

ENDOSCOPY REPORTING MANAGED SERVICES AGREEMENT

BETWEEN

THE COMMON SERVICES AGENCY

AND

[•]

File Ref: XIT.116 NR/MP

INDEX

1.	DEFINITIONS AND INTERPRETATIONS	1
2.	COMMENCEMENT AND DURATION.....	13
3.	CO-OPERATION, LIAISON AND DUE DILIGENCE.....	14
4.	POSITION OF NSS	14
5.	GRANT OF LICENCE	16
6.	IMPLEMENTATION AND ACCEPTANCE TESTING	16
7.	MANAGED SERVICES AND CONTRACT MANAGEMENT	18
8.	SERVICE LEVELS	19
9.	CATALOGUE ITEMS	19
10.	INTELLECTUAL PROPERTY RIGHTS	20
11.	INTELLECTUAL PROPERTY RIGHTS INDEMNITY.....	20
12.	PAYMENT.....	21
13.	CONTRACTOR AND NHS UNDERTAKINGS.....	21
14.	CONFIDENTIAL INFORMATION AND SECURITY	22
15.	FREEDOM OF INFORMATION	24
16.	DATA PROTECTION	25
17.	CHANGE CONTROL	33
18.	PROJECT MANAGEMENT	33
19.	TERMINATION	33
20.	EFFECT OF TERMINATION OR EXPIRY	36
21.	DISASTER RECOVERY	37
22.	ASSIGNATION AND SUB-CONTRACTING	38
23.	LIABILITIES AND INDEMNITIES	38
24.	PROHIBITED ACTS.....	40
25.	FORCE MAJEURE.....	40
26.	EQUAL OPPORTUNITIES COMPLIANCE	40
27.	SOCIAL BENEFITS	40
28.	HUMAN TRAFFICKING ETC.	41
29.	NOTICES	41
30.	COUNTERPARTS.....	42
31.	GENERAL.....	42
	SCHEDULE PART 1	45
	SPECIFICATION	45

SCHEDULE: PART 2	46
IMPLEMENTATION PLAN	46
SCHEDULE: PART 3	47
SUPPORT SERVICES AND SERVICE LEVELS.....	47
SCHEDULE: PART 4	58
ACCEPTANCE PROTOCOL.....	58
SCHEDULE: PART 5	60
ACCEPTANCE CERTIFICATE	60
SCHEDULE: PART 6	61
PRICING AND PAYMENT	61
SCHEDULE: PART 7	67
CHANGE CONTROL PROCEDURE.....	67
SCHEDULE: PART 8	71
STANDARDS AND SECURITY REQUIREMENTS.....	71
SCHEDULE PART 9	78
CONTRACT AND SERVICE MANAGEMENT AND REPORTING.....	78
SCHEDULE: PART 10	82
DISPUTE RESOLUTION PROCEDURE.....	82
SCHEDULE: PART 11	84
NHS RESPONSIBILITIES.....	84
SCHEDULE: PART 12	85
PROHIBITED ACTS	85
SCHEDULE: PART 13	87
PROCESSING INFORMATION	87

For the purposes of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015, this Agreement is delivered on _____ 2022

AGREEMENT

between

THE COMMON SERVICES AGENCY (more commonly known as National Services Scotland), a statutory body constituted pursuant to the National Health Service (Scotland) Act 1978 (as amended) and having its headquarters at Gyle Square, 1 South Gyle Crescent, Edinburgh EH12 9EB (“**NSS**”, which expression shall include its statutory successors and assignees);

and

[•], a Company registered in [•] under the Companies Acts (Registered Number [•] and having its registered office at [•]) (“the “**Contractor**”)

WHEREAS:

- A. An advertisement was placed by NSS on Public Contract Scotland on [insert date], reference [insert reference number], in respect of the procurement of an endoscopy reporting system and the provision of related support services for use by NSS and Service Recipients (as defined below) to be made available as a managed service.
- B. The Contractor submitted its Tender (as defined below) in response to the Invitation to Tender (as defined below) on [insert date].
- C. This Agreement (as defined below) sets out the terms and conditions upon which the Contractor shall provide the Managed Services (as defined below) during the Contract Duration (as defined below).

1. DEFINITIONS AND INTERPRETATIONS

- 1.1. In this Agreement the following expressions shall, unless otherwise specified or the context otherwise requires, have the following meanings:

“ Acceptance ” or “ Accepted ”	the successful completion of Acceptance Testing in respect of a Milestone;
“ Acceptance Certificate ”	the form of acceptance certificate specified in Schedule Part 5 (Acceptance Certificate);
“ Acceptance Criteria ”	the criteria specified in Schedule Part 4 (Acceptance Protocol) that must be met in order to achieve Acceptance;

“Acceptance Testing”	the acceptance testing to be carried out upon the System as specified in Schedule Part 4 (Acceptance Protocol), and “Acceptance Tests” shall be construed accordingly;
“Affiliate”	in relation to a person, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that person from time to time[, including in the case of the Contractor, the Parent Company];
“Agreement”	this agreement including the Schedule;
“Appropriate Safeguards”	a legally compliant mechanism(s) for the transfer of Personal Data to a Third Country in respect of which no adequacy regulation has been made by the Secretary of State, as such mechanism(s) may be permitted under the Data Protection Legislation from time to time;
“Associated Systems”	any system with which the System requires to interface in order to enable the provision of the Managed Services in accordance with the Specification, including those specifically referred to in the Specification;
“Availability”	shall have the meaning ascribed to it in Paragraph 1 of Schedule Part 3 (Support Services and Service Levels);
“Business Day”	Monday to Friday excluding public holidays for Christmas Day, Boxing Day, New Year’s Day, 2 January, Good Friday and Easter Monday;
“Catalogue”	the catalogue of items available for purchase by NSS on behalf of itself and/or any Service Recipient and forming part of the Specification;
“Catalogue Charges”	the charges for Catalogue Items, including Consultancy Services set out in Schedule Part 6 (Pricing and Payment);
“Catalogue Items”	any items detailed in the Catalogue;
“Change”	any change to the System, to any part of the Managed Services, to the Service Levels and/or any other changes to this Agreement proposed by either Party pursuant to the Change Control Procedure;
“Change Control Procedure”	the change control procedure set out in Schedule Part 7 (Change Control Procedure);
“Change in Control”	any sale or other disposal of any legal, beneficial or equitable interest in any or all of the equity share capital of the Contractor (including the control over the exercise of voting

rights conferred on that equity share capital or the control over the right to appoint or remove directors), provided that a Change in Control shall not occur if after any such sale or disposal the same entity or entities directly or indirectly exercise the same degree control over the Contractor;

“Change in Law”	the coming into effect or repeal (without re-enactment or consolidation) in Scotland of any Law, or any amendment or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in Scotland in each case after the Effective Date;
“Charges”	the Implementation Charges, the Managed Services Fee, the Catalogue Charges and any other charges payable by NSS to the Contractor pursuant to Clause 12 (Payment);
“Claim”	shall have the meaning given in Clause 11.1;
“Clarifications”	the Contractor’s clarifications detailed in Schedule Part 1 (Specification);
“Code of Connection”	an access agreement entered into by the Contractor and/or any sub-contractor which authorises the Contractor and such sub-contractor to access the wide area network employed by the National Health Service in Scotland;
“Commissioner”	shall have the meaning given in the UK GDPR;
“Confidential Information”	(i) all Patient Identifiable Information or other personal data where disclosure is prohibited in terms of Data Protection Legislation; and (ii) information the disclosure of which would, or which would be likely to, prejudice substantially the commercial interests of any person, including trade secrets;
“Consultancy Services”	the development services and other additional consultancy services detailed in the Catalogue and/or which may be agreed from time to time between the Parties pursuant to the Change Control Procedure;
“Contract Duration”	the duration of the Agreement;
“Contract Month”	a calendar month;
“Contract Year”	other than in respect of the first and the final Contract Years, the period of twelve (12) consecutive Contract Months commencing on 1 April 2023 and each subsequent period of twelve (12) consecutive Contract Months commencing on each 1 April thereafter, provided that: <p style="text-align: right;">a) the first Contract Year shall</p>

commence on the Effective Date and end on the next occurring 31 March; and

- b) the final Contract Year shall be such period as commences on 1 April in the final Contract Year until the date of termination or expiry of the Agreement;

“Contractor Confidential Information”	shall have the meaning given in Clause 14.5;
“Contractor Personnel”	any and all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Affiliate or any Sub-processor engaged in the performance of the obligations imposed on the Contractor pursuant to or under this Agreement, including but not limited to the performance of the Managed Services;
“Contractor Representative”	the representative of the Contractor identified in Clause 18.2;
“Control”	has the meaning given in section 1124 of the Corporation Tax Act 2010 and “Controls” and “Controlled” shall be interpreted accordingly;
“Controller”	shall have the meaning given in the UK GDPR;
“Data”	all information, text, diagrams, images or sounds that are embodied in any electronic or tangible medium;
“Data Loss Event”	any event that results, or may result, in unauthorised access to Personal Data held by the Contractor or any Sub-processor under or in connection with this Agreement, and/or actual or potential loss and/or destruction and/or corruption of Personal Data in breach of this Agreement, including but not limited to any Personal Data Breach;
“Data Protection Impact Assessment”	an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;
“Data Protection Legislation”	means (i) the UK GDPR; (ii) the DPA 2018 to the extent that it relates to the Processing of Personal Data and privacy; and (iii) any other Law in force from time to time with regards to the Processing of Personal Data and privacy, which may

	apply to either Party in respect of its activities under this Agreement;
“Data Protection Officer”	the person designated as such pursuant to Article 37 of the UK GDPR;
“Data Subject”	shall have the meaning given in the UK GDPR;
“Data Subject Request”	a request made by, or on behalf of, a Data Subject in accordance with access and other rights granted to the Data Subject pursuant to the Data Protection Legislation in respect of their Personal Data;
“Default Interest Rate”	the base lending rate of the Bank of Scotland from time to time;
“Deliverables”	shall have the meaning given in Clause 10.3;
“Direct Losses”	all damage, losses, indebtedness, claims, actions, cash, expenses (including the cost of legal or professional services) legal costs, proceedings, demands and charges whether arising under statute, contract or at common law excluding Indirect Losses;
“Disabling Programs”	any program that can or may stop the provision of any part of the Managed Services in accordance with the Specification;
“Dispute Resolution Procedure”	the Dispute Resolution Procedure detailed in Schedule Part 10 (Dispute Resolution Procedure);
“Documentation”	such manuals, reports, drawings, specifications, training materials, use policies, plans and other documents, in each case relating to the System or Managed Services (or any part of the System or Managed Services), provided by the Contractor to NSS or any Service Recipient;
“DPA 2018”	the Data Protection Act 2018;
“DP Losses”	all liabilities and amounts, including all: <ul style="list-style-type: none"> (a) Direct Losses; (b) costs and expenses relating to reconstitution and/or correction of the Personal Data and any and all records comprising the same; and (c) to the extent permitted by Applicable Law: <ul style="list-style-type: none"> (i) administrative fines, penalties, sanctions, liabilities or other remedies imposed by the Commissioner; and (ii) compensation to a Data Subject ordered by the

Commissioner;

“Effective Date”	the last date of execution of this Agreement;
“EIRs”	shall have the meaning given in Clause 15;
“Embedded Software”	any third party software embedded in or integral to operation of the System or the provision of the Managed Services and provided or supplied by the Contractor;
“End User”	any person authorised by NSS or any Service Recipient, or any NHS Agent, to use the System and receive the Managed Services;
“Final Acceptance”	the successful completion of Acceptance Testing in respect of all Milestones;
“Final Acceptance Date”	the date of issue of the Acceptance Certificate in respect of the Managed Services following Final Acceptance in accordance with Clause 6 (Installation and Acceptance Testing);
“FOISA”	shall have the meaning given in Clause 15;
“Force Majeure Event”	one or more of the following to the extent that it is not attributable to the Contractor or the Contractor Personnel: war, civil war (whether declared or undeclared), riot or armed conflict; radioactive, chemical or biological contamination; pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speed; acts of terrorism; explosion; fire; flood; extraordinarily severe weather conditions which are both unforeseen and for which precautions are not customarily taken by prudent business organisations so as to avoid or mitigate the impact thereof; industrial action which affects the supply of the Managed Services, but which is not confined to the workforce of the Contractor or is site specific; pestilence; the actions of governmental authorities to the extent that such actions are implemented either pursuant to emergency powers or otherwise outside the usual course of governmental business; or Act of God, or other event which is beyond the reasonable control of the Party in question and could not have been avoided or mitigated by the exercise of all reasonable care by that Party and further provided that such event materially affects the ability of the Party seeking to rely upon it to perform its obligations under this Agreement;
“Good Industry Practice”	using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and

experienced person engaged in providing services similar to the Managed Services under the same or similar circumstances;

“Health Board”	any Scottish Health Board or Special Health Board constituted pursuant to the National Health Service (Scotland) Act 1978 or any legislation substituted therefor, and “Health Boards” shall be construed accordingly;
“Implementation”	the provision of the Implementation Services by the Contractor;
“Implementation Charges”	the charges payable by NSS in respect of the Implementation Services, as detailed in Schedule Part 6 (Pricing and Payment);
“Implementation Deliverable”	a deliverable detailed in Schedule Part 4 (Acceptance Protocol);
“Implementation Plan”	the plan for provision of the System, the Implementation Services and the Training, as detailed in Schedule Part 2 (Implementation Plan);
“Implementation Services”	collectively, the implementation services (including integration of the System with the Associated Systems and all data transfers) as detailed in the Specification, and the Training which require to be provided by the Contractor to the extent necessary to achieve Final Acceptance;
“Incident”	shall have the meaning given in Schedule Part 3 (Support Services and Service Levels);
“Index”	the Consumer Prices Index for all items expressed as a percentage published from time to time by the Office for National Statistics;
“Indirect Losses”	loss of profits, loss of business, loss of business opportunity, loss of goodwill or any consequential loss or indirect loss of any nature;
“Initial Term”	the period of five (5) years from the Final Acceptance Date;
“Intellectual Property Rights” or “IPRs”	rights, title and interest in: (a) patents; (b) trade marks, and trade and business names (including service marks); (c) design rights; (d) utility models;

- (e) copyright (including copyright in software programs);
- (f) database rights; and
- (g) know-how, (including trade secrets and confidential business information);

in each case whether registered or unregistered registerable or not, and including (i) any pending applications or rights to apply for registrations of any of these rights, and (ii) any similar or analogous rights to any of these rights, whether arising or granted in the United Kingdom or any other jurisdiction;

“Interface”

any software which the Contractor requires to develop or to procure development of, and any other product required, to interface the System (or any part thereof) with the systems used by NSS or any Service Recipient to ensure the System is capable of performing, and the Managed Services are capable of being delivered, in accordance with the Specification;

“Invitation to Tender”

the invitation to tender issued by NSS on [•] in relation to the procurement of an endoscopy reporting system and related support services to be made available to NSS and Service Recipients as a managed service;

“Law”

- (a) any applicable statute or proclamation or any delegated or subordinate legislation;
- (b) any applicable guidance, direction, determination or regulations with which the Contractor and/ is bound to comply to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Contractor by or on behalf of the Contractor; and
- (c) any applicable judgement of a relevant court of law which is a binding precedent in Scotland,

in each case in force at any time during the Contract Duration in Scotland or if longer during which time the Contractor is providing the Managed Services);

“Legacy Data”

the data held on NSS’ or a Service Recipient’s Legacy Systems;

“Legacy Systems”

NSS’ or a Service Recipient’s legacy systems identified in the Specification;

“Location”

each and every location or site to which the Managed Services may be delivered or from which the Managed Services may be accessed;

