

AGREEMENT

between

SOUTH GLASGOW UNIVERSITY HOSPITALS  
NATIONAL HEALTH SERVICE TRUST

and

DATA GENERAL LIMITED

in respect of  
a HISS Service to the Southern General Hospital

1999

CLO Ref: GT1/29 DF/PS



SCOTTISH HEALTH SERVICE  
CENTRAL LEGAL OFFICE  
DY ED 154 EDINBURGH

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## AGREEMENT

between

SOUTH GLASGOW UNIVERSITY  
HOSPITALS NATIONAL  
HEALTH SERVICE TRUST  
constituted pursuant to the National Health  
Service and Community Care Act 1990 and  
having its headquarters at 1345 Govan  
Road, Glasgow G51 4TF  
(who and whose statutory successors and  
permitted assignees are hereinafter  
referred to as "the Trust")

### OF THE FIRST PART

and

DATA GENERAL LIMITED a company  
incorporated in England under the  
Companies Acts (No. 990752) and having  
its registered office at 90 Fetter Lane,  
London, EC4A 1DD  
(who and whose permitted assignees are  
hereinafter referred to as  
"the Contractor")

### OF THE SECOND PART

## WHEREAS

The parties have agreed and do hereby agree as follows:-

### 1 DEFINITIONS

In this Agreement the following expressions shall have the following meanings:-

"Acceptance Certificate" means the certificate be issued by the Trust to the Contractor following successful completion of an Acceptance Test in respect of the Services

"Acceptance Criteria" means the criteria for acceptance specified for each Service specified in Part F of the Schedule.

"Acceptance Date" means the last day of the Acceptance Test Period;

"Acceptance Test Period" means the periods in Part F of the Schedule of which the Acceptance Tests should be performed as specified within the Schedule for each Service.

"Acceptance Tests" means the inspections, functionality and output tests as specified within Part F of the Schedule for the Services which shall be designed by agreement of both parties to ascertain that the relevant Service meet the Services Specification.

"Achieve Acceptance" means to have successfully completed the Acceptance Test Procedures by no later than the relevant Service Item Acceptance Date;

"Agreement" means this Agreement and the Schedule hereto including all specifications, plans, drawings and other documents which are relative to and expressly incorporated herein and such variations in writing as shall subsequently be agreed between the Trust and the Contractor.

"Authorized Officer" shall mean the person or persons for the time being or from time to time duly appointed by the Trust and notified in writing to the Contractor to act as the Trust representative for the purpose of the Agreement or in default of such notification, the Trust.

\*Change Control Procedure means the method provided in Part H of the Schedule for variation to the Agreement;

"Charges" means the charges detailed in the Part G of the Schedule to be levied by the Contractor for the provision of the Services.

"Clause" means a clause of the Agreement

"Commencement Date" means the date of last execution of the Agreement by both parties hereto.

"Confidential Information" means (i) all information designated as such by either party in writing (ii) all information relating to the identity, condition or medical history of a Patient of the Trust; and (iii) all information which relates to the business, affairs, prospects, proposals, financial position, trade secrets, know-how, personnel, customers and suppliers of either party except any such information which is made available from one party to the other without restriction.

"Contract Year" means the twelve month period from the Commencement Date until the anniversary thereof and so on annually thereafter

"Contractor" means Data General Limited

"Contractor's Response" means the Contractor's response to the Trust's Operational Requirements

"Contractor's Software" shall mean all Software in which the Intellectual Property Rights are owned by the Contractor and used by the Contractor in the provision of the Services in which the Intellectual Property Rights are owned by the Contractor

"Data" means all Data and information including Input and Output and computer records stored on the system in machine readable form and information arising from or in connection with the provision of the Services.

"Default" shall have the meaning ascribed to it in Clause 18.1

"Delivery Stream Payments" means that proportion of the Charges defined as Delivery Stream Payments in Schedule G

"Employees" means employees of the Contractor engaged in the provision of the Services (whether at an operational or managerial level) from time to time

"Equipment" means all equipment (excluding Software but including firmware) and other items used by the Contractor in providing the Services as specified in Part B of the Schedule

"First Date of Acceptance" means the date of successful completion of the Initial Acceptance (as defined in Schedule F) for all the modules contained within the first phase undertaken by the parties pursuant to the Agreement

"GDP Deflator" means the Gross Domestic Product Deflator Index published by the Office for National Statistics

"Go-Live" means the transfer of the Trust's Patient Administration workload to the production and operational managed service environment.

"Go-Live Date" means the date inserted by the Trust in the Certificate of Initial Acceptance for Go-Live as specified in Schedule E4 and Schedule F

"Handover" means the cessation of the provision of the Services by the Contractor and the commencement of the provision of services equivalent to the Services by a New Contractor



"Meditech Information Technology Inc" means Meditech Information Technology Inc, a company duly organised and existing under the laws of the Commonwealth of Massachusetts and having its principal place of business at Meditech Circle, Westwood, Massachusetts, 02090.

"New Contractor" means any person or entity who is awarded an Agreement to provide services equivalent to the Services in place of the Contractor including the Trust or other National Health Service Entity in the case of the provision of such services being provided in-house.

"NHSIS" means National Health Service in Scotland

"NHSIS Property" means all tangible property of the Trust which may be used by the Contractor in accordance with the provisions of this Agreement.

"Normal Business Hours" means the "core hours" defined as 8am to 6pm, Monday to Friday within the Schedule Part K, Table KA.

"Operational Requirement" means the Trust's Operational Requirement (excluding Outpatients and Radiology) originally issued to the Contractor on 30 October 1996; the Trust's Operational Requirement for Outpatients and Radiology issued to the Contractor in May 1997 and the Trust's Operational Requirement Addendum finalised with the Contractor in November 1998.

"Output" means the computer output or whatever medium resulting from processing the Data on the System.

"Parent Company" means any company which is the ultimate Holding Company of the Contractor or any other company of which the ultimate Holding Company of the Contractor is also the ultimate Holding Company and which is either

responsible directly or indirectly for the business activities of the Contractor or which is engaged in the same or similar business to the Contractor. The term "Holding Company" shall have the meaning ascribed by Section 736 of the Companies Act 1985 or any statutory re-enactment or amendment thereof.

"Payment Profile" means the profile of payment by the Trust to the Contractor contained in Part G of the Schedule.

"Performance Stream Payments" means that proportion of the Charges defined as Performance Stream Payments in Schedule G.

"Quarter" means each three month period comprising -

1. 1 April  
May  
June 30
2. 1 July  
August  
September 30
3. 1 October  
November  
December 31
4. 1 January  
February  
March 31

"Schedule" means the Schedule annexed and subscribed as relative hereto.

"Scottish Mandatory Requirements" means any existing mandatory data requirements or any other mandatory data requirements which may from time to time be issued by the Information and Statistics Division of the Common Services Agency as applicable to the National Health Service in Scotland (for example COPPSH).

"Security Requirements" means the security requirements for the System detailed in the Specification;

"Services" means the Services to be provided by the Contractor detailed in Parts B, K and L of the Schedule.

"Service Item Acceptance Date" means in respect of each service item the date for acceptance of that service item as identified in the Implementation Plans.

"Service Levels" means the service levels set out in Parts G and K of the Schedule;

"Specification" means the Trust's Operational Requirement, the Contractor's Response and any clarifications thereto all as contained in Part A of the Schedule;

"Site" means the Sites at which the Services shall be performed as specified in Part D of the Schedule;

"Software" means all software (including Contractor's Software and Third Party Software) operating systems, data base management system, compilers, utilities and other programmes and associated documentation, but excluding source programmes, used by the Contractor in providing the Services.

"Source Code" means software in eye-readable form and in such form that it can be automatically compiled or interpreted without manual intervention into equivalent object code together with all technical information and documentation necessary for the use, reproduction, modification and enhancement of such software.

"Sub-Agreement" shall mean any Agreement or agreement or proposed Agreement or agreement between the Contractor and any third party whereby that third party agrees to provide to the Contractor the Services or any part thereof or facilities or services necessary for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof. For the avoidance of doubt the term "Sub-Agreement" shall not be regarded as including any Agreement or agreement between the Contractor and any third party for the provision of equipment, facilities or services necessary for the general discharge of the Contractor's business;

"Sub-Contractor" means any third party listed in Part C of the Schedule.

"System" means the Equipment and Software operating together used by the Contractor in provision of the Services.

"Tender" means the tender submitted by the Contractor contained in Part C of the Schedule.

"Termination Payment" means a payment calculated in accordance with the provisions of Section G7 of Part G of the Schedule payable by the Trust to the Contractor.

"Third Party" means any person, firm, company or entity other than the Contractor.

"Third Party Software" means all Software used by the Contractor in provision of the Services in which Intellectual Property Rights are owned by a Third Party.

"Total Annual Charge" means the maximum total charge payable in the Contract Year (disregarding any reduction in such charge due to failures after termination due to the fault of the Contractor).

"Transfer Payment" shall have the meaning ascribed to it in Section G4 of Part G of the Schedule.

"Trust Data" means all Data provided by or on behalf of the Trust to the Contractor.

"Trust Property" means any moveable property owned by the Trust and used by the Contractor in the provision of the Services.

"Trust Responsibilities" means the responsibilities of the Trust detailed in Part D of the Schedule.

"TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended).

"UK" means the United Kingdom.

"Undertaking" means the undertaking incorporating the provision of the Services.

"Use" means the right of the Trust to load, execute, store, transmit, display, develop, copy (for the purposes of loading, execution, storage, transmission or display) or otherwise to utilise the Software and the Source Code (including for the avoidance of doubt, the right to copy and to adapt as permitted in terms of Section 50A and Section 50C of the Copyright, Design and Patents Act 1988) for purposes of providing or receiving the Services.

"VAT" means Value Added Tax.

## **2 INTERPRETATION**

2.1 In the Agreement, unless there is something in the subject or context inconsistent therewith:

- (a) words importing the masculine include the feminine and words importing the neuter include the masculine and feminine;
- (b) words importing the singular include the plural and vice versa;
- (c) Any reference to an Act of Parliament includes any modification, extension or re-enactment thereof for the time being in force

2.2 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement

2.3 References to Clauses, the Schedule and Appendices are, unless otherwise provided, references to clauses, schedules and appendices to this Agreement.

2.4 In the event and to the extent only of any conflict between the Clauses and the Schedule, the Clauses shall prevail.

### 3. **POWER TO AGREE**

3.1 The Contractor warrants and represents to the Trust that it has requisite power to enter into and perform this Agreement and that all requisite consents and approvals therefor have been obtained and there are no statutory provisions as at the date of the Agreement which would conflict with the terms herein-contained

3.2 The Contractor hereby warrants that it has full capacity to grant the rights and licences in favour of the Trust herein-contained

3.3 The Contractor hereby warrants and represents that it currently has or shall, prior to the commencement of the Acceptance Period for each



- (b) the Agreement is executed by duly authorised representatives of the Trust

#### 4. TERM

- 4.1 This Agreement shall come into effect upon the Commencement Date and unless otherwise terminated in accordance with the provisions of this Agreement or otherwise at law shall expire eight years after the First Date of Acceptance pursuant to the Agreement ("the Initial Term").
- 4.2 The Agreement shall not continue beyond the Initial Term unless and until the Trust shall give six months' written notice, if its intention to extend the term ("The Extension"). Such extension to be mutually agreed between the parties failing which the Agreement will expire at the end of the initial term.
- 4.3 In the event that both parties agree to extend the Initial Term as provided in Clause 4.2 the Charges payable by the Trust during each Extension shall be as specified in the Part G (Section 4) of the Schedule or as otherwise agreed between the parties.

#### 5. THE SERVICES

- 5.1 Subject to the terms of the Agreement the Contractor shall perform, all of the obligations incumbent upon it in implementation and provision of the Services to the Specification and in accordance with the Service Level.
- 5.2 The Trust shall purchase the Services subject to the terms of the Agreement.
- 5.3 The Trust shall perform the Trust Responsibilities

- 5.4 For the period of the Agreement the Trust shall be entitled to make use of Software provided by the Contractor as is required for receipt of the Services. No separate user agreement shall be required, save in respect of the Meditech Information Technology Inc Health Care Information System Software Agreement to be entered into between the Trust and Meditech Information Technology Inc in the form set out in Part M of the Schedule.

## 6. IMPLEMENTATION OF SERVICES

- 6.1 Each party shall perform all of their obligations under this Agreement in accordance with the Implementation Plan A for the provision and acceptance of the Services and each part thereof.
- 6.2 The Contractor shall be entitled to use the LAN in implementation and provision of the Services;
- 6.3 Implementation Plans B shall be agreed in detail between the parties in respect of implementation of each Service prior to implementation of each Service.
- 6.4 In the event that the Contractor fails to fulfil an obligation by the date specified in the Implementation Plan A or any Implementation Plan B for such fulfilment the Contractor shall, at the request of the Trust and without prejudice to the Trust's other rights and remedies, arrange all such additional resources as are necessary to fulfil the said obligation as early as practicable thereafter at no additional Charge to the Trust.
- 6.5 Notwithstanding any of the provisions of the Implementation Plan A the Trust shall provide such reasonable resources (which shall include staff

and accommodation) as the Trust and the Contractor shall agree after the Commencement Date are reasonably required to effect successful completion of the implementation of the Services. In the event that the Implementation Plan A purports to confer an obligation upon the Trust in regard to the provision of specified numbers of Trust staff or the extent of accommodation to be made available by the Trust no such purported obligation shall be binding upon the Trust and shall be indicative only and shall be subject to the provisions of this Clause 6.5.

- 6.6 Both parties undertake to commence the Implementation Period for the Services at the relevant dates specified in each plan.

## **7. DELIVERY TO SITE**

- 7.1 No Equipment or Software shall be delivered to the Site (or any part thereof) without the prior written permission of the Authorised Officer. The Contractor shall be obliged to give the Trust a minimum of seven calendar days written notice (or such other period as may be agreed in writing between the parties for specified Equipment or Software) of the Contractor's intention to deliver any items of Equipment or Software.
- 7.2 The Contractor shall be responsible for delivery of any Equipment and Software to the Site and shall provide any labour, material and plant required for the off-loading and placing in position of the Equipment and Software. The Contractor shall promptly remove at its own expense from the Premises any packaging used for Equipment or Software save for containers for consumable stores.

## 8. PREPARATION OF THE SITE AND THE LAN

8.1 Whilst attending at or within the Site, the Contractor undertakes to comply with the Trust's appropriate on-site rules and regulations (including security arrangements), details or copies of which shall be made available to the Contractor on request prior to the Contractor attending at the Premises for any reason pursuant to the Agreement.

8.2 The Contractor hereby confirms that it has had or shall have an opportunity to inspect the Site and has:-

- (a) satisfied itself that the Site is suitable for implementation and provision of the Services in a secure physical environment;
- (b) advised the Trust in writing prior to the Commencement Date of any matter or aspect of the Site which is inadequate or not suitable for implementation and provision of the Services; or
- (c) agreed with the Trust what works are reasonably required to render the Site suitable for installation or operation of the System and such works shall be as specified in Part D of the Schedule.

8.3 The Trust shall be obliged to prepare the Site for implementation and provision of the Services in accordance with the Trust Responsibilities provided always that the Contractor shall be obliged in good time to provide such information as may be required by the Trust relating to preparation of the Site, at no cost to the Trust, to allow the Trust to meet its obligations with regard to preparation of the Site.

8.4 As identified in Parts B8 and C4 of the Schedule:-

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- (a) The Trust will assume all responsibility for the development, support and maintenance of the Local Area Network (LAN) at the Trust's premises.
- (b) The Contractor will undertake a network audit on the Trust's LAN to be agreed periodically at a cost to the Trust at the Contractor's prevailing rate for such services. These charges will be the responsibility of the Trust.
- (c) The audit will identify any issues evident or foreseen relating to the Trust's network and pertaining to the provision of the application across the LAN. As a result of the audit the Contractor will agree with the Trust any work required to upgrade the network and the respective responsibilities of the Trust and the Contractor.
- (d) Where, as a result of a periodic network audit by the Contractor, the Trust and the Contractor agree a Change Control Notice for the Contractor to upgrade the Trust's network, the Contractor will meet the service levels indicated on the agreed Change Control Notice.

## 9 ACCEPTANCE TESTS

- 9.1 Each Service shall be subject to Acceptance Testing in accordance with the Acceptance Test Procedures.
- 9.2 Each party shall bear its own costs incurred in undertaking any Acceptance Tests.
- 9.3 The Trust shall be responsible for carrying out any Acceptance Tests.

9.4 If, in the reasonable opinion of the Contractor, any Acceptance Tests are being unreasonably delayed as a result of the Trust's actions and through no fault of the Contractor the Contractor may, by notice in writing, require the Trust to implement the obligations incumbent upon it with regard to the Acceptance Tests in respect of the relevant Service within fourteen (14) days. If the Trust fails to comply with the requirements of said notice within the said fourteen (14) day period, then that Service shall be deemed to have Achieved Acceptance for payment purposes only and the Service shall still be subjected to Acceptance Testing in accordance with this Clause 9. If that Service shall subsequently fail its Acceptance Tests then any and all monies paid by the Trust upon deemed acceptance in terms aforesaid together with Interest thereon at the rate of two per centum (2%) above the base rate of the Governor and Company of the Bank of Scotland shall be credited by the Contractor against any amounts subsequently due by the Trust and payment in respect of that Service shall be due in accordance with Part G of the Schedule upon acceptance of the Service.

