



## **Service Level Agreement Conditions**

**Dated 7<sup>th</sup> September 2018**

## DEFINITIONS AND INTERPRETATIONS

In this Service Level Agreement: -

“Commencement Date” means the date of the start of the Service, or as otherwise specified.

“Pricing Schedule” means the Schedule containing details of the Price.

"Data" means all designs, models, drawings, prints, samples, transparencies, specifications, reports, manuscripts, working notes, documentation, process information, manuals, photographs, negatives, tapes, discs, software or any other similar items.

"Goods" means all products, articles or materials specified in an Order to be supplied in accordance with the Contract.

"NES" means NHS Education for Scotland (“NES”) established as a Special Health Board on 1 April 2002 by the NHS Education for Scotland Order 2002, Scottish Statutory Instrument 2002, No.103, and having a place of business at Westport 102, Edinburgh, EH3 9DN.

"Price" means the price exclusive of Value Added Tax payable to the Provider by NES under the Agreement for the full and proper performance by the Provider of its obligations under the Agreement.

“Provider” means the NHS Scotland Board with whom NES enters into the Service Level Agreement.

“Services” means the services to be supplied as specified in the Specification.

“Specification” means the description of the Services to be supplied under the Agreement as set out in the Specification Schedule including, where appropriate, the Key Personnel, the Premises and the Quality Standards.

“Term” means the period from the commencement of the Services to the date of expiry as set out in the Form of Agreement.

“Contract Period” means the period from the Commencement Date of the Services to the date of expiry as set out in the Service Level Form of Agreement.

## **1. SERVICE LEVEL AGREEMENT**

The Provider shall supply the Services during the Contract Period in accordance with the Authority's requirements as set out in the Specification and the provisions of the Contract in consideration of the payment of the Contract Price.

- 1.2 The Agreement is made between NES and the Provider who shall supply the Services during the Contract Period in accordance with NES requirements as set out in the Specification.

All outputs, hereinafter referred to as "The Materials" produced as part of the Services on behalf of NES shall become the property of NES.

- 1.3 The parties wish to record the basis on which they will work together. This Agreement sets out:

- (a) the principles underpinning this Agreement; and
- (b) the respective roles and responsibilities the Parties.

Each party shall at all times act in good faith towards the other party in interpretation and the delivery of this Agreement

The Service Level Agreement is not a contract enforceable under Law but represents the mutual commitment and collaboration of the Parties to meet service requirements and thereby to support the delivery of high quality patient care.

## **2. COMMENCEMENT AND DURATION**

The Agreement shall be in force from the Commencement Date and shall endure for the Contract Period, or where there is no Contract Period, until the Provider has completed the Services, unless it is otherwise terminated in accordance with the provisions of Clause 13, or extended

## **3. ACCOUNTABILITY ARRANGEMENTS**

- 3.1 Accountability for the performances of the Services and functions set out in this service level agreement lies with the Provider and NES as follows:

- The Provider shall be accountable for the delivery of Services and outputs in accordance with the specifications set out in this agreement;
- NES will be responsible for all the financial aspects of this agreement ensuring that payments to the Provider are made timeously and are wholly appropriate for the work undertaken.

- 3.2 The Accountable Officer of NES shall be responsible for the financial performance of NES, including any consequences arising from the failure to specify completely or appropriately the Services required by NES in this agreement.

#### **4. RISK MANAGEMENT**

4.1 Whilst the Provider and NES are committed to the minimisation of risk they jointly recognise that not all risk can be completely avoided. In the event of any costs arising from the materialisation of risk, NES and the Provider will discuss and agree on the most appropriate course of action to follow, including each party's share of the costs. This will apply to costs that arise from events such as:

- General cost over runs not attributable to the acts or omissions of one or more of the parties;
- Costs of early termination of agreement or forced cessation of any of the Services;
- Write off or permanent impairment of assets used solely or mainly for the delivery of the agreed Services;
- Any exceptional expenditure not planned for in original agreement

It is accepted by both parties that where any costs arise from the act, omission or delay of one of the parties that party shall be liable for such cost.

