



**Conditions of contract for the purchase of  
services (short form)**

**September 2022**

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These Conditions may be varied only with the written agreement of the Authority. No terms or conditions put forward at any time by the Contractor shall form any part of the Contract unless specifically agreed in writing by the Authority.

## 1. Defined Terms and Interpretation

1.1 In these terms and conditions, the words and expressions below will be interpreted to have the meanings adjacent to them:-

1.1.1 **“Additional Conditions for the Provision of Services”** means the additional terms and conditions (if any) contained in Schedule Part 2 (Additional Conditions for the Provision of Services);

**“Additional Permitted Purpose”** means, if any, such other permitted purpose for the Processing of the Personal Data which, although relating to the Purpose, is in addition to the Purpose and which is a purpose which the Contractor must implement by Law, as described in Schedule Part 1 (Processing Information);

**“Affected Employee”** has the meaning ascribed to it in Clause 24;

**“Affected Party”** means, in the context of Clause 25, the Party whose obligations under the Contract are affected by the Force Majeure Event;

**“Appropriate Safeguards”** means a legally compliant mechanism(s) for the transfer of Personal Data to a Third Country in respect of which no adequacy regulation has been made by the Secretary of State, as such mechanism(s) may be permitted under the Data Protection Legislation from time to time;

**“Authority”** means Greater Glasgow Health Board (also known as “NHS Greater Glasgow & Clyde”) constituted pursuant to the 1978 Act, having its headquarters at JB Russell House, Gartnavel Royal Hospital, 1055 Great Western Road, Glasgow G12 0XH or any integration joint board constituted pursuant to the Public Bodies (Joint Working) Scotland Act 2014;

**“Award Letter”** means the letter issued, where applicable, by the Authority to the Contractor, accepting the Contractor’s tender to provide the Services, the signed duplicate copy of which is returned to the Authority;

**“Commencement Date”** means the date the Contract comes into effect, such date being set out in the Award Letter or, where no Award letter is issued, the Purchase Order;

**“Concern”** means a concern which meets the definition of a “whistleblowing concern” within the meaning of the National Whistleblowing Standards;

**“Commissioner”** shall have the meaning given in the UK GDPR;

**“Confidential Information”** (a) all information relating to the identity, condition or medical history of any person or other personal and/or sensitive personal information where disclosure is prohibited in terms of Data Protection Legislation; (b) all information the disclosure of which would or would be likely to prejudice substantially the commercial interests of any person;

**“Contract”** means the terms and conditions set out below together with the Schedule and which includes the Additional Conditions for the Provision of Services, if any;

**“Contract Price”** means the monies payable by the Authority to the Contractor for the full and proper performance by the Contractor of its obligations under the Contract as set out in the Award Letter or, where no Award Letter is issued, the Purchase Order;

**“Contractor”** means the Person who supplies the Services to the Authority in accordance with the Contract;

**“Contractor’s Personnel”** means all persons employed or engaged by the Contractor in the provision of the Services, including any permitted sub-contractor or agent of the Contractor;

**“Contractor’s Provisional Staff List”** means a list prepared and updated by the Contractor of all the Contractor’s Personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of preparation of the list;

**“Controller”** shall have the meaning given in the UK GDPR;

**“Convictions”** means, other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by Section 1(1) of The Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975/1023) and the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003 Scottish SI 2003/231) or any replacement or amendment to those Orders);

**“Costs”** includes costs, charges, outgoings and expenses of every description;

**“Data Loss Event”** means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor or any Sub-processor under or in connection with the Contract, and/or actual or potential loss and/or destruction and/or corruption of Personal Data in breach of the Contract, including but not limited to any Personal Data Breach;

**“Data Protection Impact Assessment”** means an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;

**“Data Protection Legislation”** means (i) the UK GDPR; and (ii) DPA 2018 and all other applicable Law and regulations relating to Processing of Personal Data and privacy, which may apply to either Party in respect of its activities under this Contract;

**“Data Protection Officer”** means the person designated as such pursuant to Article 37 of the UK GDPR.

**“Data Subject”** shall have the meaning given in the UK GDPR, and **“Data Subjects”** shall be construed accordingly;

**“Data Subject Request”** means a request made by, or on behalf of, a Data Subject in accordance with access and other rights granted to the Data Subject pursuant to the Data Protection Legislation in respect of their Personal Data, and **“Data Subject Requests”** shall be construed accordingly;

**“Direct Losses”** means all damage, losses, indebtedness, claims, actions, cash, expenses (including the cost of legal or professional services and all legal costs), proceedings, demands and charges whether arising under statute, contract or at common law excluding Indirect Losses;

**“DP Losses”** means all liabilities and amounts, including all:

- (a) Direct Losses;
- (b) costs and expenses relating to reconstitution and/or correction of the Personal Data and any and all records comprising the same; and
- (c) to the extent permitted by applicable Law:
  - (i) administrative fines, penalties, sanctions, liabilities or other remedies imposed by the Commissioner; and
  - (ii) compensation to a Data Subject ordered by the Commissioner;

**“DPA 2018”** means the Data Protection Act 2018;

**“Day”** means business day, which is defined as Monday to Friday inclusive and excluding Scottish Bank and Public holidays;

**“Force Majeure Event”** has the meaning set out in Clause 25;

**“Indirect Losses”** means loss of profits, loss of business, loss of business opportunity, loss of business revenue, loss of goodwill or any consequential loss or indirect loss of any nature;

**“Insolvent”** means:

- (a) if the Contractor is an individual, that individual or where the Contractor is a partnership, any partner(s) in that firm becomes bankrupt or shall have a receiving order, administration order

or interim order made against him, or shall make any composition or scheme of arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do or appears unable to pay or to have no reasonable prospect of being able to pay, a debt within the meaning of Section 268 of the Insolvency Act 1986 or he shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 as amended by the Bankruptcy (Scotland) Act 1993, or any application shall be made under the Bankruptcy or Insolvency Act for the time being in place for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors;

- (b) if the Contractor is a company, the passing by the Contractor of a resolution for its winding-up or the making by a court of competent jurisdiction of an order for the winding-up of the Contractor or the dissolution of the Contractor, or if a receiver, manager or administrator is appointed, or documents are filed with the court for the appointment of a receiver, manager or administrator or notice of intention to appoint a receiver, manager or administrator is given by the Contractor or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or circumstances arise which entitle the court or a creditor to appoint a receiver, manager or administrator or which entitle the court to make a winding-up order, or the Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or if the Contractor makes an arrangement with its creditors generally or makes an application to a court of competent jurisdiction for protection from its creditors generally; and
- (c) any event under the law of any other jurisdiction other than Scotland which is analogous to any of the above;

**“Intellectual Property”** means any and all patents, registered and unregistered trademarks and service marks, domain names, registered designs, utility models, applications for and the right to make applications for any of such rights, inventions, Know-How (as defined below), Confidential Information (as defined above), trade and business names, including rights in any get-up or trade dress, copyrights, (including rights in computer software and in websites) unregistered design rights and other rights in designs and rights in databases, subsisting anywhere in the world; the right for the maker of a database to prevent extraction or re-utilisation or both of the whole or a substantial part of the content of that database, as described in Directive 96/9/EC on the legal protection of databases; rights under licences, consents, orders, statutes or otherwise in respect of any rights of the nature specified in this definition “Intellectual Property”; and rights of the same or similar effect or nature as or to those above in each case in any jurisdiction;

**“Intellectual Property Right”** includes the right to exploit any Intellectual Property or any right which is similar or analogous to any

Intellectual Property; any moral right; any licence, right or interest of any kind arising out of or granted or created in respect of any Intellectual Property; any right to bring an action for passing off or any similar or analogous proceeding;

**“Invitation to Tender”** means the invitation to tender relating to the Services issued by the Authority to *inter alia* the Contractor;

**“Joint Controller”** shall have the meaning given in Article 26 of the UK GDPR;

**“Know-How”** means all information not publicly known which is used or required to be used in or in connection with the Services existing in any form (including, but not limited to, that comprised in or derived from engineering, chemical and other data, specifications, formulae, experience, drawings, manuals, component lists, instructions, designs and circuit diagrams, brochures, catalogues and other descriptions) and relating to the design, development, manufacture or production of any products; the operation of any process; the provision of any services; the selection, procurement, construction, installation, maintenance or use of raw materials, plant, machinery or other equipment or processes; the rectification, repair or service or maintenance of products, plant, machinery or other equipment; the supply, storage, assembly or packing of raw materials, components or partly manufactured or finished products; quality control, testing or certification of any Person;

