eDRIS Customer Contract Terms (“Terms”)

1. DEFINITIONS AND INTERPRETATION

1.1 The following definitions and rules of interpretation apply in each Contract.

Advisory Services  the high level advisory services provided by NSS described at [https://www.isdscotland.org/Products-and-Services/eDRIS/Research-Proposal/];

Analytic Research Environment  the secure analytics platform for Approved Researchers contained within the System and forming part of the National Safe Haven;

Analytic Services  the analytic services provided by NSS as more particularly described at [https://www.isdscotland.org/Products-and-Services/eDRIS/FAQ-eDRIS/#a1]

Approved Researcher  a Potential Researcher(s) who has completed an “Approved Researcher” training course as described at  http://www.isdscotland.org/Products-and-Services/eDRIS/FAQ-eDRIS/#c1 or, in relation to research just involving Customer Data, such researcher(s) approved by the Customer in terms of Clause 5.2;

Business Days  any day (other than a Saturday or Sunday) on which clearing banks are open for the transaction of normal banking business (ignoring for this purpose twenty four (24) hour electronic banking) in Scotland;

Charges  the charges for the Services stated in the Project Record Sheet (as calculated in accordance with NSS’ standard charges set out on the NSS website as published at http://www.isdscotland.org/Products-and-Services/eDRIS/FAQ-eDRIS/#a4 );

Commencement Date  has the meaning set out in Clause 2.2;

Confidential Information  as defined in Clause 11.1;

Contract  a contract between NSS and the Customer for the supply of Services in accordance with these Terms and a Project Record Sheet;

Controller  as defined in the Data Protection Legislation;

Customer  the person or organisation identified as such in a Project Record Sheet;

Customer Analytic Outputs  interim and/or final analyses and/or reports (including the Research Findings of the Approved Researcher and/or Customer) produced by the Approved Researcher and/or Customer as part of the Research Project; to the extent that they do not incorporate any eDRIS Generated Project Dataset(s), NSS Analytic Outputs or NSS Background IPR;

Customer Data  such data provided by or on behalf of the Customer for...
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;

Data Subject as defined in the Data Protection Legislation;

DPA 2018 means the Data Protection Act 2018;

eDRIS the NSS electronic data research and innovation service;

eDRIS Generated Project Dataset(s) the NHSS Data and/or Other Sector Data listed on the Project Record Sheet, whether or not linked or de-identified, generated by eDRIS and comprising the data to be analysed by the Approved Researcher and/or by NSS as part of the Research Project;

eDRIS Services the study, design, approvals and data access services provided by NSS in relation to the National Safe Haven, as more particularly described at [https://www.isdscotland.org/Products-and-Services/eDRIS/Research-Proposal/]

eDRIS User Terms the relevant terms of access to The National Safe Haven which Users must comply with as set out at http://www.isdscotland.org/Products-and-Services/eDRIS/FAQ-eDRIS/#h2;

EEA has the meaning set out in Clause 5.5.2;

EPCC Edinburgh Parallel Computing Centre within the University of Edinburgh;

FOISA the Freedom of Information (Scotland) Act 2002;

GDPR the General Data Protection Regulation (Regulation (EU) 2016/679);

HIS Healthcare Improvement 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;

Hosting Services the hosting and access services in relation to any Customer Data more particularly described at [https://www.isdscotland.org/Products-and-Services/eDRIS/Use-of-the-National-Safe-Haven/];

ICO the Information Commissioner’s Office;

Index Agent National Records Scotland of HM General Register House, 2 Princes Street, Edinburgh EH1 3YY;
Indexing Agreement

the Agreement entered into or to be entered into between the Index Agent and NSS in relation to indexing services provided by the Index Agent in respect of the NHSS Data and Other Sector Data or in respect of the Customer Data (as such indexing services are broadly described at [https://www.isdscotland.org/Products-and-Services/eDRIS/_docs/2b-Indexing-and-Linkage-Process-Diagram.pdf]);

Indexing Services

the NRS Indexing Services and/or the NSS Indexing Services as the case may be;

Intellectual Property Rights

patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

IT Services Agreement

the agreement entered into between the University of Edinburgh and NSS in relation to the provision, hosting and maintenance by the University of Edinburgh of the IT infrastructure involving the National Safe Haven;

Model Clauses

has the meaning set out in Clause 5.5.2;

National Safe Haven

a Scotland-wide secure arrangement for the controlled collation, management, dissemination and analysis of electronic patient records and service user information from other sectors;

