

## Executive Summary

### Report to the Board of Directors

Held in public on 29 November 2022

|                              |   |
|------------------------------|---|
| <b>Subject</b>               | South Yorkshire Pathology Network Partnership Agreement |
| <b>Supporting TEG Member</b> | Mark Tuckett, Director of Strategy & Planning           |
| <b>Author</b>                | Mark Tuckett, Director of Strategy & Planning           |
| <b>Status<sup>1</sup></b>    | D&A*  |

### PURPOSE OF THE REPORT

To present the South Yorkshire Pathology Network Partnership Agreement for approval.

### KEY POINTS

- Sheffield Teaching Hospitals is working with acute partners in South Yorkshire (SY) to establish and develop the Pathology Network. This is progressing well and there are significant decisions en route (e.g., relating to the procurement of a Laboratory Information Management System) to support its development.
- DAC Beachcroft have prepared a legally binding Partnership Agreement to support the partnership. This is set out at Appendix 1
- STH sought additional legal advice from Hill Dickinson (HD) to consider any specific issues arising as host. HD's summary (Appendix 2) states that the agreement is "*generally well balanced and fit for purpose*"; but that "*some clauses [...] would benefit from greater clarity*". All of these changes have been considered and discussed with partners and with DACB. Changes relating to HD's review have been incorporated into the agreement included with this note.
- Recognising the legal nature of the document, we have prepared a much simpler and shorter explanatory note at Appendix 3, setting out how the host, and its relationship with the SYB Pathology Partnership Board.

### IMPLICATIONS<sup>2</sup>

| Aim of the STHFT Corporate Strategy |  | ✓ Tick as appropriate |
|-------------------------------------|--|-----------------------|
| 1                                   | Deliver the Best Clinical Outcomes                 | ✓                     |
| 2                                   | Provide Patient Centred Services                   | ✓                     |
| 3                                   | Employ Caring and Cared for Staff                  | ✓                     |
| 4                                   | Spend Public Money Wisely                          | ✓                     |
| 5                                   | Create a Sustainable Organisation                  | ✓                     |
| 6                                   | Deliver Excellent Research, Education & Innovation | ✓                     |

### RECOMMENDATIONS

The Board is asked to approve the Partnership Agreement.

## APPROVAL PROCESS

| Meeting               | Date             | Approved Y/N |
|-----------------------|------------------|--------------|
| Trust Executive Group | 16 November 2022 | Y            |
| Board of Directors    | 29 November 2022 |              |

<sup>1</sup>Status: A = Approval  
A\* = Approval & Requiring Board Approval  
D = Debate  
N = Note

<sup>2</sup>Against the six aims of the STHFT Corporate Strategy 'Making a Difference – The next Chapter 2022-27'

# South Yorkshire Pathology Network – Partnership Agreement

## Introduction

Sheffield Teaching Hospitals is working with acute partners in South Yorkshire and Bassetlaw to establish and develop the South Yorkshire & Bassetlaw Pathology Network. Our partners are Barnsley Hospital NHS FT; Doncaster & Bassetlaw Teaching Hospitals FT; The Rotherham NHS FT; and Sheffield Children's NHS FT.

Pathology is a fundamental diagnostic and prognostic service that supports every aspect of patient care. Pathology services across SYB provide a wide range of both routine and specialist services and offer an extensive nationally and internationally recognised portfolio of services and expertise.

The NHS Five Year Forward View and the NHS Long Term Plan both identified a need to improve efficiency and productivity across the NHS. Reports on pathology services (including Lord Carter's Independent Review of NHS Pathology Services in England (2008); and Review of Unwarranted Variation in Operational Performance and Productivity in English Acute Trusts (2016) advocated the consolidation of pathology services across England to improve both service quality and cost effectiveness.

NHSI recommended the formation of 29 pathology networks across England with pathology services delivered within each network on a 'hub and spoke' basis and estimated that £200m savings could be achieved by implementation of this model. NHSI proposed that a network should be established corresponding to the footprint of the SYB ICS, and named STHFT as the hub for the network.

In April 2018 the constituent Trusts of the SYB ICS signed a Memorandum of Understanding to agree to implement a common strategy to network pathology service and to work together to provide a single pathology service for SYB with the aim of improving sustainability and ensuring services are as cost effective as possible while maintaining high quality patient care.

As set out the Outline Business Case for our Network, it was recommended that the network should be formed as a single service partnership with a Hosted Network organisational form, with STHFT acting as the Host Trust

Significant progress has been made. We have appointed a leadership team for this work, we have secured significant capital investment for a network LIMS and for digital pathology; and are progressing a programme of huge scale and scope.

As described in the programme's Outline Business Case, the programme will:

- reduce variation across acute hospitals, resulting in more sustainable, high quality and innovative laboratory medicine solutions to patients, clinicians and partners to improve health,
- add value to patient care, safeguarding the best clinical outcomes
- and deliver efficiency savings (estimated in the OBC to be circa £5.155m per annum).

## Legal agreement, and advice from Hill Dickinson

The development of the SYB Pathology Network will be underpinned by a legally binding Partnership Agreement (**Appendix 1**). This Partnership Agreement has been developed by DAC Beachcroft LLP (DACB); who were contracted on behalf of all the partner organisations. This was

slightly redrafted based on legal advice that STH received in relation to our specific responsibilities as host.

As host for the network, STH sought additional legal advice from Hill Dickinson (HD) to consider any specific issues arising as host. HD's summary states that the agreement is "*generally well balanced and fit for purpose*"; but "*some clauses where the Partnership Agreement would benefit from greater clarity and there is scope for some of the drafting to be refined to reduce these uncertainties*"

The HD legal advice is set out at **Appendix 2**, with an additional column setting out how each aspect of their advice has been treated in the revised agreement.

Finally, and recognising that legal documents such as these don't always make the easiest reading, we have also developed a non-legalistic accompanying note to set out how the network will work in practice. This is included at **Appendix 3**. While this note (and the agreement itself) may benefit from further development; it is intended to indicate how decision making and hosting will work under the new arrangements.

On its passage to the Board of Directors, we have discussed that it would be helpful to clarify when our pathology network 'goes live' and when this agreement comes into effect. The development of SY Pathology will grow over time; and although there will not be a bit 'switch on' date; it is proposed that we work on the basis of a 'Go Live' date of 1 April 2023. This will provide a helpful date to signal with partners after which we stop working in a 'shadow' form and the governance arrangements set out in this agreement start.

We are also suggesting that the reference to reserved matters for the Partnership Board including 'financial decisions taking in line with the host's SFIs' should read 'financial decisions taken in line with the host's *scheme of delegation*'. This would mean that revenue proposals over £3.0 million over lifetime, or £1.2million p.a. (whichever is lower) would go to Partnership Board (and to our STH Board); and capital cases over £3.0 million would go to the Partnership Board (and to our STH board). This will then align to STH's recently agreed Scheme of Delegation.

We also consider that the schedule setting out reserved matters for the partnership board should set out matters reserved for individual boards. ON the basis that boards are not delegating any decisions, then matters that are currently discussed and resolved by STH's Board of Directors will continue to be taken there. We will liaise with partners to include this clarification.

## **Recommendation**

Each of the other partner Trusts in South Yorkshire have approved the Partnership Agreement.

Based on:

- HD's general advice about the '*fit for purpose*' nature of this agreement
- Subsequent developments of the Agreement based on HD's advice; and
- The need to progress and further develop our network,

...it is recommended that the Partnership Agreement is agreed by the Board of Directors. Further comments and improvements to this should be included in future iterations of this Partnership Agreement; or in the accompanying note.

## Appendix 1: Partnership Agreement

Dated \_\_\_\_\_ 2022

- (1) Barnsley Hospital NHS Foundation Trust
- (2) Doncaster and Bassetlaw Teaching Hospitals NHS Foundation Trust
- (3) The Rotherham NHS Foundation Trust
- (4) Sheffield Children's NHS Foundation Trust
- (5) Sheffield Teaching Hospitals NHS Foundation Trust

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# SYB Pathology Partnership Agreement

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**THIS AGREEMENT IS MADE THE [ ] DAY OF .....2022**

**BETWEEN:**

1. Barnsley Hospital NHS Foundation Trust of Gawber Road, Barnsley, South Yorkshire, S75 2EP (“**BHFT**”)
2. Doncaster and Bassetlaw Teaching Hospitals NHS Foundation Trust of Armthorpe Rd, Doncaster DN2 5LT (“**DBTHFT**”)
3. The Rotherham NHS Foundation Trust of Rotherham Hospital, Moorgate Road, Rotherham, S60 2UD (“**TRTF**”)
4. Sheffield Children's NHS Foundation Trust of Western Bank, Sheffield, South Yorkshire, S10 2TH (“**SCFT**”); and
5. Sheffield Teaching Hospitals NHS Foundation Trust of Northern General Hospital, Herries Road, Sheffield, South Yorkshire, S5 7AT (“**STHFT**”)

together the “**Trusts**”

**BACKGROUND**

- (A) Pathology is a fundamental diagnostic and prognostic service that supports every aspect of patient care pathology services across the South Yorkshire and Bassetlaw Integrated Care System (**‘SYB’**). SYB provide a wide range of both routine and specialist services, and offer an extensively recognised portfolio of services and expertise, both nationally and internationally.
- (B) The NHS Five Year Forward View and the NHS Long Term Plan, have both identified a need to improve efficiency and productivity across the NHS. In recent years there has also been national reports on pathology services, including Lord Carter’s Independent Review of NHS Pathology Services in England (2008), and the Review of Unwarranted Variation in Operational Performance and Productivity in English Acute Trusts (2016). These reports advocate the consolidation of pathology services across England as a means of improving both service quality and cost effectiveness.
- (C) Following these reports, National Health Service Improvement (**‘NHSI’**) recommended the formation of pathology networks across England with pathology services delivered within each of the networks, on a ‘hub and spoke’ basis and estimated £200m of savings which could be achieved by implementation of this model. NHSI proposed that a ‘North 6’ network should be established corresponding to the footprint of SYB. There is an expectation that all 29 networks are established and maturing during the 2024/25 financial year.
- (D) In April 2018 the Trusts signed a Memorandum of Understanding to agree to develop a network pathology service and to work together to provide a single pathology service for SYB with the aim of improving sustainability and ensuring that services are as cost effective as possible while maintaining high quality patient care. An appropriate governance structure and expert reference groups were established to consider the model and other possible options for service delivery across SYB. A shared vision was agreed as well as guiding principles against which to evaluate reconfiguration options and a number of key enablers were identified which are critical dependencies for reconfiguration.
- (E) A number of options were considered for the organisational form of the SYB network. In January 2020, after seeking legal advice, the Trust decided that STHFT will act as the Host Trust. This organisational form was perceived to be the most cost efficient model from a tax perspective, and would allow staff to remain within the NHS. The expert reference groups have considered the options

for service delivery and have recommended a target operating model with an associated workforce model.

