

DATA PROCESSING AGREEMENT

BETWEEN

[•]

AND

[•]

File Ref: [•]

Notes for completion (Please delete these notes before issuing this Data Processing Agreement to any Contractor):

1. This GDPR compliant Data Processing Agreement (**GDPR DPA**) is based on the style clauses issued by the Crown Commercial Service pursuant to Procurement Policy Note 03/17, but those style clauses have been tailored: (i) for NHS Scotland (**NHSS**), such that the importance of proper data handling, and thus compliance with GDPR, in the context of patient care is emphasised; and (ii) to reflect industry approach to GDPR compliance thus far. This GDPR DPA can be negotiated, to an extent, but it is recommended that where amendments are proposed, legal advice is sought from Central Legal Office (**CLO**) as to whether such amendments are acceptable.
2. Please note that this GDPR DPA is **NOT** a substitute for a Services Agreement. CLO would always recommend that the Board's style services agreement or terms and conditions for purchasing services (whichever is appropriate and both of which include GDPR-compliant data protection clauses) is/are used on all occasions where the Board is procuring services. However, where that does not happen and the services being procured involve any element of processing personal data, this standalone GDPR DPA could be used so that at least the processing activities are covered by an appropriate GDPR-compliant agreement. Please note, however, that this GDPR DPA is not a substitute for the Board's style services agreement and/or terms and conditions for purchasing services and it does not contain any provisions regarding price, general liability or performance standards.
3. This GDPR DPA could also be used where services are provided to the Board on the service provider's terms and conditions. Again, CLO would always recommend that, where possible, the Board's style services agreement and/or terms and conditions for purchasing services (both of which include GDPR-compliant data protection clauses) are used in preference to those of the service provider's. However, on those occasions where the Board agrees to procure services on the basis of a service provider's terms and conditions, the Board may want to require the service provider to sign up to this GDPR DPA. In order for this GDPR DPA to be properly incorporated into the agreement between the Board and the service provider, the Board would need to ensure that the service provider's terms and conditions make reference to the GDPR DPA. CLO has provided style "Entire Agreement" wording and this should be used to amend the service provider's terms and conditions. The wording makes reference to a Data Processing Agreement and confirms that in the event of any conflict between the service provider's terms and the terms of the Data Processing Agreement, the terms of the Data Processing Agreement would prevail. The Board would then also need to ensure that this GDPR DPA is entered into as between the Board and the service provider, as the "Entire Agreement" wording on its own would be meaningless.
4. Where this GDPR DPA is to sit alongside the service provider's terms and conditions, this GDPR DPA assumes that: (a) the relevant NHSS Board has been defined in those terms and conditions as the "Board"; and (b) the party with whom the relevant NHSS Board is contracting has been defined in the relevant terms and conditions as the "Contractor". If alternative definitions have been used in the service provider's terms and conditions, e.g. in the case of the NHSS Board – the "Customer", the "Health Board" or the "Authority" or in the case of the third party contractor – the "Company", the "Service Provider" or the "Supplier", this GDPR DPA should be amended accordingly so as that it sits alongside the service provider's terms and conditions.
5. In relation to the definition of "Indirect Losses", it is important that loss of data **not** be included as a form of indirect loss.
6. In relation to international transfers of personal data, please note that Clauses 8.1, 8.2 and 8.3 have been drafted on the basis that the relevant NHSS Board's preferred position is that all processing of personal data be carried out in the United Kingdom, either for technical reasons or to ensure ease of access to the personal data in cases where physical retrieval of such personal data from the Contractor may be required. Please note that if the relevant NHSS Board is prepared to allow the Contractor to transfer personal data within the EEA in connection with the Services, under the GDPR the Contractor is not required to implement any Appropriate Safeguards in respect of such transfer. For information, the reference to "mechanism" in the contractual definition of Appropriate Safeguards would, by way of example, include the use of standard model clauses approved by the European Commission or of Binding Corporate Rules (being a policy for intra company group transfers, which policy has been approved by the ICO or other equivalent authority in the EU).
7. In terms of the liability position as between the parties under GDPR, there are essentially three options to consider in respect of a Contractor's liability for breaches of its data protection obligations under a contract:
 - a. **Uncapped Liability** – this means that a Contractor's liability for breaches of its data protection obligations under a contract will not be subject to any financial limit of liability that is set out in the contract's Limits of Liability clause;
 - b. **Liability Capped pursuant to General Contract Cap** – this means that a Contractor's liability for breaches of its data protection obligations under a contract would be subject to the financial limit of liability already set out in the relevant contract's Limit of Liability clause; or
 - c. **Liability Subject to Specific DP Cap** – this means that a Contractor's liability for breaches of its data protection obligations under a contract is made subject to a specific financial limit of liability that is different to (and usually higher than) the general limit of liability already set out in the contract's Limit of Liability clause.

