MINUTES

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| *Date of Meeting* | | 14/07/2017 | | ***Ref*** | 17/4/MO’D | |
| *Meeting* | | IBTS Board | | | | |
| *Present* | | Brian O’Mahony | | | | |
| *In attendance* | | | Andy Kelly, Chief Executive; Marie O’Connell, Director of Quality & Compliance; Emma Dunne, Arthur Cox; Rossa Fanning SC | | | |
| *By Audio-link* | | | Prof Anthony Staines, Chairperson; Linda Hickey, Deirdre Cullivan, Dr Liz Kenny, Dr Satu Pastila, Simon Mills, John Malone, Dr Ronan Desmond | | | |
| *Apologies* | | | Dr Yvonne Traynor; Kate Williams | | | |
| **#** | Item | | | | | Notes/Action |
| **1.0** | **Terms of the mediated settlement between IBTS, MBR and LINC** | | | | |  |
| **1.1** | The Chairperson thanked everyone for making themselves available for the meeting. It was agreed that Rossa Fanning SC would give an overview of the current status of the proceedings and the process and outcome of the mediation. The route to mediation had been difficult and it emerged that there were two key issues on the day, the issue of liability which was not accepted by the manufacturer and the significant financial difficulty of both companies coupled by the absence of any insurance cover for both companies. The German company is a small stand alone subsidiary with considerable financial liabilities on its balance sheet and could be put into liquidation at no notice to the IBTS. The outcome of the lengthy mediation process was a conditional settlement contingent on all 3 parties ratifying it and fulfilling certain undertakings before going back to Court on 31st July. Mr Fanning acknowledged that the proposed settlement was far from satisfactory but advised the Board to consider the information on the table. Rejecting the proposed settlement and pursuing these companies could take over 5 years to reach a conclusion, would incur significant additional legal costs in two jurisdictions and with no guarantee regarding the outcome. Even if the IBTS was successful in the principal proceedings, both companies, given their financial situation could go into liquidation and any judgement against them may not be recoverable. Not accepting the proposed settlement could be throwing good money after bad. | | | | |  |
| **1.2** | The Chair thanked Mr Fanning and asked the Board if there were any comments or questions. The Board discussed the prospect of pursuing the two companies for IBTS losses and the likelihood of success, even if the case eventually succeeded on its merits, what was the likelihood of recovering a judgement and how much cost would be incurred in the intervening period in pursuing it? Mr Fanning confirmed that in his view, there was no more money to be had out of the manufacturer and he reminded the Board that the proposed settlement was contingent on the manufacturer securing some or all of the proposed monetary settlement from their insurers. He said that the potential cost of any future litigation could be in the order of €1m. It was noted that from the financial information that was made available by both companies that their financial position is not good, although it was also noted that in the case of the manufacturer any IP would be kept in the shareholders name. | | | | |  |
| **1.3** | The status of the personal injuries claims against the IBTS and in the two cases where the manufacturer and distributor are named and the agreement in relation to these was discussed. | | | | |  |
| **1.4** | The issue of handing over the devices to the manufacturer was discussed as there may be circumstances in the future where we would require the devices either from the insurers point of view or as part of the personal injuries litigation. Mr Fanning confirmed that in his view we would be highly unlikely to need them again, but in the event that we did, that clause allowed us to gain access. | | | | |  |
| **1.5** | The Chairperson asked if agreement was required from IBTS’s insurers to settle the case on these terms. Mr Fanning advised that the IBTS insurers were put on notice of the terms of the settlement shortly after it was agreed and asked to respond within 7 days if they had any issues with what was proposed. The CE added that cover from our insurers was in dispute and that this matter had been referred to arbitration and that an arbitrator had recently been agreed by both parties. | | | | |  |
| **1.6** | The Board agreed that under the circumstances as outlined and discussed the terms of the settlement on the table was the best that can be done. The Chairperson asked the Board if anyone disagreed with that assessment and there was no disagreement. | | | | |  |
| **1.7** | An issue was raised regarding what happens if the monies agreed as part of the settlement isn’t forthcoming. Mr Fanning said that clause 6 provides that we automatically get judgement against them, in the event that the monies aren’t paid over within the timeline in the agreement. | | | | |  |
| **1.8** | The Chairperson reiterated the Board position that the proposed settlement of this case should be accepted and this was agreed. The Chairperson thanked everyone for their work in getting to this point. It was agreed that the CE would notify the DoH of the Board decision. | | | | | CE to notify DoH of Board decision to accept proposed settlement. |

Signed:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_