NHSS

NHSSScotland, namely all NHSS Boards, HIS, NSS and all other parties contracted to any of same to provide medical, dental, ophthalmic, pharmaceutical and/or other healthcare services;

NHSS Board

a Health Board or Special Health Board as constituted pursuant to the National Health Service (Scotland) Act 1978, HIS or NSS;

NHSS Data

such data (whether Personal Data or not) within NHSS datasets (including the PACS Data);

NHSS Party

a party included within NHSS;

NHSS Procedures

the Caldicott Principles, the NHS Scotland Records Management Code of Practice, the NHS Scotland IT Security Policy, the eHealth Mobile Data Protection Standard and the NHS Scotland Code of Practice on Protecting Patient Confidentiality together with relevant NHSS guidance issued by Scottish Government;
NRS Indexing Services  
the indexing services provided by the Index Agent pursuant to the Indexing Agreement as broadly described at [https://www.isdscotland.org/Products-and-Services/eDRIS/FAQ-eDRIS/#e1];

NSS  
The Common Services Agency for the Scottish Health Service, 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 Analytic Outputs  
the NSS Interim Analytic Outputs and/or NSS Final Analytic Outputs;

NSS Background IPR  
has the meaning set out in Clause 7.1;

NSS Customer Analytic Outputs  
where the Services include Analytic Services in respect of any Customer Data, an interim or final report produced by NSS comprising of a working analysis of such Customer Data by NSS or a final analysis of such Customer Data by NSS as the case may be and in each case including the Research Findings of NSS;

NSS Final Analytic Outputs  
where the Services include Analytic Services in respect of any eDRIS Generated Project Dataset(s), the final report produced by NSS comprising a final analysis of such eDRIS Generated Project Dataset(s) by NSS and including the Research Findings of NSS;

NSS Indexing Services  
the indexing services provided by NSS as broadly described at [https://www.isdscotland.org/Products-and-Services/eDRIS/FAQ-eDRIS/#e1];

NSS Interim Analytic Outputs  
where the Services include Analytic Services in respect of any eDRIS Generated Project Dataset(s), the interim report produced by NSS comprising an interim analysis of such eDRIS Generated Project Dataset(s) by NSS;

Order  
the Customer’s order for Services set out in a Project Record Sheet;

Other Sector Data  
such data (whether Personal Data or not) provided by Other Sector Organisations required for the Research Project and procured for the Customer by NSS, as described in a Project Record Sheet;

Other Sector Organisations  
organisations within sectors outwith NHSS, such as local authority and education;

PACS Data  
data from the NHSS Picture Archiving and Communication System;

Party  
either the Customer or NSS (and “Parties” shall refer to both together);

PBPP Approval  
approval of the Research Project by the Public Benefit and Privacy Panel;

Personal Data  
as defined in the Data Protection Legislation;

Potential Researcher  
a researcher employed by or matriculated with the
Customer wishing to undertake the Research Project;

Process as defined in the Data Protection Legislation and **Processed** and **Processing** shall be construed accordingly;

Processor as defined in the Data Protection Legislation;

Project Personal Data as defined in Clause 5.5;

Project Record Sheet an order form for Services in the form set out in Part 1 of the Schedule, completed and signed by the Customer;

Project Virtual Workspace as defined in Clause 8.2;

Research Co-ordinator the NSS employee working within eDRIS who has been tasked by NSS with assisting the Approved Researcher in relation to the Research Project;

Research Findings means all final research findings and conclusions reached at the end of the Research Project by either NSS within the NSS Final Analytic Outputs or final NSS Customer Analytic Outputs, if applicable, or by the Approved Researcher in the Customer Analytic Outputs, in each case regardless of whether the Research Project concerns Customer Data or NHSS Data but specifically excluding any eDRIS Generated Project Dataset(s) and any NSS Background IPR;

Research Project the Customer’s research project(s) described in the Project Record Sheet, to be carried out via the National Safe Haven;

Schedule the schedule in two (2) parts annexed to and forming part of these Terms;

Services such eDRIS Services, Indexing Services, Analytic Services, Advisory Services, Hosting Services and/or other services as applicable in relation to the Research Project provided or procured by NSS for the Customer pursuant to a Contract and as described in the relevant Project Record Sheet;


System the IT equipment and software together with other IT infrastructure, cabling, connectivity and power supply provided by the University of Edinburgh under or pursuant to the IT Services Agreement;

Term as stated in the Project Record Sheet;

University of Edinburgh The University Court of the University of Edinburgh, a charitable body registered in Scotland under registration number SC005336, incorporated under the Universities (Scotland) Acts and having its main administrative offices at Old College, South Bridge, Edinburgh EH8 9YL; and
1.2 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time, and includes all subordinate legislation made thereunder.