9.5 If, in the opinion of the Trust, any Acceptance Tests are being unreasonably delayed as a result of the Contractor's actions the Trust may, by notice in writing, require the Contractor to implement the obligations incumbent upon it with regard to the Acceptance Tests in respect of the relevant Service within seven (7) days. If the Contractor fails to comply with the requirements of said notice within the said seven (7) day period the Trust may itself proceed to carry out the Acceptance Tests at the risk and expense of the Contractor subject to the provisions of Clauses 9.1 and 9.2.

- 9.6 The Trust shall issue Acceptance Certificates in respect of each Service as soon as practicable after the dates upon which Acceptance Tests are successfully completed in respect of the same and the Date of Acceptance shall be the earlier of (i) seven (7) days from the actual date of successful completion of the Acceptance Tests or (ii) the date of the Acceptance Certificate.

## 10 CONSEQUENCES OF FAILURE TO ACHIEVE ACCEPTANCE

- 10.1 In the event that an Acceptance Test is not successfully completed within the Acceptance Test Period in respect of any phase ("Phase" as described in any Implementation Plan) the Trust shall be entitled to the financial remedies detailed in Schedule G as a consequence of such failure and in addition the Trust shall extend the Acceptance Test Period in respect of such phase for such reasonable period as the Trust may determine during which the Contractor shall correct the fault which caused the Phase to fail to meet its Acceptance Criteria following which further Acceptance Tests shall be carried out in accordance with Clause 10. In the event that Acceptance Tests are not subsequently successfully completed during such extended Acceptance Test Period, the Trust may at its option (such options not being exclusive):-

- (a) extend the relevant Acceptance Test Period for a period or periods specified by the Trust during which the Contractor shall arrange all such additional resources as are necessary to correct the fault which caused the same to fail to meet its Acceptance Criteria following which further Acceptance Tests shall be carried out in respect of that phase subject to this Clause 10

(b) require the Contractor to take all such action as is necessary to ensure that the phase is capable of meeting the Acceptance Criteria for the same

(c) terminate the Agreement on the basis of Default by the Contractor in accordance with Clause 18

10.2 In the event that the Trust extends the Acceptance Test Period for a period pursuant to Clause 10.1 and the Service in respect of which the Acceptance Test Period is so extended fails to meet its Acceptance Criteria by the end of that period the provisions of Clause 10.1 shall apply mutatis mutandis

10.3 In the event that any Acceptance Tests are repeated pursuant to this Clause 10 as a consequence of initial failure the Contractor shall bear the whole costs of any such repeat Acceptance Tests including the Trust's and any Third Party instructed by or on behalf of the Trust in relation to Acceptance Tests except in the case when any re-test is due to a failure on the part of the Trust when the Trust shall bear the whole costs of such re-test.

## 11. SERVICE LEVELS AND FINANCIAL REMEDIES

11.1 From the Date of Acceptance in respect of Services the Contractor shall commence provision of and shall thereafter continue to provide the Services in accordance with the Specification and the Service Levels

11.2 If at any time after the Acceptance Date for the Services the Services are not supplied in accordance with the Specification and the Service Levels then the Contractor shall at the written request of the Trust and without

prejudice to the Trust's other rights and remedies, arrange all such additional resources as are necessary and take all necessary remedial action to remedy such failure as soon as practicable thereafter (and in any event within any reasonable time-scale set by the Trust) and at no additional charge to the Trust provided always that the Trust has performed the Trust Responsibilities.

11.3 Without prejudice to Clause 11.2 if at any time after the Acceptance Date for the Services the Services are not supplied in accordance with the Service Levels the Trust shall be entitled to the financial remedies detailed in Part G of the Schedule ("Remedies"). Each party shall notify the other of any failure to meet the Service Levels in writing which comes to its notice provided that such notification shall not be a condition precedent to a Trust's entitlement to the Remedies. The Remedies shall (except as provided in Clauses 11.2, 14.2 and 18) be an exclusive remedy. Notwithstanding the above, neither party shall be prevented from a remedy of specific implement, interdict, interim interdict or analogous proceedings

## 12. TITLE AND RISK

Title to and risk in all equipment and other tangible property used by the Contractor for the performance of the Services shall remain with the Contractor

## 13. CHARGES

13.1 In consideration of the supply to the Trust of the Services in accordance with the terms of this Agreement, the Trust shall make payment of the

appropriate Charges to the Contractor in accordance with the provisions of Part G of the Schedule;

13.2 The Charges may only be varied by the application of the provision detailed in Part G of the Schedule.

13.3 The Charges are exclusive of Value Added Tax which shall be payable by the Trust at the rate and in the manner prescribed by law from time to time and applicable as at the time payment is due.

13.4 In the event that the Trust fails to make payment of any Delivery Stream Payment by the due date for payment of the same, the Contractor shall be entitled to charge Interest from the date any payments are due and payable until the date of actual payment. Any such Interest shall be subject to invoices being submitted by the Contractor in respect thereof. No Interest shall be chargeable by the Contractor in any circumstance of late payment of the Performance Stream Payment.

#### 14. **WARRANTIES UNDERTAKINGS AND REPRESENTATIONS**

14.1 The Contractor warrants undertakes and represents to the Trust that -

(a) it has full capacity and authority and shall prior to the Commencement Date obtain all necessary licences, permits and consents (including, but not limited to, where its circumstances and procedures so require, the consent of its Parent Company) to enter into and to perform this Agreement,

(b) this Agreement is executed by duly authorised representatives of the Contractor.

- (c) it will complete its obligations under the Agreement;
- (d) to the best of the Contractor's knowledge and belief the provision of the Services and the Trust's use thereof shall not infringe any Intellectual Property Rights of any Third Party.
- (e) the Services shall be supplied and rendered by appropriate experienced, qualified and trained personnel with all due skill, care and diligence.
- (f) the Services shall be performed in compliance with all applicable laws, enactments, orders, regulations and other similar instruments;
- (g) the Services shall conform to the Specification and shall be provided in accordance with the Specification and the Contractor shall provide (at no extra cost) to the Trust all information the Trust may reasonably require to monitor the Contractor's performance under the Agreement.;
- (h) it shall discharge its obligations hereunder with all due skill, care and diligence including, but not limited to, good industry practice;
- (i) it shall not create nor has created any fixed or floating charge or debenture capable of attaching to the System or any part thereof
- (j) it shall not conclude any agreement with any lender or funding body or any other third party which conflicts or is at variance with the terms of this Agreement;
- (k) not used.

- (l) the Services shall be deemed to include the operation of any testing and monitoring instruments used in connection with the provision of the Services;
- (m) it will use all reasonable endeavours to ensure that all sub-contracts, equipment rental or lease agreements, licences of Intellectual Property Rights and all other (non-employment) contracts which are necessary to the performance of the Services are assignable to the Trust (without any transfer charge save for the Charges referred to in Schedule G (Clause 7)) upon the occurrence of any of the events described in Clause 18.1 or 18.2 or in the event of termination of this Agreement and the Contractor shall, prior to the Commencement Date, report the results of its efforts pursuant to this Clause 14.1(m) to the Trust;
- (n) all statements and representations made to the Trust in response to the Trust's Operational Requirements are, to the best of its knowledge, information and belief, true, accurate and not misleading and that it will advise the Trust of any fact, matter or circumstance of which it may become aware which would render any such statement or representation to be false or misleading;
- (o) it is expressly hereby agreed that the Trust is relying upon the expertise, specialised knowledge, skill and judgement of the Contractor in the performance of this Agreement and on any advice which the Contractor may at any time offer to the Trust in writing in connection with the subject matter of this Agreement;

(p) the provision of the Services by the Contractor shall not cause any interruption nor interference with services to the Trust which are outside the scope of this Agreement except as identified to and agreed with the Trust which agreement shall not be unreasonably withheld or delayed

(q) the Services to the Trust shall at all times comply with the Scottish Mandatory Requirements provided the Contractor is given reasonable notification of changes to the same and subject to the Trust meeting the appropriate costs of any work properly and necessarily incurred by the Contractor and

14.2 Notwithstanding any rule of law to the contrary and without prejudice to any other rights which the Trust has or may have, the Trust shall be entitled (without being required to resile from or rescind this Agreement) to claim damages from the Contractor in respect of any breach of the undertakings and representations specified in Clause 14.1 and the Contractor shall indemnify the Trust against any loss, claims, charges, demands, liabilities and reasonable costs and expenses incurred by the Trust which arise out of or in connection with breach of any of the undertakings or representations specified in Clause 14.1 provided that such indemnity shall be subject to the limits contained in Clause 20

14.3 Except as expressly stated in this Agreement, all undertakings and conditions, whether expressed or implied by statute, common law or otherwise (including but not limited to fitness for purpose) are hereby excluded to the extent permitted by law

15. **INTELLECTUAL PROPERTY RIGHTS INDEMNITY**

15.1 Subject always to the Trust's proper observance of its obligations under this Clause 15, the Contractor shall indemnify the Trust against all claims, demands, actions, costs, expenses (including but not limited to reasonable legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including but not limited to the defence of such alleged infringement in the United Kingdom) of any Intellectual Property Rights in any item (Hardware or Software) supplied or owned by the Contractor in the provision of the Services.

15.2 The Contractor shall forthwith notify the Trust if any claim or demand is made or action brought against the Contractor for infringement or alleged infringement of any Intellectual Property Rights which may affect the Services.

15.3 The Trust shall forthwith notify the Contractor if any claim or demand is made or action brought against the Trust for infringement or alleged infringement of any Intellectual Property Rights supplied or owned by the Contractor in the provision of the Services. The Contractor shall at its own expense conduct any litigation arising therefrom and all negotiations in connection therewith and the Trust hereby agrees to grant to the Contractor exclusive control of any such litigation and such negotiations.

15.4 The Trust shall at the request of the Contractor afford the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Trust or the Contractor for infringement

- (b) procure a licence to use and provide the Services on terms which permit the Contractor to comply with the obligations incumbent upon it in terms of this Agreement.

15.7 The foregoing provisions of this Clause 15 shall not apply insofar as any claim or demand or action is in respect of -

- (a) any use by or on behalf of the Trust of the Intellectual Property Rights in combination with any item not so supplied where such use of the Intellectual Property Rights directly gives rise to the claim, demand or action unless the service is provided specifically under a combined use arrangement agreed by the Contractor; or
- (b) the use by the Trust of the Services in a manner not reasonably to be inferred from the specification or requirements of the Trust; or
- (c) the Trust's unreasonable refusal to accept modified Services or substitute services pursuant to Clause 15.6 (a)
- (d) any modification, adaptation or enhancement of the subject of Intellectual Property Rights by the Trust or any third party engaged by it

15.8 If the Contractor has availed itself of its rights to modify the Services or supply substitute services pursuant to Clause 15.6 (a) or to procure a licence under Clause 15.6 (b) and such exercise of the said rights has avoided any claim, demand or action for infringement or alleged infringement, then the Contractor shall have no further liability thereafter under this Clause 15 in respect of the said claim, demand or action

or alleged infringement of any Intellectual Property Rights supplied or owned by the Contractor in the provision of the Services and shall be repaid all costs and expenses incurred in providing such assistance (excluding legal advice unless requested by the Contractor when in such circumstances it shall include but be not limited to legal costs and disbursements on a solicitor and client basis).

15.5 The Trust shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Rights supplied or owned by the Contractor in the provision of the Services nor settle any such claim without the prior written consent of the Contractor.

15.6 If a claim, demand or action for infringement or alleged infringement is made of any Intellectual Property Rights supplied or owned by the Contractor in the provision of the Services or in the reasonable opinion of the Contractor is likely to be made, the Contractor may at its own expense either:-

- (a) modify any or all of the Services without reducing the performance and functionality of the same, or substitute alternative services of equivalent performance and functionality for any or all of the Services so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified Services or to the substitute services
- or

15.9 If a modification or substitution in accordance with Clause 15.6 (a) above is not possible so as to avoid the infringement or the Contractor has been unable to procure a licence in accordance with Clause 15.6 (b) the Contractor shall be liable for all reasonable costs incurred in procuring and implementing replacement services or facilities together with the additional costs (if any) of such substitute services or facilities during the period of this Agreement

15.10 The Trust hereby undertakes that any instructions given in relation to the Contractor's use of any third party item supplied directly or indirectly by the Trust shall not cause the Contractor to infringe any third party's Intellectual Property Rights in such item and the Trust shall indemnify the Contractor against all reasonable loss incurred by the Contractor as a direct consequence of breach of the foregoing undertaking.

15.11 The foregoing states the entire liability of the Contractor with regard to the infringement of any Intellectual Property Rights supplied or owned by the Contractor in the provision of the Services

## 16. CONFIDENTIALITY

16.1 In further consideration of the Trust executing this Agreement with the Contractor, the Contractor hereby undertakes that:-

(a) the Contractor (and any person employed or engaged by the Contractor in connection with the Agreement) shall only use Confidential Information for the purposes of this Agreement.

(b) the Contractor (and any person employed or engaged by the Contractor in connection with this Agreement) shall not disclose

any Confidential Information other than as required to any Sub-Contractors to any third party without the prior written consent of the Trust.

- (c) without prejudice to Clauses 16.1 (a) and 16.2 (b) the Contractor shall take all necessary precautions to ensure that named patient data is not passed to persons or organisations that are not covered by the provisions of the Data Protection Act and other legislation on confidentiality and security other than those to whom the Trust instructs disclosure should be made
- (d) the Contractor shall take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (save as aforesaid) or used other than for the purposes of this Agreement by the Contractor's employees, servants, agents or sub-contractors; and
- (e) without prejudice to the generality of the foregoing neither the Contractor nor any person engaged by it whether as a servant or a consultant or otherwise shall use the Confidential Information for the solicitation of business from the Trust or another part of the Crown by the Contractor or by such servant or consultant or by any third party.

16.2 It is expressly stated that any and all information relating to patients of the Trust is confidential and shall not be disclosed by the Contractor under any circumstances and unauthorised disclosure by the Contractor or any of the Contractor's personnel shall constitute a Default. The Contractor

shall comply where applicable with the requirements of the following two NHSIS Circulars, namely:-

(a) NHS MEL (1992)42;

(b) NHS MEL (1994) 100

16.3 The Contractor shall ensure that all its employees who have access to or handle personal health information sign a statement in which they undertake to keep all such information confidential. The Contractor shall inform such employees in writing of the importance of the confidentiality of personal health information, the principles of protecting confidentiality and that breach of any confidentiality shall be a serious disciplinary matter. Employees of the Contractor shall be required to give written acknowledgement of the foregoing in a form approved by the Trust which may include the Contractor's standard terms of employment

16.4 The Trust:-

(a) shall treat as confidential all Confidential Information, obtained from the Contractor including but not limited to any Source Code in any Software, and

(b) shall not subject to Clause 16.6 disclose to any third party without the prior written consent of the Contractor any Confidential Information obtained from the Contractor.

16.5 The provisions of this Clause 16 shall not apply to any information which:-

(a) is or becomes public knowledge other than by breach of this Clause 16

- (b) is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party
- (c) is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure
- (d) is independently developed without access to the Confidential Information

16.6 Nothing contained in this Clause 16 shall prevent the Trust from disclosing any Confidential Information wherever disclosure is required by virtue of the Trust's status as a National Health Service Entity to a department, office or agency of Her Majesty's Government or to any other National Health Service Entity to a department, office or agency of Her Majesty's Government or to any other National Health Service Entity nor to any consultant, contractor or other person engaged by the Trust in connection herewith PROVIDED THAT the Trust shall have obtained from such consultant, contractor or other person engaged by the Trust to whom Confidential Information is so disclosed, a confidentiality undertaking substantially in the same terms as contained in this Clause 16

16.7 Nothing in this Clause 16 shall prevent the Contractor or the Trust from using data processing techniques, ideas and know-how gained during the performance of this Agreement in the furtherance of its normal business, to the extent that this does not relate to a disclosure of Confidential Information or an infringement by the Trust or the Contractor of any Intellectual Property Rights

## 17 SECURITY REQUIREMENTS

The Contractor shall comply with the Security Requirements

## 18 DEFAULT

### 18.1 "Default"

(a) in the case of the Trust means:-

- (i) failure to pay the Charges within thirty days (30) of the same being due and payable, or
- (ii) material or substantial infringement of the Intellectual Property Rights of the Contractor, and

(b) in the case of the Contractor means:-

- (i) gross or persistent breaches by the Contractor or the Contractor's Personnel of the provisions of Clause 16 insofar as they relate to Patient Information;
- (ii) failure by the Contractor to achieve payment of at least fifteen (15%) percent out of the thirty (30%) percent Performance Stream Payments in any four (4) consecutive quarters of the Agreement (such an event is deemed not capable of remedy);
- (iii) failure by the Contractor to achieve payment of at least five (5%) percent of thirty (30%) percent Performance Stream Payments in any two quarters in any twelve (12) consecutive months period of the Agreement (such an

event is deemed not capable of remedy). For the avoidance of doubt, any Performance Stream payment achieved by default (e.g. No statutory changes due to be delivered in the quarter) will not count towards this five (5%) per cent..