The approach that has been taken by CLO and by a number of NHSS Boards in contracts to date is that a Contractor's liability for breaches of its data protection obligations is uncapped. The reason that this approach has been adopted is to emphasise to Contractors that NHSS Boards take their responsibility for the security and confidentiality of their service users' and employees' personal data extremely seriously. It is of upmost importance to all NHSS Boards that public trust and confidence in the health service in Scotland is ensured and maintained, and the proper handling of patient identifiable information and employee personal data plays an critical role in that goal. Furthermore, depending on the nature of the breach, the cost to an NHSS Board of recovering or reconstituting any lost or corrupted data and the time and effort involved in verifying the accuracy of the same following the recovery and/or reconstitution could be considerable. These reasons are still relevant post-GDPR and, as a result, the GDPR DPA retains uncapped liability for Contractors in respect of any breaches of their data protection obligations. Please note however, that it is open to the relevant NHSS Board to consider one of the other approaches to Contractor liability for breaches of their data protection obligations, as outlined above. The relevant NHSS Board may wish to seek legal advice from

CLO in such circumstances.

8. Thought must also be given to the relevant NHSS Board's liability for breaches of its Data Protection obligations under the GDPR DPA. CLO would recommend that the relevant NHSS Board's liability never be uncapped. As noted above, the intention is that the GDPR DPA will be used in circumstances where either the Board is contracting on the Contractor's terms and conditions, or where there are no other contractual terms in place in connection with the services being provided by the Contractor. That being the case, the GDPR DPA, as a starting point, provides that the relevant NHSS Board's liability is capped at 200% of the fees paid by the relevant Board for the Services in the 12 months prior to the event giving rise to the claim. However, depending on the volume of personal data being processed in connection with the Services being provided and/or the sensitivity of the personal data being processed, the relevant NHSS Board may determine that a different liability cap for the Board's data protection indemnity is appropriate. In such circumstances, the relevant NHSS Board will need to determine, on a case by case basis, whether the Board's liability for breaches of its Data Protection obligations under these GDPR Clauses should be subject to a different, specific limit of liability, in which case, the following wording should be used: "The aggregate liability of the Board in respect of the indemnity set out in this Clause 1.28 shall in no event exceed [INSERT AMOUNT IN WORDS] Pounds Sterling (£[INSERT AMOUNT IN FIGURES]), notwithstanding any limit of liability in terms of Clause [X] (Limits of Liability) of the Services Agreement [Delete as appropriate].".

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DATA PROCESSING AGREEMENT

between

[•]

a statutory body constituted pursuant to the National Health Service (Scotland) Act 1978 (as amended) and having its headquarters at [•] (the “**Board**”)

and

[•]

a company registered under the Companies Acts (Registration No. [•]) and having its registered office at [•] (the “**Contractor**”)

WHEREAS:

- A. The Board has engaged the Contractor to provide the Services (as defined below) **[pursuant to the Services Agreement (as defined below)]**~~[Delete as appropriate]~~ and the Contractor will Process Personal Data (all as defined below) in the provision of the Services.
- B. In order to comply with the Data Protection Legislation (as defined below), the Parties require to enter into this Agreement to regulate the Processing of the Personal Data and related matters.

