provider or any other Person as contemplated in the Agreement or this **Schedule L (Privacy and Security)** shall be construed in any manner as providing Control or any other rights with respect to such Personal Information.

12. Privacy Management Plan

Service Provider shall prior to the Services Start Date develop plans, policies and procedures specific to privacy and security as described in Appendix B (*Privacy Management Plan*) to this **Schedule L (Privacy and Security)** and that include protocols and procedures to be followed:

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- (a) upon Service Provider having access to, or the ability to access, Personal Information, regardless of whether Service Provider has, or has had, actual access to Personal Information at the date such plans, policies and procedures are developed;
- (b) for the removal of any Secured Database (defined below), Supported Client Device or Secure Media (defined below) from any location as permitted by the Agreement or this **Schedule L** (*Privacy and Security*), including the development and maintenance of secure transportation protocols; and
- (c) upon any use or disclosure of Personal Information contrary to the provisions of the Agreement or this **Schedule L** (*Privacy and Security*).

Service Provider shall maintain such plans, policies and procedures and make them available for review by HSSBC upon the request of HSSBC from time to time. Service Provider shall not implement any material change to any such plans, policies or procedures without the prior written consent of HSSBC, which consent may be arbitrarily withheld.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

13. Training

Service Provider shall, and shall cause its Subcontractors to, maintain training plans and provide training that includes training of the Service Provider Personnel (which includes, for clarity, Subcontractor personnel) in the following:

- (a) aspects of privacy and security, including those set forth in these Privacy Requirements, as may be appropriate to their job function;
- (b) in respect of any Service Provider Personnel (including, for greater certainty, Subcontractor personnel) performing desk-side support services, policies relating to workstation access supervised by representatives of HSSBC (including, for greater certainty, the Health Organizations) unauthorized access, collection, creation, reproduction, use, storage, release, disposal, and disclosure of Personal Information;
- (c) the obligations that such Persons have directly to HSSBC with respect to the protection of Personal Information, if any, pursuant to FIPPA;
- (d) any requirement pursuant to FIPPA that there shall be no adverse consequences to such Persons in respect of such obligations;
- (e) in respect of any Authorized Service Provider Personnel relevant aspects of access, collection, storage, release, disposal and security of Personal Information as appropriate; and
- (f) the hotline established by HSSBC (telephone number 604.♦) pursuant to FIPPA in order that Service Provider Personnel (including, for greater certainty, Subcontractor

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personnel) can notify HSSBC directly in the event of any unauthorized disclosure or potential unauthorized disclosure of Personal Information.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this paragraph in any material respect a cure period of 14 days will apply.

Service Provider shall provide, and shall cause Subcontractors to provide, refresher training in respect of the foregoing on an annual basis or where necessary to implement material changes in the applicable policies or procedures. Service Provider shall, and shall cause its Subcontractors to, develop and maintain staff manuals that detail the security and privacy procedures that are applicable to all Service Provider Personnel (including, for greater certainty, Subcontractor personnel), as applicable. Such staff manuals shall be developed in accordance with, and incorporate, the recommendations contained in Privacy Impact Assessments/Threat and Risk Assessments conducted pursuant to Section 14 below. For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations under this paragraph in any material respect a cure period of 30 days will apply.

14. Privacy Impact Assessments/Threat and Risk Assessments

During the Term of the Agreement, Service Provider shall conduct a threat and risk assessment in accordance with Section 16 below:

- (a) at each Service Provider Permitted Service Location prior to the provision of Services at or from that location, and for each Service Provider controlled area of an HSSBC Facility prior to the provision of Services at or from that location, in all cases using a checklist derived by Service Provider from ISO27002;
- (b) prior to any material change in Service Provider's procedures, applications or technology relating to or used in connection with the Services; and
- (c) promptly in the event of a security incident caused by Service Provider or a Subcontractor involving one or more hardware products (including any server, Supported Client Device or external storage device) containing, or that may contain, Personal Information.

HSSBC shall have the right to review the results of all threat and risk assessments undertaken by Service Provider and to disclose such results to specific Health Organizations, as determined by HSSBC.

In addition to the foregoing in this Section, to the extent required and upon request by HSSBC, Service Provider shall work cooperatively with HSSBC (including, for greater certainty, the Health Organizations) and shall assist HSSBC (including, for greater certainty, the Health Organizations) by providing technical information relating to its threat and risk assessments, based on the standards contained in ISO27002, for use in the preparation of a Privacy Impact Assessment by HSSBC (including, for greater certainty, the Health Organizations) to the acquisition of the Services.

With respect to Section 14(a) above, Service Provider will not implement any material change in the procedures, applications or technology relating to or used in connection with the Services unless and until the threat and risk assessments have been completed to the satisfaction of HSSBC (including, for greater certainty, the Health Organizations), each acting reasonably. Notwithstanding the foregoing, (a) HSSBC (including, for greater certainty, the Health Organizations) have the right to conduct, at their own

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expense, their own Privacy Impact Assessments in respect of the foregoing; and (b) HSSBC has the right, at its own expense, to conduct its own security audits under Article 16 (*Record Keeping and Audit Rights*) of the Agreement in respect of the foregoing and to share the results of those audits with the specific Health Organizations as determined by HSSBC.

15. Testing and Development Work

Service Provider shall not access or use Personal Information or personally identifiable data of HSSBC or any member of the Health Organizations for any non-production purpose including, without limitation, application testing, development, maintenance and training environments.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees if it fails to fulfil its obligations above in this paragraph in any material respect no cure period will apply.

16. Risk Assessment

Periodically throughout the Term and also if directed to do so by the Commissioner for British Columbia (either directly or through a directive or order issued to the Ministry of Health, HSSBC or a member of the Health Organizations), Service Provider shall conduct a threat and risk assessment using a checklist derived by Service Provider from ISO27002 (as revised and replaced from time to time). For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails in any material respect to commence a threat and risk assessment in the manner required in this paragraph within 7 days after written notice from HSSBC instructing Service Provider to do so no further cure period will apply.

Service Provider shall provide a copy of the results of each threat and risk assessment to HSSBC prior to the implementation of any material technology changes or material business transformation changes. For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations in this Section in any material respect a cure period of 7 days will apply.

Notwithstanding the foregoing, HSSBC shall have the right to conduct, at its own expense, its own risk and control reviews or other security reviews to its satisfaction. Any such risk and control reviews or other security reviews shall be considered as audits carried out pursuant to and subject to the provisions of Article 16 (*Record Keeping and Audit Rights*) of the Agreement and shall in no way limit or otherwise diminish Service Provider's obligation to comply with the Privacy Requirements and the provisions of the Agreement. HSSBC shall have the right to disclose the results of any threat and risk assessment conducted under this Section (whether by Service Provider or HSSBC) to the Commissioner, the Ministry of Health, the Health Organizations and any other Person that HSSBC determines has a need to review such assessment.

17. Removal of Personal Information

Service Provider acknowledges that the Authorized Service Provider Personnel shall at no time be provided with the authority to remove Personal Information from any HSSBC Facility unless the purpose for such removal is expressly authorized elsewhere in these Privacy Requirements or in the Agreement (including in Appendix B (*Privacy Management Plan*) to this **Schedule L** (*Privacy and Security*)) or as otherwise agreed between the Parties.

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For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 7 days will apply. With respect to the foregoing cure period, which such is available, for purposes of information which has been wrongfully removed from an HSSBC Facility, such a cure shall be accomplished by the return or destruction of such information (as instructed by HSSBC).

18. Security Generally

To the extent Service Provider accesses Personal Information, Service Provider shall make arrangements to maintain the security and integrity of Personal Information that is in its Custody or that may come under its Control by protecting that Personal Information against such risks as unauthorized (including accidental) access, collection, use, duplication, modification, disclosure, storage or disposal. In particular, Service Provider shall:

- (a) establish and maintain security arrangements consistent with the codes of practice for information security management outlined in ISO27002 (as revised and replaced from time to time);
- (b) meet or exceed the security policies, standards, guidelines and practices expressly set forth in this Schedule or other HSSBC Policies and Procedures, including those implemented through the Change Process;
- (c) assess and adopt privacy and security enhancing technologies and cryptographic controls over the Term to improve security and restrict access to Personal Information to Authorized Service Provider Personnel, as approved and implemented in accordance with the Change Process;
- (d) follow directives from HSSBC from time to time with respect to security requirements in accordance with the Change Process;
- (e) have in place for Service Provider's networks used to provide Services all necessary network controls and other network security to maintain the level of security required for the Personal Information being handled;
- (f) require that any access to Personal Information be limited to a Permitted Purpose, be subject to compliance with Applicable Laws, and be limited to the time necessary to complete that Permitted Purpose;
- (g) require that any storage of Personal Information in the Custody or under the Control of Service Provider be at all times in Canada and in accordance with the terms of the Agreement;
- (h) to the extent that Personal Information may be Stored by Service Provider or a Subcontractor, require that such Personal Information be removed from Service Provider's or its Subcontractors' systems, physical storage areas, storage devices (including removable media, back-up media and materials) upon the Termination of the Agreement, within an agreed period of time, and in accordance with the termination provisions under Article 19 (*Transition Out Services*) of the Agreement;

- (i) require that the equipment and telecommunications facilities used by Service Provider or its Subcontractors in the delivery of the Services (that are owned by or otherwise in the custody or control of Service Provider or its Subcontractors) that host, transmit, Store or otherwise make available or provide access to any Personal Information are located in Canada and are secured by, for example, an electronic card access system, combination lock, lock and key, or other similar physical security measure, where “**Store**” or “**Storage**” means storage of Personal Information except for storage on a temporary basis such as caching for ephemeral or immediate processing purposes;
- (j) require the currency of critical software installed on Service Provider’s computers such as installation of patches and virus software updates on a timely basis, and the proactive monitoring of vendor alert services; and
- (k) actively manage the Services and monitor Authorized Service Provider Personnel, including performing random spot checks periodically throughout the Term as set out in the Service Provider Privacy Management Plan, to prevent and detect security breaches such as unauthorized access to Personal Information, and incorporate procedures to require that all access to Personal Information is given only to Authorized Service Provider Personnel, and to promptly revoke access to any such Persons when no longer required.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

19. Physical and Environmental Security

Service Provider shall develop, maintain and enforce policies that require, throughout the Term, that:

- (a) all access to Service Provider Permitted Service Locations is restricted and monitored. In addition to the other obligations set forth in the Agreement and these Privacy Requirements, Service Provider shall require that all Service Provider Permitted Service Locations have adequate physical security controls such as keys, entry cards or other similar controls; and
- (b) Authorized Service Provider Personnel are prohibited from bringing into or removing from any HSSBC Facilities any hardware that contains or may contain Personal Information or electronic data storage devices that may be used to copy or transport any Personal Information, (i) except as set forth in Section 17 (*Removal of Personal Information*) above, and (ii) except that Service Provider shall have the right to bring into or remove from an HSSBC Facility hardware or electronic data storage devices in connection with the performance of Services pursuant to the following Schedules under the Agreement and as otherwise agreed:
 - (i) ***[Insert Schedules as appropriate.]***