**“Law”** means any legislation and/or common law insofar as applicable to the performance of the Contract or any part thereof;

**“Legal Requirements”** means any legislation and/or common law insofar as applicable to the performance of the Contract or any part thereof including without limitation any subordinate legislation;

**“Location”** means the location where the Services are to be performed being as set out in the Specification or as otherwise agreed in writing between the Authority and the Contractor;

**“Loss”** includes losses, liabilities, claims, costs, charges and outgoings of every description (including legal expenses), compensation payable under contracts with suppliers and/or customers, loss of normal operating profits, loss of opportunity, loss of goodwill, loss of revenue from related contracts and pure economic loss;

**“Minimum Requirements”** means those requirements identified as such in Schedule Part 1 (Processing Information);

**“National Whistleblowing Standards”** means the National Whistleblowing Standards published by the office of the Independent National Whistleblowing Officer (INWO) and any updates or amendments thereto and any replacement thereof;

**“New Contractor”** means any entity which is awarded a contract by the Authority to provide services similar or identical to the Services in place of the Contractor (including any NHS entity in the event of

the provision of such services being undertaken in-house) at termination or expiry of the Contract;

**“the 1978 Act”** means the National Health Service (Scotland) Act 1978, as amended.

**“Party”** means any party to the Contract individually and **“Parties”** refers to both of the parties to the Contract collectively. A Party shall include all permitted assignees of the Party in question. All Persons who are not a Party to the Contract are third parties;

**“Person”** includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency, unincorporated body of Persons or association and a reference to a Person includes a reference to that Person's successors and permitted assignees;

**“Personal Data”** shall have the meaning given in the UK GDPR;

**“Personal Data Breach”** shall have the meaning given in the UK GDPR;

**“Pre-Transfer Liabilities”** means (other than in respect of any claims in relation to pension entitlement under any pension scheme) (1) all claims, including but not limited to claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race or disability discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims whether in delict, contract or statute or otherwise, demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including without limitation any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation), and any expenses and legal costs on an indemnity basis and (2) all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses incurred (either before, on or after the Service Transfer Date) in connection with or as a result of:-

- (a) any claim or demand by or in respect of the Affected Employees or any of them or any former employee of the Contractor, arising either under statute, contract or at common law from any act, fault or omission of the Contractor in relation to the period prior to the Service Transfer Date; and
- (b) any claim or demand (either under statute or at common law) by any trade union or staff association or any other workers' representatives within the meaning of TUPE arising from or connected with any breach by the Contractor of its obligations to that trade union, staff association or other workers' representatives under TUPE to the extent that such claim or

demand relates to the period before the Service Transfer Date, subject always to the Board and/or any New Contractor having complied with its obligations under Regulation 13 of the TUPE Regulations.

**“Processing”** shall have the meaning given in the UK GDPR and the terms **“Process”** and **“Processed”** shall be construed accordingly;

**“Processing Instructions”** shall have the meaning given in Clause 16.4;

**“Processor”** shall have the meaning given in the UK GDPR;

**“Protecting Vulnerable Groups Scheme”** means the membership scheme (introduced by the Scottish Government and managed and delivered by Disclosure Scotland) to ensure that those who have regular contact with children and protected adults do not have a known history of harmful behaviour;

**“Protective Measures”** means means appropriate technical and organisational measures which must include the Minimum Requirements and may also include, without limitation: pseudonymising and encrypting Personal Data; ensuring confidentiality, integrity, availability and resilience of systems and services used by the Contractor and, where relevant, by any Sub-processor in connection with the performance of the obligations imposed on the Contractor pursuant to or under the Contract, including but not limited to the performance of the Services; ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident; and regularly assessing and evaluating the effectiveness of such technical and organisational measures adopted from time to time by the Contractor and, where relevant, by any Sub-processor;

**“Purchase Order”** means written notification sent to the Contractor by the Authority of an order for any of the Services under the Contract in accordance with the Specification, which notification may be in electronic format;

**“Purpose”** shall have the meaning given in Clause 16.4;

**“Replacement Contractor”** means a supplier which, partially or wholly, takes over or acquires the business or assets of the Contractor or acquires ownership of the Contractor following:

- (a) any corporate restructuring of or involving the Contractor; or
- (b) the Contractor becoming Insolvent;

**“Representative”** shall have the meaning given in the UK GDPR;

**“Schedule”** means the schedule (in two(2) parts) appended hereto;

**“Service Transfer Date”** means the date of any transfer of the Services (or any part of the Services), for whatever reason, from the Contractor to the Authority or a New Contractor;

**“Services”** means the services to be provided by the Contractor as detailed in the Specification;

**“Specification”** means a full description of the Services as referred to in the Award Letter or, where no Award Letter is issued, the Purchase Order;

**“Staffing Information”** means in relation to all persons detailed on the Contractor's Provisional Staff List, such information as the Authority may reasonably request (subject to the DPA 2018), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employees, workers, self-employed, contractors or consultants, agency workers or otherwise;
- (c) the identity of their employer or relevant contracting party;
- (d) their relevant notice periods and any other terms relating to termination of employment or engagement, including any redundancy procedures and contractual redundancy payment schemes;
- (e) the current wages, salaries, profit sharing, incentive and bonus arrangements applicable to them;
- (f) details of other employment-related benefits including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and customer car schemes applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long-term sickness absence, maternity or other statutory leave or otherwise absent from work; and
- (i) copies of all relevant documents and materials relating to such information including copies of relevant contracts of employment or engagement (or relevant standard contracts if applied generally in respect of such individuals);

**“Sub-processor”** means any third party appointed to process Personal Data on behalf of the Contractor in connection with the Contract;

“**Third Country**” shall have the meaning given in the UK GDPR;

“**TUPE Regulations**” means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

“**UK GDPR**” shall have the meaning given in Section 3(10) of the DPA 2018;

“**Year**” means any twelve (12) month period commencing on the Commencement Date or an anniversary thereof.

- 1.2 In these terms and conditions, all references to any statute, regulation, order or other similar instrument shall be construed as a reference to the statute, regulation, order or other similar instrument as amended, extended or re-enacted.
- 1.3 Any headings to Clauses, together with the front cover and the Index are for convenience only and shall not affect the meaning of these terms and conditions. Unless the contrary is stated, references to Clauses shall mean the Clauses of this Contract.
- 1.4 In these terms and conditions, words importing any particular gender include all other genders and words importing the singular only shall include the plural and *vice versa*.
- 1.5 All references to the Contract include (subject to all relevant approvals) a reference to the Contract as amended, supplemented, substituted, novated or assigned from time to time.

## **2. Duration**

This Contract shall come into full force and effect from the Commencement Date and shall continue for the period set out in the Award Letter or in the Purchase Order (“**Contract Period**”) unless terminated early in accordance with its terms.

## **3. Services**

- 3.1 The Contractor shall begin performing the Services from the Commencement Date in accordance with the Contract.
- 3.2 The Contractor shall meet, and time is of the essence to, any dates set out in the Purchase Order or the Specification or as otherwise agreed in writing by the Parties.
- 3.3 Failure by the Contractor to perform the Services or any part of them within the time agreed in accordance with Clause 3.2 shall entitle the Authority (at its option) to withdraw such Services from the Purchase Order, to release itself from any obligations to accept and pay for such Services, to purchase other Services of the same or similar description to make good such default and recover from the Contractor the amount by which the cost of purchasing other Services exceeds the amount that would have been payable to the Contractor in respect of the Services replaced by such purchase and all costs incurred

by the Authority in purchasing such alternative Services, provided that the Authority uses all reasonable endeavours to mitigate its losses in this respect, all without prejudice to the Authority's other rights and remedies. Three (3) consecutive failures to perform the Services within the time agreed in accordance with Clause 3.1 shall entitle the Authority to terminate the Contract, and recover costs in accordance with Clause 12.

- 3.4 In supplying the Services, the Contractor warrants and undertakes that that it shall:
- 3.4.1 perform the Services with all due skill, care and diligence in accordance with best industry standards and practice;
  - 3.4.2 at all times only use personnel who are suitably skilled and experienced to perform the tasks assigned to them and in sufficient numbers to ensure that the Supplier's obligations are fulfilled, particularly during periods of sickness or absence;
  - 3.4.3 comply with all Legal Requirements;
  - 3.4.4 provide all equipment, tools, vehicles and other items required to provide the Services (unless otherwise agreed with the Authority);
  - 3.4.5 co-operate with the employees and any other contractors of the Authority where this is necessary for the performance of the Services;
  - 3.4.6 observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Location from time to time and are notified to the Contractor; and
  - 3.4.7 comply with all community benefit requirements set out in the Specification.

