

Supply of services agreement and terms

Purchaser:	
Purchaser address:	
Purchaser representative(s):	Name: Title: Email: Postal address:
Supplier:	Theta Sleep Ltd Company registration number: 16087698
Supplier's address:	Canterbury House, 1 Royal Street, London, England, SE1 7LL
Supplier's representative:	Name: Title: Email: Postal address: Canterbury House, 1 Royal Street, London, England, SE1 7LL
Contract Date:	The date of the final party's signature.
Services Start Date:	
Services:	

Signed on behalf of:	Signed on behalf of: Theta Sleep Ltd
Signed:	Signed:
Print name:	Print name:
Position:	Position:
Date:	Date:

1. Purpose, scope of services, obligations, clinical responsibility, and service availability

1.1. Purpose and background

- 1.1.1. This Agreement is entered into under the Crown Commercial Service G-Cloud Framework and sets out the terms on which Theta Sleep provides the Services to the Purchaser. Theta Sleep provides a CQC-regulated, tech-enabled sleep medicine service delivered using a cloud-based digital platform. Theta Sleep supports National Health Service (NHS) organisations to deliver diagnosis and treatment for sleep disorders through digital-first clinical pathways.
- 1.1.2. This Agreement applies in conjunction with the Service Definition and Pricing Document published on the Digital Marketplace. In the event of any inconsistency, the G-Cloud Framework agreement takes precedence.

1.2. Scope of services

- 1.2.1. Theta Sleep shall provide the Services to the Purchaser in accordance with this Agreement. The Services comprise delivery of a tech-enabled sleep medicine service, as described in the Service Definition. The Services support delivery of end-to-end sleep medicine pathways or modular pathway components, depending on the Purchaser's requirements. The Service Definition sets out the functionality, delivery model, service levels, data management and exit arrangements applicable to the Services.
- 1.2.2. The Services are provided as standard. Theta Sleep does not undertake bespoke software development or material variation to the Services unless expressly agreed in writing at call-off. Nothing in this Agreement obliges the Purchaser to procure a minimum volume of Services, nor obliges Theta Sleep to provide services beyond those expressly agreed at call-off under the G-Cloud Framework.

1.3. Theta Sleep responsibilities

- 1.3.1. Theta Sleep shall: provide the Services in accordance with this Agreement and the Service Definition, using reasonable skill and care;
- 1.3.2. maintain appropriate clinical governance arrangements and comply with applicable law and regulatory requirements, including Care Quality Commission requirements;
- 1.3.3. ensure that personnel involved in delivery of the Services are appropriately trained and competent;

- 1.3.4. maintain appropriate policies and procedures to support safe, secure and effective service delivery;
- 1.3.5. cooperate reasonably with the Purchaser in relation to onboarding, governance and service management, including collaborating on referral pathways and reporting requirements; and
- 1.3.6. respond promptly to any issues raised by the Purchaser in relation to the Services.

1.4. Purchaser responsibilities

- 1.4.1. The Purchaser shall: procure the Services in accordance with the G-Cloud Framework and this Agreement;
- 1.4.2. provide accurate and timely information and referrals required for delivery of the Services;
- 1.4.3. cooperate reasonably with Theta Sleep in relation to onboarding, governance and service management;
- 1.4.4. ensure that use of the Services aligns with applicable NHS governance, policies and commissioning arrangements; and
- 1.4.5. report any issues relating to the Service promptly to the Theta Sleep team.

1.5. Service availability and support

- 1.5.1. Theta Sleep shall make the Services available in accordance with the service levels set out in the Service Definition. Theta Sleep shall provide user support in line with the support arrangements described in the Service Definition and shall use reasonable endeavours to minimise disruption to the Services.
- 1.5.2. Planned maintenance and updates shall be managed and communicated in advance where reasonably practicable.