“Managed Services”	any and all of the services detailed in the Specification, including, without limitation, the provision of the System and the Documentation and including, without limitation, the Implementation Services, the Consultancy Services and the Support Services and any other services, functions and responsibilities relating to any or all of them which are necessary for, or incidental to, the provision of the System and the Documentation and the proper performance of the Contractor’s obligations under this Agreement;
“Managed Services Fee”	the fee payable in respect of the provision of the Managed Services, other than the Implementation Services in respect of which the Implementation Charges are payable, as detailed in Schedule Part 6 (Pricing and Payment)
“Milestone”	a milestone detailed in Schedule Part 4 (Acceptance Protocol) ;
“Minimum Requirements”	those requirements identified as such in Schedule Part 13 (Processing Information);
“NHS Agents”	any third party engaged by NSS or a Service Recipient to provide services to it, as a result of which such third party shall require to Use or access the System and receive the benefit of the Managed Services for the purposes of providing such services;
“NHS Confidential Information”	shall have the meaning given in Clause 14.2.1;
“NHS Data”	all Personal Data and other Data supplied by NSS or a Service Recipient to the Contractor or any Contractor Personnel, accessed by the Contractor or any Contractor Personnel or otherwise generated by the Contractor or any Contractor Personnel from such data, in connection with this Agreement or obtained as a result of their involvement in this Agreement or activities being performed pursuant thereto;
“NHS Operating Environment”	the computing environment at each Location (consisting of hardware, software and telecommunications networks) that will be used by NSS or a Service Recipient in connection with its receipt and use of the Managed Services and which is to interface with the System in order to enable End Users to receive and use the Managed Services, which computing environment conforms to the functional requirements specified by the Contractor in the Specification;
“NHS Requirements”	the functional and non-functional requirements for the System and the Managed Services contained in the Invitation to Tender;

“NHS Responsibilities”	NSS’ and, where appropriate, a Service Recipient’s responsibilities detailed in Schedule Part 11 (NHS Responsibilities);
“NHS Scotland”	the National Health Service in Scotland;
“NSS Representative”	the representative of NSS identified in Clause 18.3;
“Party”	a party to this Agreement and “Parties” shall be construed accordingly;
“Patient Identifiable Information”	information relating to the identity, medical condition or history of any patient or prospective patient of NSS or any Service Recipient and any and all data generated and/or derived therefrom;
“Payment Plan”	the payment plan set out in Schedule Part 6 (Pricing and Payment);
“Personal Data”	shall have the meaning given in the UK GDPR;
“Personal Data Breach”	shall have the meaning given in the UK GDPR;
“Planned Acceptance Date”	the date on which it is expected that Acceptance Testing will be successfully completed following performance of the Implementation Services, as specified in the Implementation Plan or otherwise in accordance with Clause 6;
“Pricing Model”	the pricing model set out in the Annex to Schedule Part 6 (Pricing and Payment);
“Processing”	shall have the meaning given in the UK GDPR and the terms “Process” and “Processed” shall be construed accordingly;
“Processing Instructions”	shall have the meaning given in Clause 16.4;
“Processor”	shall have the meaning given in the UK GDPR;
“Protective Measures”	appropriate technical and organisational measures which must include the Minimum Requirements and may also include, without limitation: pseudonymising and encrypting Personal Data; ensuring confidentiality, integrity, availability and resilience of systems and services used by the Contractor and, where relevant, by any Sub-processor in connection with the performance of the obligations imposed on the Contractor pursuant to or under this Agreement, including but not limited to the performance of the Managed Services; ensuring that availability of and access to Personal

Data can be restored in a timely manner after an incident; and regularly assessing and evaluating the effectiveness of such technical and organisational measures adopted from time to time by the Contractor and, where relevant, by any Sub-processor;

“Purpose”	has the meaning set out in Clause 16.4;
“Quarter”	each period of three (3) consecutive Contract Months starting 1 April, 1 July, 1 October, 1 January (acknowledging that the first and last Quarters during the Contract Duration may not comprise three (3) full consecutive Contract Months), and “Quarterly” shall be construed accordingly;
“Relevant Person”	any person who is a member of the administrative, management or supervisory body of the Contractor or has powers of representation, decision or control in relation to the Contractor;
“Replacement Contractor”	a party appointed by NSS or a Service Recipient to provide Replacement Services;
“Replacement Services”	any service which NSS or a Service Recipient obtains or itself provides in substitution for the Managed Services, as the case may be, following any termination, expiry or partial termination of this Agreement;
“Representative”	shall have the meaning given in the UK GDPR;
“Schedule”	the schedule in thirteen (13) parts annexed hereto;
“Security Requirements”	the: (a) security requirements in relation to premises and data; and (b) cyber security requirements, set out in Schedule Part 8 (Standards and Security Requirements);
“Service Deductions”	the deductions which NSS is entitled to make for failure by the Contractor to achieve the relevant Service Levels as set out in and calculated in accordance with Schedule Part 6 (Pricing and Payment);
“Service Levels”	the service level(s) applicable to the Managed Services as set out in Schedule Part 3 (Support Services and Service Levels);
“Service Points”	has the meaning given in Schedule Part 6 (Pricing and Payment);

“Service Recipients”	any and all bodies constituted pursuant to the National Health Service (Scotland) Act 1978 entitled to receive the benefit of the Managed Services under this Agreement, and “Service Recipient” shall mean the relevant Service Recipient as the context requires;
“Software”	<p>those programs and codes as detailed in the Specification, the Intellectual Property Rights in which are:</p> <ul style="list-style-type: none"> (a) owned by or licensed to the Contractor; and (b) used by the Contractor in the delivery of the Managed Services; <p>and also includes any Embedded Software (in respect of which no separate licence other than the licence contained in this Agreement in favour of NSS and the Service Recipients shall be required) as the same may be constituted from time to time in accordance with any Change made further to this Agreement;</p>
“Specification”	<p>means the specification for the Managed Services (including any required Interfaces and Associated Systems) and the requirements for hardware, comprising collectively:</p> <ul style="list-style-type: none"> 1. the Clarifications; 2. the Tender; and 3. the NHS Requirements, <p>which are set out or incorporated in Schedule Part 1 (Specification) and which, in the event of a conflict or ambiguity, shall rank in the descending order of importance set out above;</p>
“Sub-processor”	any third party appointed to process Personal Data on behalf of the Contractor in connection with this Agreement;
“Support Services”	the services to be provided by the Contractor to NSS and the Service Recipients to support the System to ensure ongoing performance of the same in accordance with the Specification, which support services are detailed in Schedule Part 3 (Support Services and Service Levels);
“System”	(a) the ICT used by the Contractor in providing the Managed Services, including the Software, the Interfaces and the communication links between these and the NHS Operating Environment;

“Tender”	the Contractor’s response to the Invitation to Tender submitted via Public Contract Scotland on [insert date] ;
“Third Country”	shall have the meaning given in the UK GDPR;
“Training”	any training to be provided by the Contractor as detailed in the Specification;
“UK GDPR”	shall have the meaning given in Section 3(10) of the DPA 2018; and
“Use”	with respect to System, the ability to load, execute, store, transmit, display and copy (for the purposes of loading, execution, transmission, storage or display), and use of all Documentation.

1.2. This Agreement shall be interpreted in accordance with the following provisions, unless the context otherwise requires:

- 1.2.1. the Clause headings are for reference only and shall not affect the construction or interpretation of this Agreement and references to sub-clauses, clauses and to the Schedule are to sub-clauses, clauses and the Schedule to this Agreement;
- 1.2.2. the singular includes the plural and vice versa;
- 1.2.3. references to gender include references to all genders;
- 1.2.4. references to a “person” includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organisation or other entity, in each case whether or not having a separate legal personality;
- 1.2.5. references to statutes, any statutory instrument, regulation or order shall be construed as a reference to such statute, statutory instrument, regulation or order as amended, consolidated, replaced or re-enacted from time to time; and
- 1.2.6. the words “include” or “including” are to be construed as meaning without limitation.

2. COMMENCEMENT AND DURATION

2.1. This Agreement shall commence on the Effective Date and shall continue in effect throughout the Initial Term unless it has been extended or earlier terminated in accordance with the provisions of this Agreement.

2.2. NSS may, at its sole discretion, extend the term of this Agreement beyond the Initial

Term by up to two (2), twelve (12) month extension periods, subject to NSS giving the Contractor not less than three (3) months' written notice in respect of each such twelve (12) month extension period. The Charges payable by NSS to the Contractor during any extension period shall be as detailed in Schedule Part 6 (Pricing and Payment).

- 2.3. The Contractor hereby warrants and undertakes that it shall maintain the System and shall continue to provide the Managed Services to NSS and the Service Recipients during the Term.

3. CO-OPERATION, LIAISON AND DUE DILIGENCE

- 3.1. The Contractor agrees to co-operate and liaise, at its own expense, with other service providers to NSS and the Service Recipients, including the providers of the Legacy Systems as necessary to ensure successful performance of this Agreement.

- 3.2. The Contractor shall provide reasonable assistance and information to NSS, the Service Recipients and other service providers to NSS and the Service Recipients to facilitate the delivery of the System and the Managed Services to NSS and the Service Recipients (including in connection with Interfaces and integration with other Associated Systems) and shall promptly engage with NSS, the Service Recipients and other service providers to NSS and the Service Recipients and answer questions and co-operate to identify and resolve issues and problems and NSS shall procure reciprocal co-operation from the Service Recipients and any such service providers to NSS and the Service Recipients.

- 3.3. The Contractor confirms that it has had an opportunity to carry out a thorough due diligence exercise in relation to its obligations under this Agreement including, without limitation, site visits, examination of Legacy Systems and Legacy Data and has received all information required by it in order to determine whether it is able to deliver the System, and to provide the Managed Services in accordance with the terms of this Agreement.

- 3.4. NSS shall not be liable to the Contractor in respect of any failure to disclose or make available to the Contractor (whether before, on or after the Effective Date) any information, documents or data, nor any failure to review or update the NSS Data, nor any failure to inform the Contractor (whether before, on or after execution of this Agreement) of any inaccuracy, error, omission, defects or inadequacy in the NSS Data, provided that nothing in this Clause shall limit or exclude the liability of NSS for fraud or fraudulent misrepresentation.

4. POSITION OF NSS

- 4.1. The Parties acknowledge and agree that NSS is entering into this Agreement on its own behalf and for the benefit of the Service Recipients for whom NSS may purchase Managed Services and/or Catalogue Items (if any). The Contractor acknowledges that the provision of the Managed Services and the Catalogue Items (if any) by the Contractor pursuant to the terms of this Agreement shall be deemed to be for the benefit of NSS and also for the benefit of the Service Recipients, and the Contractor shall owe a duty of care to the Service Recipients in respect of provision of the Managed Services and the Catalogue Items (if any) in accordance with the terms of this Agreement to or for the benefit of the Service Recipients.
- 4.2. The provision of the Managed Services and Catalogue Items (if any) to the Service Recipients shall be at no additional cost to the Charges payable by NSS pursuant to the terms of this Agreement.
- 4.3. The Contractor warrants that: (i) any warranty, representation, undertaking or indemnity given or made to NSS by the Contractor in terms of this Agreement shall also be deemed for the purpose of this Agreement to have been made to the Service Recipients; and (ii) for the purpose of calculating any loss, injury, damages, costs or expenses due to NSS from the Contractor, subject to the terms of this Agreement, arising directly or indirectly from the performance of this Agreement by the Contractor or otherwise arising out of or in connection with this Agreement and/or its termination or in respect of any indemnity, warranty, representation or undertaking in terms of this Agreement, there shall be deemed to be included by way of addition within such loss, injury, damages, costs or expenses, any or all loss, injury, damages, costs or expenses suffered or incurred by the Service Recipients as if the Service Recipients were a party to this Agreement in the stead of NSS and such obligations were due directly to the Service Recipients.
- 4.4. NSS warrants that: (i) any warranty, representation, undertaking or indemnity given or made to the Contractor by NSS shall be deemed for the purpose of this Agreement to have been made to the Contractor by NSS on behalf of itself and Service Recipients; and (ii) for the purpose of calculating any loss, injury, damages, costs or expenses due by Service Recipients, subject to the terms of this Agreement, arising directly out of or in connection with breach by NSS of the terms of this Agreement or in respect of any indemnity, warranty, representation or undertaking, there shall be deemed to be included within such loss, injury, damages, costs or expenses, any or all loss, injury, damages, costs or expenses suffered or incurred by the Contractor as if Service Recipients were a party to this Agreement in the stead of NSS and such obligations were due directly from Service Recipients.

4.5. Any claims which arise between the Contractor and any Service Recipient for loss, injury, damages, costs or expenses suffered or incurred by the Contractor or any Service Recipient may only be raised by:

4.5.1. the Contractor against NSS; or

4.5.2. NSS (on behalf of a Service Recipient) against the Contractor,

and, unless expressly stated otherwise in this Agreement, nothing in this Agreement shall confer or purport to confer on any third party (including Service Recipients) the right to enforce any terms of this Agreement. pursuant to the Contract (Third Parties Rights) (Scotland) Act 2017.

5. GRANT OF LICENCE

5.1. Subject to the terms and conditions of this Agreement, the Contractor hereby grants to NSS and the Service Recipients (and in the case of Software in which the IPRs are owned by a third party or an Affiliate, shall procure and ensure that each relevant third party and its Affiliates grants to NSS and the Service Recipients), a non-exclusive licence which allows NSS and the Service Recipients and their End Users to:

5.1.1. Use the System and Use the Documentation and otherwise enjoy the full benefit of the Managed Services in connection with the provision of health and social care and for any other purpose specified or intended in the Specification; and

5.1.2. reproduce and distribute internally any Documentation relating to the System and/or the Managed Services for the purpose of Using the System and receiving the Managed Services in accordance with the terms of this Agreement.

5.2. Subject to payment of the applicable Managed Services Fee, there shall be no restriction on the number of End Users at any time during the Contract Duration.

6. IMPLEMENTATION AND ACCEPTANCE TESTING

6.1. NSS shall and shall ensure that each Service Recipient shall undertake its obligations in respect of Acceptance of each Milestone as set out in this Clause 6. The Contractor shall provide the Implementation Services and the Training all in accordance with the Implementation Plan.

6.2. At or prior to Implementation, the Contractor shall provide NSS with the Documentation.

- 6.3. The System shall be subject to the Acceptance Tests in accordance with the timescale set out in the Implementation Plan. The Acceptance Criteria and/or the Acceptance Tests, as appropriate, shall be used to confirm that the Milestones have been achieved in accordance with the Specification. NSS and/or the relevant Service Recipient shall carry out the Acceptance Tests under observance by the Contractor in accordance with the Implementation Plan.
- 6.4. NSS shall confirm successful Acceptance of each Milestone to the Contractor in writing by signing and delivering, in email or by post, an Acceptance Certificate to the Contractor within five (5) days of successful completion.
- 6.5. If any Milestone is not Accepted on the first attempt, the Contractor shall, within twenty (20) days of being notified that the Milestone has not been Accepted, at its own cost undertake any remedial work necessary to correct any defect or malfunction in the System or any Implementation Deliverable, correct any errors in data or loss of data and any other work necessary (save to the extent the necessity for such work is due to the act, neglect or default of NSS or the relevant Service Recipient, its employees, agents or contractors) to enable the Milestone to be successfully Accepted. Any retesting shall be at the Contractor's sole expense.
- 6.6. If any Milestone is not Accepted upon the second attempt, NSS shall be entitled at its option, but at the Contractor's sole expense, to:
- 6.6.1. make one or more further attempts to achieve Acceptance of the relevant Milestone; or
- 6.6.2. if appropriate, acting reasonably, require the Contractor to replace or upgrade the System.
- 6.7. The Parties shall liaise and co-operate to ensure any further attempts to achieve Acceptance of the relevant Milestone is carried out as soon as reasonably practicable.
- 6.8. In the event that, save to the extent due to the fault of NSS or the relevant Service Recipient, its agents or contractors, Final Acceptance is delayed beyond the date for completion of Acceptance of all Milestones specified in the Implementation Plan by sixty (60) days or more then, in addition to, and without prejudice to NSS' rights in Clause 19 (Termination), NSS shall be entitled, at its option, to:
- 6.8.1. permit the Contractor a further thirty (30) days to achieve Final Acceptance; or
- 6.8.2. terminate this Agreement in accordance with Clause 19 (Termination).