NOW IT IS HEREBY AGREED as follows:-

1 DEFINITIONS AND INTERPRETATION

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

“ Agreement ”	means this data processing agreement, including the Schedule;
“ Appropriate Safeguards ”	means a legally compliant mechanism(s) for the transfer of Personal Data to a country outside the EEA in respect of which no adequacy decision has been made by the European Commission, as such mechanism(s) may be permitted under the Data Protection Legislation from time to time;
“ Business Day ”	means Monday to Friday excluding public holidays as observed by the Bank of Scotland in Edinburgh;
“ Contractor Personnel ”	means any and all directors, officers, employees, agents,

	consultants and contractors of the Contractor and/or of any Sub-processor engaged in the performance of the obligations imposed on the Contractor pursuant to or under this Agreement [and/or the Services Agreement] [Delete as appropriate] , including but not limited to the performance of the Services;
“Controller”	shall have the meaning given in the GDPR;
“Data Loss Event”	means any event, including but not limited to any Personal Data Breach, 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 the Services Agreement] [Delete as appropriate] , and/or actual or potential loss and/or destruction and/or corruption of Personal Data in breach of this Agreement;
“Data Protection Impact Assessment”	means an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;
“Data Protection Legislation”	means (i) the GDPR and any applicable national implementing Laws as amended from time to time; (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 [and/or the Services Agreement] [Delete as appropriate] ;
“Data Protection Officer”	shall have the meaning given in the GDPR;
“Data Subject”	shall have the meaning given in the GDPR;
“Data Subject Access Request”	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
“Direct Losses”	means 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;
“DPA 2018”	means the Data Protection Act 2018;
“DP Losses”	means 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"> (1.a.i) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority; and (1.a.ii) compensation to a Data Subject ordered by a Supervisory Authority;
“Effective Date”	[means the last date of execution of this Agreement] OR [shall have the meaning given to it in the Services Agreement] [Delete as appropriate] ;
“EEA”	means the European Economic Area;
“GDPR”	means the General Data Protection Regulation (Regulation (EU) 2016/679);
“Indirect Losses”	means loss of profits, loss of business, loss of business opportunity, loss of goodwill or any consequential loss or

<p>“Information Commissioner’s Office”</p> <p>“Law”</p>	<p>indirect loss of any nature; means the United Kingdom’s Supervisory Authority;</p> <p>means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Board and/or the Contractor is bound to comply;</p>
<p>“Minimum Requirements”</p> <p>“Party”</p> <p>“Personal Data”</p> <p>“Personal Data Breach”</p> <p>“Processing”</p>	<p>means those requirements identified as such in Schedule;</p> <p>means a Party to this Agreement;</p> <p>shall have the meaning given in the GDPR;</p> <p>shall have the meaning given in the GDPR;</p> <p>shall have the meaning given in the GDPR and the terms “Process” and “Processed” shall be construed accordingly;</p>
<p>“Processor”</p> <p>“Protective Measures”</p>	<p>shall have the meaning given in the GDPR;</p> <p>means appropriate technical and organisational measures which must include the Minimum Requirements and may also include, without limitation: pseudonymising and encrypting Personal Data; ensuring confidentiality, integrity, availability and resilience of systems and services used by the Contractor and, where relevant, by any Sub-processor in connection with the performance of the obligations imposed on the Contractor pursuant to or under this Agreement [and/or the Services Agreement] [Delete as appropriate], including but not limited to the performance of the Services; ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident; and regularly assessing and evaluating the effectiveness of such technical and organisational measures adopted from time to time by the Contractor and, where relevant, by any Sub-processor;</p>
<p>“Representative”</p> <p>“Schedule”</p>	<p>shall have the meaning given in the GDPR;</p> <p>means the schedule annexed to and forming part of this Agreement;</p>
<p>“Services”</p>	<p>[means [INSERT DESCRIPTION OF THE SERVICES]] OR [shall have the meaning given in the Services Agreement] [Delete as appropriate];</p>
<p>[“Services Agreement”</p>	<p>means the agreement between the Contractor and the Board of even date herewith relating to the provision of the Services;][Delete as appropriate]</p>
<p>“Sub-processor”</p>	<p>means any third party appointed to process Personal Data on behalf of the Contractor in connection with this Agreement [and/or the Services Agreement] [Delete as appropriate];</p>
<p>“Supervisory Authority”</p> <p>“Term”</p>	<p>shall have the meaning given in the GDPR; and</p> <p>means the period from the Effective Date until the Agreement is terminated in accordance with its terms.</p>

