

**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN**  
**THE SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE**  
**AND**  
**NHS BUSINESS SERVICES AUTHORITY**  
**FOR THE**  
**(ENGLAND) INFECTED BLOOD SUPPORT SCHEME**

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## **1. Parties**

1.1 This Memorandum of Understanding (MoU) is:

**BETWEEN:**

- (1) NHS Business Services Authority**, of Stella House, Goldcrest Way, Newburn Riverside, Newcastle upon Tyne, NE15 8NY (the NHSBSA); and
- (2) THE SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE** of 39 Victoria Street, London SW1H 0EU (the SoS)

together, "the Parties".

**WHEREAS:**

1.2 The Parties agree that:

- (a) The SoS directs the NHSBSA to administer the Infected Blood Support Scheme (the Scheme) in England by providing certain services (the Services) as defined in the Department of Health and Social Care (DHSC) Specification – England Infected Blood Support Scheme (the Specification).
- (b) The NHSBSA has agreed to provide the Services for the SoS in accordance with the terms of this MoU and the Specification.

## **2. Purpose of the MoU**

- 2.1 The purpose of this MoU is to define and facilitate the relationship between the DHSC and NHSBSA in respect of the administration of the Scheme in England.
- 2.2 The Scheme is to provide financial and other assistance to eligible individuals infected with HIV and/or hepatitis C via NHS-supplied blood or blood products, their eligible intimates, bereaved partners/spouses and other family members (the Beneficiaries) in line with policies and criteria set by DHSC in England.
- 2.3 The SoS directs NHSBSA to administer the Scheme under the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Infected Blood Payments Scheme) Directions 2017 (the 2017 Directions).
- 2.4 NHSBSA will administer the Scheme by providing the Services. This MoU sets out the arrangements and obligations for delivery of the Services in respect of the Scheme. The main components of the Scheme and the Services are set out in the Specification, as amended from time to time.

## **3. Status and interpretation**

- 3.1 The status of this Memorandum of Understanding is as an agreement between the Department of Health and a Special Health Authority, and, as such, it is not a legally binding contract.

3.2 The clauses together with the Schedules shall prevail to the extent of any conflict or inconsistency over any other provisions or schedules of this Memorandum of Understanding.

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

#### **4. Duration and review**

4.1 This Memorandum of Understanding shall commence on the date it is signed by both Parties under clause 21 (the "Commencement Date").

4.2 This MoU shall continue on a rolling annual basis for the minimum period of the Spending Review Period (until April /2021) unless terminated earlier in accordance with clause 17.

4.3 The parties shall formally review this Memorandum of Understanding within six months of the Commencement Date and thereafter, annually on the Commencement Date (or thereabouts).

4.4 Any changes to this Memorandum of Understanding agreed between the parties shall be effected in accordance with clause 16.

#### **5. Provision of the Services**

5.1 As a consequence of the NHSBSA agreeing to provide the Services and subject to the clauses of this Memorandum of Understanding:

5.1.1. the NHSBSA shall perform the Services; and

5.1.2. the SoS shall fund the costs of the Services, as further described in clause 6.

5.2 NHSBSA shall provide the Services from 1 November 2017. The Services to be provided are described in detail in the Specification.

5.3 Both parties shall use reasonable endeavors 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 any failure by the other party to meet any of its obligations under this Memorandum of Understanding (including but not limited to where resulting from any act or omission of its employees, agents, sub-contractor or similar).



## **6. Funding**

- 6.1 The SoS shall provide funds to the NHSBSA required to transition the provision of the Services from the Alliance House Schemes to the NHSBSA (including the costs of reforming the delivery of the Services in due course), to operate the Services and to make payments to Beneficiaries under the Scheme.

### **Payments to Beneficiaries**

- 6.2 DHSC will write to NHSBSA at the start of the financial year to confirm the level of funding available for non-discretionary payments and the funding allocation for discretionary payments under the Scheme for that financial year. Payments to Beneficiaries will be made by NHSBSA in accordance with the provisions set out in the Specification.
- 6.3 The SoS shall provide to the NHSBSA, in advance, funds needed to pay to Beneficiaries for that quarter. Such funds shall be invoiced by the NHSBSA quarterly, at least two weeks before the payment is needed. For the final quarter of the year invoices will be monthly.
- 6.4 Where NHSBSA believes additional funds are required during any given quarter of a financial year for non-discretionary or discretionary payments to Beneficiaries, the NHSBSA shall submit a request to DHSC for such funds as soon as practicable outlining the reasons with supporting evidence why it is considered that additional funding is needed. DHSC will consider the request for additional funds and, should it agree that more funds are needed in the circumstances, DHSC will send a submission to the SoS to request the funds. If the SoS agrees, the SoS shall put the NHSBSA in funds as soon as practicable.