1.3 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.4 A reference to writing or written includes fax and e-mail.

1.5 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. BASIS OF CONTRACT

2.1 A completed Project Record Sheet signed by the Customer constitutes an offer by the Customer to purchase the Services described therein in accordance with these Terms.

2.2 A Project Record Sheet shall only be deemed to be accepted when NSS issues written acceptance of same by counter-signing it, at which point and on which date the Contract shall come into existence ("Commencement Date").

2.3 These Terms and the Project Record Sheet apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4 In the event of any inconsistency between these Terms and a Project Record Sheet, the latter will prevail.

2.5 Any quotation given by NSS shall not constitute an offer, and is only valid for a period of forty (40) Business Days from its date of issue.

3. PROVISION OF SERVICES

3.1 NSS will provide the Services to the Customer in accordance with the terms and conditions of the Contract.

3.2 NSS shall use all reasonable endeavours to meet any performance dates specified in the Project Record Sheet, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 The Customer:

3.3.1 shall ensure that the Project Record Sheet is complete and accurate; and

3.3.2 shall provide NSS with such information as NSS may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects; and

3.3.3 acknowledges that NSS shall not be responsible for any delay or failure to provide any Services where this is due to the Customer’s failure to comply with any of these Terms.

3.4 Where the Customer is purchasing Indexing Services, Analytic Services or Hosting Services in respect of any Customer Data, the Customer shall provide or procure the provision to the EPCC of such Customer Data by such method and by such timescales as are set at [https://www.isdscotland.org/Products-and-Services/eDRIS/Research-Proposal/] and in the Project Record Sheet respectively.

4. PAYMENT
4.1 In consideration of the Services, the Customer shall pay the Charges to NSS.

4.2 NSS shall invoice the Customer in accordance with the invoicing provisions described in Part A of the Project Record Sheet.

4.3 The Customer shall pay each invoice submitted by NSS:

4.3.1 within sixty (60) days of the date of the invoice; and

4.3.2 in full and in cleared funds to a bank account nominated in writing by NSS, and time for payment shall be of the essence of the Contract.

4.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by NSS to the Customer, the Customer shall, on receipt of a valid VAT invoice from NSS, pay to NSS such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

4.5 If the Customer fails to make any payment due to NSS under the Contract by the due date for payment, then NSS shall, at its discretion, be entitled to require the Customer to pay interest on the overdue amount at the rate of four (4) per cent per annum above The Royal Bank of Scotland plc’s base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgement. The Customer shall pay the interest together with the overdue amount.

5. DATA PROTECTION AND SECURITY

5.1 eDRIS User Terms – Non Customer Data

Other than in relation to access to Customer Data (in which case Clause 5.2 below shall apply), the Customer will ensure that the Approved Researcher signs up to the relevant eDRIS User Terms prior to or as soon as reasonably practicable after the Commencement Date (and in any event before accessing any data within the National Safe Haven) and that the Approved Researcher complies with same. For the avoidance of doubt, other than where Customer Data is involved (in which case Clause 5.2 below shall apply), NSS will not be obliged to provide any Services beyond assisting Potential Researchers to become Approved Researchers until all such Potential Researchers become Approved Researchers.

5.2 eDRIS User Terms – Project Generated Customer Data

Where the Customer is purchasing Indexing Services, Analytic Services and/or Hosting Services involving Customer Data, the Customer will provide NSS with written details of all Approved Researchers and all necessary details in respect thereof to enable NSS to create access to the Customer Data in the relevant Virtual Project Workspace for such Approved Researcher(s). As applicable, the Customer will ensure that the Approved Researchers sign up to the relevant eDRIS User Terms prior to or as soon as reasonably practicable after the Commencement Date (and in any event before accessing any data within the National Safe Haven) or the Customer acknowledges the relevant eDRIS User Terms in place between NSS and the Customer and in each case, will ensure that the Approved Researcher complies with same. For the avoidance of doubt, where relevant NSS will not be obliged to provide any access to the Customer Data for any Approved Researcher until the Customer provides NSS with a copy of the relevant signed eDRIS User Terms for that Approved Researcher.

