

**Sub-contract for the provision of services related to the Network Contract DES 2022/23**

***Guidance – this is a template contract. The Sub-Contract Summary and the Schedules must be tailored to the Parties’ circumstances. All guidance notes should be removed prior to signature.***

Prepared by: [TBC]

[insert email address]

(please do not send sub-contracts to this email address)

First published: [TBC]

Publication Approval Number: [PR1964]

This Sub-Contract records the agreement between the Core Network Practices and the Sub-Contractor as defined by this Sub-Contract.

Each Party acknowledges and agrees that it accepts and will be bound by the terms of this Sub-Contract.

**IN WITNESS OF WHICH the Parties have signed this Sub-Contract on the date(s) shown below**

| SIGNED by | ……………………………………………………….  Signature |
| --- | --- |
| [*insert authorised signatory’s name*]  for and on behalf of  [*insert Core Network Practice’s name*] | ……………………………………………………….  Title  ……………………………………………………….  Date |

| SIGNED by | …………………………………………………….  Signature |
| --- | --- |
| [*insert authorised signatory’s name*]  for and on behalf of  [*insert Core Network Practice’s name*] | ……………………………………………………….  Title  …………………………………………………….  Date |

| SIGNED by | …………………………………………………….  Signature |
| --- | --- |
| [*insert authorised signatory’s name*]  for and on behalf of  [*insert Core Network Practice’s name*] | ……………………………………………………….  Title  …………………………………………………….  Date |

*Guidance: All Core Network Practices of the PCN should sign the Sub-Contract unless agreed otherwise. Add or remove the number of signature boxes for Core Network Practices as required.*

| SIGNED by | …………………………………………………….  Signature |
| --- | --- |
| [*insert authorised signatory’s name*]  for and on behalf of  [*insert Sub-Contractor’s name*] | ……………………………………………………….  Title  …………………………………………………….  Date |

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# SUB-CONTRACT SUMMARY

|  |  |
| --- | --- |
| **PCN** | *Guidance: insert here the name by which the PCN is known* |
| **Core Network Practices** | *Guidance: insert here the name and ODS numbers of each Core Network Practice in the PCN. Ensure the information here matches that used in the original submission to the commissioner to establish the PCN* |
| **Sub-Contractor** | *Guidance: insert here the legal name, registered address and registered number (if applicable) of the Sub-Contractor* |
| **Services Commencement Date** | *Guidance: insert here the date the Sub-Contractor will commence delivery of the Sub-Contract Services* |
| **Expiry Date** | 31 March 2023 |
| **Sub-Contract Premises** | *Guidance: insert here the address of the premises from which Sub-Contract Services will be provided. If Schedule 1 indicates that Sub-Contract Services are also to be provided from places other than the Sub-Contract Premises, such as a Patient’s home or a place from where Sub-Contract Services can be provided remotely, then these additional premises need not be included as Sub-Contract Premises.* |
| **Sub-Contract Premises are Core Network Practice Premises** | [Yes/No]  *Guidance: state “Yes” if the Sub-Contract Premises are premises routinely used by any Core Network Practice in the provision of services under a GP Contract. State “No” if this is not the case.* |
| **PCN Representative** | Name:  Title:  Telephone number:  Postal address  Email address:  *Guidance: add the details above* |
| **Sub-Contractor Representative** | Name:  Title:  Telephone number:  Postal address  Email address:  *Guidance: add the details above* |
| **Termination Notice Period** | *Guidance: insert here the minimum period of time in days, weeks or months, that the Core Network Practices must provide to the Sub-Contractor to terminate the Sub-Contract* |

# SUB-CONTRACT CONDITIONS

# Operation of this Sub-Contract

## The Core Network Practices each hold a GP Contract. The Core Network Practices operate together as the PCN. The Core Network Practices participate in the Network Contract DES. The Core Network Practices operate the PCN pursuant to the Network Agreement.

## Under this Sub-Contract, the Core Network Practices agree with the Sub-Contractor that the Sub-Contractor will perform on behalf of the Core Network Practices certain of the services that the Core Network Practices in the PCN are required to provide pursuant to the DES Specification.

## The Parties expressly agree and acknowledge that these Sub-Contract Conditions are mandatory and may not be amended or changed except where it is necessary following a change to any provisions of a GP Contract and in such circumstances, the Parties will act in accordance with Clause 15.

# Interpretation

## Except as provided expressly in these Sub-Contract Conditions, terms as defined in the DES Specification will have the same meaning when used in this Sub-Contract.

## Definitions:

**Affected Party** a party the performance of whose obligations under this Sub-Contract is affected by an Event of Force Majeure

**CEDR** the Centre for Effective Dispute Resolution

**Commissioner** has the meaning in the DES Specification

**Confidential Information** information, data and material of any nature which any Party may receive or obtain in connection with the operation of this Sub-Contract and:

(i) the release of which is likely to prejudice the commercial interests of the Core Network Practices or (as the case may be) the Sub-Contractor respectively; or

(ii) which is a trade secret

**Core Network Practices** the GP practices listed in the Sub-Contract Summary

**Data Protection Legislation** all applicable data protection and privacy legislation in force from time to time in the UK including the UK General Data Protection Regulation; the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); and guidance and codes of practice issued by the Information Commissioner, the Health & Social Care Information Centre, NHS England, the National Data Guardian or other relevant regulatory or professional body;

**Data Controller, Data Processor, Personal Data, Processing and cognate terms** have the meanings given to them in the Data Protection Legislation

**DES Directions** the Primary Medical Services (Directed Enhanced Services) Directions 2022

**DES Specification** the Network Contract DES Specification 2022/23 published by NHS England

**Direction Letter/Determination** a letter or determination issued by the NHS Business Services Authority (on behalf of the Secretary of State pursuant to Section 7(2) of the Superannuation (Miscellaneous Provisions) Act 1967 or Section 25(5) of the Public Service Pensions Act 2013) to the Sub-Contractor, setting out the terms on which the Sub–Contractor, is to be granted access to the NHS Pension Scheme in connection with this Sub-Contract

**Dispute** any dispute or claim or any potential dispute or claim in relation to this Sub-Contract

**Dispute Resolution Procedure** the procedure set out in Schedule 7

**Event of Force Majeure** an event or circumstance which is beyond the reasonable control of the Party claiming relief under Clause 15, including war, civil war, armed conflict or terrorism, strikes or lock outs, riot, fire, flood or earthquake, and which directly causes that Party to be unable to comply with all or a material part of its obligations under this Sub-Contract in relation to any Sub-Contract Service

**Expert Determination Notice** the notice in writing showing an intention to refer a Dispute for expert determination

**Expiry Date** the date listed in the Sub-Contract Summary

**Guidance** any applicable health or social care guidance, guidelines, direction or determination, framework, code of practice, standard or requirement to which the Core Network Practices and/or the Sub-Contractor have a duty to have regard (and whether specifically mentioned in this Sub-Contract or not), to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Sub-Contractor by the Core Network Practices

**Good Practice** using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced clinical services provider providing clinical services and/or engaged in operations similar to the Sub-Contract Services under the same or similar to the obligations of the relevant party under this Sub-Contract whilst at the same time complying with any specific standards set out in this Sub-Contract or notified to the Sub-Contractor by the Core Network Practices from time to time

**GP Contracts** the general medical services contracts, the primary medical services agreements and/or the alternative provider medical services contracts held by the Core Network Practices

**IPR** inventions, copyright, patents, database right, trademarks, designs and confidential know-how and any similar rights anywhere in the world whether registered or not, including applications and the right to apply for any such rights

**Law**

(i) any applicable statute or proclamation or any delegated or subordinate legislation or regulation;

(ii) any enforceable EU right within the meaning of section 2(1) European Communities Act 1972;

(iii) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;

(iv) Guidance; and

(v) any applicable code,

in each case in force in England and Wales

**Network Agreement** has the meaning in the DES Specification

**Network Contract DES** the Network Contract Directed Enhanced Service Scheme as set out in the DES Directions

**NHS Business Services Authority** the Special Health Authority established under the NHS Business Services Authority (Establishment and Constitution Order) 2005

**NHS Pension Scheme** the National Health Service Pension Scheme for England and Wales, established under the Superannuation Act 1972 and or the Public Service Pensions Act 2013 (as relevant), governed by subsequent regulations under those Acts

**Parties** the Core Network Practices and the Sub-Contractor

**Patients** persons to whom the Sub-Contractor is required or has agreed to provide Sub-Contact Services under this Sub-Contract