7. MANAGED SERVICES AND CONTRACT MANAGEMENT

7.1. The Contractor shall provide the Managed Services to NSS and the Service Recipients:

7.1.1. in accordance with the Specification and the provisions of this Agreement;

7.1.2. in accordance with Good Industry Practice;

7.1.3. in accordance with the Service Levels;

7.1.4. in accordance with all applicable Laws; and

7.1.5. in a proper, diligent, expeditious and professional manner.

7.2. The Contractor shall only provide such personnel as shall possess the appropriate experience, skills and qualifications necessary for the Managed Services to be performed in accordance with the provisions of this Agreement and shall remove or replace any of those personnel on reasonable request by NSS or any Service Recipient.

7.3. The Contractor shall throughout the Contract Duration:

7.3.1. ensure that all Software, Interfaces and other components of the System necessary for the provision of the Managed Services is refreshed (by replacement, addition, modification or otherwise) on an ongoing basis throughout the Contract Duration to the extent necessary so as to enable the Contractor to provide the System and the Managed Services in accordance with the Specification and the Service Levels, such refresh to be at least comparable with the level of technological change and innovation generally being used by similar service providers providing services similar to the Managed Services;

7.3.2. provide the Managed Services to NSS and the Service Recipients and shall meet the Service Levels in its provision of the Managed Services, at all times maximising the availability of the System so that the Software and all other components and equipment used in the course of the provision of the Managed Services shall operate in accordance with their technical specifications; and

7.3.3. ensure that any Software necessary for the provision of the Managed Services is a currently supported version of that software and is fully supported in accordance with the Specification.

7.4. The Contractor and NSS shall comply with the Contract Management Requirements

set out in Schedule Part 9 (Service Management and Reporting).

8. SERVICE LEVELS

- 8.1. The Contractor acknowledges and agrees that its performance of its obligations under this Agreement shall be measured in accordance with the Service Levels and the procedures set out in Schedule Part 3 (Support Services and Service Levels).
- 8.2. The Contractor shall:
 - 8.2.1. monitor its performance of the Managed Services as against the Service Levels; and
 - 8.2.2. report any failures (including any events or circumstances which may adversely affect or delay its performance in whole or in part) in its performance and the actual level of performance it has achieved to NSS Representative.
- 8.3. If the Contractor fails to provide the Managed Services in accordance with this Agreement, the Contractor shall as soon as reasonably practicable, at no additional cost to NSS or any Service Recipient:
 - 8.3.1. identify the cause of any failure;
 - 8.3.2. take whatever action is reasonably necessary to minimise the impact of that failure and prevent it from recurring;
 - 8.3.3. correct the failure if it is a failure that can be corrected immediately or if not, put forward a rectification programme which sets out in reasonable detail the measures the Contractor will adopt to remedy the failure and the timetable for implementation of those measures and rectification of the failure; and
 - 8.3.4. keep NSS or the relevant Service Recipient informed of the status of remedial efforts and any rectification programme being undertaken with respect to the underlying cause of the failure.
- 8.4. Any rectification programme proposed by the Contractor in terms of Clause 8.3.3 shall be subject to NSS's or the relevant Service Recipient's prior written approval, not to be unreasonably withheld, delayed or conditioned.
- 8.5. NSS may verify the Contractor's performance of the Managed Services to the Service Levels and in accordance with the Agreement at any time (or times) as agreed with the Contractor, such agreement not to be unreasonably withheld, delayed or conditioned.

9. CATALOGUE ITEMS

If ordered by NSS on behalf of itself or any Service Recipient pursuant to the Change Control Procedure, the Contractor will provide Catalogue Items to NSS or the relevant Service Recipient, as appropriate. Such Catalogue Items shall be delivered on the basis set out in the relevant CCN.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1. NSS acknowledges that any and all Intellectual Property Rights subsisting in or used in connection with the Managed Services, including the System and all Documentation relating thereto, are and shall remain the property of the Contractor.
- 10.2. All Intellectual Property Rights in any modifications to or derivative works of the Software developed by the Contractor, including any Interfaces developed by the Contractor whether through provision of Consultancy Services or otherwise, shall vest exclusively in the Contractor as at the date of creation.
- 10.3. In respect of any modification and/or derivative works of the Software undertaken by the Contractor as a result of provision of the Consultancy Services, and any Interfaces developed by the Contractor as a result of the provision of the Managed Services or of any Consultancy Services, (the “**Deliverables**”), the Contractor hereby grants to NSS and the Service Recipients a non-exclusive, royalty free licence to Use such Deliverables during the Contract Duration on the same terms as the licence granted in accordance with Clause 5 (Grant of Licence).

11. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

- 11.1. The Contractor shall indemnify and keep indemnified NSS and the Service Recipients from and against any claim or action that the receipt or use of the Managed Services (or any part thereof) infringes the Intellectual Property Rights of any third party (“**Claim**”) and shall fully indemnify and hold harmless NSS and Service Recipients from and against any losses (direct or indirect), damages, costs (including all legal fees) and expenses incurred by or awarded against NSS or any Service Recipient as a result of, or in connection with, any such Claim.
- 11.2. Where a claim or action as referred to in Clause 11.1 arises as a result of the receipt or use by NSS or any Service Recipient of the Managed Services contrary to the terms of this Agreement, such claim or action shall not constitute a Claim for the purposes of this Clause 11 (Intellectual Property Rights Indemnity).
- 11.3. NSS undertakes that the Contractor shall be given prompt notice of any Claim that is made against NSS or any Service Recipient.
- 11.4. In the event that any such infringement occurs or may occur, the Contractor shall, at

NSS' sole option but at the Contractor's sole expense, and without prejudice to NSS' other remedies hereunder and at law:

11.4.1. procure for NSS and the Service Recipients the right to continue using or receiving the Managed Services or the infringing part thereof; or

11.4.2. modify or amend the Managed Services or the infringing part thereof so that the same becomes non-infringing (subject always to the Managed Services continuing to meet the Specification).

12. PAYMENT

Subject to satisfactory performance by the Contractor of its obligations under this Agreement, NSS shall pay to the Contractor the Charges in accordance with the provisions of Schedule Part 6 (Pricing and Payment).

13. CONTRACTOR AND NHS UNDERTAKINGS

13.1. NSS shall, and shall procure that the Service Recipients shall, comply with NHS Responsibilities.

13.2. Save only to the extent that the Contractor is limited by a failure of NSS or any Service Recipient to comply with an NHS Responsibility, the Contractor shall be solely and wholly responsible for:

13.2.1. the build, design, hosting, development, integration, testing, scope, adequacy of the System and the Managed Services to ensure that the System and the Managed Services are at all times provided to NSS and the Service Recipients in accordance with the Specification; and

13.2.2. the repair, maintenance, replacement and refresh of all elements of the System, including Software, Interfaces and any other components used or required by the Contractor in the provision of the System and the Managed Services in accordance with the terms of this Agreement.

13.3. The Contractor warrants that it has identified to NSS all items of NHS Operating Environment which may be required by NSS and the Service Recipients to enable the System and the Managed Services to be operate in accordance with the Specification and to be Used. Subject to utilisation by NSS and the Service Recipients of the relevant items of NHS Operating Environment specified by the Contractor (if any) in the Specification, the Contractor warrants that the System and the Managed Services shall, other than in minor or inconsequential ways, meet the Specification.

13.4. In addition to all other undertakings contained herein or implied by Law, the
Y:\NSDBCS\02 Corporate Gov\Information Governance\FOI\Requests and Responses\2024\000208 - Endoscopy Reporting System Contract\Appendix 1 - ERS Managed Services Agreement v1.0.docx

Contractor warrants that:

- 13.4.1. it has the skill and expertise to enter into and perform this Agreement;
 - 13.4.2. where any third party software is included in the System, it has the necessary authority to act on behalf of all such third party software owners and to grant or procure the licence rights granted hereunder in respect thereof;
 - 13.4.3. the NHS Responsibilities are exhaustive and the Contractor does not require NSS or the Service Recipients to comply with any other obligation to allow or enable the Contractor to perform its obligations under this Agreement; and
 - 13.4.4. it will provide the Managed Services during the Term.
- 13.5. The Contractor undertakes that it will use all reasonable endeavours to ensure that the Managed Services shall be free from all viruses and other contaminants, including, but not limited to, any codes or instructions that may be or will be used to access, modify, delete or damage any data files or other computer programs used by NSS or the Service Recipients.
- 13.6. The Contractor shall, as an enduring obligation throughout the Contract Duration, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of malicious software in any part of the Managed Services (or as otherwise agreed by the Parties).
- 13.7. The Contractor warrants that there are no Disabling Programs comprised in the Managed Services nor will the Contractor introduce any at any time without the prior written consent of NSS.
- 13.8. The Contractor does not warrant that the provision of the Managed Services will be uninterrupted or error free but does warrant that there will be no material or significant errors or interruptions.

14. CONFIDENTIAL INFORMATION AND SECURITY

- 14.1. The Contractor shall comply with the Security Requirements.
- 14.2. The Contractor hereby undertakes that:
- 14.2.1. the Contractor (and any Contractor Personnel) shall only use Confidential Information provided by or accessed from NSS or any Service Recipient or accessed as a result of access to the systems of NSS or of any Service

Recipient (“**NHS Confidential Information**”) for the purposes of this Agreement; and

- 14.2.2. the Contractor (and any Contractor Personnel) shall not disclose any NHS Confidential Information to any third party without the prior written consent of NSS or the relevant Service Recipient (as appropriate).
- 14.3. The Contractor’s attention is expressly drawn to the importance of retaining confidentiality in any and all information relating to patients. The Contractor shall not make any use whatsoever of Patient Identifiable Information other than for the purposes of this Agreement or disclose such Patient Identifiable Information that may become available to it to any third party other than as expressly authorised by NSS or the relevant Service Recipient in writing.
- 14.4. The Contractor shall ensure that all its employees, contractors, agents and representatives who have access to or handle Patient Identifiable Information receive appropriate data security training and are advised of the importance of maintaining the confidentiality of such information, that such information should only be accessed strictly as required to perform the Managed Services and that breach of confidentiality is a serious disciplinary offence.
- 14.5. NSS shall, and shall procure that the Service Recipients shall, only use Confidential Information provided by or accessed from the Contractor (“**Contractor Confidential Information**”) for the purposes of this Agreement and shall not disclose any Contractor Confidential Information to any third party without the prior written consent of the Contractor.
- 14.6. The provisions of this Clause 14 shall not apply to any information (other than Patient Identifiable Information to which the provisions of Clauses 14.3 and 14.4 shall apply) which:
 - 14.6.1. is or becomes public knowledge other than by breach of this Clause 14;
 - 14.6.2. is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party;
 - 14.6.3. is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
 - 14.6.4. is independently developed without access to the disclosing party’s Confidential Information.
- 14.7. Nothing contained in this Clause 14 shall prevent NSS or any Service Recipient from disclosing any Contractor Confidential Information:

- 14.7.1. wherever disclosure is required by virtue of their status as an NHS Scotland entity to a department, office or agency of Her Majesty's Government or of the Scottish Government or to any other NHS Scotland entity; or
- 14.7.2. to any consultant, company or other person engaged by them in connection with their day to day operations, and provided in the case of Contractor Confidential Information that the disclosing party shall have obtained from such consultant, company or other person engaged by it to whom Contractor Confidential Information is so disclosed, a confidentiality undertaking substantially in the same terms as contained in this Clause 14.
- 14.8. Nothing in this Clause 14 shall prevent the Contractor or NSS or any Service Recipient 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 NSS or any Service Recipient or the Contractor of any Intellectual Property Rights of the other party.

15. FREEDOM OF INFORMATION

Nothing in this Agreement shall preclude NSS or any Service Recipient from making public under the Freedom of Information (Scotland) Act 2002 ("**FOISA**"), the Environmental Information (Scotland) Regulations 2004 ("**EIRs**") or otherwise, details of all matters relating to this Agreement unless such details fall within an exemption under FOISA or an exception under the EIRs, as may be applicable at the discretion of NSS or the relevant Service Recipient and NSS or the relevant Service Recipient has agreed that such exemption or exception shall apply, and (in respect of commercially sensitive information only) the Contractor has advised NSS in writing that disclosure of specified information would or would be likely to substantially prejudice the commercial interests of any person (including but not limited to the Contractor, NSS or a Service Recipient). Any material or document marked 'confidential' or equivalent by the Contractor shall not be taken to mean that NSS or the relevant Service Recipient accepts any duty of confidence by virtue of that marking. NSS will take all reasonable steps to provide the Contractor with notice of such intended disclosures prior to making such information public. The Contractor will facilitate NSS' and the Service Recipients' compliance with their obligations under FOISA and/or the EIRs, and shall comply with any request from NSS or any Service Recipient for that purpose.

16. DATA PROTECTION

Controller/Processor and Personal Data

- 16.1. The Parties acknowledge that for the purposes of the Data Protection Legislation NSS or the relevant Service Recipient is the Controller and the Contractor is the Processor.
- 16.2. For the avoidance of doubt, references in this Clause 16 to the term “Personal Data” shall only apply to Personal Data Processed in the course of the performance of the obligations imposed on the Contractor pursuant to or under this Agreement, including but not limited to the performance of the Managed Services.

Compliance with Data Protection Legislation

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

Processing Instructions

- 16.4. The only Processing that the Contractor is authorised to undertake in connection with the performance of the obligations imposed on the Contractor pursuant to or under this Agreement, including but not limited to the performance of the Managed Services is listed in this Clause 16 and in Schedule Part 13 (Processing Information), as the same may be amended from time to time by written agreement between the Parties (together, the “**Processing Instructions**”). In addition, the Contractor warrants that it will, and will procure that any and all Sub-processors will, at all times throughout the Contract Duration, only Process the Personal Data for the purposes of the performance of the obligations imposed on the Contractor pursuant to or under this Agreement, including but not limited to the performance of the Managed Services (the “**Purpose**”).
- 16.5. The Contractor shall promptly comply with any written request from NSS or the relevant Service Recipient requiring the Contractor to amend, transfer or delete the Personal Data.
- 16.6. The Contractor shall notify NSS or the relevant Service Recipient immediately if it considers that any of NSS’s or the relevant Service Recipient’s instructions infringe the Data Protection Legislation and will provide NSS or the relevant Service Recipient with a written explanation of the reasons why it considers any of NSS’s or the relevant Service Recipient’s instructions to be so infringing.

Assistance to NSS and the Service Recipients

- 16.7. The Contractor shall, as part of the Managed Services and at no additional cost or expense to NSS or any Service Recipient, provide all reasonable assistance to NSS and the Service Recipients in ensuring compliance with NSS's and the Service Recipients' obligations under the Data Protection Legislation in relation to:
- 16.7.1. ensuring the security of the Personal Data;
 - 16.7.2. any notifications, communications and remedial action that may be required to be made or taken following any Data Loss Event, including notifications to the Commissioner following a Data Loss Event and communications to affected or potentially affected Data Subjects;
 - 16.7.3. responding to Data Subject Requests within the timescale set out in the Data Protection Legislation;
 - 16.7.4. responding to any other requests, complaints or communications relating to either Party's obligations under the Data Protection Legislation;
 - 16.7.5. responding to any request from any third party for disclosure of Personal Data;
 - 16.7.6. any communication from the Commissioner or any other regulatory authority or any consultation by NSS or any Service Recipient with the Commissioner or any other regulatory authority, to the extent that such communication or consultation relates to or involves the Processing undertaken by the Contractor and/or any Sub-processor under or in connection with this Agreement; and
 - 16.7.7. the preparation of any Data Protection Impact Assessment prior to commencing any new Processing that has been agreed between the Parties pursuant to Clause 16.4. Such assistance may, at the discretion of NSS, include:
 - (a) a systematic description of the envisaged Processing operations and the purpose of the Processing;
 - (b) an assessment of the necessity and proportionality of the Processing operations in relation to the performance of the obligations imposed on the Contractor pursuant to or under this Agreement, including but not limited to the performance of the Managed Services;
 - (c) an assessment of the risks to the rights and freedoms of Data

Subjects; and

- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

16.8. At any time throughout the Contract Duration, or following the date of termination, at the request of NSS or any Service Recipient, the Contractor shall provide to NSS or the relevant Service Recipient, as applicable, a copy of all Personal Data held by the Contractor in the format and on the media reasonably specified by NSS or the relevant Service Recipient, as applicable.