1.6. Clinical responsibility and patient care

- 1.6.1. Theta Sleep are responsible for the delivery of clinical sleep medicine care provided as part of the Services and for ensuring that such care is delivered in accordance with applicable clinical standards, regulatory requirements and clinical governance arrangements. Theta Sleep are responsible for any patient complaints or concerns relating to the service.
- 1.6.2. Clinical decisions made within the Clinical Pathway are the responsibility of Theta Sleep clinicians. Theta Sleep shall ensure appropriate escalation, safeguarding and onward referral where clinically indicated. The Purchaser

remains responsible for commissioning decisions, referral criteria, and for the management of care outside the scope of the Services, including onward or ongoing care provided by local NHS services.

2. General terms and conditions

2.1. Definitions

- 2.1.1. **“Agreement”**: the call-off contract formed between the purchaser and Theta Sleep under the G-Cloud Framework, comprising these terms and conditions, the Service Definition and the Pricing Document.
- 2.1.2. **“Applicable Laws”**: applicable law, statute, bye law, regulation, order, regulatory policy (including any requirement or notice of any regulatory body), guidance or industry code of practice, judgements of relevant courts of law and directives, delegated or subordinate legislation in force from time to time, which include but is not limited to Data Protection Legislation, the Bribery Act 2010, the Modern Slavery Act 2015, and applicable medical device regulations;
- 2.1.3. **“Clinical Pathway”**: the clinically governed processes and workflows operated by Theta Sleep to deliver sleep medicine services, as described in the Service Definition.
- 2.1.4. **“Confidential Information”**: any information disclosed by one party to the other in connection with this Agreement that is confidential in nature or that would reasonably be understood to be confidential, whether disclosed in writing, orally or otherwise.
- 2.1.5. **“Data Protection Legislation”**: all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the UK GDPR; the Data Protection Act 2018; the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended, 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 the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and which are applicable to a party;
- 2.1.6. **“Data Sharing Agreement”**: a separate agreement entered into between the parties governing the sharing of personal data.
- 2.1.7. **“Force Majeure Event”**: means an event which is beyond the reasonable control of the affected party including: (a) strike, lock out, work stoppages, slow downs or any other industrial or labour dispute (except to the extent they involves the employees, agents, subcontractors and/or other suppliers

of the affected party); (b) act of God, fire, flood, storm, earthquake, extreme adverse weather conditions; (c) war, hostilities, military action, riot, civil commotion, terrorism, epidemic or pandemic; (d) nuclear, chemical or biological contamination or sonic boom; (e) explosion or malicious damage; (f) compliance with a law or governmental order, rule, regulation or direction; and, (g) any action taken by a government or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition, or the failure to grant any necessary licence or consent; and provided that mere shortage of materials, equipment, labour or supplies shall not constitute a Force Majeure Event unless caused by circumstances which are themselves a Force Majeure Event;

- 2.1.8. **“G-Cloud Framework”**: the Crown Commercial Service G-Cloud framework agreement under which this Agreement is entered into.
- 2.1.9. **“Intellectual Property Rights” (IPRs)**: patents, rights to inventions, copyright and related rights, trade-marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
- 2.1.10. **“Pricing Document”**: the pricing document published on the Digital Marketplace for the Theta Sleep service.
- 2.1.11. **“Purchaser”**: the NHS organisation or other public sector body procuring the Services under the G-Cloud Framework.
- 2.1.12. **“Service Definition”**: the service definition document published on the Digital Marketplace for the Theta Sleep service.
- 2.1.13. **“Services”**: the services supplied by Theta Sleep as described in the Service Definition and procured by the Purchaser under this Agreement.
- 2.1.14. **“Controller”, “Data Subject”, “Personal Data”, “Personal Data Breach”, “Process”, “Processing”, and “Processor”**: shall have the meaning given to them in the Data Protection Legislation.
- 2.1.15. **Interpretation**: headings are for convenience only and do not affect interpretation; words in the singular include the plural and vice versa; references to legislation include any amendment or replacement. In the event of any conflict, the G-Cloud Framework shall take precedence over this Agreement.