#### **4. Contract Price and Payment**

- 4.1 In consideration of the Contractor's due and proper performance of its obligations under the Contract the Authority shall pay the Contractor the Contract Price in accordance with this Clause 4.
- 4.2 The Contract Price shall be net, i.e. after the deduction of all agreed discounts. Unless otherwise stated in the Contract, payment will be made, by BACS (Bank Automated Clearing System), if the Authority so chooses, within thirty (30) days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Authority.
- 4.3 The Authority shall be entitled to deduct from any monies due or to become due to the Contractor any monies owing to the Authority from the Contractor.
- 4.4 Except where otherwise stated in the Purchase Order, the Contract Price is exclusive of VAT which shall be payable, if applicable, by the Authority in addition to such Contract Price at the rate prevailing as at the tax invoice date.

- 4.5 In the event of the Authority breaching Clause 4.2, the Contractor shall be entitled to charge interest on the outstanding amount owed by the Authority in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

## **5. Location**

- 5.1 The Contractor shall make no delivery of materials, plant or other things nor commence any work at the Location without obtaining the Authority's prior consent.
- 5.2 The Authority shall have the power at any time during the progress of the Services to order in writing:
- 5.2.1 the removal from the Location of any materials which in the opinion of the Authority are either hazardous, noxious or not in accordance with the Contract; and/or
  - 5.2.2 the substitution of proper and suitable materials; and/or
  - 5.2.3 the removal and proper re-execution, notwithstanding any previous test thereof or interim payment therefore, of any work which, in respect of material or workmanship, is not in the opinion of the Authority in accordance with the Contract.

On completion of the Services the Contractor shall remove his plant, equipment and unused materials and shall clear away from the Location all rubbish arising out of the performance of the Services and leave the Location in a neat and tidy condition.

- 5.3 The Contractor shall take the steps reasonably required by the Authority to prevent unauthorised persons being admitted to the Location. If the Authority gives the Contractor notice that any person is not to be admitted to, or is to be removed from the Location or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Contractor shall take all reasonable steps to comply with such notice and if required by the Authority the Contractor shall replace any person removed under this Clause 5 with another suitably qualified person and procure that any pass issued to the person removed is surrendered.
- 5.4 The decision of the Authority as to whether any person is to be admitted to or is to be removed from the Location or is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Contractor has furnished the information or taken the steps required of him by this condition shall be final and conclusive.
- 5.5 The Contractor shall bear the cost of any notice, instruction or decision of the Authority under this Clause 5.

## **6. Transfer and Sub-Contracting**

- 6.1 The Contractor shall not assign the whole or any part of the Contract. The Contractor shall not sub-contract the production or supply of any Services

without the previous consent in writing of the Authority, such consent not to be unreasonably withheld or delayed.

- 6.2 If, with the Authority's consent, the Contractor sub-contracts the performance of the Services, every act or omission of the sub-contractor shall for the purposes of the Contract be deemed to be the act or omission of the Contractor and the Contractor shall be liable to the Authority as if such act or omission had been committed or omitted by the Contractor itself.
- 6.3 The Authority shall be entitled to assign, novate, contract or otherwise dispose of its rights and obligations under the Contract or any part thereof to:-
- 6.3.1 any NHS entity; or
- 6.3.2 any other body (including but not limited to any private sector body) which substantially performs any of the functions that previously had been performed by the Authority.
- 6.4 The Authority shall be entitled to disclose to any body to whom the Contract may be transferred pursuant to the foregoing provisions any Confidential Information of the Contractor which relates to the performance of the Contract by the Contractor. In such circumstances, the Authority shall authorise the said transferee to use such Confidential Information only for the purpose relating to the performance of the Contract and for no other purpose and shall take all reasonable steps to ensure that such body accepts an obligation of confidence in terms similar to Clause 15.

## **7. Indemnity**

- 7.1 Without prejudice to any rights and remedies of the Authority, the Contractor shall indemnify the Authority against all actions, suits, claims, demands, losses, charges, costs and expenses which the Authority may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any failure in the provision of the Services or defect in the Services or the act or omission of the Contractor.
- 7.2 Except in the case of (i) death or personal injury caused by negligence, breach by the Contractor of Clause 13.1 and fraudulent misrepresentation or in other circumstances where liability may not be so limited under any applicable law; or (ii) the indemnity in Clause 16.29 in respect of which liability shall not be limited, the liability of either Party under or in connection with the Contract, whether arising in contract, delict, negligence, breach of statutory duty or otherwise shall not exceed the sum of five hundred thousand pounds Sterling (£500,000) for any one incident in any one Year.

## **8. Insurance**

- 8.1 The Contractor shall effect with a reputable insurance company:-
- 8.1.1 a policy or policies of insurance covering all the matters which are the subject of indemnities under the Contract with a minimum limit of indemnity of five hundred thousand pounds Sterling (£500,000) per

*annum* for any one incident in any one Year, unless an alternative figure has been agreed between the Authority and the Contractor in writing;

8.1.2 Employers Liability insurance in accordance with any legal requirement for the time being in force.

8.2 The Contractor shall at the request of the Authority produce the relevant policy or policies referred to in Clause 8.1 together with the receipts or other evidence of payment of the latest premium due thereunder.

## **9. Variation of the Contract**

9.1 Any variation to the terms of the Contract must be recorded in writing and executed by an authorised signatory of the Contractor and the Authority. Such record of the variation in question must address all consequential amendments required to be made to the Contract as a result of such variation, including adjustment to the Contract Price.

9.2 The Authority may agree to substitution of the Contractor with a Replacement Contractor as a party to the Contract. The Authority may request such information as it considers necessary to allow the Authority to consider any request from the Contractor/or a Replacement Contractor for such a substitution. In the event that the Authority agrees to such substitution, it shall notify the Contractor and/or the Replacement Contractor in writing and such notification shall specify the date from which such substitution shall take effect (the "**Substitution Date**"). As from the Substitution Date:-

9.2.1 the Replacement Contractor shall assume all responsibilities, obligations and rights of the Contractor under the Contract;

9.2.2 all references to "Contractor" shall be deemed to be to the Replacement Contractor; and

9.2.3 the Contract shall be deemed to be between the Authority and the Replacement Contractor;

and the Contractor shall, if necessary at law, execute an assignation of its rights and obligations under the Contract in favour of the Replacement Contractor.

## **10. Dispute Resolution Procedure**

10.1 During any dispute, including a dispute as to the validity of the Contract, it is mutually agreed that the Contractor shall continue its performance of the provisions of the Contract (unless the Authority requests in writing that the Contractor does not do so).

10.2 If any dispute arises out of the Contract (other than in relation to any matter in which the Authority has a discretion which is exercised in accordance with the terms of the Contract and which shall be final and conclusive) the Parties will use all of their respective reasonable endeavours to resolve it by negotiation. If negotiations fail to resolve such dispute the Parties will attempt

to settle it by mediation in accordance with the Centre for Dispute Resolution (“CEDR”) Model Mediation Procedure or any other model mediation procedure as agreed by the Parties. To initiate mediation, a Party shall give notice in writing (a “**Mediation Notice**”) to the other Party requesting mediation of the dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the Parties asking them to nominate a mediator in the event that the Parties shall not be able to agree such appointment by negotiation. The mediation shall commence within twenty eight (28) Days of the Mediation Notice being served. Neither Party will terminate such mediation until each Party has made its opening presentation and the mediator has met each Party separately for at least one hour. Thereafter, paragraph 14 of the CEDR Model Mediation Procedure (or the equivalent paragraph of any other model mediation procedure agreed by the Parties) will apply. Neither Party will commence legal proceedings against the other until thirty (30) Days after such mediation of the dispute in question has failed to resolve the dispute. The Authority and the Contractor will co-operate with any person appointed as mediator providing him with such information and other assistance as he shall require and will pay his costs, as he shall determine or in the absence of such determination such costs will be shared equally.

## **11. Environmental Considerations**

- 11.1 The Contractor shall comply in all material respects with applicable environmental laws and regulations in force from time to time in relation to the Services or any other matter, which is the subject of the Contract. Where the provisions of any such legislation are implemented by the use of voluntary agreements or codes of practice, the Contractor shall comply with such agreements or codes of practice as if they were incorporated into Scottish law, subject to those voluntary agreements being cited in the Invitation to Offer.
- 11.2 The Contractor shall meet all reasonable requests by the Authority for information evidencing the Contractor's compliance with the provisions of this Clause.