**PCN** the primary care network listed in the Sub-Contract Summary

**PCN Representative** the person nominated by the Core Network Practices and whose name, address and contact details are provided to the Sub-Contractorpursuant to Clause 4

**Services Commencement Date** the date listed in the Sub-Contract Summary

**Sub-Contract** this sub-contract

**Sub-Contract Conditions** the terms and conditions set out in the clauses of this Sub-Contractbut does not include the Sub-Contract Summary or the Schedules

**Sub-Contract Premises** the premises listed in the Sub-Contract Summary

**Sub-Contract Services** the services specified in Schedule 1

**Sub-Contract Summary** the table of information that appears immediately before the Sub-Contract Conditions

**Sub-Contract Term** the period from the Services Commencement Date to the Expiry Date or the date of termination if earlier

**Sub-Contractor** the entity listed in the Sub-Contract Summary

**Sub-Contractor Insolvency Event** the occurrence of any of the following events in respect of the Sub-Contractor:

(i) the Sub-Contractor being, or being deemed for the purposes of any Law to be, unable to pay its debts or insolvent;

(ii) the Sub-Contractor admitting its inability to pay its debts as they fall due;

(iii) the value of the Sub-Contractor’s assets being less than its liabilities taking into account contingent and prospective liabilities;

(iv) the Sub-Contractor suspending payments on any of its debts or announces an intention to do so;

(v) by reason of actual or anticipated financial difficulties, the Sub-Contractor commencing negotiations with creditors generally with a view to rescheduling any of its indebtedness;

(vi) a moratorium is declared in respect of any of the Sub-Contractor’s indebtedness;

(vii) the suspension of payments, a moratorium of any indebtedness, winding -up, dissolution, administration, (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Sub-Contractor;

(viii) a composition, assignment or arrangement with any creditor of any member of the Sub-Contractor;

(ix) the appointment of a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer (in each case, whether out of court or otherwise) in respect of the Sub-Contractor or any of its assets;

(x) a resolution of the Sub-Contractor or its directors is passed to petition or apply for the Sub-Contractor’s winding-up or administration;

(xi) the Sub-Contractor’s directors giving written notice of their intention to appoint a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, or administrator (whether out of court of otherwise); or

(xii) if the Sub-Contractor suffers any event analogous to the events set out in (i) to (xi) of this definition in any jurisdiction in which it is incorporated or resident

**Succession Plan** a plan for the transition of any affected Sub-Contract Service on the expiry or termination of this Sub-Contract or of that Sub-Contract Service (as appropriate), to include details of the affected Service, details of patient groups affected and the date on which the successor provider will take responsibility for providing the affected Sub-Contract Service

**Termination Notice Period** the period listed in the Sub-Contract Summary

**Working Day** any day which is not a Saturday, Sunday or a bank or public holiday in England

## In this Sub-Contract unless the context otherwise requires:

### use of the term “including” or “includes” will be interpreted as being without limitation;

### references to any body, organisation or office include reference to its applicable successor from time to time;

### the headings in this Sub-Contract are inserted for convenience only and do not affect the construction or interpretation of this Sub-Contract;

### use of the singular includes the plural and vice versa and use of the masculine includes the feminine and vice versa

### reference to any statute or statutory provision, to Law, or to Guidance, includes a reference to that statute or statutory provision, Law or Guidance as from time to time updated, amended, extended, supplemented, re-enacted or replaced; and

### reference to a statutory provision includes any subordinate legislation made from time to time under that provision.

## If there is any conflict or inconsistency between the parts of this Sub-Contract, that conflict or inconsistency will be resolved according to the following order of priority:

### the Sub-Contract Conditions; and

### the Schedules.

# Commencement and duration

## *Guidance: The Sub-Contract will expire at the same time as the DES Specification 2022/23 – 31 March 2023. The Parties may choose to continue the Sub-Contract for FY2023/24 in which case the Parties will need to vary the Sub-Contract to refer to the DES Specification 2023/24, the DES Directions 2023 and vary the Expiry Date and potentially the Sub-Contract Services and payments.*

## This Sub-Contract comes into force on the date the last signatory signs this Sub-Contract and will continue in force until the Expiry Date unless:

### it is terminated earlier in accordance with Clause 13;

### the participation of all of the Core Network Practices in the Network Contract DES ends for any reason (unless the Parties agree otherwise in writing) in which case this Sub-Contract terminates immediately and automatically, without further action being necessary by the Parties, and subject to all the rights of the Parties accrued up to the date of termination; or

### the Commissioner, in accordance with a Core Network Practice’s GP Contract (which to avoid doubt includes the DES Specification), requires the removal of the Sub-Contractor, or the termination of this Sub-Contract or any Sub-Contract Service.

## Delivery of the Sub-Contract Services will begin on the Services Commencement Date unless the PCN Representative prior to the Services Commencement Date notifies the Sub-Contractor of a different date or the Parties agree otherwise.

# Representatives

## The Core Network Practices shall appoint the PCN Representative and the Sub-Contractor shall appoint the Sub-Contractor Representative.

## The PCN Representative is authorised to act on behalf of the Core Network Practices on all matters relating to this Sub-Contract.

## All correspondence relating to the Sub-Contract shall be dated and sent to the PCN Representative or the Sub-Contractor Representative (as relevant) at the relevant postal or email addresses.

## The Core Network Practices and the Sub-Contractor shall notify the other of the identity of their respective representative and of any change of such representative as soon as reasonably practicable.

# Cooperation

## The Sub-Contractor must co-operate with the Core Network Practices and (where the PCN Representative requests) with the Commissioner or any other third party in order to ensure effective delivery of the Sub-Contract Services.

## The Sub-Contractor must:

### comply in core hours with any reasonable request for information from any person engaged or employed by any Core Network Practice or the Commissioner relating to the provision of the Sub-Contract Services;

### participate in any meetings of the PCN at the request of the Core Network Practices; and

### take reasonable steps to provide information to Patients about the Sub-Contract Services where required to do so by the Core Network Practices. Such information may include but is not limited to information on how to access the Sub-Contract Services and any changes to them.

## The Sub-Contractor expressly agrees and acknowledges that it has been provided with copies of the GP Contracts, including to avoid doubt the DES Specification, and understands all requirements and expectation of the Core Network Practices as they may relate to the Sub-Contract Services.

# Obligations of the Core Network Practices

## In consideration of the provision of the Sub-Contract Services by the Sub-Contractor, the Core Network Practices will make the payments set out in Schedule 2 to the Sub-Contractor.

## Where the Sub-Contractor informs the PCN Representative of issues which require action under the DES Specification, the Core Network Practices must endeavour to resolve those issues with the Commissioner or any relevant third party.

# Obligations of the Sub-Contractor

## In consideration of the payments set out in Schedule 2 made by the Core Network Practices to the Sub-Contractor, the Sub-Contractor will provide the Sub-Contract Services.

## Without prejudice to the Sub-Contractor’s obligations to meet all performance requirements under this Sub-Contract, the Sub-Contractor shall carry out its obligations under this Sub-Contract in a timely manner and with reasonable care and skill, including where appropriate such level of care and skill as would be expected from a competent professional carrying out the relevant obligation and in any event in accordance with Good Practice.

## The Sub-Contractor must deliver the Sub-Contract Services and perform its obligations under this Sub-Contract in such a manner as to ensure that each Core Network Practice is able to comply with its obligations under the DES Specification and its GP Contract insofar as those obligations relate to, depend on or may be affected by the Sub-Contract Services, including compliance by the Sub-Contractor with any positive or negative obligation.

## The Sub-Contractor must deliver the Sub-Contract Services in accordance with any quality standards or performance requirements that are required of the Core Network Practices under the GP Contracts that relate to the Sub-Contract Services.

## In complying with this Sub-Contract, in exercising its rights under this Sub-Contract and in performing its obligations under this Sub-Contract, the Sub-Contractor must act reasonably and in good faith.

# Staffing

## The Sub-Contractor shall ensure that all persons providing Sub-Contract Services comply with any relevant provisions of the GP Contracts, including to avoid doubt the DES Specification, that relate to persons providing services as if references to the “Contractor” under any GP Contract, or the “PCN” under the DES Specification, is a reference to the Sub-Contractor.

## The Sub-Contractor shall comply with any relevant provision of the GP Contracts, including to avoid doubt the DES Specification, that relate to staff as if references to the “Contractor” under any GP Contract, or the “PCN” under the DES Specification, is a reference to the Sub-Contractor.

## The Parties will comply with any provisions set out in Schedule 8.

# Premises

## Where the Sub-Contract Summary indicates “Yes” to “Sub-Contract Premises are Core Network Practice Premises”, Schedule 3 will apply.