#### **5. CONFIDENTIALITY AND DATA SECURITY**

##### 5.1 Caldicott

Where for the purposes of delivering the agreed Services it is necessary for the Provider to hold patient identifiable information (i.e. that is subject to NHS Rules on protection and disclosure under the supervision of a named Caldicott Guardian), it shall not disclose such information without the prior consent in writing of the Caldicott Guardian of the organisation from which the patient identifiable has originated. It may then disclose patient identifiable information for proper purposes under procedures supervised by the Provider's Caldicott Guardian. This consent may be given in general or specific terms, but cannot authorise any greater degree of disclosure than would be permitted under the Caldicott arrangements of either party.

##### 5.2 Data Protection

Both parties agree to adhere to Data Protection Regulations. Data Protection Regulations means the EU Data Protection Directive 95/46/EC, the Directive on Privacy and Electronic Communications 2002/58/EC (as amended by the Citizens Rights Directive 2009/136), the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699) and The EU General Data Protection Regulation, UK Data Protection Bill and ePrivacy Regulations as well as any applicable decisions and guidance made under them together with any other law, statute, directive, regulation, other legislation in whatever form, delegated act (under any of the foregoing), rule or other binding restriction, decision or guidance in force from time to time with regards to the processing of personal data, which may apply to either party in respect of its activities under this agreement.

##### 5.3 Confidentiality

Both parties will endeavour to maintain appropriate confidentiality regarding information that is proprietary to each within the context of shared working, but both parties acknowledge their obligations under the Freedom of Information (Scotland) Act 2002 ("the 2002 Act") and shall, where it is reasonably practical to do so, consult with

the other party before providing any information in response to a request received by them under the 2002 Act regarding information which has been passed to them under this Service Level Agreement.

**6. EQUALITY AND DIVERSITY**

In accordance with the Equality Act 2010, NES has a statutory duty (the 'Equality Duty') when carrying out its functions to have due regard to the need to eliminate discrimination, harassment and other conduct prohibited by the Act, promote equality of opportunity between those who share a protected characteristic and those who do not, and to promote good relations between people who share a particular protected characteristic and those who do not. This duty applies in respect of the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership status, pregnancy and maternity, race, religion or belief, sex and sexual orientation. NES requires that any Services carried out on its behalf are carried out in such a way as to comply with NES's Equality Duty.

- 6.1 The Provider agrees to comply with the Equality Act 2010 for all work undertaken through this Agreement and the Provider shall secure that all servants, employees, suppliers, sub-contractors or agents of the Provider employed in the execution of the Agreement shall comply with the Equality Act 2010. For the avoidance of doubt, the Provider shall not discriminate directly or indirectly, or by way of discrimination arising from disability, victimisation or harassment, against any person on grounds of age, disability, gender reassignment, marriage and civil partnership status, pregnancy and maternity, race, religion or belief, sex and sexual orientation, contrary to the Equality Act 2010.
- 6.2 The Provider shall notify NES forthwith in writing as soon as it becomes aware of any investigation or of proceedings brought against the Provider under the Equality Act 2010.
- 6.3 Where any investigation is undertaken by a person or body empowered to conduct such investigation, and/or proceedings are instituted in connection with any matter in relation to this Agreement being in contravention of the Equality Act 2010, the Provider shall free of charge:
- i. notify NES in writing as soon as it becomes aware;
  - ii. provide any information requested in the timescale allotted;
  - iii. attend any meetings as required and permit the Provider's staff to attend;
  - iv. promptly allow access to and investigation of any document or data deemed by NES to be relevant;
  - v. allow itself and any staff of the Provider to appear as witness in any ensuing proceedings; and
  - vi. co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.

Where any such investigation is conducted or proceedings are brought under the Equality Act 2010, which arise directly or indirectly out of any act or omission of the Provider, its servants, employees, suppliers, sub-contractors or agents, and where

there is a finding against the Provider in such investigation or proceedings, the Provider shall indemnify NES with respect to all costs, charges and expenses arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment NES may have been ordered or required to pay to a third party.

- 6.4 If required, the Provider will provide relevant equality and diversity monitoring information or disaggregated data as specified by this Agreement.

## **7. FINANCIAL ARRANGEMENTS**

- 7.1 The price payable to the Provider for the successful delivery of the Services shall be calculated as set out in the Pricing Schedule.

This price is based on the full cost provision in accordance with current best practice in the NHS for costing service agreements between NHS bodies. No increases in the agreed level of funding will be paid unless the NES, at its absolute discretion, agrees in writing and in advance that such an increase is justified.