Technical and Organisational Measures

16.9. The Contractor shall:

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

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

- (a) the nature, scope, context and purposes of the Processing;
- (b) the nature of the Personal Data to be protected;
- (c) the harm that might result from a Data Loss Event, including the risks to the rights and freedoms of Data Subjects;
- (d) the state of technological development; and
- (e) the cost of implementing any measures.

Contractor Personnel

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

16.10.1. are aware of and comply with the Contractor's duties under this Agreement, in particular those obligations set out in this Clause 16;

16.10.2. are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor, as the case may be, which confidentiality undertakings

require the Contractor Personnel to keep the Personal Data confidential and to only Process the Personal Data for the Purpose;

16.10.3. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by NSS or any relevant Service Recipient or as otherwise permitted by this Agreement; and

16.10.4. have undergone adequate training in the use, care, protection and handling of Personal Data and on the Data Protection Legislation insofar as it relates to Processing.

International Transfers of Personal Data

16.11. The Contractor shall not transfer Personal Data outside of the United Kingdom without the prior written consent of NSS.

16.12. If NSS gives its written consent to a transfer of Personal Data outside of the United Kingdom, the Contractor shall ensure that:

16.12.1. the Contractor has Appropriate Safeguards in place in respect of such transfer and, where practicable, the particular Appropriate Safeguards to be used by the Contractor for such transfer shall be subject to NSS's prior written approval, which approval shall not be unreasonably withheld or delayed;

16.12.2. the transfer and any Processing of Personal Data following such transfer complies at all times with Clause 16.4; and

16.12.3. the transfer otherwise complies with Data Protection Legislation.

Notifications required to be given by the Contractor to NSS

16.13. The Contractor shall, at its own cost and expense, notify NSS or the relevant Service Recipient, as applicable, immediately (and within three (3) Business Days of receipt of the relevant communication at the latest) if it:

16.13.1. receives a Data Subject Request (or purported Data Subject Request);

16.13.2. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

16.13.3. receives any communication from the Commissioner or any other regulatory authority in connection with Personal Data processed under or in connection with this Agreement; or

- 16.13.4. receives a request from any third party for disclosure of Personal Data where compliance with such request is required or permitted by Law,
- and the Contractor will provide NSS or the relevant Service Recipient, as applicable, with a copy of the relevant Data Subject Request, request, complaint or communication, as the case may be and such further information regarding the same as NSS or the relevant Service Recipient, as applicable, may request from time to time.
- 16.14. Taking into account the nature of the Processing, the Contractor shall provide NSS and the Service Recipients with all reasonable assistance in relation to any complaint, communication or request notified to NSS or any Service Recipient, as applicable, pursuant to Clause 16.13 (and insofar as possible within the timescales reasonably required by NSS or the relevant Service Recipient, as applicable).
- 16.15. The Contractor shall, at its own cost and expense:
- 16.15.1. notify NSS of any Data Loss Event of which it becomes aware as soon as practicable and, in any event, within twenty four (24) hours of becoming aware of such Data Loss Event; and
- 16.15.2. provide NSS, as soon as practicable and wherever possible within twenty four (24) hours of becoming aware of such Data Loss Event, with such information regarding the Data Loss Event as NSS and/or any Service Recipient may reasonably require, including but not limited to:
- (a) the nature of the Data Loss Event, including, where possible the categories and approximate number of Data Subjects and Personal Data records affected by the Data Loss Event;
 - (b) the likely consequences of the Data Loss Event; and
 - (c) where the Data Loss Event involves the Contractor and/or any Sub-processor, the measures taken or proposed to be taken by the Contractor and/or any Sub-processor to address the Data Loss Event, including those to mitigate the possible adverse effects of the Data Loss Event.
- 16.16. If the Contractor cannot provide all of the information set out in Clause 16.15 within the timescale specified, the Contractor shall, within such timescale advise NSS and/or any Service Recipient of the delay and of the reasons for the same and advise NSS and/or any Service Recipient when the Contractor expects to be able to provide the relevant outstanding information, which information may be provided in phases

without undue delay, as details become available.

Records

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

16.17.1. the name and contact details of the Contractor's Representative (if any) and of the Contractor's Data Protection Officer (if any);

16.17.2. the categories of Processing carried out in connection with the Purpose;

16.17.3. where applicable, details of any transfers of Personal Data pursuant to Clause 16.12, including the identity of the recipient of such transferred Personal Data and the countries to which such Personal Data is transferred, together with details of the Appropriate Safeguards used; and

16.17.4. a general description of the Protective Measures implemented by the Contractor pursuant to Clause 16.9.

Use of Sub-processors

16.18. The Contractor shall not allow any Sub-processor to Process any Personal Data unless the Contractor has:

16.18.1. notified NSS in writing of the intended Sub-processor and the Processing activity that the Contractor wishes the Sub-processor to undertake on the Contractor's behalf;

16.18.2. obtained the prior written consent of NSS in respect of the use of such Sub-processor in connection with the Processing undertaken pursuant to this Agreement;

16.18.3. entered into a binding written agreement with the Sub-processor, which agreement sets out enforceable data protection obligations on the same terms as set out in this Clause 16 such that they apply to the Sub-processor, in particular such binding written agreement must provide:

(a) sufficient guarantees that the Sub-processor will adopt Protective Measures such that the Processing undertaken by the Sub-processor will meet the requirements of the Data Protection Legislation; and

(b) details of the Processing that is to be undertaken by the Sub-processor, which Processing shall only involve activity that is set

out in Schedule Part 13 (Processing Information) of this Agreement;
and

16.18.4. provide NSS with such other information regarding the Sub-processor as NSS may reasonably require from time to time.

16.19. The Contractor shall cease using a Sub-processor to undertake any Processing of Personal Data pursuant to or in connection with this Agreement immediately upon receipt of a written request from NSS requesting that such Sub-processor ceases Processing the Personal Data, in circumstances where NSS has reasonable grounds for concern about the Sub-processor's ability to carry out the Processing in accordance with the Data Protection Legislation.

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

Audit Right

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

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

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

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

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

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

16.24. If an audit identifies that the Contractor has failed to perform its obligations under this Agreement in any material manner, NSS may, at its sole discretion:

- 16.24.1. treat such failure as a material breach of the Agreement; or
- 16.24.2. agree with the Contractor a remedial plan to resolve such failure, which remedial plan the Contractor shall implement at its sole cost and expense.

Deletion or Return of Personal Data

- 16.25. Within one (1) month following the date of termination of this Agreement, or if earlier, the date of the cessation of those Managed Services pursuant to or in connection with which the Processing of Personal Data by the Contractor on behalf of NSS or any Service Recipient was undertaken, the Contractor shall, at the written direction of NSS or the relevant Service Recipient, securely delete or securely return to NSS or the relevant Service Recipient all affected Personal Data (and any copies of it) and the Contractor shall certify in writing to NSS or the relevant Service Recipient that to the best of the Contractor's knowledge and belief all Personal Data (and any copies of it) have been securely deleted or securely returned to NSS or the relevant Service Recipient, unless the Contractor is required by Law to retain the Personal Data. If the Contractor is required by Law to retain the Personal Data, the Contractor shall advise NSS or the relevant Service Recipient of such requirement in writing.

Liability

- 16.26. The Contractor shall indemnify and keep indemnified and defend at its own expense NSS from and against any and all DP Losses incurred by NSS and/or any Service Recipient or for which NSS and/or any Service Recipient may become liable arising from or in connection with any failure by the Contractor or any Sub-processor or any of their employees or agents to comply with any of the Contractor's obligations under this Clause 16. The indemnity set out in this Clause 16.26 shall not be subject to any limit of liability in terms of Clause 23 (Liabilities and Indemnities).
- 16.27. NSS shall indemnify and keep indemnified and defend at its own expense the Contractor from and against any and all DP Losses incurred by the Contractor or for which the Contractor may become liable arising solely from or in connection with any failure by NSS or its employees or agents to comply with any of NSS's obligations under this Clause 16. The aggregate liability of NSS in respect of the indemnity set out in this Clause 16.27 shall be subject to the limits of liability in terms of Clause 23 (Liabilities and Indemnities).
- 16.28. The provisions of Clauses 16.26 and 16.27 shall not affect the liability of either Party to any Data Subject.

17. CHANGE CONTROL

- 17.1. Any Changes to this Agreement shall be effected through the Change Control Procedure.
- 17.2. Either Party may give written notice to the other of the need for a Change which is necessary in order to enable the Contractor and/or NSS to comply with any Change in Law.
- 17.3. The Contractor shall not be entitled to any payment, any increase to the charges or other compensation or relief from any performance of its obligations under this Agreement in respect of any Change in Law or associated Change (or the consequences of either).

18. PROJECT MANAGEMENT

- 18.1. The Contractor and NSS shall each carry out their service management and contract management responsibilities as specified in Schedule Part 9 (Service Management and Reporting).
- 18.2. The Contractor Representative shall be **[insert job title]**, or such other individual as may be notified in writing by the Contractor to NSS from time to time.
- 18.3. NSS Representative shall be the ERS Project Manager, or such other individual as may be notified in writing by NSS to the Contractor from time to time.
- 18.4. The Contractor Representative and NSS Representative shall be authorised to exercise the functions and powers of the Contractor and NSS respectively with respect to this Agreement.

19. TERMINATION

- 19.1. For the purposes of this Agreement, “**Contractor Default**” means any of the following events or circumstances set out in this Clause 19.1:
- 19.1.1. the occurrence of any of the following events in respect of the Contractor, namely:
- (a) any moratorium, arrangement or composition with its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) being obtained or entered into by or in relation to the Contractor or any steps being taken to obtain or enter the same or any proceedings being commenced in relation to the Contractor under any law, regulation or procedure relating to the reconstruction or adjustment of debts;

- (b) a receiver, manager, administrator, sequestrator, administrative receiver, liquidator or other similar officer, or other encumbrancer taking possession of or being appointed over, or any distress, execution, attachment or other process being levied or enforced (and not being discharged within five (5) days) upon, against or in respect of the whole or any material part of the assets, rights or revenues of the Contractor, or the Contractor failing to satisfy any judgment debt in whole or in part within fourteen (14) days;
- (c) the Contractor ceasing or threatening to cease to carry on the whole or a substantial part of its business, or if the Contractor is dissolved;
- (d) a petition or other form of application being presented or made at court (and not being discharged within twenty (20) days), or a resolution being passed or an order being made for the administration or the winding-up, bankruptcy or dissolution of the Contractor, or the giving or filing of notice of intention to appoint or notice of appointment or presentation of a petition in respect of the appointment of an administrator, receiver, administrative receiver, liquidator or similar officer in respect of the Contractor, its business or assets;
- (e) the Contractor is, or is adjudicated or found to be, insolvent as set out in section 123 of the Insolvency Act 1986 or stops or suspends payments of its debts or is (or is deemed to be) unable to or has no real prospect of being able to, or admits inability to pay its debts as they fall due;
- (f) if the Contractor shall suffer any event analogous to the events set out in Clauses 19.1(a) to 19.1(e) in any jurisdiction in which it is incorporated or resident;

19.1.2. the Contractor committing a material breach of this Agreement;

19.1.3. the Contractor committing a series of breaches of this Agreement which when taken together amount to a material breach of this Agreement;

19.1.4. the Contractor has accrued or incurred fifty (50) Service Points in any twelve (12) month period in accordance with paragraph 7.3 of Schedule Part 6 (Pricing and Payment) (for the occurrence of Incidents and/or failure to remedy within the specified Resolution Times);

- 19.1.5. Availability, calculated in accordance with the provisions of Schedule Part 3 (Support Services and Service Levels), is less than 99.0% in any three (3) Contract Months out of any nine (9) consecutive Contract Months on a rolling calendar basis;
- 19.1.6. the Contractor failing to achieve Final Acceptance in respect of Implementation of the System by expiry of a period of sixty (60) days after the date specified in the Implementation Plan for Final Acceptance to occur, subject to any extension of time necessary to compensate the Contractor for a Force Majeure Event or failure by NSS or the relevant Service Recipient to comply with NHS Responsibilities.
- 19.2. The Contractor shall notify NSS in writing of the occurrence, and details, of any Contractor Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a Contractor Default, in either case promptly on the Contractor becoming aware of its occurrence.
- 19.3. On the occurrence of a Contractor Default, or within a reasonable time after NSS becomes aware of the same, NSS may:
- 19.3.1. in the case of any Contractor Default incapable of remedy, terminate this Agreement in its entirety by notice in writing having immediate effect; or
- 19.3.2. in the case of any other Contractor Default which is capable of remedy, serve written notice of default on the Contractor requiring the Contractor to remedy the Contractor Default referred to in such notice of default (if the same is continuing) within twenty (20) Business Days of such notice of default.
- 19.4. NSS may terminate this Agreement by notice in writing to the Contractor in the following circumstances:
- 19.4.1. NSS considers that procurement of a new contract is required as a result of a substantial modification, or a series of modifications which, taken together, constitute a substantial modification being, or having been, effected to the Agreement;
- 19.4.2. NSS becomes aware that the Contractor and/or any Relevant Person has been convicted of any of the offences listed in Regulation 58(1) of the Public Contracts (Scotland) Regulations 2015;
- 19.4.3. a court of competent jurisdiction makes a declaration that the Agreement should not have been awarded to the Contractor in view of a serious

infringement of the obligations under any applicable public procurement law or regulation; or

19.4.4. proceedings are served on NSS in connection with or related to any novation of transfer of the Agreement in whole or in part,

provided always that the Contractor shall be entitled to payment of such proportion of the Charges as is due and payable in terms of the Agreement up to the date of termination on any of the grounds set out in this Clause 19.4.

19.5. Termination pursuant to Clause 19.1 to 19.4 above shall not give rise to any liability on the part of NSS or any Service Recipient.

19.6. The rights of NSS (to terminate or otherwise) under this Clause 19 are in addition (and without prejudice) to any other right or remedy which NSS may have to:

19.6.1. claim the amount of loss or damage suffered by, and/or claims made against, NSS or any Service Recipient on account of any breaches or omissions of the Contractor; or

19.6.2. take any action other than termination of this Agreement.

20. EFFECT OF TERMINATION OR EXPIRY

20.1. Notwithstanding that a Party may have a right to terminate this Agreement, such Party may elect to continue to treat this Agreement as being in full force and effect and to enforce its rights under this Agreement.

20.2. The Contractor shall develop an exit plan to ensure the orderly transition of the Managed Services to NSS, the relevant Service Recipient (and/or its nominee) or to any Replacement Contractor and shall provide such reasonable assistance and cooperation during the Contract Duration to facilitate a smooth transfer as shall be required by NSS or the relevant Service Recipient acting reasonably.

20.3. Upon termination or expiry of this Agreement for any reason:

20.3.1. all licences granted under this Agreement shall automatically terminate;

20.3.2. the Contractor shall repay forthwith to NSS any advance payments made by NSS in respect of any Charges relating to the supply of Managed Services or of Catalogue Items not performed or delivered by the Contractor in accordance with this Agreement;

20.3.3. the Contractor shall comply with its obligations under Clause 16.25 (Data Protection); and

20.3.4. the Contractor shall cease to use the Data and, at the direction of NSS, shall

destroy or return to NSS or the Service Recipients (or their nominees) or the Replacement Contractor, at no cost, all Data in its possession or in the possession of any third party supplier to the Contractor in a format nominated by NSS (acting reasonably), together with all related documentation and all copies thereof as directed by NSS.