5.3 Controller/Processor

The Parties acknowledge and agree that there is no intention for any eDRIS Generated Project Dataset(s) to include any Personal Data but to the extent that Personal Data is included:

5.3.1 in any eDRIS Generated Project Dataset(s), then from the point when the Approved Researcher accesses same, the Customer is a Controller; in respect of same; and
5.3.2 the Customer agrees that such Personal Data may only be used for the purpose of the Research Project.

5.4 Both Parties agree to comply with their obligations under the Data Protection Legislation. Schedule Part 2 sets out certain information regarding the Processing of Project Personal Data.

5.5 NSS Obligations

Where NSS is acting as a Processor in relation to the Processing of Personal Data contained in the eDRIS Generated Project Dataset(s) or Project Generated Customer Data as applicable, for the purposes of the Research Project (such Personal Data being (“Project Personal Data”), NSS shall:

5.5.1 Process such Project Personal Data only in accordance with the Customer’s written instructions from time to time and shall not Process the Project Personal Data for any purpose other than in connection with the Services unless required to do so by law. The Customer warrants that none of its instructions will breach any applicable laws, enactments, regulations, orders, standards and other similar instruments;

5.5.2 not transfer the Project Personal Data outwith the European Economic Area (“EEA”) unless expressly required or permitted to do so by the Customer and where written consent has been provided by the Customer, NSS undertakes to comply with the European Commission model clauses relating to the transfer of Personal Data outside the EEA (“Model Clauses”), as advocated by the ICO (and as updated or amended from time to time), such clauses being incorporated into the Contract by reference;

5.5.3 ensure that all individuals Processing Project Personal Data on behalf of NSS are subject to a duty of confidence;

5.5.4 not engage a sub-Processor, beyond that described at [https://www.isdscotland.org/Products-and-Services/eDRIS/Research-Proposal/] without the prior consent of the Customer;

5.5.5 delete and/or return all Customer Personal Data to the Customer on termination of the Contract pursuant to Clause 9.5.5;

5.5.6 maintain complete and accurate records and information to demonstrate its compliance with this Clause 5 and allow for audits by the Customer or the Customer’s designated auditor upon reasonable notice by NSS and subject to the Customer complying with the relevant health and safety and security policies of NSS;

5.5.7 comply with Article 32 of GDPR which will include, but not be limited to, implementing the security measures set out at [https://www.isdscotland.org/Products-and-Services/eDRIS/FAQ-eDRIS/#h1];

5.5.8 assist the Customer as described in Articles 28(3)(e) and (f) of GDPR; and

5.5.9 notify the Customer if asked by it to act in contravention of the Data Protection Legislation.

5.6 Without prejudice to the generality, NSS undertakes to comply with the obligations placed upon a Controller in the Data Protection Legislation when appointing a Processor as they apply to the provision of the Indexing Services by the Index Agent and the provision of hosting and other services by The University of Edinburgh pursuant to the IT Services Agreement.

5.7 Customer Obligations

Without prejudice to the remainder of this Clause 5 and to Clause 7, the Customer further undertakes

5.7.1 in respect of the eDRIS Generated Project Dataset(s), not to use the eDRIS Generated Project Dataset(s) other than as provided in the Contract; and to implement adequate technical and organisational measures (in light of the nature of
the access to and processing to be undertaken in relation to the eDRIS Generated Project Data to protect the integrity of the eDRIS Generated Project Dataset(s).

5.7.2 not to allow the eDRIS Generated Project Dataset(s) or the NSS Interim Analytic Outputs as applicable to be accessed by, or sent to, parties outside the EEA (unless expressly required or permitted to do so by NSS and where written consent has been provided by NSS, and the other relevant Controller(s) if applicable, in which case the Customer undertakes to comply with the Model Clauses, such Model Clauses being incorporated into the Contract by reference). For the avoidance of doubt NSS will not, in any situation, grant permission for the eDRIS Generated Project Dataset(s) to be transferred, extracted or copied from the National Safe Haven.

5.8 Breach

Each Party shall notify the other immediately in relation to any (i) actual or suspected breach of the Contract; or (ii) any breach which involves Personal Data Processed as part of the Contract in respect of which it becomes aware and shall promptly provide any information, co-operation and assistance reasonably requested by the other to remedy or mitigate the effects of the event or issue in question;

5.9 Each Party agrees to promptly report to the ICO, such Personal Data Breaches (as defined in the Data Protection Legislation) which it becomes aware of which are Personal Data Breaches which must in terms of Article 33 of the GDPR, be reported to the ICO, all in line with the Data Protection Legislation and ICO Guidance.