1.2 In this Agreement unless the context otherwise requires it:-

1.2.1 the Clause headings are for reference only and shall not affect the construction or interpretation of this Agreement and references to the

Schedule, sub-clauses and clauses are to the Schedule, sub-clauses and clauses in 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 reference 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 CONTROLLER/PROCESSOR AND PERSONAL DATA

- 1.3 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Board is the Controller and the Contractor is the Processor.
- 1.4 For the avoidance of doubt, references in this Agreement 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 **[and/or the Services Agreement] [Delete as appropriate]**, including but not limited to the performance of the Services.

3 COMPLIANCE WITH DATA PROTECTION LEGISLATION

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

4 PROCESSING INSTRUCTIONS

- 1.6 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 **[and/or the Services Agreement] [Delete as appropriate]**, including but not limited to the performance of the Services is listed in the Schedule, as the same may be amended from time to time by written agreement between the Parties. The Contractor warrants that it will, and will procure that any and all Sub-processors will, at all times throughout the Term, only Process the Personal Data for the purposes of the performance of the obligations imposed on the Contractor pursuant to or under this Agreement **[and/or the Services Agreement] [Delete as appropriate]**, including but not limited to the performance of the Services.
- 1.7 The Contractor shall promptly comply with any written request from the Board requiring the Contractor to amend, transfer or delete the Personal Data.
- 1.8 The Contractor shall notify the Board immediately if it considers that any of the Board’s instructions infringe the Data Protection Legislation and will provide the Board with a written explanation of the reasons why it considers any of the Board’s instructions to be so infringing.

5 ASSISTANCE TO THE BOARD

1.9 The Contractor shall, as part of the Services and at no additional cost or expense to the Board, provide all reasonable assistance to the Board in ensuring compliance with the Board's obligations under the Data Protection Legislation in relation to:

- 1.9.1 ensuring the security of the Personal Data;
- 1.9.2 any notifications, communications and remedial action that may be required to be made or taken following any Data Loss Event, including notifications to the relevant Supervisory Authority following a Data Loss Event and communications to affected or potentially affected Data Subjects;
- 1.9.3 responding to Data Subject Access Requests within the timescale set out in the Data Protection Legislation;
- 1.9.4 any request from a Supervisory Authority or any consultation by the Board with a Supervisory Authority, to the extent that such request 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/or the Services Agreement] [Delete as appropriate]**;
- 1.9.5 the preparation of any Data Protection Impact Assessment prior to commencing any new Processing that has been agreed between the Parties pursuant to Clause Error: Reference source not found. Such assistance may, at the discretion of the Board, include:
 - 1.9.5.1 a systematic description of the envisaged Processing operations and the purpose of the Processing;
 - 1.9.5.2 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 **[and/or the Services Agreement] [Delete as appropriate]**, including but not limited to the performance of the Services;
 - 1.9.5.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 1.9.5.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

1.10 At any time throughout the Term, or following the date of termination, at the request of the Board, the Contractor shall provide to the Board a copy of all Personal Data held by the Contractor in the format and on the media reasonably specified by the Board. If the Contractor fails to provide the Board with a copy of such requested Personal Data the Board may, without limiting its other rights or remedies, enter the Contractor's premises and take a copy of such Personal Data.