21. DISASTER RECOVERY

- 21.1. The Contractor shall at all times throughout the Contract Duration have a disaster recovery and business continuity plan in respect of the provision by it of the Managed Services and provide a copy of the same to NSS.
- 21.2. The Contractor shall ensure that it is able to implement its disaster recovery and business continuity plan at any time.
- 21.3. The Contractor shall, at no additional cost to NSS or any Service Recipient, test its disaster recovery and business continuity plan at least once every Contract Year. In addition, where NSS, acting reasonably, considers it necessary for there to be additional tests of the Contractor's disaster recovery and business continuity plan, including in circumstances where there has been any change to the Managed Services or any underlying business processes or on the occurrence of any event which may increase the likelihood of the need to implement the Contractor's disaster recovery and business continuity plan, NSS shall be entitled to require additional tests of the Contractor's disaster recovery and business continuity plan by notifying the Contractor to such effect in writing and the Contractor shall conduct such tests in accordance with NSS' requirements. The cost of undertaking such additional tests, if successful in all material respects, shall be borne by NSS, failing which each Party shall bear its own costs.
- 21.4. Following each test, the Contractor shall send NSS a written report summarising the results of the test and shall promptly implement any precautionary actions that NSS considers, in its reasonable opinion, to be necessary as a result of the conduct of the test.
- 21.5. The Contractor shall undertake regular risk assessments in relation to the provision of the Managed Services not less than once every six months and shall provide the results of, and any recommendations in relation to, those risk assessments to NSS promptly in writing following each review. The Contractor shall immediately effect any change in its practices or procedures highlighted as being necessary by any risk assessment, except to the extent that the change is a Change, in which case the Contractor shall propose the Change in accordance with Clause 17 (Change Control

Procedure).

22. ASSIGNATION AND SUB-CONTRACTING

- 22.1. This Agreement is personal to, and shall be binding on and inure for the benefit of, the Contractor and NSS and their respective successors and permitted assignees or transferees.
- 22.2. The Contractor shall not be entitled to sub-contract, assign or transfer its rights or obligations under this Agreement or any part thereof without the prior written consent of NSS. The Contractor will, at all times, remain liable for the acts and omissions of any and all sub-contractors and Sub-processors.
- 22.3. NSS may assign or transfer its rights and obligations hereunder without the consent of the Contractor where such assignation or transfer does not increase and/or make more onerous and/or otherwise adversely affect any of the rights and responsibilities of the Contractor under this Agreement. This Agreement shall automatically devolve to any statutory successor of NSS.

23. LIABILITIES AND INDEMNITIES

- 23.1. The Contractor shall indemnify, and keep indemnified, NSS and each Service Recipient at all times from and against all losses sustained by NSS and the Service Recipients (whether foreseeable or otherwise) in the event of:
- 23.1.1. any loss of or damage to any property or assets of NSS or any Service Recipient (including NHS Data) arising by reason of any act or omission of the Contractor;
- 23.1.2. NSS and/or any Service Recipient:
- (a) not benefiting from any equipment or services to be provided by any other service provider to NSS and/or any Service Recipient arising by reason of any act or omission of the Contractor; or
 - (b) being liable to make any payment to any other service provider in circumstances in which it would not have been so liable by reason of any act or omission of the Contractor;
- 23.1.3. any loss, destruction, corruption, degradation or inaccuracy of data (including any NHS Data) arising by reason of any act or omission of the Contractor.
- 23.1.4. any breach of any applicable Law either in effect at the Effective Date or in respect of which the Parties have agreed a Change;

- 23.1.5. any failure by the Contractor to provide the Managed Services;
 - 23.1.6. any breach by the Contractor of Clause 14 (Confidential Information and Security);
 - 23.1.7. any failure by the Contractor to comply with its obligations pursuant to Clause 15 (Freedom of Information) resulting in NSS failing to comply with its obligations under FOISA and/or the EIRs; and
 - 23.1.8. any act or omission of the Contractor (including any breach by the Contractor of any of its obligations under this Agreement, any delictual act or omission (including negligence) or otherwise) save where and to the extent that Direct Losses are caused by the wilful misconduct of NSS, or its employees, agents or contractors (save for the Contractor).
- 23.2. The indemnities set out in Clause 23.1 shall be payable on demand.
- 23.3. The Parties agree that the relevant Service Deductions due pursuant to this Agreement are not a penalty and are a genuine pre estimate of the loss likely to be suffered by NSS and the Service Recipients in respect of the relevant failures of the Contractor to which the Service Deductions relate.
- 23.4. NSS shall be entitled to seek interdict or a decree of specific implement or any other discretionary remedy of the court.
- 23.5. Subject to Clauses 11 (Intellectual Property Rights Indemnity), 16 (Data Protection) and 23.8 below (in respect of which the Contractor's liability will be unlimited), the aggregate liability of the Contractor in respect of all claims made by NSS arising in each Contract Year whether arising from delict (including negligence), breach of contract or otherwise under or in connection with this Agreement shall in no event exceed Five Million Pounds Sterling (£5,000,000).
- 23.6. The aggregate liability of NSS in respect of all claims made by the Contractor whether in respect of the acts or omissions of NSS or any Service Recipient arising in each Contract Year whether arising from delict (including negligence), breach of contract or otherwise under or in connection with this Agreement shall in no event exceed One Million Pounds Sterling (£1,000,000).
- 23.7. Notwithstanding any other provision of this Agreement, neither Party shall be liable to the other for any indirect, special or consequential loss.
- 23.8. Notwithstanding any other provision of this Agreement, there shall be no exclusion or limit of liability in respect of:
- 23.8.1. fraud or fraudulent misrepresentation by either Party; and

23.8.2. death or personal injury caused by the breach of duty or negligence of either Party.

24. PROHIBITED ACTS

The provisions of Schedule Part 12 (Prohibited Acts) shall apply to this Agreement.

25. FORCE MAJEURE

25.1. No Party shall be entitled to bring a claim for breach of obligations under this Agreement by the other Party or incur any liability to the other Party for any loss or damages incurred by that Party to the extent that a Force Majeure Event occurs and it is prevented from carrying out obligations by that event of Force Majeure.

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

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

25.4. If either Party becomes aware of circumstances that may give rise to a Force Majeure Event, which could result in a failure or delay on its part to perform its obligations under this Agreement, it shall as soon as practicably possible, notify the other.

26. EQUAL OPPORTUNITIES COMPLIANCE

The Contractor shall not unlawfully discriminate, either directly or indirectly, on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof. The Contractor shall take all reasonable steps to secure the observance of this clause by all employees and representatives of the Contractor employed in the performance of the Agreement.

27. SOCIAL BENEFITS

The Contractor shall comply with the obligations imposed on it in relation to social benefits as detailed in the Specification.

28. HUMAN TRAFFICKING ETC.

- 28.1. The Contractor shall, and shall ensure that all Contractor Personnel shall:
- 28.1.1. not commit any act or omission which causes or could cause it to breach, or commit an offence under, any laws relating to anti human trafficking, child labour and modern slavery;
 - 28.1.2. keep accurate and up to date records showing all suppliers engaged in connection with this Agreement and the steps the Contractor has taken to comply with this Clause 28 (Human Trafficking Etc.), and permit NSS and/or any Service Recipient to inspect those records as required;
 - 28.1.3. warrant that neither the Contractor, nor any of its officers, employees or other persons associated with it, having made reasonable enquiries, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking;
 - 28.1.4. implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains; and
 - 28.1.5. promptly notify NSS of any breach of this Clause 28 (Human Trafficking Etc.).
- 28.2. NSS may terminate this Agreement immediately by giving written notice to that effect to the Contractor if the Contractor is in breach of this Clause 28 (Human Trafficking Etc.).

29. NOTICES

- 29.1. Any notice to be given under this Agreement shall either be delivered personally or sent by first class recorded delivery post (airmail if overseas) or electronic mail. The address for service shall be the registered or principal office of the recipient or such other address for receipt of notices as either Party may previously have notified to the other Party in writing. A notice shall be deemed to have been served:
- 29.1.1. if personally delivered, at the time of delivery;
 - 29.1.2. if posted, at the expiration of forty-eight (48) hours or (in the case of airmail seven days) after the envelope containing the same was delivered into the custody of the postal authorities; and
 - 29.1.3. if sent by electronic mail, at the time of the transmission

30. COUNTERPARTS

- 30.1. This Agreement may be executed in any number of counterparts and by each Party on separate counterparts.
- 30.2. Where executed in counterparts:
 - 30.2.1. this Agreement shall not take effect until all of the counterparts have been delivered; and
 - 30.2.2. each counterpart will be held as undelivered for the purposes of The Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 until the Parties agree a date (the "**agreed date**") on which the counterparts are to be treated as delivered. The agreed date will be inserted on the front page of this Agreement.

31. GENERAL

- 31.1. Failure or neglect by one Party to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of that Party's right hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice that Party's right to take subsequent action.
- 31.2. The rights and remedies provided under this Agreement are cumulative and, unless otherwise provided in this Agreement, are not exclusive of any right or remedy provided at law or otherwise under this Agreement.
- 31.3. In the event that any of these terms, conditions or provisions shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall to that extent be severed from the remaining terms, conditions and provisions which shall continue to be valid to the fullest extent permitted by law.
- 31.4. Any notice to be given by either Party to the other may be sent by recorded delivery to the address of the other Party as appearing herein or such other address as such Party may from time to time have communicated to the other in writing and if so sent shall be deemed to be served three (3) days following the date of posting.
- 31.5. Termination or expiry shall not affect the accrued rights of the Parties or the continuing rights and obligations of the Contractor and NSS which expressly or by implication are intended to survive termination. Without limitation the provisions of Clauses 1, 3.4, 4, 11, 13, 14, 15, 16, 20, 22, 23, 28, 29 and 31 shall survive termination of this Agreement.
- 31.6. This Agreement and the Schedule which is incorporated into and forms part of this *Y:\NSD\BCS\02 Corporate Gov\Information Governance\FOI\Requests and Responses\2024\000208 - Endoscopy Reporting System Contract\Appendix 1 - ERS Managed Services Agreement v1.0.docx*

Agreement, and the documents referred to herein, contain all the terms which the Parties have agreed in relation to the subject matter of this Agreement and supersedes any prior written or oral agreements, representations or understandings between the Parties in relation to such subject matter, provided that nothing contained herein shall operate or be constituted as to limit or exclude either Party's liability for fraud or fraudulent misrepresentation.

- 31.7. No variation to the Clauses of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the Parties. Any Changes to this Agreement shall be effected through the Change Control Procedure.

31.8. The Parties hereby agree that this Agreement shall be governed and construed in accordance with Scots law and the Parties submit to the exclusive jurisdiction of the Scottish Courts: IN WITNESS WHEREOF these presents typewritten on this and the preceding [•] ([•]) pages together with the Schedule are executed in duplicate as follows:

For and on behalf of The Common Services Agency

Place..... Date.....

Signed

by.....

Print

Name.....

Designation.....

.....

For and on behalf of [•]

Place..... Date.....

Signed

by.....

Print

Name.....

Designation.....

This is the Schedule referred to in the foregoing Agreement between [•] and [•]

SCHEDULE PART 1

SPECIFICATION

The Specification is comprised of:

- A. the Clarifications;
- B. the Tender; and
- C. the NHS Requirements.

SCHEDULE: PART 2

IMPLEMENTATION PLAN

[•]

SCHEDULE: PART 3

SUPPORT SERVICES AND SERVICE LEVELS

1. Definitions

In this Schedule Part 3 (Support Services and Service Levels) the following terms shall have the following meanings:

“Action Report”	has the meaning ascribed to it in Paragraph 12.1 below;
“Available”	means NSS and all Service Recipients and End Users are able to access and Use the System wholly in accordance with the Specification, and “Availability” shall be construed accordingly;
“Availability Hours”	means 24 hours x 7 days a week;
“Contractor’s Helpdesk”	has the meaning ascribed to it in Paragraph 4.1(a) below;
“Emergency maintenance”	means any maintenance of System that cannot be agreed between the Parties in accordance with the timescales set out in Paragraph 3.2(c) below;
“Improvement”	has the meaning ascribed to it in Paragraph 14.2 below;
“Incident”	has the meaning ascribed to it in Paragraph 6.1 below;
“Incident Log”	has the meaning ascribed to it in Paragraph 6.2 below;
“Incident Reporter”	has the meaning ascribed to it in Paragraph 6.1 below;
“Performance Monitoring Report”	has the meaning ascribed to it in Paragraph 11.3 below;
“Permitted Downtime”	means any period of time during which the System is not Available as a result of Planned Maintenance;
“Planned Maintenance”	has the meaning ascribed to it in Paragraph 3.2 below;
“Resolution Times”	means the times for Resolution of any Incident set out in Paragraph 8 below;
“Resolved”	means an Incident has been fixed to the satisfaction of NSS or the relevant Service Recipient such that the System is performing satisfactorily in accordance with the Specification and that NSS or the relevant Service Recipient has received an explanation from the Contractor of the nature of the Incident and the actions taken

by the Contractor to effect the fix, and the terms “**Resolve**” and “**Resolution**” shall be construed accordingly;

- “**Satisfaction Surveys**” has the meaning ascribed to it in Paragraph 14.1 below;
- “**Severity Classification**” has the meaning ascribed to it in Paragraph 6.5 below;
- “**Service Failure**” means any failure by the Contractor to achieve any specified Service Level;
- “**Service Level**” means the level of performance specified in this Schedule Part 3 in respect of specific elements of the Managed Services;
- “**Service Points**” means the points which accrue to the Contractor in the event of any failure by the Contractor to achieve the specified Service Level, as detailed in this Schedule Part 3, and which will be used to calculate Service Deductions in accordance with Schedule Part 6 (Pricing and Payment);
- “**Support Hours**” has the meaning ascribed to it in Paragraph 5.1 below;
- “**Support Services**” has the meaning ascribed to it in Paragraph 4 below; and
- “**Unavailability**” means any period where any Service Recipient and/or End User is unable to access and Use the System wholly in accordance with the Specification other than due to Planned Maintenance but, to avoid doubt, any period of Planned Maintenance in excess of those hours detailed in paragraphs 3.2(a) and 3.2(b) of this Schedule Part 3 shall constitute Unavailability.

2. Availability

- 2.1 The Contractor shall be responsible for monitoring and measuring the Availability of the System.
- 2.2 The System shall be deemed to be Available to the extent that any Unavailability results solely from equipment faults, network faults or other incidents outside the Contractor’s control.
- 2.3 The Availability of the System during any Contract Month shall be measured as a percentage of the Availability Hours in the relevant Contract Month, in accordance with the following formula:

$$\text{Availability \%} = \frac{(AH - U)}{AH} \times 100$$

Where:

AH = Total number minutes comprised in the Availability

SCHEDULE: PART 4

ACCEPTANCE PROTOCOL

In respect of the Implementation, the following deliverables and the associated Acceptance Criteria shall be used in the manner set out in Clause 6 (Implementation and Acceptance Testing) of this Agreement.

To the extent that the detailed nature of the Acceptance Tests that will be undertaken to evidence that the Acceptance Criteria are met is not defined prior to the Effective Date, NSS and the Contractor shall, as part of the Implementation, agree those prior to the tests being undertaken. Acceptance Tests used to demonstrate satisfactory achievement of the Acceptance Criteria shall comprise a combination of observation, test scripts and other suitable methods. Each Party shall maintain appropriate records to evidence the outcome of the Acceptance Tests undertaken.

In the table below, “**Generic Document Acceptance Criteria**” means in relation to a document that such document is:

- a) consistent with any description of the document in the Specification;
- b) clear and unambiguous;
- c) capable of being understood by its target audience;
- d) produced in accordance with the terms of this Agreement;
- e) complete;
- f) compliant with all applicable Law and standards;
- g) fit for the purpose for which it was written; and
- h) consistent with the terms of any applicable Implementation Deliverable previously Accepted by NSS.

