

SCOTTISH MINISTERS

AND

NATIONAL SERVICES SCOTLAND

MEMORANDUM OF AGREEMENT
in respect of the operation of
the Scottish Infected Blood Support scheme

THIS MEMORANDUM OF AGREEMENT IS MADE BETWEEN

THE SCOTTISH MINISTERS of St Andrew's
House, Edinburgh (the **Scottish Ministers**)

And

**THE COMMON SERVICES AGENCY FOR
THE SCOTTISH HEALTH SERVICE**
(commonly known as **National Services
Scotland**) constituted pursuant to the **National
Health Service (Scotland) Act 1978** and having its
headquarters at Gyle Square, 1 South Gyle
Crescent, Edinburgh, EH12 9EB (**NSS**)

RECITALS

- (1) A scheme has been established in Scotland for the making of ex-gratia payments to Scheme Beneficiaries (as defined below) who are persons affected by infected blood.
- (2) The Scottish Ministers wish to appoint NSS to administer payments to be made under that scheme. Scottish Ministers and NSS have agreed the terms of appointment set out in this Agreement.

AGREED TERMS

1 Interpretation and effect

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

- 1.1.1 **Agreement** means this memorandum of Agreement which is made as an NHS Contract in terms of section 17A of the National Health Service (Scotland) Act 1978 (c.29);
- 1.1.2 **Direction** means a direction given by the Scottish Ministers;
- 1.1.3 **Environmental Information Regulations** means the Environmental Information (Scotland) Regulations 2004 as amended;
- 1.1.4 **Exit Plan** means the plan referred to in clause 16;
- 1.1.5 **Financial Year** means a period of one calendar year commencing on 1 April;
- 1.1.6 **First Financial Year** means the period from 1 April 2017 to 31 March 2018;
- 1.1.7 **FOISA** means the Freedom of Information (Scotland) Act 2002 as amended;
- 1.1.8 **Fund** means the fund provided to NSS by Scottish Ministers for the purpose of this Agreement;

- 1.1.9 **Quarter** means the quarter of a financial year starting on the 1st April, 1st July, 1st October or 1st December, as the case may be;
- 1.1.10 **Scottish Ministers** means the Scottish Ministers or any person acting on the authority of the Scottish Ministers;
- 1.1.11 **Scheme** means the scheme established by Scottish Ministers in accordance with section 28 of the Smoking, Health and Social Care (Scotland) Act 2005, under which payments are made to Scheme Beneficiaries as set out in this Agreement and any Directions;
- 1.1.12 **Scheme Beneficiary** means any person eligible for support under paragraph 3(1) of the Scheme.
- 1.1.13 **Transferring Qualifying Person** has the meaning given in paragraph 2 of the Scheme;
- 1.1.14 **Working Day** means a day other than a Saturday, Sunday or a bank holiday within the meaning of the Banking and Financial Dealings Act 1971.
- 1.2 Headings are included in the Agreement for ease of reference only and do not affect the interpretation or construction of the Agreement.
- 1.3 References to any person include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees.
- 1.4 Words importing the singular meaning include, where the context so admits, the plural and vice versa.
- 1.5 References to clauses are to the clauses of this Agreement.
- 1.6 References to this Agreement include this Agreement as amended or varied in accordance with its terms.
- 1.7 References to any statute, enactment, order, regulation or other similar instrument are construed as a reference to the instrument as amended by any subsequent instrument or re-enacted.
- 1.8 This Agreement is an NHS contract within the meaning of section 17A of the National Health Services (Scotland) Act 1978 and does not form a contract which is otherwise enforceable and the parties confirm that there is no intention to create any other legally binding relations between them.
- 2 **Appointment and status of NSS**
 - 2.1 The Scottish Ministers appoints NSS to implement and administer the Scheme.
 - 2.2 Whilst NSS will hold certain funds at certain times as the agent of or on trust for the Scottish Ministers, it shall not generally be the agent or trustee of the Scottish Ministers or of any other person and the Scottish Ministers shall have no responsibility for the acts or omissions of NSS or its officers, employees or agents.