- (F) The Trusts now wish to consolidate pathology services and related services across the South Yorkshire and Bassetlaw Integrated Care System to create a single pathology service. The SYB Clinical Strategy provides a framework and direction for the reconfigured pathology services that will ensure the local region has an innovative and sustainable pathology service, capable of adapting to the changing needs of clinicians and patients. The services offered will support the national and local clinical priorities and support the needs of the local population. This will be effected through the establishment of a contractual joint venture, through which the pathology services will be delivered (known as the “Partnership”).
- (G) The Partnership will be hosted by the Partnership Host on behalf of the Trusts. The Trusts shall share control of the Partnership fairly.
- (H) This Agreement sets out the Partnership arrangements of the pathology network, how the Trusts have agreed to contribute resources, collaborate, work together to optimise benefits and efficiencies across the Trusts, and manage and apportion risk and liability on a proportionate and equitable basis. This Pathology Agreement is the legal underpinning of the agreed Partnership between the Trusts.
- (I) As at the date of this Agreement, the Trusts are preparing to participate in a collaborative Procurement Processes for pathology services and related services, including a pan pathology Managed Service Contract (MSC), a single Laboratory Information Management System (LIMS), Digital Pathology, and logistics services to support the delivery of the Partnership.
- (J) The Trusts vision for pathology is to improve lives and safeguard best clinical outcomes by delivering high-quality, innovative laboratory medicine solutions. The agreed guiding principles include making the best use of taxpayers money and to deliver efficiencies from economies of scale and scope.
- (K) The Trusts acknowledge and confirm that the way in which the collaboration is to be structured, establishes a cooperation between the Trusts pursuant to Regulation 12(7) of the Public Contracts Regulations 2015 (“PCR”) and the Trusts will adhere to the conditions of Regulation 12(7) PCR throughout the term of this Agreement.

**IT IS HEREBY AGREED** as follows:

**1. DEFINITIONS**

In this Agreement, the words and expressions defined in Schedule 1 shall have the meanings attached thereto.

This Agreement shall be interpreted in accordance with the following provisions unless the context requires a different meaning:

unless otherwise specified, references to Clauses and Schedules are to the Clauses of and Schedules to this Agreement;

the Schedules to this Agreement are an integral part of this Agreement and any reference to this Agreement includes a reference to the Schedules; and

where the context requires, words importing the singular shall be construed as importing the plural and vice versa and words importing the masculine shall be construed as importing the feminine or the neuter or vice versa.



In relation to any conflict and/or inconsistency relating to the provisions of this Agreement, the following shall apply:

for any conflict and/or inconsistency between the Clauses and the Schedules to this Agreement, the Clauses shall take precedence;

for any conflict and/or inconsistency between the Schedules, the following order of precedence shall apply:

this Agreement;

Schedule 2 (Terms of Reference and Trust Delegations);

Schedule 3 (Procurement Resources and Project Delivery Costs)

Schedule 4 (Hosting Obligations and Hosting Standards); and

the order in which all subsequent schedules appear.

## **STATUS AND PURPOSE OF THIS AGREEMENT**

This Agreement sets out the Trusts' intentions to work together during the Term.

The Trusts acknowledge that this Agreement is between NHS Foundation Trusts and is intended to be legally binding.

The Trusts confirm to each other that they have and will continue to have all relevant and necessary authority and permissions to participate in this Agreement and any associated documentation in due course.

The Trusts acknowledge and agree that, as at the date of this Agreement, each Trust has obtained approval in accordance with its internal governance arrangements to enter into this Agreement.

## **TERM**

This Agreement will commence on the Commencement Date and shall continue for the Initial Term unless terminated earlier in accordance with this Agreement.

On the expiry of the Initial Term this Agreement will expire automatically without notice unless, no later than 12 months before the end of the Initial Term, the Trusts agree in writing that the term of this Agreement will be extended for a further term to be agreed between them (the "**Extended Term**").

## **PARTNERSHIP ARRANGEMENTS**

The Trusts shall work together to deliver:

the Target Operating Model;

each Procurement Process; and

the Pathology Services.

The Trusts have established the SYB Pathology Partnership Board with representation from each Trust which, subject to Clause 8 and Schedule 2, shall be responsible for the:

oversight and control of the Partnership, including the Project, the Pathology Services, the Partnership Business and this Agreement;

making decisions relating to the Partnership, including but not limited to decisions regarding SYB Pathology Partnership Board Reserved Matters;

appointment of members to and oversight of the SYB Pathology Network Operational Management Team; and

reporting to the Acute Federation Collaborative at a frequency which is to be agreed by the Trusts.

Each Trust shall provide to the Partnership Host a complete list of Transferring Employees and all information set out in Schedule 7 within the timeframes specified and in any event before the relevant contract Commencement Date.

During the first twelve (12) months following the Commencement Date, the Trusts shall develop an agreed list and content of the Partnership Policies in accordance with Clause 8.7.

The Trusts agree that:

the Transferring Assets and Equipment will transfer to the Partnership Host in accordance with Part 1 of Schedule 6;

the Retained Assets and Equipment will be retained by the Trusts and made available to the Partnership Host in accordance with Part 2 of Schedule 6;

the Transferring Employees will transfer from the Trusts to the Partnership Host in accordance with Schedule 7;

#### **THE PARTNERSHIP HOST**

The Trusts agree that STHFT shall be the host of the Partnership ("**Partnership Host**").

Subject to Clause 5.3, the Partnership Host shall carry out the Hosting Obligations in accordance with the Hosting Standards.

Notwithstanding Clause 5.2, the Partnership Host shall not be obliged to carry out or perform any act (or omission) that it reasonably considers:

would conflict with legislation, regulations, the Partnership Host's constitutional documents, the standing orders and standing financial instructions governing the Partnership Host from time to time; or

would put the Partnership Host's business or assets or reputation at risk.

The costs incurred in fulfilling the Hosting Obligations shall be:

calculated; and

paid;

in accordance with Schedule 4 and any deviation therefrom is a SYB Pathology Partnership Board Reserved Matter and shall require approval by the SYB Pathology Partnership Board.

STHFT shall remain the Partnership Host until the expiry or early termination of this Agreement unless or until STHFT is unable or unwilling to comply with the requirements or recommendations of a regulatory body in relation to the performance of its obligations as Partnership Host.

Where STHFT can no longer fulfil its obligations as the Partnership Host, in accordance with Clause 5.5, the remaining Trusts shall agree a replacement Partnership Host which shall provide the Hosting Obligations in accordance with the Hosting Standards from the leaving date of STHFT until this Agreement is terminated in accordance with Clause 3.

#### **PROCUREMENT PROCESS**

Each Trust commits to funding its share of the Project Delivery Costs, and providing the Procurement Resources required to successfully deliver each Procurement Process in accordance with Schedule 3.

The Partnership Host shall manage each Procurement Process on behalf of the Trusts. Each other Trust shall provide such information and assistance to the Partnership Host as may be required by the Partnership Host in order to fulfil its obligations under this Clause 6.2, Clause 5 and Schedule 3. The Partnership Host shall bill the Project Delivery Costs based on actual costs incurred and shall issue invoices to the Trusts on a quarterly basis accompanied by a reconciliation of current Project Delivery Costs. Any significant variance in actual Project Delivery Costs against estimated Project Delivery Costs, which could lead to cost pressures, will be notified to Trusts following discussion at SYB Pathology Partnership Board to assess mitigation options. Any deviation from the Project Delivery Costs is a SYB Pathology Partnership Board Reserved Matter and shall require approval by the SYB Pathology Partnership Board.

Any other costs relating to each Procurement Process shall be borne by each Trust as they are incurred unless otherwise expressly provided otherwise in this Agreement or otherwise agreed in advance in writing by all Trusts.

#### **CONTRACT RESOURCE PROVISION AND CONTRACT COSTS**

Each Trust commits to funding its share of the Contract Costs, and providing the Contract Resources required to ensure compliance with the Partnership Host's obligations under each Contract.

The Partnership Host shall bill the Contract Costs based on invoices received from the relevant Contract Provider and in accordance with the procedure for invoicing at Schedule 4.

Each Trust shall ensure that the Contract Costs are paid to the Partnership Host in a timely manner and in accordance with the procedure for payment as set out in Schedule 4.

Any other costs relating to each Contract shall be borne by each Trust as they are incurred unless otherwise expressly provided otherwise in this Agreement or otherwise agreed in advance in writing by all Trusts.

#### **MANAGEMENT AND GOVERNANCE OF THE PARTNERSHIP**

The SYB Pathology Partnership Board is responsible for oversight, control and decision making of the Partnership in accordance with Clause 4.2.

The SYB Pathology Network Operational Management Team shall report to the SYB Pathology Partnership Board in accordance with Schedule 2.

Each Trust shall fully support the SYB Pathology Partnership Board and the SYB Pathology Operational Management Team in their roles which are set out in Schedule 2 including:

by way of approval of the OBC/FBC and execution of this Agreement, confirmation that it authorises the SYB Pathology Partnership Board and the SYB Pathology Operational Management Team under their respective Terms of Reference;

participation in the decision making process via each Trust's Board in a timely (as referenced in Schedule 2, Governance Structure, of this Agreement) and appropriate manner in line with the SYB Pathology Partnership Board's, and the SYB Pathology Operational Management Team's requirements. Each Trust has agreed that at the Commencement Date the delegation at Part 3 of Schedule 2 shall be made to Chair/CEO on behalf of Trust Boards of the relevant organisation to enable parallel decision making;

establishment of its own Trust specific project team (as required) to manage the Trust's participation in each Procurement Process and the implementation and transition of the Trust's relevant existing contract during the final phase of the relevant Procurement Process and the commencement of the relevant Contract;

active participation in each Procurement Process when identified by the SYB Pathology Partnership Board or the SYB Pathology Network Operational Management Team as necessary;

adherence to principles of openness and transparency in relation to each Trust;

thorough reviews and checks of final draft documents prior to publication as may be notified as required by the Programme and Project Managers, the SYB Pathology Partnership Board, or the SYB Pathology Operational Management Team;

use of reasonable endeavours to co-operate with and provide assistance to each Trust as requested by the SYB Pathology Partnership Board or the SYB Pathology Operational Management Team;

confirmation of the provisions relating to decision making, quorum and dispute resolution as set out in Schedule 2 and Clause 23 respectively;

confirmation of its support (and any required participation) in respect of the Deliverables (as required by the SYB Pathology Partnership Board or the SYB Pathology Operational Management Team), including but not limited to:

ensuring the SYB Pathology Partnership Board and the SYB Pathology Operational Management Team are fully aware of any relevant policies and procedures with which they must comply;

co-operating and participating in the approval process required by the SYB Pathology Partnership Board or the SYB Pathology Operational Management Team in a timely and transparent manner;

the set up and confirmation of all internal governance procedures; and

ensuring that appointments to the SYB Pathology Partnership Board and the SYB Pathology Operational Management Team are made openly and transparently.