## **12. Termination**

- 12.1 Either Party may terminate the Contract (in whole or in part) by serving not less than three (3) months' written notice on the other Party.
- 12.2 The Authority may terminate the Contract (in whole or in part) by serving written notice on the Contractor in any of the following circumstances:-
- 12.2.1 with immediate effect as from the date of service of such notice in the event of:-
- (a) a material failure (in whole or in part) by the Contractor to perform any obligation of the Contractor under the Contract provided that (if capable of remedy) such failure has not been remedied to the Authority's reasonable satisfaction within a period of thirty (30) Days following written notice demanding

remedy of the failure in question being served by the Authority on the Contractor; or

- (b) the Contractor failing (in whole or in part) to perform any material obligation of the Contractor owed to the Authority on more than three (3) occasions; or
- (c) the Contractor becoming Insolvent or otherwise ceasing to be capable of supplying the Services provided that no Replacement Contractor has been approved pursuant to Clause 9.2 in which case the Authority shall not be entitled to terminate the Contract on grounds that the Contractor has become Insolvent; or
- (d) the Contractor being in default of any duty of care or any fiduciary or statutory duty owed to the Authority and/or any patient, employee or agent of the Authority; or
- (e) a change of ownership or control of the Contractor which, in the reasonable opinion of the Authority will have a material impact on the supply of the Services or the image of the Authority provided that no Replacement Contractor has been approved pursuant to Clause 9.2 in which case the Authority shall not be entitled to terminate the Contract on grounds of a change in ownership or control of the Contractor; or
- (f) the Contractor sub-contracting or purporting to assign the Contract or any part of the Contract in breach of Clause 6; or
- (g) the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any action in relation to the obtaining or execution of the Contract or any other contract with the Authority or for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other contract with the Authority or similar acts have been done by any person employed by it or acting on its behalf (whether with or without the knowledge of the Contractor); or
- (h) if, in relation to the Contract or any other contract with the Authority, the Contractor or any person employed by it or acting on its behalf shall have committed any offence under the Bribery Act 2010, or shall have given any fee or reward to any officer of the Authority which shall have been exacted or accepted by such officer under colour of his office or employment and is otherwise than such officer's proper remuneration.

12.3 The Authority shall be entitled to recover from the Contractor the amount of any Loss resulting from termination under Clauses 3.3, 12.1, or 12.2. For the purpose of this Clause 12, Loss shall include reasonable cost to the Authority of the time spent by its officers in terminating the Contract and in making alternative arrangements for the provision of the Services.

- 12.4 The Contractor may terminate the Contract in the following circumstance, by giving the Authority not less than one (1) month's written notice:
- 12.4.1 if the Authority has committed a material breach of the Contract; and
  - 12.4.2 the Contractor has brought the breach of Contract to the attention of the Authority; and
  - 12.4.3 the Authority has not corrected the said breach of Contract within a reasonable period of time.
- 12.5 The Authority and the Contractor agree that termination (in whole or in part) or expiry of the Contract shall not affect either Party's obligations which the Contract provides shall survive the termination or expiry of the Contract or the continuance of the part or parts not terminated where the Contract is terminated in part only.
- 12.6 Any termination (in whole or in part) of the Contract will not prejudice the rights, obligations and duties of each Party arising prior to such termination taking effect.

### **13. Intellectual Property**

- 13.1 It shall be a condition of the Contract that nothing done by the Contractor in the performance of the Services shall infringe any Person's Intellectual Property Right.
- 13.2 Subject to Clause 7, the Contractor agrees to indemnify and keep indemnified the Authority against any actions, costs, claims, proceedings, expenses and demands arising from the use, application, supply or delivery of any process, article, matter or thing supplied under the Contract that would constitute or is alleged to constitute any infringement of any Person's Intellectual Property Rights or which the Authority may otherwise suffer or incur as a result of or in connection with any breach of Clause 15.1.
- 13.3 All Intellectual Property Rights in any reports, documents, specifications, instructions, plans, drawings, computer programmes, patents, models or designs, whether in writing or on magnetic or other media:
- 13.3.1 furnished to or made available to the Contractor by the Authority shall remain vested in the Authority absolutely;
  - 13.3.2 prepared by or for the Contractor for use, or intended use in relation to the performance of the Contract are hereby assigned to and shall vest in the Authority absolutely and the Contractor shall do all such things and sign all such documentation as may be required to give effect to this provision. The Contractor shall not and shall procure that the Contractor's Personnel shall not (except to the extent necessary for the implementation of the Contract) without prior written consent of the Authority use or disclose any such reports, documents, specifications, instructions, plans, drawings, patents, models, designs or other material as aforesaid or any other information (whether or not relevant to the Contract) which the Contractor may obtain pursuant to or by reason of the Contract,

except information which is in the public domain otherwise than by reason of a breach of this provision, and in particular (but without prejudice to the generality of the foregoing) the Contractor shall not refer to the Authority or the Contract in any advertisement without the Authority's prior written consent.

- 13.4 The provisions of this Clause 13 shall apply during the continuance of the Contract and after its termination howsoever arising.

## **14. Audit and Accounts**

- 14.1 The Contractor shall keep proper records in respect of the Contract Price due to it under the Contract and shall make such records available to the Authority and/or its auditors when reasonably requested to do so. The Contractor will positively assist the Authority in the discharge of the Authority's reporting obligations pursuant to the Procurement Reform (Scotland) Act 2014 and shall provide the Authority with accurate and up-to-date information if reasonably requested from time to time.
- 14.2 The Contractor shall take all reasonable steps to place similar obligations on its sub-contractors in all sub-contracts entered into in relation to the Contract to ensure access by the Authority and its duly authorised representatives, where appropriate, to relevant information of such sub-contractors.

## **15. Confidentiality and Freedom of Information**

### **Use and Disclosure of Confidential Information**

- 15.1 In respect of all Confidential Information provided by, or on behalf of, the Authority to the Contractor and subject to the terms of this Contract, the Contractor undertakes to the Authority that it will:

15.1.1 keep that Confidential Information completely and strictly confidential and keep in safe custody all documentation and media recording of the same;

15.1.2 save as expressly permitted in this Contract, not disclose, copy, reproduce, publish or distribute the whole or any part of that Confidential Information to any person unless authorised in writing by the Authority;

15.1.3 use that Confidential Information only for the performance of the Contract and will not use that Confidential Information for its own benefit or for the benefit of anyone other than the Authority; and

15.1.4 maintain that Confidential Information as the Authority's property;

provided that the Contractor may, subject to obtaining appropriate confidentiality restrictions no less stringent than those set out in this Clause 15 pass to a sub-contractor such documents and other information which are necessary solely for the sub-contractor's performance of this Contract. If requested to do so by the Authority, the Contractor shall procure that any sub-contractor enters into a direct confidentiality undertaking with the Authority in

a form approved by the Authority.

- 15.2 Subject to Clauses 15.3 and 15.4 the Authority shall use its reasonable endeavours to keep any Confidential Information provided to it by, or on behalf of, the Contractor confidential and shall use its reasonable endeavours to use such Confidential Information only in connection with the performance of the Contract.

### **Exceptions**

- 15.3 The obligation to maintain the confidentiality of, and the prohibitions and restrictions on use of, the Confidential Information shall not apply to information:
- 15.3.1 which the Party disclosing such information confirms in writing is not required to be treated as Confidential Information;
  - 15.3.2 which is or comes into the public domain otherwise than through any disclosure prohibited by this Contract;
  - 15.3.3 which is received from a third party who lawfully acquired or developed it and who is under no obligation of confidence in relation to its disclosure;
  - 15.3.4 disclosed pursuant to Clause 15.6 (Scottish Government Health and Social Care Directorate disclosure and disclosure to other Government departments and agencies); or
  - 15.3.5 to the extent required to be disclosed pursuant to Clause 14 (Audit Access).
- 15.4 Where the Authority receives Confidential Information from the Contractor, the Authority may disclose such Confidential Information to, and permit its use by, any third party or to its professional advisers for any purpose provided for or contemplated by this Contract.