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal

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Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

20. Secured Databases

Service Provider shall develop, maintain and enforce policies, standards and guidelines relating to Service Provider controlled systems that Store Personal Information (“**Secured Databases**”). Secured Databases do not include workstations or systems that have access to but do not Store Personal Information, except as agreed to by both Parties. Service Provider’s policy shall:

- (a) require that no Personal Information be stored by Authorized Service Provider Personnel on laptops, PDAs, or any other mobile computing devices unless authorized under or pursuant to the terms of the Agreement or otherwise approved in writing by HSSBC;
- (b) identify all Secured Databases including, where applicable, serial numbers;
- (c) protect Secured Databases in accordance with the authentications standards set forth in Section 23 (*Authentication Standards*) below;
- (d) require that an Service Provider firewall is in place between Service Provider owned and operated networks storing Secured Databases and other networks;
- (e) except as expressly set forth in this **Schedule L** (*Privacy and Security*) of the Agreement, provide that there shall be no remote access to any Secured Databases;
- (f) require that Secured Databases not be removed from Service Provider Permitted Service Locations except as permitted pursuant to Section 17 (*Removal of Personal Information*) of this Schedule or the provisions of the Agreement;
- (g) require that all Secured Databases not have any active writeable/recordable removable data storage devices (such as floppy drives, CD or DVD burners), and that all USB or other ports to which external storage devices (such as external hard drives, memory sticks or CD ROMs) may be connected be disabled for such use, except where required to perform the Services such as:
 - (i) for authorized back-up of Personal Information,
 - (ii) for the purposes of software updates, maintenance and emergency maintenance and where the Authorized Service Provider Personnel performing such software updates, maintenance and emergency maintenance use a personal computer, terminal or laptop that is subject to HSSBC’s usage and security policies and that it equipped with the most current security features and software as required by HSSBC’s policies (for greater clarity, “usage” of the personal computer, terminal or laptop will be limited to Authorized Service Provider Personnel and shall be restricted by credentials, including password or other user identification that is equivalent to the legal signature of Authorized Service Provider Personnel, protected using physical security measures that prohibit use of the media or access to the Personal Information contained thereon, and the Personal Information contained thereon shall be encrypted using cryptography that meets or exceeds the adopted cryptography standards of HSSBC as of the Effective Date;

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- (h) require that all storage devices used in Secured Databases or otherwise containing Personal Information will be disabled prior to removal from the facilities where such storage devices are located and destroyed (using secure destruction and disposal mechanisms) strictly in accordance with policies or procedures expressly set forth in this Schedule or other HSSBC Policies and Procedures, including those implemented through the Change Process. For greater clarity, Service Provider shall not redeploy storage devices used in Secured Databases or otherwise containing Personal Information; and
- (i) require that any processing systems used to provide the Services that are shared with other clients of Service Provider or any Subcontractor are partitioned in such a way to allow only Authorized Service Provider Personnel to access any Personal Information.

For the purposes of this **Schedule L (Privacy and Security)**, “**remote access**” means, with respect to Secured Databases, access to Secured Databases by Authorized Service Provider Personnel from any location outside of the networks protected by Service Provider and as specifically approved in writing by HSSBC.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. A cure period of 14 days will apply.

21. Secured Equipment

Service Provider shall develop, maintain and enforce policies, standards and guidelines relating to Service Provider controlled Equipment that Stores Personal Information (“**Secured Equipment**”). Secured Equipment does not include workstations or systems that have access to but do not Store Personal Information, except as agreed to by both Parties. Service Provider’s policy shall:

- (a) require that no Personal Information is stored by Authorized Service Provider Personnel on laptops, PDAs, or any other mobile computing devices unless authorized under or pursuant to the terms of the Agreement or otherwise approved by HSSBC;
- (b) protect Secured Equipment in accordance with the authentications standards set forth in Section 23 (*Authentication Standards*) below;
- (c) require that an Service Provider firewall is in place between Service Provider owned and operated networks using Secured Equipment and other networks; and
- (d) require that any processing systems used to provide the Services that are shared with other clients of Service Provider or any Subcontractor are partitioned in such a way to allow only Authorized Service Provider Personnel to access any Personal Information.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

22. Desktop Computer/Mobile Devices

Service Provider shall develop, maintain and enforce policies, standards and guidelines relating to desktop computers. Service Provider's policy shall:

- (a) require that remote access to any desktop computer be limited to access for a Permitted Purpose, subject to requirements of Applicable Laws;
- (b) require that desktop computers shall not be removed from HSSBC Facilities by Service Provider Service Provider Personnel or any other Service Provider employee or independent contractor, except as permitted pursuant to Section 17 (*Removal of Personal Information*) of this Schedule or the provisions of the Agreement and except that Service Provider shall have the right to bring into or remove from an HSSBC Facility hardware products (including a Supported Client Device or external storage device) in connection with the execution of the Services pursuant to the following Schedules under the Agreement and as otherwise agreed:
 - (i) **[Insert Schedule as appropriate.]**
- (c) require that all fixed internal storage devices used in desktop computers or otherwise containing Personal Information be disabled and "locked down" by Service Provider Personnel prior to removal from an HSSBC Facility; and
- (d) where a fixed internal storage device used in a desktop computer or otherwise containing Personal Information is to be destroyed by Service Provider at the instruction of HSSBC or a member of the Health Organizations, require that all such devices be destroyed using secure destruction and disposal mechanisms (such as by the use of tools, including hammers, band saws or drills, so as to make the device no longer usable and the data on that device unreadable) and otherwise strictly in accordance with policies or procedures expressly set forth in this **Schedule L (Privacy and Security)** or other HSSBC Policies and Procedures, including those implemented through the Change Process.

If Service Provider acquires possession of any portable or external storage devices (*e.g.*, external hard drives, memory sticks, CD-ROMs) of HSSBC, any member of the Health Organizations or any HA User in the course of providing the Services, then Service Provider shall not remove any such device until an authorized representative of HSSBC or the applicable member of the Health Organizations, as the case may be, is present and upon removal Service Provider shall immediately deliver such device to that authorized representative.

For the purposes of this **Schedule L (Privacy and Security)**, "**remote access**" means, with respect to desktop computers, access to desktop computers by Authorized Service Provider Personnel from any location outside of the HSSBC Facilities where that desktop computer is located and as specifically approved by HSSBC.

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For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

23. Authentication Standards

Service Provider shall develop, maintain and enforce policies, standards and guidelines that require of all systems controlled by Service Provider and used to provide Services under the Agreement:

- (a) credentials and other mechanisms, including passwords and access codes, to restrict access to Personal Information;
- (b) strong and unique user IDs and credentials, including passwords and access codes, assigned to individual Authorized Service Provider Personnel;
- (c) power-on and screen-saver passwords and session time-outs (as appropriate);
- (d) strong authentication, credential and password rules and standards, including standards relating to character length and time-expiry of passwords, strictly in accordance with policies or procedures expressly set forth in Service Provider policies; and
- (e) other similar measures.

Service Provider shall be responsible for the actions of the Service Provider Personnel (which includes, for clarity, Subcontractor personnel) under this **Schedule L** (*Privacy and Security*) and otherwise with respect to the Privacy Requirements, including all loss or damage suffered or incurred by HSSBC or any member of the Health Organizations resulting from or relating to:

- (a) the loss or disclosure of any password, user ID, access code or other credentials of or assigned to any Service Provider Personnel;
- (b) all activities performed, or any failure to perform such activities, under its passwords, user IDs, access codes or other credentials.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

24. Internet/Email

- (a) Effective as of the Services Start Date, HSSBC shall establish and assign email accounts (the “**Assigned Accounts**”) on the internal email system of HSSBC or of a Health Authority (the “**HSSBC Email System**”) for each Authorized Service Provider Personnel in connection with the performance of the Services. Any and all email communication containing Personal Information shall be communicated by Service Provider within the HSSBC’s Email System using the Assigned Accounts only. If HSSBC communicates Personal Information to Service Provider using an Service Provider email address (for

example, XXX.com), then Service Provider shall be deemed not to be in breach of Sections 6(a) and (b) (*Access to Personal Information*), and 26 (*Transmission and Back-ups of Personal Information*), of these Privacy Requirements, nor is it an Event of Termination pursuant to Section 18.5(11) (*Events of Termination*) of the Agreement. In addition, in the event HSSBC communicates Personal Information to Service Provider using an Service Provider email address and the actual recipient of the email is not an Authorized Service Provider Personnel, then Service Provider shall be deemed not to be in breach of Sections 31 (*Limiting Access to Authorized Service Provider Personnel*) or Section 36 (*Security Clearances*) of these Privacy Requirements on the basis that such Service Provider employee has not entered into a Service Provider Personnel Agreement or undergone the required security clearance. However, for greater certainty, all other provisions of the Agreement and these Privacy Requirements relating to the disclosure and use of Personal Information shall continue to apply.

- (b) Service Provider shall develop, maintain and enforce policies, standards and guidelines relating to Service Provider's receipt of email from HSSBC or a member of the Health Organizations containing Personal Information and the transmission of email containing Personal Information, which policies, standards and guidelines shall require that any Personal Information contained in such email will not be disclosed to any Person other than HSSBC or a member of the Health Organizations unless the disclosure is:
 - (i) permitted under Article 13 (*Privacy, Security and Confidentiality*) of the Agreement or these Privacy Requirements;
 - (ii) necessary for the ordinary performance of the Services in accordance with the Agreement or as otherwise approved by HSSBC in writing; and
 - (iii) permitted in accordance with FIPPA, and for purposes thereof, Service Provider shall comply with FIPPA with respect to that Personal Information to the extent such Act applies to Service Provider as a "service provider" as defined in such Act.

Without limiting the generality of the foregoing, Service Provider shall not disclose any Personal Information contained in an email sent from HSSBC or a member of the Health Organizations to Service Provider via an Service Provider email address pursuant to a Disclosure Order, as more expressly described in Article 13 (*Privacy, Security and Confidentiality*) of the Agreement.

- (c) The Parties acknowledge that email communication may result in Personal Information being temporarily stored on laptops or personal digital assistants ("**PDAs**") used by the Authorized Service Provider Personnel, which laptops and PDAs will not be required to be maintained at HSSBC Facilities or Service Provider Permitted Service Locations (notwithstanding the provisions of Section 6(a) or (b) (*Access to Personal Information*) or Section 17 (*Removal of Personal Information*) or Section 19 (*Physical and Environmental Security*) above).