- 7.2 The price for the service will be reviewed annually, when cost improvement programmes, inflationary pressures, the financial impact of the management plan and other plans will be considered.
- 7.3 The final payment is dependent upon the complete satisfaction of the NES, at its absolute discretion, that the Provider has complied with all of its obligations under this agreement, and has completed all of the research and reporting required to a standard acceptable to the NES.
- 7.4 Payment of sums due under the service agreement shall be made in accordance with the Pricing Schedule.

## **8. PERFORMANCE REVIEW AND MONITORING**

- 8.1 The aim of the review and monitoring arrangements is to ensure that the overall objectives of providing a timely, high quality and cost effective service are met through a system of agreed criteria, objective measurement and regular discussion between the Provider and NES, including proper opportunity for feedback for:
- Problem resolution and escalation procedures;
  - Development of the agreement itself;
  - Adjustment to price to reflect significant variation (planned or unplanned).
- 8.2 Performance of the Provider will be monitored principally through the issue of performance reports, to be issued in accordance with the requirements of the Specification. Performance reports will list the outcome of the agreed measures relating to each of the tasks as listed in the agreement.
- 8.3 Regular review meetings will be held on the dates set out in an agreed Schedule between the parties. The Specification, details the meeting representatives from each party and the matters to be discussed.

## **9. DISPUTES RESOLUTION**

9.1 In the event of a dispute over the interpretation or application of the terms of this agreement, the process of resolution is as follows:

- The officers of the Provider and NES who are named as having day to day responsibility for the service concerned should consider the issue;
- If it is not possible to resolve the issue at that level it should be referred to the Directors of Finance of the Provider and NES for resolution;
- If Directors of Finance cannot resolve the issue it should be referred to the Accountable Officers of the Provider and NES for resolution.

9.2 Disputes should be determined as quickly as possible. In normal circumstances the Provider and NES are committed to resolution within one month of formal notification of a dispute.

## **10. VARIATION**

The Service Level Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by the parties.

## **11. STATUTORY REQUIREMENTS**

The Provider shall ensure that it complies with all current legislation and other statutory requirements relevant to the compliance by the Provider with its duties, either expressed or implied by this Agreement.

## **12. REPRESENTATIVES**

Details of the NES representative and the Provider Representative are included in the Specification. The parties will notify the other party, in writing, of any change to their representative. The Provider representative shall be the key point of contact of the Provider and the person who NES may refer all queries and day to day communications regarding the operation of the agreement in the first instance.

## **13. EXIT STRATEGY/TERMINATION OF AGREEMENT**

13.1 The Provider may terminate this agreement if NES fails to make any payments required under the agreement within sixty days of the receipt of a competent invoice.

13.2 NES reserves the right to terminate this agreement at any time upon reasonable notice of not less than two months. Subject to full compliance by the Provider with all of its obligations under this agreement to the date of termination, NES will re-imburse the Provider for any expenditure properly incurred on the project.

13.3 Termination of this agreement shall not in any way detract from the provisions of this agreement, which relate to confidentiality, ownership and publication of data and other project material, and financial probity and reporting.

**14**     **INTELLECTUAL PROPERTY**

- 14.1    For the purposes of this Clause 14, “Intellectual Property” shall mean any and all intellectual property of whatever nature anywhere in the world and all rights pertaining thereto whether recorded or registered in any manner or otherwise including without prejudice to the foregoing generality patents, trade marks, registered designs and applications for any of the same, copyright, database rights (however so called), design rights, trade secrets, know how and all other legal rights protecting intangible proprietary information.
- 14.2    Nothing in this agreement shall give the Provider any rights in or to the Intellectual Property of NES and the Provider hereby acknowledges that it shall not acquire any rights in respect thereof.
- 14.3    The Provider hereby assigns to NES and, insofar as it is not competent for the Provider currently to assign, hereby undertakes and agrees to assign to NES any and all Intellectual Property in the Materials developed by the Provider as part of the delivery of the Services.

**15**     **PROVIDER USE OF MATERIALS**

- 15.1    In the event that the Provider wishes to make use of the Materials for purposes outwith those covered by this agreement then the Provider will:
- a)     obtain written consent from NES from the NES representative;
  - b)     ensure that the Materials include an acknowledgement that they belong to NES and if requested by NES will also include the logo of NES.