- (iv) failure by the Contractor to Achieve Acceptance in respect of Phase 1 of Implementation of the Services (as defined in the Implementation Plan) within a six months period after the Planned Acceptance Date for Phase 1 (other than where such failure is due to an event of Force Majeure);
- (v) For the avoidance of doubt, it is hereby agreed and declared that there is no right of termination for delay in any subsequent phases later implemented under Change Control Procedures herein. Instead the Trust is entitled to an abatement equal to ten (10%) per cent of the annual Delivery Stream Payments for the relevant Phase and Phases which is or are delayed for each month of delay (and proportionately for any period less than a month on a per diem basis). If such a delay is longer than ten months from the Planned Acceptance Date, then the Contractor shall, in addition to the abatement as aforesaid (which shall continue to accrue) pay to the Trust by way of agreed compensation the sum of ten (10%) per cent of the annual Delivery Payment Stream for the relevant Phase or Phases per month of further delay (and proportionately for any period of delay less than a month on a per diem basis

(such payments to be made on each anniversary of the relevant Planned Acceptance Date

18.2 The Trust may at any time by notice in writing terminate this Agreement as from the date of service of such notice in the event that the Contractor -

(a) being an individual, or where the Contractor is a firm, any partner or director in that firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, shall at any time become bankrupt or shall have a receiving order or administration order against him, or shall make any composition or 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 so, or appears unable to pay, or to have no reasonable prospect of being unable 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 force for sequestration of his estate or a trust deed shall be granted to him for behoof of his creditors, or any similar event occurs under the law of any other jurisdiction, or

(b) being a company passes a resolution, or the Court makes an Order that the Contractor be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator or person or a creditor is

appointed in respect of the Contractor's business or any part thereof or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purposes of a bona fide reconstruction or amalgamation, to make a winding up Order or the Contractor is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986

18.3 The Contractor shall be entitled to terminate the Agreement as from the date of service of notice to that effect ("Termination Notice") in circumstances only where damages would not be an adequate remedy if the Trust shall Default as expressly specified in Clause 18.1(a) in performance of the Agreement and provided that if the Default is capable of remedy the Contractor shall first have served the Trust with a notice in writing specifying the Default and afforded the Trust a period of two calendar months (or such longer period as is reasonable given the nature of the breach and is specified in the notice) in which to remedy the Default but the Trust has failed to remedy the Default.

18.4 The Trust shall be entitled to terminate the Agreement as from the date of service of notice to that effect if the Contractor shall commit an act of Default as expressly provided in Clause 18.1(b) in performance of the Agreement and provided that if the Default is capable of remedy the Trust shall have served the Contractor with a notice in writing specifying the Default and afforded the Contractor a period of two calendar months in which to remedy the Default but the Contractor has failed to remedy the Default the Trust may at its sole option -

- (a) terminate the Agreement forthwith, or
- (b) withhold payment of a proportion (reasonably determined by the Trust having regard to the nature of the Default) of the Performance Stream Payments from the date of service of notice by the Trust in terms aforesaid until the Trust shall be reasonably satisfied that the Default has been remedied.

18.5 Termination in accordance with this Clause 18 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party

18.6 Termination of this Agreement (howsoever occasioned) shall not affect the coming into force or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

## 19. CONSEQUENCES OF TERMINATION

19.1 In the event of proper and lawful termination of the Agreement by the Contractor pursuant to Clause 18.3 the Trust shall make payment to the Contractor of a Termination Payment. Payment of any Termination Payment shall:-

- (a) be in full and final settlement of all claims exigible by the Contractor against the Trust for Default by the Trust; and
- (b) shall become payable ninety (90) days after the date of the lawful and valid Termination Notice PROVIDED THAT Interest shall accrue upon the Delivery Stream Payment element of the

Termination Payment as from the date of the lawful and valid Termination Notice and Interest shall accrue on all remaining elements from the expiry of the said ninety (90) days period.

19.2 In the event of termination of the Agreement by the Contractor pursuant to Clause 18.3 the Trust shall be entitled at no charge and subject to no payment being due to the Contractor PROVIDED ALWAYS that the Trust has made payment of the Termination Payment in accordance with Clause 19.1 to require the Contractor to or to procure transfer, to the Trust (or any Third Party nominated by the Trust) of the System which shall comprise transfer, assignments or novation (as reasonably determined by the Trust) of:-

- (a) title in the Equipment;
- (b) all licences in any Software used in the Service provision;
- (c) rights as reasonably required by the Trust to use any documentation manuals relating to the System;
- (d) any and all other equipment (excluding spare parts), agreements, licences or rights (relevant to the Services) as may reasonably be required by the Trust in order to continue (or be required by a Third Party on its behalf) to use the System.

19.3 In the event of lawful termination of the Agreement by the Trust pursuant to Clauses 18.2 and/or 18.4 the Trust shall be entitled at its option to:

- (a) continue use of the System or

(b) require transfer of the System to the Trust (as provided in Clause 19.2) save that the calculation of the Termination Payment payable in such circumstances will be subject to the provisions of Clause 19.4 to achieve the cost neutral arrangement after described

19.4 Any use by the Trust or transfer to the Trust of the System in terms aforesaid shall be effected in such manner as to be cost neutral to the Trust by which it is meant that the total cost to the Trust of use of the System and reprovision of the Services either by the Trust itself or by any party appointed by the Trust, shall not exceed, during the balance of the term of the Agreement, the total Contract Charges which the Trust would have paid to the Contractor had the Contractor continued to perform its obligations under the Agreement. The Trust shall at its absolute discretion determine whether the foregoing provisions shall be implemented by the Trust continuing to make payments of the Charges to the Contractor in accordance with Schedule G (or its liquidators, receivers, agent or nominee) or making payment of a Termination Payment (subject to the foregoing provisions of Clause 19.3) and recovering such monies from the Contractor as may be required to effect the cost neutral arrangement referred to in Clause 19.3.

19.5 The Contractor shall fully and effectively indemnify the Trust against:-

(a) all costs and expenses reasonably and properly incurred by the Trust in relation to transfer (howsoever effected) of the System pursuant to Clause 19.3 (including the time of the Trust's personnel) and

- (b) any increased cost to the Trust of procuring the System or a replacement system and/or services equivalent to the Services from any third party for the remainder of the term of the Agreement.

19.6 The indemnities referred to in Clause 19.5 shall be assessed and taken into account in calculating any Termination Payment payable by the Trust pursuant to Clause 19.3

19.7 In the event of termination of this Agreement in terms of Clause 34.1 (Force Majeure), the Trust shall pay within one month of demand a Termination Payment being the sum of:-

- (a) net present value of all the Delivery Stream Payments then due and to become due from the date of such termination discounted at the rate equal to the internal rate of return achieved by the Contractor on the Delivery Stream Payments and;
- (b) the reasonable breakage costs of third party agreements entered in to on an arms' length basis directly arising from such termination.

19.8 The Trust shall account to the Contractor in a reasonable manner for any betterment enjoyed by the Trust as a result of its continued use of the System. In relation to any termination in accordance with this Clause 19 the Contractor shall use all reasonable endeavours to assign the Agreement (always subject to Clause 35) and/or relevant sub-contracts to a suitable person or shall assign the Agreement as the Trust shall direct (but without obligation on the Trust so to direct) if the Trust wishes to continue to use the System, which option shall be at the Trust's discretion. The Trust may require use of the System after termination of the



- (e) the Expert's decision shall be delivered to the parties in writing and with reasons but save in the case of manifest error shall be final and binding on both parties

19.10 Subject always to Clause 19.1, termination in accordance with this Clause 19 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party or any continuing rights of either party in relation to its Intellectual Property Rights.

## **20. LIMIT OF LIABILITY**

20.1 Except as provided in this Clause 20, nothing herein contained shall limit either the liability or the remedies available to either party in terms of the Agreement.

20.2 The aggregate liability of either party for all defaults resulting in direct loss or damage to the tangible property or premises of the other under this Agreement shall be limited to damages which in no event shall exceed TWO MILLION POUNDS (£2,000,000) STERLING.

20.3 The aggregate limit of liability of either party for all loss or damage suffered by either party as a consequence of fault of the other (including but not in addition to the limit of liability specified in Clause 20.2 but excluding any liability of the Contractor arising pursuant to Clauses 18.1 and 19.2) shall not exceed the Total Annual Charge payable by the Trust to the Contractor in relation to the date in which the event giving rise to the liability arises except in respect of death or personal injury to which there shall be no limit of liability. For the avoidance of doubt it is expressly stated that the indemnity granted by the Contractor to the Trust pursuant

to Clause 15 of the Agreement shall not be subject to the limit of liability contained within this Clause 20.3.

20.4 In no circumstances under this Agreement including Default by either party shall either party be liable to the other for (a) loss of profits, business revenue or goodwill and/or (b) indirect or consequential loss or damage.

## 21. DATA TRANSFER AT TERMINATION

21.1 If upon termination of this Agreement the Trust shall require the Contractor to deliver up to any of the Trust Data on magnetic media then the Contractor shall -

- (a) supply to the Trust within twenty four (24) hours of request by the Trust free of charge all Trust Data on magnetic media in an industry standard format.
- (b) co-operate in all reasonable respects with the Trust or its employees in arranging for the orderly transfer of the Trust Data and Software on magnetic media in an industry standard format to such other party as may be identified by the Trust and in such manner as may be necessary to ensure that any interruption in the services available to the Trust and its employees is minimised.
- (c) Return or deliver to the Trust all eye readable material and procedures manuals relating to the Services in the possession of the Contractor save where unavoidably prevented from so doing under the terms of any third party licence or agreement.

21.2 On termination for any reason or expiry of the Agreement, the Contractor will cease to use for any purpose and will return or deliver to the Trust within twenty four hours of termination or on expiry of the Agreement:

- (a) all Data belonging to the Trust and related documentation in a form capable of being read by the Trust: and
- (b) all eye readable material and procedures manuals relating to the Services in the possession of the Contractor save where prevented from so doing under the terms of any third party licence or agreement.

21.3 The Contractor will be obliged to satisfy the Trust that it has erased all its copies of Trust Data used in connection with the provision of the Services.

21.4 The Trust will return to the Contractor all licence materials except where the Trust exercises its option pursuant to this Agreement to continue to use the System.

## **22. RECOVERY OF SUMS DUE**

Whenever under the Agreement any sum of money shall be recoverable from or payable by the Contractor to the Trust the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under the Agreement or any Agreement between the Contractor and the Trust. After Initial Acceptance, any sums due to the Trust under this Agreement may only be deducted from the Performance Stream payments specified in Schedule G. Exercise by the Trust of its rights under this Clause shall be without prejudice to any other rights or remedies available to the Trust under the Agreement or otherwise at law.

## 23. AUDIT ACCESS

23.1 The Trust has a duty to account for the disbursement of public funds. The Contractor shall keep proper records in respect to the Contract Price and all Contract Charges due to it under the Agreement. The Contractor shall allow inspection of such records at all reasonable times by the Trust's duly authorised representatives for the sole purpose of verifying the Contractor's fulfilment of its obligations under the Agreement and amounts due to the Contractor therefor. The Contractor shall make available such facilities and give such assistance, including the provision of copies or extracts of such records as the Trust may reasonably request in connection with the performance of such audit and shall afford the Trust's authorised representatives all reasonable access to all other information, reports, documents, records and data, whether in human or machine readable form, solely relevant to the performance of its obligations.

23.2 Representatives of the Trust who are authorised to perform such inspection shall:-

- (a) be acceptable on all reasonable grounds, to the Contractor;
- (b) enter into a confidentiality undertaking in such reasonable form as the Contractor may properly and reasonably require prior to such inspection;

23.3 All confidential information of the Contractor made available to the Trust under this Clause 21 shall be treated by the Trust in accordance with Clause 16.

23.4 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 Agreement to ensure access by the Trust, where appropriate, to relevant information of such sub-contractors.

#### 24. **DISASTER RECOVERY USE AND LOSS OF DATA**

The Contractor shall adopt at no additional expense to the Trust such appropriate Disaster Recovery Plan as agreed between the parties in existence at the Commencement Date.

24.1 The Contractor shall make no use whatsoever of the Trust's Data, other than as may be required to provide the Services. Any unauthorised use of the Trust's Data by the Contractor shall constitute a Default by the Contractor.

24.2 The Contractor acknowledges that the Trust's Data is the Property of the Trust and the Trust hereby reserves all Intellectual Property Rights which may subsist in the Trust's Data. The Contractor shall not delete or remove any copyright notices contained within or relating to the Trust's Data.

24.3 The Contractor and the Trust shall each take reasonable precautions (having regard to the nature of their other respective obligations under this Agreement) to preserve the integrity of the Trust's Data and to prevent any corruption or loss of the Trust's Data.

24.4 As part of the Services the Contractor shall:-

- (a) if the Input or any part thereof shall be lost, destroyed or damaged prior to the inputting thereof whilst in the Contractor's possession

then the Contractor shall forthwith notify the Trust and the Trust shall supply the Contractor with a copy of the Input at the cost of the Contractor. The Contractor shall thereupon use such copy for inputting the Input. The cost of preparing and delivering such copy of the Input shall be borne by the Contractor unless such loss, damage or destruction of the Input is caused by any negligent act or omission or wilful misconduct of the Trust or its employees.

- (b) If the Output or any part thereof shall be lost, damaged or destroyed prior to the delivery thereof to the Trust then the Contractor shall produce a further copy forthwith. The cost of producing such further copy shall be borne by the Contractor.

24.5 The Contractor shall be obliged:-

- (a) to take all steps as are necessary to ensure that in the event of any corruption or loss of Trust Data, howsoever caused, it is in a position to procure the restoration of such Data to a reconstituted state suitable for continued access and use by the Trust; and
- (b) at the request of the Trust and consequent upon any loss or corruption of the Trust Data to procure the restoration of the Trust Data to a reconstituted state suitable for continued access and use by the Trust.

24.6 The Contractor shall implement the obligations detailed in Clause 24.4 and Clause 24.5 at no cost to the Trust except where any corruption or loss of the Trust's Data is caused by the fault or negligence of the Trust in which event any steps taken by the Contractor to restore the Trust's Data

shall be subject to such reasonable charge as shall be agreed between the parties subject to the Contractor providing such information as it may reasonably require to verify any such proposed charge is reasonable. In the event of loss of Trust's Data through an event of Force Majeure the parties shall equally share restoration costs.

- 24.7 Without limiting the generality of the Contractor's obligation under Clause 24.4, the Contractor shall ensure that a backup copy of the Trust's Data is provided in accordance with the requirement set out in Part A of the Schedule.

## 25. TRUST PROPERTY

- 25.1 Nothing in this Agreement shall be taken as affecting the Trust's proprietary rights in Trust Property and such Trust Property shall be used in the performance of this Agreement and for no other purpose without the prior approval in writing of the Trust.
- 25.2 Any Trust Property made available to or otherwise received by the Contractor shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Trust in writing to the contrary within fourteen days of any Trust Property being made available to the Contractor or otherwise received by it detailing any fault or damage in the Trust Property.
- 25.3 The Contractor undertakes the safe custody of and due return of all Trust Property made available to or otherwise received by the Contractor and the Contractor shall be responsible for all loss of any such Trust Property and shall indemnify the Trust against such loss.

25.4 The Contractor shall be responsible for any deterioration in the Trust Property where the Contractor has the responsibility for maintenance save for any deterioration resulting from its normal and proper use for the purposes of this Agreement provided that such deterioration resulting from normal and proper use is not contributed to by any want of due maintenance and repair.

25.5 Neither the Contractor, nor any sub-contractor, nor any other person shall have a lien on any Trust Property for any sum due to the Contractor, sub-contractor or other person and the Contractor shall take all reasonable steps to ensure that the title of the Trust and the exclusion of any such lien are brought to the notice of all sub-contractors and other persons dealing with Trust Property.

## 26. **TRUST'S RESPONSIBILITIES**

The Trust undertakes to provide to the Contractor, all information services, facilities and responses designated as the Trust's Responsibilities

## 27. **SERVICE MANAGEMENT AND PROGRESS REPORTS**

27.1 The parties shall manage the provision of Services by the Contractor in accordance with the provisions of Part K of the Schedule

27.2 Where progress reports are to be submitted under this Agreement the Contractor shall render such reports as to the progress of the mutual obligations under this Agreement at the time and in such form as may be specified or as otherwise agreed between the Trust and the Contractor.

27.3 Submission and receipt of these reports shall not prejudice the rights of either party under this Agreement

## 28. **HEALTH AND SAFETY HAZARDS**

28.1 The Contractor shall notify the Trust of any health and safety hazards which may arise in connection with the performance of this Agreement.

28.2 The Trust shall notify the Contractor of any health and safety hazards which may exist or arise at the Site and which may affect the Contractor. The Contractor shall draw these hazards to the attention of its employees and sub-contractors or any persons engaged by the Contractor in the performance of this Agreement at the Site.

28.3 The Contractor shall use all reasonable endeavours to make itself aware of any health and safety hazards which are a normal part of the Trust's operations.

28.4 The Contractor shall inform all persons engaged in the performance of this Agreement at the Site of all such hazards and shall instruct such persons in connection with any necessary associated safety measures.

## 29. **PROTECTION OF PERSONAL DATA**

29.1 The Contractor's attention is hereby drawn to the Data Protection Act 1984, Data Protection Act 1998 and the Computer Misuse Act 1990.

29.2 Both parties warrant that they will duly observe all their obligations under the Data Protection Act 1984, Data Protection Act 1998 and the Computer Misuse Act 1990 which arise in connection with this Agreement.