Implementation Deliverable	Acceptance Criteria	Completion Evidenced by	Milestone
Project Initiation Document	Generic Document Acceptance Criteria	Review and approval by NSS	1
Implementation Plan	Generic Document Acceptance Criteria	Review and approval by NSS	1
Design Document	Generic Document Acceptance Criteria	Review and approval by NSS	1
Technical Document	Generic Document Acceptance Criteria;	Review and approval by NSS	1
Test Cases Document	Generic Document	Review and approval by NSS and Contractor	1

SCHEDULE: PART 5

ACCEPTANCE CERTIFICATE

Note: *The Acceptance Certificate should be issued on NSS headed notepaper and addressed to Contractor*

On behalf of [•], this Certificate confirms that the Acceptance Tests in respect of Milestone [•] have been successfully completed in accordance with the terms of the Agreement between [•] and [•] dated [•] in respect of the Endoscopy Reporting System provided as a Managed Services pursuant to the Agreement between The Common Services Agency and [•] dated [•].

Signed for and on behalf of The Common Services Agency

Date

Signed by

Position

SCHEDULE: PART 6

PRICING AND PAYMENT

This Schedule Part 6 sets out the provisions relating to payment of the Charges, together with the calculation of Service Deductions.

1. IMPLEMENTATION CHARGES

1.1 The Implementation Charges are comprised of the following elements:

Implementation Charges	Cost in pounds sterling (£)
Project Management	[•]
Implementation Support	[•]
Software Configuration	[•]
Software Development	[•]
Training	[•]
Total	[•]

1.2 The Implementation Charges of £[•] (exclusive of VAT) shall be paid in accordance with the following payment plan (the “**Payment Plan**”):

1	£[•]	20 % of Implementation Charges	Issue of Acceptance Certificate in respect of Milestone 1
2	£[•]	20 % of Implementation Charges	Issue of Acceptance Certificate in respect of Milestone 2
3	£[•]	20 % of Implementation Charges	Issue of Acceptance Certificate in respect of Milestone 3
4	£[•]	40 % of Implementation Charges	Issue of Acceptance Certificate in respect of Milestone 4

1.3 The various Milestones referred to in the Payment Plan are set out in Schedule Part 4 (Acceptance Protocol) and further detailed in the Implementation Plan.

2. MANAGED SERVICES FEE

- 2.1 Subject always to the Service Deductions detailed below, the annual Managed Services Fee payable by NSS for the provision of the Managed Services by the Contractor shall be paid in four equal instalments, Quarterly in arrears.
- 2.2 The Managed Services Fee for each Quarter shall be calculated by reference to the Pricing Model by applying actual usage parameters to the “Bidder Managed Services Pricing Plans” and determining the appropriate plan level and any other charges.
- 2.3 NSS shall commence payment of the appropriate amount of the Managed Services Fee within thirty (30) days of receipt of a valid VAT invoice once the relevant Final Acceptance Date has occurred. Such payments shall be due Quarterly in arrears following the relevant Final Acceptance Date.
- 2.4 The Quarterly Managed Services Fee shall be the total amount payable by NSS to the Contractor for provision by the Contractor of the System and the Managed Services during each Quarter (or where such payments are due in respect of other periods during each such other period).

3. CATALOGUE CHARGES

Any Catalogue Items comprising Consultancy Services, hardware, and secondary requirements to be provided by the Contractor to NSS or any Service Recipient further to a Change shall be charged at the following day rates (which day rates are exclusive of VAT):

Catalogue Charges	Cost in pounds sterling
Project Manager	£[•]
Technical Architect	£[•]
Business Analyst	£[•]
Design Development	£[•]
Interface Development	£[•]
Test Manager	£[•]
Test Analyst	£[•]
Training	£[•]
Consultancy	£[•]
Change Management	£[•]
Hardware	Please see section 2 of the Pricing Model for relevant costs
Other (Please specify)	£[•]

Charges are inclusive of all travelling, subsistence and other expenses. Any and all Catalogue Charges comprising Consultancy Services will be payable in arrears. To avoid doubt, there shall be no Catalogue Charges for secondary requirements in respect

of which the Contractor has indicated in its Tender that it is already compliant.

4. INDEXATION

The Managed Services Fee and Catalogue Charges shall be subject to annual review in line with the increase, if any, in the Index on each anniversary of the Agreement.

5. SERVICE DEDUCTIONS

- 5.1 Service Deductions which arise as a result of failures by the Contractor to provide the System in accordance with the Availability Service Level detailed in Schedule Part 3 (Support Services and Service Levels) shall be applied against payments made by NSS.
- 5.2 Service Deductions which arise as a result of failures by the Contractor to provide the Support Services in accordance with the Service Levels shall be applied against payments made by NSS.
- 5.3 Each Service Point shall equate to a Service Deduction of 1% of the Managed Services Fee payable in that Quarter.
- 5.4 The Contractor shall calculate the total Service Deductions due in each Quarter and shall detail such Service Deductions in each Performance Monitoring Report to be issued by the Contractor in accordance with paragraph 11.3 of Schedule Part 3 (Support Services and Service Levels).
- 5.5 The Contractor shall apply the Service Deductions detailed in each relevant Performance Monitoring Report against the amount payable by NSS.
- 5.6 The total Service Deductions payable by the Contractor in each Quarter to NSS shall not exceed thirty five (35%) of the amount of the Managed Services Fee for that Quarter payable by NSS.
- 5.7 Service Deductions shall be applied by the Contractor one Quarter in arrears to the Quarter during which they accrued, save for those accruing during the final Quarter which shall be paid by the Contractor to NSS at the end of the final Quarter and be due as a debt by the Contractor to NSS.

6. INVOICING

- 6.1 The Contractor shall submit an invoice to NSS in respect of the Implementation Charges in accordance with the Payment Plan set out in paragraph 1. above.
- 6.2 Invoices in respect of the Managed Services Fee shall be issued by the Contractor to NSS within five (5) Business Days following the end of the Quarter to which they relate.
- 6.3 The following details shall be disclosed and/or confirmed on all invoices and accompanying statements issued by the Contractor to NSS (save where the details are manifestly not applicable to the invoice concerned):
 - the Milestone to which the invoice relates;
 - any Catalogue Items to which the invoice relates, including the identity of the party receiving such services, be it NSS or a Service Recipient;
 - the date of the invoice and due date for payment;
 - details of the correct contract reference;
 - the Quarterly period or other period(s) to which the relevant Managed Services Fee relate;
 - details of Service Deductions, if applicable, credited against the Managed Services Fee for that Quarter in accordance with the provisions of this

Schedule Part 6;

- total Charges, gross and net of any applicable Service Deductions, for the Quarter, excluding VAT;
- any Charges arising from agreed Changes made pursuant to the Change Control Procedure, priced on the basis of the Charges for Changes set out in paragraph 7. below; and
- total VAT.

6.4 All Contractor invoices and accompanying statements for NSS shall be submitted in both hard copy and electronic format and sent to NSS at the following address:

[•]

and shall be marked for the attention of [•]

6.5 All Contractor invoices shall be in pounds Sterling (GBP).

6.6 The Contractor shall incorporate all reasonable requests from NSS for variations to the type and content of invoices and the information summary attached to any invoices.

7. CHANGES

7.1 The pricing principles set out in this paragraph will apply to any Change that is approved through the Change Control Procedure. Only approved Changes will be paid for.

7.2 With each estimate for a Change, the Contractor shall provide to NSS:

- full disclosure of the comprehensive and detailed figures and records including the assumptions underlying the estimates;
- a copy of the outputs of any resource estimating model and/or techniques that the Contractor used to produce the estimate and/or quotation, including the productivity rates used to calculate the resources;
- the deliverables (if any) that will be produced by the Contractor and the proposed test criteria that NSS will be used for acceptance of the Change;
- the method of calculation of the charges by reference to the Catalogue Charges and other Charges set out herein;
- a supporting financial model for that Change which identifies all the categories of cost.

7.3 In cases where NSS decides to make a one-off payment for a Change, the charge for the Change is expected to be lower than the charge if the Contractor recovered the cost of the Change through revision of any payment in recognition of the reduction in risk and the cost of capital. In such instances NSS reserves the right to ask for the charge according to both payment options.

7.4 Wherever daily rates are provided, daily rates means the cost of one day of labour of a grade of staff with specific and appropriate skills and expertise. One day of labour shall be a minimum of eight (8) hours work. On any day where less than eight (8) hours are worked, the applicable daily rate shall be pro-rated in accordance with the number of hours worked against eight (8) hours for one day of labour. To avoid doubt such daily rates shall be for one day of labour and shall be for days which require to be commenced and completed between 8am – 8pm, failing which, out of hours rates shall apply to any hours outside those times.

7.5 Where the Change requires sub-contracting of services or the acquisition of third party hardware, software or other item, the Contractor shall obtain at least three

quotations or estimates and shall use all reasonable endeavours to minimise cost, disclosing the breakdown of cost of Change to NSS on an open book accounting basis.

ANNEX

Pricing Model

SCHEDULE: PART 7

CHANGE CONTROL PROCEDURE

1. GENERAL PRINCIPLES

- 1.1 Both Parties shall conduct discussions relating to proposed Changes in good faith and neither Party shall act unreasonably in implementing the Change Control Procedure set out in this Schedule Part 7.
- 1.2 Changes may either be initiated by NSS or the Contractor.
- 1.3 Subject to compliance with the provisions of paragraph 2 below, all Changes proposed by NSS must be carried out by the Contractor, save in the circumstances set out in paragraph 1.5.
- 1.4 Neither Party shall unreasonably withhold or delay any consent which is requested pursuant to this Schedule Part 7 in relation to a proposed Change. Until such time as a written Change Authorisation has been signed and issued by NSS in accordance with paragraph 2.6 of this Schedule Part 7, both Parties shall, unless otherwise expressly agreed in writing, continue to perform this Agreement in accordance with the existing terms of the Agreement.
- 1.5 NSS shall not be entitled to require the Contractor to implement any Change (including specifically any Mandatory Change) which:
 - (a) would materially and adversely affect the health and safety of any person;
 - (b) requires the System to operate or the Managed Services to be performed in a way that infringes any law; or
 - (c) the Contractor can demonstrate, to NSS's reasonable satisfaction, is impossible to carry out technically provided that the Contractor may not rely on this exception where:
 - (i) the Specification states that the Contractor must have the technical capacity and flexibility required by the proposed Change; or
 - (ii) such proposed Change could reasonably be undertaken by a supplier of services similar to the Managed Services; or
 - (iii) such proposed Change would be in accordance with Good Industry Practice.
- 1.6 If the Contractor reasonably believes that any Change proposed by a Notice of Change (as defined in paragraph 2.1 below) received from NSS falls within the provisions of paragraph 1.5 of this Schedule Part 7, then it shall inform NSS in writing of its reasons for this belief within seven (7) days of receipt of the relevant Notice of Change and shall not be obliged to submit a CCN in relation to such Notice of Change. If NSS disagrees with the Contractor's conclusion, the matter will be addressed in accordance with the Dispute Resolution Procedure.
- 1.7 To the extent that any Change requires implementation and/or testing, the procedures set out in Clause 5 (installation and Acceptance testing) and Schedule Part 4 (Acceptance Protocol) shall apply (as relevant), unless otherwise specified by NSS.

2. PROCEDURES

- 2.1 NSS may issue a notice proposing a Change (a **"Notice of Change"**) to the Contractor at any time. Any such Notice of Change shall include sufficient details of the proposed Change to enable the Contractor to prepare a change control

note containing the information set out in paragraph 2.3 ("**Change Control Note**" or "**CCN**") in relation to it. The Contractor shall provide the CCN to NSS's Representative within ten (10) Business Days of receipt of the Notice of Change or such shorter period as NSS, acting reasonably, shall specify.

- 2.2 A recommendation for a Change by the Contractor shall be submitted to NSS's Representative as a CCN. The Contractor shall request from NSS any clarification it requires in relation to a CCN, giving NSS reasonable time to respond, and the Contractor shall provide sufficient information to enable NSS to respond to any such request submitted by it to the Contractor.
- 2.3 Each CCN shall contain (but need not be limited to):
- (a) the title of the Change;
 - (b) the originator of the Change and the date of the request or recommendation for the Change;
 - (c) the reason for the Change;
 - (d) full details of the Change, including any specifications;
 - (e) the price, if any, for the Change which shall be calculated in accordance with paragraph 2.10;
 - (f) the impact of the Change on other aspects of the Agreement, including, without limitation:
 - (i) any timetable previously agreed with NSS (including, without limitation, for Acceptance Testing);
 - (ii) the provision of the Managed Services (including performance and resource issues) and the Contractor's ability to meet its obligations under the Agreement;
 - (g) on the provision of services to NSS by any other IT service provider, including any required modification to any parts of NSS's IT infrastructure;
 - (h) the terms of the Agreement, including amendments required to the terms of the Agreement as a result of the Change and a plan for implementing the Change;
 - (i) the payment schedule (which shall be derived in accordance with the mechanism set out in Schedule Part 6 (Pricing and Payment));
 - (j) details of any resources which it intends to use to implement any proposed Change; and
 - (k) such other information as NSS may reasonably request.
- 2.4 For each CCN submitted to NSS's Representative, the Parties shall follow the procedure set out below:
- (a) NSS shall allocate a sequential number to the CCN;
 - (b) NSS shall evaluate the CCN and as appropriate, within ten (10) Business Days of receiving the CCN, either:
 - (i) request further information or further discussions with the Contractor and then either approve or reject any modified CCN;
 - (ii) approve the CCN;
 - (iii) notify the Contractor of rejection of the CCN;
 - (iv) require the Contractor to modify the CCN, in which event the Contractor shall make such modifications within five (5) Business

Days of the request. NSS may then approve or reject a modified CCN and the remaining provisions of this paragraph 2 shall apply.

- 2.5 If the CCN is given initial approval by NSS's representative, two copies of it in its agreed form shall be:
- (a) prepared for signature on behalf of the Contractor and NSS;
 - (b) provided to the Contractor for its signature; and
 - (c) once signed, returned by the Contractor to NSS for signature by NSS's designated signatory.
- 2.6 When the CCN signed by the Contractor under paragraph 2.5 of this Schedule Part 7 is signed on behalf of NSS in accordance with paragraph 5 of this Schedule Part 7, this shall constitute a Change Authorisation and shall constitute a variation to this Agreement.
- 2.7 Any dispute in relation to any Change or any CCN or to the application of, or compliance with, this Change Control Procedure (including whether the Change is correctly classified as an Urgent Change) shall be resolved in accordance with the Dispute Resolution Procedure.
- 2.8 If the Contractor does not intend to use its own resources to implement any proposed Change it shall comply with Good Industry Practice with the objective of ensuring that it obtains best value for money (taking into account all relevant circumstances including, in particular, the requirement that NSS should not be worse off as a result of the implementation of the Change) when procuring any work, services, supplies, materials or equipment required in relation to the Change.
- 2.9 The principles referred to in Schedule Part 6 (Pricing and Payment) shall apply to the costing of any Changes and at all times best value principles shall apply.
- 2.10 Any Changes required as a result of, or in connection with, an error or default by the Contractor shall be paid for by the Contractor.
- 2.11 Each Party shall bear its own costs in relation to the preparation and agreement of each Notice of Change and CCN.

3. URGENT CHANGES

- 3.1 The following types of Change are Urgent Changes:
- (a) in the case of NSS:
 - (i) changes required as a result of a ministerial decision; and
 - (ii) other Changes which in the reasonable opinion of NSS need to be dealt with urgently; and
 - (b) in the case of the Contractor, Changes which in the reasonable opinion of the Contractor need to be dealt with urgently.
- 3.2 Where either Party wishes to propose an Urgent Change, it shall include in the relevant Notice of Change or CCN (as the case may be) a statement that the Change is an Urgent Change (and a brief statement of the grounds for classifying it as an Urgent Change).
- 3.3 In the case of an Urgent Change requested pursuant to a Notice of Change, NSS may specify that it wishes the Contractor to produce a CCN within two (2) Business Days unless otherwise agreed.
- 3.4 Any queries regarding the Urgent Change shall be discussed and agreed between the Parties and incorporated into the CCN.

3.5 The Contractor shall implement Urgent Changes in accordance with the relevant Notice of Change and/or CCN as soon as reasonably practicable.