5.10 General

The Customer acknowledges that mutually agreed sets of access rules and protocols for the handling of the eDRIS Generated Project Dataset(s) and for the handling of the Customer Data by the Approved Researchers are set out in the relevant eDRIS User Terms.

5.11 Notwithstanding Clause 5.4, each of NSS and the Customer warrants to the other that it will Process the eDRIS Generated Project Dataset(s), Customer Data, NSS Analytic Outputs and the Customer Analytic Outputs as applicable in compliance with:

5.11.1 the Data Protection Legislation, the Human Rights Act 1998 and all other applicable laws, enactments, regulations, orders, standards and other similar instruments and all codes and guidance issued pursuant thereto;

5.11.2 the common law duty of confidentiality;

5.11.3 the Scottish Government Procedures, and in respect of the eDRIS Generated Project Dataset(s), the NHSS Procedures.

6. CHANGE CONTROL

6.1 If either Party wishes to change the scope of the Services, it shall submit details of the requested change to the other in writing.

6.2 If either Party requests a change to the scope of the Services, NSS shall, within a reasonable period of time after providing or receiving the written details of the proposed change pursuant to Clause 6.1, provide a note in writing to the Customer of:

6.2.1 the likely time required to implement the change;

6.2.2 any cost implications arising from the change; and

6.2.3 any other impact of the change on the terms of the Contract,

and the matter will be discussed by the Parties.

6.3 The Parties agree that NSS should proceed with a change, the Parties will agree in writing the necessary variations to the Contract to take account of the change before NSS proceeds with
such change.

7. IPR AND PROPRIETARY RIGHTS

7.1 Without prejudice to Clauses 7.4 and 7.5, the Customer acknowledges and agrees that NSS and/or its licensors own all rights in to:

7.1.1 the eDRIS Generated Project Dataset(s);

7.1.2 the NSS Analytic Outputs and the NSS Customer Analytic Outputs (except, in each case, any Research Findings of NSS therein and, in the case of the NSS Customer Analytic Outputs, any Customer Data therein); and

7.1.3 all “NSS Background IPR” (being all Intellectual Property Rights in the Services and in any materials used by or developed by NSS in the course of or in connection with the provision of the Services),

and the Customer acknowledges and agrees that other than as set out in Clauses 7.2, 7.3 and 7.4 below, it acquires no rights in and to same.

7.2 Without prejudice to the remainder of this Clause 7 and to Clauses 5 and 11, provided all Charges have been paid in full to NSS, NSS hereby grants to the Customer as applicable, a non-exclusive, royalty-free, worldwide licence to use: (i) (and sub-license) the NSS Final Analytic Outputs and such Intellectual Property Rights in the NSS Customer Analytic Outputs owned by NSS on a perpetual basis for any purpose; and (ii) the NSS Interim Analytic Outputs for the Term for the purposes of the Research Project.

7.3 Regardless of the remainder of this Clause 7, and without prejudice to Clauses 5 and 11, the Customer acknowledges and agrees that the NSS Interim Analytic Outputs (as applicable) may only be disclosed by it to the Customer project team for the Research Project (as such team must be disclosed by the Customer to NSS) and that such staff are appropriately trained and vetted. For the avoidance of doubt, there are no restrictions on disclosure in relation to any NSS Final Analytic Outputs.

7.4 NSS acknowledges and agrees that the Customer and/or its licensors owns all rights in and to the Customer Data, Customer Analytic Outputs and all Research Findings of NSS, the Approved Researcher and/or Customer and to the extent that NSS owns any of the foregoing, NSS hereby assigns same to the Customer.

7.5 Where NSS requires to use any Intellectual Property Rights of the Approved Researcher and/or Customer for the purposes of the Services, the Customer hereby grants to NSS a royalty-free, fully-paid, non-exclusive licence to use same for the Term for the purpose of NSS delivering the Services and complying with its obligations under the Contract.