2.2. Data protection

- 2.2.1. Each party shall comply with its respective obligations under applicable data protection legislation, including the UK General Data Protection Regulation and the Data Protection Act 2018.
- 2.2.2. In relation to the processing of Personal Data in connection with the Services, the parties acknowledge that they may act as independent controllers and/or joint controllers, depending on the nature and purposes of the specific processing activity.
- 2.2.3. The parties shall comply with their respective data protection obligations pursuant to a separate Data Sharing Agreement.

2.3. Intellectual property

- 2.3.1. The Supplier and its licensors shall retain ownership of all intellectual property rights in the Services, including the Supplier IPRs.
- 2.3.2. The Supplier grants the Purchaser, or shall procure the direct grant to the Purchaser of, a fully paid-up, worldwide, non-exclusive, non-transferable, non-sub-licensable, royalty-free licence to use the Supplier IPRs for the purpose of receiving and using the Services during the Term and, where applicable, for the duration of any agreed exit assistance.

2.4. Charges and invoicing

- 2.4.1. Charges shall be payable by the Purchaser in accordance with the Pricing Document and the Services agreed at call-off.
- 2.4.2. All Charges are exclusive of value added tax (VAT), which shall be payable by the Purchaser at the applicable rate subject to receipt of a valid VAT invoice.
- 2.4.3. The Supplier shall invoice the Purchaser monthly in arrears.
- 2.4.4. The Purchaser shall pay each invoice within thirty (30) days of receipt, in pounds sterling, to the bank account notified by the Supplier.
- 2.4.5. Where the Purchaser disputes an invoice in good faith, it shall notify the Supplier promptly and pay any undisputed amounts by the due date. The parties shall seek to resolve the dispute in accordance with the dispute resolution provisions of this Agreement.
- 2.4.6. Where Charges relate to Services that have been delivered in accordance with the Pricing Document, Charges may remain payable notwithstanding patient non-attendance or disengagement, as set out in the Pricing Document.

2.5. Confidentiality

- 2.5.1. Each party shall keep the other party's Confidential Information confidential and shall not disclose it to any third party except as permitted under this clause.
- 2.5.2. A party may disclose the other party's Confidential Information to its employees, officers, contractors, subcontractors or advisers who need to know such information for the purposes of performing its obligations under this Agreement, provided that such persons are subject to confidentiality obligations no less onerous than those set out in this clause.
- 2.5.3. A party may disclose Confidential Information where required to do so by law, regulation, a court of competent jurisdiction or a regulatory authority.
- 2.5.4. Each party shall use the other party's Confidential Information solely for the purposes of performing its obligations under this Agreement and shall implement appropriate technical and organisational measures to protect it against unauthorised or unlawful disclosure.

2.6. Warranties

- 2.6.1. Each party warrants that it has full power and authority to enter into and perform this Contract, and all necessary actions to authorise the execution and performance have been taken.
- 2.6.2. Each party warrants that it will comply with all Applicable Laws in relation to the performance of this Contract including but not limited to data protection laws.
- 2.6.3. Each party warrants that it has the right to use and, where applicable, license any intellectual property necessary for the performance of its obligations under this Agreement, and that such use shall not knowingly infringe the intellectual property rights of any third party.

2.7. Limitation of liability and indemnity

- 2.7.1. Nothing in this Agreement limits or excludes either party's liability for:
 - 2.7.1.1. death or personal injury caused by negligence;
 - 2.7.1.2. fraud or fraudulent misrepresentation; or
 - 2.7.1.3. any other liability which cannot be limited or excluded by law.
- 2.7.2. Subject to clause 2.7.1, neither party shall be liable to the other for any indirect or consequential loss arising under or in connection with this Agreement.