6 TECHNICAL AND ORGANISATIONAL MEASURES

1.11 The Contractor shall:

- 1.11.1 Process the Personal Data only in accordance with the Schedule, unless the Contractor is required to do otherwise by Law, in which case the provisions of Clause Error: Reference source not found shall apply;

1.11.2 ensure that it has in place Protective Measures, which the Contractor shall maintain throughout the Term at its cost and expense, and which are appropriate to protect against a Data Loss Event, having taken account of:

- 1.11.2.1 the nature of the Personal Data to be protected;
- 1.11.2.2 the harm that might result from a Data Loss Event;
- 1.11.2.3 the state of technological development; and
- 1.11.2.4 the cost of implementing any measures

7 CONTRACTOR PERSONNEL

1.12 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:

- 1.12.1 are aware of and comply with the Contractor's duties under this Agreement, in particular those obligations set out in this Agreement;
- 1.12.2 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 purposes of the performance of the obligations imposed on the Contractor pursuant to or under this Agreement **[and/or the Services Agreement] [Delete as appropriate]**, including but not limited to the performance of the Services;
- 1.12.3 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 the Board or as otherwise permitted by this Agreement; and
- 1.12.4 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.

8 INTERNATIONAL TRANSFERS OF PERSONAL DATA

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

1.14 Where the Contractor wishes to transfer Personal Data to a country within the EEA, the Board's consent shall not be unreasonably withheld or delayed.

1.15 If the Board gives its written consent to a transfer of Personal Data outside of the EEA, the Contractor shall ensure that:

- 1.15.1 the Contractor has Appropriate Safeguards in place in respect of such transfer and, where practicable, the particular Appropriate Safeguards to be used by the Contractor for such transfer shall be subject to the Board's prior written approval, which approval shall not be unreasonably withheld or delayed;
- 1.15.2 the transfer and any Processing of Personal Data following such transfer complies at all times with Clause Error: Reference source not found; and
- 1.15.3 the transfer otherwise complies with Data Protection Legislation.

9 NOTIFICATIONS REQUIRED TO BE GIVEN BY THE CONTRACTOR TO THE BOARD

1.16 The Contractor shall, at its own cost and expense, notify the Board immediately (and within three (3) Business Days of receipt of the relevant communication at the latest) if it:

1.16.1 receives a Data Subject Access Request (or purported Data Subject Access Request);

1.16.2 receives a request to rectify, block or erase any Personal Data;

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

1.16.4 receives any communication from any Supervisory Authority, including from the Information Commissioner's Office, or any other regulatory authority in connection with Personal Data processed under or in connection with this Agreement **[and/or the Services Agreement] [Delete as appropriate]**; or

1.16.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law,

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

1.17 Taking into account the nature of the Processing, the Contractor shall provide the Board with all reasonable assistance in relation to any complaint, communication or request notified to the Board pursuant to Clause Error: Reference source not found (and insofar as possible within the timescales reasonably required by the Board).

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

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

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

1.18.2.1 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;

1.18.2.2 the likely consequences of the Data Loss Event;

1.18.2.3 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.

1.19 If the Contractor cannot provide all of the information set out in Clause Error: Reference source not found within the timescale specified, the Contractor shall, within such timescale advise the Board of the delay and of the reasons for the

same and advise the Board 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.