7.6 The Customer acknowledges that:

7.6.1 unless otherwise agreed in writing between NSS and the Customer, NSS requires that the NSS Final Analytic Outputs or Research Findings therein as applicable are placed in the public domain by publishing such NSS Final Analytic Outputs or Research Findings as applicable; and

7.6.2 in the event that the Customer fails to publish the NSS Final Analytic Outputs or Research Findings as applicable, the Customer acknowledges that NSS shall be entitled to publish same;

7.6.3 notwithstanding the provisions of Clauses 5.3 and 5.14 but without prejudice to Clause 10.2, it is fully responsible for any use of the eDRIS Generated Project Dataset(s), NSS Analytical Outputs, NSS Customer Analytical Outputs, Customer Data and Customer Analytic Outputs (other than use by NSS of same for the purpose of delivering the Services) and;

7.6.4 it is responsible for ensuring that the Approved Researcher has a valid licence to all necessary analytic software in order to access the Customer Data or eDRIS.
Generated Project Dataset(s) as applicable, via the National Safe Haven.

8. ACCESS TO THE ANALYTIC RESEARCH ENVIRONMENT WITHIN THE NATIONAL SAFE HAVEN

8.1 The Customer acknowledges that only Approved Researchers may access the Analytic Research Environment.

8.2 When the Research Coordinator and Approved Researcher have agreed the study design for the Research Project, the Research Coordinator will liaise with the University of Edinburgh as required to allow the University of Edinburgh to create a sufficient tailored “portion” of the Analytic Research Environment (a “Project Virtual Workspace”) for the Approved Researcher. The University of Edinburgh will then create such Project Virtual Workspace, import the eDRIS Generated Project Dataset(s) or Customer Data as applicable thereto and create the means of access to same for the Research Coordinator. The Research Coordinator will then make such access available to the Approved Researcher.

8.3 The Customer acknowledges that the University of Edinburgh ensures that each Approved Researcher is only able to access such part of the Analytic Research Environment within the National Safe Haven as represents his or her Project Virtual Workspace and will only make such access available when it has received confirmation from the Research Coordinator that the Potential Researcher is an Approved Researcher.

9. TERMINATION

9.1 The Contract will subsist for the Term.

9.2 Either Party may terminate the Contract by giving the other Party two (2) months’ written notice.

9.3 Without limiting its other rights or remedies, either Party may terminate the Contract with immediate effect by giving notice to the other Party if:

9.3.1 the other Party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of that Party being notified in writing to do so.

9.4 Without limiting its other rights or remedies, NSS may terminate the Contract with immediate effect by giving written notice to the Customer if:

9.4.1 the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than thirty (30) days after being notified in writing to make such payment; and/or

9.4.2 the Customer’s financial position deteriorates to such an extent that in the opinion of NSS, the Customer’s capability to adequately fulfil its obligation under the Contract has been placed in jeopardy.

9.5 On termination of the Contract for any reason:

9.5.1 the Customer shall immediately pay to NSS all of NSS’ outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, NSS shall submit an invoice, which shall be payable by the Customer immediately on receipt;

9.5.2 the Customer shall return any NSS Analytic Outputs and/or NSS Customer Analytic Outputs which have not been fully paid for;

9.5.3 the accrued rights, remedies, obligations and liabilities of the Parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry;

9.5.4 Clauses which expressly or by implication survive termination shall continue in full force and effect; and
9.5.5 NSS shall return the Customer Data to the Customer by such method is explained at [https://www.isdscotland.org/Products-and-Services/eDRIS/FAQ-eDRIS/#h1] or securely destroy same.

10. ASSURANCES AND LIABILITY

10.1 NSS warrants that it will perform the Services with all reasonable skill and care and shall comply with all applicable laws and regulations with respect to its activities under the Contract. All implied warranties, conditions and assurances are, to the fullest extent permitted by law, excluded from the Contract.

10.2 Subject to the remainder of this Clause 10, each Party (the “Defaulting Party”) shall indemnify the other Party (which in the case of NSS includes all relevant NHSS Parties and all relevant Other Sector Organisations) against all claims, actions, proceedings, liabilities, costs, expenses, damages and losses suffered or incurred by the other Party (which in the case of NSS includes all relevant NHSS Parties and all other relevant Other Sector Organisations) arising out of or in connection with any breach by the Defaulting Party of Clauses 5, 7 and/or 11.

10.3 Neither Party shall be liable to the other Party for any indirect or consequential loss or damage nor be liable to the other for loss of profit or loss or contracts, loss of business opportunity, revenue, goodwill or anticipated savings.

10.4 Nothing in these Conditions shall be construed as attempting to limit or exclude the liability of either Party in respect of injury to, or the death of, any person caused by any wilful or negligent act or omission of that Party, its officers, employees, agents or subcontractors, or for fraud or fraudulent misrepresentation or the deliberate default or wilful misconduct of that Party, its employees or agents or sub-contractors.