## Where the Sub-Contract Summary indicates “No” to “Sub-Contract Premises are Core Network Practice Premises”, the Sub-Contractor will ensure that it complies with the same obligations or requirements in relation to the Sub-Contract Premises as the Core Network Practices are required to comply with in relation to their premises used to provide services pursuant to the GP Contracts, unless the Core Network Practices inform the Sub-Contractor that it need not comply with any particular obligation or requirement.

## The Sub-Contractor will allow entry to the Sub-Contract Premises to any representative of the Core Network Practices for any purpose related to the provision of Sub-Contract Services. The Sub-Contractor will also allow entry to the Sub-Contract Premises to the same persons, in the same circumstances and for the same reasons as the Core Network Practices are required to allow entry to premises used for the provision of services pursuant to the GP Contracts.

## Where Schedule 1 indicates that the Sub-Contract Services can be delivered from places that are not the Sub-Contract Premises, including but not limited to:

### a Patient’s home;

### another place the Core Network Practices have informed the Sub-Contractor that a Patient is to be treated;

### a place where the Sub-Contract Services are provided remotely,

## then the Sub-Contractor must comply with any provision of the GP Contracts that relates to that place as if reference to the “Contractor” in the GP Contracts is a reference to the Sub-Contractor.

## The Sub-Contractor will promptly provide to the Core Network Practices any information relating to the Sub-Contract premises as the Core Network Practices may require.

# Insurance

## The Sub-Contractor shall at all times hold adequate insurance in respect of any incident against:

### all liabilities arising from negligent performance of the Sub-Contract Services under this Sub-Contract;

### all public liabilities in relation to liabilities to third parties arising under or in connection with this Sub-Contract; and

### all liabilities as an employer in respect of all staff.

## The Sub-Contractor shall provide the PCN Representative with a copy of all insurance policies obtained pursuant to Clause 10.1 and/or a broker certified schedule of insurances together with evidence that any requisite premiums have been paid upon the request of the PCN Representative.

## If the proceeds of any insurance are insufficient to cover the settlement of any claim relating to this Sub-Contract the Sub-Contractor must make good any deficiency.

## The Sub-Contractor shall not sub-contract its obligations to provide the Sub-Contract Services under this Sub-Contract unless it is satisfied that the sub-contractor holds adequate insurance against liability arising from negligent performance of such sub-contracted services.

## For the purposes of Clauses 10.1 to 10.4:

### “insurance” means a contract of insurance or other arrangement made for the purpose of indemnifying the Sub-Contractor and includes membership of a medical defence organisation established for the purpose set out in this Clause or appropriate coverage provided by virtue of NHS Resolution’s Clinical Negligence Scheme for General Practice; and

### the Sub-Contractor shall be regarded as holding insurance if insurance is held by a person employed or engaged by it in connection with clinical services which that person provides under this Sub-Contract provided that that insurance is adequate and is not less than that required by this Clause. The Sub-Contractor agrees that this may not be sufficient to meet the Sub-Contractor’s obligations to insure all of the risks listed under Clause 10.1 and that the Sub-Contractor must seek advice from a specialist insurance broker in this regard.

# Payment

## Payments to the Sub-Contractor will be calculated in accordance with Schedule 2.

## Unless otherwise stated in Schedule 2, the payments set out in Schedule 2:

### will be payable with effect from the Services Commencement Date;

### will remain fixed during the Sub-Contract Term; and

### are the entire payments payable by the Core Network Practices to the Sub-Contractor in respect of the Sub-Contract Services and include, without limitation, any royalties, licence fees, supplies, all consumables and equipment used by the Sub-Contractor, travel costs, accommodation expenses and the cost of the Sub-Contractor’s staff.

## Unless stated otherwise in Schedule 2, the Sub-Contractor must invoice the Core Network Practices, within 10 days of the end of each month, the relevant payment in respect of the Sub-Contract Services provided in the preceding month. Each invoice must contain and be accompanied by such information and be addressed to such individual as the Core Network Practices may inform the Sub-Contractor from time to time.

## The Core Network Practices must pay each undisputed invoice received in accordance with this Clause within 30 days of receipt of such invoice.

## Payment is exclusive of any applicable VAT for which the Core Network Practices will be additionally liable to pay the Sub-Contractor upon receipt of a valid tax invoice at the prevailing rate in force from time to time.

## If a Party contests all or any part of any payment calculated in accordance with this Sub-Contract, the contesting Party must:

### within five (5) Working Days of receipt by that Party of an invoice in accordance with this Sub-Contract, notify the other relevant Party, setting out in reasonable detail the reasons for contesting that account or invoice (as applicable), and in particular identifying which elements are contested and which are not contested; and

### any uncontested amount must be paid in accordance with this Sub-Contract by the Party from whom it is due; and

### if the matter has not been resolved within twenty (20) Working Days of the date of notification referred to above, the contesting Party must refer the matter to the Dispute Resolution Procedure;

## and following the resolution of any matter referred to the Dispute Resolution Procedure in accordance with this Clause, insofar as any amount will be agreed or determined to be payable, the Sub-Contractor must immediately issue an invoice or credit note (as appropriate) for such amount. The Sub-Contractor must make any payment due to the Core Network Practices immediately together with interest calculated in accordance with this Clause. For the purposes of this Clause, the date the amount was due will be the date it would have been due had the amount not been disputed.

## Subject to any express provision of this Sub-Contract to the contrary, each Party will be entitled, in addition to any other right or remedy, to receive interest at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998 on any payment not made from the day after the date on which payment was due up to and including the date of payment.

## Whenever any sum is due from one Party to another as a consequence of the Dispute Resolution Procedure or otherwise, the Party due to be paid that sum may deduct it from any amount that it is due to pay the other.

## In its performance of this Sub-Contract the Sub-Contractor must not provide or offer to a Patient any clinical or medical services for which any charges would be payable by the Patient except in accordance with this Sub-Contract, the Law and/or Guidance.

# Indemnities

## The Sub-Contractor shall indemnify each Core Network Practice fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities in respect of any death or personal injury or loss of or damage to property which is caused directly or indirectly by any act or omission or breach of obligation under this Contract of the Sub-Contractor, its staff, agents or sub-contractors save to the extent that the same was caused by any negligent act of a Core Network Practice or a Core Network Practice’s staff, agents or sub-contractors (except the Sub-Contractor).

## A Core Network Practice shall indemnify the Sub-Contractor fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities in respect of any death or personal injury or loss of or damage to property which is caused directly or indirectly by any act or omission or breach of obligation under this Contract of that Core Network Practice, its staff, agents or sub-contractors (except the Sub-Contractor) save to the extent that the same was caused by any negligent act of the Sub-Contractor, its staff, agents or sub-contractors.

## All Parties will at all times take all reasonable steps to minimise and mitigate any losses or other matters for which one Party is entitled to be indemnified by or to bring a claim against another under this Sub-Contract.

# Termination

## The Core Network Practices may terminate this Sub-Contract or any Sub-Contract Service by giving the Sub-Contractor written notice of not less than the Termination Notice Period.

## Either the Core Network Practices or the Sub-Contractor may terminate this Sub-Contract or any affected Sub-Contract Service by written notice, with immediate effect, if and to the extent that the Core Network Practices suffer, or the Sub-Contractor suffers, an Event of Force Majeure and that Event of Force Majeure persists for more than twenty (20) Working Days without the Parties agreeing alternative arrangements.

## The Sub-Contractor may terminate this Sub-Contract with immediate effect by written notice to the Core Network Practices:

### if at any time the aggregate undisputed amount due to the Sub-Contractor exceeds £10,000 and full payment is not made within twenty (20) Working Days of receipt of written notice from the Sub-Contractor referring to this Clause 13.3 and requiring payment to be made; or

### if any Core Network Practice is in persistent material breach of any of its obligations under this Sub-Contract so as to have a material and adverse effect on the ability of the Sub-Contractor to provide the Sub-Contract Services and the Core Network Practice fails to remedy that breach within forty (40) Working Days of the receipt of the Sub-Contractor’s written notice identifying the breach.

## The Core Network Practices may terminate this Sub-Contract or any affected Sub-Contract Service, with immediate effect, by written notice to the Sub-Contractor if:

### the Sub-Contractor ceases to carry on its business or substantially all of its business; or

### a Sub-Contractor Insolvency Event occurs; or

### the Sub-Contractor is in persistent or repetitive breach of any provision of this Sub-Contract; or

### the Sub-Contractor is in material breach of any provision of this Sub-Contract; or

### the NHS Business Services Authority has notified the Core Network Practices that the Sub-Contractor has, in the opinion of the NHS Business Services Authority, failed in any material respect to comply with its obligations in relation to the NHS Pension Scheme (including those under any Direction Letter/Determination).

