

**NHS BUSINESS SERVICES AUTHORITY**

**And**

**NHS England**

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MEMORANDUM OF UNDERSTANDING

FOR

**PRESCRIPTION EXEMPTION CHECKING SERVICES  
(PECS)**

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This Memorandum of Understanding is entered into on 01/04/2025

BETWEEN:

- (1) NHS Business Services Authority (NHSBSA), “**The Provider**” of Stella House, Goldcrest Way, Newburn Riverside, Newcastle upon Tyne, NE15 8NY and
- (2) NHS England (NHSE) of 7-8 Wellington Place, Leeds LS1 4AP “**The Customer**”

WHEREAS:

It has been agreed that:

- (a) The Customer requires the Provider to provide certain services (as defined in Schedule 2).
- (b) The Provider has agreed to deliver the services on behalf of the Customer in accordance with the terms of this Memorandum of Understanding (MoU).

NOW IT IS HEREBY AGREED as follows:

## **1. Status of Memorandum of Understanding**

- 1.1. The status of this Memorandum of Understanding is as an agreement between two public bodies.
- 1.2 The clauses together with Schedule 1 shall prevail to the extent of any conflict or inconsistency over any other provisions or schedules of this Memorandum of Understanding.

## **2. Interpretation**

- 2.1. Under this Memorandum of Understanding the terms and expressions set out in Schedule 1 shall have the meanings ascribed therein.

## **3. Review of Services**

- 3.1 This Memorandum of Understanding shall commence on 01/04/2025 (the "Commencement Date") and shall continue (unless terminated earlier in accordance with clause 13) for a minimum period of 12 months, until 31/03/2026. The parties shall formally review this Memorandum of Understanding within three months of each anniversary of Commencement Date and any changes to this Memorandum of Understanding agreed between the parties shall be affected in accordance with clause 21.

## **4. Provision of Services**

- 4.1. As a consequence of the Provider agreeing to deliver the Services and subject to the terms and conditions of this Memorandum of Understanding
  - 4.1.1. The Provider shall perform the Services; and
  - 4.1.2. the Customer shall pay the charges as specified in Schedule 4.
- 4.2. Both parties shall use reasonable endeavours to co-operate in the performance of their respective obligations under this Memorandum of Understanding and mitigate any loss, liability, cost or expense that they may suffer or incur as a result of a Default by the other

party of any of its obligations under this Memorandum of Understanding.

4.3. To the extent that the Provider is unable to perform, or is hindered or delayed in its performance of the Services as a result of any Customer Default:

4.3.1. the Provider shall not be regarded as having committed any Provider Default thereby;

4.3.2. the Provider shall be entitled to a reasonable extension of time, which is mutually agreed by the Provider and Customer, in the performance of the Services; and

4.3.3. the Provider shall be entitled to a reimbursement in respect of any reasonable additional costs which are incurred by the Provider as a direct result of Customer Default. The amount of which must be agreed with the Customer prior to invoicing

however, Provider shall in such circumstances notify Customer as soon as is reasonably practicable after it becomes aware of any such failure by Customer and will use all reasonable endeavours to continue to perform its obligations in accordance with this Memorandum of Understanding notwithstanding such failure and to mitigate the effects (including any costs incurred) of such failure.

## **5. Data Processing Legal basis**

5.1. The Customer has the following legal basis (by reference to the following articles of the GDPR for Processing the Personal Data:

In relation to Article 6(1) for Personal Data:

(c) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller; the Customer commissioned the service.

## **6. Liability for Services**

6.1. The Customer shall be responsible for bearing any liabilities, costs, claims and expenses (including but not limited to legal fees), which arise from or are connected to:

6.1.1. any decision which is made by the Customer (not withstanding that that decision may be based on advice provided by the Provider, except where such advice is unreasonably given); and

6.1.2. acts or omissions by Customer staff, in relation to the Services;

save where such liabilities, costs, claims and expenses (including but not limited to legal fees) arise as a result of acts or omissions on the part of the Provider.

6.2 Nothing within the contract relieves either Party of their own direct responsibilities and liabilities under the GDPR.

6.3 Neither party seeks to exclude or limit its liability to the other party in respect of:

6.3.1 death or personal injury resulting from negligence.

6.3.2 fraud or fraudulent misrepresentation; or

6.3.3 any other circumstances where liability may not be excluded or limited under any applicable law.

6.4 Without prejudice to clause 6.3, each party's total annual aggregate liability to the other arising in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise, arising in connection with the performance, contemplated performance or non-performance of this Memorandum of Understanding shall in no event exceed the charges paid or payable by the Customer in accordance with this Memorandum of Understanding in the year to which the claim relates.