4. MANDATORY CHANGES

4.1 Upon NSS becoming aware of the occurrence of an event requiring a Mandatory Change, NSS may issue a Notice of Change in respect of such Mandatory Change. If NSS does not issue a Notice of Change for a Mandatory Change, the Contractor shall also be entitled to initiate a CCN for such Mandatory Change.

4.2 The following types of Changes are Mandatory Changes:

- (a) where the Change is necessary to enable the System or the Managed Services to be in compliance with any Change in Law;
- (b) Changes required to ensure NSS can comply with the NHS Scotland Requirements, as such may be updated, varied or amended from time to time; and
- (c) where any Change is necessary for the System to operate, or the Managed Services to be performed, in accordance with the Specification and System Performance Levels or the Service Levels (as the case may be).

4.3 Upon receipt of a Notice of Change in respect of a Mandatory Change, the Contractor shall, within five (5) Business Days of such receipt (or such other timescale as may be agreed between the Parties having due regard to the operational urgency of the Mandatory Change) provide the relevant CCN to NSS.

5. FORM OF CHANGE AUTHORISATIONS

Unless otherwise agreed by the NSS Representative in writing, the Contractor may not proceed with any Change until the relevant Change Authorisation, which shall have the relevant CCN attached to it, has been issued and executed by NSS in accordance with the prescribed limits and authorisations set out in NSS' Change Authorisation and sign off procedure, as notified to the Contractor from time to time.

SCHEDULE: PART 8

STANDARDS AND SECURITY REQUIREMENTS

1. GENERAL

- 1.1 The Contractor shall, at all times throughout the Contract Duration, comply with:
- 1.1.1 All standards, legislation and/or guidelines mentioned in the NHS Requirements, other than to the extent the Tender makes it clear that the Contractor will not comply with the relevant standards, legislation and/or guidelines. Where the Tender states that the Contractor will only partly comply with the relevant standards, legislation and/or guidelines then the Contractor will comply with the parts of those standards, legislation and/or guidelines that the Tender states (or implies) will be complied with;
 - 1.1.2 All applicable Laws; and
 - 1.1.3 PRINCE 2.

2. NHS LOCATIONS

- 2.1 At NSS' or a Service Recipient's request, the Contractor shall provide a list of the names and business addresses of all of the Contractor Personnel who may require admission to any Location in connection with the Agreement, specifying the capacities in which they are concerned with the Agreement and giving such other particulars as NSS or the relevant Service Recipient may reasonably request.
- 2.2 The operator of a Location shall be responsible for maintaining the security of that Location in accordance with its standard security requirements. The Contractor shall comply with all reasonable security requirements of the operators of the Locations.
- 2.3 The Contractor shall ensure that the Contractor Personnel engaged within any Location shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or within the boundaries of the relevant Location.
- 2.4 The Contractor shall ensure that Contractor Personnel on/in any Location shall carry and display photo ID badge on clothing at all times in the form required by the operator of the Location (acting reasonably) to facilitate clear identification.
- 2.5 The Contractor will take all such steps as NSS or any Service Recipient may from time to time in writing reasonably request to assist the operator of a Location to comply with its obligations under the Health and Safety at Work Act 1974 and related legislation and all other relevant legislation relating to health and safety issues.
- 2.6 The Contractor shall ensure that Contractor Personnel engaged in the performance of the Agreement has been pre-employment screened in accordance with the policies and procedures set out in the Tender.

3. CYBER SECURITY

3.1 Definitions

The defined terms used in this paragraph 3 of this Schedule Part 8 shall have the following meanings:

“Cyber Implementation Plan” means the cyber implementation plan set out in Section B (*Cyber Implementation Plan*) of the Annex to this Schedule Part 8;

“Cyber Security Incident” means any thing, event, act or omission which gives, or may give, rise to:

- (i) unauthorised access to any information system, data or electronic communications network (including breach of an applicable security policy);
- (ii) reduced integrity of an information system, data or electronic communications network;
- (iii) unauthorised use of any information system or electronic communications network for the processing (including storing) of data;
- (iv) disruption or change of the operation (including, but not limited to, takeover of control, malicious disruption and/or denial of service) of an information system or electronic communications network;
- (v) unauthorised changes to firmware, software or hardware;
- (vi) unauthorised destruction, damage, deletion or alteration of data residing in an information system or electronic communications network;
- (vii) removal or limiting the availability of, or possibility to use, data residing in an information system or electronic communications network;
- (viii) the appropriation, publication, dissemination or any other use of data by persons unauthorised to do so; or
- (ix) a breach of the Computer Misuse Act 1990, the Network and Information Systems Regulations 2018, the Data Protection Legislation, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Communications Act 2003, the Official Secrets Act 1911 to 1989, or any other applicable legal requirements in connection with cybersecurity and/or privacy,

in connection with the Services and/or this Agreement;

“Cyber Security Requirements” means NSS’ requirements in connection with cyber security as set out in Section A (Cyber Security Requirements) and Section B (Cyber Implementation Plan) of the Annex to this Schedule Part 8 and the Specification; and

“Good Industry Practice” in relation to any undertaking and any circumstances, means the exercise of skill, diligence, prudence, foresight and judgment and the making of any expenditure that would reasonably be expected from a skilled person in the same type of undertaking under the same or similar circumstances.

3.2 Contractor’s Warranty and Indemnity

3.2.1 The Contractor warrants and undertakes that it shall meet and comply with the Cyber Security Requirements in connection with the provision of the Services and this Agreement (including in respect of any certification or accreditation).

3.2.2 The Contractor shall on demand indemnify NSS and the Service Recipients and keep NSS and the Service Recipients indemnified fully against all losses, liabilities, damages, costs and expenses (including legal and other professional fees) which may arise out of, or in consequence of, a breach of the warranty in paragraph 3.2.1 above by the Contractor or the Contractor Personnel.

3.2.3 This paragraph 3.2 shall survive the expiry or termination of this Agreement.

3.3 Contractor’s Obligations

3.3.1 The Contractor shall implement and maintain all security measures:

- (a) as may be required under applicable Law (including but not limited to the Network and Information Systems Regulations 2018);

- (b) to enable it to discharge its obligations under this Schedule Part 8; and
 - (c) to ensure there are no Cyber Security Incidents,
- in all cases to NSS' reasonable satisfaction and in accordance with Good Industry Practice.

3.3.2 The Contractor shall notify NSS promptly of any changes in its ability to meet the Cyber Security Requirements, including any changes to certifications and accreditations.

3.3.3 The Contractor shall assist NSS and the Service Recipients to comply with any applicable cyber security requirements, codes, policies and practices in connection with the Services and/or this Agreement.

3.4 **Cyber Security Incidents**

3.4.1 The Contractor shall notify NSS immediately as soon as it knows or believes that a Cyber Security Incident has or may have taken place and shall provide full details of the incident and any mitigation measures already taken and intended to be taken by it and (where applicable) any mitigation measures recommended by it to be taken by NSS and/or the Service Recipients. Where such initial notification is not in writing, then the Contractor shall provide NSS with a written notification setting out the details required under this paragraph 3.4.1 promptly and in any case within twelve (12) hours from the initial notification.

3.4.2 Following a Cyber Security Incident, the Contractor shall:

- (a) use its best endeavours to mitigate the impact of the Cyber Security Incident;
- (b) investigate the Cyber Security Incident completely and promptly, and shall keep NSS fully informed of the progress and findings of its investigation;
- (c) where required to do so, inform any applicable regulator of the Cyber Security Incident; and
- (d) take any action deemed necessary by NSS in the circumstances, including complying with any additional security measures deemed appropriate by NSS.

3.4.3 The Contractor shall perform its obligations under this paragraph 3.4 at no additional charge to NSS or the Service Recipients, unless it can show that the Cyber Security Incident was caused solely by an act or omission of NSS or any Service Recipient.

3.5 **Information and Audit**

3.5.1 Promptly upon request, the Contractor shall provide to NSS such information and records in connection with the Contractor's obligations under this Schedule Part 8 as NSS may request.

3.5.2 The Contractor agrees (and procures that its sub-contractors agree) that NSS, its agents and its representatives may conduct such audits as are considered necessary by NSS, acting reasonably, including for the following purposes:

- (a) to ascertain the impact of any Cyber Security Incident;
- (b) to review and verify the integrity, confidentiality and security of any data relating to this Agreement; or

- (c) to review the Contractor's and/or any sub-contractor's compliance with its obligations under this Schedule Part 8.
- 3.5.3 The Contractor shall (and shall ensure that any sub-contractor shall) provide NSS, its agents and representatives with all reasonable co-operation and assistance in relation to audits, including but not limited to:
- (a) all data and/or records requested by NSS;
 - (b) access to any relevant premises and to any equipment owned/controlled by the Contractor, any associated or group company and any sub-contractor and, where such premises and/or equipment are outside the control of the Contractor, shall secure sufficient rights of access for NSS, its agents and representatives as are necessary to allow audits to take place; and
 - (c) access to any relevant individuals.
- 3.5.4 NSS shall use its reasonable endeavours to:
- (a) provide at least 10 days' notice of its intention to conduct an audit (but is not obliged to do so); and
 - (b) ensure that the conduct of each audit does not unreasonably disrupt the Contractor and/or sub-contractor or delay the performance of this Agreement.
- 3.5.5 The parties shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this paragraph 3.5 unless an audit identifies a breach of the terms of this Schedule Part 8 by the Contractor and/or sub-contractor, in which case the Contractor shall reimburse NSS on demand for all NSS' reasonable costs and expenses incurred in conducting the audit.
- 3.6 Breach Of Cyber Security Requirements**
- 3.6.1 A breach of this Schedule Part 8 by the Contractor shall be considered to be a material breach of this Agreement which shall entitle NSS to terminate this Agreement immediately (either in whole or in part) by serving written notice to the Contractor to that effect.
- 3.6.2 If the Contractor fails to comply with the provisions of this Schedule Part 8, NSS may take any action it considers appropriate or necessary (and the Contractor shall comply with NSS' requests in this respect), including:
- (a) suspending the whole or any part of the Contractor's obligations under this Agreement;
 - (b) requiring that specific sub-contractors connected with such breach be removed from their involvement with the Services and this Agreement and cease to have any access to NHS Confidential Information and NHS Data;
 - (c) requesting the Contractor return and/or arrange the evidenced secure and permanent destruction of NHS Confidential Information and NHS Data; and
 - (d) implementing additional or alternative measures, both technical and organisational, to protect and secure NHS Confidential Information and NHS Data.

4. FRAMEWORKS, POLICIES AND LINKS

The Contractor is required to comply with the Cyber Resilience Framework available at: <https://www.gov.scot/publications/cyber-resilience-framework/>

The following are the policies relevant to the handling of NHS Data and health records:

Clinical Document Indexing Standards:

<https://www.digihealthcare.scot/resources/? sf s=cdi>

ICT Infrastructure Standards:

<https://www.digihealthcare.scot/app/uploads/2022/03/Infrastructure-Standard-2021-v1.3-1.pdf>

NHSScotland Code of Practice on Protecting Patient Confidentiality:

<https://www.nhsinform.scot/care-support-and-rights/health-rights/confidentiality-and-data-protection/privacy-and-confidentiality-when-using-the-nhs>

NHSScotland Mobile Data Protection Standard- NHS CEL 25 (2012):

http://www.sehd.scot.nhs.uk/mels/CEL2012_25.pdf

Scottish Government Records Management Health and Social Care Code of Practice (Scotland) 2020:

<https://www.informationgovernance.scot.nhs.uk/wp-content/uploads/2020/06/SG-HSC-Scotland-Records-Management-Code-of-Practice-2020-v20200602.pdf>

NHSScotland Safeguarding the Confidentiality of Personal Data Processed by Third Party Agreements- NHS CEL (2011) 25:

http://www.sehd.scot.nhs.uk/mels/CEL2011_25.pdf

NHSS Caldicott Guardians: Principles into Practice:

<https://www.informationgovernance.scot.nhs.uk/wp-content/uploads/2016/03/CaldicottGuardianManualScotland-June2012v2.pdf>

HMG Baseline Personnel Security Standard:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/714002/HMG_Baseline_Personnel_Security_Standard_-_May_2018.pdf

5. ITIL STANDARDS

5.1 The Contractor shall, and shall procure that each sub-contractor shall (if applicable), follow the guidelines contained in the Office of Government Commerce's IT Infrastructure Library ("**ITIL guidelines**") for delivering the Managed Services.

5.2 Specifically, the Contractor shall, and shall procure that each sub-contractor shall (if applicable), ensure that its service support processes include:

- configuration management
- call centre/helpdesk
- security incident management
- problem management
- change management
- release management

and the Contractor's service delivery processes shall include:

- Service Level management
- financial management
- capacity management
- Availability management
- Managed Services continuity management

- security management
- 5.3 The Contractor shall, and on behalf of each sub-contractor (if applicable), on request by NSS or any Service Recipient, provide NSS or the relevant Service Recipient with documents showing how the ITIL guidelines have been implemented and are being followed in the provision of the Managed Services.
- 5.4 The Contractor shall, and on behalf of a sub-contractors (if applicable), on request from NSS or any Service Recipient allow NSS, the relevant Service Recipient or its representatives to audit any or all of its processes and IT service management functions to ensure that the ITIL guidelines are being implemented and followed in the delivery of the Managed Services.
- 5.5 Notwithstanding any other term of the Agreement, NSS and any Service Recipient shall, subject to paragraph 5.6 have the right to perform on-going ad-hoc audits of any or all of the processes to ensure that the ITIL guidelines are being used to deliver the Managed Services.
- 5.6 NSS, the Service Recipients or its representatives shall be permitted to carry out no more than two (2) ad-hoc audits in any twelve (12) month period, provided that NSS or a Service Recipient shall be permitted to conduct more quality audits where it has significant concerns as to whether the ITIL guidelines are being followed in the delivery of the Managed Services.

ANNEX

The cyber security requirements applicable to this Agreement are set out in this Annex. Section A (*Cyber Security Requirements*) includes NSS' requirements in connection with cyber security and Section B (*Cyber Implementation Plan*) sets out further details on how the Contractor will meet such requirements.

Section A. Cyber Security Requirements

Cyber risk profile	<ul style="list-style-type: none">• Medium
Certification requested for assurance purposes	<ul style="list-style-type: none">• Cyber Essentials or equivalent
NSS' risk management approach	<ul style="list-style-type: none">• Cyber Implementation Plans accepted

The Contractor shall meet the following requirements:

[Note to bidders: the full "SAQ Responses" section of the successful bidder's SAQ Report shall be inserted here.]

Section B. Cyber Implementation Plan

The Contractor shall follow the agreed Cyber Implementation Plan to meet the requirements of Section A (*Cyber Security Requirements*) by no later than the date(s) set out in the Cyber Implementation Plan. The Parties shall review the Contractor's progress on the Cyber Implementation Plan regularly every 2 weeks. If the Contractor fails to meet the commitments set out in the Cyber Implementation Plan, this shall be considered to be a material breach of this Agreement for the purposes of paragraph 3.6 (Breach of Cyber Security Requirements) of this Schedule Part 8.

[Note to bidders: the agreed Cyber Implementation Plan shall be inserted here.]

SCHEDULE PART 9

CONTRACT AND SERVICE MANAGEMENT AND REPORTING

1. OVERVIEW

The Contractor will provide, at a frequency to be agreed between the Parties, but no less than once per month, progress reports detailing Milestones achieved and proposals to ensure adherence to the Implementation Plan, together with details of any failure to meet Milestones and proposed remedial action (“**Progress Reports**”) and Performance Monitoring Reports listing the Incidents which have been Resolved during the relevant reporting period, and the Incidents currently outstanding. The Performance Monitoring Reports must include the date and time of any and all Calls (as defined in Paragraph 5.1 of Schedule Part 3 (Support Services and Service Levels), the name of the user, the unique report number, NSS Incident number (if any), and the current status of the Incident (for example, open or Resolved).