10.5 Except for any liability of either Party under the indemnities given under Clause 10.2 of these Conditions and subject to Clause 10.3 and 10.4, each party’s total aggregate liability in contract, delict (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited to the amount of Charges, and where no Charges are payable under the Contract, shall be limited to £50,000.

10.6 Each Party’s total aggregate liability in respect of the indemnities granted in Clause 10.2 shall be limited to £500,000.

11. CONFIDENTIALITY

11.1 Each of the Parties shall, during the continuance of the Agreement and thereafter, keep confidential all, and shall not use for its own purposes (other than for the purposes of and as provided in the Contract) nor without the prior written consent of the other Party, disclose to any third party (except its professional advisors, permitted subcontractors or as may be required by any law or any legal or regulatory authority or as provided for in this Contract) any information of a confidential nature (including trade secrets and information of commercial value and in respect of NSS, includes any Personal Data included within the eDRIS Generated Project Dataset(s) and in respect of the Customer includes any Personal Data included within the Customer Data) which may become known to such Party from the other Party and which belongs to, is licensed to or relates to the other Party or its activities (“Confidential Information”), unless such information is public knowledge or already known to such Party at the time of disclosure, or subsequently becomes public knowledge other than by breach of the Contract or (ii) subsequently comes lawfully into the possession of such Party from a third party.

11.2 For the avoidance of doubt, disclosures made by NSS to the Office of the Chief Statistician shall not be subject to the provisions of this Clause 11.

11.3 Use and disclosure of eDRIS Generated Project Dataset(s) is addressed in Clause 7. In the event of any conflict between Clause 7 and this Clause 11, Clause 7 shall prevail.

12. FOISA

12.1 Each Party shall (at its own expense) assist and co-operate with the other Party to enable the
Party that has received a request under FOISA where such Party is subject to FOISA (a “Receiving Party”) to comply with the requirements of FOISA.

12.2 In furtherance of the obligation in Clause 12.1, each Party shall and shall ensure that all its staff shall:

12.2.1 provide the Receiving Party with a copy of all information in its possession or control in the form that the Receiving Party reasonably requires within five (5) Business Days (or such other period as the Receiving Party may reasonably require) of the Receiving Party request; and

12.2.2 provide all necessary assistance as reasonably requested by the Receiving Party to enable the Receiving Party to respond to a request for information within the time for compliance set out in Section 10 of FOISA.

12.3 A Receiving Party shall be entitled to apply its own policies and procedures in connection with a request under FOISA and shall be responsible for determining in its absolute discretion whether any information, whether commercially sensitive or otherwise, is exempt from disclosure in accordance with the provisions of FOISA or is to be disclosed in response to a request for information. In no event shall a Party respond directly to a request for information unless expressly authorised to do so by the Receiving Party.

12.4 In responding to a request for information under FOISA, including information in connection with the Contract (including grant application or award documents, subsequent contractual information or information classified as confidential or sensitive), the Receiving Party will, where such request involves information concerning the other Party or the Contract, inform the other Party of such request and use all reasonable endeavours to consult with the other Party, all prior to making any such information public.

13. GENERAL

13.1 No variation to the Contract shall be effective unless it is in writing and signed by the Parties (or their duly authorised representatives).

13.2 Any waiver of a right or remedy under the Agreement shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a Party to exercise any right or remedy provided under the Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy.

13.3 In the event that any of these terms, conditions or provisions shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall to that extent be severed from the remaining terms, conditions and provisions which shall continue to be valid to the fullest extent permitted by law.

13.4 Neither Party shall be entitled to assign, novate, sub-contract or otherwise dispose of the Contract or part thereof without the prior written consent of the other.

13.5 NSS and the Customer acknowledge that where the Customer is referred to in Section 17A of the National Health Service (Scotland) Act 1978, the Contract is an NHS Contract pursuant to that provision.