## Where one or more Core Network Practices but not all Core Network Practices no longer participate in the Network Contract DES or are no longer a party to the Network Agreement, then the Parties expressly agree that, from the date the relevant Core Network Practice no longer participates in the Network Contract DES or is no longer a party to the Network Agreement, that Core Network Practice will be deemed to be removed as a Party from this Sub-Contract. This Sub-Contract will continue in force as between the remaining Core Network Practices and the Sub-Contractor unless agreed otherwise by the remaining Core Network Practices and the Sub-Contractor.

## As soon as practicable after the date a Core Network Practice is deemed to be removed as a Party from this Sub-Contract pursuant to Clause 13.5, the remaining Core Network Practices and the Sub-Contractor will use best endeavours to ensure that this Sub-Contract is updated to remove references to the departed Core Network Practice and to reflect any changes to the Sub-Contract Summary or Schedules that have been agreed.

# Consequence of termination

## If, as a result of termination of this Sub-Contract or of any Sub-Contract Service following service of notice by the Core Network Practices under Clause 13.4, any Core Network Practice procures any terminated Sub-Contract Service from an alternative provider, and the cost of doing so (to the extent reasonable) exceeds the amount that would have been payable to the Sub-Contractor for providing the same Sub-Contract Service, then that Core Network Practice, acting reasonably, will be entitled to recover from the Sub-Contractor (in addition to any other sums payable by the Sub-Contractor to the Core Network Practice in respect of that termination) the excess cost and all reasonable related administration costs it incurs (in each case) in respect of the period of 6 months following termination.

## On or pending expiry or termination of this Sub-Contract or termination of any Sub-Contract Service the Core Network Practices, the Sub-Contractor, and if appropriate any successor provider, will agree a Succession Plan.

## For a reasonable period before and after termination of this Sub-Contract or of any Sub-Contract Service, and where reasonable and appropriate before and after the expiry of this Sub-Contract, the Sub-Contractor must:

### co-operate fully with the Core Network Practices and any successor provider of the terminated Sub-Contract Services in order to ensure continuity and a smooth transfer of the expired or terminated Sub-Contract Services, and to avoid any inconvenience or any risk to the health and safety of Patients or employees of any Core Network Practice; and

### at the reasonable cost and reasonable request of any Core Network Practice:

#### promptly provide all reasonable assistance and information to the extent necessary to effect an orderly assumption of the terminated Sub-Contract Services by a successor provider;

#### deliver to the Core Network Practices all materials, papers, documents, and operating manuals owned by the Core Network Practices and used by the Sub-Contractor in the provision of any expired or terminated Sub-Contract Services; and

#### use all reasonable efforts to obtain the consent of third parties to the assignment, novation or termination of existing contracts between the Sub-Contractor and any third party which relate to or are associated with the expired or terminated Sub-Contract Services.

## On and pending expiry or termination of this Sub-Contract, or expiry or termination of any Sub-Contract Service, the Parties must:

### implement and comply with their respective obligations under the Succession Plan; and

### use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to Patients or prospective patients as a result of the expiry or termination of this Sub-Contract or any Sub-Contract Service.

## If termination of this Sub-Contract or of any Sub-Contract Service takes place with immediate effect in accordance with Clause 13, and the Sub-Contractor is unable or not permitted to continue to provide any affected Sub-Contract Service under any Succession Plan, or implement arrangements for the transition to a successor provider, the Sub-Contractor must co-operate fully with the Core Network Practices to ensure that any affected Sub-Contract Service is commissioned without delay from an alternative provider.

## The Parties will comply with any Exit Arrangements set out in Schedule 4.

# Force Majeure

## If an Event of Force Majeure occurs, the Affected Party must:

### take all reasonable steps to mitigate the consequences of that event;

### resume performance of its obligations as soon as practicable; and

### use all reasonable efforts to remedy its failure to perform its obligations under this Sub-Contract.

## The Affected Party must serve an initial written notice on the other Parties immediately when it becomes aware of the Event of Force Majeure. This initial notice must give sufficient detail to identify the Event of Force Majeure within a further five (5) Working Days. This more detailed notice must contain all relevant information as is available, including the effect of the Event of Force Majeure, the mitigating action being taken and an estimate of the period of time required to overcome the event and resume full delivery of Sub-Contract Services.

## If it has complied with its obligations under Clauses 15.1 and 15.2, the Affected Party will be relieved from liability under this Sub-Contract if and to the extent that it is not able to perform its obligations under this Sub-Contract due to the Event of Force Majeure.

# Variation

## Subject to Clause 16.2, no variation of this Sub-Contract shall be effective unless it is in writing and signed by all the Parties.

## The Core Network Practices may vary this Sub-Contract, including but not limited to the Sub-Contract Conditions, without the Sub-Contractor’s consent so as to comply with the NHS Act 2006, the Health and Social Care 2012, the Health and Care Act 2022, any regulations made pursuant to those Acts and any direction given by the Secretary of State pursuant to those Acts where the Core Network Practices:

### are reasonably satisfied that it is necessary to vary this Sub-Contract in order so to comply; and

### notify the Sub-Contractor in writing of the wording of the proposed variation and the date upon which that variation is to take effect.

## Where any variation is imposed under Clause 16.2, the Parties shall meet to discuss whether any variation to the payments is necessary consequent upon the variation to the Sub-Contract, and in default of agreement a Dispute may be referred to the Dispute Resolution Procedure.

## The Sub-Contractor must:

### not seek to vary any element of this Sub-Contract where it relates to a similar provision in the GP Contract which cannot be varied unless the variation is essential to the delivery of the Sub-Contract Services;

### in proposing a variation, have regard to the Core Network Providers’ position under the GP Contracts;

### where any variation is proposed to any GP Contract and that variation impacts on the Sub-Contract Services, provide the Core Network Practices with all information they reasonably require within the timescales requested by the Core Network Practices to enable the Core Network Practices to liaise with the Commissioner; and

### use all reasonable endeavours to ensure the Core Network Practices are able to fulfil their obligations under the GP Contracts to the extent any proposed variation relates to the Sub-Contract Services.

# Warranties

## Each of the Parties warrants that it has power to enter into this Sub-Contract and has obtained any necessary approvals to do so.

## The Sub-Contractor warrants that it has received from the Core Network Practices, and has reviewed and understands, the GP Contracts to the extent that they are relevant to the provision of Sub-Contract Services pursuant to this Sub-Contract.

# Intellectual Property

## Except as set out expressly in this Sub-Contract no Party will acquire the IPR of any other Party.

## The Sub-Contractor acknowledges that a Core Network Practice’s GP Contract may state that any IPR developed in connection with or related to the GP Contract shall belong to the Commissioner. The Sub-Contractor will take all necessary steps to ensure that the Core Network Practice will not be in breach of any such provision.

## Where a Party grants a licence or sub-licence to another Party that relates to the Sub-Contract Services or the delivery of the Sub-Contract Services, the Parties shall record such grants in Schedule 5.

# Patient records, information and other matters

## The Parties will comply with any provisions set out in Schedule 9 relating to patient records, information or any other matter.

# Confidentiality

## Subject always to the obligations of the Parties under statute or common law, in respect of such Confidential Information it may receive from another Party (the “**Discloser**”), each Party (the “**Recipient**”) undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser’s prior written consent provided that the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of this Sub-Contract.

## The provisions of Clause 20.1 shall not apply to any Confidential Information which:

### is in or enters the public domain other than by breach of this Sub-Contract or other act or omissions of the Recipient;

### is obtained by a third party who is lawfully authorised to disclose such information;

### is authorised for release by the prior written consent of the Discloser.

## Nothing in Clause 20.1 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law or, where the Sub-Contractor is the Recipient, to the Sub-Contractor’s immediate or ultimate holding company provided that the Sub-Contractor procures that such holding company complies with this Clause 20 as if any reference to the Sub-Contractor in Clause 20.1 were a reference to such holding company.

## The Sub-Contractor authorises the Core Network Practices to disclose the Confidential Information to such person(s) as may be notified to the Sub-Contractor in writing by the Core Network Practices from time to time to the extent only as is necessary for the purposes of auditing and collating information so as to ascertain a realistic market price for the Sub-Contract Services supplied in accordance with the Sub-Contract, such exercise being commonly referred to as “benchmarking”. The Core Network Practices shall use all reasonable endeavours to ensure that such person(s) keeps the Confidential Information confidential and does not make use of the Confidential Information except for the purpose for which the disclosure is made.