- 6.5 The Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the customer of its obligations under this Memorandum of Understanding.
- 6.6 Subject always to clause 6.3, in no event shall either Party be liable to the other for any loss of profits, loss of business, loss of revenue, loss of an opportunity, or loss of goodwill; and/or loss of savings (whether anticipated or otherwise); and/or indirect or consequential loss or damage.
- 6.7 The Provider shall maintain appropriate insurance cover through the NHS Resolution in respect of the Services delivered under this Memorandum of Understanding.

## **7. Charges**

- 7.1. The Customer shall pay to the Provider the Service Charges in accordance with the procedures set out in Schedule 4.
- 7.2. The Service Charges for the first 12 months of the Memorandum of Understanding from the Commencement Date are based on a pre agreed total cost set out in schedule 4.

## **8. Intellectual Property Rights (IPR)**

- 8.1. The parties acknowledge that any intellectual property rights owned by either party or created by its employees shall remain the property of the relevant party. The parties will allow each other to use IPR should this be appropriate on a case by case basis.

## **9. Audit**

- 9.1. Customer and Provider audit responsibilities will be carried out in line with Schedule 6.

## **10. Warranties**

- 10.1. The Provider shall be responsible for ensuring that reasonable skill, care and diligence are exercised in carrying out the Services properly and efficiently in accordance with this Memorandum of Understanding.
- 10.2 The Provider: -
- 10.2.1 will perform its obligations with a sufficient number of appropriately experienced and qualified personnel;
  - 10.2.2 will perform its obligations in compliance with all applicable laws and regulatory guidance;
  - 10.2.3 holds all necessary consents, approvals and licences to perform the Services;
  - 10.2.4 has full capacity and authority to enter into this Memorandum of Understanding;
  - 10.2.5 will perform the Services in accordance with all applicable policies as may be set out in this Memorandum of Understanding or as advised by the Customer from time to time; and
  - 10.2.6 has not committed fraud in entering into this Memorandum of Understanding.
- 10.3. Except as expressly stated in this Memorandum of Understanding, all warranties and conditions, whether express or warranties which would (if this Memorandum of Understanding were legally binding) be implied by statute, common law or otherwise (including but not limited to fitness for purpose) are hereby excluded to the extent which would be permitted by law if this Memorandum of Understanding were legally binding.

**11. Client meetings**

- 11.1. Customer and Provider meetings shall be conducted as specified in Schedule 5 (Strategic Review Meetings).

**12. Dispute Resolution**

- 12.1. Disputes regarding the provision of and delivery of the Services under this Memorandum of Understanding may be referred by any party to the Head of Exemption Checking Services of Provider and the Head of Performance and Assurance - Performance and Assurance (Support Services Team - Primary Care, Community Vaccinations & Screening Team) of Customer for resolution.
- 12.2. If a dispute referred in accordance with Clause 12.1 is not resolved within 30 days of such referral, any party may refer it to the Associate Director of Provider and the Deputy Director (Support Services Team, Primary Care and Community Services) of Customer for resolution.

**13. Termination**

- 13.1. Either party may terminate this Memorandum of Understanding by written notice to the other party (taking effect on the date specified in the notice) in any of the following circumstances:
- 13.1.1. a Default is committed by another party where that other party has failed to remedy the relevant Default within sixty (60) days of receipt of written notice from the non-breaching party specifying the Default and requiring its remedy; or
- 13.1.2. a Default is committed by another party which is not capable of remedy, provided that a Default shall not be treated as incapable of remedy merely because it has already occurred.
- 13.2. Either party may terminate this Memorandum of Understanding for convenience by written notice to the others, such notice to take effect no less than six (6) months from the date of such notice.
- 13.3. Either party may terminate this Memorandum of Understanding by written notice to the other (taking effect on the date specified in the notice) if a Force Majeure event arises during the term of this Memorandum of Understanding which directly causes any party to be materially unable to comply with substantially all of its obligations hereunder for a continuous period exceeding six (6) consecutive months and terms for the continued performance of this Memorandum of Understanding are not agreed by the parties within six (6) months of the commencement of the said Force Majeure event.

**14. Consequences of Termination**

- 14.1 In the event of the termination or expiry of this Memorandum of Understanding, howsoever arising, each Party shall forthwith deliver up to the other Party, or as the other party notifies, all property and data of the other party then held in the custody or control of that Party.
- 14.2 The termination or expiry of this Memorandum of Understanding shall not prejudice or affect any right or remedy which shall have accrued or shall thereafter accrue to any Party.
- 14.3 The provisions of Clauses 1,2,5,7,9,12 to 22 and relevant provisions of Schedule 1 shall survive the termination of this Memorandum of Understanding.
- 14.4 The Provider shall be reimbursed by the Customer the costs associated with any redundancies occurring as a direct result of the termination of the Services on a pro-rata basis in accordance with Schedule 2 (Services).
- 14.5 The Provider shall cooperate with any the Customer's/replacement provider to the extent reasonably required to facilitate the smooth migration of the Services from the Provider to the Customer's/replacement provider.