### **Restricted Use**

- 15.5 The Contractor shall be permitted to disclose the Confidential Information only to its directors, officers, employees, agents and professional advisers who need to see and know it in connection with performance of the Contract (who are hereafter called the “**Permitted Persons**”) and the Contractor agrees to ensure that its Permitted Persons shall not divulge the Confidential Information to any third party and shall deal with the Confidential Information solely in accordance with the terms of this Contract.
- 15.6 The Authority shall be free to disclose the terms of this Contract and any documents connected with the Contract to and within the Scottish Government Health and Social Care Directorate and to other Government departments, agencies and non-departmental public bodies and the Parties agree that the Authority shall be free to use and disclose such information on such terms and in such manner as the Authority sees fit.

15.7 The provisions of this Clause 15 shall survive termination of the Contract.

#### **Return of Confidential Information**

15.8 Without prejudice to the Parties' other obligations under this Contract, if directed to do so by the Authority at any time and in any event promptly following termination or expiry, the Contractor shall return to the Authority or destroy all Confidential Information of the Authority and shall certify that it does not retain any such Confidential Information, save to the extent that any Confidential Information needs to be retained:

15.8.1 by the Contractor for the purposes of the provision of the Services;

15.8.2 in cases where there is a partial termination by the Contractor for the purpose of the performance of the remainder of the Contract; or

15.8.3 by the Contractor in order to enforce any of its rights or remedies under this Contract.

#### **Retention of Confidential Information by the Authority**

15.9 Notwithstanding termination or expiry, the Authority shall be entitled to retain and use Confidential Information provided to it by or on behalf of the Contractor:

15.9.1 for the purposes of receiving any continuing Services; or

15.9.2 in cases where there is a partial termination, for the purposes of performance of the remainder of the Contract; or

15.9.3 in order to enforce any of its rights or remedies under this Contract; or

15.9.4 in order to maintain a record of the Confidential Information of the Contractor to enable the Authority to establish its continuing obligations under this Clause 15.

15.10 No term of this Contract, whether express or implied (including this Clause 15), shall preclude the Authority from making public under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2014 and/or any codes applicable from time to time relating to access to public authorities' information, details of all matters relating to this Contract unless (i) such details constitute a trade secret; (ii) the disclosure of such details would or would be likely to prejudice substantially the commercial interests of any person (including but not limited to the Contractor or the Authority); or (iii) such details fall within such other exemption as may be applicable at the discretion of the Authority in terms of the said Act and/or Regulations; provided that the Authority will take all reasonable steps to provide the Contractor with notice of such intended disclosures prior to making such information public.

15.11 The Contractor shall provide all such assistance as may be required by the Authority to enable the Authority to comply with its obligations under the Freedom of Information (Scotland) Act 2002 and/or the Environmental Information (Scotland) Regulations 2014 (as the case may be).

- 15.12 This Clause survives termination of the Contract and shall remain in full force and effect.

## 16. Data Protection

### Controller/Processor and Personal Data

- 16.1 Where for the purposes of the Data Protection Legislation:
- 16.1.1 the Authority is the Controller and the Contractor is the Processor, to the extent that the Parties have these roles in terms of the Data Protection Legislation, this Clause 16 (Data Protection) shall apply with the exception of Clauses 16.26 and 16.27 and Schedule Part 1 (Processing Information) shall only apply in so far as it relates to the Purpose;
  - 16.1.2 the Authority and the Contractor are Joint Controllers, to the extent that the Parties have these roles in terms of the Data Protection Legislation, this Clause 16 (Data Protection) shall apply with the exception of Clauses 16.5, 16.25 and 16.27, and Schedule Part 1 (Processing Information) shall only apply in so far as it relates to the Purpose;
  - 16.1.3 the Contractor is a Controller because it requires to Process Personal Data for the Additional Permitted Purpose, to the extent that in terms of the Data Protection Legislation, the Contractor is a Controller for the Additional Permitted Purpose, this Clause 16 (Data Protection) shall apply, subject to the amendments set out in Clause 16.27, and Schedule Part 1 (Processing Information) shall only apply in so far as it relates to the Additional Permitted Purpose,

and the Parties acknowledge that in connection with the Contractor's performance of its obligations pursuant to or under the Contract, including but not limited to the performance of the Services, the Contractor may, in terms of the Data Protection Legislation, have more than one of the roles described in this Clause 16.1. This Clause 16.1 describes what provisions of this Clause 16 (Data Protection) and Schedule Part 1 (Processing Information) apply in relation to each role.

- 16.2 For the avoidance of doubt, references in this Clause 16 (Data Protection) to the term "**Personal Data**" shall only apply to Personal Data Processed in the course of the performance of the obligations imposed on the Contractor pursuant to or under the Contract, including but not limited to the performance of the Services and where, and to the extent that, the Contractor is a Controller as described in Clause 16.1.3 above, shall only apply to such of this Personal Data which the Contractor Processes for the Additional Permitted Purpose.

### Compliance with Data Protection Legislation

- 16.3 The Contractor warrants that it will, and will procure that any and all Sub-processors will, at all times throughout the Contract Period, Process Personal Data in compliance with the Data Protection Legislation.

### **Processing Instructions**

- 16.4 The only Processing of Personal Data that the Contractor is authorised to undertake in connection with the performance of the obligations imposed on the Contractor pursuant to or under the Contract, including but not limited to the performance of the Services, is listed in this Clause 16 (Data Protection) and in Schedule Part 1 (Processing Information), as the same may be amended from time to time by written agreement between the Parties (together, the “**Processing Instructions**”). In addition, the Contractor warrants that it will, and will procure that any and all Sub-processors will, at all times throughout the Contract Period, only Process the Personal Data for the purposes of the performance of the obligations imposed on the Contractor pursuant to or under the Contract, including but not limited to the performance of the Services (the “**Purpose**”).
- 16.5 The Contractor shall promptly comply with any Written request from the Authority requiring the Contractor to amend, transfer or delete the Personal Data.
- 16.6 The Contractor shall notify the Authority immediately if it considers that any of the Authority’s instructions infringe the Data Protection Legislation and will provide the Authority with a Written explanation of the reasons why it considers any of the Authority’s instructions to be so infringing.

### **Assistance to the Authority**

- 16.7 The Contractor shall, as part of the Services and at no additional cost or expense to the Authority, provide all reasonable assistance to the Authority in ensuring compliance with the Authority’s obligations under the Data Protection Legislation in relation to:
- 16.7.1 ensuring the security of the Personal Data;
  - 16.7.2 any notifications, communications and remedial action that may be required to be made or taken following any Data Loss Event, including notifications to the Commissioner following a Data Loss Event and communications to affected or potentially affected Data Subjects;
  - 16.7.3 responding to Data Subject Requests within the timescale set out in the Data Protection Legislation;
  - 16.7.4 responding to any other requests, complaints or communications relating to either Party’s obligations under the Data Protection Legislation;
  - 16.7.5 responding to any request from any third party for disclosure of Personal Data;
  - 16.7.6 any communication from the Commissioner or any other regulatory authority or any consultation by the Authority with the Commissioner

or any other regulatory authority, to the extent that such communication or consultation relates to or involves the Processing undertaken by the Contractor and/or any Sub-processor under or in connection with the Contract; and

16.7.7 the preparation of any Data Protection Impact Assessment prior to commencing any new Processing that has been agreed between the Parties pursuant to Clause 16.4. Such assistance may, at the discretion of the Authority, include:

- (a) a systematic description of the envisaged Processing operations and the purpose of the Processing;
- (b) an assessment of the necessity and proportionality of the Processing operations in relation to the performance of the obligations imposed on the Contractor pursuant to or under the Contract, including but not limited to the performance of the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

16.8 At any time throughout the Contract Period, or following the date of termination, at the request of the Authority, the Contractor shall provide to the Authority a copy of all Personal Data held by the Contractor in the format and on the media reasonably specified by the Authority.

### **Technical and Organisational Measures**

16.9 The Contractor shall:

16.9.1 Process the Personal Data only in accordance with Clause 16.4, unless the Contractor is required to do otherwise by Law, in which case the provisions of Clause 16.6 shall apply; and

16.9.2 ensure that it has in place Protective Measures, to ensure a level of security appropriate to the risk involved and which the Contractor shall maintain throughout the Contract Period at its cost and expense, and which are appropriate to protect against a Data Loss Event, having taken account of:

### **Contractor Personnel**

16.10 The Contractor shall ensure that it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:

- (a) are aware of and comply with the Contractor's duties under the the nature scope, context and purposes of the Processing;
- (b) the nature of the Personal Data to be protected;

- (c) the harm that might result from a Data Loss Event, including the risks to the rights and freedoms of Data Subjects;
  - (d) the state of technological development; and
  - (e) the cost of implementing any measures.
- 16.10.2 Contract, in particular those obligations set out in this Clause 16 (Data Protection);
- 16.10.3 are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor, as the case may be, which confidentiality undertakings require the Contractor Personnel to keep the Personal Data confidential and to only Process the Personal Data for the Purpose;
- 16.10.4 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by the Contract; and
- 16.10.5 have undergone adequate training in the use, care, protection and handling of Personal Data and on the Data Protection Legislation insofar as it relates to Processing.