29.3 The Contractor shall indemnify the Trust against any penalty incurred by the Trust as a consequence of breach by the Contractor of its obligations under the Data Protection Act 1984, Data Protection Act 1998 and the Computer Misuse Act 1990

### 30. PUBLICITY

30.1 Except with the written consent of the other party which shall not be unreasonably withheld or delayed, neither party shall make any press announcements or publicise this Agreement in any way

30.2 Both parties shall take all reasonable steps to ensure the observance of the provisions of Clause 30.1 by all their servants, employees, agents and consultants. The Contractor shall take all reasonable steps to ensure the observance of the provisions of Clause 31.1 by its sub-contractors.

30.3 Notwithstanding the provisions of Clause 30.1, the Trust shall be entitled to publicise this Agreement in accordance with any legal or quasi-legal obligations upon the Trust, including, but without limitation to, obligations under the Government Procurement Agreement and the World Trade Organisation rules.

### 31. CORRUPT GIFTS AND PAYMENTS OF COMMISSION

31.1 The Contractor shall neither -

- (a) offer or give or agree to give any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or performance of this Agreement or for showing or forbearing to

Agreement, nor

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- 32.5 If and when directed by the Trust, the Contractor shall provide a list of the names and addresses of all persons who it is expected may require access to Trust Data. Systems or Premises in connection with the performance of this Agreement, specifying the capacities in which they are concerned with this Agreement and giving such other particulars as the Trust may reasonably require.
- 32.6 Whilst attending at the Premises the Contractor's representatives shall comply with the Trust's on-Site rules, regulations and requirements (including those relating to security arrangements) for the conduct of personnel. The Trust shall make available to the Contractor the latest version of such rules, regulations and requirements.
- 32.7 If the Contractor shall fail to comply with Clause 32.6 and if the Trust (whose decision shall be final and conclusive) shall decide that such failures is prejudicial to the interests of the NHSiS and if the Contractor does not comply with the provisions of Clause 32.6 within a reasonable time of written notice so to do then the Trust may terminate this Agreement upon the basis of Default by the Contractor provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Trust.
- 32.8 The decision of the Trust (acting reasonably) as to whether any person is to be refused admission to any Premises occupied by or on behalf of the Trust and as to whether the Contractor has failed to comply with Clause 30.1 shall be final and conclusive provided that the Trust shall if requested by the Contractor, advise the Contractor of the reasons for its decision except in circumstances where the Trust regards such reasons

as confidential and provided further that no liability shall attach to the Trust in relation to such information. The Contractor agrees that it shall not disclose such information to any person including the relevant member of its personnel without the prior written consent of the Trust

### 33 **RACIAL DISCRIMINATION**

33.1 The Contractor shall not unlawfully discriminate within the meaning and scope of the Race Relations Act 1976 or any statutory modification or re-enactment thereof relating to discrimination in employment.

33.2 The Contractor shall take all reasonable steps to ensure the observance of the provisions of Clause 33.1 by all servants, employees, agents and consultants of the Contractor and all sub-contractors.

### 34. **FORCE MAJEURE**

34.1 The events which are to be classified as Force Majeure events are as follows -

- (a) war, civil war, armed conflict or terrorist attack arising within and affecting the United Kingdom, or
- (b) nuclear, chemical or biological contamination of the Contractor's property arising from any of the events at (a) above.

34.2 If a Force Majeure event arises during the term of the Agreement which directly causes the Contractor to be materially unable to comply with any of its obligations hereunder, the Contractor and the Trust may agree such terms as are appropriate for the continued performance of the Agreement. If no such terms are agreed within 60 days of the commencement of the

said event, and such event is continuing or its consequence remains such that the Contractor is materially unable to comply with its obligations the Parties hereby agree that the Agreement shall thereupon terminate, subject to the provision of Clause 19.7. Failure by the Contractor to comply with its contractual obligations by reason of a Force Majeure event shall not constitute a Default

#### 34A PERMITTED DELAYS

34A.1 Neither party shall be liable for delay or failure to perform any of its obligations under the Contract insofar as the performance of such obligation is prevented by any event which is beyond its reasonable control ("Permitted Delay"). Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Permitted Delay event. In particular the Contractor will operate the agreed disaster recovery procedures without additional cost to the Trust. If the disaster recovery procedures do not satisfactorily remedy the situation then the Contractor will, but only with the consent of the Trust, adopt such reasonable measures as may be necessary to mitigate the effects of an event of a Permitted Delay for as long as the same continues and in that event any reasonable additional costs properly incurred by the Contractor shall be borne by the parties in equal shares

34A.2 For purposes of this Clause, it shall not be considered to be a Permitted Delay event, nor shall either party be excused from liability for delay or failure to perform any of its obligations under the Contract if it is delayed or fails to meet its obligations as a result of -

- (a) industrial action taken by it or its employees; or
- (b) failure by its agents or sub-contractors to meet any obligation in relation to the Contract when failure by such agent or sub-contractor does not itself result from a Permitted Delay event; or
- (c) any unplanned event, the effects of which the Contractor undertakes to avoid or circumvent by:-
  - (i) the operation of back-up or recovery procedures or other relevant procedures or
  - (ii) the provision of alternative or back-up services.

as specified in this Agreement.

34A.3 In the event of any Permitted Delays and such delay would directly thereby otherwise lead to a shortfall in the payments payable to the Contractor in terms of this Agreement, the initial term shall be extended with the prior written consent of the Trust (such consent not to be unreasonably withheld or delayed) by such period as shall allow the Contractor the opportunity to recover the shortfall in the Delivery Stream Payments. The parties shall bear in equal shares the shortfall in the Performance Stream Payments. The schedule of payments shall be recalculated to give effect to the above principles. In the event of any dispute, the matter shall be referred to an independent accountant of at least ten years' qualification agreed between the parties or, failing such agreement, by nomination by the President for the time being of the Institute of Chartered Accountants in Scotland for determination.

### 35. TRANSFER AND SUB-CONTRACTING

35.1 This Agreement is personal to the Contractor. The Contractor shall not assign, novate, Sub-Agreement or otherwise dispose of this Agreement or any part thereof without previous consent in writing of the Trust which shall not be unreasonably withheld or delayed.

35.2 The Trust hereby consents to the Contractor's Sub-Contracting obligations specified in Part C of the Schedule to the respective Sub-Contractors specified in Part C of the Schedule. Notwithstanding any sub-contracting permitted hereunder, the Contractor shall remain primarily responsible for the acts and omissions of its Sub-Contractors as though they were its own.

35.3 Save as may be provided in Clause 35.5 and/or Clause 35.6 the Trust shall be entitled to assign, novate, sub-Agreement or otherwise dispose of its rights and obligations under this Agreement or any part thereof to -

(a) any contracting authority (as defined in Regulation 3(i) of the Public Services Contracts Regulations 1993) (a "Contracting Authority");  
or

(b) any other body (including but not limited to any private sector body)

Where either party identified in (a) or (b) substantially performs any of the functions that previously had been performed by any Contracting Authority; Declaring that in the event that such assignation or novation to such other body in (b) above shall only be permitted where such body is capable of meeting the financial obligations of the Trust

- 35.4 This Agreement shall devolve to any statutory successor of the Trust.
- 35.5 The Trust shall be entitled upon serving notice in writing to the Contractor to appoint a Third Party to perform all rights and obligations (other than financial) available to the Trust pursuant to this Agreement (but without affecting the financial and non-financial obligations of the Trust). Notwithstanding the provisions of Clause 16, the Trust shall be entitled to disclose any information (including Confidential Information) to the Third party as may be required by any such Third Party to perform in terms aforesaid.
- 35.6 The Trust shall be entitled to disclose to any body to whom this Agreement may be transferred pursuant to the foregoing provisions any Confidential Information of the Contractor which relates to the performance of the Services by the Contractor. In such circumstances, the Trust shall authorise the said transferee to use such Confidential Information only for purposes relating to the performance of the Services and for no other purposes and shall take all reasonable steps to ensure that such body accepts an obligation of confidence in terms similar to Clause 16.
- 35.7 Any change in the legal status of the Trust such that it ceases to be a Contracting Authority shall not affect the validity of this Contract. In such circumstances this Agreement shall bind and inure to the benefit of any successor body to the Trust.

## 36. AMENDMENTS TO THE SERVICES

- 36.1 The Trust shall be entitled to require the Contractor to make changes to the Services and the Contractor shall be entitled to request that the Trust accepts changes to the Services ("Changes");
- 36.2 All Changes shall be subject to the Change Control Procedure but without prejudice thereto the Contractor shall ensure that any Change required by the Trust is made on a timetable as may be agreed between the parties after any alteration (if any) to the Charges are agreed in accordance with the provisions of this Clause 36.
- 36.3 If the parties are unable to agree the alteration to the Charges pursuant to any Change the party so entitled in terms of this Clause 36 shall be entitled to refer the matter to a firm of accountants agreed by the parties or failing agreement a firm of chartered accountants selected by the then President of the Institute of Chartered Accountants in Scotland ("the Accountants"). The Accountants shall act as experts and not as arbiters. The Accountants shall be entitled to require any supporting evidence in support of a submission by either party as they may deem appropriate and shall be entitled to take expert advice in relation to the Change as they may deem appropriate. The Accountant's decision shall be final and binding. Each party shall bear their own costs in connection with the preparation of their submissions or gathering of evidence. The Trust and the Contractor shall bear the Accountant's charges and expenses equally.

## 37. COMMUNICATIONS

37.1 Except as otherwise expressly provided no communication from one party to the other shall have any validity under this Agreement unless made in writing by or on behalf of the Trust or as the case may be by or on behalf of the Contractor

37.2 Any notice or other communication whatsoever which either party hereto is required or authorised by this Agreement to give or make to the other shall be given or made by post in a prepaid letter, confirmed by post in a prepaid letter, addressed to the other party in the manner referred to in Clause 37.3 below and if that letter is not returned as being undelivered that notice or communication shall be deemed for the purposes of this Agreement to have been given or made after two days, for letter.

37.3 For the purposes of Clause 37.2 above the address of each party shall be:-

(a) For the Trust:-

For the attention of the Chief Executive  
Southern General Hospital NHS Trust  
1345 Govan Road  
Glasgow  
G51 4TF

Tel No: 0141-201 1100

Fax No: 0141-201 2998

(b) For the Contractor:-

For the attention of the Managing Director  
Data General Limited  
Data General Tower  
Great West Road  
Brentford  
Middlesex

Tel No: 0181-758 6000

Fax No: 0181-758 6758

37.4 Either party may change its address for service by notice as provided in this Clause 37.

38. **SEVERABILITY**

If any provisions of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Contract, the Trust and the Contractor shall immediately commence good faith negotiations to remedy such invalidity.

39. **WAIVER**

39.1 The failure of either party to insist upon strict performance of any provision of this Contract, or the failure of either party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Contract

39.2 A waiver of any Default shall not constitute a waiver of any subsequent Default.

39.3 No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing in accordance with the provisions of Clause 37.

#### 40. ACCESS TO SOURCE CODE

40.1 The Contractor undertakes that all Software used in provision of the Services in which the Intellectual Property Rights are owned by Meditech Information Technology, Inc. ("Meditech Software") incorporates the Source Code for such Software. The Trust shall be entitled to Use Source Code in Meditech Software in circumstances detailed in Clause 40.2.

40.2 The Trust shall be entitled to Use the Source Code in Meditech Software for continued provision and/or implementation of the Services in the event that the Trust terminates the Agreement pursuant to Clause 19.1 or 19.3 and such entitlement shall subsist:-

(a) as from the expiry of the two calendar month period specified in Clause 19.3; or

(b) as from the date the Trust serves notice terminating the Agreement in terms of Clause 19.1.

40.3 The Contractor shall within thirty days of the Commencement Date procure that an agreement ("an Escrow Agreement") in terms of that contained in Part I of the Schedule is concluded with the National Computing Centre in Birmingham ("NCC") Software used in provision of the Services (other than Meditech Software). Such Agreement shall be concluded between the NCC, the Third Party and the Trust and shall provide for deposit of the latest/original version of the Source Code of all such Software used in provision of the Services. The Contractor shall be obliged to procure that the Source Code lodged under the Escrow Agreement is updated upon no less than a three monthly basis throughout

the period of the Agreement, except in any instance where the Trust makes a specific request to the Contractor to update the Source Code in which event the Contractor shall comply with the same.

40.4 The Trust or any Third Party appointed by it shall be entitled to Use any Source Code obtained pursuant to this Clause 40 only for the purpose of continued provision and/or implementation of the Services

40.5 It is expressly agreed between the parties that the provision of this Clause 40 shall survive termination of the Agreement.

#### 41. **HANDOVER**

41.1 For the purpose of this Clause 41:-

(a) "Employees" shall mean employees of the Contractor engaged in the provision of the Services (whether an at operational or managerial level) from time to time, and

(b) "Transferring Employees" shall mean any Employees who shall transfer to the Trust upon the application of TUPE.

41.2 On termination for any reason or expiry of this Agreement, the Contractor, without prejudice to the Trust's other rights and remedies, will liaise with the Trust and render to the Trust or a New Contractor all such assistance as the Trust may reasonably require to provide for the provision of facilities and/or services equivalent to the Services by the Trust itself or a New Contractor. Such assistance shall include, without limitation, making available suitable liaison staff as the Trust may reasonably require. Such assistance shall be provided at no cost to the Trust unless it falls outwith

the scope of the provision of the Services or unless following termination, the Trust is no longer obliged to pay the Charges. The period of liaison will commence as soon as notice has been given of termination of this Agreement or at the time at the discretion of the Trust within three months prior to expiry of this Agreement. Upon the Trust's written request reasonable assistance in converting file conversions to a new operating system and/or a new Contractor and additional liaison outwith the scope of the provision of the Services shall be provided by the Contractor:

- (a) From Three Months prior to the expiry of the Agreement or in any circumstance where the Agreement is terminated by the Contractor as a consequence of Default on the part of the Trust at the Contractor's then current time and materials rates.
- (b) in circumstances of termination of the Agreement by the Trust as a consequence of Default by the Contractor at no expense to the Trust.

41.3 If the Trust so requires, the Contractor will use all reasonable endeavours to procure the transfer at the Trust's expense to the Trust or to a New Contractor of any software owned by a third party and licensed by the Contractor in its own name in order to provide the Services.

41.4 The Contractor shall not within four (4) months prior to expiry of this Agreement or after receiving notice of the Trust's intention to terminate this Agreement (i) transfer any Key Personnel to a post in another part of its business, (ii) offer any Key Personnel a post in another part of its business, (iii) create a new post in the Undertaking, and (iv) dismiss Transferring Employees in the Undertaking by reason of a prospective

Handover without the prior consent in writing of the Trust such consent not to be unreasonably withheld or delayed.

41.5 The Contractor shall (subject to any obligations of confidentiality) disclose to the Trust at the written request of the Trust all material facts and matters relating to or concerning the employment of any Transferring Employee including:-

- (a) their respective names and ages, experience, gender and job description;
- (b) length of service;
- (c) notice period;
- (d) all terms and conditions of employment or benefits policies;
- (e) all other agreements or arrangements or understandings in respect of each of them relating to their employment;
- (f) any existing or threatened or pending litigation relating to or concerning all or any of them.

41.6 The Contractor shall disclose to the Trust at the written request of the Trust:-

- (a) all material facts and matters relating to any collective agreements, arrangements or other understandings which it has with any trade union, staff association or other body representing Transferring Employees including, without limitation any outstanding or



the Contractor such expression having the meaning prescribed by regulation 8(2) of TUPE.

41.9 Any information ("Information") disclosed by the Contractor under Clauses 41.5 and 41.6 shall to the best of the Contractor's knowledge and belief be true, accurate and up to date as at the time of disclosure. The Trust shall treat Information as confidential but shall be entitled to disclose any or all Information to any prospective New Contractor(s) without restrictions, but subject to similar obligations of confidentiality as contained in this Contract. The Trust may request any or all Information to be updated as it sees fit.

#### 42. **EMPLOYEE CONSULTATION**

The provisions of Clause 41 shall subsist where TUPE applies and the Trust and the Contractor each undertake to comply with its obligations under TUPE and its other statutory obligations to inform and/or consult with any trade union, staff association or other body representing employees of the Trust or any other National Health Service Entity engaged primarily in providing services equivalent to the Services

#### 43. **SPECIFIC PERFORMANCE**

The parties acknowledge and agree that in the event of a Default by the Contractor in performance of its obligations under the Agreement, the loss or damage incurred by the Trust by reason of such default will be such that damages may not be an adequate remedy. Accordingly, the Trust shall have the right to specific performance of the Contractor's obligations under the Agreement

Such remedy shall be in addition to and not in lieu or limitation of other remedies provided to the Trust hereunder or otherwise at law or in equity.

#### 44. **INSURANCE**

44.1 The Contractor shall effect insurance with a reputable insurer or underwriter in respect of all matters which are the subject of indemnities under the Agreement and such insurance shall include, without prejudice to the limit of liability contained in Clause 20 the following insurances -

- (a) public and product liability insurance in not less than the sum of Two Million Pounds Sterling (£2,000,000) in respect of any one incident or any series of connected incidents;
- (b) employer liability insurance in not less than the sum of Four Million Pounds Sterling (£4,000,000) in respect of the any one incident or any series of connected incidents.

44.2 The Contractor shall procure that a letter shall be issued by its broker addressed to the Trust:-

- (a) within fourteen days of written request confirming the existence and validity of the insurances effected under Clause 44.1
- (b) immediately, in the event that the policies of insurance are permitted to lapse or are varied for any reason;
- (c) immediately in the event that any claim is submitted against such insurance and any monies paid by the insurer to the Contractor pursuant to such claim

44.3 The Contractor shall, on request, exhibit the certificate of insurance for that insurance year to the Trust.

44.4 The Contractor shall procure waiver by the insurer of any subrogation rights available to the insurer against the Trust.