## The provisions of Clauses 20.1 and 20.4 shall continue in force following expiry or termination of this Sub-Contract for any reason whatsoever and without limit in time.

# Data protection

## The Sub-Contractor must comply fully in all respects with the provisions of the Data Protection Legislation.

## Any processing of Personal Data by the Sub-Contractor:

### in the capacity of a Data Processor acting on behalf of the Core Network Practices as a Data Controller; or

### in the capacity of a Data Sub-Processor acting on behalf of the Core Network Practices as a Data Processor,

## must be carried out in in accordance with the terms set out in Schedule 6 (Data Protection and Information Governance).

# Freedom of Information

## The Sub-Contractor will comply with all obligations relating to the Freedom of Information Act 2000, the Environmental Information Regulations 2004 and the Code of Openness in the NHS that any Core Network Practice is required to comply with pursuant to the GP Contracts.

# Complaints

## The Sub-Contractor will promptly inform the Core Network Practices of any complaints and shall not take any action in relation to such complaints without the express permission of the Core Network Practices. The Sub-Contractor will promptly carry out actions in relation to such complaints as directed by the Core Network Practices.

## Subject to Clause 23.1, the Sub-Contractor will comply with the complaints procedures of the Core Network Practices as if it were the relevant Core Network Practice.

# Sub-contracting and change of control

## The Sub-Contractor shall not sell, assign, sub-contract or in any way dispose of any of its rights or duties under this Sub-Contract in relation to the Sub-Contract Services or any part thereof without the prior written authorisation of the Core Network Practices.

## The Sub-Contractor acknowledges that the Core Network Practices may need to notify or seek consent of the Commissioner in respect of any sub-contracting and the Sub-Contractor will assist the Core Network Practices with providing relevant information to, or communicating with, the Commissioner for this purpose.

## A contract that the Sub-Contractor puts in place with a further sub-contractor must, unless the Core Network Practices agree otherwise in writing, prohibit the further sub-contractor from sub-contracting the services it has agreed with the Sub-Contractor to provide.

## The Sub-Contractor will comply with all obligations relating to change in control that any Core Network Practice is required to comply with pursuant to the GP Contracts.

# Dispute Resolution Procedure

## If a Dispute arises, the Parties will act in accordance with the Dispute Resolution Procedure set out in Schedule 7.

## The Sub-Contractor will comply with any requests for information related to a dispute involving any one or more Core Network Practices and a third party including but not limited to the Commissioner.

# General

## The Sub-Contractor will comply with all obligations relating to the Bribery Act 2010 that any Core Network Practices are required to comply with pursuant to the GP Contracts.

## A person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of this Sub-Contract.

## Any notices given under this Sub-Contract must be in writing and must be served in the ways set out below. The following table sets out the respective deemed time and proof of service:

|  |  |  |
| --- | --- | --- |
| **Manner of Delivery** | **Deemed time of delivery** | **Proof of Service** |
| Hand delivery:   * to the postal address of the Sub-Contractor Representative; * to the postal address of the PCN Representative,   as applicable | * 1. On delivery | * 1. Properly addressed and delivered |
| * 1. Prepaid first class recorded delivery domestic postal service: * to the postal address of the Sub-Contractor Representative; * to the postal address of the PCN Representative,   1. as applicable | * 1. 9.00am on the second Working Day after posting | * 1. Properly addressed, prepaid and posted |
| * 1. Email: * to the email address of the Sub-Contractor Representative; * to the email address of the PCN Representative,   1. as applicable | * 1. at the time of transmission and if sent before 9am or after 5pm then on the following Working Day | * 1. No undeliverable message has been received by the sender |

## If any part of this Sub-Contract is declared invalid or otherwise unenforceable, it will be severed from this Sub-Contract and this will not affect the validity and/or enforceability of the remaining provisions.

## This Sub-Contract constitutes the entire agreement and understanding between the Core Network Practices and the Sub-Contractor and supersedes any previous agreement between the Core Network Practices and the Sub-Contractor relating to the subject matter of this Sub-Contract.

## The Parties acknowledge and agree that in entering into this Sub-Contract the Parties do not rely on and have no remedy in respect of any statement, representation, warranty or understanding (whether negligently or innocently made) of another Party other than as expressly set out in this Sub-Contract. Nothing in this Clause will exclude any liability for fraud or any fraudulent misrepresentation.

## Any relaxation or delay of any Party in exercising any right under this Sub-Contract must not be taken as a waiver of that right and will not affect the Party’s ability subsequently to exercise that right.

## Each Party is responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Sub-Contract.

## The Sub-Contractor shall not enter into any arrangements for the sponsorship by any person of the Sub-Contract Premises, the Sub-Contract Services or anything connected to this Sub-Contract without the prior written consent of the Core Network Practices, which the latter, in their absolute discretion, may withhold.

## Any rights, duties or obligations of any of the Parties which are expressed to survive, or which otherwise by necessary implication survive the expiry or termination for any reason of this Sub-Contract, together with all indemnities, will continue after expiry or termination, subject to any limitations of time expressed in this Sub-Contract.

## This Sub-Contract and any Dispute arising out of or in connection with it, whether such Dispute is contractual or non-contractual in nature, such as claims in tort, for breach of statute or regulation, or otherwise, will be governed by, and construed in accordance with, the laws of England.

## Subject to the Parties first complying with the Dispute Resolution Procedure, the Parties hereby submit to the exclusive jurisdiction of the English courts.

## The Sub-Contract may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties, shall constitute a full original of this Sub-Contract for all purposes.

# Schedule 1 - Sub-Contract Services

*Guidance: The Sub-Contract Services that the Sub-Contractor must deliver should be set out in sufficient detail in this Schedule 1. Note that the Sub-Contact expressly states that terms defined in the DES Specification will have the same meaning when used in this Sub-Contract. This should assist the drafting of this Schedule 1. Matters to consider when drafting this Schedule 1 include, but are not limited to:*

* *the Patients – which persons must the Sub-Contract Services be provided to. Reference could be made to provisions of the GP Contracts to identify the Patients;*
* *the hours of service – when must the Sub-Contractor provide the Sub-Contract Services to Patients;*
* *the Sub-Contract Services – which services is the Sub-Contractor required to deliver. Reference can be made to the relevant provisions of the DES Specification. Where provisions of the GP Contracts are relevant to the delivery of the Sub-Contract Services, it should be made clear that the Sub-Contractor is required to deliver the Sub-Contract Services in accordance with those provisions;*
* *whether the Sub-Contractor is required to provide the Sub-Contract Services from any place other than the Sub-Contract Premises, e.g. a Patient’s home;*
* *whether the Sub-Contract Services can be provided remotely;*
* *whether there are any specific standards that the Sub-Contractor must comply with.*

# Schedule 2 - Payments

*Guidance: Clause 11 sets out mandatory provisions relating to certain aspects of payments. Those matters should not be replicated here. This Schedule 2 is for the parties to detail how payments will be calculated.*

# Schedule 3 - Premises

*Guidance: Where the Sub-Contract Premises are not the same premises routinely used by the Core Network Practices in the delivery of the services they provide under the GP Contracts, then this Schedule should state “Not Applicable”.*

*Where the Sub-Contract Premises are the same premises used by the Core Network Practices in the delivery of services, then the Core Network Practices should consider the obligations and responsibilities of the Sub-Contractor in relation to those premises and include relevant matters in this Schedule. Such matters may include:*

* *Permitted use of the premises and at what times*
* *Arrangements for allowing entry to the premises*
* *Obligations relating to use of facilities and utilities (with payments for the same reflected in Schedule 2)*
* *Use of equipment present at the premises*
* *Arrangements for repairs/damages and alterations including but not limited to provisions relating to insurance and indemnities for damage*
* *Arrangements for cleaning/disinfecting premises*
* *Requirement to follow any premises policies of the Core Network Practices*

# Schedule 4 - Exit Arrangements

*Guidance: The Parties should consider if there are any additional obligations relating to expiry or termination of the Sub-Contract, other than the obligations set out in Clause 14, and insert appropriate provisions here. Please note that TUPE provisions are set out in Schedule 8.*

# Schedule 5 - Intellectual Property Grants

*Guidance: Where the Sub-Contractor or any Core Network Practice grants a licence or a sub-licence to use any intellectual property, the details of the grant – what it is for, how long it lasts, any conditions – should be set out in this Schedule 5.*