2. SCOPE

- 2.1 The Parties recognise that successful provision of the Managed Services by the Contractor will not be possible without frequent information exchange and good co-operation between the Parties.
- 2.2 This Schedule Part 9 (together with the Contract Management Plan agreed pursuant to it) sets out the operating framework for the management of the relationship among NSS, the Service Recipients and the Contractor. It outlines the governance framework and guidelines for the relationship, the roles and responsibilities of each of the parties to maintain an effective working relationship and the type, content and frequency of meetings between the parties and, in particular, NSS’ requirements in respect of:
 - (a) the contract and service management regime; and
 - (b) the Contractor’s reporting obligations.

3. DISCLAIMER

- 3.1 Whilst NSS wishes at all times to have good visibility of performance and the delivery of this Agreement, and may offer their views on the information supplied by the Contractor, it remains the responsibility of the Contractor to perform its obligations in accordance with this Agreement.
- 3.2 NSS shall not, and no Service Recipient shall, accept any responsibility or liability for any delay in the provision, cost, or reduction in the standard or quality, of the Managed Services alleged to arise from any communication made under the procedures established in this Schedule Part 9

4. CONTRACT AND SERVICE MANAGEMENT

- 4.1 Within twenty (20) Business Days of the Effective Date the Contractor shall provide NSS with a plan (the “**Contract Management Plan**”) containing at least the information set out in paragraph 4.2 below and set out in a format acceptable to NSS.
- 4.2 The Contract Management Plan shall address, amongst other things, the following:
 - (a) project management and governance arrangements in respect of the Managed Services and roll out of the System pursuant to the Implementation Plans including (but not limited to):

- (i) attendance by the Contractor as required by notice from NSS, at meetings of the User Group;
- (ii) attendance by the Contractor, on a monthly basis prior to Final Acceptance and on a quarterly basis thereafter, or as otherwise required by notice from NSS, at meetings covered by NSS to discuss the Contractor's performance of its obligations hereunder, and improvements which could be made thereto;
- (iii) descriptions of the roles and responsibilities of Contractor personnel engaged in provision of the Managed Services;
- (iv) monitoring and reporting structure, format and timing or in the form required by NSS; and
- (v) risk management process and procedures.

4.3 NSS shall notify the Contractor within ten (10) days of NSS' receipt of the Contract Management Plan of NSS' acceptance or rejection of such Contract Management Plan. If the draft Contract Management Plan is:

- (a) rejected by NSS, NSS shall in such notice identify the changes it requires to be made to the Contract Management Plan and provide a reasonable explanation as to why it wishes such changes to be made. The Contractor shall amend the Contract Management Plan so as to incorporate the changes set out in the rejection notice and submit the amended Contract Management Plan to NSS for approval within five (5) days of the date of NSS' rejection notice. If NSS does not approve the amended Contract Management Plan following its resubmission to NSS in accordance with this paragraph 4.3 (a) the matter shall be resolved in accordance with the Dispute Resolution Procedure; or
- (b) approved by NSS it shall be adopted immediately and shall become the Contract Management Plan.

The parties shall use all reasonable endeavours to ensure that the approval process with respect to the Contract Management Plan takes as little time as possible and in any event no longer than fifteen (15) days (or such other period as the parties may agree in writing) from the date of its first submission to NSS.

4.4 Following approval of the Contract Management Plan in accordance with paragraph 4.3, the Contractor shall maintain and update the Contract Management Plan on a quarterly basis as may be necessary to reflect the then stage of performance of this Agreement. Save for the type of amendments identified and notified by NSS to the Contractor in writing as not requiring approval, the Contractor shall obtain the approval of NSS in relation to any updates to the Contract Management Plan. Until such time as the updated Contract Management Plan (as appropriate) is approved by NSS, the relevant Contract Management Plan then existing (that is to say prior to the update) shall apply.

4.5 Subject to paragraph 4.3 above, each of NSS and the Contractor shall have the right to propose changes to the Contract Management Plan in accordance with the Change Control Procedure.

5. CONTRACT MANAGEMENT BOARD

5.1 NSS, the Service Recipients and the Contractor shall establish and maintain throughout the Contract Duration a contract management board (the "**Contract Management Board**") consisting of two (2) representatives of NSS (one of

whom shall be appointed Chairman), at least two (2) Service Recipient representatives and two (2) representatives of the Contractor, which shall have the functions described below.

- 5.2 The functions of the Contract Management Board shall be:
- (a) to provide a means for the joint review of issues as referred to it by the parties;
 - (b) to provide a forum for a high level discussion of payments relating to the Agreement;
 - (c) to provide a forum for joint strategic discussion, considering actual and anticipated changes in the market and business of NSS or any Service Recipient and possible variations of this Agreement to reflect those changes or for the more efficient performance of this Agreement.
- 5.3 The role of the Contract Management Board is to make recommendations to the parties, which they may accept or reject at their complete discretion. The Contract Management Board may agree to vary any of the provisions of this Agreement but any such changes shall only be binding on the Parties once effected through the Change Control Procedure. Neither Party shall rely on any act or omission of the Contract Management Board, or any member of the Contract Management Board acting in that capacity, so as to give rise to any waiver or personal bar in respect of any right, benefit or obligation of either Party.
- 5.4 The members of the Contract Management Board may adopt such procedures and practices for the conduct of the activities of the Contract Management Board as they consider appropriate from time to time.
- 5.5 The Contract Management Board shall meet at least once each Quarter (unless otherwise agreed by its members) and from time to time as necessary and as requested by NSS.

6. MONITORING/REPORTING

- 6.1 The Contractor shall provide the following reports to NSS and the Service Recipients (this list is not intended to be exhaustive):
- (a) Progress Reports on a monthly basis or if required by NSS a weekly basis in the event that a Milestone is not met or it appears likely that a Milestone will not be met;
 - (b) monthly change control reports, which will include an analysis of the Change requests raised and their status (both in terms of agreement and execution);
 - (c) Performance Monitoring Reports and exception reports (as required by Schedule Part 3 (Support Services and Service Levels); and
 - (d) reports in relation to the conduct of Acceptance Testing in accordance with Schedule Part 4 (Acceptance Protocol); and
 - (e) any financial information required to be provided to NSS pursuant to Schedule Part 6 (Pricing and Payment).
- 6.2 NSS and/or any Service Recipient shall also have the right to request the Contractor to provide any other information reasonably required by NSS or the relevant Service Recipient from time to time.

7. FUNCTIONS AND POWERS OF THE NSS REPRESENTATIVE

- 7.1 Within twenty (20) Business Days of the Effective Date, NSS shall provide to

the Contractor a list identifying individuals authorised by the NSS Representative to exercise its functions and powers under this Agreement.

- 7.2 NSS may at any time vary the individual and/or the individual's functions and, subject to the Contractor's agreement (such agreement not to be unreasonably withheld or delayed) powers set out in the list to be provided under paragraph 7.1 above.

8. FUNCTIONS AND POWERS OF THE CONTRACTOR REPRESENTATIVE

- 8.1 Within twenty (20) Business Days of the Effective Date, the Contractor shall provide to NSS a list identifying individuals authorised by the Contractor Representative to exercise its functions and powers under this Agreement.

- 8.2 The Contractor may at any time vary the individual and/or the individual's functions and, subject to NSS' agreement (such agreement not to be unreasonably withheld or delayed) powers set out in the list to be provided under paragraph 8.1 above.

SCHEDULE: PART 10

DISPUTE RESOLUTION PROCEDURE

1. APPLICATION

- 1.1 Any Dispute which is to be resolved in accordance with the Dispute Resolution Procedure will be resolved in accordance with the following process.
- 1.2 Nothing in this Dispute Resolution Procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

2. INITIAL PROCESS

- 2.1 Any Dispute between the Parties which is to be resolved by the Dispute Resolution Procedure shall be referred by notice in writing by one Party to the other and the Party making the referral may call a meeting of NSS Representative and Contractor Representative who shall meet within 10 (ten) Business Days or such longer period as agreed to seek to resolve the Dispute.
- 2.2 If the said meeting of NSS Representative and Contractor Representative fails to reach agreement on the Dispute or is not held within 10 (ten) Business Days (or such longer period as agreed between the Parties) either Party may refer the Dispute to NSS's Chief Executive (or his nominee) and the Contractor's **[insert title]** (or equivalent replacement) or his nominee ("**Management**") by service of a Management referral notice ("**Management Referral Notice**").

3. MANAGEMENT REFERRAL

Within 10 (ten) Business Days of service of the Management Referral Notice the Management shall meet at a mutually agreed time and place or failing agreement within 2 (two) Business Days of the service of the Management Referral Notice at a time and place specified by the Party serving notice provided such place is at a neutral location (or other agreed location) within Scotland and that the meeting is to take place within normal business hours. Both Parties may bring a third party representative to the meeting.

4. EXPERT DETERMINATION

If the Dispute is not resolved between the Parties through the procedures set out in paragraphs 1 to 3 above then either Party may by notice ("**Dispute Notice**") refer the Dispute to an expert selected by agreement of the Parties or failing agreement in ten (10) days, by the President of the Law Society of Scotland.

5. ROLE OF THE EXPERT

- 5.1 Decisions of the Expert shall be binding until the dispute is finally determined by legal proceedings, or by agreement between the Parties.
- 5.2 The Expert shall act fairly and impartially, but shall not be obliged or empowered to act as though he were an arbiter.
- 5.3 The Expert shall conduct himself with a view of fairness and impartiality, giving each Party a reasonable opportunity, in light of the timetable, of putting his case and dealing with that of his opponents.
- 5.4 The Expert shall reach a decision within twenty eight (28) days of referral or such longer period as is agreed by the Parties after the dispute has been referred to him. The Expert shall be entitled to extend the said period of twenty eight (28) days by up to fourteen (14) days with the consent of the Party by whom the dispute was referred.

- 5.5 The Parties shall be jointly responsible for the Expert's fees and expenses including those of any specialist consultant appointed by him. Subject always to paragraph 5.6, the Expert shall have the discretion to make directions with regard to those fees and expenses. If no such directions are made, the Parties shall bear such fees and expenses in equal shares, and if any Party has paid more than such equal share, that Party shall be entitled to contribution from the other Party accordingly.
- 5.6 Where a Dispute relating to any adjustment to any element of the Charges is referred to the Expert the Parties shall bear their own and shall each be responsible for a one half share of the Expert's fees and expenses.

6. COURT APPLICATION

No Party shall, save in case of bad faith on the part of the Expert, make any application to the courts whatsoever in relation to the conduct of the resolution of the Dispute or the decision of the Expert until such time as the Expert has made his decision, or refused to make a decision, and until the Party making the application has complied with any such decision.

7. IMPLEMENTATION OF DECISIONS

- 7.1 Every decision of the Expert shall be implemented without delay. The Parties shall be entitled to such reliefs and remedies as are set out in the decision, and shall be entitled to summary enforcement thereof, regardless of whether such decision is or is to be the subject of any challenge or review. No Party shall be entitled to raise any right of set-off counterclaim or abatement in connection with any enforcement proceedings.
- 7.2 No Party shall make any application whatsoever to a competent court in relation to the conduct of the resolution of a Dispute or the decision of the Expert after a period of ninety (90) days has passed from the date of the decision of the Expert.

SCHEDULE: PART 11

NHS RESPONSIBILITIES

1. NSS and each Service Recipient (as appropriate) shall endeavour to ensure that the provider(s) of each Legacy System and each Associated System co-operates with the Contractor and provides such timely assistance as may be reasonably required in order that the Contractor can fulfil its responsibilities under the Agreement.
2. NSS and each Service Recipient (as appropriate) shall provide the Contractor with such timely assistance and co-operation as may be reasonably required during the implementation phase, including, but not limited to, that required in respect of Acceptance Testing.
3. Provision of sufficient suitably qualified and experienced NSS or Service Recipient (as appropriate) staff to undertake Acceptance Tests as and when reasonably requested in advance by the Contractor.
4. Access to NSS' or Service Recipient's (as appropriate) appointed system specialist(s) during the implementation phase to provide the opportunity for early training and knowledge transfer in respect of both the Legacy System and the System.

SCHEDULE: PART 12

PROHIBITED ACTS

Prohibited Act

1. The term “**Prohibited Act**” means:
 - (a) offering, giving or agreeing to give to NSS or any other public body or to any person employed by or on behalf of NSS or any other public body any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other agreement with NSS or any other public body; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other agreement with NSS or any other public body;
 - (b) entering into this Agreement or any other agreement with NSS or any other public body in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant agreement is entered into particulars of any such commission and of the terms and conditions of any such agreement for the payment of such commission have been disclosed in writing to NSS;
 - (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under any Law creating offences in respect of fraudulent acts; or
 - (iii) at common law, in respect of fraudulent acts in relation to this Agreement or any other agreement with NSS or any other public body; ordefrauding or attempting to defraud or conspiring to defraud NSS or any other public body.

Warranty

2. The Contractor warrants that in entering into this Agreement it has not committed any Prohibited Act.

Remedies

3. If the Contractor (or anyone employed by or acting on behalf of them) commits any Prohibited Act, then NSS shall be entitled to act in accordance with paragraphs (a) to (c) below:
 - (a) if a Prohibited Act is committed by the Contractor or by an employee not acting independently of the Contractor, then NSS may terminate the Agreement with immediate effect by giving written notice to the Contractor, and no compensation or payment shall be due to the Contractor in respect of such termination;
 - (b) if the Prohibited Act is committed by an employee of the Contractor or a sub-contractor or acting independently of the Contractor, then NSS may give written notice to the Contractor of termination and the Agreement will terminate, unless within twenty (20) Working Days of receipt of such notice the Contractor

terminates the employee's employment or sub-contractors agreement (as the case may be) and (if necessary) procures the performance of the relevant part of the Managed Services by another person;

- (c) any notice of termination under this Schedule Part 12 shall specify:
 - (i) the nature of the Prohibited Act;
 - (ii) the identity of the party who NSS believes has committed the Prohibited Act; and
 - (iii) the date on which the Agreement will terminate in accordance with the applicable provisions of this Schedule Part 12.

- 4. Without prejudice to its other rights or remedies under this Clause, NSS shall be entitled to recover from the Contractor:
 - (a) the amount or value of any such gift, consideration or commission; and
 - (b) any other loss sustained in consequence of any breach of this Schedule Part 12.

Permitted Payments

- 5. Nothing contained in this Schedule Part 12 shall prevent the Contractor from paying any proper commission or bonus to its employees within the agreed terms of their employment.

Notification

- 6. The Contractor shall notify NSS on the occurrence (and details) of any Prohibited Act promptly on the Contractor becoming aware of its occurrence.

Replacement of Sub-Contractor

- 7. Where the Contractor is required to replace any sub-contractor pursuant to this Schedule Part 12, the provisions of Clause 22 shall apply.

SCHEDULE: PART 13

PROCESSING INFORMATION

1. The Contractor shall comply with any further written instructions with respect to Processing issued by NSS.
2. Any such further instructions shall be incorporated into this Schedule Part 13.

Description	Details relevant to the Purpose
Subject matter of the Processing	<i>The Processing relates to the configuration and operation of a National Endoscopy Reporting System</i>
Duration of the Processing	From the Effective Date up to and including the end of the Contract Duration.
Nature and purpose of the Processing	The Purpose of the Processing is the performance of the obligations imposed on the Contractor pursuant to or under this Agreement, including, but not limited to, performance of the Managed Services. In summary, this is to perform analysis and clinical reporting for patient care all as more particularly described in the Specification.
Type of Personal Data	Patient information, including name, address, date of birth, CHI number, telephone number, email address, test results and reports including images.
Categories of Data Subject	Staff (including volunteers, agents, and temporary workers) and patients

<p>Plan for return and destruction of the Personal Data once the Processing is complete UNLESS requirement under Law to preserve that type of Personal Data.</p>	<p>As per Clause 16.25 of the Agreement.</p>
<p>Minimum Requirements</p>	<p>Any and all technical and organisation measures or requirements detailed in Schedule Part 8 (Standard and Security Requirements), and/or in the Specification.</p>
<p>Additional Information</p>	<p><i>[E.g. details of any approved Sub-processors; details of any approved transfers outside the United Kingdom, other relevant information, etc.]</i></p>