#### **International Transfers of Personal Data**

- 16.11 The Contractor shall not transfer Personal Data outside of the United Kingdom without the prior Written consent of the Authority.
- 16.12 If the Authority gives its Written consent to a transfer of Personal Data outside of the United Kingdom, the Contractor shall ensure that:
- 16.12.1 the Contractor has Appropriate Safeguards in place in respect of such transfer and, where practicable, the particular Appropriate Safeguards to be used by the Contractor for such transfer shall be subject to the Authority's prior Written approval, which approval shall not be unreasonably withheld or delayed;
  - 16.12.2 the transfer and any Processing of Personal Data following such transfer complies at all times with Clause 16.4; and
  - 16.12.3 the transfer otherwise complies with Data Protection Legislation.

#### **Notifications required to be given by the Contractor to the Authority**

- 16.13 The Contractor shall, at its own cost and expense, notify the Authority immediately (and within three (3) Days of receipt of the relevant communication at the latest) if it:
- 16.13.1 receives a Data Subject Request (or purported Data Subject Request);
  - 16.13.2 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

16.13.3 receives any communication from the Commissioner, or any other regulatory authority in connection with Personal Data Processed under or in connection with the Contract; or

16.13.4 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or permitted by Law,

and the Contractor will provide the Authority with a copy of the relevant Data Subject Request, request, complaint or communication, as the case may be and such further information regarding the same as the Authority may request from time to time.

16.14 Taking into account the nature of the Processing, the Contractor shall provide the Authority with all reasonable assistance in relation to any complaint, communication or request notified to the Authority pursuant to Clause 16.13 (and insofar as possible within the timescales reasonably required by the Authority).

16.15 The Contractor shall, at its own cost and expense:

16.15.1 notify the Authority of any Data Loss Event of which it becomes aware within twenty four (24) hours of becoming aware of such Data Loss Event; and

16.15.2 provide the Authority, as soon as practicable and wherever possible within twenty four (24) hours of becoming aware of such Data Loss Event, with such information regarding the Data Loss Event as the Authority may reasonably require, including but not limited to:

- (a) the nature of the Data Loss Event, including, where possible the categories and approximate number of Data Subjects and Personal Data records affected by the Data Loss Event;
- (b) the likely consequences of the Data Loss Event; and
- (c) where the Data Loss Event involves the Contractor and/or any Sub-processor, the measures taken or proposed to be taken by the Contractor and/or any Sub-processor to address the Data Loss Event, including those to mitigate the possible adverse effects of the Data Loss Event.

16.16 If the Contractor cannot provide all of the information set out in Clause 16.15 within the timescale specified, the Contractor shall, within such timescale advise the Authority of the delay and of the reasons for the same and advise the Authority when the Contractor expects to be able to provide the relevant outstanding information, which information may be provided in phases without undue delay, as details become available.

## **Records**

16.17 The Contractor shall maintain complete, accurate and up-to-date written records of all Processing carried out under or in connection with the Contract. Such records shall contain the following information:

- 16.17.1 the name and contact details of the Contractor's Representative (if any) and of the Contractor's Data Protection Officer (if any);
- 16.17.2 the categories of Processing carried out in connection with the Purpose;
- 16.17.3 where applicable, details of any transfers of Personal Data pursuant to Clause 16.12, including the identity of the recipient of such transferred Personal Data and the countries to which such Personal Data is transferred, together with details of the Appropriate Safeguards used; and
- 16.17.4 a general description of the Protective Measures implemented by the Contractor pursuant to Clause 16.9.

### **Use of Sub-processors**

- 16.18 The Contractor shall not allow any Sub-processor to Process any Personal Data unless the Contractor has:
  - 16.18.1 notified the Authority in writing of the intended Sub-processor and the Processing activity that the Contractor wishes the Sub-processor to undertake on the Contractor's behalf;
  - 16.18.2 obtained the prior Written consent of the Authority in respect of the use of such Sub-processor in connection with the Processing undertaken pursuant to the Contract;
  - 16.18.3 entered into a binding written agreement with the Sub-processor, which agreement sets out enforceable data protection obligations on the same or similar terms as set out in this Clause 16 (Data Protection) such that they apply to the Sub-processor, in particular such binding written agreement must provide:
    - (a) sufficient guarantees that the Sub-processor will adopt Protective Measures such that the Processing undertaken by the Sub-processor will meet the requirements of the Data Protection Legislation; and
    - (b) details of the Processing that is to be undertaken by the Sub-processor, which Processing shall only involve activity that is set out in Schedule Part 1 (Processing Information); and
  - 16.18.4 provided the Authority with such other information regarding the Sub-processor as the Authority may reasonably require from time to time.
- 16.19 The Contractor shall cease using a Sub-processor to undertake any Processing of Personal Data pursuant to or in connection with the Contract immediately upon receipt of a Written request from the Authority requesting that such Sub-processor ceases Processing the Personal Data, in circumstances where the Authority has reasonable grounds for concern about the Sub-processor's ability to carry out the Processing in accordance with the Data Protection Legislation.

- 16.20 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

### **Audit Right**

- 16.21 The Contractor shall, and shall procure that any and all Sub-processors shall, make available to the Authority, at no cost or expense to the Authority, all information necessary to demonstrate the Contractor's compliance with its obligations under this Clause 16 (Data Protection) and the Data Protection Legislation.

- 16.22 The Contractor shall, and shall procure that any and all Sub-processors shall, allow for and contribute to audits, including inspections, conducted by the Authority or by another auditor mandated by the Authority, for the purpose of reviewing and assessing the Contractor's compliance with its obligations under this Clause 16 (Data Protection) and the Data Protection Legislation, provided that the Authority shall, where possible:

16.22.1 provide the Contractor with reasonable prior notice of such audit or inspection;

16.22.2 ensure that such audit is carried out during normal business hours; and

16.22.3 ensure that each such audit and inspection is carried out so as to cause minimal disruption to the Contractor's business and other customers.

- 16.23 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under Clause 16.22, unless the audit identifies a breach of the Contractor's obligations under this Clause 16 (Data Protection) and/or the Data Protection Legislation, in which case the Contractor shall reimburse the Authority for all of the Authority's reasonable costs incurred in the course of the audit.

- 16.24 If an audit identifies that the Contractor has failed to perform its obligations under the Contract in any material manner, the Authority may, at its sole discretion:

16.24.1 treat such failure as a material breach of the Contract; or

16.24.2 agree with the Contractor a remedial plan to resolve such failure, which remedial plan the Contractor shall implement at its sole cost and expense.

### **Deletion or Return of Personal Data**

- 16.25 Within one (1) month following the date of termination of the Contract, or if earlier, the date of the cessation of those Services pursuant to or in connection with which the Processing of Personal Data by the Contractor on behalf of the Authority was undertaken, the Contractor shall, at the Written direction of the Authority, securely delete or securely return to the Authority all affected Personal Data (and any copies of it) and the Contractor shall certify in writing to the Authority that to the best of the Contractor's knowledge and belief all Personal Data (and any copies of it) have been securely deleted

or securely returned to the Authority, unless the Contractor is required by Law to retain the Personal Data. If the Contractor is required by Law to retain the Personal Data, the Contractor shall advise the Authority of such requirement in writing.

### **Additional Considerations for Joint Controllers**

16.26 Where the Parties are Joint Controllers:

16.26.1 Without prejudice to Clauses 16.7 and 16.13:

- (a) the Parties agree that the Authority shall handle all Data Subject Requests and all requests from third parties for disclosure of Personal Data;
- (b) the Parties agree that the Authority shall be responsible for co-ordinating the notifications, communications and remedial action that may be required to be made or taken following any Data Loss Event;
- (c) each Party shall be responsible for responding to communications addressed to that Party from the Commissioner or other regulatory authority and for participating in consultations with the Commissioner or other regulatory authority at their instance relating to the Processing of any Personal Data but that Party shall keep the other Party informed in relation to same; and
- (d) any Processing Instructions which, in terms of the Data Protection Legislation, are inconsistent with the Contractor's role as Joint Controller with the Authority, shall not apply to the Contractor.