#### 45. **DISPUTE RESOLUTION**

In the event of any dispute or difference between the parties arising pursuant to this Agreement the parties shall use all reasonable endeavours to resolve the same between themselves failing which either party shall be entitled to exercise any remedy available to it in terms of this Agreement or at law or otherwise.

#### 46. **TRANSFER OF THIRD PARTY AGREEMENTS**

46.1 Within six months of written request by the Trust, the Contractor shall use its reasonable endeavours to procure that any Third Party Agreement nominated by the Trust is assigned in favour of the Trust (at no cost to the Trust) pursuant to which the right, title and interest and all liabilities after the date of the assignation becoming effective as hereinafter described, provided always that such assignations shall only become effective in the event that the circumstances narrated in Clause 18.2 hereof occur

46.2 The Contractor shall use its reasonable endeavours to procure that all such Third Party Agreements are effected on binding terms which allows such assignations at no additional cost payable

#### 47. **ENTIRE AGREEMENT**

This Agreement (together with agreements entered into pursuant to this Agreement and the Schedule, Appendices and Annexes attached hereto)

constitute the entire understanding between the parties relating to the subject matter of this Agreement and save as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect thereto.

48. **APPOINTMENT OF EXPERT**

In the event of any difference of dispute between the parties of a technical nature relating to the Services or the implementation or performance thereof the same shall be referred by mutual agreement to an expert agreed by the parties and failing agreement appointed by referral by either party to the President of the British Computer Society. Such person shall act as an expert and not as an arbiter and the expert's decision shall be final and binding upon both parties. The expense of any referral to such expert shall be borne equally between the parties unless otherwise directed by the experts.

49. **LICENCE**

The Contractor shall have the non-exclusive licence to use the Trust premises insofar as necessary to perform its obligations hereunder subject always to the Contractor, its staff and its sub-contractors complying with all the on-site guidance and rules of the Trust from time to time.

50. **LAW AND JURISDICTION**

50.1 This Agreement shall be governed and construed in accordance with the Law of Scotland and both parties hereby submit to the non-exclusive jurisdiction of the Scottish Courts.

50.2 This Agreement is binding on the Trust and its successors and assignees and the Contractor and the Contractor's successors and permitted assignees: IN WITNESS WHEREOF these presents typewritten on this and the preceding seventy four pages together with the Schedule incorporating the four volumes of Appendices are executed as follows:

Signed for and on behalf of the Trust

Place of Execution London

Date 23/06/99

Signed by R Calderwood

Print Name ROBERT CALDERWOOD

Title CHIEF EXECUTIVE

Place of Execution London

Date 23/06/99

Signed by [Signature]

Print Name [Name]

Title [Title]

Signed for and on behalf of the Contractor

Place of Execution London

Date 23/06/99

Signed by [Signature]

Print Name [Name]

Title [Title]

Place of Execution London

Date 23/06/99

Signed by [Signature]

Print Name [Name]

Title [Title]

**COMMERCIAL IN CONFIDENCE**

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**South Glasgow University Hospitals NHS Trust**

**The Schedule to Contract**

**for a**

**Managed Service**

**for**

**Hospital Information Support Systems**

**VERSION 5.1**

**Revision Date : June 20th, 1999**

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- Appendix 3 Contractor's response to Operational Requirement
- Appendix 4 Contractor's response to Operational Requirement  
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- Appendix 5 Trust Operational Requirement Addendum & Contractor's Response  
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- Appendix 11 MEDITECH Abstracting to MEDICODE Coding System for PC,  
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- Appendix 12 Trust Project Organisation
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## Part A

### Trust requirements and Contractor's response

A1.1. This Part refers to the Trust's requirements as stated in the Operational Requirement dated October 1996 and the Contractor's response. This Part also refers to the Trust's requirements as stated as an Addendum to the Operational Requirement of October 1996 and the Contractor's response to the Addendum.

A1.2. The following documents are included as appendices:

- Appendix 1 The Trust's Operational Requirement (OR).
- Appendix 2 The Trust's OR (Radiology & Outpatients).
- Appendix 3 The Contractor's response to the OR.
- Appendix 4 The Contractor's response to the OR (Radiology & Outpatients)
- Appendix 5 The Trust's Operational Requirement (OR) Addendum & Contractor's Response (dated 29 May 1998) and Operational Requirement Addendum (dated 23 October 1997 and addended 4 December 1997).
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### Part B Deliverables

This Part describes the deliverable products and services to be provided to the Trust in the managed service contract between the Trust and the Contractor.

#### **B1 Baseline application software**

B1.1. This section specifies the application software modules proposed by the Contractor to meet the functional requirements of the Trust, as expressed in the Trust's Operational Requirement.

B1.2. Adequate licences will be provided to enable users to access all these applications as required. A total of 10 MEDICODE Licences will be provided.

B1.3. Table BA includes all application systems proposed by the Contractor to meet these requirements. Table BA does not include:

1. developments required to meet these requirements in full and listed in Part J.
2. new systems developed by the Contractor during the life of the contract and systems outside of the proposal. These are referred to in section B2.

Table BA Applications provided by the Contractor

	<i>Trust requirement</i>	<i>Applications provided by the Contractor</i>
	Patient Administration System, including: Patient Master Index Inpatients and bed Management Outpatients Inpatients Waiting List Day Patients Accident & Emergency Contract Management Case Note Tracking	Admissions Medical Records Abstracting & Coding Outpatient Scheduling Wait List Contracting  Accident & Emergency

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<i>Trust requirement cont</i>	<i>Applications provided by the Contractor</i>
Order Communications and results reporting	Order Entry Patient Care Inquiry
Systems Interfacing to Telepath 2000 laboratory systems at South Glasgow University Hospital NHS Trust	Microscript Interface Engine- MEDITECH Interface
Systems Interfacing to a Windows based ORSOS theatre management system at South Glasgow University Hospital NHS Trust	Microscript Interface Engine-MEDITECH Interface
Departmental Applications	Order Entry/Departmental
Tiara	Microscript Interface Engine-MEDITECH Interface

B1.4. The Contractor will provide all available upgrades to all MAGIC applications included in the contract, provided that they are made available to the UK market; this includes new upgrades to the MAGIC operating system. The application software upgrades are made available as part of this contract. However, any additional training & implementation requested by the Trust will be charged at the contractor's prevailing rates.

B1.5. Upgrades to the "so called" Client-Server version are subject to the provisions set out in Appendix 13 - Miscellaneous Clarification Points.

### **B2 System software**

B2.1. The Contractor will provide the necessary operating system software to operate the current version of each application system proposed.

B2.2. The Contractor will have fully tested the compatibility of all equipment and software specified in these Parts with the system software.

B2.3. Adequate licences will be provided to enable users to access applications as required.

B2.4. The Contractor will also provide the appropriate Windows based terminal emulation software for all personal computers requiring access to the application software.

B2.6 The Trust will provide either a Windows 3.11 with TCP/IP Stack or Windows 95 environment in order to operate the emulation software.

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### **B3 Training**

- B3.1. All training will be carried out at the Trust premises unless otherwise requested by the Trust. The costs of providing training facilities will be borne by the Trust.
- B3.2. The principle of core training will be applied. The Contractor will train the trainers within the department concerned, who will themselves train, under the guidance of the Contractor, other users within the Trust.
- B3.3. It will be the responsibility of the Trust to ensure that course attendees have appropriate skills, commitment and available time. The Trust will use the MEDITECH HCIS Implementation and Staffing Guide as a guideline for staffing requirements.
- B3.4. The Trust will allocate staff who will provide an end user helpdesk function for MEDITECH users within the Trust, and will ensure that these staff attend the appropriate training courses provided.
- B3.5. The Contractor and the Trust will agree upon the detailed training plan at the start of the project and the resource required from both parties will be identified and planned. The HHS Implementation Guide indicates the resource level and commitment required for the Trust.
- B3.6. Training will be structured into defined courses for which documentation will be provided by the Contractor.
- B3.7. The Trust will have the opportunity to accept that the course material presented meets the objectives outlined for the course.
- B3.8. The maximum class size for core training will be agreed by the Trust and the Contractor in advance of each course.
- B3.9. The maximum number of core trainers who require training by the Contractor on application software will be agreed by the Trust and the Contractor in advance of each course.
- B3.10. Training for third party applications will be provided according to the procedures identified in this Part.
- B3.12. Core trainers will provide feedback on the quality of training provided by the Contractor through a course assessment process to the Trust's project manager and to the Contractor.

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### **B4    Server hardware**

- B4.1. The Contractor will provide a managed HISS service to the Trust. The hardware specified in this Part will be the hardware that the Contractor intends to use at the start of the service period in order to provide the defined service. Title to all hardware will be retained by the Contractor.
- B4.2. The Contractor reserves the right to benefit from any technology that becomes available at any stage during the delivery of the service so long as this does not impact either the performance or the reliability of the service.
- B4.3. The Contractor agrees to give reasonable notice to the Trust of any changes in hardware used.
- B4.4. Table BD below details the hardware that the Contractor intends to utilise to provide the full service at the start of the service period. The equipment includes all equipment required to meet the workloads defined in Part B, all special tools, diagnostic and test equipment required for proper maintenance of the system, and all equipment required to interface with the systems defined in Part B. It also includes any additional hardware which may be utilised in a disaster recovery plan.

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Table BD Hardware provided at the start of the managed service

## Main Server Hardware

<i>Model No.</i>	<i>Qty</i>	<i>Description</i>
50587Q2-F4	1	MEDITECH "MAGIC" packaged system. Includes 4 DS450 N+1 power Uni-CPU servers each with 400MHz PII 128MB memory, 2GB disk, 2MB Video controller, Diff SCSI controller, 10/100MB LAN controller, DLT4000 tape drive, and HAL (MAGIC enabling s/w), plus two 20-slot CLARiONs with dual SP's, and an 8-port system console switch, all configured in a 73" deep-rack cabinet.
R7371	2	Replace 8MB mirrored CLARiON cache with 64MB
79153	2	BBU for CLARiON Disk Array
5222SM-5	1	Standalone VGA Monitor
5235MTKB	1	5235 Series Keyboard
5235MTLB-5	4	Medstroke logic base. Provides VT and "MAGIC" terminal capabilities.
1340-T	4	RS-232 I/O Cable, 15ft
15309B006	4	9DB to 25DB Serial Adaptor Cable
5513CH12	4	Cable: Medstroke logic base to console switch
5513CC12	1	Cable: Extension, console switch to console
G6856R-AF4	1	1600bpi Reel tape unit, rackmounted.
15396E010	1	10ft SCSI cable to connect tape unit.
G6001A-B5	1	PC-AT style 102-key keyboard for D1600I console
6945G	1	D1600I console & keyboard for CLARiON disk array
79013-1H11	34	9GB, 7200 rpm hot swap disk module for CLARiON disk array
4BNSRJ455P	4	RJ45 UTP Lead, 5m
5400D1C	8	DI-14000 media cartridge
15437F010	4	10ft Modem Cable

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4B80328-5	4	Modem for dial-in access.
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## Disaster Recovery Hardware

<i>Model No.</i>	<i>Qty.</i>	<i>Description</i>
50586D2-F4	1	MEDITECH "MAGIC" packaged system. Includes 2 HDS/400 N+1 power Uni-CPU servers each with 400MHz PII 128MB memory, 2GB disk, 2MB Video controller, Diff SCSI controller, 10/100MB LAN controller, D1 T4000 tape drive, and HAL (MAGIC enabling s/w), plus one 20-slot CLARiiONs with dual SP's, and an 8-port system console switch, all configured in a 73" deep-rack cabinet.
5222SM-5	1	Standalone VGA Monitor
5235MTKB	1	5235 Series Keyboard
5235MTLB-5	2	Medstroke logic base. Provides VT and "MAGIC" terminal capabilities.
1340-T	2	RS-232 I/O Cable, 15ft
15309B006	2	9DB to 25DB Serial Adaptor Cable
5513CH12	2	Cable: Medstroke logic base to console switch
5513CC12	1	Cable: Extension, console switch to console
G6001A-B5	2	PC-AT style 102-Key keyboard for D1600I console
6945G	2	D1600I console & keyboard for CLARiiON disk array.
79012-HC	20	4GB, 7200 rpm hot swap disk module for CLARiiON disk array
4BNSRJ455P	2	RJ45 UTP Lead, 5m
15437E010	2	Modem Cable
4B80328-5	2	33.6Kbps modem for dial-in access.

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### Interface Engine Hardware

<i>Model No.</i>	<i>Qty</i>	<i>Description</i>
70831-B5	2	AV2200 PII 400MHz/512KB dual-CPU with 64MB memory, 10/100MB LAN controller, Ultra-wide SCSI controller, CD-ROM, diskette, keyboard & mouse
7138	2	64MB memory
61029A-SJB	3	4 GB Ultra2/1 VD SCSI Disk (7200rpm)
61085-SJB	2	12GB 4mm tape drive for AV2200
19034	2	4mm data cartridges, 5 pack
26130-5	1	15" SVGA LR Colour Monitor

### Capscan PC Hardware

<i>Model No.</i>	<i>Qty</i>	<i>Description</i>
92757-B5	1	DG PII 350MHz, 64 MB memory, 4.3GB disk, CD-ROM, and 10/100MB LAN controller
26126-5	1	15" SVGA colour monitor

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### **B5 Peripheral hardware**

- B5.1. The Trust is responsible for providing all peripheral hardware on the Trust's local area network. This includes network hardware such as terminal servers, network hubs and cards, bridges, routers.
- B5.2. The Contractor will assist, if able, in evaluating the Trust's existing peripherals (PCs, terminals, printers, laptops, bar-code readers etc) as listed in Appendix 6 . for use with the application.
- B5.3. The Contractor recommends a minimum specification for Trust P.C. systems to operate with the MEDITECH application:

- IBM Compatible PC
- 386SX or 386DX processor
- 101/102 key enhanced keyboard
- 8MB memory
- 80MB hard disk
- VGA colour monitor
- MS-DOS 5.0 or higher
- MS-Windows 3.11 or higher

#### ***For LAN Connections***

- Windows for Workgroups 3.11 (or higher)
- Microsoft TCP/IP-32 3.11 (or equivalent Winsock Compliant TCP/IP stack)

### **B6 Documentation**

- B6.1. All documentation will be provided to the Trust in hard copy and/or electronic format.

#### **Application software**

- B6.2. Unless otherwise stated, the Contractor will make available one copy of the relevant documentation for each module of the service used. The Contractor will use all reasonable endeavours to provide the Trust with all revisions to the standard software manuals prior to the delivery of that software to the Trust.

#### **Training**

- B6.3. Application documentation for trainers and trainees will be provided by the Contractor.
- B6.4. The Contractor will provide Application documentation for each application. This documentation will be appropriate for training end users, and as such will be non-technical

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### Other

B6.5. Documentation will be provided for all software updates, including:

1. modifications to meet statutory changes;
2. general upgrades of systems, modules and interfaces;
3. minor standard software changes that are Trust specific;
4. totally rewritten applications;
5. new applications which are made available to the Trust, when developed.

### **B7 Management services**

B7.1. The management services to be provided are described in Parts K and L.

### **B8 Local Area Network support and maintenance**

B8.1 The Trust will assume all responsibility for the development, support and maintenance of the Local Area Network (LAN) at the Trust's premises.

B8.2 The Contractor will identify any issues evident or foreseen with the network cabling system and the network hardware being used, and pertaining to the provision of the application across the LAN by means of a network audit. This audit will contain a generic list of equipment/services required.

B8.3 The Contractor can recommend acceptable suppliers for any major network equipment the Trust intends to purchase

B8.4 The Contractor does not underwrite or guarantee the performance of the system across the Trust's LAN. In the event that all relevant equipment and services are purchased from Data General, any performance guarantees will be subject to separate agreement. The Contractor will ensure that skilled Networking Consultants are available to the Trust to provide assistance and advice to ensure the system will operate successfully across the Local Area Network.

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### Part C Other responsibilities of the Contractor

#### C1 Information required by the contract

Address: Data General Tower  
Great West Road  
Brentford  
TW8 9AN

Telephone: 0181 758 6000

Facsimile: 0181 758 6758

Project Manager: David Kusuno, Data General Livingston

Project Director : Ian Haggart, Data General Tower

Managed Service Account Manager: Allan White, Data General Livingston

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### C2 List of subcontractors

C2.1. The subcontractors providing deliverables or services within this contract are listed below:

Table CA Subcontractors

<i>Supplier name</i>	<i>Supplier address</i>	<i>Deliverable/service provided</i>
MEDITECH Inc.	MEDITECH Circle Westwood Massachusetts 02090 United States	Application Software, Implementation, Development, Training and Application Support services
I.T.Services	Allday House Risley Warrington Cheshire WA3 6AS	WAN Management, FMI Support & Out of Core Hours Call Management
Capscan Ltd	Tranley House Tranley Mews Fleet Road London NW3 2QW	Automated Postcoding
Guardian	Benchmark House St Georges Business Centre 203 Brooklands Close Weybridge Surrey KT13 0RH	Disaster Recovery
Microscript Corporation	Sunbury International Centre Brooklands Close Windmill Road Sunbury on Thames TW16 7DX	Data Migration Interface Engine
Medicode Ltd	Thorncliffe House Thorncliffe Park Chapelton Sheffield S35 2PH	Clinical Coding Software

C2.2. The Contractor warrants that subcontractors will be placed to provide the Trust with a managed service.