### **Administrative charges for the provision of the Services**

- 6.5 The SoS shall meet all of the NHSBSA's reasonable operational costs and expenses in providing the Service (including but not limited to costs and expenses relating to staffing, equipment (including IT equipment), licenses (including software licenses) stationary, office space, postage and facilities.

6.5.1 For the period from 1 November 2017 to 31 March 2018, the administrative charges shall be met by such amount as is notified by the NHSBSA to DHSC.

6.5.2 For the 2018/2019 financial year, NHSBSA will invoice DHSC quarterly in arrears for the administration charges of administering the Scheme.

6.5.3 Based on learning from the administration charges information from the 2018/2019 financial year, the Parties will agree a longer term funding arrangement from 2019/2020 onward.

### **Reform costs**

- 6.6 The SoS shall meet the NHSBSA's cost and expenses of reform of the provision of the Services as agreed by the Parties, including but not limited to any redundancy related costs, expenses or liabilities arising from staff number reduction and/or the redundancy of roles, and the relocation of the provision of the Services (in whole or in part).

## **7. Liabilities**

### Liabilities connected to the Alliance House Schemes

- 7.1 The SoS shall hold the NHSBSA harmless for any liabilities connected with the acts or omissions (or alleged acts and omissions) of the Alliance House Schemes. This will include but not be limited to liabilities connected to any allegation of incorrect payments being made by the Alliance House Schemes, any failure by them to meet obligations under any contracts entered into in respect of the provision of the Services or related services, any false or inaccurate statements, promises or representations made by the Alliance House Schemes to any persons, and any breaches of any law or regulation (including in respect of data protection), or any investigation or enforcement action by any regulatory body. For the avoidance of doubt it is acknowledged that the NHSBSA will play no role in the close down of the Alliance House Schemes, nor has any responsibility for any aspect of the previous provision of the Services or any related services by the Alliance House Schemes. NHSBSA will forward to DHSC any complaints or information it receives in respect of the above.

### Liabilities arising from termination

- 7.2 The SoS shall hold the NHSBSA harmless from any costs, expenses or liabilities arising as a result of termination of this MOU and/or the NHSBSA ceasing to provide the Services (or any part thereof) including but not limited to those connected to the redundancy of employees and the termination of any contracts with third parties (including software licence agreements) in the provision of the Services, unless such costs, expenses or liabilities arise as a result of the negligence of NHSBSA or its default under this MoU. The SoS will reimburse the NHSBSA for agreed costs associated with assisting the SoS in the transition of the Services to a new scheme administrator.

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

- 8.1. The Parties acknowledge and agree 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 IRR should this be appropriate on a case by case basis.

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

- 9.1 Each Party shall discuss any interest under this Memorandum of Understanding with the other Party prior to any transfer of obligations or sub contract of its duties under this Memorandum of Understanding.

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

- 10.1. Save as expressly set out in this clause 10, 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
- 10.2. Notwithstanding the provisions of clause 10.1, each party shall be entitled to disclose any information relating to this Memorandum of Understanding in the following circumstances:
- 10.2.1 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;
- 10.2.2. for parliamentary, governmental, statutory or judicial purposes; or
- 10.2.3. in relation to any other legal obligation on the disclosing party; or
- 10.2.4 such information is already in the public domain.
- 10.3. Each party shall take all reasonable steps to ensure the observance of this clause 10 by all its servants, employees, agents and consultants.

## **11. Freedom of Information and Data Protection**

### Freedom of information

- 11.1 Each Party acknowledges that they are subject to the requirements of the Freedom of Information Act 2000 (FOIA) and each Party shall comply with its obligations under the FOIA.
- 11.2 In the event that an FOIA request is received and only relates to information held by the receiving Party, it will issue a formal response following their internal process and procedures for responding to requests within the statutory timeframes.
- 11.3 Where it is identified that the FOIA request (in its entirety) relates to information held by the other Party to this MoU, the receiving Party will issue a formal response informing the requestor that the information requested may be held by the other Party and provide relevant contact details for the other Party.
- 11.4 Where it is identified that the FOIA request relates to information held partly by the Parties to this MoU, the receiving Party will issue a formal response answering only the questions that are applicable to their own department and refer the requestor to the other Party for the remaining information; and provide relevant contact details for the other Party.

### Data Protection

- 11.5 The Parties shall duly observe all their obligations under data protection legislation, which arise in connection with this MoU.