# Schedule 6 - Data Protection and Information Governance

**Sub-Contractor Data Processing Agreement**

*Guidance: This Schedule 6 applies only where the Sub-Contractor is appointed to act as a Data Processor under this Contract. Where the Core Network Practices act as Data Controller in respect of the relevant data, it may appoint the Sub-Contractor to act as a Data Processor in relation to that data; where the Core Network Practices are themselves appointed to act as a Data Processor they may appoint the Sub-Contractor to act as a Sub-processor. Delete/populate this Schedule if and as applicable.*

1. **Scope**
   1. The Core Network Practices appoint the Sub-Contractor as a [Data Processor] [Data Sub-Processor] to perform the Data Processing Services specified in Annex A.
   2. When delivering the Data Processing Services, the Sub-Contractor must, in addition to its other obligations under this Sub-Contract, comply with the provisions of this Schedule 6.
   3. This Schedule 6 applies for so long as the Sub-Contractor acts as a [Data Processor] [Sub-processor] in connection with this Sub-Contract.
2. **Data Protection**
   1. The Parties acknowledge that for the purposes of Data Protection Legislation in relation to the Data Processing Services, the Core Network Practices act as the [Data Controller/s] [Data Processor] and the Sub-Contractor is the [Data Processor] [Data Sub-Processor].
   2. The Sub-Contractor must process the Processor Data only to the extent necessary to perform the Data Processing Services and only in accordance with written instructions set out in this Schedule 6, including instructions regarding transfers of Personal Data outside the UK or to an international organisation unless such transfer is required by Law, in which case the Sub-Contractor must inform the Core Network Practices of that requirement before processing takes place, unless this is prohibited by Law on the grounds of public interest.
   3. The Sub-Contractor must notify the Core Network Practices immediately if it considers that carrying out any of the Core Network Practices’ instructions would infringe Data Protection Legislation.
   4. The Sub-Contractor must provide all reasonable assistance to the Core Network Practices in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Core Network Practices, include:
      1. a systematic description of the envisaged processing operations and the purpose of the processing;
      2. an assessment of the necessity and proportionality of the processing operations in relation to the Data Processing Services;
      3. an assessment of the risks to the rights and freedoms of Data Subjects; and
      4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
   5. The Sub-Contractor must, in relation to any Personal Data processed in connection with its obligations under this Schedule 6:
      1. process that Personal Data only in accordance with Annex A, unless the Sub-Contractor is required to do otherwise by Law. If it is so required the Sub-Contractor must promptly notify the Core Network Practices before processing the Personal Data unless prohibited by Law;
      2. ensure that it has in place Protective Measures, which have been reviewed and approved by the Core Network Practices as appropriate to protect against a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed (a “Data Loss Event”) having taken account of the:
         1. nature, scope, context and purposes of processing the data to be protected;
         2. likelihood and level of harm that might result from a Data Loss Event;
         3. state of technological development; and
         4. cost of implementing any measures;
      3. ensure that:
         1. when delivering the Data Processing Services the Sub-Contractor’s Staff only process Personal Data in accordance with this Schedule 6 (and in particular Annex A);
         2. it takes all reasonable steps to ensure the reliability and integrity of any Sub-Contractor’s Staff who have access to the Personal Data and ensure that they:
            1. are aware of and comply with the Sub-Contractor’s duties under this paragraph;
            2. are subject to appropriate confidentiality undertakings with the Sub-Contractor and any further Sub-processor;
            3. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Core Network Practices or as otherwise permitted by this Sub-Contract; and
            4. have undergone adequate training in the use, care, protection and handling of Personal Data.
      4. not transfer Personal Data outside of the UK unless the prior written consent of the Core Network Practices has been obtained and the following conditions are fulfilled:
         1. the Sub-Contractor has provided appropriate safeguards in relation to the transfer as determined by the Core Network Practices
         2. the Data Subject has enforceable rights and effective legal remedies;
         3. the Sub-Contractor complies with its obligations under Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Core Network Practices in meeting their obligations); and
         4. the Sub-Contractor complies with any reasonable instructions notified to it in advance by the Core Network Practices with respect to the processing of the Personal Data;
      5. at the written direction of the Core Network Practices, delete or return Personal Data (and any copies of it) to the Core Network Practices on termination of the Data Processing Services and certify to the Core Network Practices that it has done so within five Operational Days of any such instructions being issued, unless the Sub-Contractor is required by Law to retain the Personal Data;
      6. if the Sub-Contractor is required by any Law or Regulatory or Supervisory Body to retain any Processor Data that it would otherwise be required to destroy under this paragraph 2.4, notify the Core Network Practices in writing of that retention giving details of the Processor Data that it must retain and the reasons for its retention; and
      7. co-operate fully with the Core Network Practices during any handover arising from the cessation of any part of the Data Processing Services, and if the Core Network Practices direct the Sub-Contractor to migrate Processor Data to the Core Network Practices, or to a Commissioner or to a third party, provide all reasonable assistance with ensuring safe migration including ensuring the integrity of Processor Data and the nomination of a named point of contact for the Core Network Practices.
   6. Subject to paragraph 2.6, the Sub-Contractor must notify the Core Network Practices immediately if, in relation any Personal Data processed in connection with its obligations under this Schedule 6, it:
      1. receives a Data Subject Access Request (or purported Data Subject Access Request);
      2. receives a request to rectify, block or erase any Personal Data;
      3. receives any other request, complaint or communication relating to obligations under Data Protection Legislation owed by the Sub-Contractor or the Core Network Practices;
      4. receives any communication from the Information Commissioner (including any communication concerned with the systems on which Personal Data is processed under this Schedule 6);
      5. receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
      6. becomes aware of or reasonably suspects a Data Loss Event; or
      7. becomes aware of or reasonably suspects that it has in any way caused the Head Provider or any Commissioner to breach Data Protection Legislation.
   7. The Sub-Contractor’s obligation to notify under paragraph 2.5 includes the provision of further information to the Core Network Practices in phases, as details become available.
   8. The Sub-Contractor must provide whatever co-operation the Core Network Practices reasonably require to remedy any issue notified to the Core Network Practices under paragraphs 2.5 and 2.6 as soon as reasonably practicable.
   9. Taking into account the nature of the processing, the Sub-Contractor must provide the Core Network Practices with full assistance in relation to either Party's (or any Commissioner’s) obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 2.5 (and insofar as possible within the timescales reasonably required by the Core Network Practices) including by promptly providing:
      1. the Core Network Practices with full details and copies of the complaint, communication or request;
      2. such assistance as is reasonably requested by the Core Network Practices to enable the Core Network Practices to comply with a Data Subject Access Request within the relevant timescales set out in Data Protection Legislation;
      3. assistance as requested by the Core Network Practices following any Data Loss Event;
      4. assistance as requested by the Core Network Practices with respect to any request from the Information Commissioner’s Office, or any consultation by the Core Network Practices with the Information Commissioner's Office.
   10. The Sub-Contractor must allow for audits of its delivery of the Data Processing Services by the Head Provider, the Co-ordinating Commissioner, or either’s designated auditor.
   11. Before allowing any Sub-processor to process any Personal Data related to this Schedule 6, the Sub-Contractor must:
       1. notify the Core Network Practices [(and if the Core Network Practices act as a Data Processor regarding the Data Processing Services, the relevant Data Controller)] in writing of the intended Sub-processor and processing;
       2. obtain the written consent of the Core Network Practices [(and if the Core Network Practices act as a Data Processor regarding the Data Processing Services the relevant Data Controller)];
       3. carry out appropriate due diligence of the Sub-processor and ensure this is documented;
       4. enter into a binding written agreement with the Sub-processor which, as far as practicable, includes equivalent terms to those set out in this Schedule 6; and
       5. provide the Core Network Practices [(and if the Core Network Practices act as a Data Processor regarding the Data Processing Services the relevant Data Controller)] with such information regarding the Sub-processor as the Core Network Practices [(and if the Core Network Practices act also as a Data Processor regarding the Data Processing Services the relevant Data Controller)] may reasonably require.
   12. The Sub-Contractor must create and maintain a record of all categories of data processing activities carried out under this Schedule 6, containing:
       1. the categories of processing carried out under this Schedule 6;
       2. where applicable, transfers of Personal Data to a third country or an international organisation, including the identification of that third country or international organisation and, where relevant, the documentation of suitable safeguards;
       3. a general description of the Protective Measures taken to ensure the security and integrity of the Personal Data processed under this Schedule 6; and
       4. a log recording the processing of the Processor Data by or on behalf of the Sub-Contractor comprising, as a minimum, details of the Processor Data concerned, how the Processor Data was processed, when the Processor Data was processed and the identity of any individual carrying out the processing.
   13. The Sub-Contractor warrants and undertakes that it will deliver the Data Processing Services in accordance with all Data Protection Legislation and this Sub-Contract and in particular that it has in place Protective Measures that are sufficient to ensure that the delivery of the Data Processing Services complies with Data Protection Legislation and ensures that the rights of Data Subjects are protected.
   14. The Sub-Contractor must comply at all times with those obligations set out at Article 32 of the UK General Data Protection Regulation (“UK GDPR”) and equivalent provisions implemented into Law by Data Protection Act 2018.
   15. The Sub-Contractor must assist the Core Network Practices in ensuring compliance with the obligations set out at Article 32 to 36 of the UK GDPR and equivalent provisions implemented into Law, taking into account the nature of processing and the information available to the Sub-Contractor.
   16. The Sub-Contractor must take prompt and proper remedial action regarding any Data Loss Event.
   17. The Sub-Contractor must assist the Core Network Practices by taking appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Core Network Practices’ obligations to respond to requests for exercising rights granted to individuals by Data Protection Legislation.