## 15. Protection of Personal Data (Data Protection)

- 15.1. Each party shall ensure that it complies with and shall not breach the provisions of the General Data Protection Regulation (GDPR), the provisions of Schedule 3, and any other obligations which arise in connection with this Memorandum of Understanding. The Customer will act as Controller and the Provider as Processor.
- 15.2. Notwithstanding the general obligation in clause 15.1, where the Provider is Processing Personal Data as a Processor for the Customer, the Provider shall:
  - 15.2.1 ensure that it has in place appropriate technical and organisational measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful Processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under Article 5 (1) f) the 'integrity and confidentiality' Principle; and reasonably require to satisfy itself that Provider is complying with its obligations under Data Protection Legislation;
  - 15.2.2 provide Customer with such information as the Customer may reasonable request such as the information detailed in Article 28 of GDPR.
  - 15.2.3 not transfer Personal Data outside of the UK and/or the European Union Area;
  - 15.2.4 only process Personal Data in accordance with, and for the purposes set out in, written instructions received from the Customer from time to time.
  - 15.2.5. notify the Customer promptly and without undue delay, and in any event within 24 hours, upon becoming aware of any Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach;
  - 15.2.6. promptly notify the Customer of any instruction received that it believed breaches any data protection law pursuant to this clause 15.2;
  - 15.2.7. co-operate with the Customer in informing Data Subjects of any Personal Data breach;
  - 15.2.8. ensure it does not knowingly or negligently do or omit to do anything which places the Customer in breach of the Customer's obligations under Data Protection Legislation;
  - 15.2.9. Obtain the Customer's approval of any sub-contractor and ensure that they are subject to the same contractual obligations as the Provider in the same terms as this Clause 15;
  - 15.2.10. permit the Customer at any time and from time to time upon seven days' written notice to have escorted access to the appropriate part of the Provider's premises, systems, equipment, and other materials and facilities to enable the Customer to inspect the same for the purposes of monitoring compliance with this Memorandum of Understanding and the Data Protection Act Legislation to the extent that such premises, equipment and other materials and facilities are used for or relevant to the Services. Such inspection shall not relieve the Provider of any of its obligations under this Memorandum of Understanding.
- 15.3. Where the Provider receives an Data Subject Rights Request (as defined in Articles 15 to 22 of GDPR) from a Data Subject in relation to information which it is holding on behalf of the other Party, it shall (and shall procure that its sub-contractors shall):
  - 15.3.1. transfer the Request to the Customer as soon as practicable after receipt and in any event within two (2) Working Days of receiving the Information Rights Request;
  - 15.3.2. provide the Customer with a copy of all information in its possession or power in the form that the Customer requires within ten (10) Working Days (or such other period as may be agreed) of the Customer requesting that information; and

15.3.3. provide all necessary assistance as reasonably requested to enable the Customer to respond to the Data Subject Rights Request within the time for compliance set out in GDPR.

15.4 The Customer hereby permits the Provider to store Personal Data relating to (the Personal Data being Processed) on a third party supplier's system and the Customer permits the Provider's third party supplier to act as the Processor on its behalf.

15.5. The provisions of this clause 15 shall apply during the continuance of this Memorandum of Understanding and for as long as the Data Protection Legislation requires after its expiry or termination.

## **16. Scope limitation**

16.1 It is accepted by all parties that the Services are those outlined in Schedule 2,

## **17. Publicity and Disclosure of Information**

17.1. Save as expressly set out in this clause 17, or otherwise with the written consent of the other party, no party shall make any press announcements about this Memorandum of Understanding or publicise this Memorandum of Understanding or any of the terms in any way and each party shall ensure that any such information disclosed is solely for the purpose of performing its obligations under this Memorandum of Understanding.

17.2 Notwithstanding the provisions of clause 17.1, each party shall be entitled to disclose any information relating to this Memorandum of Understanding in the following circumstances:

17.2.1 for the purpose of any examination of this Memorandum of Understanding by the National Audit Office pursuant to the National Audit Act 1983 or otherwise;

17.2.2. for parliamentary, governmental, statutory or judicial purposes; or

17.2.3. in relation to any other legal obligation on the disclosing party; or

17.2.4 such information is already in the public domain.

17.3. Each party shall take all reasonable steps to ensure the observance of this clause 17 by all its servants, employees, agents and consultants.

## **18. Freedom of Information**

18.1. Each Party acknowledges that the other Party is subject to the requirements of the FOIA and each Party shall assist and co-operate with the other (at their own expense) to enable the other Party to comply with its information disclosure obligations.