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

25. Wireless Network Controls

Service Provider may use wireless networks owned or operated by it for the performance of the Services, provided that no such wireless network shall connect to or otherwise access any network owned or operated by HSSBC or a member of the Health Organizations. To the extent Service Provider or a Subcontractor accesses Personal Information, Service Provider shall not, and shall ensure that its Subcontractors do not, transmit any Personal Information over a wireless network that is not owned or operated by HSSBC or any member of the Health Organizations.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

26. Transmission and Back-ups of Personal Information

Service Provider shall develop, maintain and enforce policies, standards and guidelines that require that throughout the Term all individual items of hardware or storage media that Store Personal Information that are permitted or required, pursuant to the Agreement or to these Privacy Requirements, to be removed from either Service Provider Permitted Service Locations or HSSBC Facilities (“**Secured Media**”), may only be removed for purposes such as off-site back-up and business continuity, destruction or at the express direction of HSSBC in writing. Access to Secured Media shall be restricted by credentials, including password, protected using physical security measures that prohibit use of the media or access to the Personal Information contained thereon, and the Personal Information contained thereon shall be encrypted using cryptography that meets or exceeds the adopted cryptography standards of HSSBC as of the Effective Date.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

27. Intentionally Deleted

28. System Logs

Service Provider shall design and implement for the purpose of audit and investigation by HSSBC a system to record and maintain all user access records/logs (“**System Logs**”) for all Service Provider Personnel who (i) access devices, or (ii) access any Service Provider systems that have access to or that may enable a user to access Personal Information. Service Provider shall require that Service Provider developed applications that have access to or enable a user to access Personal Information shall conform to paragraphs (a) - (c) below, and that any applications delivered to Service Provider that support an audit trail shall continue to have such support.

With respect to each desktop computer, the System Logs shall, at a minimum, automatically record the identity of the Service Provider Personnel accessing that device and the time of such Service Provider Personnel’s logon to and log-off from that device. With respect to any Service Provider systems that have access to or that may enable a user to access Personal Information, the Systems Logs shall, at a minimum, automatically record the following:

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- (a) the time of each data entry, modification, and duplication of Personal Information and the user ID performing the function;
- (b) the time at which Personal Information is accessed and the identity of the Service Provider Personnel gaining the access;
- (c) the identity of the Service Provider Personnel and the time of such Service Provider Personnel's logon to and log-off from Secured Databases, devices and/or Secured Equipment, VPN login and logout time/date, IP addresses of Authorized Service Provider Personnel having remote access, IP addresses assigned to each Authorized Service Provider Personnel from the VPN address pool, connection time and packet information; and
- (d) logs of individuals who access any Service Provider Permitted Service Location (such as sign-in logs, whether paper or electronically based).

Service Provider shall not modify or erase any System Logs stored on desktop computers except at the written instruction of HSSBC and shall make information from such logs, whether relating to an individual desktop computer or to multiple desktop computers, available to HSSBC in a timely manner as HSSBC may reasonably request from time to time for audit, investigation and spot check by HSSBC. Service Provider shall retain all System Logs relating to Service Provider systems that have access to or that may enable a user to access Personal Information for a minimum of two years unless otherwise agreed to in writing by HSSBC and shall make information from such logs available to HSSBC in a timely manner as HSSBC may reasonably request from time to time for audit, investigation and spot check by HSSBC.

The Parties acknowledge that as technology evolves during the Term of the Agreement, there may be other data that HSSBC will require Service Provider to log as part of the System Logs.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

29. Notification

Service Provider shall develop, maintain and enforce policies, standards and guidelines that require that Service Provider systems that Store or that may enable access to Personal Information have mechanisms in place to provide notification to a Person or Persons designated by HSSBC in the event of specific irregular actions such as unauthorized access, security malfunction, irregular access, large scale copying or other similar activities with respect to Personal Information. For the purposes thereof, Service Provider shall require that its Subcontractors report any such irregular actions to Service Provider, and Service Provider shall report the same forthwith to HSSBC in accordance with the foregoing.

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For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations in this Section in any material respect a cure period of 30 days will apply.

30. Organizational Security

Service Provider shall throughout the Term:

- (a) have clearly defined security roles and responsibilities within Service Provider in the form of organization charts and role descriptions for specialized security personnel;
- (b) ensure appropriate security requirements and confidentiality and non-disclosure obligations are included in all of its Subcontractor contracts entered into in connection with providing the Services;
- (c) have a designated Privacy, Security and Compliance Officer, who is not a US Service Provider Personnel (defined below), responsible for monitoring and enforcing privacy and security measures and who is responsible for overseeing the implementation Directives of HSSBC relating to the Privacy Requirements; and
- (d) have an individual who is not a US Service Provider Personnel (defined below) act in administrator roles with elevated access privileges, such as Systems Administrator, Network Administrator, Database Administrator, Security Administrator or Applications Administrator or other similar positions.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations in this Section in any material respect results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

31. Limiting Access to Authorized Service Provider Personnel

Service Provider shall require that all individuals who have access or who may obtain access to Personal Information:

- (a) are Service Provider Personnel who are employees of Service Provider who have entered into a Confidentiality Covenant (as defined below) or Subcontractor personnel of a Subcontractor who have entered into an agreement as contemplated in Section 0 (*External Confidentiality Covenant*) of this **Schedule L** (*Privacy and Security*);
- (b) are not US Service Provider Personnel; and
- (c) have a need to know or to have access to the Personal Information in order to perform their job tasks (provided that such job tasks are in furtherance of the Services and are not inconsistent with the terms or the purpose of these Privacy Requirements),

(“Authorized Service Provider Personnel”).

Service Provider shall create and deliver to HSSBC a complete and accurate list of all Service Provider Personnel (which includes, for clarity, Subcontractor personnel) who will or may have access to or obtain Custody of any Personal Information in connection with providing Services under the Agreement as at the

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Effective Date. From time to time during the Term, Service Provider will provide HSSBC with prompt written notice of any changes to or the departure or cessation of employment of any such Service Provider Personnel (which includes, for clarity, Subcontractor personnel).

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect and such failure results in results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 will apply.

32. Monitoring of Telephone Calls

To the extent and for so long as Service Provider has a telephone monitoring system in place, Service Provider shall require that any Personal Information obtained from such monitoring is:

- (a) not Stored at or accessed from any location outside of Canada; and
- (b) only used by or disclosed to Authorized Service Provider Personnel. Service Provider shall maintain and enforce policies that prohibit the use or disclosure of any sensitive monitored information by its Authorized Service Provider Personnel.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations in this Section in any material respect results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

33. Service Provider Personnel Confidentiality Covenant

All Service Provider Personnel who have access to, or who have the ability to access, Personal Information shall be required to sign confidentiality covenants directly with Service Provider in a form approved by HSSBC (the “**Confidentiality Covenants**”). The Confidentiality Covenants shall contain non-disclosure obligations along with express obligations to advise Service Provider directly in the event that the Person becomes aware of any disclosure or potential disclosure of Personal Information. Service Provider shall not permit any Service Provider Personnel to engage in any activities with respect to the Services or the Agreement nor have any access to Personal Information until such time as a Confidentiality Covenant has been signed and delivered by the Service Provider Personnel to Service Provider. Upon the request of HSSBC, Service Provider shall confirm, in writing, to HSSBC that all Service Provider Personnel who require access to Personal Information have signed a Confidentiality Covenant. The form of Confidentiality Covenant in effect at the Effective Date is attached as Appendix C to this **Schedule L** (*Privacy and Security*). Any change in the form of a Confidentiality Covenant implemented after the Effective Date shall be implemented in accordance with the Change Process. Service Provider shall cause all Service Provider Personnel to reconfirm in writing their Confidentiality Covenants on an annual basis.

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For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

34. Subcontractor Personnel Confidentiality Covenant

All Subcontractor personnel who have access to, or who have the ability to access, Personal Information shall be required to sign external confidentiality covenants directly with the Subcontractor in a form approved by HSSBC (the “**External Confidentiality Covenants**”). The External Confidentiality Covenants shall contain non-disclosure obligations along with express obligations to advise the Subcontractor directly in the event that the Subcontractor personnel becomes aware of any disclosure or potential disclosure of Personal Information. Service Provider shall not permit any such Subcontractor personnel to have any access to any Supported Client Device or any other system that has or may permit access to Personal Information until such time as that Subcontractor personnel have signed an External Confidentiality Covenant and all such signed agreements have been delivered to Service Provider. At the request of HSSBC, Service Provider shall confirm, in writing to HSSBC that all Subcontractor personnel who have access or who may obtain access to Personal Information have signed an External Confidentiality Covenant. The form of External Confidentiality Covenants in effect at the Effective Date is attached as Appendix D to this **Schedule L** (*Privacy and Security*). Any change in the form of External Confidentiality Covenants implemented after the Effective Date will be implemented in accordance with the Change Process. Service Provider shall require that all Subcontractor personnel who are required by this paragraph to sign External Confidentiality Covenants to reconfirm in writing their External Confidentiality Covenants on an annual basis.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

35. Precedence of Service Provider Personnel Agreements/Whistleblower Protection

Service Provider shall include in its employee agreements with the Service Provider Personnel or supplement its employee agreements with the Service Provider Personnel with the specific language with respect to privacy and confidentiality of the Personal Information, which language may take the form of a unilateral agreement by Service Provider to the Service Provider Personnel. The language in the attached Appendix C (*Confidentiality Covenants*) shall provide for precedence pertaining to the obligation to protect privacy and confidentiality of Personal Information over any agreement that Service Provider has with the Service Provider Personnel.

Service Provider will not dismiss, suspend, demote, discipline, harass or otherwise disadvantage Service Provider Personnel (including, for greater certainty, Authorized Service Provider Personnel), or deny that Service Provider Personnel (including, for greater certainty, Authorized Service Provider Personnel) a benefit, because the individual acting in good faith and on the basis of reasonable belief:

- (a) has notified the minister responsible for FIPPA and HSSBC of a foreign demand for disclosure;

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- (b) has otherwise disclosed to HSSBC that Service Provider has contravened or is about to contravene FIPPA or the e-Health Act;
- (c) has done or stated an intention of doing anything that that is required to be done in order to avoid having any Person contravene FIPPA or the e-Health Act;
- (d) has refused to do or stated an intention of refusing to do anything that is in contravention of FIPPA or the e-Health Act; or
- (e) Service Provider believes that Service Provider Personnel (including, for greater certainty, Authorized Service Provider Personnel), will do anything described above in Sections 35(a) - (d).

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

36. Security Clearances

Service Provider shall perform or cause to be performed security clearances for all Service Provider Personnel (which includes, for clarity, Subcontractor personnel) who have access to, or who have the ability to access, Personal Information in the course of performing the Services prior to the first time at which Service Provider provides such Service Provider Personnel (which includes, for clarity, Subcontractor personnel) with the ability to access Personal Information. For the purposes of this **Schedule L (Privacy and Security)**, the term “security clearance” means a check of criminal records using a CPIC Level 2 query.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations in this Section in any material respect a cure period of 14 days will apply.