The Trusts agree that:

neither the SYB Pathology Partnership Board nor the SYB Pathology Operational Management Team shall have any delegated statutory powers or functions of the Trusts;

SYB Pathology Operational Management Team is not a committee of any Trust's board. The SYB Pathology Partnership Board members will be made up of Executive and/or Corporate Directors of the Trusts with delegations as set out at Clause 8.3.2;

nothing in this Agreement shall be construed as a delegation of its statutory powers by any of the Trusts to the SYB Pathology Partnership Board or the SYB Pathology Operational Management Team and nor shall any Trust be deemed to have delegated any powers to the SYB Pathology Partnership Board or the SYB Pathology Operational Management Team;

the operation and decision making of the SYB Pathology Partnership Board and the SYB Pathology Operational Management Team shall be governed by the principles of contract law and not public law;

nothing in this Agreement shall be construed as fettering the statutory powers of the Trusts;

acts and decisions in relation to the Partnership Business shall be taken or made (as the case may be) in the manner described in Schedule 2 and, when a decision has been made in accordance with Schedule 2, then such decision shall bind the Trusts under contract law;

if the Partnership Host fails to act in accordance with the decisions of the SYB Pathology Partnership Board or the SYB Pathology Operational Management Team (in circumstances where such decisions have been made in accordance with Schedule 2), then the Partnership Host shall be in breach of the contractual terms of this Agreement; and

actions of the Partnership will be taken by the Partnership Host acting on behalf of the Partnership.

In this Agreement, any reference to a decision or resolution of the SYB Pathology Partnership Board or the SYB Pathology Operational Management Team shall be taken in accordance with Schedule 2 and/or this Agreement (as the context so requires).

The Trusts acknowledge and agree that they shall comply with all Partnership Host Policies. A list and copies of the Partnership Host Policies that are in place at the Commencement Date have been provided by STHFT to the Trusts prior to the date of this Agreement.

During the first twelve (12) months following the Commencement Date, the Trusts will develop a list and the content of relevant operational policies that are specific to the Partnership (the "**Partnership Policies**"). The Partnership Policies:

are subject to ratification by the [Policy Ratification Group] (or any equivalent committee or group) of the Partnership Host;

may not contradict the Partnership Host Policies;

shall supplement but not replace the Partnership Host Policies; and

shall include but are not limited to innovation, quality improvement and education and research policies.

All changes to the Partnership Policies shall be implemented by the SYB Pathology Partnership Board and the SYB Pathology Operational Management Team.

The SYB Pathology Operational Management Team shall develop an annual Business Plan which shall be approved by the SYB Pathology Partnership Board, The Business Plan will be annexed to this Agreement at each annual review and shall include:

the proposed annual activity (and details of service/pathway developments and how they may be managed) for SYB Pathology;

a financial assessment of the Partnership, including financial modelling assumptions;

agreeing the pricing strategy and the apportionment of costs relating to the Partnership, including any changes to the Project Delivery Costs, the Contract Costs, and the Risk and Gain Share Principles;

financial monitoring and management accounting of the Partnership;

annual planning, schemes of delegation and accounting principles that will apply to the Partnership;

efficiency targets applicable to the Partnership;

quality and improvement targets applicable to the Partnership and any processes required to ensure compliance with these;

contract monitoring arrangements;

facilities and estates arrangements relating to the Partnership;

the purchase of new and/or transfer of existing assets and equipment for use by the Partnership and the management of the assets and equipment used by the Partnership;

arrangements and approvals for the bidding and delivery of additional pathology services to non-Trust organisations;

additional funding or investments (including capital investments) relating to the Partnership; and

requirements and arrangements for the delivery of corporate services relating to the Partnership.

The Business Plan for the first Financial Year has been adopted by the SYB Pathology Partnership Board.

Any variations to the Business Plan shall be approved and adopted in writing by the SYB Pathology Partnership Board before 1 April of the Financial Year to which it applies.

To the extent that a Business Plan is not approved and adopted in any Financial Year, the Business Plan for the preceding Financial Year shall be rolled forward, subject to updating the costs detailed in such Business Plan to reflect indexation by reference to national NHS guidance.

## **REVIEW AND AUDIT OF THE AGREEMENT**

This Agreement shall be reviewed annually by the SYB Pathology Partnership Board.

The purpose of each review undertaken pursuant to Clause 9.1 is to ensure that the arrangements detailed within this Agreement are operating as envisaged and that each Trust can raise any issues through the SYB Pathology Partnership Board.

Any proposed changes to this Agreement must be agreed by all Partnership Trust Boards in writing.

## **RESPONSIBILITIES**

Each Trust shall:

at all times, act in good faith towards the other Trusts;

act in a timely manner (including by paying any costs within [30 days] of production of a valid invoice issued by the Partnership Host);

generally do all things necessary, where reasonable and practical to do so, to give effect to the terms of this Agreement and each Contract;

take all reasonable steps to ensure, so far as it is able, that any meeting of the SYB Pathology Partnership Board has the necessary quorum throughout;

share information, experience, skills and work collaboratively with each other to identify solutions, eliminate duplication of effort, mitigate risk and reduce costs; and

adhere to statutory requirements and best practice.

## LIABILITY

No Trust limits its liability for:

death or personal injury caused by its negligence;

fraudulent misrepresentation; or

any other liability which cannot be excluded or limited by Applicable Law.

In consideration of the Hosting Obligations of the Partnership Host the Trusts agree that:

save in the case of the Partnership Host's fraud or wilful default, irrespective of the subject matter (whether in breach of contract, under any indemnity in any agreement, contracts (including each Contract) or arrangements, tort, breach of statute or otherwise), all losses, liabilities, expenses, costs and claims, including liabilities incurred in the event of a termination of any Contract incurred by the Partnership Host in carrying out its role as Partnership Host ("**Liabilities**") should be borne by all Trusts divided by the Trusts in the proportions equivalent to the agreed shares determined by the SYB Pathology Partnership Board as at the date such Liabilities were incurred;

they hereby indemnify and keep indemnified the Partnership Host from and against all unavoidable Liabilities whatsoever resulting from or in connection with its role as Partnership Host, including for the avoidance of doubt, its liability under any Contract; and

each Trust shall, upon request to do so by the Partnership Host in writing, meet its share of any and all unavoidable Liabilities or reimburse the Partnership Host if it has already met such unavoidable Liabilities on demand.

Subject to Clauses 11.4 and 11.5 and notwithstanding Clause 11.2, each Trust shall be severally liable for costs and/or losses incurred by one or more of the other Trusts to the extent that they arise or result from that Trust's deliberate or negligent acts or omissions and/or breach of this Agreement except to the extent that such costs and/or losses have been caused by any deliberate or negligent act or omission by, or on behalf of, or in accordance with the instructions of the SYB Pathology Partnership Board or the Trust claiming costs and/or losses.

No Trust shall be liable under Clause 11.3 to the extent that the costs are already covered in the Contract Costs.

No Trust shall be liable for any Indirect Losses.

It is agreed that each Trust has reviewed and agreed to the terms of each Contract prior to the Partnership Host entering into each Contract on behalf of the Trusts.

## TERMINATION

This Agreement shall terminate:

where a material dispute cannot be resolved pursuant to Clause 23 and all Trusts agree to its termination;

upon the termination of each and every Contract; or

during the Term, if:

- a Trust fails to obtain or loses any regulatory consent, licence or approval necessary for its compliance to this Agreement and/or the continuation of this Agreement or incurs any other restriction, the effect of which might reasonably be considered to have a material adverse impact on the continuance of this Agreement;
- a Trust commits an illegal act which is relevant to or connected with this Agreement;
- a Trust causes significant reputational damage to any other Trust due to a material breach (whether or not capable of remedy); or
- a Trust is deemed to be incapable of carrying on its business by a relevant regulatory or professional body, or substantially the whole of its business, including in relation to its ability to award and/or enter into a Contract;

then the other Trusts shall be entitled to immediately terminate the relevant Trust's participation in the Agreement by joint written notice. Such decision by the Trusts shall be approved by the SYB Pathology Partnership Board.

Where this Agreement is terminated pursuant to Clause 12.1.1 or Clause 12.1.2 then the Trusts shall pay any outstanding proportion of the Project Delivery Costs and any other costs (not included in the foregoing) directly arising pursuant to Clause 12.1.1 or 12.1.2. Each Trust shall be responsible for any outstanding proportion of the Contract Costs owed by it at the time of the Termination as identified by the Partnership Host. Any Dispute between the Trusts regarding whether any such costs should be apportioned shall be referred to the Dispute Resolution Procedure (Clause 23) for resolution without prejudice to the Trusts' obligations to make payments of Contract Costs accrued to the date of termination or expiry as well as any termination payments payable under the relevant Contract on demand by the Partnership Host. Subject to the foregoing, each Trust shall bear their own costs where they fall due.

If notice is served pursuant to Clause 12.1.3, then the Trust that is in default or that wishes to withdraw or otherwise leaves the Agreement shall pay any outstanding proportion of the Project Delivery Costs and any other costs (not included in the foregoing) directly arising pursuant to Clause 12.1.3. The Trust that is in default or that wishes to withdraw or otherwise leaves the Agreement shall be responsible for any outstanding proportion of the Contract Costs owed by it at the time of the Termination as identified by the Partnership Host. Any Dispute between the Trusts regarding whether any such costs should be apportioned shall be referred to the Dispute Resolution Procedure (Clause 23) for resolution without prejudice to the Trusts' obligations to make payments of Contract Costs accrued to the date of termination or expiry as well as any termination payments payable under the relevant Contract on demand by the Partnership Host. Subject to the foregoing, each Trust shall bear their own costs where they fall due.