18.2. Where a Party receives a "Request for Information" (as defined in the FOIA) in relation to information which it is holding on behalf of the other Party, it shall (and shall procure that its sub-contractors shall:

18.2.1. transfer the Request for Information to the other Party as soon as practicable after receipt and in any event within two (2) Working Days of receiving the Request for Information;

18.2.2. provide the other Party with a copy of all information in its possession or power in the form that the other Party requires within five (5) Working Days (or such other period as may be agreed) of the other Party requesting that information; and

18.2.3. provide all necessary assistance as reasonably requested to enable the other Party to respond to the Request for Information within the time for compliance set out in Section 10 of the FOIA.

18.3. Where a Party receives a Request for Information which relates to this Memorandum of Understanding it shall inform the other Party of the Request for Information as soon as practicable after receipt and in any event within two (2) Working Days of receiving the Request for Information.

- 18.4. If either Party determines that information must be disclosed pursuant to clause 18.3 it shall notify the other Party of that decision at least two (2) · Working Days before disclosure is required.
- 18.5 Each party shall be responsible for determining at its absolute discretion whether the relevant information is exempt from disclosure or is to be disclosed in response to a Request for Information.
- 18.6. Each Party acknowledges that the other Party may be obliged under the FOIA to disclose information:
- 18.6.1. without consulting with the other Party; or
- 18.6.2. following consultation with the other Party and having taken its views into account.

## **19. Force Majeure**

- 19.1. For the purposes of this Memorandum of Understanding , the expression "Force Majeure" shall mean any event outside the reasonable control of a party, including without limitation war, civil war, armed conflict or terrorist attack affecting the United Kingdom; nuclear, chemical or biological contamination, fire, flood, earthquakes, natural disaster, extreme weather conditions, national pandemic, riot, civil commotion, lightning, prohibitive legislation and failure of public telecommunications systems or utility (other than power) supplies.
- 19.2. No party shall be liable to the others for any failure to comply with its obligations under this Memorandum of Understanding (including but not limited to any obligation to make any payment hereunder) due to a Force Majeure event and any failure to comply with such obligations shall not constitute a Default.
- 19.3. Notwithstanding clause 19.2, the Customer shall remain liable for the costs of those Services which are properly provided by the Provider prior to or during any Force Majeure.

## **20. Transfer and Sub-Contracting of Memorandum of Understanding**

- 20.1. Either Party shall discuss any interest under this Memorandum of Understanding with the other prior to any transfer of obligations or subcontract of its duties under this Memorandum of Understanding

## **21. Amendments**

- 21.1. This Memorandum of Understanding shall not be varied or amended unless such variation or amendment is agreed in writing by duly authorised representatives of the Provider and the Customer. Any such amendment shall specify all relevant consequential changes to this Memorandum of Understanding.

## **22. Severability**

- 22.1 If any provision of the Agreement is held invalid, illegal or unenforceable for any reason by any court or competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Agreement shall continue in full force and effect as if the Agreement had been executed with the invalid, illegal or unenforceable provision eliminated, In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement, the parties shall immediately commence negotiations in good faith to remedy the invalidity.

## **23. Waiver**

- 23.1. The failure of the Provider or the Customer to insist upon strict performance of any provision of this Memorandum of Understanding or the failure of any party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Memorandum of Understanding
- 23.2. A waiver of any Default shall not constitute a waiver of any subsequent Default.

- 23.3. No waiver of any of the provisions of this Memorandum of Understanding shall be effective unless it is expressly stated to be a waiver and communicated to the other parties in writing.

#### **24. Entire Memorandum of Understanding**

- 24.1. This Memorandum of Understanding constitutes the entire understanding and agreement between the parties relating to the subject matter of this Memorandum of Understanding and incorporates all the respective rights and obligations of the parties relating to the subject matter of this Memorandum of Understanding and, save as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto, whether oral or in writing, provided that nothing in this Clause shall be deemed to seek to exclude liability for any fraudulent misrepresentation.

#### **25. Publicity**

- 25.1 the Provider shall not make any public statement relating to the existence or performance of this Memorandum of Understanding without the Customer's prior approval in writing, which shall not be unreasonably withheld.
- 25.2 the Provider and its sub-Providers (if any) shall not refer to Customer in any advertisement without the Customer's prior written consent.
- 25.3 The provisions of this clause 25 shall apply during the continuance of this Memorandum of Understanding and after its termination howsoever arising, without limitation of time covered at clauses 3 and 13.