2.7.3. Subject to clause 2.7.1, each party's total aggregate liability to the other arising out of or in connection with this Agreement shall not exceed an amount equal to the Charges paid or payable under this Agreement in the twelve (12) months preceding the event giving rise to the claim.

2.7.4. The Supplier shall indemnify the Purchaser against any losses arising from a third-party claim that the normal use of the Services infringes that third party's intellectual property rights, provided that the Supplier is given prompt notice of the claim and reasonable control over its defence.

2.8. Insurance

2.8.1. During the Term and any agreed exit arrangements, the Supplier shall maintain in force with a reputable insurer appropriate insurance cover, including professional indemnity and public liability insurance, to cover liabilities arising under or in connection with this Agreement.

2.8.2. The Supplier shall, on reasonable request, provide the Purchaser with evidence of such insurance cover.

2.9. Term and termination

2.9.1. This Agreement shall commence on the Commencement Date and shall continue for the term agreed at call-off, unless terminated earlier in accordance with this clause.

2.9.2. Either party may terminate this Agreement for convenience by giving the other party not less than one hundred and eighty (180) days' written notice.

2.9.3. Either party may terminate this Agreement immediately by written notice if the other party commits a material breach of this Agreement which, if capable of remedy, is not remedied within a reasonable period after being notified in writing.

2.9.4. The Supplier may suspend or terminate the Services on written notice where the Purchaser fails to pay undisputed Charges in accordance with this Agreement.

2.9.5. Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued prior to termination or expiry.

2.9.6. Provisions which by their nature are intended to survive termination or expiry shall continue in force, including provisions relating to confidentiality, intellectual property, liability, data protection and exit arrangements.

2.10. Exit arrangements

- 2.10.1. On termination or expiry of this Agreement for any reason, the parties shall cooperate in good faith to support an orderly and clinically safe exit.
- 2.10.2. The Supplier shall provide reasonable exit assistance to the Purchaser to support transition of the Services, in accordance with the exit arrangements described in the Service Definition and subject to any agreed timescales.
- 2.10.3. Exit assistance shall include appropriate arrangements for continuity of patient care, handover to local services where applicable, and access to data in accordance with this Agreement, the Service Definition and any applicable Data Sharing Agreement.

2.11. Dispute resolution

- 2.11.1. If a dispute arises out of or in connection with this Agreement, the parties shall first seek to resolve it through good-faith discussions between senior representatives of the parties.
- 2.11.2. If the dispute cannot be resolved through such discussions within a reasonable period, either party may propose that the dispute is referred to mediation. Any mediation shall be conducted on terms agreed between the parties.
- 2.11.3. If the dispute is not resolved through negotiation or mediation, either party may pursue the dispute through the courts of competent jurisdiction.

2.12. General

- 2.12.1. **Force majeure:** Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event.
- 2.12.2. **Assignment:** Neither party may assign this Agreement without the prior written consent of the other party, not to be unreasonably withheld or delayed. The Supplier may subcontract its obligations under this Agreement, provided it remains responsible for the acts and omissions of its subcontractors.
- 2.12.3. **Variation:** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 2.12.4. **Entire agreement:** This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, understandings and arrangements relating to its subject matter.

- 2.12.5. **Waiver:** No failure or delay by a party to exercise any right or remedy shall operate as a waiver of that right or remedy.
- 2.12.6. **Severance:** If any provision of this Agreement is held to be invalid or unenforceable, it shall be deemed modified or deleted to the minimum extent necessary without affecting the remainder of the Agreement.
- 2.12.7. **Notices:** Any notice under this Agreement shall be in writing and sent to the contact details notified by the relevant party from time to time. Notices may be given by email.
- 2.12.8. **Third party rights:** A person who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.
- 2.12.9. **Governing Law and jurisdiction:** This Agreement and any dispute arising out of or in connection with it shall be governed by the laws of England and Wales, and the courts of England and Wales shall have exclusive jurisdiction.