14. DISPUTE ESCALATION

14.1 The Parties agree to consult and negotiate in good faith to try to resolve any dispute, controversy or claim that arises out of or relates to the Contract. The Parties agree that any and all disputes and controversies arising from, connected with, or relating to the Contract or any breach thereof (collectively “Disputes”) will be resolved in accordance with the terms of this Clause 14 as follows:

14.1.1 the Associate Director of Research Infrastructure at NSS and Chief Operating Officer of the Customer, shall first meet and attempt to resolve the Dispute in face-to-face or telephone negotiations. The meeting shall occur within thirty (30) days of the time that one Party notifies the other in writing of the existence of the Dispute;
14.1.2 should the Dispute not be resolved within thirty (30) days of the meeting referred to in Clause 14.1.1, the Dispute may be referred by either party to the Director of Public Health and Intelligence at NSS and the Chief Executive of the Customer who shall meet and attempt to resolve the Dispute in face-to-face or telephone negotiations. The meeting shall occur within thirty (30) days of the time that one Party refers the Dispute to such representatives;

14.1.3 should the Dispute not be resolved within thirty (30) days of referral to the representatives referred to in Clause 14.1.2, pursuant to Clause 14.1.2, the Parties will be at liberty to resolve the Dispute through the Courts in accordance with Clause 15.
15. GOVERNING LAW

15.1 The terms of the Contract and any dispute arising in relation hereto will be governed by and construed in accordance with the law of Scotland and the Parties agree to submit to the exclusive jurisdiction of the Scottish Courts.
This is the Schedule referred to in the foregoing eDRIS Customer Contract Terms

Part 1

Project Record Sheet
(Individual Research Project)

PART A – GENERAL

In terms of this Project Record Sheet, the Customer (as detailed below) is commissioning services from The Common Services Agency for the Scottish Health Service (constituted pursuant to the National Health Service (Scotland) Act 1978 and commonly known as NHS National Services Scotland or “NSS”) in relation to research projects to be conducted via the National Safe Haven. When the Customer completes and signs this Project Record Sheet and it is counter-signed by NSS, a contract is formed between the Customer and NSS as described in and on the terms of this signed Project Record Sheet and the eDRIS Customer Contract Terms located at [https://www.isdscotland.org/Products-and-Services/eDRIS/Research-Proposal/]. Terminology used in this Project Record Sheet is explained in the eDRIS Customer Contract Terms.

Customer:

Customer contact:

Research Project:

NHSS Data:

Other Sector Data:

Customer Data:

Date NSS Requires Customer Data:

PBPP Approval Number

Services:

Customer should describe the services it wishes to purchase from NSS in Part B of this Project Record Sheet. A description of the services is set out on the NSS website at [https://www.isdscotland.org/Products-and-Services/eDRIS/Research-Proposal/];

Charges:

Invoices:

NSS shall invoice the Customer [for the full amount of Charges when the data has been made available in the National Safe Haven] OR [as follows:-]

Timescales for Services:

Term:

The period from the Commencement Date until the earlier of the date that delivery of the Services is complete and [INSERT LONGSTOP DATE]

PART B - SERVICES†

Advisory Services relating to Research Project

Yes

No

eDRIS Services

Yes

No

* Please insert details of categories of data subjects and the types of data involved as applicable e.g. forename, surname, gender, date of birth and CHI of NHS patients between 16 and 21
† A description of these various services is set out at [INSERT LINK]
Indexing Services  Yes  No
Analytic Services  Yes  No
Hosting Services (Data hosted in the National Safe Haven)  Yes  No

General summary of Services:

PART C – DECLARATION

IN WITNESS WHEREOF these presents consisting of this and the preceding page are executed as follows:

Signed for and on behalf of [●] by:

.................................................................................................................Signature .................................................................Date
.................................................................................................................Signatory Name
.................................................................................................................Witness Signature
.................................................................................................................Witness Name
.................................................................................................................Witness Address

Accepted for and on behalf of The Common Services Agency for the Scottish Health Service

.................................................................................................................Signature .................................................................Date
.................................................................................................................Signatory Name
.................................................................................................................Witness Signature
.................................................................................................................Witness Name
.................................................................................................................Witness Address
DETAILS OF PROCESSING OF PROJECT PERSONAL DATA

1. **Subject matter and duration of the Processing of Project Personal Data**

The subject matter and duration of the Processing of the Project Personal Data for each Research Project are set out in the relevant Project Record Sheet.

2. **The nature and purpose of the Processing of Project Personal Data**

The nature of the Processing is dependent on the Services so information on this is set out in the relevant Project Record Sheet. The Processing is for the purpose of the Research Project.

3. **The types of Project Personal Data to be Processed**

NSS Processes such types of Project Personal Data on behalf of the Customer as is described in the relevant Project Record Sheet.

4. **The categories of Data Subject to whom Project Personal Data relates**

The categories of Data Subjects are as described in the relevant Project Record Sheet.

5. **The obligations and rights of the Customer**

The obligations and rights of the Customer are set out in the Terms and relevant Project Record Sheet.