37. US Service Provider Personnel

Subject to Applicable Laws, Service Provider shall not provide Service Provider Personnel (and, for clarity, shall not authorize or permit Subcontractors to provide Subcontractor personnel), who are US Service Provider Personnel with any access to Personal Information at any time unless expressly approved in advance by HSSBC in writing pursuant to the terms of the Agreement or otherwise. Where US Service Provider Personnel are required for the performance of the Services, Service Provider shall provide dummy data to the extent possible, such as by replacing Personal Information (such as names, phone numbers, addresses and personal health information details) with identifiers, or utilizing other means as reasonably directed by HSSBC. Any approved US Service Provider Personnel shall only access Personal Information from a location within Canada approved by HSSBC or a member of the Health Organizations. Under no circumstances shall any US Service Provider Personnel have remote access to Personal Information except from a location within Canada and for a Permitted Purpose, subject to compliance with Applicable Laws. “**US Service Provider Personnel**” means any Service Provider Key Personnel, and all other personnel assigned by Service Provider or its Subcontractors to perform Service Provider’s obligations under this Agreement including, for greater certainty, independent contractors of the Service Provider or Subcontractors, who have or have entered into an employment agreement (whether express or implied by law) with a Person of the United States of America.

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For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations in this Section in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

38. Paramountcy of Obligation to Protect Personal Information

Service Provider acknowledges that its applicable policies, education and training of Authorized Service Provider Personnel, shall reflect the obligations of the Service Provider Personnel pursuant to the Confidentiality Covenants and shall require that the applicable policies, education and training of Authorized Service Provider Personnel by Subcontractors reflect the obligations of the Subcontractor personnel pursuant to the External Confidentiality Covenants (as applicable), which may require them to act in a manner that is contrary to the interests of Service Provider or a Subcontractor (for example, because the fulfillment of such obligations may result in remedies being assessed against Service Provider under the terms of the Agreement). The Parties shall not, throughout the Term:

- (a) discipline or discourage Authorized Service Provider Personnel from acting in accordance with:
 - (i) provisions of the Confidentiality Covenants or the External Confidentiality Covenants pertaining to the protection of the privacy and confidentiality of the Personal information, or
 - (ii) Service Provider's obligations to HSSBC (including, for greater certainty, the Health Organizations) pursuant to these Privacy Requirements as implemented in accordance with Appendix B to this **Schedule L** (*Privacy Management Plan*); or
- (b) impose or permit to be imposed on any Authorized Service Provider Personnel any obligation that is inconsistent with or that materially adversely affects his or her ability to fulfill:
 - (i) his or her obligations pursuant to Confidentiality Covenants or External Confidentiality Covenants (as applicable), or
 - (ii) Service Provider's obligations to HSSBC (including, for greater certainty, the Health Organizations) pursuant to these Privacy Requirements as implemented in accordance with Appendix B to this **Schedule L** (*Privacy Management Plan*).

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations in this Section in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

39. Data Sharing

Except as may be permitted under Applicable Laws or as may be provided otherwise under the Agreement or the Transaction Documents, or as may be explicitly approved by HSSBC through the Governance Process, under no circumstances shall Service Provider enter into any relationship,

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contractual or otherwise, with any other Person involving data sharing or data access with respect to Personal Information.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations in this Section in any material respect results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

40. Collection of Personal Information

Except as may be provided otherwise in the Agreement or as may otherwise be directed by HSSBC in writing pursuant to the Governance Process, Service Provider shall not collect or create any Personal Information in the performance of the Services (other than Personal Information that is necessary for the performance of Service Provider's obligations). Except as otherwise contemplated or permitted in the Transaction Documents, Service Provider shall:

- (a) collect such Personal Information directly from the Person to whom the Personal Information relates;
- (b) inform the Person from whom Service Provider collects Personal Information:
 - (i) the purpose for collecting the information,
 - (ii) the legal authority for collecting the information,
 - (iii) that Service Provider is collecting the information on behalf of HSSBC or a member of the Health Organizations, and
 - (iv) the title, business address and business telephone number of the Person designated by HSSBC to answer questions about Service Provider's collection of such Personal Information; and
- (c) make every reasonable effort to ensure the accuracy and completeness of Personal Information collected by Service Provider in respect of the Services.

This Section does not apply to personal information in respect of Service Provider Personnel (which includes, for clarity, Subcontractor personnel) or other employees of suppliers used in the ordinary course of Service Provider's business except to the extent that the same constitutes Personal Information of such person other than in their role as an employee as contemplated above.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations in this Section in any material respect a cure period of 14 days will apply.

41. Complaints and Investigations

Subject to the provisions of Section 5 (*Directives*) above, in the event of a dispute between either Service Provider and an individual, or HSSBC or a member of the Health Organizations and an individual, or an investigation or other proceeding before a Commissioner or other institution or authority, concerning the access, collection, use, disclosure, or otherwise in respect of Personal Information, Service Provider will, upon the request of HSSBC, defend and advocate the lawfulness of Service Provider's Personal

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Information access and handling practices and its policies and procedures and, at HSSBC's cost and expense, those policies and procedures of HSSBC, through all available means of dispute resolution as provided for by Applicable Laws, all in cooperation with HSSBC.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations in this Section in any material respect a cure period of 14 days will apply.

42. Non-Compliance Reports

Service Provider shall, as soon as possible, and in any event within 24 hours, report to HSSBC any known breach of the requirements of these Privacy Requirements, disclosure of Personal Information, potential disclosure of Personal Information or other risk with respect to the disclosure of Personal Information. If for any reason Service Provider does not comply, or anticipates that it will be unable to comply, with a term of these Privacy Requirements in any respect, then Service Provider shall promptly notify HSSBC of the particulars of such non-compliance or anticipated non-compliance, and the steps that Service Provider proposes to take to address, or prevent recurrence of, the non-compliance or anticipated non-compliance. If Service Provider fails to take steps to address, or prevent recurrence of, the non-compliance or anticipated non-compliance or if such steps proposed by Service Provider are not adequate to enable Service Provider to comply with these Privacy Requirements, in HSSBC's discretion, then such failure shall be a breach of the Agreement and HSSBC shall have all rights and remedies under the Agreement.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations above in this Section in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

43. FIPPA Investigations

Service Provider acknowledges that under FIPPA, the Commissioner has the power to obtain information and evidence from Persons other than HSSBC (including, for greater certainty, the Health Organizations) in the course of conducting an investigation or an inquiry under that Act. Accordingly, Service Provider shall provide, and shall cause its Subcontractors to provide, reasonable cooperation to HSSBC with respect to investigations or inquiries of the Commissioner under FIPPA in connection with any information related to the Agreement that the Commissioner is entitled to obtain under such Act.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations in this Section in any material respect a cure period of 7 days will apply.

44. Prohibition Against Foreign Affiliates

Service Provider shall, and shall cause its Subcontractors that have access to, or that have the ability to access, Personal Information, to prohibit or otherwise restrict their foreign Affiliates from accessing any Personal Information and require that such Personal Information is at all times in the custody of a Canadian entity, except as may be expressly permitted otherwise under the terms of the Agreement or these Privacy Requirements.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations in this Section in any material respect and

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such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

45. Intentionally Deleted.

46. Indemnification and Limitation of Liability

Any Claims, disputes, procedures or otherwise arising out of this Schedule or the Parties' requirements under the Privacy Requirements, or the disclosure of Personal Information, shall be governed by the provisions Article 21 (*Indemnification and Limitation of Liability*) of the Agreement.

47. Changes

Any changes, amendments, updates, modifications, revisions, replacements or supplements in or to the Privacy Requirements, including:

- (a) the form of the Confidentiality Covenants or the External Confidentiality Covenants;
- (b) information security management codes of practice, as outlined in ISO27002 (as amended from time to time); or
- (c) the HSSBC Policies and Procedures or other policies of HSSBC, including those implemented through the Change Process,

that have a material adverse impact on Service Provider's responsibilities under the Agreement will be implemented in accordance with the Change Process.

Appendix A

PROVINCIAL HEALTH SERVICES AUTHORITY PRIVACY PROTECTION SCHEDULE Custody and Control of Data

1. Purpose

The purpose of this Schedule is to: (a) enable the Customer to comply with its statutory obligations under the *Act* with respect to personal information; and (b) ensure that the Service Provider is aware of and complies with its statutory obligations under the *Act* with respect to personal information.

For the purposes of Section 18.5(10) (*Events of Termination*) of the Agreement, Service Provider acknowledges and agrees that if it fails to fulfil its obligations in this Appendix in any material respect and such failure results in a use, disclosure, access or storage (outside of Canada) of Personal Information in a manner not authorized under the Agreement no cure period will apply. Otherwise a cure period of 14 days will apply.

2. Definitions

“*Act*” means the *Freedom of Information and Protection of Privacy Act* (British Columbia), as amended from time to time.

“*Associate*” has the meaning specified in the *Act*.

“*Authorized Site*” means Service Provider’s head office in British Columbia or at such other location in Canada as may be approved in writing by the Customer.

“*Agreement*” means the Agreement to which the Schedule is appended.

“*Commissioner*” means the BC Information and Commissioner appointed under the *Act*.

“*Conflicting Foreign Order*” means any order, subpoena, directive, ruling, judgement, injunction, award or decree, decision, request or other requirement issued from a foreign court, agency of a foreign state or other authority outside Canada or any foreign legislation the compliance with which would likely render the Customer or its employees in non-compliance with the *Act*.

“*Contact Information*” means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual.

“*Customer*” means HSSBC and the Health Organizations.

“*Foreign Access Conditions*” means:

- (i) the Service Provider must ensure that such access is limited to temporary access and storage for the minimum time necessary for the Permitted Purpose; and

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- (ii) if such access is for the Permitted Purpose of data recovery, the Service Provider must ensure such access is limited to access and storage only after the system failure has occurred.

“Permitted Purpose” means access to Records containing Personal Information that is necessary for:

- (i) installing, implementing, maintaining, repairing, trouble-shooting or upgrading an electronic system used by the Customer or by the Service Provider to provide services to the Customer pursuant to the Agreement, or any equipment that includes an electronic system used by the Customer or by the Service Provider to provide services to the Customer pursuant to the Agreement; or
- (ii) recovery of data (including Personal Information) undertaken following the failure of an electronic system used by the Customer or by the Service Provider to provide services to the Customer.