- 11.6 In the event that a Subject Access Request is received, the receiving Party will issue a formal response following their internal process and procedures for responding to requests within the statutory timeframes.
- 12. Reporting, Accountability and governance arrangements**
- 12.1 The DHSC Senior Departmental Sponsor (SDS) for the NHSBSA will hold an annual performance management meeting with NHSBSA's Director of Service Delivery.
- 12.2 In order to inform the annual performance management meeting, NHSBSA will provide an annual report to DHSC. NHSBSA is to furnish information to DHSC in the annual report as outlined in the Specification.
- 12.3 In order to inform the annual performance management meeting for 2017/18, the Parties' day to day contacts will hold monthly review meetings for the remainder of 2017/18 on mutually agreed dates in January 2018, February 2018 and March 2018.
- 12.4 Quarterly progress meetings will be held between DHSC's SDS and Head of Patient Services throughout the financial year to monitor compliance with the requirements of the Services, including but not limited to performance monitoring of the Services, spending, variations and agreed funding variations. Quarterly reporting to inform these meetings (and monthly, where appropriate) will be carried out by NHSBSA in accordance with the requirements laid out in the Specification.
- 12.5 NHSBSA will, upon request, furnish DHSC with any other information about the Services in a timely manner. NHSBSA agrees to promptly provide DHSC with the required information as and when needed to assist with DHSC's timely responses to queries including (but not limited to) Parliamentary Questions, FOIA requests, Minister and media requests and Ministerial Correspondence.
- 13. Management information and annual key performance indicators**
- 13.1 The Parties will agree annually the Management Information (MI) Key Performance Indicators (KPIs) for the forthcoming financial year by March of the current year. These performance indicators are described in the Specification.
- 13.2 NHSBSA will comply with the attainment of KPIs and Key Management information requirements as described in the Specification. If KPIs are not being met, NHSBSA should follow the procedure as outlined in the Specification. If the issue cannot be resolved, the Parties will follow the procedure set out in clause 19.
- 13.3 The KPIs will be reviewed annually to ensure they are measuring the performance effectively and to the satisfaction of the Parties. Any required changes will be subject to agreement by the Parties and may require an amendment to the Specification, such amendment to be affected through the procedure identified in clause 16.
- 13.4 It is acknowledged that for the 2017/18 financial year the KPIs have been agreed as an interim measure. The KPIs will be reviewed on a monthly basis throughout the remainder of the 2017/18 financial year, and the Parties will meet 2 months prior to the end of the 2017/18 financial year in order to establish whether the initial measures set require adjustment. Reporting throughout the 2017/18 financial year will be on the basis set out in clause 12 and in the Specification.

#### **14. Complaints and litigation**

- 14.1 NHSBSA will handle complaints about its provision of the Services in accordance with the procedure set out in the Specification. NHSBSA will inform DHSC of complaints on a quarterly basis unless NHSBSA considers that DHSC need to take action as well in which case they should inform DHSC at the earliest opportunity.
- 14.2 NHSBSA will, as soon as reasonably practicable, notify the SoS of any actual or potential litigation and forward to the SoS any documents or other information received from the claimant together with any other information that might assist the SoS in understanding the challenge being made. NHSBSA will continue to cooperate in the same manner throughout the proceedings.
- 14.3 Where the NHSBSA is the named defendant, it will provide the SoS with an early assessment of any claim made at the pre-action protocol stage in order to assist the SoS in deciding whether to participate in the proceedings. The SoS may then decide whether to apply to the relevant court to be joined as a party to the proceedings or to participate in the proceedings as an interested party.
- 14.4 NHSBSA will support the SoS in any application to be joined as a party to the proceedings and, if the application is successful, NHSBSA will take all reasonable steps to support and assist the SoS in relation to the litigation, including making any of its records, documents, etc. and resources (such as employees, agents, consultants or others) available to the SoS, the SoS's lawyers and other professional advisers.
- 14.5 The SoS will endeavour to reach a decision as to participation in the proceedings as soon as reasonably practicable and will keep this decision under review during the proceedings. Where the SoS decides not to participate in the proceedings, NHSBSA agrees to keep the SoS informed of any changes that might lead to a need to revisit these decisions.
- 14.6 NHSBSA will:
- (a) before incurring any legal costs or other expenses relating to any actual or potential litigation, consult the SoS before doing so (including on the choice and fees of Counsel);
  - (b) not make any admissions of liability, enter into any settlement agreement or compromise arrangement with the claimant without first having obtained the written consent of the SoS;
  - (c) keep the SoS informed of the costs incurred in the litigation and the likelihood of an adverse judgement being made.
  - (d) Adhere to the above in the case of any appeals relating to the case.
- 14.7 Where the SoS is the named defendant, it will provide NHSBSA with an early assessment of any claim made at the pre-action protocol stage in order to assist NHSBSA in deciding whether to participate in the proceedings. The NHSBSA may then decide whether to apply to the relevant court to be joined as a party to the proceedings or to participate in the proceedings as an interested party.
- 14.8 Where NHSBSA and the SoS are both named defendants, the Parties agree to cooperate in all respects of participating in the proceedings.