C2.3. At an appropriate time the Contractor will consider a Prime Contracting role with the CDS Group as a further Sub-contractor. CDS Group are current suppliers to the Trust of the

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Telepath 2000 Laboratory software Adoption of this role will be subject to the following conditions :

- CDS Group must be willing to negotiate and agree a Back-To-Back agreement with the Contractor which will include pass-through penalties.
- CDS Group must provide an experienced project manager as a single point of contact with the Contractor.
- CDS Group must provide a detailed development plan including key activities, resources, Quality Assurance.
- CDS Group must outline the escalation path and senior management structure in place in order to effect remedial actions.
- CDS Group commit to delivery of a working interface with the MEDITECH MACRO Application, as specified in Appendix 9

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### C3 Sizing

C3.1. The Contractor will provide a managed service to meet the performance criteria set out in Part K.

C3.2. The foregoing assumes that:

- the software is installed without modification, other than developments described in Part J
- the Trust has followed the Contractor's recommended procedures for the use of the product.

C3.3. Costs associated with additional equipment required as a result of additional functionality which is agreed by both parties to be outside the contract, will be funded by the Trust in whole.

C3.4. The sizing information in Table CB is only indicative and is given for planning purposes only.

**Table CB Indicative sizing volumes**

Item	Indicator	Volume (full year or end 1998/99)
1	Beds	828
2	Average Occupancy	81.40%
3	Finished consultant episodes	35,851 inpatients 13,198 day cases
4	First outpatient attendances	40,258 new 97,422 returns
5	No of Radiology Exams	81,174 Radiology 20,774 Neuroradiology
6	No of Pharmacy Prescriptions	22,000 with 77,500 items
7	Size of PMI Database to Convert	1,000,000 patients
8	A&F attendances	42,371 new 2,539 returns
9	Concurrently active terminals/PC's	400
10	Printers	300

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C3.5. The growth factors shown in Table CC are only indicative and are given for planning purposes only.

Table CC Growth estimates

<i>Parameter</i>	<i>1999/2000 growth</i>	<i>Year 1 growth</i>	<i>Years 2-7 growth</i>
Finished consultant episodes	0	2 %	2 %
Outpatient attendances	0	2 %	2 %
Terminal / PC connections	0	2 %	2 %
Other peripheral connections	0	2 %	2 %

### C4 Network Audit

- C4.1 The Contractor will undertake a network audit on the Trust's LAN to be agreed periodically at a cost to the Trust at the Contractor's prevailing rate for such services. These charges will be the responsibility of the Trust.
- C4.2 The Contractor will identify any issues evident or foreseen with the network cabling system and the network hardware being used, and pertaining to the provision of the application across the LAN by means of a network audit. This audit will contain a generic list of equipment/services required.
- C4.3 The audit will identify any issues evident or foreseen relating to the Trust's network and pertaining to the provision of the application across the LAN. As a result of the audit the Contractor will agree with the Trust any work required to upgrade the network and the respective responsibilities of the Trust and the Contractor.
- C4.4 The Trust will make any changes to the LAN recommended by the Contractor and agreed with the Trust following the network audit. These changes will be implemented and tested at least 2 months prior to go live of the Managed Service.
- C4.5 Where, as a result of a periodic network audit by the Contractor under C4.2, the Trust and the Contractor agree a Change Control Notice for the Contractor to upgrade the Trust's network, the Contractor will meet the service level indicated on the agreed Change Control Notice.

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## Part D Trust's responsibilities

### D1 Information required by the contract

#### Address & Definition of the Site:

The South Glasgow University Hospitals NHS Trust  
1345 Govan Road  
GLASGOW G51 4TF

Telephone: 0141 201 1100

Facsimile: 0141 201 2999

Project Manager: Tom McNamara, IM & I Manager

Project Director: Peter Gallagher, Finance Director

Project Sponsor: Robert Calderwood, Chief Executive

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### **D2 Trust software**

- D2.1. The Trust will provide access to any additional software that the Trust maintains, where the Contractor requires access to meet the requirements of Part A.
- D2.2. The Trust will maintain appropriate software licences for all Trust software required to enable the Contractor to meet the requirements in D2.1

### **D3 Trust hardware**

- D3.1. The Trust currently owns a range of peripherals. The Trust will be responsible for separately maintaining this hardware. It will also be responsible for maintaining hardware procured during the life of this contract but procured outside of this contract.
- D3.2. The Contractor has a listing of guaranteed, supported peripherals which is outlined in Appendix 6 and will assist the Trust in any problems encountered in connecting these supported peripherals to the network. The Contractor can assist the Trust, if able, with any problems encountered connecting non-guaranteed, non-supported peripherals on a Time and Materials basis only. We cannot be responsible for any malfunctions on non-guaranteed, non-supported peripherals.

**D4    On-site facilities**

- D4.1. During the implementation period, the Trust will provide an office adequate for members of the Contractor's implementation team. Access to the system will be provided. The Contractor's team will also have access to a meeting room as required. The office will be of sufficient size to house a desk, table and four chairs. It will have a telephone as part of the Trust main switchboard.
- D4.2. Contractor staff will be allowed to work out of hours and will be provided with security badges.
- D4.3. The Trust will maintain training facilities as required to support the agreed training and implementation plan.
- D4.4. The Trust will provide workstation and printing facilities for training and implementation throughout the duration of the Contract.

**D5 Wide Area Network**

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### **D6 Responsibilities for tasks**

#### File definition and build

D6.1. The Trust will have the responsibility to define and build all reference files where these can not be included as part of the take on process. The Contractor will support the Trust by providing:

- assistance and training
- standard utility files; any other types of files are not standardly provided by the Contractor and/or licenced sites.

#### End user training and support

D6.2. It will be the responsibility of the Contractor to train key departmental co-ordinators and trainers. It will be the responsibility of the Trust to provide end-user training. The Trust will undertake its own user satisfaction survey for this training to ensure a high standard is maintained.

D6.3. The Trust will provide a 24-Hour first line technical support Help Desk. This help Desk will provide support for all applications in use at the Trust during the period of the Managed Service Contract.

D6.4. If appropriate, Trust Help Desk staff will provide first line support for all end users. Any calls which cannot be resolved by the Trust Help Desk will be logged on the Contractor's Electronic Help Desk.

#### Liaison with 3rd party suppliers

D6.5. The Contractor has responsibility for liaison with 3rd party suppliers included in Table CA, and will support the Trust in liaising with any 3rd party supplier who provides an input to the system and service

#### Benefits management

D6.6. It will be the responsibility of the Trust to produce a Benefits Analysis Plan. This plan will identify the strategy that the Trust will pursue in order to realise those benefits.

#### D6.7. Releases

The Trust will undertake to use the most recent major release of software when offered by the Contractor, or may alternatively continue to run on the previous release. It will not without prior written agreement from the Contractor operate on any release earlier than the previous release unless it can be demonstrated that the two most recent releases detrimentally impact the functionality utilised by the Trust

**Part E**  
**Timetable**

**E1 Commencement date of contract**

E1.1. The Contractor will commence a managed service to the Trust at a mutually agreed date.

**E2 Implementation plan completion**

**Data take-off and take-on**

E2.1. The Contractor will agree the format and conditions for data take-off and data take-on exercises, as outlined in Appendix 8.

E2.2. The Trust will provide the Contractor with data sets in the agreed format for data take-on in accordance with the project timetable as specified in Appendix 8.

E2.3. In the event of the Trust being unable to provide the Contractor with data sets in the agreed format, the Trust and the Contractor will work together to find and implement an alternative solution, as outlined in Appendix 8.

E2.4. Any delays to the data take-on timetable that are not the sole responsibility of the Contractor shall fall outside the scope of any acceptance date.

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### **E3 Project plans**

- E3.1. Outline plans for the entire project are included as Appendix 7. The Contractor and the Trust will agree amendments and updates to these plans through the Project Organisation.

### **E4 Planned acceptance dates**

- E4.1. The contract will include two acceptance dates for each separately defined software module. The Initial Acceptance test period will be completed within two weeks of the introduction of the module into the live environment. The Final Acceptance period will be completed within six weeks of its introduction into the live environment.
- E4.2. In the situation where, through no fault of the Contractor, the Trust wishes to complete the Final Acceptance testing after the agreed date, the Contractor and the Trust will agree to undertake the full acceptance testing process as in Part F.
- E4.3. For the purposes of the contract, the Initial Acceptance dates are to be contractual dates, and each phase will be deemed to be accepted on the date that the last software module within that phase has been accepted.
- E4.4. The Initial Acceptance dates for each module of the implementation project will be mutually agreed.

## Part F

### Software Delivery and Acceptance Testing

#### **F1 Applications Software**

- F1.1. The Contractor will deliver software into a test environment for its own quality assurance to be completed.
- F1.2. The Contractor will clearly document the agreed version of the software delivered.
- F1.3. The phase will be accepted by the Trust when each module in the phase has passed the acceptance criteria.
- F1.4. There will be two acceptance tests. The first acceptance test will occur 2 weeks before go-live and the second will be within six weeks after go-live.
- F1.5. The Trust may delay implementation of application modules only with the agreement of the Contractor. All changes to the implementation Part will be handled through the Change Control Procedure.
- F1.6. In the situation where, the Trust is solely responsible for delaying the implementation of application modules, the Contractor and the Trust will agree to undertake the full acceptance testing process.
- F1.7. The Trust and the Contractor will agree the acceptance test criteria for each module of the application for both Initial and Final Acceptance tests at least 90 days before the Part Live date.
- F1.8. The Contractor will be responsible for any remedial work required as a result of the acceptance testing, with an agreed delivery date for each software change. Where this delivery date falls outside the Final Acceptance period, the Trust may agree to exclude this change from Final Acceptance, such agreement not to be unreasonably withheld.

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F1.9. The process set out in Table F1-1 will be followed for full acceptance testing. Not all stages may be required for minor software changes.

**Table F1-1 - Acceptance testing process**

1. Contractor provides standard software notes to the Trust providing an overview of each module within the phase	Standard documentation
2. Contractor delivers the Base software into a delivery environment	Dictionaries & application software
3. Contractor undertakes its standard software quality controls	Satisfactory QA report
4. Contractor provides Satisfactory technical training for the Trust's stage manager and support team	Satisfactory training evaluation
5. Trust and Contractor agree software tailoring	Agreed specification as per agreed CCN
6. Contractor provides agreed module documentation	Module documentation
7. Trust approves documentation	Agreed module documentation
8. Contractor and Trust undertake software tailoring	Agreed specification as per Part J or agreed CCN
9. Contractor and Trust transfer software into a training environment and undertake QA	Satisfactory module version in the test environment
10. Trust undertakes Initial Acceptance test	Initial Acceptance certificate
11. Trust undertakes Final Acceptance test	Final Acceptance certificate

## **F2 Performance trial**

F2.1 The Trust and the Contractor will agree a set of acceptance criteria for system performance. The acceptance criteria will include the following.

- Availability of module documentation.
- Availability of the on-line help facilities
- Availability of all the functions.
- Satisfactory operation of all functions.
- Availability of all agreed software changes.
- Agreed completion of training.
- Availability of agreed test scripts.
- Performance of software against the test script.

F2.2 The Contractor and the Trust will complete an acceptance test of the actual system performance against the agreed criteria when appropriate.

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- F2.3 The Contractor will undertake to remedy the performance of the system if actual performance fails to meet the agreed acceptance criteria.
- F2.4 The Contractor and the Trust will agree a timetable for the remedy of the performance of the system and for the re-testing of the performance
- F2.5 The adequacy of the performance of the system will be based on a previously agreed test script and on the agreed performance criteria.

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### Part G Financial obligations

#### G1 Contract payment

G1.1. The annual contract payment is defined as the managed service payment tendered by the Contractor and accepted by the Trust.

G1.2. There will be two separate payment streams throughout the contract period. These will be:

1. delivery stream. 70% of the annual contract payment will be payable on go-live. These sums will be authorised immediately following use of the system in the LIVE environment as indicated by the signing of the Initial Acceptance certificate on the day of go-live.
2. performance stream. 30% of the annual contract payment is linked directly to the performance of the system and the Contractor. These sums will apply from the date of go-live and will be paid on a quarterly basis in arrears following acceptance by the Trust and the Contractor of the contract performance as described in the quarterly SLA Review report. Payment will be made according to performance against the following payment drivers:

Type of payment driver	Payment driver	% of annual contract payment
System & Performance availability	Help desk resolution times	3%
	System availability	4%
	System response times	3%
Usage	Usage	10%
Cost of change	Statutory changes	5%
	General upgrades	3%
	Minor software changes	2%
Total		30%

G1.3. 50% of the annual contract payment is subject to an annual rate of increase based on the Treasury GDP deflator.

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Table GA Payment driver summary

<i>Trigger</i>	<i>Period</i>	<i>Reason for non-payment</i>	<i>Form of non-payment</i>	<i>Extent of financial non-payment</i>	<i>Rewards</i>
Initial software acceptance	Implementation phase	Delayed acceptance	Delayed payment until initial acceptance.	Nil	Early payment on early acceptance within same financial year.
Final software acceptance	Implementation phase	Delayed acceptance	Partial Clawback of 1 <sup>st</sup> years Delivery Stream payment	25% of the 1 <sup>st</sup> years Delivery Stream Payment will be reimbursed by the Contractor to the Trust. This sum will be retained by the Trust until Final Software Acceptance is achieved	Early payment on early acceptance within same financial year.
Help desk resolution times	quarterly review meetings of SLA reports	non-achievement of problem fix targets	Reduction in quarterly payment.	up to 3% of the annual contract payment for the quarter.	Payment at quarter start in the event of consistent good performance.
System availability	quarterly review meetings of SLA reports	non-achievement of availability targets	Reduction in quarterly payment	up to 4% of the annual contract payment for the quarter.	
System response times	quarterly review meetings of SLA reports	non-achievement of system response time target.	Reduction in quarterly payment.	up to 3% of the annual contract payment for the quarter.	
Usage	quarterly review meetings of SLA reports	non-achievement of usage targets	Reduction in quarterly payment.	up to 10% of annual contract payment for the quarter.	
Cost of Change	quarterly review meetings of	non-achievement	Reduction in quarterly	up to 5% of annual contract	

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	SLA reports	of software maintenance targets	payment.	payment for the quarter.	
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### **G2 Delivery payment stream**

- G2.1. Payment for the satisfactory acceptance of application software comprises 70% of the full contract payment.
- G2.2. The Contractor and the Trust will agree a payment plan for each project phase.
- G2.3. The Trust will authorise the annual delivery stream payment to the contractor for each phase upon the initial acceptance of that phase.
- G2.4. If a phase does not satisfactorily pass the final acceptance test within 2 months, 25% of the annual delivery stream payment will be reimbursed by the contractor to the Trust. This sum will be retained by the Trust until the phase satisfactorily passes the final acceptance test.
- G2.5. In the event of late Acceptance of subsequent phases, if any, due to Trust default as set out in clause 18.1(v) of the Terms and Conditions the Trust shall pay to the Contractor the same total sum for that Phase over the period to the end of the Initial Term that would have been paid had Acceptance been on the Planned Acceptance Date.

### G3 Performance payment stream

- G3.1. Payment for the satisfactory performance comprises 30% of the full contract payment. The Trust will commence the quarterly performance stream payments to the Contractor for each phase upon the initial acceptance of that phase.
- G3.2. One quarter of the annual payment for performance will be eligible for payment at the end of each quarter.
- G3.3. This payment will be reduced or increased according to contractual performance against criteria under the following headings:
- System performance and availability:
    - \* Help desk resolution times
    - \* System availability
    - \* System response times.
  - Usage:
  - Cost of Change.

#### G3.3.1. System performance and availability

There are three system performance and availability payment drivers:

1. Contractor help desk "resolution" times
2. system availability
3. application software response times

##### G3.3.1.1. Contractor Help desk resolution time:

The targets for Contractor Help Desk resolution times are described in Table KC

G3.3.1.1(a) Fault Calls will be registered with the Contractor via the Call Management system against the appropriate assigned priority shown in Table KC.

G3.3.1.1(b) At the quarterly SLA review meeting the Contractor will present a report for each month of the quarter to be reviewed. This report will show the performance of the Contractor's Help Desk against the requirements detailed in Table KI)

If the requirements for both categories have been met in the quarter under review, Payment for that quarter will be a quarter of the annual contract payment x 3%. If one category is not met in the quarter payment will be 1.5% and 0% if both categories are not met.

##### G3.3.1.2. System availability:

The quarterly SLA Review Meeting will consider availability performance within the

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quarter to be reviewed against the targets in Table KA detailed in Part K.

If all the above requirements detailed in Table KA have been met in the quarter, a 4% payment will be made for that quarter.

If all hours (B) is met but core hours (A) is not met in the quarter a 2% payment will be made for that quarter and 0% payment in the quarter if Core hours (A) and all hours (B) are not met.

G3.3.1.3 Application software response times:

G3.3.1.3a Response times are monitored continuously by the Contractor's Operating System utilities for disk and CPU resource usage. As defined in Table KB, a given set of real system transactions will also be monitored periodically at mutually agreeable times by the Trust and the Contractor throughout the contract period.