**Annex A**

**Data Processing Services**

**Processing, Personal Data and Data Subjects**

1. The Sub-Contractor must comply with any further written instructions with respect to processing by the Core Network Practices.
2. Any such further instructions will be incorporated into this Annex.

| **Description** | **Details** |
| --- | --- |
| Subject matter of the processing | *[This should be a high level, short description of what the processing is about i.e. its subject matter]* |
| Duration of the processing | *[Clearly set out the duration of the processing including dates]* |
| Nature and purposes of the processing | *[Please be as specific as possible, but make sure that you cover all intended purposes. The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. The purpose might include: employment processing, statutory obligation, recruitment assessment etc.]* |
| Type of Personal Data | *[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.]* |
| Categories of Data Subject | *[Examples include: Staff (including volunteers, agents, and temporary workers), Head Provider/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc.]* |
| Plan for return and destruction of the data once the processing is complete UNLESS requirement under law to preserve that type of data | *[Describe how long the data will be retained for, how it be returned or destroyed]* |

# Schedule 7 - Dispute Resolution

*Guidance: The wording below sets out a suggested dispute resolution procedure. It can be amended as the Parties see fit. The PCN may have a specific dispute resolution procedure set out in the Network Agreement which it wants to apply to a dispute with the Sub-Contractor in which case the wording below should be replaced by the relevant dispute resolution procedure.*

# Parties to a Dispute

## Where a Dispute arises between the Sub-Contractor and the Core Network Practices, the Core Network Practices will act as one Party through the PCN Representative. References to the PCN in this Schedule 7 will, unless expressly indicated otherwise, refer to the PCN Representative. References to a Party in this Schedule 7 is reference to either the Sub-Contractor or the PCN.

# Escalated Procedure

## If any Dispute arises, the Sub-Contractor and the PCN must first attempt to settle it by one of them making a written offer to negotiate. They must then negotiate and be represented:

### for the first ten (10) Working Days after the receipt of the first offer to negotiation, by a senior person who, where practicable, has not had any direct day-to-day involvement in the matter and has authority to settle the Dispute; and

### for the next five (5) Working Days, by a chief executive, director, partner or member of a relevant Governing Body, as the case may be, who has authority to settle the Dispute.

## Where practicable, they should not be represented by the same individual under paragraphs 2.1.1 and 2.1.2 of this Schedule 7.

# Mediation

## If the Sub-Contractor and the PCN are unable to settle the Dispute by negotiation within the time periods set out in paragraph 2.1, they must, within five (5) Working Days after the end of the time period set out in paragraph 2.1.2, submit the Dispute to mediation by CEDR or other independent body or organisation agreed between them.

## Mediation must follow the mediation process of CEDR or other independent body or organisation as agreed between them in accordance with paragraph 3.1.

# Expert Determination

## If the Sub-Contractor and the PCN are unable to settle the Dispute through mediation, the Dispute must be referred to expert determination, by either one of them giving written notice to that effect to the other. The Expert Determination Notice must include a brief statement of the issue or issues which it is desired to refer, the expertise required in the expert, and the solution sought.

## If the Sub-Contractor and the PCN have agreed upon the identity of an expert and the expert has confirmed in writing their readiness and willingness to embark upon the expert determination, then that person will be appointed as the Expert.

## Where the Sub-Contractor and the PCN have not agreed upon an expert, or where that person has not confirmed their willingness to act, then either of them may apply to CEDR for the appointment of an expert. The request must be in writing, accompanied by a copy of the Expert Determination Notice and the appropriate fee and must be copied simultaneously to the other. The receiving Party may make representations to CEDR regarding the expertise required in the expert. The person nominated by CEDR will be appointed as the Expert.

## The Party serving the Expert Determination Notice must send to the Expert and to the other Party within five (5) Working Days of the appointment of the Expert a statement of its case, including a copy of the Expert Determination Notice, this Contract, details of the circumstances giving rise to the Dispute, the reasons why it is entitled to the solution sought, and the evidence upon which it relies. The statement of case must be confined to the issues raised in the Expert Determination Notice.

## The Party not serving the Expert Determination Notice must reply to the Expert and to the other Party within five (5) Working Days of receiving the statement of case, giving details of what is agreed and what is disputed in the statement of case and the reasons why.

## The Expert must produce a written decision with reasons within thirty (30) Working Days of receipt of the statement of case referred to in paragraph 4.13, or any longer period as is agreed by the Parties after the Dispute has been referred.

## The Expert will have complete discretion as to how to conduct the expert determination, and will establish the procedure and timetable.

## The Parties must comply with any request or direction of the Expert in relation to the expert determination.

## The Expert must decide the matters set out in the Expert Determination Notice, together with any other matters which the Parties and the Expert agree are within the scope of the expert determination. The Expert must send their decision in writing simultaneously to the Parties. Within five (5) Working Days following the date of the decision the Parties must provide the Expert with any requests to correct minor clerical errors or ambiguities in the decision.

## The Parties must bear their own costs and expenses incurred in the expert determination and are jointly liable for the costs of the Expert.

## The decision of the Expert is final and binding, except in the case of fraud, collusion, bias, or material breach of instructions on the part of the Expert, in which case a Party will be permitted to apply to Court for an order that:

### the Expert reconsider his decision (either all of it or part of it); or

### the Expert’s decision be set aside (either all of it or part of it).

## If a Party does not abide by the Expert’s decision the other Party may apply to Court to enforce it.

## All information, whether oral, in writing or otherwise, arising out of or in connection with the expert determination will be inadmissible as evidence in any current or subsequent litigation or other proceedings whatsoever, with the exception of any information which would in any event have been admissible or disclosable in any such proceedings.

## The Expert is not liable for anything done or omitted in the discharge or purported discharge of their functions, except in the case of fraud or bad faith, collusion, bias, or material breach of instructions on the part of the Expert.

## The Expert is appointed to determine the Dispute or Disputes between the Parties and the Expert’s decision may not be relied upon by third parties, to whom the Expert shall have no duty of care.

# Schedule 8 – TUPE Provisions

*Guidance: The wording below sets out suggested provisions related to TUPE which may be relevant depending on the transfer of staff at the start and/or at the end of the Sub-Contract. The wording can be amended as the Parties see fit.*

# DEFINITIONS

## In this Schedule:

### **Core Network Practice Transferee** means any Core Network Practice to which any Subsequent Transferring Employees transfer, or who are found or alleged to have transferred, under TUPE and/or COSOP

### **Core Network Practice Transferor** means any Core Network Practice from whom any Transferring Employees transfer, or who are found or alleged to have transferred, under TUPE and/or COSOP to the Sub-Contractor

### **COSOP** means the Cabinet Office Statement of Practice Staff Transfers in the Public Sector January 2000

### **Subsequent Service Transfer Date** means the point in time, if any, at which services equivalent to the Sub-Contract Services (either in whole or in part) are first provided by a Core Network Practice, giving rise to a relevant transfer under TUPE and/or COSOP

### **Subsequent Transferring Employees** means any employee, agent, consultant and/or contractor who immediately before the Subsequent Service Transfer Date is wholly or mainly engaged in the performance of services equivalent to Sub-Contract Services (either in whole or in part) which are to be undertaken by a Core Network Practice Transferee on and following the Subsequent Service Transfer Date

### **Transferring Employees** means those employees transferring from a Core Network Practice Transferor to the Sub-Contractor under TUPE and/or COSOP and listed in Part B of this Schedule entitled Core Network Practice Employees

### **TUPE** means the Transfer of Undertakings (Protection of Employment) Regulations 2006

# At Service Commencement

## The Sub-Contractor must comply with its obligations under TUPE and COSOP in relation to any persons who transfer to the employment of the Sub-Contractor by operation of TUPE and/or COSOP as a result of this Sub-Contract, and that the Sub-Contractor will ensure a smooth transfer of those persons to its employment. The Sub-Contractor must indemnify and keep indemnified the Core Network Practices, the Commissioner and any previous provider of services equivalent to the Sub-Contract Services or any of them before the Services Commencement Date against any and all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities arising out of or in connection with:

### any failure by the Sub-Contractor to comply with its obligations under TUPE and/or COSOP in connection with any relevant transfer under TUPE and/or COSOP;

### any claim by any person that any proposed or actual substantial change by the Sub-Contractor to that person’s working conditions or any proposed measures on the part of the Sub-Contractor are to that person’s detriment, whether that claim arises before or after the date of any relevant transfer under TUPE and/or COSOP to the Sub-Contractor; and/or

### any claim by any person in relation to any breach of contract arising from any proposed measures on the part of the Sub-Contractor, whether that claim arises before or after the date of any relevant transfer under TUPE and/or COSOP to the Sub-Contractor.