- 2.3 NSS will administer the Scheme in accordance with the terms of the Scheme from time to time or as otherwise directed by the Scottish Ministers.

3 Payments to NSS

- 3.1 The Scottish Ministers will make a determination of the total amounts to be paid out pursuant to the Scheme in each forthcoming Financial Year and will make appropriate payments to NSS via their annual allocation. If additional funds are required to make sufficient payments to Scheme beneficiaries, the Scottish Ministers shall agree an additional allocation with NSS during the Financial Year.

4 Status of Funds held by NSS

- 4.1 Pending payment to Scheme Beneficiaries the Funds held by NSS shall be held by it in trust for the Scottish Ministers. No Scheme Beneficiary shall have any entitlement to any part of the Fund except in so far as NSS makes a payment to them of a sum which is due to them under the Scheme.

5 Interest

- 5.1 Interest earned on the Fund held by NSS shall be held on behalf of the Scottish Ministers, and shall be cumulated with the Fund until payment to a Scheme Beneficiary or as otherwise directed by Scottish Ministers (after allowance for any tax that may be payable in respect of that interest and after deduction of any administrative costs incurred by NSS).

6 Identification of Scheme Beneficiaries

- 6.1 NSS shall identify Scheme Beneficiaries who are eligible for support under the Scheme (other than those referred to in paragraph 6.2) by assessing applications and making payments in accordance with provisions set out in the Scheme and any additional Directions provided by the Scottish Ministers.
- 6.2 In the case of Transferring Qualifying Persons, NSS may rely upon the accuracy of the information provided by a UK scheme and shall not be required to undertake any further investigation or verification of it.
- 6.3 NSS shall determine all new applications for support under Schedules 1 to 5 of the Scheme within 25 Working Days unless further information or documentation is required from the applicant or another person or organisation in order to determine whether the applicant is eligible for support under the Scheme.

7 Payment by NSS to Scheme Beneficiaries

- 7.1 In each Financial Year NSS shall make payments from the funds received from the Scottish Ministers to all Scheme Beneficiaries in accordance with the Scheme and with any Directions issued by the Scottish Ministers, in particular with regard to the types of support payments to be made under Schedule 5 of the Scheme.
- 7.2 Payments may be made to persons whose details are added to the list of Scheme Beneficiaries during that Financial Year.
- 7.3 Annual payments are to be made to each Scheme Beneficiary who is eligible for such payments either monthly or quarterly. The frequency of payment shall be decided by NSS, although in the case of Transferring Qualifying Persons NSS

should take account of the preferences of each such person, unless the Scottish Ministers make a direction to the contrary.

- 7.4 The date of payment shall be determined by NSS, provided that the first payment to each identified Scheme Beneficiary who wishes to receive any payment shall be made not more than one month after the commencement of each Financial Year. The first payment shall be backdated to the date of application by the Scheme Beneficiary or where the Scheme Beneficiary is a Transferring Qualifying Person, to the date of transfer to the Scheme. At the discretion of NSS the first payment may be backdated to an earlier date but only where the Scheme Beneficiary has provided evidence of exceptional circumstances which prevented that person from submitting an earlier application.
- 7.5 In the case of a Scheme Beneficiary who is a Transferring Qualifying Person and a surviving spouse or civil partner, the first payment under Schedules 1 to 4 of the Scheme shall be made not more than three months after the commencement of the First Financial Year where the Scheme Beneficiary submits a valid claim by 31 May 2017. Where such Scheme Beneficiary submits a valid claim by 30 April 2017 the first payment shall be backdated to 1 April 2017.
- 7.6 If any Scheme Beneficiary dies within a Financial Year any unpaid balance due to that person for the period up to the date of death shall be paid to the deceased's estate on such dates and in such manner as may be agreed between NSS and the representatives of the deceased's estate.
- 7.7 If any Scheme Beneficiary at any time declines any payment under the Scheme, then any sum held by NSS to meet such payment shall be either returned to the Scottish Ministers or held as part of the Fund in accordance with clause 4 (status of Fund held by NSS).
- 7.8 If any Scheme Beneficiary cannot be traced or properly identified at any time so that NSS is unable to pay to them any sum under the Scheme, then any sum held by NSS to meet such payment shall be held as part of the Fund in accordance with clause 4 (status of Fund held by NSS).
- 8. Advisory Group**
- 8.1 NSS shall establish an Advisory Group, involving representatives of Scheme Beneficiaries, which shall meet at least once every six months to provide feedback to NSS on the effectiveness of service delivery through the Scheme and to help NSS promote good practice.
- 9. Appeals Panel**
- 9.1 NSS shall establish an Appeals Panel in accordance with Schedule 6 of the Scheme and ensure that the Panel complies with the requirements as to the conduct of appeals set out in that Schedule.
- 10. Status of unpaid Funds**
- 10.1 At the end of each Financial Year, the balance of the Funds received from the Scottish Ministers for that Financial Year shall be returned to the Scottish Ministers or held on continuing trust for the benefit of the Scottish Ministers to be used in such manner as the Scottish Ministers may direct pending payment to Scheme Beneficiaries in any subsequent year.