Where the Partnership Host is the Trust that is the subject of Clause 12.1.3 (a) to (e), then the outstanding proportion of the Contract Costs owed at the time of the Termination shall be calculated by the Partnership Host and approved by the SYB Pathology Partnership Board.



## CONSEQUENCES OF TERMINATION

On termination of this Agreement, the following Clauses shall continue in force: Responsibilities (Clause 10), Clause 12 (Termination), this Clause 13 (Consequence of Termination), Clause 14 (Confidentiality), Clause 15 (Information Governance and Sharing of Data), Clause 16 (Data Protection), Clause 18 (Bribery and Corruption), Clause 23 (Dispute Resolution), Clause 25 (Status of Agreement), Schedule 1 (Definitions and Interpretation) and Schedule 3 (Procurement Resources and Project Delivery Costs).

Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Trusts that have accrued up to the date of termination.

Each Trust shall act reasonably and in good faith with regards to mitigating any adverse consequences on each other to the extent it is reasonable and within the control of each Trust to do so.

## CONFIDENTIALITY

Each Trust:

shall treat all Confidential Information belonging to any other Trust or any Contract Provider as confidential and safeguard it accordingly; and

shall not disclose any Confidential Information belonging to any other Trust or any Contract Provider to any other person without the prior written consent of the other Trust or the relevant Contract Provider, except to such persons and to such extent as may be necessary for the performance of this Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Agreement including Applicable Law.

Each Trust shall take all necessary precautions to ensure that all Confidential Information obtained from any other Trust under or in connection with this Agreement:

is given only to such of the employees and professional advisers or consultants engaged to advise it in connection with this Agreement and as is strictly necessary for the performance of this Agreement;

is, if it is Special Category Data or Personal Data, kept secure in accordance with the requirements of the Data Protection Legislation and only used in accordance with the disclosing Trust's instructions;

is treated as confidential and not disclosed (without written prior consent) or used by any employees or professional advisers or consultants otherwise than for the purposes of performing its obligations under this Agreement.

The provisions of Clauses 14.1 to 14.3 (inclusive) shall not apply to any Confidential Information received by one Trust from the other which:

is or becomes public knowledge (otherwise than by breach of this Clause 14 or through act of default on the part of the receiving Trust or the receiving Trust's agents or employees);

the receiving Trust lawfully obtained from a third party who:

lawfully acquired it;

did not derive it directly or indirectly from the disclosing Trust; and

is under no obligation restricting its disclosure;

must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Trust making the disclosure, including any requirements for disclosure pursuant to Clause 15, or otherwise in accordance with a court order, or the recommendation, notice or decision of a competent authority.

On termination of this Agreement or the participation of a Trust, each Trust (or in the event that the Agreement is terminated in relation to one Trust, that Trust) shall:

Subject to the Public Records Act 1958 as amended, destroy or return to the other Trusts, as applicable, all documents and materials (and any copies) containing, reflecting, incorporating or based on the other Trusts' Confidential Information;

erase all Confidential Information belonging to the other Trusts from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically and legally practicable); and

certify in writing to the other Trusts that it has complied with the requirements of this Clause and any relevant provision of each Contract notified to it by the Partnership Host, provided that a recipient Trust may retain documents and materials containing, reflecting, incorporating or based on the Confidential Information of the other Trusts to the extent required by Applicable Laws or any applicable governmental or regulatory authority.

Except as expressly stated in this Agreement, no Trust makes any express or implied warranty or representation concerning its Confidential Information.

The Trusts agree that the provisions of this Clause 14 shall continue following expiry or termination for any reason of this Agreement for a period of three (3) years.

#### **INFORMATION GOVERNANCE AND SHARING OF DATA**

The Trusts acknowledge that they are subject to the requirements of the FOIA, the EIRs and the Data Protection Legislation and the Trusts shall assist and co-operate with each other to enable them to comply with these requirements.

The Trusts shall procure that any of their agreed sub-contractors shall:

transfer any Request for Information to the relevant Trust which is the subject of the Request for Information (the "**Disclosing Trust**") as the case may be as soon as practicable after receipt and in any event within two (2) Working Days of receiving that Request for Information;

provide the Disclosing Trust with a copy of all Information in its possession or power in the form that the Disclosing Trust requires as soon as practicable and in any event within five (5) Working Days (or such other period as the Disclosing Trust may specify) of the Disclosing Trust requesting that Information; and

provide all necessary assistance as reasonably requested by the Disclosing Trust to enable it to respond to a Request for Information within the time for compliance set out in the FOIA and regulation 5 of the EIRs.

Each Trust shall maintain an adequate records management system to enable it to retrieve the Information within the time limits prescribed in the FOIA and/or EIRs as applicable.

In considering whether Information is exempt from disclosure, the Disclosing Trust shall reasonably consider the nature of such Information and in particular whether any information has been identified by the other Trust as being commercially sensitive; however, for the avoidance

of doubt, the Disclosing Trust shall be responsible for determining in its absolute discretion whether the Information should be disclosed in response to a Request for Information.

Each Trust acknowledges that the other Trusts may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the EIR to disclose Information:

without consulting with the other Trusts, or

following consultation with the other Trusts and having taken their views into account.

The Disclosing Trust agrees to keep the other Trusts fully informed of any FOIA requests received and processed in relation to this Agreement.

The Trusts shall ensure that all Information produced in the course of this Agreement or relating to this Agreement is retained for disclosure and each Trust shall permit the other to inspect such Information and documents and records containing such Information as that other Trusts may reasonably request from time to time.

It is agreed that SYB Pathology Partnership Board and any SYB Pathology Operational Management Team minutes and any documents related to each Procurement Process and each Contract may contain commercially sensitive information, and that the Disclosing Trust shall, where reasonably practicable and appropriate, seek the other Trusts' opinion on whether such information is exempt from disclosure in accordance with the provisions of the FOIA or the EIRs save that the decision on disclosure shall remain the sole responsibility of the Disclosing Trust.

Any costs charged for FOIA requests received and processed in relation to this Agreement will be split proportionately between the Trusts.

## DATA PROTECTION

Each Trust shall comply with the Data Protection Legislation. Without prejudice to the foregoing, when a Trust (the "**Processing Trust**") is acting as a Processor by Processing Personal Data on behalf of another Trust (the "**Controlling Trust**") under or in connection with this Agreement, the Processing Trust shall:

only Process Agreement Data in accordance with the instructions of the Controlling Trust as set out in this Agreement or as provided in writing by the Controlling Trust to the Processing Trust from time to time;

not transfer data outside of the UK; and

assist and fully co-operate with the Controlling Trust as requested by the Controlling Trust from time to time to ensure the Controlling Trust's compliance with its obligations under the Data Protection Legislation which shall include, but not be limited to:

completing and reviewing data protection impact assessments;

implementing measures to mitigate against any data protection risks; and

implementing such technical and organisational measures to enable the Controlling Trust to respond to requests from Data Subjects exercising their rights under the Data Protection Legislation.

The Processing Trust shall notify the Controlling Trust promptly (but in any event within 72 hours) should it:

- 1.1.1 be under a legal obligation to Process the Agreement Data, other than under the instructions of the Controlling Trust, in which case it shall inform the Controlling Trust of the legal obligation, unless the law prohibits such information being shared on important grounds of public interest; and
- 1.1.2 become aware that in following the instructions of the Controlling Trust, it shall be breaching Data Protection Legislation.

When Processing Agreement Data under this Agreement the Processing Trust shall take all necessary technical and organisational precautions and measures to preserve the confidentiality and integrity of Agreement Data and prevent any unlawful Processing or disclosure, taking into account the state of the art, the costs of implementation, the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of the Data Subjects. These shall include, but not be limited to the following measures (the “**Security Measures**”):

- 1.1.3 encrypting the Agreement Data stored on any mobile media or transmitted over public or wireless networks; and
- 1.1.4 implementing and maintaining policies and procedures to ensure:
  - the confidentiality, integrity, availability and resilience of Processing systems and services;
  - the availability and access to Agreement Data in a timely manner in the event of a physical or technical incident;
  - that all employees and contractors who are involved in the Processing of Agreement Data are trained in the policies and procedures set out in Clause 16.3 and are under contractual or statutory obligations of confidentiality concerning Agreement Data.

The Security Measures shall be regularly tested by the Processing Trust to assess the effectiveness of the measures in ensuring the security, confidentiality, integrity, availability and resilience of the Agreement Data and shall maintain records of the testing. The Processing Trust’s compliance with relevant requirements of the Data Security and Protection Toolkit shall be sufficient to meeting the requirements of this Clause 16.4.

The Processing Trust shall notify the Controlling Trust promptly (and in any event no later than 24 hours of discovery) if it becomes aware of any actual, suspected or threatened unauthorised exposure, access, disclosure, Processing, use, communication, deletion, revision, encryption, reproduction or transmission of any component of the Agreement Data, unauthorised access or attempted access or apparent attempted access (physical or otherwise) to the Agreement Data or any loss of, damage to, corruption of or destruction of such Personal Data (“**Security Incident**”).

The notification in Clause 16.5 shall include:

- the nature of the breach, including the categories and approximate number of Data Subjects and records concerned;
- the contact at the Processing Trust who will liaise with the Controlling Trust concerning the breach; and
- the remediation measures being taken to mitigate and contain the breach.

Subject to Clause 16.8, the Processing Trust shall not provide any third party with access to Agreement Data or sub-contract any of its obligations under this Agreement without the prior written approval of the Controlling Trust. Where approval has been granted by the

Controlling Trust to the Processing Trust pursuant to this Clause 16.7, the Processing Trust shall:

undertake due diligence on the sub-contractor equivalent to the due diligence undertaken on the Processing Trust by the Controlling Trust under this Agreement;

put in place contractual data processing provisions equivalent to those in place between the Processing Trust and the Controlling Trust under this Agreement; and

remain liable for the Processing activities of such sub-contractor.

A Controlling Trust shall be deemed to have provided prior written approval for the purposes of Clause 16.7, and the Processing Trust shall be deemed to have complied with the requirements of Clause 16.7, where:

a sub-contract has been entered into by the Processing Trust in advance of the Commencement Date; and

the Processing Trust has provided notice of such sub-contract to the Controlling Trust in advance of the Commencement Date.

The Processing Trust shall provide all reasonably necessary information and assistance to the Controlling Trust in order for the Controlling Trust to verify the Processing Trust's compliance with its obligations under this Agreement and the Data Protection Legislation.