#### **26. Corrupt Gifts and Payments of Commission**

- 26.1 The Provider shall not do (and warrants that in entering this Memorandum of Understanding it has not done) any of the following (referred to in this clause as "Prohibited Acts"):
- 26.1.1 offer, give or agree to give to any servant of the Crown any gift or consideration of any kind as an inducement or reward for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of this or any other Agreement with the Crown, or for showing or not showing favour or disfavour to any person in relation to this or any other Agreement with the Crown;
- 26.1.2 enter into this or any other agreement with the Crown in connection with which commission has been paid or has been agreed to be paid by him or on his behalf, or to his knowledge, unless before the agreement is made particulars of any such commission and the terms and conditions of any such agreement for the payment of it have been disclosed in writing to the Customer.
- 26.1.3 If The Provider , its employees, agents or any sub-Provider, or anyone acting on its or their behalf, does any of the Prohibited Acts or commits any offence as the case may be under the Bribery Act 2010 with or without the knowledge of the Provider , in relation to this or any other agreement with the Crown, the Customer shall be entitled:
- 26.1.3.1 to terminate this Memorandum of Understanding immediately by giving notice in writing and recover from the Provider the amount of any loss resulting from the termination;
- 26.1.3.2 to recover from the Provider the amount or value of any such gift consideration or commission; and
- 26.1.3.3 to recover from the Provider any other loss sustained in consequence of any breach of this clause, whether or not this Memorandum of Understanding has been terminated.

In exercising its rights or remedies under this clause, the Customer shall act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing the Prohibited Act.

## **27. Conflict of Interest**

- 27.1 "Conflict of Interest" means a situation in which the Provider or a member of the Provider's Staff has a private, personal or corporate interest which could appear to influence the objective exercise of his or her work towards the provision of the Services.
- 27.2 the Provider shall ensure that there is no Conflict of Interest as to be likely to prejudice his independence and objectivity in performing this Memorandum of Understanding, and undertakes that upon becoming aware of any such Conflict of Interest during the performance of this Memorandum of Understanding (whether the conflict existed before the award of this Memorandum of Understanding or arises during its performance), it shall immediately notify the Customer in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises and shall furnish such further information as the Customer may reasonably require.
- 27.3 Where the Customer is of the opinion that a Conflict of Interest is not capable of being avoided or removed, the Customer may terminate this Memorandum of Understanding immediately by giving notice in writing and recover from the Provider the amount of any loss from such termination.

## **28. Discrimination and Human Rights**

- 28.1 the Provider shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, gender reassignment, pregnancy or maternity, marital or civil partnership status or age and without prejudice to the generality of the foregoing, the Provider shall not unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Equal Pay Act 1970, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Equality Act 2010, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment of those laws.
- 28.2 the Provider shall take all reasonable steps to secure the observance of clause 28.1 by all Provider Staff.
- 28.3 the Provider shall undertake, or refrain from undertaking, such acts as the Customer requests so as to enable the Customer to comply with its obligations under the Human Rights Act 1998.
- 28.4 Subject to clause 6 (Liability for Services), the Provider agrees to indemnify and keep indemnified the Customer against all loss, costs, proceedings or damages whatsoever arising out of or in connection with any breach by the Provider of its obligations under this clause 28.

Signed for and on behalf of

NHS BUSINESS SERVICES AUTHORITY

Signed by:  
s.99(1) PA23

Date:

Signed for and on behalf of

NHS England

Signed by:  
s.99(1) PA23

Date Signed: 27 November 2025

Date:

**SCHEDULE 1 INTERPRETATIONS**

"Controller"	has the meaning given in Data Protection Legislation and "Joint Controllers" has the meaning given in Article 26 GDPR;
"Data Protection Legislation"	the Data Protection Act 2018 (DPA), the General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council (GDPR), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to Processing of Personal Data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;
"Data Subject"	has the meaning given in Data Protection Legislation;
"Data Subject Rights Request"	a request made by a Data Subject in accordance with rights granted pursuant to Data Protection Legislation to access his or her Personal Data;
"Default"	means any material or persistent breach of the obligations of a party to this Memorandum of Understanding, or any default, act, omission, negligence or statement of either party, its employees, agents or sub-Memorandum of Understandings in connection with or in relation to the subject matter of this Memorandum of Understanding and in relation to which such party is liable to the other, where such breach, default, act or omission has an adverse impact on the ability of the other to carry out its statutory function or to meet its financial budget;
"Designated Senior Officer"	means the person/s currently fulfilling the positions senior responsible officer specified in Schedule 6
"European Law"	European Union or European Member State law (as referred to in the GDPR) or such other law as may be designated in its place when England (whether with Scotland, Wales and/or North Ireland or not), leaves the European Union;
"FOIA"	means the Freedom of Information Act 2000;
"Force Majeure"	has the meaning given to it in Clause 19;
"GDPR"	the General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council);
"Individual"	means an employee, temporary worker, student/ apprentice or honorary contract;
"Memorandum of Understanding"	means this Memorandum of Understanding, consisting of the Clauses and Schedules;

"Personal Data"	has the meaning given in Data Protection Legislation;
"Personal Data Breach"	has the meaning given in Data Protection Legislation;
"Process"	has the meaning given in Data Protection Legislation and "Processed" and "Processing" shall be construed accordingly;
"Processor"	has the meaning given in Data Protection Legislation;
"Services"	means the services to be provided by the Provider under this Memorandum of Understanding as specified in Schedule 2;
"Service Charges"	means the charge levied by the Provider to the Customer for provision of the Services as agreed on an annual basis between the Parties or as and when an additional service is required and as specified in Schedule 4;
"Sponsor Report"	means monthly report detailing performance against customer service and monitoring KPI's.
"Transforming Exemption Checking Services Digital Team (TECS)"	means the team working on digital transformations of the system and service.