“Personal Information” means recorded information about an identifiable individual, other than contact information, collected or created by the Service Provider or otherwise held on behalf of the Service Provider as a result of the Agreement or any previous agreement between the Customer and the Service Provider dealing with the same subject matter as the Agreement but excluding any such information that, if this Schedule did not apply to it, would not be under the “control of a public body” within the meaning of the Act.

“Service Provider Personnel” means any employees, agents, representatives or Associates of the Service Provider who provide the Services or to whom access is made available to Personal Information for the purposes of fulfilling the Service Provider’s obligations under the Agreement.

“Access Agreement” means an agreement between Service Provider Personnel and the Service Provider requiring the security of Personal Information.

“Record” includes books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information, including Personal Information, is recorded or stored by graphic, electronic, mechanical or other means, but does not include a computer program or any other mechanism that produces records.

“Service Provider” means Service Provider.

“Schedule” means this Privacy Schedule, as may be amended from time to time.

3. Interpretation

In this Schedule, references to sections by number are to sections of this Schedule unless otherwise specified in this Schedule.

4. Service Provider Subject to the Act

- (a) The Service Provider must in relation to Personal Information comply with: (a) the requirements of the Act applicable to the Service Provider, including any applicable order of the Commissioner under the Act; and (b) any direction given by the Customer under

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this Schedule. If the Customer learns of a Commissioner order applicable to the Service Provider's services, it will notify the Service Provider.

- (b) The Service Provider acknowledges that it is familiar with the requirements of the Act governing Personal Information that are applicable to it as a service provider.

5. Collection of Personal Information

- (a) Unless the Agreement otherwise specifies or the Customer otherwise directs in writing, the Service Provider may only collect, create or hold, on behalf of the Customer, Personal Information that is necessary for the performance of the Service Provider's obligations, or the exercise of the Service Provider's rights, under the Agreement.
- (b) The Service Provider may only collect Personal Information if expressly authorized by the Agreement. Where authorized to do so, and unless the Agreement otherwise specifies or the Customer otherwise directs in writing, the Service Provider shall: (i) collect Personal Information directly from the individual the information is about; and (ii) tell an individual from whom the Service Provider collects Personal Information the purpose for collecting it; the legal authority for collecting it; and the title, business address and business telephone number of the person designated by the Customer to answer questions about the Service Provider's collection of Personal Information.

6. Accuracy of Personal Information

Where applicable to the Services provided by the Service Provider pursuant to the Agreement, the Service Provider shall make every reasonable effort to ensure the accuracy and completeness of any Personal Information that comes into their custody pursuant to this Agreement and which may be used by the Service Provider or the Customer to make a decision that directly affects the individual the information is about.

7. Receiving Requests for Access or Correction to Personal Information

If a request is received under the Act for access to, or correction of, Records that are in the custody of the Service Provider but under the control of the Customer, the Service Provider must promptly advise the person to make the request to the Customer and if the Customer has advised the Service Provider of the name or title and contact information of an official of the Customer to whom such requests are to be made, the Service Provider must also promptly provide that official's name or title and contact information to the person making the request. The Service Provider must provide the Records to the Customer for management by the Customer's Information and Privacy Officer. This shall occur within a reasonable time frame to enable the Customer to comply with the Act. If a request is permitted by the Act, the Service Provider shall be responsible for providing the Records at the Service provider's expense to the Customer. If the Service Provider is expressly authorized by the Agreement to manage the request for correction of records, the Service Provider shall do so in accordance with Section 8 of this schedule.

8. Correction of Personal Information

The Service Provider may only correct Personal Information if expressly authorized by the Agreement. Where authorized to do so, and unless the Agreement otherwise specifies or the Customer otherwise directs in writing:

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- (a) Within 5 business days of receiving a written direction from the Customer to correct or annotate any Personal Information, the Service Provider must annotate or correct the information in accordance with the direction.
- (b) When issuing a written direction under paragraph (a), the Customer must advise the Service Provider of the date the correction request to which the direction relates was received by the Customer in order that the Service Provider may comply.
- (c) Within 5 business days of correcting or annotating any Personal Information, the Service Provider must provide the corrected or annotated information to any party to whom, within one year prior to the date the correction request was made to the Customer, the Service Provider disclosed the information being corrected or annotated.

9. Control of and Rights in the Record

All right, title and interest in, and control and custody of, all Records shall remain with the Customer. No interest or any right respecting the Record, other than as expressly set out herein, is granted to the Service Provider under this Schedule, by implication or otherwise. If Personal Information is collected by the Service Provider and transmitted to the Customer, such Personal Information is deemed to be under the control of the Customer.

10. Access to and Use of Personal Information

- (a) The Service Provider is hereby granted temporary access to Personal Information pursuant to the terms and conditions of this Schedule, for the sole and express purpose of fulfilling its obligations under the Agreement and for no other use or purpose except as required to comply with any Canadian statutory or other legal requirement, including an Order of a Canadian Court, although any disclosure of Personal Information remains subject to Section 12 of this Schedule. The Service Provider shall not copy or reproduce any written materials containing Personal Information without the Customer's prior written consent. Notwithstanding the foregoing, the Service Provider may access Records containing Personal Information for a Permitted Purpose. However, if Records containing Personal Information are disclosed outside of Canada or accessed from outside of Canada, the Service Provider must comply with the Foreign Access Conditions.
- (b) The Service Provider shall not take any action to obtain access of any kind to any Personal Information from any location outside of Canada except for a Permitted Purpose or as permitted by the Act and then only subject to the Foreign Access Conditions and such other processes and access controls as may be imposed by the Customer.
- (c) Except as otherwise permitted under this Schedule, the Service Provider shall not remove, physically, electronically or in other manner whatsoever from the authorized premises of the Customer, any Personal Information, without the Customer's prior written consent. Except as otherwise permitted under this Schedule, the Service Provider shall not store any Personal Information or permitted back-up copies of the Personal Information off-site unless expressly authorized by Customer. Where authorized, Service Provider must store back-up records off-site in Canada under conditions that are the same as or better than on-site storage conditions for original Records.

- (d) The Service Provider will ensure that only Service Provider Personnel who have entered into a Access Agreement may access the Personal Information. Unless approved by the Customer, the Service Provider may not enter into any form of a Personal Information sharing relationship with any other party.

11. Return or Destruction of the Record Upon Request

- (a) Unless the Agreement otherwise specifies, the Service provider must retain Personal Information until directed by the Customer in writing to dispose of it or deliver it as specified in the direction. Upon the request of the Customer for any reason whatsoever, and unless required to do otherwise in order to comply with any Canadian statutory or other legal requirement, including an Order of a Canadian Court, although any disclosure of Personal Information remains subject to Section 12 of this Schedule, the Service Provider shall deliver to the Customer or destroy promptly, according to the Customer's instructions, all documents or other Records in any form or format whatsoever in the Service Provider's possession constituting or based upon Personal Information and shall confirm that delivery or destruction to the Customer in writing. If, for any reason, the Service Provider fails to return or destroy any Record in accordance with this Section 11, the Service Provider's obligations pursuant to this Schedule will continue in full force and effect.
- (b) In the event of destruction of electronic Personal Information by the Service Provider, the following instructions shall be adhered to:
 - (i) Personal Information erasure may be accomplished by software erasure (where feasible) or by physical destruction of the media;
 - (ii) Software erasure must be at a minimum to US DoD standard 5220.22-M (this standard is achievable through a number of products such as Norton WipeInfo);
 - (iii) Physical destruction of paper media can be done by burning, by cross-cut shredding, or by pulping;
 - (iv) Physical destruction of disc media can be done by use of tools such as hammers, band saws, or drills in order to render the device no longer useable; and
 - (v) Some media such as diskettes can be run through a degausser in order to render them no longer readable.

12. Disclosure to Third Parties

Except as specifically permitted by the Customer in writing, the Service Provider shall not disclose and shall not allow any Service Provider Personnel to disclose in any manner whatsoever any Personal Information to any person, firm or corporation without the prior written consent of the Customer. The Service Provider agrees that such consent shall only be provided if such disclosure is permitted under the Act and the third party agrees, in writing, to be bound by the Act. If the Service Provider or anyone to whom the Service Provider transmits Personal Information pursuant to a Permitted Purpose, becomes legally compelled or otherwise receives a demand to disclose Personal Information other than as permitted by the Act, including without limitation pursuant to any Conflicting Foreign Order, the Service Provider will not do so unless: (a) the Customer has been notified; (b) the parties have appeared before a

Canadian Court; and (c) the Court has ordered the disclosure. Unauthorized disclosure is subject to penalties under the Act.

13. Privacy Representative

If required by the Customer, immediately upon execution of the Agreement the Service Provider shall appoint a representative to be responsible for the Service Provider's compliance with this Schedule and the Act (the "**Privacy Representative**"). The Service Provider shall grant its Privacy Representative sufficient authority to communicate and execute documents on behalf of the Service Provider as may be required from time to time for this purpose. The Service Provider shall promptly provide the Customer with the name of its Privacy Representative and shall promptly notify the Customer of any change of its Privacy Representative.

14. Notice of Breach

- (a) If for any reason the Service Provider does not comply, or anticipates that it will be unable to comply, with a provision in this Schedule in any respect, the Service Provider must promptly notify the Customer of the particulars of the non-compliance or anticipated non-compliance and what steps it proposes to take to address, or prevent recurrence of the non-compliance or anticipated non-compliance.
- (b) The Service Provider shall notify the Customer immediately of the disclosure of Personal Information to any person or entity not authorized by the Agreement to have such Personal Information, including full details of such disclosure. The Service Provider shall co-operate with the Customer in preventing the recurrence of such disclosure and to the extent feasible, in recovering the disclosed Personal Information, including any copies thereof.

15. Service Provider Personnel Bound by the Act

- (a) The Service Provider and the Customer hereby further acknowledge and agree that in order to fulfill its obligations under the Agreement or in connection with a Permitted Purpose it may be necessary for the Service Provider to grant to Service Provider Personnel access to Personal Information. The Service Provider hereby agrees that:
 - (i) it shall only make Personal Information available to Service Provider Personnel to the extent it is necessary for the purpose of fulfilling the Service Provider's obligations under the Agreement and for a Permitted Purpose;
 - (ii) it shall not make Personal Information available to any Service Provider Personnel while any such persons are physically located outside of Canada, except for a Permitted Purpose under the Foreign Access Conditions or as permitted by the Act;
 - (iii) if and whenever requested by the Customer, the Service Provider shall cause each of the Service Provider Personnel providing services on behalf of the Service Provider under the Agreement to enter into an Access Agreement, in a form and substance acceptable to the Customer wherein the Service Provider Personnel agree, among other things, to comply with the requirements of all applicable laws including in particular the requirements of the Act as if that person were originally bound by the Act; and

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- (iv) the Customer is granted the right to demand that the Service Provider Personnel who breached the obligation be removed from the provision of services pursuant to the Agreement.