- Response times are monitored continuously by the Contractor's Operating System utilities for disk and CPU resource usage. If the Trust experiences response problems, a critical or major call (as defined in Section K3.16) should be logged with the Contractor. The Contractor will measure and diagnose response problems as required.
- The Contractor will also research all chronic response problems reported by the Trust, by utilizing the system utilities available within the Contractor's Operating System, and respond accordingly.
- The response times of the applications can be scheduled and monitored periodically at mutually agreeable times by the Trust and the Contractor throughout the Contract period. As defined in Table KB, a given set of real system transactions have been defined along with acceptable application response times. The methodology for this process is defined in Section K2.7

G3.3.1.3b Core hours are defined as 8am to 6pm Monday to Friday

G3.3.1.3c

If the Trust wishes to alter or add additional system transaction types to be used in measuring response times, such request must be processed via the Change Control procedure as defined within the Part H. Such change may incur additional cost.

If all relevant requirements are met for core hours in all 3 months in the quarter, the 3% payment for that quarter will be made to the Contractor, i.e. a quarter of the annual contract payment x 3%

G3.3.1.3e If the requirements have been met in core hours in two months 2% will be paid; in one month then 1%; in no months, then 0%.

### G3.3.2 Usage

- G3.3.2.1 During the first two quarters following Initial Acceptance, after all of the deliverables that comprise the phase are operational, the Trust and the Contractor will define 10% of the Trust's clinical staff by name as representative key users of the system. For the avoidance of doubt, the Usage payments will be made in full during the first two quarters following Initial Acceptance.
- G3.3.2.2 The names of these key users will change during the contract period as staff leave and rotate. Changes to the list will be agreed by the Trust and Contractor project managers.
- G3.3.2.3 Access to the system by these key users will be monitored using the Contractor's access control application (Contractors' User Activity Log).
- G3.3.2.4 The Trust and the Contractor agree that a minimum average number of thirty (30) log-in sessions per key user during a quarter is an indicator that the users are actively accessing information and gaining benefit from the system.
- G3.3.2.5 Quarterly payments will be made on a sliding scale dependant on the average number of system accesses by key users in that quarter. This sliding scale is detailed in Table GC. After four quarters the Trust and the Contractor will review the Usage payment driver to determine whether log-in sessions are the most appropriate method of measuring Usage, with a view to changing the methodology if this is mutually agreeable.
- G3.3.2.6 Any shortfall in the level of Usage in any quarter that is attributable to LAN issues will be discounted when determining the amount payable to the Contractor.

Table GC Sliding scale for usage payment

<i>Average number of system accesses by key users in the quarter</i>	<i>Percent payment</i>
Up to 10	0%
Up to 20 but more than 10	50%
Up to 30 but more than 20	70%
More than 30	100%

### G3.3.3 Cost of change

G3.3.3.1 There are three cost of change payment drivers:

- Modifications to meet statutory changes
- General upgrades
- Minor software changes.

G3.3.3.2 As stated in Part K4, the Trust and Contractor will agree at quarter start all software changes to be delivered in the quarter and the delivery dates, and will allocate each software change to one of the 3 categories in G3.3.3.1. Note: Additional training associated with general upgrades, requested by the Trust, will be charged at the Contractors prevailing rates.

#### Statutory changes

G3.3.3.3 If all statutory changes in the quarter are delivered in to the test environment by the agreed date, then a % payment will be made by the Trust, i.e. a quarter of the annual contract payment x 5%.

G3.3.3.4 If the Contractor fails to deliver all the changes in to a test environment in the quarter, no payment will be made. Where this failure is only due to the late delivery of required SMRs, and this occurs through no fault of the contractor, this penalty will not apply.

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### General upgrades

- G3.3.3.5 If all software upgrades planned in the quarter are delivered in to the test environment by the deadline date, then a % payment will be made by the Trust, i.e. one quarter of the annual contract payment x 3%.
- G3.3.3.6 If the Contractor fails to deliver all the planned upgrades in to a test environment in the quarter, except by agreement between the Trust and the Contractor, payment will be reduced on a proportionate basis from 100% of the payment otherwise due.
- G3.3.3.7 The Contractor will inform the Trust as soon as is reasonably practicable should any planned delivery dates be no longer achievable within the quarter. In the event that this procedure is adhered to, the penalty in G3.3.3.6 will not apply.

### Minor software changes

- G3.3.3.8 Software changes under Part J (excluding interface and whole application/module developments) are included in the "minor software changes" category for payment driver purposes.
- G3.3.3.9 Trust specific software changes agreed with the Contractor during the contract period are included in the "minor software changes" category for payment driver purposes.
- G3.3.3.10 If all software changes planned in the quarter are delivered in to the test environment by the deadline date, then a % payment will be made by the Trust, i.e. a quarter of the annual contract payment x 2%.
- G3.3.3.11 If the Contractor fails to deliver all the software changes in to a test environment in the quarter, payment will be delayed until final software acceptance.

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G3.4. After the acceptance of all phases of the managed service the Trust will make full performance payments each quarter, except in those respects where performance requirements are not met.

After the managed service has been operational and the Contractor has met all performance criteria for two consecutive quarters, the Trust will move the performance stream payment to the beginning of the quarter.

G3.5. In the event that this happens, and the Contractor subsequently fails the performance criteria in four subsequent quarters, the Trust can decide to revert the payment stream to quarter end. In this event, one quarter's notice will be given to the Contractor.

G3.6. Where penalties under more than one performance and availability payment drivers could apply, The Trust will apply each of those penalties as separate entities with the exception of System Response Times where the other two penalties have been applied.

#### **G4 Contract extension and the transfer payment**

G4.1 The Trust shall reduce all amounts due and payable by the Trust to Contractors in terms of this agreement (including for the avoidance of doubt Delivery Stream Payments and Performance Stream Payments) by 5% which amount shall be 'the Transfer Payment'.

G4.2 The contract will continue after the end of the Initial term, unless and until the Trust shall have given not less than six months notice, expiring at the end of the Initial Term or any 3 month period ("Extension Quarter") thereafter.

G4.3 Any extension of the Contract as aforesaid shall be on the same terms as the original Contract except as to price and Transfer Payment. The price payable during each Extension Quarter shall be the Contract Charges applicable at the end of the Initial Term together with any increase pursuant to G1.3 and then multiplied by the percentages set out in the following table

Extension Quarter	%	Extension Quarter	%
1	80	5	74
2	78.5	6	73
3	77	7	71.5
4	75.5	8	70

The prices during any Extension Quarter shall continue to be subject to variation in accordance with G1.3

G4.4 The Trust will carry out a review at a time and in a manner which seems appropriate in order to determine whether it should re-procure HISS services.

G4.5 The Transfer Payment will be paid to the Contractor at the end of the Term (including any extension thereto) in the event that the Trust awards another contract for HISS services to the Contractor, or decides not to use any computerised HISS system.

If the Trust wishes to continue to use the System at the end of the Term (including any extension thereto) but to replace the service provider, the Trust will either pay or ensure that there is paid to the Contractor a sum equivalent to the Transfer Payment as consideration for the transfer of the title to the hardware and access to the software

### **G5 Incentives**

G5.1 Each of the parties agree to share on a fair and equitable basis any financial benefits achieved by either party during the Term (including any extension thereof) in excess of those reasonably in the contemplation of the parties at the date of execution of this Contract and which are reasonably and directly attributable to the existence of this Contract. Any dispute in relation thereto should be referred to the Disputes Procedure for the determination of what is fair and reasonable in the circumstances.

### **G6 Timing of payments**

G6.1 Payments to the Contractor will be made on or before the expiration of a period of 14 calendar days after the receipt of a valid invoice for the service provided. Unless otherwise agreed, the payments due under this contract are due:

- delivery stream: payment will be made by standing order at the end of the month in which Initial Acceptance for the relevant phase occurs and thereafter on each anniversary of the Initial Acceptance Date.
- performance stream: payment will be made after the end of the quarter to which the payment relates, subject to agreement of the service levels and payment drivers detailed in section G3. Payment will be made within 14 days of the end of the Quarter. Payments for periods where a full quarter's performance is not available, e.g. the first period following the relevant Acceptance, payment shall be proportional and be determined by the performance in the period up to the end of the quarter prior to the date of payment. The Contractor's invoices will be issued following the Service Level Review meeting and upon agreement as to the payment due in respect of the payment drivers.

G6.2 The contractor shall submit valid VAT invoices bearing the Contract number, the relevant VAT number, the details of the items and services to which they relate and shall be addressed as follows:

Director of Finance  
South Glasgow University Hospital NHS Trust  
1345 Govan Road  
Glasgow  
G51 4TF

**G7 Termination on Trust Default**

G7.1. The amount of any Termination Payment payable by the Trust to the Contractor in circumstances of termination of the Agreement by the Contractor following Default by the Trust shall be the sum of the following:-

- all payments due and payable up to and including the actual date of termination of the Agreement.
- the amount of the Transfer Payment accumulated up to the actual date of termination
- all Delivery Stream Payments due and payable up to the date of expiry of the Initial term discounted from the due date to the date of actual payment at the rate of 6% per annum less any amount recovered by the Contractor from sale of the Equipment (to the Trust or otherwise) and compliance with an obligation on the Contractor to mitigate its loss in any circumstance of Default by the Trust; and
- 30% of anticipated Performance Stream Payment due up to the expiry of the Initial Term calculated by reference to the average level of Performance Stream Payments actually paid by the Trust up to the date of termination discounted at the rate of 6% per annum from the due date of actual payment.

## **Part H**

### **Change control**

#### **H1 Principles**

- H1.1. Where the Trust or the Contractor during the implementation of the contract see the need for change (which term includes modification) to functionality, system interfaces, inputs, outputs, project timescales or to the way that the service is implemented and provided, the Trust may at any time request and the Contractor may at any time recommend such changes and propose an amendment to the contract in accordance with the formal Change Control Procedure (CCP) as set out in this Part.
- H1.2. Neither the Trust or the Contractor shall unreasonably withhold its agreement to any change.
- H1.3. Unless the Trust and the Contractor otherwise agree in writing there shall be no presumption that the obligations undertaken by either party in connection with the contract are in any way changed until the amendment to the contract has been effected in accordance with the CCP.
- H1.4. No amendments to the Contract shall be valid unless they have been agreed in writing by or on behalf of the Trust and by the Contractor.
- H1.5. Where there are cost implications of any change requested by the Trust, the Contractor is required to bring this to the Trust's attention at the earliest opportunity, and at the latest in its formal response to the change request.
- H1.6. Written requests for change that are considered essential/business critical must be received from the Trust not less than 90 days before 'Five'.

## **H2 Procedures**

H2.1. The Trust and the Contractor shall discuss changes proposed by either party and such discussion shall result in either:-

- agreement not to proceed further, or
- in a written request for a change by the Trust, or
- a recommendation for a change by the Contractor.

H2.2. Where a written request for a change is received from the Trust, the Contractor shall, unless otherwise agreed, submit a Change Control Note (CCN) quotation promptly to the Trust. In the event of a complex change, the Contractor will provide the CCN quotation within a period not exceeding ninety days. In the case of less complex, individual changes, the Contractor will endeavour to deliver individual CCN quotations within a four week period.

H2.3. A recommendation for a change by the Contractor shall be submitted as a CCN direct to the Trust at the time of such recommendation.

H2.4. Each CCN shall contain:-

1. the title of the change,
2. the originator and date of the request or recommendation for the change
3. the reason for the change,
4. the full details of the change including any specifications and user facilities,
5. the price, if any, of the change,
6. a timetable for implementation together with any proposals for acceptance of the change,
7. a Part of payments if appropriate,
8. the impact if any of the change on other aspects of the contract including but not limited to:-
  - (a) milestone
  - (b) the overall contractual timetable
  - (c) the project implementation plan
  - (d) the contract price/contract charges
  - (e) the overall payment Part
  - (f) documentation lists
  - (g) resources
  - (h) contractual issues
  - (i) serviceability and performance levels
  - (j) system configuration including store utilisation
  - (k) throughput
  - (l) resilience
9. the date for expiry of validity of the CCN,
10. provision for signature by the Trust and the Contractor.

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H2.5. For each CCN submitted the Trust shall, within the period of validity of the CCN,

1. allocate a sequential number to the CCN
2. evaluate the CCN and as appropriate either:
  - (a) request further information, or
  - (b) (i) approve the CCN, or
  - (ii) notify the Contractor of the rejection of the CCN.
3. if approved, arrange for two copies of an approved CCN to be signed by or on behalf of the Trust and the Contractor. The signing of the CCN will signify acceptance of a formal amendment to the contract by both the Trust and the Contractor.

**Part I**  
**Escrow agreement**

11. The Contractor guarantees that the source code of the application, including any coded interfaces developed by the contractor or any subcontractor, will be deposited by the Contractor in an Escrow account, and that the Trust will be notified on completion.

## Part J

### Specially written software

#### J1 Interfaces

- J1.1. The Trust and the Contractor have agreed full specifications of all interfaces, which are outlined in Appendix 9,10 and 11. The Contractor will provide all reasonable endeavours to accommodate any subsequent changes to the specifications through the change control process defined in Part H
- J1.2. The Contractor will provide the Trust with the interfaces specified in Appendix 9, 10 and 11 within the contract. This will be at no additional cost to the Trust with the exception of:
- additional consultancy required from 3<sup>rd</sup> party organisations, excluding Data General subcontractors to implement the interface specifications;
  - additional hardware and software required from 3<sup>rd</sup> party organisations, excluding Data General subcontractors, as a result of the specification.
- J1.3. The Trust and the Contractor will use the change control mechanism for interfaces required beyond those specified in Appendix 9,10 and 11.

**J2 Application software changes**

- J2.1. Discussions between the Contractor and the Trust have identified that no additional software developments need to be carried out by the Contractor to meet the Trust's requirements.
- J2.2. The Trust has sought clarification of some of the responses provided by the Contractor in the Contractor's original Proposal (see Appendix 3 and 4) and has also included additional questions on required functionality. The Contractor has provided a written response which has been agreed by the Trust, and this is included in Appendix 5.

**J3 Take off and take on exercises**

- J3.1. The Contractor and the Trust have agreed that the demographic data from all disparate sources as defined within Appendix 8 will be taken onto the MEDITECH HISS using the MPI specification for demographic take-on, included in Appendix 8.

## **Part K**

### **Managed services**

#### **K1 Managed services overview**

K1.1. This Part describes in detail the management services that will be provided by the Contractor. They are:

- Operations and system management.
- Problem management (including the service desk).
- Application software maintenance.
- Disaster recovery.
- Data and systems security
- Wide Area Network (WAN) Management

K1.2. An Account Manager will be appointed by the Contractor and will be the prime contact for the Trust for the purposes of service level management, including:

- service levels;
- project management (post implementation).

K1.3. Project management services are included in Part L.

K1.4. Each quarter the trust and the Contractor will meet to conduct a Service Level Agreement (SLA) Review meeting. At this meeting both parties will consider a SLA Review report previously circulated.

K1.5. The SLA review report will contain reports on the performance of the Contractor over the previous three monthly period

K1.6. These reports will enable both parties to agree contract performance and therefore the performance payment stream to be paid to the Contractor.

## **K2 Operations and system management**

### Availability

K2.1. The Contractor will manage systems and services to ensure the service is available.

K2.2. The Trust will not raise an incident for planned unavailability agreed between the Trust and the Contractor.

K2.3. Availability will be measured on a quarterly basis against the parameters in Table KA below.

**Table KA Quarterly targets for System Availability**

<i>Parameter</i>	<i>8am – 6pm (Monday to Friday) Core Hours (A)</i>	<i>All Hours (B)</i>
Total Availability	650 Hours	2184 Hours
Maximum Total Duration of Complete System being unavailable	12 hours	24 Hours

K2.4. Planned unavailability will be agreed by the Trust and the Contractor and is an integral part of projects of the following nature:

- delivery of new, additional modules.
- application software upgrades.
- operating systems upgrades (and other firmware).
- hardware upgrades or replacement.
- upgrades and servicing of the facilities management centre.

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### Application system response times:

- K2.5. The response times of the application will be monitored against a subset of common transactions listed in Table KB. Response times will be measured from a PC using terminal emulation (MEDITECH Workstation), and DG/MEDITECH's proposed routines that will comprise "the script". The PC will be located at the Wide Area Network entry point of the service the Contractor is providing (IT Services). This point on the network will not be subject to any data traffic flow other than that flowing to the MEDITECH systems in the remote data centre.
- K2.6. Response times will be measured at mutually agreeable times, within the core hours as defined in G3.3.1.3b, with the exception of the time taken to generate response time reports, by the Contractor. These reports will show whether the subset of transactions are completed 95 % and 99 % of the time within the limits set out in the Table KB, relating to the quarter to be tested.
- K2.7. The device will complete the transactions in Table KB below.

**Table KB Application system response times**

<i>Transaction</i>	<i>95% of responses within:</i>	<i>99% of responses within</i>
<i>Data input without validation</i>	1 second	2 seconds
<i>Data input with validation</i>	2 seconds	3 seconds
<i>Simple on-line enquiries (involving only one file)</i>	1 second	2 seconds
<i>Complex on-line enquiries (several files)</i>	20 seconds	30 seconds
<i>Simple updates including insertion or replacement of items</i>	2seconds	3seconds
<i>Complex updates (several files)</i>	3 seconds	10 seconds
<i>Simple standard on-screen reports</i>	5 seconds	10 seconds
<i>Complex printed reports (on-line)</i>	180 seconds	600 seconds
<i>Complex reports (background)</i>	5 seconds	10 seconds
<i>PC Log onto server directly (excluding LFN)</i>	20 seconds	30 seconds

**K3 Support and problem management**

- K3.1. The Contractor will provide Help Desk facilities 24 hours per day for major and critical incidents.
- K3.2. For software and hardware activities required to maintain and update the service, the Contractor will be required to program activities so that they do not affect services during the hours of 8am to 6pm, Monday to Friday.
- K3.3. The timing of these activities will be agreed by the Contractor and the Trust on an individual basis if required.
- K3.4. Outside of the hours 8am to 6pm Monday to Friday, the Contractor will provide a point of contact who is able to diagnose the type of problem and direct remedial action by the Trust and the Contractor.