The Processing Trust shall, upon termination or earlier expiry of the Agreement for whatever reason, at the option of the Controlling Trust, provide a copy of all Agreement Data to the Controlling Trust.

The Trusts agree to use all reasonable efforts to assist each other to comply with the Data Protection Legislation. This includes (but is not limited to) the Trusts providing each other with reasonable assistance in complying with Data Subject access requests served on an Trust under the Data Protection Legislation and always consulting with each other prior to the disclosure by any Trust of any Personal Data in relation to such requests.

The provisions of this Clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

Agency under each Contract

The Trusts acknowledge that the Partnership Host will act as an agent on behalf of the Trusts under each Contract in respect of their obligations as Controllers.

In the event that the agency position is deemed unlawful by a competent authority, the Trusts will, without undue delay, and as soon as reasonably practicable, enter into data processing agreements with the relevant Contract Provider.

## **FORCE MAJEURE**

If an Event of Force Majeure occurs, the affected Trust 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 Agreement.

The affected Trust must notify the other Trusts immediately when it becomes aware of the Event of Force Majeure, giving detail of the Event of Force Majeure and its likely impact on the delivery of its obligations in accordance with this Agreement.

If it has complied with its obligations under Clause 17.1 and Clause 17.2, the affected Trust will be relieved from liability under this Contract if and to the extent that it is not able to perform its obligations under this Agreement due to the Event of Force Majeure.

#### **BRIBERY AND CORRUPTION**

For the purposes of this Clause 18 the expressions "**adequate procedures**" and "**associated with**" shall be construed in accordance with the Bribery Laws.

Each Trust shall ensure that it does not, by any act or omission, place any other in breach of any Bribery Laws. Each Trust shall comply with all applicable Bribery Laws and ensure that they have in place adequate procedures to prevent any breach of this Clause 18 and ensure that no Trust shall make or receive any bribe (which term shall be construed in accordance with the Bribery Laws) or other improper payment or advantage, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and will implement and maintain adequate procedures to ensure that such bribes or improper payments or advantages are not made or received directly or indirectly on its behalf.

Each Trust shall immediately notify the other Trusts, the SYB Pathology Partnership Board and the SYB Pathology Operational Management Team as soon as they become aware of a breach or possible breach of any of the requirements in this Clause 18.

#### **EQUALITY ACT**

Each Trust shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010 or any statutory modification or re-enactment of that Act or analogous legislation which has been, or may be, enacted from time to time relating to discrimination in employment or discrimination in the delivery of public services.

Each Trust shall take all reasonable steps to secure that all their servants, employees or agents and all sub-contractors employed in the performance of the sub-contract do not unlawfully discriminate as set out in Clause 19.1.

#### **SUB-CONTRACTING AND ASSIGNMENT**

Subject to Clause 20.2, no Trust shall be entitled to sub-contract or assign its rights or obligations under this Agreement without the consent of each of the other Trusts, such consent not to be unreasonably withheld or delayed unless such assignment, sub-contracting, novation or transfer is to a statutory successor in which case no consent shall be required.

The other Trusts shall be deemed to have consented to sub-contracting arrangements related to the Pathology Services:

entered into by the Partnership Host prior to the Commencement Date; and

in respect of which the Partnership Host has given notice to the other Trusts prior to the Commencement date.

#### **INTELLECTUAL PROPERTY RIGHTS**

All existing Intellectual Property of each Trust that is used by the Trusts in connection with this Agreement shall remain the exclusive property of the Trust that owned such Intellectual Property on the commencement of this Agreement. Each Trust hereby grants to each other a non-exclusive, royalty free licence to use any such existing Intellectual Property solely for the purposes of participating in the relevant Procurement Process.

Any Intellectual Property created by a Trust as part of or arising out of this Agreement shall belong to the Trust who created it (the "**Owning Trust**"). The Owning Trust hereby grants to the other Trusts a non-exclusive, royalty free licence to use any such new Intellectual Property for the purposes of collaborating in relation to this Agreement.

Where Intellectual Property is developed jointly by the Parties and there is no single clear developer, the Trusts will jointly own any such Intellectual Property and no Trust will be entitled to independently use such Intellectual Property other than in conjunction with the relevant Procurement Process without the written consent of the other Trusts.

The Trusts hereby agree that any benefit accruing to any Trust in relation to the exploitation of the Intellectual Property arising under Clause 21.2 and/or 21.3 shall be shared between the Parties on terms to be agreed by the SYB Pathology Partnership Board.

Any dispute as to the ownership of any Intellectual Property shall be determined in accordance with Clause 23 (Dispute Resolution Procedure).]

## **NOTICES**

Any notice required to be given under this Agreement may be delivered personally or sent by first class post, courier or transmitted by email to the Chief Executive (or equivalent) of each other Trust at the address given at the beginning of this Agreement, or such other addresses as may be notified in accordance with this Clause 22 from time to time.

Any notice so sent shall be deemed to have been duly given if sent by:

personal delivery or courier – on delivery at the address of the relevant Trust; or

prepaid first class post – five (5) days after the date of posting; or

transmitted by email – when able to be read as received on recipient's email server.

This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **DISPUTE RESOLUTION PROCEDURE**

In the event of any dispute arising in relation to this Agreement ("**Dispute**"), the matter shall first be considered by the SYB Pathology Operational Management Team. In the event that the SYB Pathology Operational Management Team is not able to resolve the dispute within ten (10) Working Days of the matter arising, the SYB Pathology Operational Management Team shall escalate the matter by referring it (in the first instance), to the SYB Pathology Partnership Board.

In the event that the SYB Pathology Partnership Board is unable to settle the dispute within ten (10) Working Days of referral to it detailed in Clause 23.1, they shall within five (5) Working Days after the end of that negotiation period submit the dispute for consideration by the Acute Federation Collaborative.

In the event that the Acute Federation Collaborative is unable to settle the dispute within ten (10) Working Days of referral to it detailed in Clause 23.2, they shall within five (5) Working Days after the end of that negotiation period submit the dispute to mediation by a mediator to be agreed between the Trusts.

If the matter is not resolved following the process referred to in Clauses 23.1 to 23.3, the Trusts shall attempt to settle it by mediation in accordance with Centre for Effective Dispute Resolution ("**CEDR**") Model Mediation Procedure. To initiate a mediation, a Trust may give notice in writing ("**Mediation Notice**") to the others requesting mediation of the dispute and shall send a copy thereof to CEDR asking CEDR to nominate a mediator. The mediation

shall commence within 28 days of the Mediation Notice being served. No Trust will terminate such mediation until each of them has made its opening presentation and the mediator has met each of them separately for at least one hour or one Trust has failed to participate in the mediation process. No Trust will commence legal proceedings against the other until thirty (30) days after such mediation of the dispute in question has failed to resolve the dispute. The Trusts shall co-operate with any person appointed as mediator, providing him with such information and other assistance as he shall require and will pay the mediator's costs, as the mediator shall determine or in the absence of such determination such costs shall be shared equally.

During the mediation phase and in advance of the mediation session, each Trust must submit to the mediator within five (5) Working Days of the mediator's request a signed position statement describing the precise points on which the Trusts disagree, and describing its own solution to the dispute.

No Trust may commence any court proceedings in relation to any Dispute arising out of this Agreement until it has attempted to settle the Dispute by mediation and either the mediation has terminated or the other Trust has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

Nothing in this Agreement shall prevent a Trust seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Trust or the security of Confidential Information, pending resolution of the relevant dispute in accordance with the process set out in this Clause 23.

#### **GENERAL**

No variation of this Agreement or the Terms of Reference shall be effective unless it is in writing and signed by each Trust.

Failure of any Trust to enforce or exercise, at any time or for any period, any term of this Agreement does not constitute, and shall not be construed as, a waiver of any term and shall not affect the right to enforce such term, or any other term contained in this Agreement, at a later date.

Except where otherwise expressly stated, nothing in this Agreement shall constitute, or be deemed to constitute, a legal partnership between the Trusts, or shall constitute any Trust as the agent, employee or representative of the other(s).

The Trusts hereby agree that this Agreement shall be binding on any successors in title.

No one other than a party to this Agreement, their successors and/or permitted assignees, shall have any right to enforce any of its terms whether by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise.

If any part of this Agreement is declared invalid or otherwise unenforceable, it shall be severed from this Agreement and the Trusts shall work together to agree a variation to this Agreement to ensure their continuation and achieve so far as possible their original intent. In the event that the Trusts cannot agree an appropriate variation, any Trust may terminate its participation from this Agreement with immediate effect.

No publicity or advertising regarding the relationship between the Trusts concerning any Procurement Process, any Contract or this Agreement shall be released by any Trust without the prior written approval of the other Trusts, which shall not be unreasonably withheld.

The Trusts shall do and execute all such further acts and things as are reasonably required to give full effect to the rights given and the matters contemplated by this Agreement.



This Agreement may be executed and delivered in any number of counterparts, each of which is an original and which, together, have the same effect as if each Trust had signed the same document.

This Agreement constitutes the entire agreement and understanding between the Trusts with respect to the subject matter of this Agreement and supersedes any prior agreement, understanding or arrangement between the Trusts with respect to the subject matter of this Agreement, whether oral or in writing.

#### **STATUS OF AGREEMENT**

This Agreement is governed in accordance with this Clause 25.

This Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England.

The Trusts irrevocably agree that the Courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims).