10 RECORDS

1.20 The Contractor shall maintain complete, accurate and up-to-date written records of all Processing carried out under or in connection with this Agreement **[and/or the Services Agreement] [Delete as appropriate]**. Such records shall contain the following information:

- 1.20.1 the name and contact details of the Contractor's Representative (if any) and of the Contractor's Data Protection Officer (if any);
- 1.20.2 the categories of Processing carried out on behalf of the Board;
- 1.20.3 where applicable, details of any transfers of Personal Data pursuant to Clause Error: Reference source not found, 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
- 1.20.4 a general description of the Protective Measures implemented by the Contractor pursuant to Clause Error: Reference source not found.

11 USE OF SUB-PROCESSORS

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

- 1.21.1 notified the Board 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;
- 1.21.2 obtained the prior written consent of the Board in respect of the use of such Sub-processor in connection with the Processing undertaken pursuant to this Agreement **[and/or the Services Agreement] [Delete as appropriate]**;
- 1.21.3 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 Agreement such that they apply to the Sub-processor, in particular such binding written agreement must provide:
 - 1.21.3.1 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
 - 1.21.3.2 details of the Processing that is to be undertaken by the Sub-processor, which Processing shall only involve activity that is set out in the Schedule; and
- 1.21.4 provide the Board with such other information regarding the Sub-processor as the Board may reasonably require from time to time.

1.22 The Contractor shall cease using a Sub-processor to undertake any Processing of Personal Data pursuant to or in connection with this Agreement **[and/or the Services Agreement] [Delete as appropriate]** immediately upon receipt of a written request from the Board requesting that such Sub-processor

ceases Processing the Personal Data, in circumstances where the Board has reasonable grounds for concern about the Sub-processor's ability to carry out the Processing in accordance with the Data Protection Legislation.

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

12 AUDIT RIGHT

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

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

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

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

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

1.26 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under Clause Error: Reference source not found, unless the audit identifies a breach of the Contractor's obligations under this Agreement and/or the Data Protection Legislation, in which case the Contractor shall reimburse the Board for all of the Board's reasonable costs incurred in the course of the audit.

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

1.27.1 treat such failure as a material breach of the Agreement; or

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

13 DELETION OR RETURN OF PERSONAL DATA

1.28 On termination of this Agreement, howsoever arising, or on the cessation of those Services pursuant to or in connection with which the Processing of Personal Data by the Contractor on behalf of the Board was undertaken, the Contractor shall immediately cease using all affected Personal Data in the possession or control of the Contractor.

1.29 Within one (1) month following the date of termination of this Agreement, or if earlier, the date of the cessation of those Services pursuant to or in connection with which the Processing of Personal Data by the Contractor on behalf of the Board was undertaken, the Contractor shall, at the written direction of the Board, securely delete or securely return to the Board all affected Personal Data (and any

copies of it) and the Contractor shall certify in writing to the Board that to the best of the Contractor's knowledge and belief all Personal Data (and any copies of it) have been securely deleted or securely returned to the Board, unless the Contractor is required by Law to retain the Personal Data. If the Contractor is required by Law to retain the Personal Data, the Contractor shall advise the Board of such requirement in writing.

14 LIABILITY

1.30 The Contractor shall indemnify and keep indemnified and defend at its own expense the Board from and against any and all DP Losses incurred by the Board or for which the Board 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 Agreement. The indemnity set out in this Clause The Contractor shall indemnify and keep indemnified and defend at its own expense the Board from and against any and all DP Losses incurred by the Board or for which the Board 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 Agreement. The indemnity set out in this Clause The Contractor shall indemnify and keep indemnified and defend at its own expense the Board from and against any and all DP Losses incurred by the Board or for which the Board 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 Agreement. The indemnity set out in this Clause The Contractor shall indemnify and keep indemnified and defend at its own expense the Board from and against any and all DP Losses incurred by the Board or for which the Board 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 Agreement. The indemnity set out in this Clause 14.1 shall not be subject to any limit of liability [in terms of Clause [X] (Limits of Liability) of the Services Agreement] [Delete as appropriate] shall not be subject to any limit of liability [in terms of Clause [X] (Limits of Liability) of the Services Agreement] [Delete as appropriate] shall not be subject to any limit of liability [in terms of Clause [X] (Limits of Liability) of the Services Agreement] [Delete as appropriate] shall not be subject to any limit of liability **[in terms of Clause [X] (Limits of Liability) of the Services Agreement] [Delete as appropriate]**.