**Incident placing and tracking**

- K3.6. All queries raised by users will be directed to the Trust's own Help Desk.
- K3.7. If the Trust's own Help Desk is unable to deal with the incident or query, it will log a call with the Contractor's Help Desk.
- K3.8. The Contractor will provide an electronic incident tracking system and make this available to the Trust for Call Logging and progress tracking.
- K3.9. A unique incident number will be generated when incidents are logged with the Contractor.
- K3.10. The Contractor will maintain a copy (or access to) of the Trust's live application off-site for problem analysis and problem resolution.

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### Incident resolution times

K3.11. The following resolution time requirements apply to all support calls logged with the Contractor's Help Desk:

Table KC resolution time requirements

<i>Assigned Priority</i>		<i>Maximum resolution</i>
Critical		4 hours
Major		1 business day
Medium		9 business days
Low		20 business days

K3.12. The resolution time is measured from the initial logging of the call with the Contractor to when the following actions have been completed:

- a solution to the incident has been agreed by the Trust and the Contractor;
- the agreed solution has been successfully implemented on the Trust's live system;
- the Trust and the Contractor agree that the incident can be closed.

K3.13. The Trust may require, at its discretion, to monitor a resolution to an incident for an extended period. This may be required in order to monitor for repeated occurrences or to evaluate the effect of proposed solutions. In this instance, the Trust and the Contractor will agree to provisionally close the incident.

K3.14. Where there is benefit to the Trust, the Trust and the Contractor may agree to extend the maximum resolution period. In this case, an agreed resolution date will apply to this incident.

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### Impact codes

K3.15. The Trust will assign a priority to all incidents logged with the Contractor in accordance with the definitions given below. The Contractor may challenge the impact code assigned to a particular incident, but may not change it without the agreement of the Trust's Project Manager.

K3.16. The Trust will assign all incidents with priorities as listed below:

1. Critical. a module, application or interface being unavailable, and critical or urgent issues. This may include, but is not limited to:
  - service unavailability affecting all users.
  - module unavailable
  - critical real time interface unavailable.
  - data integrity issues.
  - printing or access control systems inoperable.
  - poor system and printer response times rendering the system unusable (in the event that these problems are associated with the system)
2. Major. This will include a module, application or interface is significantly affected so as to cause repercussions for patient care or the business aspects of the Trust. This may include, but is not limited to:
  - patient batch reports not printed or printing incorrectly
  - single function unavailable.
  - data locking issues.
  - patient labels not printing or printing incorrectly.
  - printers of a given type(s) not functioning properly.
  - poor system and printer response times (as with critical problems above)
  - module, application, or interface largely inoperable.
  - critical report unavailable
  - problems preventing critical deadlines being met.
3. Medium. This will include issues affecting users of the system, for which no reasonable work around exists. This may include, but is not limited to:
  - single peripheral not working
  - patient batch reports printing incorrectly so as make interpretation more difficult
  - non-critical standard report unavailable.



4. Low. This will include mainly cosmetic changes required, which nevertheless impact upon how effectively the user(s) can do the job. This may include, but is not limited to:

- difficulty with the presentation of management reports (excluding standard report layouts)

#### Service level performance monitoring

K3.17. The performance of the Contractor will be monitored for the quarter against the following parameters at the SLA review meeting:

Table KD Quarterly Targets for Contractor's Help Desk	
Requirement	Number of Calls
Maximum number of calls (Critical Calls Only) in which resolution target is not met	0
Maximum number of calls (Major Calls Only) in which resolution target is not met	1
% Resolution of Medium & Low Priority Calls in which resolution target is not met	5%

K3.18. As incident calls to the Contractor's Help Desk are resolved, the period since the incident was opened will be recorded by the Contractor.

K3.19. At the quarterly SLA Review meeting the Contractor will present a report for each month in the quarter, showing the performance of the Help Desk against each of these requirements.

K3.20. The following additional reports can be accessed by the Trust from the Contractor's Help Desk on a weekly basis:

- Detail and summary of open support incidents.
- Detail and summary of closed support incidents.
- Summary of calls by module or application.
- Detailed review of critical and major incidents.

K3.21. Summaries of the monthly reports will be included by the Contractor in the quarterly SLA Review Report.

#### **K4 Application software changes**

K4.1. The Contractor will provide changes to the application systems, where reasonable and technically feasible, listed in K4.2, as part of this contract, and agreed to be part of the system by the Contractor's User Group (MUSE), normally at no additional charge, other than associated software implementation and training charges. The Contractor reserves the right to charge for complex, application changes that require an extensive amount of effort, under section K4.2 describing statutory changes.

K4.2. Application software changes fall in to four categories.

- changes required to meet the requirements of the Trust's Operational Requirement. These are included in Part J.
- modifications to meet statutory changes, where reasonable and technically feasible. Where the system structure would need to be redesigned, the Contractor reserves the right to submit a cost quotation at the Contractor's then prevailing rates.
- general upgrades of MAGIC operating systems, and application modules which are made available to the UK market, including minor software changes that become available during the contract period and are generally available to the Contractor's clients and agreed to be part of the system by the Contractor's User Group (MUSE). Any additional software implementation and training requested by the Trust will be chargeable at the Contractor's prevailing rates.
- minor software changes that are generated by the Trust during the life of the contract, managed under the Change Control procedure.

K4.3. All changes (including those in Part J) will be subject to the acceptance criteria and methodology described in Part I

K4.4. The Trust will be given the opportunity to discuss with the Contractor the timing of the delivery of any changes available, as compared to other Contractor clients.

K4.5. The Trust and the Contractor will agree, at quarter start, all application software changes to be accepted by the Trust in the quarter. The Contractor and the Trust will agree a single acceptance date for each software change for this purpose.

K4.6. This set of changes will be used to measure the Contractor's performance at the end of the quarter at the SLA Review meeting.

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### Modifications to meet statutory changes

- K4.7. The Contractor will be made aware of all open statutory notices SMRs issued by Information Statistics Division (ISD) of NHS in Scotland.
- K4.8. The Trust will provide details of required notices, and the Trust and Contractor will undertake a quarterly review of statutory notices during the Service Level review. This review will include:
- prioritisation the required software changes,
  - agreement of an outline project plan for their delivery to the Trust,
  - joint consideration (impact analysis) of the appropriate software solution
- K4.9. The Contractor will document the solution required according to the change control procedure.
- K4.10. The Contractor and the Trust will agree a method for tracking the progress of its development.
- K4.11. The Contractor will ensure that the Trust meets the deadlines set by Information Statistics Division (ISD) of NHS in Scotland for these requirements, unless there are mitigating circumstances outside the control of the Contractor.

### General upgrades of MACILC operating systems, and application modules (which are made available to the UK market)

- K4.12. The Contractor will consult the Trust at regular review meetings of any changes that should be included in releases or upgrades of systems (Server interface removed)
- K4.13. The Trust will be offered by the Contractor all relevant upgrades, made available to the UK market, as soon as is reasonably possible. These upgrades will be made available but any additional software implementation and training requested by the Trust will be charged at the contractor's prevailing rates
- K4.14. The Contractor will inform the Trust of any available minor application software changes that become available as soon as is reasonably possible

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Minor software changes that are generated by the Trust.

K4.15. The Contractor undertakes to complete changes to the application software and install these changes for the Trust through the Change Control procedure. As outlined in Part II, or when applicable, the Contractor may recommend that the Trust direct their request to the Contractor's USER Organisation, known as MUSE.

K4.16. The Contractor will agree a charge with the Trust for any such changes.

K4.17. The Contractor will propose a number of days that the change will take to complete, test, install and accept, and will also provide a cost for the complete implementation to the Trust.

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### **K5 Disaster recovery**

- K5.1. The Contractor will maintain an agreed disaster recovery plan throughout the period of the contract.
- K5.2. The Contractor will test the DR plan prior to the go live date for the managed service.
- K5.3. The Contractor will test the DR plan annually, at a mutually acceptable date and time.
- K5.4. If the service is unavailable for 6 hours, the Contractor will initiate the DR plan, unless the service will be restored more quickly by not initiating the plan.
- K5.5. Once the DR plan has been initiated, the service will be restored by the Contractor within 18 hours.
- K5.6. The DR plan will cover systems and services provided under this contract as agreed by the Trust and the Contractor.
- K5.7. The Trust will participate in any DR planning and testing.

**K6 Data and systems security**

Data

- K6.1. All data will be backed up by the Contractor once every 24 hours at least.
- K6.2. The Contractor will take all reasonable steps to ensure that it can restore data to its previous current state following the loss of the service.
- K6.3. In the event of a disaster, data recovery will be initiated according to the procedure agreed to meet Clause 24 of the Terms and Conditions of the contract.
- K6.4. A copy of the backed up data will be moved by the Contractor to a separate site from the managed service on a daily basis at least.
- K6.5. Backed up data will be secured by the Contractor in a fire proof, physically secure environment.
- K6.6. The Contractor will take all reasonable steps to ensure the physical safety and confidentiality of the backed up data.

Systems

- K6.6. The Contractor will take all reasonable steps to ensure that it can restore the whole system to its previous current state following the loss of the service.
- K6.7. System back ups will be stored by the Contractor on a separate site from the managed service.
- K6.8. System back ups will be secured in a fire proof, physically secure environment.
- K6.9. The Contractor will take all reasonable steps to ensure the physical safety of the system back ups.

Hardware

- K6.11. The Contractor will ensure the system hardware is kept in a physically secure environment.

## Part L Project Management

### L1 Project plans

- L1.1. The project must have a single Contractor project manager and a deputy to be contacted in their absence.
- L1.2. The Trust will also ensure it provides a single project manager.
- L1.3. The Contractor is required to provide the project plans according to PRINCE methodology for:
- the overall project.
  - each implementation phase.
  - each module within each phase.
  - introduction of application software changes.
  - system events e.g. hardware and operating system upgrades etc.
  - ad hoc projects (e.g. take-on).
  - software acceptance.
  - core and end user training.
- L1.4. The presentation of Gantt charts showing tasks, milestones and dates will be required prior to each project meeting during the appropriate phases of the project.
- L1.5. Resource plans will also be required from both parties.
- L1.6. Responsibility for updating these plans rests with both project managers.
- L1.7. Both project managers will agree the agenda and any supporting documentation prior to circulation, 3 days before each project meeting.
- L1.8. The Trust has responsibility for documenting minutes of all meetings and will circulate them to the Contractor project manager, along with any revised plans, for authorisation before circulation.
- L1.9. The minutes and plans will reach the Contractor's project manager within 3 working days of the meeting unless otherwise agreed by the Trust's and the Contractor's project managers.

L1.10. Updating the project plan will inevitably mean that key milestones, potentially linked to payments and penalties, will be changed. Therefore a master project plan will be agreed by the Project Team and confirmed by the Project Board. If either party wishes to change the master project plans, this will be subject to change control procedures and ratification by the Project Board (or both Project Directors if urgency is required).

## **L2 Organisational structure**

L2.1. The organisational structure of the project is included as Appendix 12.

L2.2. To ensure a common agenda all the groups are joint Contractor/Trust groups, except the organisation specific Boards and Steering Boards.

L2.3. All project meetings will be held as frequently as requested by the joint Project Board. This will naturally vary over time according to the project.

L2.4. The following project meetings frequencies are included here as a guide only:

Table LA: Frequency of Project Meetings	
Group	Frequency
Executive Review	As required (at least annually)
Joint Project Board	Monthly - Quarterly
Project Team	Weekly or bi-weekly
Module Teams	As directed

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L2.5. The following tables indicate the roles and duties to be undertaken by the project groups.

Table LB

Executive Review	Review critical project issues raised by the Project Board or by either the Trust's or the Contractor's Steering/Project Board Provide strategic direction as required.
Joint Project Board	Provide strategic direction for the Project Team through consultation with Trust's Steering Board and the Contractor's Project Board Review high level project plans maintained by both parties Undertake contract reviews Review the service level reports produced by the Contractor and agree payment and penalties Review benefits realisation reports and identify actions Escalate critical issues raised by the project managers to respective Steering/Project Boards
Project Team	Manage overall implementation project Review progress of modules and direct Module Teams as appropriate Review service levels Escalate critical issues to the Joint Project Board
Module Teams	Manage implementation of a module Monitor progress on module specific service issues, e.g. s/w updates. Escalate critical issues to Project Team

### **L3 Milestones**

L3.1. Each project will include a number of milestones for events such as:

- delivery of software to specification.
- completion of core training.
- go-live.
- initial software acceptance.
- final software acceptance

L3.2. A payment will be associated with the initial and final acceptances of each module identified in the project. Therefore, acceptance before the date identified in the master project plan, and ratified by the Project Board, will mean that the Contractor will receive early payment; late acceptance will mean late payment (see Part C)

### **L4 Contractor's responsibilities**

L4.1. The Contractor will act as the Prime Contractor for the managed service delivery to the Trust and manage all projects with its subcontractors accordingly.

L4.2. The Contractor is required to demonstrate that it has contracts in place with all relevant 3rd party contractors.

L4.3. It will also be required to demonstrate that the plans it has with the 3rd party contractors are consistent with its joint project plans with the Trust.

L4.4. The Contractor is required to ensure that its representatives for project management have training and experience in the use of the PRINCE project management methodology.

L4.5. The Contractor's project manager will present the Trust with the project plans the Contractor has with subcontractors if required by the Trust. The Contractor will not be obliged to disclose to the Trust any information held in commercial confidence relating to the Contractor or any subcontractor.

### The project manager

- 1.4.6. The Contractor's project manager will have the necessary skills and experience for this role.
- 1.4.7. The Trust may ask for the Contractor's project manager to be changed if s/he is not performing to the standard the Trust would expect.
- 1.4.8. The Contractor may change the project manager at its discretion if this is required during the course of the project and with the mutual acceptance of the Trust.
- 1.4.9. The Contractor's project manager will act as the prime point of contact for the Trust.
- 1.4.10. The Contractor's project manager will co-ordinate the activities of Contractor's module managers.
- 1.4.11. The Contractor's project manager will provide up to date project and module plans, showing tasks and dates according to PRINCE.
- 1.4.12. The Trust's project manager will ensure minutes of all project meetings (including stage and service meetings) are completed and forwarded to the Contractor for confirmation before circulation.
- 1.4.13. The Contractor's project manager will initiate formal project closedown procedures in accordance with Data General project management and ISO certified quality procedures. Project closedown enables an implementation project under the Contract to be recognised as complete and formally closed. The Contractor's project manager may then effect a hand-over to the on-going account management team. The Joint Project Board will confirm formal project closedown.

## L5 Trust's responsibilities

### The project manager

- L5.1. The Trust will provide a dedicated Project Manager who will act as the point of contact for all contractual and non-contractual matters.
- L5.2. The project manager will be supported by and responsible for co-ordinating the effort of all Trust staff engaged in the project.
- L5.3. The project manager for the Trust will have a wide range of experience and skills necessary for a project of this kind.
- L5.4. The Trust will have clear escalation procedures to the Project Director and Project Sponsor for matters requiring the attention of more senior management.
- L5.5. The Trust will provide a deputy project manager who will act as the point of contact when the project manager is absent.
- L5.6. Deleted 22 June, 1999
- L5.7. The Trust's project manager will fulfill the following roles:
- report to the Trust's Project Director and the Project Board.
  - chair meetings of the Project Team.
  - co-ordinate the work of the Trust stage management teams.
  - direct the Trust's training programme through the Trust's training team.
  - ensure the Trust's stage management teams form a support service following implementation.
  - work closely with the Contractor's project manager and other members of the Project Team.
  - co-ordinate Trust responsibilities for LAN management and peripheral installation and maintenance.
  - arrange purchase of equipment, its installation and testing following initial testing by the Contractor.
  - co-ordinate schedules on peripheral.
  - maintain copies of relevant documentation.
  - confirm arrangements with the Contractor's project manager for the transfer of all data and software throughout the project.

## COMMERCIAL IN CONFIDENCE

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### Project management

- L5.9. The Trust will ensure that there is a Module Manager for each module defined, and that there is a deputy for each manager.
- L5.10. The Trust uses the PRINCE project methodology in all major IM&I projects. The Trust will ensure that the Project Director, Project Manager and Deputy Project Manager throughout the project life are all been fully trained to use PRINCE.
- L5.11. The Trust will ensure it retains the broad range of skills required for a project of this type.
- L5.12. The Trust's project organisation (and key personnel) is detailed in Appendix 12.
- L5.13. SMR & ISD(S) Returns The Trust will provide suitable resource to enable successful implementation, management and reporting of Statutory Returns in accordance with ISD and Trust requirements. This resource will also act as primary liaison between the Contractor, the Scottish Health Service Information & Statistics Division (ISD), and Greater Glasgow Health Board (GGHB) on matters relating to SMR's and ISD(S) returns.

**Part M**

**Conditions For Use of Software**

Part N

Not Used

Part O

Tender

R. (Signature)