## **15. Working together**

- 15.1 The NHSBSA will work collaboratively with DHSC and other stakeholders to improve the Scheme application process and information provision. Where such improvement would impact on the terms of this Memorandum of Understanding, any consequential change will be dealt with in accordance with Clause 16.
- 15.2 Representatives from the NHSBSA will be made available to attend any meetings for key projects or initiatives as and when required by DHSC.
- 15.3 The NHSBSA will share insight with DHSC in order to assist with continuous service improvement.

## **16. Managing change**

- 16.1 This MoU including the schedules may be modified or amended by written agreement between the Parties.
- 16.2 The Parties will keep the arrangements set out in this MoU under review. In accordance with clause 4.3, this MoU will be formally reviewed six months from the anniversary of the Commencement and thereafter, annually on the Commencement Date.
- 16.3 Any changes deemed to be necessary in the interim may be agreed in writing by the Parties and appended to this MoU for inclusion at the following review. Reviews outside of the schedule can be called by representatives of either of the Parties.
- 16.4 External changes affecting the operational delivery responsibilities of the Parties will also necessitate the review and potential amendment of this MoU.
- 16.5 The NHSBSA and DHSC will agree which changes are to be included within the NHSBSA business plan and funding request. Any changes that fall outside this planning process will need agreement with ALB Finance and funding will be provided separately to the NHSBSA annual allocation.
- 16.6 Notwithstanding clauses 16.1 to 16.5 above, NHSBSA acknowledges that DHSC may vary this MoU. DHSC will notify NHSBSA of any such variations it believes may from time to time be necessary.
- 16.7 Insofar as the above clauses relate to the MoU, they also apply to the Specification.

## **17. Termination**

- 17.1 Each Party shall have the right to terminate the MoU by giving six months' written notice in writing to the other Party at any time. If the MoU is terminated by either Party, steps shall be taken to ensure that the termination does not affect any prior obligation, project or activity already in progress.



## **18. Scheme Transfer**

- 18.1. On ceasing to provide the Services under this MOU for whatever reason, NHSBSA will cooperate in all respects with DHSC to ensure the smooth transition of the Services to any new scheme administrator.
- 18.2 NHSBSA will, in a timely manner, provide DHSC with any reporting, funding, or other information it may require in the months leading up to the date of the transfer, and after the transfer of the scheme to the new scheme administrator.
- 18.3 NHSBSA will transfer all information as outlined by the DHSC to the new scheme administrator in a timely manner.
- 18.4 If there is any funding remaining at the end of NHSBSA's provision of the Services, NHSBSA will transfer the remaining funds to DHSC.

## **19. Contact points, Dispute resolution and Escalation process**

- 19.1 The names and contact details of relevant contact points for DHSC and for NHSBSA are given in Schedule 2. Any changes to the names and contact details of the relevant contact points will be notified in writing by the other Party and Schedule 2 will be updated accordingly.
- 19.2 The Parties agree to nominate a representative to liaise with the other Party and be the primary point of contact in all matters concerning the operation of this MoU. 'Business as usual' contact will generally be between the Service Delivery Manager and the Head of Infected Blood Policy.
- 19.3 The Parties agree to inform each other immediately of any problem arising in respect of this MoU and/or the Services and try to resolve the problem as soon as reasonably practicable.
- 19.4 If the Parties are unable to agree a matter arising under this MoU, the Parties will attempt in good faith to resolve the dispute. The Parties agree that for first tier escalation, the dispute will be referred to a senior person of each Party for resolution. For DHSC, the senior person will be the Infected Blood Policy Deputy Director. For NHSBSA, the senior person will be the Head of Service EIBSS.
- 19.5 If the senior persons referred to in paragraph 19.4 are unable to resolve the dispute within ten (10) working days from referral to them, or within an agreed time that is reasonable, the dispute should be referred for second tier escalation to a person at director general (or equivalent) of each Party for resolution. For DHSC, that person will be the Director. For NHSBSA, that person will be the Senior Departmental Sponsor.
- 19.6 If the dispute is not able to be resolved by second tier escalation staff within twenty (20) working days, or within an agreed time that is reasonable, then the Parties will attempt to settle it by mediation.



## **20. Miscellaneous**

### **20.1 Entire agreement**

- Jurisdiction**  
20.2 This MoU shall be governed by and construed in accordance with English law and the jurisdiction of the courts of England and Wales.

- Human rights and discrimination**  
20.3 The Parties will observe and comply with their obligations under human rights legislation and shall not unlawfully discriminate on any basis.

**21. Signatories**

Signed for and on behalf of:	Department of Health and Social Care
Signature:	
Name:	Ailsa Wight
Position:	Deputy Director Emergency Preparedness and Health Protection Policy Global and Public Health Group
Date:	26/6/18
Signed for and on behalf of:	NHSBSA
Signature:	
Name:	Chris Calise
Position:	Head of Service
Date:	25/6/18