1.31 The Board 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 the Board or its employees or agents to comply with any of the Board's obligations under this Agreement. The aggregate liability of the Board in respect of the indemnity set out in this Clause Error: Reference source not found shall in no event exceed an amount equivalent to TWO HUNDRED PERCENTUM (200%) of the fees paid by the Board for the Services in the 12 months prior to the event giving rise to the claim **[, notwithstanding any limit of liability in terms of Clause [X] (Limits of Liability) of the Services Agreement] [Delete as appropriate]**.

1.32 The provisions of Clauses The Contractor shall indemnify and keep indemnified and defend at its own expense the Board from and against any and all DP Losses incurred by the Board or for which the Board 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 Agreement. The indemnity set out in this Clause The Contractor shall indemnify and keep indemnified and defend at its own expense the Board from and against any and all DP Losses incurred by the Board or for which the Board 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 Agreement. The indemnity set out in this Clause The Contractor shall indemnify and keep indemnified and defend at its own expense the Board from and against any and all DP Losses incurred by the Board or for which the Board 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 Agreement. The indemnity set out in this Clause 14.1 shall not be subject to any limit of liability [in terms of Clause [X] (Limits of Liability) of the Services Agreement] [Delete as appropriate] shall not be subject to any limit of liability [in terms of Clause [X] (Limits of Liability) of the Services Agreement] [Delete as appropriate] shall not be subject to any limit of liability [in terms of Clause [X] (Limits of Liability) of the Services Agreement] [Delete as appropriate] and The Board 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 the Board or its employees or agents to comply with any of the Board's obligations under this Agreement. The aggregate liability of the Board in respect of the indemnity set out in this Clause Error: Reference source not found shall in no event exceed an amount equivalent to TWO HINDRED PERCENTUM (200%) of the fees paid by the Board for the Services in the 12 months prior to the event giving rise to the claim[, notwithstanding any limit of liability in terms of Clause [X] (Limits of Liability) of the Services Agreement] [shall not affect the liability of either Party to any Data Subject.

15 GENERAL

1.33 **[This Agreement shall terminate automatically upon the termination of the Services Agreement, howsoever arising.] OR [The Board shall be entitled to terminate this Agreement at any time, without cause, upon giving one (1) month's prior notice in writing to the Contractor.] [Delete as appropriate]** Notwithstanding the provisions of this Clause [This Agreement shall terminate automatically upon the termination of the Services Agreement, howsoever arising.] OR [The Board shall be entitled to terminate this Agreement at any time, without cause, upon giving one (1) month's prior notice in writing to the Contractor.] [Delete as appropriate] Notwithstanding the provisions of this Clause [This Agreement shall terminate automatically upon the termination of the Services Agreement, howsoever arising.] OR [The Board shall be entitled to terminate this Agreement at any time, without cause, upon giving one (1) month's prior notice in writing to the Contractor.] [Delete as appropriate] Notwithstanding the provisions of this Clause 15.1, the provisions of Clauses 1, 3, 5, 9, 10, 13, 14 and 15 shall survive expiry or termination of this Agreement, howsoever caused., the provisions of Clauses Error: Reference source not found, Error: Reference source not found, Error: Reference source not found, Error: Reference source not found, Error: Reference source not found, Error:

Reference source not found and Error: Reference source not found shall survive expiry or termination of this Agreement, howsoever caused., the provisions of Clauses Error: Reference source not found, Error: Reference source not found, Error: Reference source not found, Error: Reference source not found, Error: Reference source not found, Error: Reference source not found, Error: Reference source not found and Error: Reference source not found shall survive expiry or termination of this Agreement, howsoever caused., the provisions of Clauses Error: Reference source not found, Error: Reference source not found, Error: Reference source not found, Error: Reference source not found, Error: Reference source not found and Error: Reference source not found shall survive expiry or termination of this Agreement, howsoever caused.