### **Controller for Additional Permitted Purposes**

16.27 Where, and to the extent that, the Contractor is a Controller pursuant to Clause 16.1.3:

16.27.1 Clauses 16.5, 16.7, 16.8, 16.14, 16.17–16.26 inclusive shall not apply;

16.27.2 Clause 16.4 shall apply but shall be amended such that all words in Clause 16.4 following “for the purposes of the” where they appear in the last sentence shall be deleted and replaced with the words “Additional Permitted Purpose”;

16.27.3 in Clause 16.9.2, the words “Protective Measures” shall be deleted and replaced with the words “appropriate technical and organisational measures”;

16.27.4 Clause 16.10 shall apply but shall be amended such that:

- (a) in Clause 16.10.3 the words “Additional Permitted” shall be inserted prior to the word “Purpose”; and

- (b) in Clause 16.10.4, the words “directed in writing to do so by the Authority” shall be deleted and replaced with the words “required or permitted by Law in connection with the Additional Permitted Purpose”;

16.27.5 and the Contractor requires to transfer Personal Data outside of the UK, the Contractor shall advise the Authority in writing and shall ensure that the transfer complies with the Data Protection Legislation;

16.27.6 and the Contractor receives a Data Subject Request, the Contractor shall action the same.

## **Liability**

16.28 Whether the Contractor is a Processor, Joint Controller and/or Controller, the Contractor shall indemnify and keep indemnified and defend at its own expense the Authority from and against any and all DP Losses incurred by the Authority or for which the Authority may become liable arising from or in connection with any failure by the Contractor or any Sub-processor or any of their employees or agents to comply with any of the Contractor’s obligations under this Clause 16 (Data Protection).

16.29 The Authority shall indemnify and keep indemnified and defend at its own expense the Contractor from and against any and all DP Losses incurred by the Contractor or for which the Contractor may become liable whether the Contractor is a Processor, Joint Controller and/or Controller, arising solely from or in connection with any failure by the Authority or its employees or agents to comply with any of the Authority’s obligations under this Clause 16 (Data Protection).

16.30 The provisions of Clauses 16.28 and 16.29 shall not affect the liability of either Party to any Data Subject.

16.31 The provisions of this Clause 16 (Data Protection) shall survive following termination of the Contract for any reason whatsoever.

## **17. Liaison and Provision of Information at Termination**

17.1 The Contractor will positively assist the Authority in ensuring a smooth, timely, risk-reduced transition of services to a New Contractor at the end of the Contract Period.

17.2 In anticipation of termination of the Contract (either at natural expiry or earlier termination in accordance with its terms) the Authority may require the Contractor to deliver up to the Authority any data (including Confidential Information) relevant to the provision of the Services on an appropriate media.

## **18. Protecting Vulnerable Groups Scheme**

18.1 The Contractor (to the extent permitted by law) shall and shall procure that all potential staff or persons performing any of the Services pursuant to any Contract who may reasonably be expected in the course of their employment

or engagement to have access to children, the elderly and/or vulnerable adults:

- 18.1.1 are questioned concerning their Convictions; and
  - 18.1.2 only in the case of potential staff who may reasonably be expected in the course of their employment to have access to children, the elderly and/or vulnerable adults, are required to complete a Protecting Vulnerable Groups Scheme form.
- 18.2 No person who discloses any Convictions, or who is found to have any Convictions following the completion of a Protecting Vulnerable Groups Scheme check, in either case of which the Contractor is aware or ought to be aware, may be employed or engaged in the provision of any of Services pursuant to the Contract.
- 18.3 The Contractor shall keep the Authority advised at all times of any person employed or engaged by the Contractor or any sub-contractor in the provision of any Services pursuant to the Contract who, subsequent to his/her commencement of such employment or engagement, receives a Conviction of which the Contractor becomes aware or whose previous Convictions become known to the Contractor.

## **19. The Human Rights Act 1998 and the Asylum and Immigration Act 1996**

- 19.1 The Contractor shall, and shall use all reasonable endeavours to procure that its employees or agents and/or sub-contractors shall, at all times
- 19.1.1 act in a way which is compatible with the Convention rights within the meaning of Section 1 of the Human Rights Act 1998; and
  - 19.1.2 not be in breach of the Asylum and Immigration Act 1996.
- 19.2 Subject to Clause 7, the Contractor agrees to indemnify and keep indemnified the Authority against all Loss, Costs, proceedings or damages whatsoever arising out of or in connection with any breach by the Contractor of its obligations under this Clause 19.

## **20. General**

- 20.1 Any decision, act or thing that a Party is required or authorised to take or do under the Contract may be taken or done by any person authorised, either generally or specifically, by that Party to take or do that decision, act or thing, provided that each Party shall inform the other in writing of the name of any person so authorised.
- 20.2 If any provision of this Contract is declared to be void or unenforceable by any judicial or administrative authority in any jurisdiction in which this Contract is effective, such provision will be deemed to be severable and shall not affect the validity, legality or enforceability of the remaining parts of this Contract.
- 20.3 Failure to take action in respect of a breach or alleged breach of this Contract shall not be construed as a waiver of that Party's rights nor shall it affect the

obligations of either Party under this Agreement and nor shall it prejudice that Party's right to take action in respect of a subsequent breach.

- 20.4 Each Party shall bear its own expenses in relation to the preparation, execution and implementation of the Contract including all costs, legal fees and other expenses so incurred.
- 20.5 This Contract constitutes the entire understanding between the Parties with respect to the subject matter hereof and supersedes any previous understandings, arrangements, representations, negotiations or agreements between the Parties, provided that nothing in this clause shall have effect to exclude the liability of either party for fraud or fraudulent misrepresentation.
- 20.6 The Contractor shall not offer to the Authority or any of its employees or agents as a variation of the Contract, or as an agreement collateral to it, any advantage other than a cash discount against the Contract Price or training of the employees of the Authority.

## **21. Diversity**

- 21.1 The Contractor shall not discriminate unlawfully against any person contrary to the Race Relations Act 1976, the Disability Discrimination Act 1995 and the Disability Discrimination Act 2005, the Sex Discrimination Act 1975 or the Equality Act 2010 (the “**Anti-Discrimination Legislation**”).
- 21.2 The Contractor shall notify the Authority immediately of any investigation of or proceedings against the Contractor under the Anti-Discrimination Legislation and shall co-operate fully and promptly with any requests of the person or body conducting such investigation or proceedings, including allowing access to any documents or data required, attending any meetings and providing any information requested.
- 21.3 The Contractor shall indemnify the Authority against all costs, claims, charges, demands, liabilities, damages, losses and expenses incurred or suffered by the Authority arising out of or in connection with any investigation conducted or any proceedings brought under the Anti-Discrimination Legislation due directly or indirectly to any act or omission by the Contractor, its agents, employees or sub-contractors.
- 21.4 The Contractor shall impose on any sub-contractor obligations substantially similar to those imposed on the Contractor by this Clause.

## **22. Publicity**

The Contractor shall not advertise or publicly announce that it is supplying the Services or undertaking work for the Authority without the prior consent of the Authority.

## **23. Notices**

- 23.1 Any notice to be given under the Contract shall either be delivered personally, or sent by first class recorded delivery post (airmail if overseas) or electronic

mail. The address for service of each Party shall be its registered office or such other address as either Party may previously have notified to the other Party in writing. A notice shall be deemed to have been served:

- 23.1.1 if personally delivered, at the time of delivery;
- 23.1.2 if posted, at the expiration of forty eight (48) hours or (in the case of airmail seven (7) Days) after the envelope containing the same was delivered into the custody of the postal authorities; and
- 23.1.3 if sent by electronic mail, at the time of the transmission, provided a telephone call is made to the recipient warning the recipient that an electronic mail message has been sent to him (as evidenced by a contemporaneous note of the Party sending the notice) and a hard copy of such notice is also sent by first class recorded delivery post (airmail if overseas) on the same day as that on which the electronic mail is sent.

In proving such service it shall be sufficient to prove that personal delivery was made, or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authority as pre-paid first class, recorded delivery or airmail letter (as appropriate).