11 Data Protection Act

- 11.1 For the purposes of this clause, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data" and "Processing" have the meanings given in section 1(1) of the Data Protection Act 1998.
- 11.2 In administering the Scheme in accordance with this Agreement and to the extent that NSS Processes Personal Data as a Data Processor as a consequence of provision by NSS of the services under this Agreement, NSS must:
 - 11.2.1 enter into a data processing agreement in the form set out in the Schedule annexed hereto if required to do so by Scottish Ministers, and process the Personal Data in accordance with any instructions as may be given by the Scottish Ministers (which may be specific or of a general nature);
 - 11.2.2 process the Personal Data only to the extent, and in such manner as is necessary for the performance of the obligations of NSS under the Agreement or as is required by the law;
 - 11.2.3 implement appropriate technical and organisational measures to protect Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure, such measures being appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
 - 11.2.4 obtain approval of the Scottish Ministers (not to be unreasonably withheld or delayed) before transferring the Personal Data to any sub-contractor other than Atos IT Services Limited (Company Number 01240677);
 - 11.2.5 not cause or permit the Personal Data to be transferred outside of the European Economic Area without approval of the Scottish Ministers (not to be unreasonably withheld or delayed);
 - 11.2.6 ensure that all persons accessing the Personal Data are aware of and comply with the obligations set out in this clause; and
 - 11.2.7 not disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Scottish Ministers or as required by law or by any court or regulatory authority.
- 11.3 NSS must, where the Scottish Ministers are the Data Controller in relation to relevant information, notify the Scottish Ministers promptly, and in any event within 5 Working Days, if it receives:
 - 11.3.1 a request from a Data Subject to have access to their Personal Data;
 - 11.3.2 a complaint or request relating to the Scottish Ministers' obligations under the Data Protection Act 1998.
- 11.4 Where NSS is collecting data for the purpose of this Agreement NSS must comply with all the fair processing provisions under the Data Protection Act 1998, including notification to Data subjects that the information may be shared with the Scottish Ministers.

- 11.5 To comply with section 31(3) of the Public Services Reform (Scotland) Act 2010, the Scottish Ministers publish an annual statement of all payments over £25,000. In addition, in line with openness and transparency, the Scottish Ministers publish a monthly report of all payments over £25,000. NSS should note that where a payment is made to NSS in excess of £25,000 there will be disclosure (in the form of the name of the payee, the date of the payment, the subject matter and the amount of payment) in the both the monthly report and the annual Public Service Reform (Scotland) Act 2010 statement.