The masculine includes the feminine and the neuter; and

The singular included the plural and vice versa.

A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.

Headings are included in this Memorandum of Understanding for ease of reference only and shall not affect the interpretation or construction of this Memorandum of Understanding.

References to "Clauses" and "Schedules" are, unless otherwise provided, references to the clauses and schedules of this Memorandum of Understanding.

## **SCHEDULE 2: THE SERVICES**

The provider will provide a service to the customer in accordance with Roles and Responsibilities detailed in Schedule 3 and as detailed below:

### **1. Liaison with External Bodies**

*1.1 The Provider will be the direct point of contact on behalf of the Customer, with statutory authorities in respect of the application of regulations associated with the Processing.*

### **2. Scope**

The Provider will investigate a random sample of prescription claims from patients who have claimed exemption from payment to verify the accuracy of the exemption declared. Claims are verified by cross checking the patient details on the prescription claim against the Provider records of valid exemption schemes which the Provider administer in addition to DWP records.

Where a patient has declared they are entitled to free prescription costs and entitlement cannot be confirmed through the checking process carried out by the Provider the patient is advised; a letter will be sent to request to confirm their entitlement or pay the applicable charges. If no exemption is found and case is not resolved subsequent letters will be issued.

The Provider will operate a contact centre function during the hours of 8am to 6pm Monday to Friday and 9am to 3pm on a Saturday excluding public UK holidays. This function will deal with telephone and e-mail queries and payments from patients and members of the public in relation to PECS.

The Provider will also operate a back-office support function to deal with paper-based and other residual queries in relation to PECS. Opening hours to be determined by the Provider, however, should broadly be in line with contact centre hours.

A payment and finance system will also be operated to take the payments for PECS. This may be through a payment over the phone, internet or by other means.

All Service Level Agreements (SLAs) and Key Performance Indicators (KPI's) agreed between the Provider and the Customer for the operation of these services will be set out in Schedule 6. Performance against the SLAs and Key Performance Indicators (KPIs) will be reported monthly by the Provider to the Customer through Sponsor Reports.

The Provider will have a digital team (TECS) working on service improvements.

## **SCHEDULE 3: CUSTOMER AND PROVIDER RESPONSIBILITIES**

Any proposal by either party (the Provider or the Customer) to materially add, modify or remove part of the functions, deliverables or activities associated with this agreement must be agreed by both parties before it may be implemented. Agreement will not be unreasonably withheld by either party.

The Provider will have the ability to revise monthly mailing plans stated in the business case without prior agreement from the Customer if overall yearly volumes and associated income remain the same.

### **Part 1: Provider Responsibilities**

The Provider will:

1. Issue letters to patients that have incorrectly claimed exemption for Prescription Charges. Where exemption has been claimed incorrectly, unpaid prescription charges if recovered and returned to the NHS.
2. Ensure accurate recording of patient and payment data.
3. Undertake an audit, in line with the Provider Audit Plan, of the provision of Prescription Exemption Checking services and produce a report providing a balanced review of the provision of services.
4. Make records available at the request of the Customer for the purposes of both internal and external audits.
5. Measure delivery, quality and cost of the service through a set of standard performance indicators outlined in Schedule 5. This data will be provided to the Customer monthly through Sponsor Reports. Where activity is carried out through non-standard processes then this may be excluded from the measure.
6. Provide a Service Review Report on a monthly basis which will confirm performance details against the agreed Key Performance Indicators.
7. Communicate planned system down time to the Customer and any affecting system issues.
8. Will comply with all Data Protection Legislation and specifically that adequate protocols are in place in accordance with Part 3 of this Schedule 3 to ensure the security confidentiality and data protection of Personal Information.