**SCHEDULE 1**

**Definitions**

|                                       |   |
|---------------------------------------|---|
| <b>Acute Federation Collaborative</b> | means the collaboration of Chief Executives and Chairs of all SYB Acute Trusts with a common aim of improving quality, safety, sustainability of services and the patient experience by sharing collective expertise and collaborating on specific projects;  |
| <b>Agreement</b>                      | means this agreement, including its Schedules;  |
| <b>Agreement Data</b>                 | means Personal Data and/or Special Category Data Processed by a Processing Trust on behalf of the Controlling Trust under or in connection with this Agreement;   |
| <b>Applicable Laws</b>                | all laws, rules, regulations, codes of practice, research governance or ethical guidelines or other requirements of regulatory authorities, as amended from time to time;   |
| <b>Bribery Laws</b>                   | means the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010 and all other applicable United Kingdom laws, legislation, statutory instruments and regulations in relation to bribery or corruption;  |
| <b>Business Plan</b>                  | means [insert];   |
| <b>Commencement Date</b>              | means [insert date];  |
| <b>Confidential Information</b>       | means information, the disclosure of which would constitute an actionable breach of confidence, which has either been designated as confidential by an Trust in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored), including commercially sensitive information, information which relates to the finances, business, affairs, properties, assets, trading practices, goods/services, developments, trade secrets, Intellectual Property rights, know-how, employees and other workers, customers and suppliers of an Trust and all Personal Data and Special Category Data.; |
| <b>Contract</b>                       | means each contract for the provision of the different elements of the Pathology Services entered into by the Partnership Host with each Selected Supplier for the delivery of the Pathology Services;  |
| <b>Contract Award Criteria</b>        | means the agreed contract award criteria applied during each Procurement Process;   |
| <b>Contract Commencement Date</b>     | means the commencement date of the relevant Contract;   |
| <b>Contract Costs</b>                 | means the costs payable under or in connection with the Contracts, including any such costs arising on termination or expiry of the Contracts, however that arises, to be apportioned between the Trusts as set out in Schedule [3 OR x];   |

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|---|--|
| <b>Contract Manager</b>                     | means [an individual appointed by the Partnership Host in accordance with paragraph 2 of Schedule 4 of the Agreement];   |
| <b>Contract Provider</b>                    | means [insert for each of the Contracts];  |
| <b>Contract Resources</b>                   | means the human resources that must be supplied by each Trust as set out in Schedule [3 OR x] (Contract Resources and Project Delivery Costs);   |
| <b>Contract Term</b>                        | means the period of time equivalent to the duration of the relevant Contract as set out and determined therein;  |
| <b>Controller</b>                           | has the meaning given in the Data Protection Legislation;  |
| <b>Controlling Trust</b>                    | has the meaning given in Clause 16.1;  |
| <b>Data Protection Legislation</b>          | means all applicable data protection and privacy legislation, regulations and guidance, including: the General Data Protection Regulation (Regulation (EU) 2016/679), as incorporated into UK legislation by way of the European Union (Withdrawal Agreement) Act 2020 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 ; the Data Protection Act 2018; and the Privacy and Electronic Communications (EC Directive) Regulations 2003;                       |
| <b>Data Security and Protection Toolkit</b> | means an online system which allows NHS Bodies and non-NHS providers of NHS-funded services to assess their compliance with UK GDPR and with the National Data Guardian's Data Security Standards, available at: <a href="https://digital.nhs.uk/data-and-information/looking-afterinformation/data-security-and-information-governance/data-security-and-protection-toolkit">https://digital.nhs.uk/data-and-information/looking-afterinformation/data-security-and-information-governance/data-security-and-protection-toolkit</a> |
| <b>Data Subject</b>                         | has the meaning given in the Data Protection Legislation;  |
| <b>Deliverables</b>                         | means deliverables set out in Schedule 2;  |
| <b>Direct Losses</b>                        | means amounts recoverable under Clause 11.3 or any Project Delivery Costs, excluding Indirect Losses;  |
| <b>Dispute Resolution Procedure</b>         | means the procedure set out in Clause 23 of this Agreement;  |
| <b>EIRs</b>                                 | means the Environmental Information Regulations 2004 together with any code of practice made pursuant to those Regulations and any related guidance issued by the Secretary of State for the Department for Environment, Food and Rural Affairs, the Information Commissioner or the Secretary of State for the Department of Constitutional Affairs;  |
| <b>Evaluation Process</b>                   | means the process identified as such in Schedule 3 (Evaluation Process Compliance);  |
| <b>Event of Force Majeure Event</b>         | an event or circumstance which is beyond the reasonable control of the Trust claiming relief under Clause 17, including war, civil war,  |

armed conflict or terrorism, strikes or lock outs, riot, fire, flood or earthquake, and which directly causes that Trust to be unable to comply with all or a material part of its obligations under this Agreement;

|                                  |  |
|----------------------------------|--|
| <b>Expiry Date</b>               | means [insert];  |
| <b>Financial Year</b>            | the period starting on the Commencement Date and ending on the following 31 March and each subsequent period of 12 calendar months starting on 1 April, provided that the final Financial Year will be the period starting on the relevant 1 April and ending on the Expiry Date or date of earlier termination of this Agreement;   |
| <b>FOIA</b>                      | means the Freedom of Information Act 2000 and any subordinate legislation (as defined in the Interpretation Act 1978), but excluding the EIRs, as amended modified or re-enacted from time to time, together with all codes of practice made pursuant to that Act or pursuant to that subordinate legislation from time to time, and together with any related guidance issued by the Information Commissioner or the Secretary of State for the Department of Constitutional Affairs;   |
| <b>Full Business Case or FBC</b> | means the full business case that has been approved in relation to the Project;  |
| <b>Health Service Body</b>       | has the meaning set out at section 9(4) of the NHS Act 2006;   |
| <b>Hosting Obligations</b>       | means the obligations set out in Schedule 4;   |
| <b>Hosting Standards</b>         | means the standards set out in Schedule 4;   |
| <b>Indirect Losses</b>           | means any loss of profits, loss of business or loss of business opportunity (whether such losses arise directly or indirectly) and any other consequential or indirect loss of any nature, but excluding Direct Losses;  |
| <b>Initial Term</b>              | means a period from the date of this Agreement until the Expiry of the Contract Term of each Contract unless terminated earlier in accordance with Clause 12 (Termination) or extended in accordance with Clause 3.2 (Term);   |
| <b>Information</b>               | shall have the meaning given under section 84 of the Freedom of Information Act 2000 including but not limited to environmental information as defined in regulation 2 of the EIRs and Personal Data and data as defined in the Data Protection Legislation;   |
| <b>Intellectual Property</b>     | means any patents, rights to inventions, registered designs, copyright and related rights, database rights, design rights, topography rights, trademarks, service marks, trade names and domain names, trade secrets, rights in unpatented know-how, rights of confidence and any other intellectual or industrial property rights of any nature, including all applications (or rights to apply) for and renewals or extensions of 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; |
| <b>NHS Act 2006</b>              | means the National Health Service Act 2006;  |

|  |   |
|--|---|
| <b>NHS Contract</b>                      | shall have the meaning set out in section 9 of the NHS Act 2006;  |
| <b>Outline Business Case or OBC</b>      | means the outline business case that has been approved in relation to the Project;  |
| <b>Partnership</b>                       | means the contractual joint venture established pursuant to this Agreement between the Trusts for the provision of the Pathology Services which the Trusts agree will be collaborative and inclusive venture;   |
| <b>Partnership Business</b>              | means [the arrangements set out in the Business Plan];  |
| <b>Partnership Host</b>                  | has the meaning set out in Clause 5.1;  |
| <b>Partnership Host Policies</b>         | means [insert a list of Partnership Host policies] as updated from time to time;  |
| <b>Partnership Policies</b>              | has the meaning set out in Clause 8.7;  |
| <b>Pathology Services</b>                | [means the pathology services and related services, including a single laboratory information management system, transport services to support the delivery of the pathology services, and digital pathology [services and equipment], procured in accordance with the relevant Procurement Process and set out within the relevant Contract; |
| <b>Personal Data</b>                     | has the meaning given in the Data Protection Legislation;   |
| <b>Process</b>                           | has the meaning given in the Data Protection Legislation (and “ <b>Processed</b> ” and “ <b>Processing</b> ” shall be construed accordingly);   |
| <b>Processing Trust</b>                  | has the meaning given in Clause 16.1;   |
| <b>Processor</b>                         | has the meaning given in the Data Protection Legislation;   |
| <b>Procurement Decision Making Group</b> | means the group made up of members of each Trust and governed in accordance with its agreed terms of reference;   |
| <b>Procurement Process</b>               | means each of the procurement processes as more particularly set out in Schedule 3;   |
| <b>Procurement Resources</b>             | means the human resources that must be supplied by each Trust as set out in Schedule 3 (Procurement Resources and Project Delivery Costs);  |
| <b>Procurement Timetable</b>             | means the timetable included in Schedule 3 (Procurement Timetable) as the same may be amended from time to time by the SYB Pathology Partnership Board;   |
| <b>Project</b>                           | means the project for the provision of the pathology laboratory services, a laboratory information management system, transport services, and digital pathology [services and equipment] that are required by each Trust and which are being provided or procured pursuant to each Procurement Process;                                       |