12 Freedom of Information

- 12.1 NSS acknowledges that the Scottish Ministers are subject to the requirements of FOISA and the Environmental Information Regulations and undertakes to assist and cooperate with the Scottish Ministers to enable them to comply with FOISA and the Environmental Information Regulations.
- 12.2 If NSS receives a request for information, within the meaning on FOISA or the Environmental Information Regulations, NSS must promptly respond to the applicant. Where the Request for Information appears to be directed to information held by the Scottish Ministers, NSS must promptly inform the applicant in writing that the request for information can be directed to the Scottish Ministers.
- 12.3 Where the Scottish Ministers receive a valid request for information concerning the Agreement, the Scottish Ministers are responsible for determining at their absolute discretion whether information requested is to be disclosed to the applicant or whether the information requested is exempt from disclosure in accordance with FOISA or the Environmental Information Regulations.
- 12.4 NSS acknowledges that the Scottish Ministers may, acting in accordance with the Scottish Ministers' Code of Practice on the Discharge of Functions of Public Authorities issued under section 60 of FOISA (as may be issued and revised from time to time), be obliged under FOISA or the Environmental Information Regulations to disclose information requested concerning NSS or the Agreement:
- 12.4.1 in certain circumstances without consulting NSS, or
- 12.4.2 following consultation with NSS and having taken its views into account.
- 12.5 Where clause 12.4.1 applies the Scottish Ministers must take reasonable steps, where practicable, to give NSS advance notice of the fact of disclosure or, failing that, draw the fact of disclosure to the attention of NSS after such disclosure.

13 Administrative Costs

- 13.1 Administrative costs for running the scheme should be agreed by NSS and Scottish Ministers at the start of each Financial Year. The budget for these costs will be included in NSS' annual budget allocation.
- 13.2 If NSS requires any increase in administrative costs, such an increase will only be made if agreed in writing by the Scottish Ministers. If NSS has not spent its administrative costs budget in full in any Financial Year, it must notify the Scottish Ministers of this. In such cases, the Scottish Ministers will direct NSS regarding whether any such underspend should be returned to the Scottish Ministers or whether it should be used for other purposes as directed.

14 Records and Inspection

- 14.1 NSS must, until 5 years after the end of this Agreement, keep and maintain full and accurate records of all sums received and paid pursuant to this Agreement. Within three months of the end of each Financial Year, NSS shall provide to the Scottish Ministers a summary of all sums paid by it to Scheme Beneficiaries during that Financial Year.
- 14.2 In addition, NSS shall, following the end of each quarter, provide a summary of the following scheme activity over the previous quarter:
 - 14.2.1 numbers of applications received, approved, refused and paid, broken down by reference to the type of payment;
 - 14.2.2 number of people currently receiving annual payments, by type of payment;
 - 14.2.3 number of appeals received, upheld and refused;
 - 14.2.4 operating costs;
 - 14.2.5 number of deaths of scheme beneficiaries which have been notified to NSS, broken down by type of scheme beneficiary (chronic Hepatitis C, advanced Hepatitis C, HIV, widow/widower, etc.).
- 14.3 The Scottish Ministers may at any time request access to and copies of any of the books and records of NSS for the verification of payments, auditing or any other proper public purpose. NSS shall provide any requested access to the Scottish Ministers, their representatives or auditors at all reasonable times upon reasonable notice and shall promptly provide copies of all requested documents. NSS should also ensure independent audits of its management of the Scheme are carried out at appropriate intervals or as otherwise directed by Scottish Ministers and shall provide a copy of the results and reports to the Scottish Ministers.

15 Waiver

- 15.1 Any failure of either Party to insist upon strict performance of any provision of the Agreement, or the failure of either Party to exercise, or any delay in exercising, any right or remedy does not constitute a waiver of that right or remedy and does not cause a diminution of the obligations established by the Agreement.
- 15.2 Accordingly, no waiver is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 20 (communications).
- 15.3 A waiver of any default is not a waiver of any subsequent default.

16 Exit Management

- 16.1 NSS shall perform the exit management obligations set out in this clause and the Exit Plan as part of the Agreement whether applicable on either the expiry or termination of this Agreement however arising.