### **Part 2: Customer Responsibilities**

The Customer will:

1. *Address any issues highlighted in the Sponsor Reports.*
2. *Will comply with all Data Protection Legislation and specifically that adequate protocols are in place in accordance with Part 3 of this Schedule 3 to ensure the security confidentiality and data protection of Personal Information.*

### **Part 3: Data Protection / GDPR Responsibilities**

1. The Parties agree that they have the following roles, as defined by Data Protection legislation,

in providing and receiving the Services: -

<i>Party</i>	<i>Role(s)</i>
<i>Customer</i>	<i>Controller</i>
<i>Provider</i>	<i>Processor</i>

- The Parties agree to update their completed tables as necessary during the Term to reflect any changes in the arrangement. The completed tables (as updated from time to time) shall form part of this Agreement. The essence of the arrangement shall be made available to the Data Subject. The Parties acknowledge that irrespective of the terms of the arrangement set out in this Schedule 3, the Data Subject may exercise his or her rights under the GDPR in respect of and against each of the Joint Controllers.

**Governance**

Data drives all operations, whether that is through the identification and prioritisation of contracts for review, the management of resources and workflows, the measurement of benefits achieved, feedback to NHSE on the actions taken, or the delivery of insight to identify further opportunities for the NHS. Data will be at the heart of planning and evaluation activities.

The individual Contract and Performance Management services will be accountable to NHSE through the MOU at formal Review meetings (e.g. Engagement and relationship meetings).

The NHSE Pharmacy Service Line Board and Relationship meetings will continue to provide oversight of the individual services, with the strategic direction for the service as a whole managed through the Service Delivery Board.

s.94(1)(b) and s.94(2) PA23

In 2025/26 NHSE will be reviewing the above Governance structure, to ensure it is fit for purpose in light of possible changes to the NHS structure. NHSE and NHSBSA will work together to ensure that any revised governance arrangements meet the needs of both parties and facilitate high quality delivery.

Performance report will be produced by NHSBSA in line with the agreements made at the Service Line Boards, and Joint Governance Meetings, to allow NHSE oversight and monitoring of the contract and performance management service. NHSBSA and NHSE will agree the content and date for submission of the reports.

This report will include:

- KPI indicators
- Operational volumes
- Operational overview of workstreams against the service planning roadmap with appropriate narrative, status, risks and issues
- Incident summaries
- Finance summary

**SCHEDULE 4: SERVICE CHARGES AND PAYMENT TERMS**

5. Cost/Benefits		Capital / Non-recurring Revenue Expenditure - £		Revenue Expenditure - £	Forecasted Financial Benefits - £	
		Capital Requested	Additional Non-recurring revenue	Revenue Requested	Cash Releasing	Cost Avoidance
Year 1	2025-26			£18,585,381 (this inc. TECS Costs)	s.94(1)(b) and s.94(2) PA23	
<b>Subtotal</b>						
<b>Total</b>				£18,585,381		

- All recoveries go back to NHSE and the NHSBSA invoice on a quarterly basis against raised Purchase Orders the cost of the service.
- s.94(1)(b) of the staff overhead cost will be fixed and s.94(1)(b) variable in the event the Provider are unable to operate the full or planned service as outlined in this business case and are able to temporarily redeploy a proportion of WTE’s working on PECS.
- *Note: The Provider ability to fluctuate staffing costs rely of the ability to re-deploy staff to other paid work. This is not guaranteed.*
- If the Customer decides to terminate the PECS agreement, the Provider will endeavour to redeploy individuals and identify options to minimise the risk of redundancy. Where this is not possible and there is a requirement to terminate an individuals’ employment on the grounds of redundancy the Customer will meet these costs limited to the time the employee worked on the PECS project.
- The service expenditure is expected to be in line with the agreed PECS business case. Where there is deviation that exceeds these projections; The Customer and the Provider will evaluate the impact and jointly agree any necessary mitigation, which may include funding any shortfall by using the tolerance if agreed with the Customer or through using income generated by the service. This will be reported on monthly bases within the PECS Sponsor Report, and agreed with the Customer before this approach is implemented.
- Any contract variations will be done in accordance with Schedule 7 – Change Control Process. If any changes require additional funding to be provided by NHSE

to NHS BSA, this will be subject to a further business case being written and approved through the NHSE governance process

**SCHEDULE 5 STRATEGIC REVIEW MEETINGS**

**1. Performance Management**

Service Line board meetings will be held every 3 months to discuss performance and KPI’s and where required, operational activity issues. These meetings will be held virtually as a standard however if required face to face appointments can be arranged. The membership of the group, as a minimum, will be:

- The Customer nominated representative.
- The Provider Head of Services or nominated representative.

**Customer Service Level**

Customer Service KPI’s as managed by the Providers Customer Operations will be reported monthly in the Sponsor Report. Performance against these will be discussed and accounted for during the 2 monthly Accountability meetings.

Indicator	KPI	Target
Contact Centre - waiting time	PECS calls to be answered	Average calls answered within 300 seconds.
Contact Centre - abandoned call rate	PECS abandoned call rate	Performance figure to be included within the PECS Sponsor Report
Email clearance	Emails answered	98% cleared within two working days
Patient data accuracy	PECS service patient data capture accuracy	97.5%
Complaints	Escalations stage 1 and above	Performance figure to be included within the PECS Sponsor Report
Correspondence	Written correspondence to be cleared within 5 working days	100%

**Monitoring KPIs**

The below indicators are monitored only and will be reported monthly in the Sponsor Report. Performance and monetary recoveries to date will be discussed during the 2 monthly Accountability meetings.