The Service Provider shall be required to renew and refresh any or all such agreements from time to time at the reasonable request of the Customer.

- (b) The Service Provider shall properly advise each of the Service Provider Personnel providing services under the Agreement of the requirements of the Service Provider under this Schedule and the Act. If requested by the Customer, the Service Provider shall provide and conduct specific ongoing training for all such individuals in form and substance reasonably satisfactory to the Customer. The Service Provider acknowledges its obligations and, to the extent legally permissible, will address any non-compliance with this Agreement, by their staff, at their discretion.
- (c) Intentionally Deleted.
- (d) The Service Provider shall, upon request by Customer, provide a copy of the access agreement to the Customer.

16. Subcontractors

Any reference to the Service Provider in this Schedule includes any subcontractor or agent retained by the Service Provider to perform obligations under the Agreement and the Service Provider must ensure that any such subcontractors and agents comply with this Schedule.

17. Intentionally Deleted

18. Intentionally Deleted

19. Termination

- (a) Upon the expiration or earlier termination of the Agreement, the Service Provider shall promptly return to the Customer or destroy promptly, according to the Customer's instructions, all Records in the Service Provider's possession pursuant to the Agreement, whether created by the Service Provider or by others, constituting or based upon Personal Information and shall confirm that delivery or destruction to the Customer in writing.
- (b) In the event of a change to the Act or any other applicable privacy legislation or the issuance of a directive or policy by the government of the Province of British Columbia or a finding or report by the Commissioner, such that the Customer reasonably considers that the terms and conditions of the Agreement for the protection of Personal Information are deficient, the Customer and the Service Provider will enter into good faith negotiations in an effort to cure any deficiency and agree to new or amended terms of the Agreement such that it is no longer deficient. Should such negotiations fail, the Customer may terminate all or any portion of the Agreement in accordance with the termination requirements in the Agreement, upon provision of written notice to the Service Provider or upon such other future date as the Customer may specify in writing in such notice.

20. No Withholding

The Service Provider shall not be entitled to, and hereby waives any and all right to, withhold any Personal Information from the Customer to enforce any alleged payment obligation or in connection with any dispute relating to the terms of the Agreement or any other matter between the Customer and the Service Provider.

21. Investigation

The Service Provider shall co-operate with any Customer investigation of a complaint that the Customer's Personal Information has been used contrary to the *Act* or this Schedule.

22. Storage and Access to Personal Information

The Service Provider shall maintain Personal Information only at an Authorized Site. Except in relation to a Permitted Purpose under Foreign Access Conditions, no services that require access to Personal Information shall be provided or performed by the Service Provider in any location outside Canada and no Personal Information may be stored, transmitted or otherwise made available in any manner or accessed from outside Canada and no person outside Canada shall have access in any manner to Personal Information except as expressly approved by the Customer in writing. The Service Provider will notify the Customer prior to changing the Authorized Site.

23. Segregation of Data

The Service Provider shall take reasonable steps to ensure that all Personal Information is securely segregated from any information owned by the Service Provider or third parties, including access barriers, physical segregation, password authorization and public key encryption systems. The Service Provider must store Personal Information on agreed-upon media using techniques enabling access only by authorized persons, including encryption and compression of Personal Information. The Service Provider must encrypt Personal Information held on portable storage devices, including laptops.

24. Protection of Personal Information

The Service Provider must protect Personal Information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal, including any expressly set out in the Agreement.

25. Paramountcy

- (a) The Service Provider must comply with the provisions of this Schedule despite any conflicting provision of this Agreement or, subject to section 25 (b), the law of any jurisdiction outside Canada or any conflicting Foreign Order.
- (b) Nothing in this Schedule requires the Service Provider to contravene the law of any jurisdiction outside Canada unless such contravention is required to comply with the *Act*.
- (c) The Service Provider acknowledges that the Customer is subject to the *Act*.
- (d) The Service Provider shall immediately inform the Customer if the Service Provider or any of the Service Provider Personnel receive any Conflicting Foreign Order.

26. Survival

The obligations of the Service Provider in this Schedule will survive the termination of the agreement.

27. Amendment

Upon enactment of any British Columbia law or regulation or amendment to such law or regulation affecting the use or disclosure of Personal Information, or the publication of any decision of a British Columbia court relating to such law or regulation, or the publication of any interpretive policy or opinion of any government agency charged with the enforcement of any such law or regulation, the Customer, by written notice to the Service Provider, may specify the amendment of this Schedule in such manner as the Customer reasonably determines necessary to comply with such law or regulation to the extent such law or regulation is directly applicable and enforceable against the Service Provider. This provision is additional to any rights of the Customer to terminate pursuant to Section 19(b) of this Schedule.

28. Inconsistency

If a provision of the Agreement (including any direction given by the Customer under this Schedule) conflicts with a requirement of the Act or an applicable order of the Commissioner under the Act, the conflicting provision of the Agreement (or direction) will be inoperative to the extent of the conflict. Where in the Customer's reasonable opinion, there is ambiguity regarding whether a provision conflicts, the conflicting provision will be inoperative to the extent determined by the Customer. The Service Provider must comply with the provisions of this Schedule despite any conflicting provision of this Agreement or the law of any jurisdiction outside Canada.

Appendix B

Service Provider PRIVACY MANAGEMENT PLAN

Appendix C

CONFIDENTIALITY COVENANTS AND ACCESS AGREEMENT

BACKGROUND

Pursuant to a contract (“**Contract**”) entered into among **Provincial Health Services Authority**, as well as **Vancouver Coastal Health Authority**, by its agent, **Health Shared Services British Columbia, a division of Provincial Health Services Authority (“HSSBC”)** and **[Insert Name of Service Provider]** (“**Service Provider**”) for the provision of **[Insert description of services]**, Service Provider will be providing services to HSSBC. In providing services to HSSBC, Service Provider will have the ability to access, and may access or obtain custody of, personal information that is in the custody or under the control of HSSBC, the provincial health authorities in British Columbia and any of the various facilities and affiliated companies owned, controlled or financed by any of them, including highly sensitive health personal information, and other confidential information (the “**HSSBC Data**”), and Service Provider is obligated to ensure the privacy, confidentiality and security of the Health Organizations Data.

DEFINITION

“**Foreign Disclosure Laws**” means any laws, statutes, by-laws, treaty, directive, policy having the force of law, order, judgment, injunction, award, decree or other similar matter of any government, legislature (or similar body), court, governmental department, commission, board, bureau, agency, instrumentality, province, state, territory, association, county, municipality, city, town or other political of governmental jurisdiction, whether not or in the future constituted, outside of Canada, that may require, request, or otherwise demand access, use or disclosure of personal information, whether to intercept or obstruct terrorism, or for any other reason.

COVENANT

I, the undersigned, acknowledge that upon my employment with Service Provider it will be a condition of my access to HSSBC Data that I maintain the confidentiality and security of HSSBC Data and report any breach or suspected breach of confidentiality or security and any wrongdoing or suspected wrongdoing of which I am or become aware.

I, the undersigned, covenant that upon my employment with Service Provider:

1. I will access and deal with HSSBC Data: (a) only to the extent expressly required in order for me to perform my regular employment duties with Service Provider and so as to permit Service Provider to fulfil its obligations to HSSBC under the Contract; and (b) in strict accordance with the written policies and processes that have been agreed to between Service Provider and HSSBC, to the extent that the same have been delivered or made available to me, including all Service Provider policies that expressly prohibit any disclosure of HSSBC Data pursuant to Foreign Disclosure Laws (collectively, the “**Privacy Requirements**”).
2. I will not disclose any HSSBC Data except as clearly permitted or provided for by the Privacy Requirements.
3. In the event that I know or suspect that Service Provider or any other person or organization has accessed or disclosed or intends to access or disclose any HSSBC Data in any manner that is not

permitted by, or that is inconsistent with, the provisions of the Privacy Requirements (a “**Breach**”), I will:

- (a) not take any action to assist Service Provider or any other person in committing the Breach or that might otherwise permit or provide for the furtherance of the Breach, even if instructed to do so by Service Provider or by any other person; and
 - (b) immediately notify the Privacy Officer for HSSBC of the Breach by calling telephone number 604.♦ (the “**Hotline**”) and cooperate with HSSBC by providing all relevant information regarding the details of the Breach.
4. Where I have any questions as to whether a Breach has occurred, I will call the Hotline. I will be deemed to be in compliance with my obligations under this Confidentiality Covenant where I follow any direction that I receive from HSSBC through the Hotline.
5. I am aware that under the *Freedom of Information and Protection of Privacy Act* (British Columbia) (“**FIPPA**”), there are certain obligations placed on me as an employee of “service provider” and, in particular, an obligation to provide notice to HSSBC of any foreign demand for disclosure of personal information.
6. I am aware that FIPPA also provides for “whistle blower” protection for those who report incidents relating to foreign demands for disclosure, which requires, among other things, that an employer not discipline an employee because the employee, acting in good faith and on the basis of reasonable belief, has notified the commissioner under FIPPA of an unauthorized disclosure of personal information or has notified the minister responsible under FIPPA of a foreign demand for disclosure.
7. I acknowledge and agree that my obligations to Service Provider pursuant to this Confidentiality Covenant take priority over any agreement with or commitment to any other party (including Service Provider) that is inconsistent with this Confidentiality Covenant.
8. I acknowledge and agree that, if I leave the employ of Service Provider, I will not disclose to any person any HSSBC Data nor take with me any HSSBC Data received during the course of my employment with Service Provider.
9. I will, on an annual basis or as otherwise requested by HSSBC or Service Provider, reconfirm my commitments in respect of the Health Organizations Data.

I acknowledge that, upon my employment with Service Provider, my failure to comply with the provisions of this Confidentiality Covenant will be cause for and may result in disciplinary action up to and including, where necessary, my dismissal from Service Provider.

IN WITNESS WHEREOF I have executed this Confidentiality Covenant as of the ____ day of _____, 20____.

SIGNED, SEALED and DELIVERED by ♦ in)
the presence of:)

_____))
Signature)

_____))
Print Name)

_____))
Address)

_____))

_____))
Occupation)

_____)
♦

Appendix D

EXTERNAL CONFIDENTIALITY COVENANT AND ACCESS AGREEMENT

BACKGROUND

Pursuant to a contract (“**Contract**”) entered into among **Provincial Health Services Authority**, as well as **Vancouver Coastal Health Authority**, by its agent, **Health Shared Services British Columbia, a division of Provincial Health Services Authority**, (“**HSSBC**”) and **[Insert Name of Service Provider]** (“**Service Provider**”) for the provision of **[Insert description of services]**, Service Provider will be providing services to HSSBC. In providing services to HSSBC, Service Provider may be given or otherwise obtain access to or custody over personal information that is under the control of HSSBC, the provincial health authorities in British Columbia and any of the various facilities and affiliated companies owned, controlled or financed by any of them (the “**HSSBC**”), including highly sensitive health personal information, and other confidential information (the “**HSSBC Data**”), and Service Provider is obligated to ensure the privacy, confidentiality and security of the HSSBC Data. I am currently employed by **[Insert name of Subcontractor]** (the “**Company**”) and I have been advised that the Company will provide services to Service Provider as a subcontractor and that, in providing such services to one or more of HSSBC (including, for greater certainty, the Health Organizations), the Company will have the ability to access, and may access or obtain custody of, personal information that is under the control of HSSBC (whether directly or indirectly through Service Provider), including HSSBC Data.