16.2 NSS shall prepare a draft plan setting out information in relation to the service provided by NSS pursuant to this Agreement and the transition to Scottish Ministers or to another providers ("Exit Plan") and supply that draft Plan to the Scottish Ministers within twelve (12) months after the commencement of this Agreement. The draft Exit Plan shall include or address the following matters:-

16.2.1 the information needed by the Scottish Ministers and the activities required to enable the Scottish Ministers to tender their requirements for the administration of the Scheme;

16.2.2 the activities necessary to support the Scottish Ministers or any other person in carrying out any necessary due diligence relating to all or part of the administration of the Scheme;

16.2.3 details of the exit management services to be provided by NSS;

16.2.4 support for the Scottish Ministers or any other person appointed by them during their preparation of any relevant plan for the transition of the administration of the Scheme to the Scottish Ministers or any other person, including prior to and during such transition period;

16.2.5 the maintenance of a 'business as usual' environment for the Scottish Ministers during the period when exit management obligations are applicable; and

16.2.6 all other necessary activities to support the preparation for, and execution of, a smooth and orderly exit management and transfer of all or part of the administration of the Scheme to either the Scottish Ministers or another person appointed by them.

16.3 The Scottish Ministers shall provide to NSS the Scottish Ministers' comments on the draft Exit Plan within one (1) month of their receipt of the draft Exit Plan. NSS shall take into account the comments of the Scottish Ministers and shall issue the final version of the Exit Plan to the Scottish Ministers within ten (10) Working Days of receipt of the Scottish Ministers' comments.

16.4 NSS shall throughout the period of the Agreement review, maintain and continuously update the Exit Plan which shall also address any further comments made by the Scottish Ministers from time to time.

16.5 No amendment of the Exit Plan shall be considered final without prior written consent of the Scottish Ministers.

17 Termination

17.1 This Agreement may be terminated by either party on not less than 6 months written notice of termination given to the other.

17.2 On expiry or termination of the Agreement NSS must immediately transfer to Scottish Ministers or such other person as they may direct all information held by NSS for the purpose of administering the Scheme under this Agreement including all relevant information concerning Scheme Beneficiaries.

17.3 The following provisions survive the expiry or termination of the Contract:

- 17.3.1 clause 1 (interpretation and effect);
- 17.3.2 clause 11 (Data Protection Act);
- 17.3.3 clause 12 (freedom of information);
- 17.3.4 clause 14 (records and inspection);
- 17.3.5 clause 15 (Waiver and Cumulative Remedies);
- 17.3.6 this clause 17 (termination);
- 17.3.7 clause 20 (communication); and
- 17.3.8 clause 21 (applicable law).

18 Assignment

- 18.1 No party may assign, or grant any security interest over, any of its rights under this Agreement or any document referred to in it.

19 Variation

- 19.1 No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of the parties.

20 Communications

- 20.1 Any notice or other communication required to be given under this Agreement shall be in writing and may be delivered in any form referred to in this Clause 20 (communications).

- 20.2 Notice or other communication may be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each party required to receive the notice or communication as set out below:

20.2.1 The Scottish Ministers: Blood Policy team, Scottish Government, 3E, St Andrew's House, Regent Road, Edinburgh, EH1 3DG

20.2.2 NSS: Director, Practitioner & Counter Fraud Services, NHS National Services Scotland, Gyle Square, 1 South Gyle Crescent, Edinburgh, EH12 9EB

or as otherwise specified by the relevant party by notice in writing to each other party.

- 20.3 Any notice or other communication issued in a manner referred to in Clause 20.2 shall be deemed to have been duly received:

20.3.1 if delivered personally, when left at the address and for the contact referred to in this clause; or

20.3.2 if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Working Day after posting; or

20.3.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

20.4 Notice or other communication may be issued by e-mail and shall, provided it has been sent to an address specifically notified for such purpose and not been returned, rejected or otherwise notified as being undelivered, be deemed to have been delivered 4 working hours after the communication was sent.

21 Applicable Law

21.1 This Agreement shall be construed in accordance with the laws of Scotland.

21.2 This Agreement is an NHS Contract as set out in section 17A of the National Health Service (Scotland) Act 1978 and any dispute or difference between the parties concerning the subject matter of this Agreement or its interpretation shall be resolved in accordance with that Act.