Indicator	KPI/Management Information	Target
<b>Letters sent</b>		
Number Enquiry (ENQ) letters sent	Letters sent against plan	100%
Number of penalty charge notice (PCN) letters sent	Letters sent against plan	100% of letters available. Volume all dependant on customer behaviour

Number of surcharge letters sent	Letters sent against plan	100% of letters available. Volume all dependant on customer behaviour
<b>Easements</b>		
Number of easements	Easements made to Penalty and Surcharge values	Figure to be included in the sponsor report
Value of easements	Value of easements made to Penalty and Surcharges	Figure to be included in the sponsor report
<b>New Prescription charge requested</b>		
Total new charges including prescription charge, PCN and surcharge	Charges requested from all letters sent	Performance figure to be included within the PECS Sponsor Report
<b>Prescription charges collected</b>		
Prescription Charge (£)	Payments received for prescription charges	Performance figure to be included within the PECS Sponsor Report
PCN (£)	Payments received for PCN	Performance figure to be included within the PECS Sponsor Report
Surcharge (£)	Payments received for surcharge	Performance figure to be included within the PECS Sponsor Report
Total collected (£)	Payment received for prescription charge, PCN and surcharge	15% of all patient contacts

## **SCHEDULE 6: AUDIT**

1. The Customer's internal audit will not be conducted by Provider's auditors.
2. The Provider will provide information to the Customer on an annual basis regarding the relevant elements of its internal audit plan.
3. The Provider will report to the Customer, on an exception basis, any material issues identified in reports from its internal auditors, which are relevant to the Customer.
4. In order to ensure an efficient, integrated approach, it is expected that the Customer's internal auditors will, wherever possible, place reliance on internal audit work undertaken by the Provider's internal auditors.
5. The Customer will also formally report any issues or recommendations to the Provider, in connection with Customer Internal Audits.
6. Special internal audit reports may from time to time be necessary to address specific issues. Such special reports will be subject to negotiation and agreement between all relevant parties.
7. The Customer will provide a minimum of 5 working days' notice for any data required to support their own audit. The Provider will provide a maximum of 3 person days per audit. Any additional time requested will be chargeable as an Additional Service (see costs in Schedule 4) subject to the Provider having the available resource to allocate to audit activity.
8. The Customer will request data from the Provider via the agreed process.

## SCHEDULE 7: CHANGE CONTROL PROCESS

1. The Provider will keep a Change Control Log which allows for unique internal numbering of change requests.
2. Where a change is identified a Change Request Form will be generated by the single point of contact (or nominated deputy) (the "Sending Party"). These will be authorised by Provider signatory role and/or the customer signatory role, as appropriate (depending on which Party requests the change).
3. The Change Request Form is then e-mailed by the Sending Party to the other party's single point of contact for progression (the "Receiving Party"). The receipt of the form will be confirmed by the Receiving Party to the Sending Party with details of the internal change request number allocated for use in future enquiries, and indicative timescales for completion of internal review by the Receiving Party.
4. After internal review (including additional associated costs) by the Receiving Party and any joint review required between the parties the Change Request will either be accepted or rejected by the Receiving Party. If the Receiving Party rejects the Change Request, then the Receiving Party shall confirm the reasons for such rejection in writing to the Sending Party. If the Receiving Party accepts the Change Request, then any required implementation controls and additional charges shall be agreed between the parties. Where such implementation controls include consequential amendments to this Agreement then such amendments shall be agreed in writing and signed by both parties and shall constitute a variation to this Agreement in accordance with clause 21.
5. On completion of implementation of the Change Request the parties shall agree a date for review of the implementation which will usually be the date of the next Management Meeting, but earlier if appropriate and agreed between the parties.
6. Progression of outstanding Change Requests will be reported at Management Meetings.

## SCHEDULE 8: CONTACTS

### Provider contacts

**s.99(1) PA23**

Responsible for service delivery of Exemption Checking Services and liaising between the Customer, Provider and DHSC

# s.99(1) PA23

Responsible for overall operational management of Exemption Checking Services
Responsible for day to day management of operations and customer management
Responsible for communications to support PECS

Customer contacts

<b>s.99(1) PA23</b>	Finance lead responsible for reducing patient and contractor fraud within community pharmacy
	Overall financial responsibility for managing fraud within primary care
	Commercial matters associated with the MOU
	Commercial escalations
	Performance and contract reviews. KPI reviews. General Performance issues
	NHSE sub directorate lead.
	SME