## Paragraphs 2.3 to 2.7 will only apply where any employees of a Core Network Practice transfer to the Sub-Contractor under TUPE on or before the Service Commencement Date.

## The Transferring Employees will transfer to the Sub-Contractor under TUPE and/or COSOP on the Services Commencement Date and paragraphs 2.4 to 2.7 shall apply.

## The Core Network Practice Transferor will on or before the Services Commencement Date:

### discharge all financial obligations owing to the Transferring Employees in respect of the period on or before the Services Commencement Date;

### procure that any loans or advances made by the Core Network Practice Transferor to the Transferring Employees before the Services Commencement Date are repaid to it;

### account to the proper authority for all PAYE tax deductions, pensions contributions and national insurance contributions payable in respect of the Transferring Employees in the period before the Services Commencement Date; and

### pay the Sub-Contractor the amount which would be payable to each of the Transferring Employees in lieu of accrued but untaken holiday entitlement as at the Services Commencement Date.

## The Core Network Practice Transferor will comply with its obligations under TUPE and COSOP in relation to the Transferring Employees by operation of TUPE and/or COSOP and will ensure a smooth transfer of the Transferring Employees to the Sub-Contractor.

## The Core Network Practice Transferor will indemnify and keep indemnified the Sub-Contractor in relation to any and all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities arising out of or in connection with any act or omission by it in relation to the Transferring Employees or Core Network Practice Transferor employees transferring to the Sub-Contractor under paragraph 2.7 prior to the Services Commencement Date save for where such act or omission results from complying with the instructions of the Sub-Contractor and save for where the Sub-Contractor fails to comply with its obligations under regulation 13 of TUPE.

## If any person who is an employee of the Core Network Practice Transferor who is not a Transferring Employee claims or it is determined that their contract of employment has been transferred from the Core Network Practice Transferor to the Sub-Contractor pursuant to TUPE, or claims that their employment would have so transferred had they not resigned, the Sub-Contractor must employ that person in accordance with its obligations and duties under TUPE and will be responsible for all liabilities arising in respect of any such person from the Service Commencement Date unless the Core Network Practice Transferor offers employment to such person and the offer is accepted.

# At the end of the Sub-Contract

## If the Core Network Practices notify the Sub-Contractor that they (or the Commissioner) intend to tender or retender any Sub-Contract Services, the Sub-Contractor must within 15 Working Days following written request (unless otherwise agreed in writing) provide the Core Network Practices with anonymised details (as set out in Regulation 11(2) of TUPE) of staff engaged in the provision of the relevant Sub-Contract Services who may be subject to TUPE. The Sub-Contractor must indemnify and keep indemnified the Core Network Practices, the Commissioner and, at the Core Network Practices’ request, any new provider who provides any services equivalent to the Sub-Contract Services or any of them after expiry or termination of this Sub-Contract or termination of a Sub-Contract Service, against any and all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities in respect of any inaccuracy in or omission from the information provided under this Schedule.

## During the three months immediately preceding the expiry of this Sub-Contract or at any time following a notice of termination of this Sub-Contract or of any Sub-Contract Service being given, the Sub-Contractor must not, without the prior written consent of the Core Network Practices (that consent not to be unreasonably withheld or delayed), in relation to any persons engaged in the provision of the Sub-Contract Services or the relevant Sub-Contract Service:

### terminate or give notice to terminate the employment of any person engaged in the provision of the Sub-Contract Services or the relevant Sub-Contract Service (other than for gross misconduct);

### increase or reduce the total number of people employed or engaged in the provision of the Sub-Contract Services or the relevant Sub-Contract Service by the Sub-Contractor by more than 5% (except in the ordinary course of business);

### propose, make or promise to make any material change to the remuneration or other terms and conditions of employment of the individuals engaged in the provision of the Sub-Contract Services or the relevant Sub-Contract Service;

### replace or relocate any persons engaged in the provision of the Sub-Contract Services or the relevant Sub-Contract Service or reassign any of them to duties unconnected with the Sub-Contract Services or the relevant Sub-Contract Service; and/or

### assign or redeploy to the Sub-Contract Services or the relevant Sub-Contract Service any person who was not previously a member of Staff engaged in the provision of the Sub-Contract Services or the relevant Sub-Contract Service.

## Paragraphs 3.4 to 3.8 will only apply where any employees of the Sub-Contractor transfer to a Core Network Practice Transferee on or immediately following the expiry or earlier termination of this Sub-Contract in whole or in part.

## The Subsequent Transferring Employees will transfer to the Core Network Practice Transferee under TUPE and/or COSOP on the Subsequent Service Transfer Date and paragraphs 3.5 to 3.8 shall apply.

## The Sub-Contractor will on or before the Subsequent Service Transfer Date:

### discharge all financial obligations owing to the Subsequent Transferring Employees in respect of the period on or before the Subsequent Service Commencement Date;

### procure that any loans or advances made by the Sub-Contractor to the Subsequent Transferring Employees on or before the Subsequent Service Transfer Date are repaid to it;

### account to the proper authority for all PAYE tax deductions, pensions contributions and national insurance contributions payable in respect of the Subsequent Transferring Employees in the period before the Subsequent Service Transfer Date; and

### pay the Core Network Practice Transferee the amount which would be payable to each of the Subsequent Transferring Employees in lieu of accrued but untaken holiday entitlement as at the Subsequent Service Transfer Date.

## The Sub-Contractor will comply with its obligations under TUPE and COSOP in relation to the Subsequent Transferring Employees and will ensure a smooth transfer of the Subsequent Transferring Employees to the Core Network Practice Transferee.

## The Sub-Contractor will indemnify and keep indemnified the Core Network Practice Transferee in relation to any and all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities arising out of or in connection with any act or omission of the Sub-Contractor in relation to the Subsequent Transferring Employees prior to the Subsequent Service Transfer Date save for where such act or omission results from complying with the instructions of the Core Network Practice Transferee and save for where the Core Network Practice Transferee fails to comply with its obligations under regulation 13 of TUPE.

## The Sub-Contractor will indemnify and keep indemnified the Core Network Practice Transferee in relation to any person who is an employee of the Sub-Contractor who is not a Subsequent Transferring Employee is found to or it is alleged to transfer to the Core Network Practice Transferee under TUPE and/or COSOP.

**Annex A**

**Core Network Practice Transferor's Employees**

*Guidance: insert list of Transferring Employees or state 'Not Applicable'*

# SCHEDULE 9 - PATIENT RECORDS, INFORMATION AND OTHER MATTERS

## *Guidance: If there are any other obligations on either parties, they should be added here. Particular consideration should be given to matters that don’t obviously fall within another Schedule such as::*

## *any requirements on the Sub-Contractor in relation to patient records - accessing and updating the PCN’s records and/or creating its own;*

## *provision of any other information that the PCN may require;*

## *further indemnity and/or liability arrangements between the Parties;*

## *reporting requirements of the Sub-Contractor in relation to the provision of the Sub-Contract Services – this could include KPIs or other performance metrics;*

## *contract management provisions – Core Network Practices could be subject to breach or remedial notices by the Commissioner. This approach could be reflected in this Sub-Contract. Alternatively, a process of meetings and remedial plans could be put in place for any suspected breaches and which would apply provided a matter had not been referred to the dispute resolution process. It will be for the Parties to agree the specifics of a contract management process.*