Signed by

GRO-C

.....David Knowles On behalf of The
Common Services Agency

GRO-C

..Gareth Brown, a member of the Senior Civil
Service

On behalf of the Scottish Ministers

This and the following 4 pages comprise the Schedule to the foregoing Agreement between the Scottish Ministers and National Services Scotland

SCHEDULE

MODEL CONTRACT REGARDING DATA PROTECTION DIRECTIVE 95/46/EC

Model Contract

STANDARD FORM CONTRACT TO ASSIST COMPLIANCE WITH OBLIGATIONS IMPOSED BY

ARTICLE 17 OF THE DATA PROTECTION DIRECTIVE 95/46/EC

(FOR USE BY DATA CONTROLLERS AND DATA PROCESSORS LOCATED WITHIN
THE EUROPEAN ECONOMIC AREA WHERE THE PARTIES HAVE ENTERED INTO
A SEPARATE DATA PROCESSING AGREEMENT)

THIS AGREEMENT is made on...9 March....and2017.

BETWEEN:

(1) THE SCOTTISH MINISTERS (the "Controller"); and

(2) THE COMMON SERVICES AGENCY incorporated in, or existing and established under the laws of the United Kingdom, whose registered office is at Gyle Square, 1 South Gyle Crescent, Edinburgh, EH12 9EB (the "Processor").

BACKGROUND

(A) The Controller processes Personal Data in connection with its business activities;

(B) The Processor processes Personal Data on behalf of other businesses and organisations;

(C) The Controller wishes to engage the services of the Processor to process personal data on its behalf in relation to the Scottish Infected Blood Support Scheme;

(D) Article 17(2) of the Data Protection Directive 95/46/EC (as hereinafter defined) provides that, where processing of personal data is carried out by a processor on behalf of a data controller the controller must choose a processor providing sufficient guarantees in respect of the technical security measures and organisational measures governing the processing to be carried out, and must ensure compliance with those measures;

(E) Articles 17(3) and 17(4) of the Data Protection Directive require that where processing is carried out by a processor on behalf of a controller such processing shall be governed by a contract or legal act binding the processor to the controller stipulating, in particular, that the processor shall act only on instructions from the controller and shall comply with the technical and organisational measures required under the appropriate national law to protect personal data against accidental or unlawful destruction or accidental loss, alternation, unauthorised disclosure or access and against all other unlawful forms of processing;

(F) In compliance with the above-mentioned provisions of Article 17 of the Data Protection Directive the Controller and Processor wish to enter into this processing security Agreement.

THE PARTIES HEREBY MUTUALLY AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words and phrases shall have the following meanings, unless inconsistent with the context or as otherwise specified:

"Data Protection Directive" shall mean Directive 95/46/EC of the European Parliament and Council of 24th October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

"national law" shall mean the law of the Member State in which the Processor is established;

"personal data" shall mean any information relating to an identified or identifiable natural person ('data subject'); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic cultural or social identity;

"processing of personal data" shall mean any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alternation, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;

"sub-contract" and "sub-contracting" shall mean the process by which either party arranges for a third party to carry out its obligations under this Agreement and "Sub Contractor" shall mean the party to whom the obligations are subcontracted; and

"Technical and organisational security measures" shall mean measures to protect personal data against accidental or unlawful destruction or accidental loss, alternation, unauthorised disclosure or access and against all other unlawful forms of processing.

2. CONSIDERATION

2.1 In consideration of the Controller engaging the services of the processor to process personal data on its behalf the Processor shall comply with the security, confidentiality and other obligations imposed on it under this Agreement.

3. SECURITY OBLIGATIONS OF THE PROCESSOR

3.1 The Processor shall only carry out those actions in respect of the personal data processed on behalf of the Controller as are expressly authorised by the Controller.

3.2 The Processor shall take such Technical and Organisational Security Measures as are required under its own national law to protect personal data processed by the Processor on behalf of the Controller against unlawful forms of processing. Such Technical and Organisational measures shall include, as a minimum standard of protection, compliance with the legal and practical security requirements set out in Appendix 1 of this Agreement.