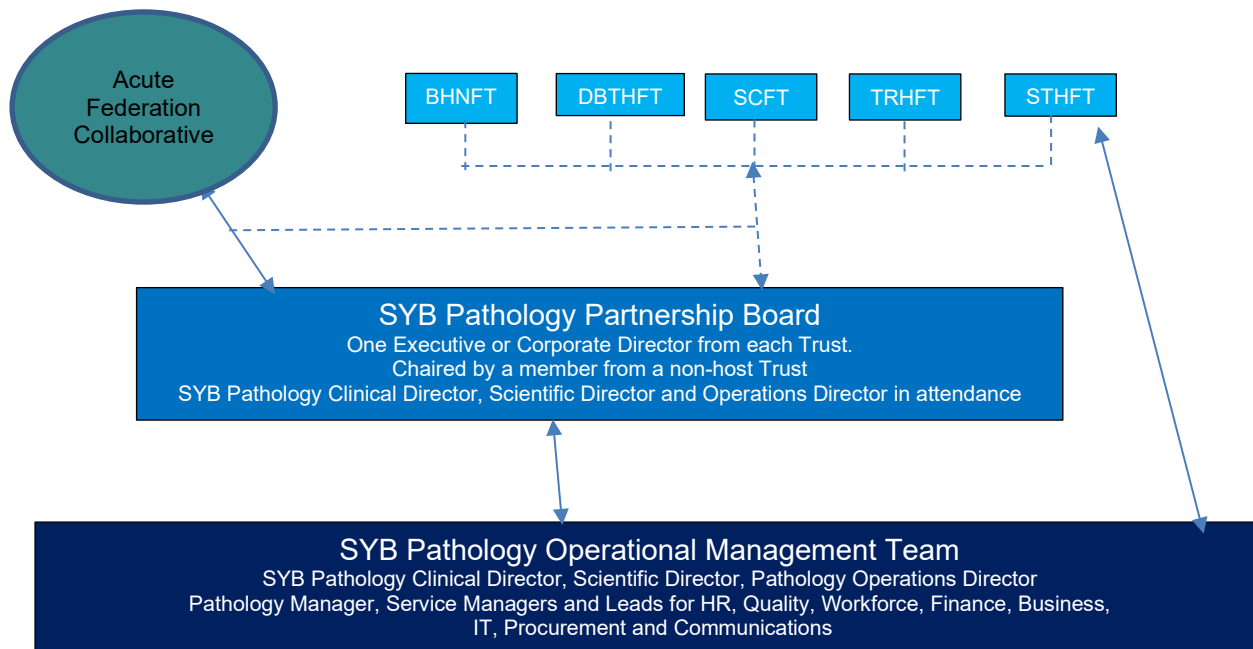
|   |   |
|---|---|
| <b>Project Delivery Costs</b>                                       | means the project delivery costs to be incurred by the Trusts and apportioned as set out in Schedule 3;   |
| <b>Request for Information</b>                                      | shall have the meaning set out in FOIA;   |
| <b>Retained Assets and Equipment</b>                                | means the assets and equipment listed in Part 2 of Schedule 6;  |
| <b>Risk and Gain Share Principles</b>                               | means the risk and gain share principles set out in Schedule 4;   |
| <b>Selected Supplier</b>  | means the supplier (or suppliers, if applicable, on the basis of multiple lots) appointed by the Trusts pursuant to the application of the Contract Award Criteria during each Procurement Process;   |
| <b>Special Category Data</b>  | has the meaning given in the Data Protection Legislation;   |
| <b>SYB Pathology Operational Management Team</b>                    | means the SYB Pathology Operational Management Team established in accordance with the SYB Pathology Operational Management Team Terms of Reference at Part 2 of Schedule 2;  |
| <b>SYB Pathology Operational Management Team Terms of Reference</b> | means the terms of reference that govern the set-up, management, roles and responsibilities of the SYB Pathology Operational Management Team (as updated from time to time), a copy of which (as at the date of this Agreement) is set out in Part 2 of Schedule 2; |
| <b>SYB Pathology Partnership Board</b>                              | means the SYB Pathology Partnership Board established in accordance with the SYB Pathology Partnership Board Terms of Reference at Part 1 of Schedule 2;  |
| <b>SYB Pathology Partnership Board Reserved Matter</b>              | means matters reserved for decision by the SYB Pathology Partnership Board as set out at Part 2 or Schedule 2;  |
| <b>SYB Pathology Partnership Board Terms of Reference</b>           | means the terms of reference that govern the set-up, management, roles and responsibilities of the SYB Pathology Partnership Board (as updated from time to time), a copy of which (as at the date of this Agreement) is set out in Part 1 of Schedule 2;           |
| <b>SYB Pathology Workforce Group</b>                                | means the group made up of members of each Trust and governed in accordance with its agreed terms of reference;   |
| <b>Target Operating Model or TOM</b>                                | means the target operating model set out in Schedule 5;   |
| <b>Term</b>   | means the Initial Term of this Agreement plus any Extended Term(s) agreed between the Trusts;   |
| <b>Transferring Assets and Equipment</b>                            | means the assets and equipment listed in Part 1 of Schedule 6;  |
| <b>Trust(s)</b>   | means each and any or all (as the context so requires) of the organisations listed at the start of this Agreement (numbers 1 to 6);   |

**Working Day**

means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom and "**Working Days**" shall be construed accordingly.

**SCHEDULE 2**

**Terms of Reference and Trust Delegations**





**SCHEDULE 2**

**Terms of Reference and Trust Delegations**

**Part 1**

**South Yorkshire and Bassetlaw (SYB)**

**Pathology Partnership Board (PPB)**

**Terms of Reference**

|  |  |
|--|--|
| <b>NAME OF GROUP:</b>                    | SYB Pathology Partnership Board  |
| <b>ACCOUNTABLE TO:</b>                   | Chairs and Chief Executives - Acute Federation Collaborative   |
| <b>REPORTING THROUGH:</b>                | Chief Executives – Acute Federation Collaborative  |
| <b>PRIMARY PURPOSE:</b>                  | <p>To oversee delivery of, and maximise the sustainability, safety and efficiency, of the Partnership.</p> <p>The vision is to improve lives and safeguard the best clinical outcomes by delivering high quality, innovative laboratory medicine solutions making best use of taxpayers money to deliver efficiencies form economies of scale and scope.</p>   |
| <b>COMPOSITION OF GROUP/ MEMBERSHIP:</b> | <p>A non-host Chief Executive will act as the Chair of the SYB Pathology Partnership Board.</p> <p>The membership of the Partnership Board will comprise one of each of the following:-</p> <ul style="list-style-type: none"> <li>• Executive or Corporate Director (Barnsley Hospital NHS FT)</li> <li>• Executive or Corporate Director (Doncaster &amp; Bassetlaw Teaching Hospitals NHS FT)</li> <li>• Executive or Corporate Director (Sheffield Children’s NHS FT)</li> <li>• Executive or Corporate Director (Sheffield Teaching Hospitals NHS FT)</li> <li>• Executive or Corporate Director (The Rotherham Hospital NHS FT)</li> </ul> <p>In appointing individuals to the SYB Pathology Partnership Board, the participating Trusts will act with a view to ensuring that the makeup of the board reflects the breadth of the provision across both general and specialist care, with an appropriate mix of skills and expertise.</p> |
| <b>IN ATTENDANCE</b>                     | <ul style="list-style-type: none"> <li>• SYB Pathology Clinical Director</li> <li>• SYB Pathology Scientific Director</li> <li>• SYB Pathology Operations Director</li> </ul> <p>Attendance by other relevant officers outside of the Membership will be agreed in advance of each meeting.</p>  |

|   |   |
|---|---|
| <p><b>RESPONSIBILITIES OF PARTNERSHIP BOARD MEMBERS</b></p> | <ol style="list-style-type: none"> <li>1. To review the Agreement on an annual basis with any variations to be approved by each Trust Board in writing.</li> <li>2. To provide leadership, create a culture of collaboration across the Partnership and effectively manage any challenges that arise in an open and constructive way.</li> <li>3. To ensure appropriate governance and management arrangements are in place across the Partnership.</li> <li>4. To agree the overall strategy for the Partnerships on behalf of the Trusts and report to the Acute Federation Collaborative and Trust Boards as required.</li> <li>5. To provide oversight to annual planning, tenders and business case processes including planning, delivery of milestones, and risk and issue management.</li> <li>6. To approve the annual Business Plan and to oversee its implementation.</li> <li>7. To agree plans ensuring that measurable outcome criteria are in place for each initiative / project.</li> <li>8. On an annual basis, to agree the contribution to the running of the Partnership to be made by the Trusts and the outcomes and benefits that are required as a result from that investment.</li> <li>9. To ensure the principles of this Agreement are adhered to by all of the participating Trusts.</li> <li>10. To ensure successful delivery and implementation of the Full Business Case for the Partnership.</li> <li>11. To review and endorse any proposed changes to the agreed Target Operating Model, ensuring operational, clinical and financial sustainability of such changes prior to approval by all Trust Boards.</li> <li>12. To refer any Reserved Matters, as defined in this Agreement, to individual Trust Boards.</li> <li>13. To agree the structure and objectives of the SYB Pathology Operational Management Team.</li> <li>14. To provide oversight and direction to the SYB Pathology Operational Management Team, holding the Clinical Director and team accountable for service delivery and performance.</li> <li>15. On behalf of the Trusts, and customers, assure the delivery of the agreed outcomes.</li> <li>16. To monitor delivery and performance of the expected outcomes, agreeing mitigations and corrective actions with the SYB Pathology Operational Management Team.</li> <li>17. To make business case recommendations to individual Trust Boards and approve business cases and plans within the limits of the Hosts SFIs.</li> <li>18. To receive, review and approve the annual accounts as provided by the Host Department of Finance.</li> <li>19. To have oversight of all relevant external contracts.</li> <li>20. To abide by the agreed guiding principles including making the best use of taxpayers money and to deliver efficiencies from economies of scale and scope.</li> <li>21. To agree any financial implications for the Partnership as a result of the annual Business Plan e.g. fluctuations to test pricing, expected annual Cost Improvement Plan.</li> </ol> |
|---|---|

|                               |   |
|-------------------------------|---|
|                               | <p>22. To provide effective support in the identification and mitigation of the Partnership's risks and issues.</p> <p>23. To agree and support the Partnership's communication and engagement plans at system and local level.</p> <p>24. To ensure appropriate communication and engagement with stakeholders across the Integrated Care System, acting as points of contact for local teams and services.</p> <p>25. To hold any external advisors to account for their performance against agreed objectives and in accordance with any contract.</p> <p>26. To undertake any other duties required of it by the Trust Boards.</p> <p>27. To ensure that organisational, professional or personal conflicts of interest are effectively managed in an open and constructive way</p> <p>28. To seek to resolve any disputes between the Trusts in accordance with Clause 23 of this Agreement.</p> |
| <b>SERVICED BY:</b>           | SYB Pathology Operations Director   |
| <b>FREQUENCY OF MEETINGS:</b> | Monthly for the first 12 months and then as agreed by the Partnership Board   |
| <b>REQUIRED ATTENDANCE:</b>   | <p>Attendance of the Director representative from each participating Trust at scheduled meetings will be critical to successful delivery of the SYB Pathology Network. Therefore, notwithstanding the quoracy requirements below, each Trust will endeavour to have representation at each meeting.</p> <p>A nominated executive or corporate deputy may represent Trusts where necessary.</p>  |
| <b>QUORACY:</b>               | <p>In line with this Agreement, each of the five Trusts will have equal participation in this forum.</p> <p>Meetings will be quorate based on attendance of Executive representatives from three out of five Trusts.</p> <p>Proposed decisions will be shared with any participating Trust not represented within a week of the meeting to enable feedback from that Trust. Where a unanimous agreement cannot be reached, the proposal will be discussed via email and at the next meeting.</p> <p>Each Trust must be present at the meeting where a material decision is required.</p>  |
| <b>MINUTES CIRCULATED TO:</b> | <p>Acute Federation Collaborative Trust Boards</p> <p>SYB Pathology Operational Team</p> <p>Other Groups as required</p>  |
| <b>REVIEW DATE:</b>           | April 2023  |
| <b>DATE APPROVED:</b>         |   |