## **24. TUPE**

24.1 The Contractor agrees that, subject to compliance with the Data Protection Legislation:

24.1.1 Within twenty (20) days of the earliest of:

- (a) receipt of the giving of notice of early termination of the Contract or any part thereof; or
- (b) the date which is twelve (12) months before the expiry of the Contract;

and, in any event, on receipt of a written request of the Authority at any time, it shall provide the Contractor's Provisional Staff List and the Staffing Information to the Authority or, at the direction of the Authority, to a replacement contractor and it shall provide an updated Contractor's Provisional Staff List when reasonably requested by the Contractor or any replacement contractor;

24.1.2 the Authority shall be permitted to use and disclose the Contractor's Provisional Staff List and the Staffing Information for informing any tenderer or other prospective replacement contractor for any services which are substantially the same type of services (or any part thereof) as the Services; and

24.1.3 on reasonable request by the Authority, the Contractor shall provide the Authority or at the request of the Authority, the replacement contractor, with access (on reasonable notice and during normal working hours) to such employment records (and provide copies) as the Authority reasonably requests.

- 24.2 The Contractor agrees that once it has provided the Contractor's Provisional Staff List and the Staffing Information pursuant to Clause 24.1 above, it shall not without the prior written consent of the Authority, assign any person to the provision of the Services (or the relevant part) which is the subject of a transfer who is not listed in the Contractor's Provisional Staff List and shall not without the prior written consent of the Customer (such consent not to be unreasonably withheld or delayed):
- 24.2.1 increase the total number of employees listed on the Contractor's Provisional Staff List save for fulfilling assignments and projects previously scheduled and agreed with the Authority;
  - 24.2.2 make, propose or permit any changes to the terms and conditions of employment of any employees listed on the Contractor's Provisional Staff List;
  - 24.2.3 increase the proportion of working time spent on the Services (or the relevant part) by any of the Contractor's Personnel save for fulfilling assignments and projects previously scheduled and agreed with the Authority;
  - 24.2.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Contractor's Provisional Staff List; and
  - 24.2.5 replace any of the Contractor's Personnel listed on the Contractor's Provisional Staff List or deploy any other person to perform the Services (or the relevant part) or increase the number of employees or terminate or give notice to terminate the employment or contracts of any persons on the Contractor's Provisional Staff List.
- 24.3 The Contractor will promptly notify the Authority or, at the direction of the Authority, the replacement contractor of any notice to terminate employment received from any persons listed on the Contractor's Provisional Staff List regardless of when such notice takes effect.
- 24.4 Where there is a transfer pursuant to the TUPE Regulations of the contracts of employment of any of the Contractor's staff (such Contractor's staff being referred to herein as "**Affected Employees**") to the Authority or a New Contractor then the following shall apply:-
- 24.4.1 the Contractor shall comply with the TUPE Regulations, provided always that notwithstanding the TUPE Regulations, the Contractor shall provide all the information which it is required to disclose in terms of Regulation 11 of the TUPE Regulations to the Authority no later than two (2) months before the Service Transfer Date;
  - 24.4.2 the Contractor shall advise the Authority in writing prior to the Service Transfer Date of any updates to the information referred to at Clause 24.4;
  - 24.4.3 the Contractor warrants that the information to be provided by the Contractor in terms of Regulation 11 of the TUPE Regulations will be true, accurate and complete in all material respects;

24.4.4 the Contractor shall and does hereby indemnify the Authority and any New Contractor from and against all Pre-Transfer Liabilities relative to the period up to and including the Service Transfer Date.

24.5 The provisions of this Clause 24 shall survive following termination of the Contract for any reason whatsoever and without limit in time.

## **25. Force Majeure**

25.1 Neither Party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control (a "Force Majeure Event").

25.2 In the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.

25.3 As soon as practicable, following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of the Contract.

## **26. Compliance with National Whistleblowing Standards**

26.1 The provisions of this Clause 26 (Compliance with National Whistleblowing Standards) shall apply where it has been identified in the Invitation to Tender that compliance with the requirements of the National Whistleblowing Standards will be required.

26.2 The Contractor undertakes to the Authority that it will maintain in place throughout the Contract Period appropriate policies and procedures to enable its staff members (including for this purpose any staff, students, contractors, volunteers and any others who are working in any capacity for the Contractor in the provision of the Goods ("**Staff**")) to access a whistleblowing procedure that meets the requirements of the National Whistleblowing Standards.

26.3 The Contractor shall provide a copy of the policies and procedures maintained by the Contractor pursuant to Clause 26.2 to the Authority on request and shall provide the Authority with any such additional information with regard to the Contractor's compliance with Clause 26.2 as the Authority may reasonably require.

26.4 Without prejudice to the generality of the obligation under Clause 26.2, the Contractor shall:

26.4.1 ensure arrangements are in place to encourage and support Staff who raise a Concern;

26.4.2 provide clear information about who Staff can raise Concerns with, both within the Contractor's organisation and externally;

- 26.4.3 ensure that its policies and procedures permit and encourage Staff to contact the Authority's Confidential Contact in the event that a Staff member does not feel able to raise a Concern within the Contractor's organisation; and
- 26.4.4 record all Concerns raised with the Contractor or its confidential contact, monitor those Concerns and report to the Authority in accordance with Clauses 26.5 and 26.6 below.
- 26.5 The Contractor shall provide quarterly reports to the Authority regarding any Concerns raised during the previous quarter. In the event that no Concerns have been raised during the previous quarter, the Contractor shall not be obliged to submit a quarterly report.
- 26.6 The Contractor shall provide annual reports to the Authority regarding any Concerns raised during the previous year. In the event that no Concerns have been raised during the previous year, the Contractor shall report accordingly.
- 26.7 The Contractor shall co-operate with the Authority with regard to any review or follow up investigation conducted by the Authority on the basis of the reports issued by the Contractor pursuant to Clauses 26.5 and/or 26.6. The Contractor shall provide the Authority with any such additional information as the Authority may reasonably require in this regard and shall co-operate and provide assistance to the Authority (and any investigator appointed by the Authority) with regard to any investigation into any Concerns identified in connection with the provision of the Goods.
- 26.8 The Contractor shall co-operate with and provide such information and assistance to the Authority as the Authority may reasonably require to enable to enable the Authority to record and review information in relation to any Concerns raised about its services in accordance with the Authority's obligations under the National Whistleblowing Standards. This includes, but is not limited to, provision of any data based on the key performance indicators referred to in Paragraph 13 of Part 5 of the National Whistleblowing Standards.
- 26.9 Where any investigation within the Contractor's organisation into any Concern in connection with the provision of the Goods is not possible, due to actual or potential conflict of interest, the Contractor must discuss the Concern with the Authority and work with the Authority to investigate the issue

## **27. Law**

The Contract shall be governed and construed in accordance with the law of Scotland and subject to Clause 10 (Dispute Resolution) both Parties hereby irrevocably submit to the exclusive jurisdiction of the Scottish Courts:

## SCHEDULE PART 1

### PROCESSING INFORMATION

1. The Contractor shall comply with any further Written instructions with respect to Processing issued by the Authority.
2. Any such further instructions shall be incorporated into this Schedule Part 3.
3. This Schedule Part 3 must be read in conjunction with Clause 16.26.1(d).

Description	Details relevant to the Purpose	Details relevant to the Additional Permitted Purpose
Subject matter of the Processing	The subject matter of the Processing is as detailed in the Specification.	The subject matter of the Processing is compliance with the Law.
Duration of the Processing	The Processing activities will be undertaken throughout the entire Contract Period.	The Processing activities will be undertaken as long as required for compliance with the Law.
Nature and purpose of the Processing	The Purpose of the Processing is the performance of the obligations imposed on the Contractor pursuant to or under the Contract, including, but not limited to, performance of the Services, as detailed in the Specification.	As per definition of "Additional Permitted Purpose".
Type of Personal Data	The types of Personal Data Processed under or in connection with the Contract are as detailed in the Specification.	The types of Personal Data Processed will be as required for compliance with the Law.
Categories of Data Subject	The categories of Personal Data Processed under or in connection with the Contract are as detailed in the Specification.	The categories of Personal Data Processed will be as required for compliance with the Law.
Plan for return and destruction of the data once the Processing is complete UNLESS requirement under union or member state law to preserve that type of data	The plan for the return and destruction of the Personal Data once the Processing is complete is as detailed in Clause 16.25.	N/A

Minimum Requirements	All technical and organisation measures with which the Contractor must comply are as detailed in the Specification.	N/A
Additional Information	No Sub-processors have been approved in connection with the Contract.  No transfers outside the United Kingdom have been approved in connection with the Contract.	N/A

**SCHEDULE PART 2**  
**ADDITIONAL CONDITIONS FOR THE PROVISION OF THE SERVICES**