4. CONFIDENTIALITY

4.1 The Processor agrees that it shall maintain the personal data processed by the Processor on behalf of the Controller in confidence. In particular, the Processor agrees that, save with the prior written consent of the Controller, it shall not disclose any personal data supplied to the Processor by, for, or on behalf of, the Controller to any third party.

4.2 The Processor shall not make any use of any personal data supplied to it by the Controller otherwise than in connection with the provision of services to the Controller.

4.3 The obligations in clauses 4.1 and 4.2 above shall continue for a period of five years after the cessation of the provision of services by the Processor to the Controller.

4.4 Nothing in this agreement shall prevent either party from complying with any legal obligation imposed by a regulator or court. Both parties shall however, where possible, discuss together the appropriate response to any request from a regulator or court for disclosure of information.

5. SUB-CONTRACTING

5.1 The Processor shall not sub-contract any of its rights or obligations under this Agreement without the prior written consent of the Controller.

5.2 Where the Processor, with the consent of the Controller, sub-contracts its obligations under this agreement it shall do so only by way of a written agreement with the Sub-Contractor which imposes the same obligations in relation to the security of the processing on the Sub-Contractor as are imposed on the Processor under this Agreement.

5.3 For the avoidance of doubt, where the Sub-Contractor fails to fulfil its obligations under any sub-processing agreement, the Processor shall remain fully liable to the Controller for the fulfilment of its obligations under this Agreement.

6. TERM AND TERMINATION

6.1 This Agreement shall continue in full force and effect for so long as the Processor is processing personal data on behalf of the Controller.

6.2 Within 7 days following termination of this Agreement the Processor shall, at the direction of the Controller, (a) comply with any other agreement made between the parties

concerning the return or destruction of data, or (b) return all personal data passed to the Processor by the Controller for processing, or (c) on receipt of instructions from the Controller, destroy all such data unless prohibited from doing so by any applicable law.

7. GOVERNING LAW

7.1 This Agreement shall be governed by and construed in accordance with the national law of the Member state in which the Controller is established.

AS WITNESS this Agreement has been signed on behalf of each of the parties by its duly authorised representative on the day and year first above written.

SIGNED on behalf of the Scottish Minister at St Andrew's House, Edinburgh on 9 March 2017

GRO-C

(Authorised signatory)

GARETH BROWN, DEPUTY DIRECTOR, HEALTH PROTECTION DIVISION

In the presence of

GRO-C

SAM BAKER, ST ANDREW'S HOUSE, EDINBURGH

(witness name, signature and address)

SIGNED on behalf of the Common Services Agency (NSS) at Edinburgh on March 2017

GRO-C

(Authorised signatory)

DAVID KNOWLES, DIRECTOR, PRACTITIONER AND COUNTER FRAUD SERVICES

In the presence of

KELLY WATT, NHS NATIONAL SERVICES SCOTLAND,
GYLES, EDINBURGH.

GRO-C

(witness name, signature and address)

APPENDIX

1. Legal requirements

1.1 The Processor shall, in respect of the processing of personal data on behalf of the Controller, identify and comply with any specific security provisions imposed by its national law.

2. Practical security measures

2.1 In compliance with its obligations under clause 3.2 with regard to the processing of personal data on behalf of the Controller, the Processor, as a minimum requirement, shall give due consideration to the following types of security measures:

2.1.1 Information Security Management Systems;

2.1.2 Physical Security;

2.1.3 Access Control;

2.1.4 Security and Privacy Enhancing Technologies;

2.1.5 Awareness, training and security checks in relation to personnel;

2.1.6 Incident/Response Management/Business Continuity; and

2.1.7 Audit Controls/Due Diligence;

The Practical Security Measures outlined in the Schedule are taken from the OECD Working Party on Information Security and Privacy's draft paper of 30-31 March 2004 entitled "Information Security Issues and Resources for Small and Entrepreneurial Companies – A business companion to the 2002 OECD Guidelines for the Security of Networks and Information systems: Towards a Culture of Security"