DEFINITION

“**Foreign Disclosure Laws**” means any laws, statutes, by-laws, treaty, directive, policy having the force of law, order, judgment, injunction, award, decree or other similar matter of any government, legislature (or similar body), court, governmental department, commission, board, bureau, agency, instrumentality, province, state, territory, association, county, municipality, city, town or other political of governmental jurisdiction, whether not or in the future constituted, outside of Canada, that may require, request, or otherwise demand access, use or disclosure of personal information, whether to intercept or obstruct terrorism, or for any other reason.

COVENANT

I, the undersigned, acknowledge that upon my employment with the Company it will be a condition of my access to HSSBC Data that I maintain the confidentiality and security of HSSBC Data and report any breach or suspected breach of confidentiality or security and any wrongdoing or suspected wrongdoing of which I am aware.

I, the undersigned, covenant that upon my employment with the Company:

1. I will access and deal with HSSBC Data only: (a) to the extent expressly required in order for me to perform my regular employment duties with the Company and so as to permit the Company to fulfil its obligations to Service Provider; and (b) in strict accordance with the written policies and processes that have been agreed to between Service Provider and HSSBC, to the extent that the same have been delivered or made available to me, including all Service Provider policies that expressly prohibit any disclosure of HSSBC Data pursuant to Foreign Disclosure Laws (collectively, the “**Privacy Requirements**”).

2. I will not disclose any HSSBC Data except as clearly permitted or provided for by the Privacy **Requirements**.
3. In the event that I know or suspect that the Company or any other person or organization has accessed or disclosed or intends to access or disclose any HSSBC Data in any manner that is not permitted by, or that is inconsistent with, the provisions of the Privacy **Requirements** (a “**Breach**”), I will:
 - (a) not take any action to assist the Company or any other person in committing the Breach or that might otherwise permit or provide for the furtherance of the Breach, even if instructed to do so by the Company or by any other person; and
 - (b) immediately notify the Privacy Officer for HSSBC of the Breach by calling telephone number 604.♦ (the “**Hotline**”) and cooperate with HSSBC by providing all relevant information regarding the details of the Breach.
4. Where I have any questions as to whether a Breach has occurred, I will call the Hotline. I will be deemed to be in compliance with my obligations under this External Confidentiality Covenant where I follow any direction that I receive from HSSBC through the Hotline.
5. I am aware that under the *Freedom of Information and Protection of Privacy Act* (British Columbia) (“**FIPPA**”), there are certain obligations placed on me as an employee of a “service provider” and, in particular, an obligation to provide notice to HSSBC of any foreign demand for disclosure of personal information.
6. I am aware that FIPPA also provides for “whistle blower” protection for those who report incidents relating to foreign demands for disclosure, which requires, among other things, that an employer not discipline an employee because the employee, acting in good faith and on the basis of reasonable belief, has notified the commissioner under FIPPA of an unauthorized disclosure of personal information or has notified the minister responsible under FIPPA of a foreign demand for disclosure.
7. I acknowledge and agree that my obligations to the Company pursuant to this External Confidentiality Covenant take priority over any agreement with or commitment to any other party (including the Company) that is inconsistent with this External Confidentiality Covenant.
8. I acknowledge and agree that, if I leave the employ of the Company, I will not disclose to any person any HSSBC Data nor take with me any HSSBC Data received during the course of my employment with the Company.
9. I will, on an annual basis or as otherwise requested by HSSBC or the Company, reconfirm my commitments in respect of the HSSBC Data.

I acknowledge that, upon my employment with the Company, my failure to comply with the provisions of this External Confidentiality Covenant will be cause for and may result in disciplinary action up to and including, where necessary, my dismissal from the Company.

IN WITNESS WHEREOF I have executed this External Confidentiality Covenant as of the ____ day of _____, 20____.

SIGNED, SEALED and DELIVERED by ♦ in)
the presence of:)

_____)
Signature)

_____)
Print Name)

_____)
Address)

_____)
Occupation)

_____)
♦

STRATEGIC TRANSFORMATION FOR CLINICAL INFORMATION SYSTEMS

RFP # HSSBC-00578

APPENDIX H

SECURE DATA ROOM DOCUMENT LIST

Documents
1. Background:
a. Health Organizations' Strategic Plans
b. Enterprise Overview
c. IMITS Strategic Plan
d. Governance Structure
e. Proof of Concept Document
f. Key Challenges and Risks
g. Ambulatory Strategy VCH/PHC
h. VCH Roadmap Oct 2011
2. Current Roadmap
a. Roadmap
b. Status of initiatives within the roadmap
c. Application Rationalization
3. HIMSS EMR Adoption Model
a. HIMSS EMR Adoption Model
b. Current HIMSS rankings by Health Organization and site
4. Canada Health Infoway: Benefits Evaluation Framework
5. Key Results Areas (KRAs)
6. Current Systems
a. Current state systems per Health Organization
b. List of Interfaces
7. Current System Statistics
a. Inventory of Sites and Users per System
b. Site Statistics
8. Current Infrastructure and Technical Environment
a. Applications
9. Organization Chart and HR Information
a. Organization Chart
b. Staff Costs for roles to transition
c. Benefits for roles to transition

d. Relevant Collective Agreements
e. Contractor Costs (re: CIS Projects for transition)
10. Cerner Millennium Licenses, Current and Planned
11. IMITS Documents
a. Architectural Standards/principles/guidelines
b. Open Problem List and Status
c. Privacy Impact Assessment
d. Current Services Score Card
12. Items for transference to Service Provider (cost or management/delivery responsibility)
a. In Progress projects
b. 3rd Party contracts to be transferred (software, hardware, consulting)
c. Costs and timing of software license payments to Cerner
d. Net Book Value of CIS assets (Licenses, Hardware, Infrastructure)

STRATEGIC TRANSFORMATION FOR CLINICAL INFORMATION SYSTEMS
RFP # HSSBC-00578
EXHIBIT D-1
IMPLEMENTATION PATH

INSTRUCTIONS:

Please note the date you plan to go live with each Cerner module by facility (see lines 19 to 59).
Please note the date you plan to achieve the HIMSS functionality by facility (see lines 60 to 76).
Add additional Cerner modules you may require to enable your strategy.
Add additional key functional milestones or outcome measures within your strategy.

NOTES:

The following commitments have been made with respect to C&W, BC Cancer Agency and Mental Health and
Addiction Services' Forensic Hospital: To achieve HIMSS Level 3 by 2013, HIMSS Level 5 by 2015, and HIMSS Level 7 by
1 2017.
Except for the entities listed in Note (1) above, the expectation is that the remaining entities achieve HIMSS Level 5 by
2 2017
All references to years in these notes are to the start of the fiscal year (e.g. 2017 means the fiscal year April 1, 2017 to
3 March 31, 2018)

Level of Services Key:	A	Acute
	B	Ambulatory
	C	Residential
	D	Rehab
	E	Emergency

						C&W	
Cerner/HI MSS	Category	Module/Function	Licenses Purchased	Licenses Planned FY12/13	Comments/questions	BC Children's & Sunny Hill Health Centre	BC Women's
						A,B,D,E	A,B
Cerner	Access Management	Cerner Registration Management	Yes				
Cerner	Access Management	Cerner Scheduling Management	Yes				
Cerner	Access Management	Appointment Reminders	Yes				
Cerner	Access Management	Criminal Justice Management	Yes		Forensics only		
Cerner	Acute Care Delivery	CareNet: PowerChart, CDR, PowerOrders, EasyScript, PowerNote	Yes				
Cerner	Ambulatory Care	Clinical Office with PowerNote	Yes				

Cerner	Ambulatory Care	Chronic Condition Management (Ambulatory)	No	Yes			
Cerner	Ambulatory Care	Patient Accounting, registration, scheduling	No				
Cerner	Acute Care Delivery	CareNet: PowerPlan, Advanced Care Documentation, eMAR	Yes				
Cerner	Acute Care Delivery	Infection Control	Yes				
Cerner	Clinical Imaging	CareAware MultiMedia: document images	Yes				
Cerner	Clinical Research	PowerTrials	Yes				
Cerner	Common Services	Discern Expert (rules)	Yes				
Cerner	Common Services	Discern Explorer (CCL)	Yes				
Cerner	Common Services	Discern Analytics (PowerVision)	Yes				
Cerner	Common Services	Clinical Reporting XR	Yes				
Cerner	Document Imaging	Cerner ProVision Document Imaging (CPDI)	Yes				
Cerner	Emergency Medicine	FirstNet: Triage and Tracking, Dept. care management, physician documentation and coding	Yes				
Cerner	HIM	Cerner Health Information Management (ProFile)	Yes				
Cerner	HIM	Medical Transcription Management	Yes		Only for C&W		
Cerner	Oncology	PowerChart Oncology	Yes				
Cerner	Patient Accounting	Charge Services for Radiology	Yes				
Cerner	Pharmacy	PharmNet: Inpatient, Outpatient & Dept. clinical supply chain	Yes				
Cerner	Radiology	RadNet: Radiology management, mammography management, visual desktop integration (VDI)	Yes				
Cerner	Radiology	Visual Desktop Integration	Yes				
Cerner	Women's Health	PowerChart Maternity: Acute and Ambulatory	Yes				
Cerner	Cardiology	PowerChart Cardiovascular, PowerChart ECG	No	Possible	depends on business case		
Cerner	Critical Care	iNet (offsite critical care management)	No				
Cerner	Critical Care	Apache (ICU predictive outcomes)	No				
Cerner	CareAware	CareAware AlertLink, Capacity Management, iAware, iBus, myStation, RoomLink, StaffLink, TempLink and VitalsLink	No				
Cerner	Clinical Imaging	Cerner PACS: study management, viewers, workstation	No				