1.34 Any notice to be given under this Agreement shall be delivered personally, sent by facsimile 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:-

1.34.1 if personally delivered, at the time of delivery;

1.34.2 if sent by facsimile at the time of transmission;

1.34.3 if posted, at the expiration of forty eight (48) hours; and

1.34.4 if sent by electronic mail, at the time of the transmission.

1.35 In proving such service it shall be sufficient to prove that personal delivery was made, or that the envelope containing such notice was properly addressed and delivered into the custody of the relevant Party as prepaid first class or recorded delivery (as appropriate) or that the facsimile was transmitted on a tested line or that the correct transmission report was received from the facsimile machine sending the notice as the case may be, or that the hard drive has recorded the successful transmission of the electronic mail.

1.36 The Contractor shall not assign, sub-contract or otherwise transfer any of its Processing obligations in respect of the Personal Data to any third parties other than in accordance with the provisions of Clause Error: Reference source not found.

1.37 The failure by either Party to insist upon the strict performance of any provision, term or condition of this Agreement or to exercise any right or remedy consequent upon the breach thereof shall not constitute a waiver of that Party's rights or remedies in respect of any such breach by the other Party or any subsequent breach of such provision, term or condition.

1.38 No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and notified to the other Party in writing in accordance with the provisions of Clause Error: Reference source not found.

1.39 This Agreement, **together with the Services Agreement,**~~[Delete as appropriate]~~ constitute the entire agreement between the Parties and supersede all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between the Parties relating to the subject matter of this Agreement, provided that nothing contained herein shall operate or be construed as to limit or exclude either party's liability for fraud or fraudulent misrepresentation. **[If there is any conflict between the terms of this Agreement and the terms of the Services Agreement in relation to the subject matter of this Agreement, the terms of this Agreement shall prevail.]** ~~[Delete as appropriate]~~

1.40 This Agreement shall be governed and construed in accordance with Scots law and both parties hereby irrevocably submit to the exclusive jurisdiction of the Scottish Courts: IN WITNESS WHEREOF, these presents consisting of this page and the preceding [•] ([•]) pages are executed as follows:

For and on behalf of [•]

Place	Date
Signed by	Witnessed by
Print Name	Print Name
Designation	Designation
	Address

For and on behalf of [•]

Place	Date
Signed by	Witnessed by
Print Name	Print Name
Designation	Designation
	Address

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

SCHEDULE

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

Description	Details
Subject matter of the processing	<i>[This should be a high level, short description of what the Processing is about, i.e. its subject matter]</i>
Duration of the processing	<i>[Clearly set out the duration of the Processing, including dates. It may be that all of the Processing activities will be undertaken throughout the entire Term, in which case, this should be stated clearly. If, however, the various Processing activities will be required for different periods of time, then this needs to be considered and narrated.]</i>
Nature and purposes of the processing	<p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.</i></p> <p><i>The nature of the Processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means), etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment, etc.]</i></p>
Type of Personal Data	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data, etc.]</i>

<p>Categories of Data Subject</p>	<p><i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular Website, etc.]</i></p>
<p>Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data</p>	<p><i>[Describe how long the data will be retained for, how it be returned or destroyed]</i></p>
<p>Minimum Requirements</p>	<p><i>[E.g. detail any specific technical and organisational measures that the Contractor must comply with, e.g. ISO 27001, particular NHSS policies, etc.]</i></p>
<p>Additional Information</p>	<p><i>[E.g. details of any approved Sub-processors; details of any approved transfers outside the EEA, etc.]</i></p>