Cerner	Community/Consumer Health	Community Health Record (CHR), Personal Health Record (PHR)	No				
Cerner	Community/Consumer Health	Patient Portal	No	Possible	depends on business case		
Cerner	Laboratory	Millennium Helix for Laboratory and PathNet suite	No				
Cerner	Patient Accounting	Cerner Patient Accounting (ProFit)	No				
Cerner	Perioperative	SurgiNet: Surgical, scheduling, anesthesia, case tracking, clinical supply chain, charging	No	Possible	depends on business case		
Cerner	Point of Care and Mobility	CareAdmin, CareMobile, Millennium Mobile	No				
Cerner	Reporting and Outcomes	PowerInsight Enterprise Data Warehouse, Explorer	No				
Cerner	Reporting and Outcomes	Lighthouse (Sepsis Management)	No	Yes			
Cerner	Workforce Management	Workforce Management: staff scheduling, workforce outcomes	No				
Zynx	Orders	Evidence based order sets	No	Yes			
HIMSS	Facilitywide	Clinical documentation including vital signs, flow sheets, nursing notes, care plans and eMAR	N/A	N/A			
HIMSS	At least one patient care area	Evidence based order sets and CPOE	N/A	N/A			
HIMSS	Facilitywide	Evidence based order sets and CPOE	N/A	N/A			
HIMSS	Facilitywide	Clinical decision support related to evidence-based clinical protocols.	N/A	N/A			
HIMSS	Facilitywide	90%+ adoption of CPOE	N/A	N/A			
HIMSS	At least one patient care area	Closed loop medication administration fully implemented including any necessary auto-identification technology	N/A	N/A			
HIMSS	Facilitywide	Closed loop medication administration fully implemented including any necessary auto-identification technology	N/A	N/A			
HIMSS	At least one patient care area	Full physician structured documentation/charting implemented	N/A	N/A			
HIMSS	Facilitywide	Full physician structured documentation/charting	N/A	N/A			
HIMSS	Facilitywide	90%+ adoption of physician structured documentation/charting	N/A	N/A			

	BC Cancer Agency		Mental Health and Addiction Services	Providence Health Care (Vancouver North)				
Children & Adolescent Mental Health	Cancer Care	Screening Program	Forensic Hospital	St. Paul's Hospital	Mt St Joseph's Hospital	Holy Family Hospital	Brock Fahrni	Youville
<i>A,B,E</i>	<i>A,B</i>	<i>B</i>	<i>A,B</i>	<i>A,B,E</i>	<i>A,B,C,E</i>	<i>A,B,D</i>	<i>C</i>	<i>C</i>

	Vancouver Acute (Vancouver South)						Richmond	
Langara	Vancouver General Hospital	Diamond Center	UBC Hospital	GF Strong	George Pearson	Mary Pack Arthritis	Richmond Hospital	Minoru
C	A,B,E	B	A,B	D	C	B,D	A,B,E	C

North Shore	Powell River	Sunshine Coast	Sea to Sky			Central Coast	
Lions Gate Hospital	Powell River General Hospital	St. Mary's Hospital	Whistler	Pemberton	Squamish	R.W Large Memorial Hospital	Bella Coola General Hospital
<i>A,B,C,E</i>	<i>A,C,E</i>	<i>A,C,E</i>	<i>B,E</i>	<i>B</i>	<i>A,C,E</i>	<i>B,C,E</i>	<i>A,B,C,E</i>

STRATEGIC TRANSFORMATION FOR CLINICAL INFORMATION SYSTEMS

RFP # HSSBC-00578 Exhibit F-1 Economic Model Template

[enter Proponent Name]

[Proponent Contact Person (Name, email)]

Jeff Thom

Team Lead, Category Management IMIT, Supply Chain, HSSBC
100 - 575 W 8th Avenue, Vancouver, BC, V5Z 1C6

Phone: 604.331.8923 | Fax: 604.331.8946 | Mobile: (604) 219-4334
Email: jeff.thom@hssbc.ca Web: www.hssbc.ca

STRICTLY CONFIDENTIAL

STRATEGIC TRANSFORMATION OF CLINICAL INFORMATION SYSTEMS

RFP # HSSBC-00578

EXHIBIT G-1

DRAFT SERVICES AGREEMENT

“NON-NEGOTIABLE” PROVISIONS

The Draft Services Agreement in Appendix G contains a number of contract provisions that the Provincial Health Services Authority (“PHSA”), through its division Health Shared Services British Columbia (“HSSBC”), intends to include in certain of its complex commercial agreements with third parties. The Draft Services Agreement is a collection of contract provisions only and is not a final contract. PHSA/HSSBC anticipates that a number of additional transaction specific provisions may be included in a final contract, which will be negotiated with third parties (primarily schedules other than the Privacy and Security Schedule). In addition, it may become evident during negotiations that minor changes may be required to create a final contract that is based upon the Draft Services Agreement to reflect deal specific requirements or deal specific negotiated terms.

In the interests of reaching negotiated solutions in the shortest reasonable time periods, third parties are advised that HSSBC has determined that the structure and/or content of certain Articles and/or provisions within the Draft Services Agreement will not be open to negotiation.

NOTE: The content of all Schedules will be open for negotiation with the exception of Schedule L (Privacy & Security).

ITEM #	ARTICLE OR SECTION	COMMENTS
1	Article 1: Guiding Principles	
2	Article 2: Interpretation	Exception: Section 2.14. Schedules may be added to or deleted from the list.
3	Article 4: Services	Timelines with Section 4.6(1) of Article 4 remain negotiable.
4	Article 5: Service Levels and Service Level Reporting	Timelines within Sections of Article 5 remain negotiable.
5	Section 6.9 (Liens)	Mandated by HSSBC – not negotiable
6	Article 7: Change Process	
7	Article 8: Contract Governance	
8	Article 9: Personnel	Section 9.7 (Criminal Records Check) – regulated – not negotiable
9	Article 10: Use of Subcontractors	

10	Article 11: Business Requirements Strategy	PHSA IMIT reserves the absolute right to determine strategy.
11	Article 12: Intellectual Property Rights and Licenses	Structure of Article 12 must remain as is and content related to HSSBC is non-negotiable – content related to Service Provider will be negotiable.
12	Article 13: Privacy, Confidentiality and Security	Structure / content of Article 13 and the content of the related Schedule L are non-negotiable.
13	Article 15: Legal Compliance	
14	Article 16: Record Keeping and Audit Rights	Sections 16.4 and 16.5 require input from Service Provider – all remaining Sections within Article 16 are either regulatory or mandated by HSSBC/HSSBC.
15	Article 17: Fees & Payments Section 17.4 (Taxes) Section 17.5 (Pass-Through Expenses) Section 17.6 (Financial Responsibility for Own Costs) Section 17.7 (Right of Set-Off) Section 17.8 (Invoices and Payment) Section 17.9 (Disputed Amounts) Section 17.10 (Pro Ration) Section 17.11 (Service Provider Travel and Living Expenses)	Clarification regarding Section 17.7 (Right of Set-Off) – the right to set-off applies only under this agreement and does not apply to other contracts.
16	Article 20: Representations, Warranties and Covenants	Only justified exceptions will be considered by HSSBC.
17	Article 21: Indemnifications and Limitation of Liability	Language of Article 21 has been approved by BC Healthcare Risk Management Branch for inclusion into this Agreement. Dollar values are negotiable where required within the Article.
18	Article 22: Force Majeure	Only justified exceptions will be considered by HSSBC.
19	Article 23: Insurance	Language of Article 23 has been approved by BC Healthcare Risk Management Branch for inclusion into this Agreement.
20	Article 25: Miscellaneous	

STRATEGIC TRANSFORMATION OF CLINICAL INFORMATION SYSTEMS

RFP # HSSBC-00578

EXHIBIT G-1

DRAFT SERVICES AGREEMENT

“NON-NEGOTIABLE” PROVISIONS

The Draft Services Agreement in Appendix G contains a number of contract provisions that the Provincial Health Services Authority (“**PHSA**”), through its division Health Shared Services British Columbia (“**HSSBC**”), intends to include in certain of its complex commercial agreements with third parties. The Draft Services Agreement is a collection of contract provisions only and is not a final contract. PHSA/HSSBC anticipates that a number of additional transaction specific provisions may be included in a final contract, which will be negotiated with third parties (primarily schedules other than the Privacy and Security Schedule). In addition, it may become evident during negotiations that minor changes may be required to create a final contract that is based upon the Draft Services Agreement to reflect deal specific requirements or deal specific negotiated terms.

In the interests of reaching negotiated solutions in the shortest reasonable time periods, third parties are advised that HSSBC has determined that the structure and /or content of certain Articles and/or provisions within the Draft Services Agreement will not be open to negotiation.

NOTE: The content of all Schedules will be open for negotiation **with the exception of Schedule L (Privacy & Security).**

ITEM #	ARTICLE OR SECTION	COMMENTS
1	Article 1: Guiding Principles	
2	Article 2: Interpretation	Exception: Section 2.14. Schedules may be added to or deleted from the list.
3	Article 4: Services	Timelines with Section 4.6(1) of Article 4 remain negotiable.
4	Article 5: Service Levels and Service Level Reporting	Timelines within Sections of Article 5 remain negotiable.
5	Section 6.9 (Liens)	Mandated by HSSBC – not negotiable
6	Article 7: Change Process	
7	Article 8: Contract Governance	
8	Article 9: Personnel	Section 9.7 (Criminal Records Check) – regulated – not negotiable
9	Article 10: Use of Subcontractors	

10	Article 11: Business Requirements Strategy	PHSA IMIT reserves the absolute right to determine strategy.
11	Article 12: Intellectual Property Rights and Licenses	Structure of Article 12 must remain as is and content related to HSSBC is non-negotiable – content related to Service Provider will be negotiable.
12	Article 13: Privacy, Confidentiality and Security	Structure / content of Article 13 and the content of the related Schedule L are non-negotiable.
13	Article 15: Legal Compliance	
14	Article 16: Record Keeping and Audit Rights	Sections 16.4 and 16.5 require input from Service Provider – all remaining Sections within Article 16 are either regulatory or mandated by HSSBC/HSSBC.
15	Article 17: Fees & Payments Section 17.4 (Taxes) Section 17.5 (Pass-Through Expenses) Section 17.6 (Financial Responsibility for Own Costs) Section 17.7 (Right of Set-Off) Section 17.8 (Invoices and Payment) Section 17.9 (Disputed Amounts) Section 17.10 (Pro Ration) Section 17.11 (Service Provider Travel and Living Expenses)	Clarification regarding Section 17.7 (Right of Set-Off) – the right to set-off applies only under this agreement and does not apply to other contracts.
16	Article 20: Representations, Warranties and Covenants	Only justified exceptions will be considered by HSSBC.
17	Article 21: Indemnifications and Limitation of Liability	Language of Article 21 has been approved by BC Healthcare Risk Management Branch for inclusion into this Agreement. Dollar values are negotiable where required within the Article.
18	Article 22: Force Majeure	Only justified exceptions will be considered by HSSBC.
19	Article 23: Insurance	Language of Article 23 has been approved by BC Healthcare Risk Management Branch for inclusion into this Agreement.
20	Article 25: Miscellaneous	