**SCHEDULE 2**

**Terms of Reference and Trust Delegations**

**Part 2**

**South Yorkshire and Bassetlaw (SYB)**

**Pathology Operational Management Team (OMT)**

**Terms of Reference**

|  |  |
|--|--|
| <b>NAME OF GROUP:</b>                    | SYB Pathology Operational Management Team  |
| <b>ACCOUNTABLE TO:</b>                   | Acute Federation Collaborative   |
| <b>REPORTING THROUGH:</b>                | SYB Pathology Partnership Board (PPB)  |
| <b>PRIMARY PURPOSE:</b>                  | <p>To oversee the general pathology service delivery and to maximise sustainability, safety and efficiency of the Partnership.</p> <p>The vision is to improve lives and safeguard the best clinical outcomes by delivering high quality, innovative laboratory medicine solutions making best use of taxpayers money to deliver efficiencies form economies of scale and scope.</p>   |
| <b>COMPOSITION OF GROUP/ MEMBERSHIP:</b> | <ul style="list-style-type: none"> <li>• SYB Clinical Director (CD)</li> <li>• SYB Scientific Director (SD)</li> <li>• SYB Operations Director (OD)</li> <li>• SYB Pathology Manager</li> <li>• Pathology Clinical Lead for each Pathology Discipline</li> <li>• Pathology Laboratory Manager for each Pathology Discipline</li> <li>• Quality Lead</li> <li>• Workforce Lead</li> <li>• Business Lead</li> <li>• Finance Lead</li> <li>• Procurement Lead</li> <li>• IT Lead</li> <li>• HR Business Partner</li> <li>• Communications Lead</li> </ul> <p>The SYB Clinical Director will act as Chair of the Pathology Operational Team.</p> <p>The Clinical Lead and Laboratory Manager Lead representation for each discipline must ensure that all partner Trusts are adequately represented.</p> |
| <b>IN ATTENDANCE</b>                     | <p>NHSI North of England regional lead for diagnostic transformation programmes.</p> <p>Other relevant officers outside of the Membership will be agreed in advance of each meeting.</p>   |

|   |  |
|---|--|
| <p><b>RESPONSIBILITIES OF SYB PATHOLOGY OPERATIONAL MANAGEMENT TEAM MEMBERS</b></p> | <ol style="list-style-type: none"> <li>1. To develop and recommend the overall strategy for the Partnership and provide medical, scientific, technical and support expertise to the SYB Pathology Partnership Board.</li> <li>2. To develop the annual Business Plan for the Partnership, including measurable outcomes, for recommendation to the SYB PPB.</li> <li>3. To prepare associated business cases, procurement plans and other and projects for recommendation to the SYB PPB, and individual Trust Boards where required.</li> <li>4. To support the successful delivery of the business cases or projects arising from the annual Business Plan, monitoring and leading on any corrective action needed to deliver the agreed outcome/success criteria including delivery of milestones and risk and issue management.</li> <li>5. To report the measurable outcome criteria to the PPB on a monthly basis.</li> <li>6. To establish and monitor an agreed set of KPIs across SYB Pathology, reporting compliance by exception to the PPB on a monthly basis.</li> <li>7. To provide effective support in the identification and mitigation of SYB Pathology risks and issues.</li> <li>8. To take action to ensure the Trusts compliance with the principles of this Agreement including tenders, investment and recruitment decisions.</li> <li>9. To provide leadership in driving a collaborative culture across the Partnership.</li> <li>10. To provide oversight and direction to working teams.</li> <li>11. To provide oversight to the recruitment of posts.</li> <li>12. To provide support to the Host finance and business teams to enable a common pricing strategy which can be implemented across the Partnership.</li> <li>13. To monitor activity and income of all external contracts.</li> <li>14. To ensure appropriate communication and engagement with stakeholders across the Integrated Care System, acting as points of contact for local teams and services.</li> <li>15. To recommend SYB Pathology communication to the PPB and support engagement plans at both system and local level.</li> <li>16. To ensure that organisational, professional or personal, conflicts of interest are effectively managed in an open and constructive way.</li> <li>17. To ensure appropriate governance and management arrangements are in place.</li> <li>18. To undertake any other duties required of it by the PPB and Trust Boards.</li> </ol> |
| <p><b>SERVICED BY:</b></p>  | <p>SYB Pathology Manager</p>   |

|                               |  |
|-------------------------------|--|
| <b>FREQUENCY OF MEETINGS:</b> | Monthly  |
| <b>REQUIRED ATTENDANCE:</b>   | <p>It is expected that, as a minimum, two members of the SYB Senior Management Team (CD, SD or OD) will be in attendance.</p> <p>It is expected that the Clinical Lead and / or Laboratory Manager from each Pathology Discipline (Automated Blood Sciences, Specialist Blood Sciences, Histology, Microbiology) will attend each meeting such that all partner sites are adequately represented.</p> <p>Senior nominated deputies may represent Disciplines and Sites where necessary.</p>  |
| <b>QUORACY:</b>               | <p>Meetings will be quorate based on attendance of representatives from three out of the four Pathology Disciplines (Automated Blood Sciences, Specialist Blood Sciences, Histology, Microbiology) with adequate representation of 3 out of the 5 partner Trusts.</p> <p>Recommendations will be shared with any discipline and Trust not present within a week of the meeting to enable feedback, from that Trust.</p> <p>Where a unanimous agreement cannot be reached the proposal will be discussed via email and at the next meeting.</p> |
| <b>MINUTES CIRCULATED TO:</b> | <p>Pathology Partnership Board<br/>Other Groups as required<br/>Minutes to be communicated to all SYB Pathology staff via agreed communication channels.</p>   |
| <b>REVIEW DATE:</b>           | April 2023   |
| <b>DATE APPROVED:</b>         |  |

**SCHEDULE 2**

**Terms of Reference and Trust Delegations**

**Part 3**

**Trust Delegations**

Trust Boards will not delegate their statutory responsibilities to the SYB Pathology Partnership Board.

Any proposed changes to this Agreement must be approved by all Trust Boards in writing.

Any proposed changes to Terms of Reference must be approved by all Trust Boards in writing.

Pathology Board Reserved Matters are any changes to the agreed Target Operating Model and Workforce Models which must be approved by the Trust Boards with consideration by the Acute Federation Collaborative.

Reserved Matters as at the Commencement Date include:

- Changes to the Partnership Agreement
- Changes to the Target Operating Model
- Financial decisions in line with Host SFIs
- Changes to the Workforce Model

### SCHEDULE 3

#### Procurement Resources and Project Delivery Cost

All procurements undertaken in accordance with this Agreement will be in accordance with:

- procurement legislation;
- the Partnership Host Standing Financial Instructions, Standing Orders and Procurement Policy; and
- the Pathology Network Outline Business Case ('OBC') and when agreed, the Full Business Case ('FBC');

Any procurement requiring competition, not included in the Pathology Network OBC or FBC, may be recommended by the SYB Pathology Operational Management Team and approved by the SYB Pathology Partnership Board.

#### **A) Procurement Process – General Compliance**

In order for the Partnership Host to carry out the Procurement Processes on behalf of the Partnership that are both, compliant with the relevant legislative framework and minimise the risk of a challenge being brought, the below process will be adhered to (in accordance with the relevant Host decision making process, for each Procurement Process);

The SYB Operational Management Team will:

- Establish a Procurement Decision Making Group. For larger projects this will require a project board with a representative from each Trust;
- Establish a Pathology Project Lead/Manager;
- Establish a lead for the development of the OBC and FBC (if required);
- Agree the overall timetable of the procurement;
- Agree the procurement route and put the recommendation forward to the Procurement Decision Making Group;
- Draft the tender documentation;
- Agree the contract award criteria (this will include adherence to the evaluation guidance as provided and directed by STHFT as the Partnership Host) and make a recommendation to the Procurement Decision Making Group;
- Carry out the commitments in the OBC and FBC;
- Provide support to the team leading the Procurement Process on their behalf;
- Make contract recommendations to the Procurement Decision Making Group and where required the SYB Pathology Partnership Board; and
- Approve the Regulation 84 Procurement Report.

The Partnership Host will, in conjunction with the SYB Pathology Operational Management Team, provide advice via the SYB Pathology Partnership Board to ensure all Trusts, as a collective group, mitigate the risk of non-compliance and supplier challenge. Any deviation from the advice may compromise the process, therefore all Trusts must raise any potential issues including potential conflicts of interest to the SYB Pathology Partnership Board and the SYB Pathology Operational Management Team as soon as they are aware of the issues or conflicts.

#### **B) Contract Award and Contract Management**

The Partnership Host will enter into all the contracts with the supplier on behalf of the Trusts.



The Partnership Host will be responsible for the contract management of all contracts with the supplier awarded on behalf of the Partnership.

**C) Finances**

The Partnership Host will deal with the financial elements of the contracts following contract award and costs will be recovered from the Trusts via a routine monthly/quarterly recharge (TBC). The authorised 'risk and gain share' document will be used as the default principle for distributing costs and income between the Trusts. Costs will be signed off by the SYB Pathology Partnership Board and will reflect the values in each Outline Business Case.

Where any procurements exceed the scope of this Agreement, these would be considered on an individual basis. When the Target Operating Model is reached, Trusts will be recharged on an equalised cost per unit basis. Unit costs will include the costs of any procurement.

**D) Slippage and Delays**

The project timelines will be managed by the SYB Pathology Operational Management Team and any delays that have a financial impact will be reported to the Pathology Partnership Board. Any delays that cause a financial risk to a Trust(s) will be shared proportionally between all Trusts in accordance with the agreed risk and gain share arrangement.

## SCHEDULE 4

### Hosting Obligations and Hosting Standards

#### Part 1

#### 1. GENERAL OBLIGATIONS

- 1.1 The Partnership Host shall:
- 1.1.1 comply with Schedule 7 (TUPE), employ the staff of the Partnership in accordance with Schedule 4 Part 2) (Hosting Standards) and ensure there are no compulsory redundancies;
  - 1.1.2 in all matters regarding legal personality act on behalf of the Partnership, including, without limitation, entering into all contracts, agreements and arrangements (including each Contract) in relation to the Partnership;
  - 1.1.3 be responsible for all regulatory matters including:
    - registration with the Care Quality Commission (or its successor body);
    - registration with the Medicines and Healthcare products Regulatory Agency (or its successor body);
    - registration with the Human Tissue Authority and registration with the Clinical Pathology Accreditation UK Limited;
    - meeting the requirements of NHS Improvement and any relevant Clinical Commissioning Groups and any other commissioning organisations;
    - and
    - any relevant UKAS accreditation;
  - 1.1.4 set up separate accounting records in relation to the Partnership including maintaining accurate and complete statements and records of all transactions in relation to the Partnership;
  - 1.1.5 prepare financial reports and accounts for the Partnership records for each year in accordance with the requirements of all Applicable Laws and generally accepted accounting practices applicable in the United Kingdom in relation to this Agreement;
  - 1.1.6 supply each Trust with the financial and other information necessary to keep the party informed about how effectively the business of the Partnership is performing and in particular shall supply each Partner with:
    - (a) a copy of each year's Business Plan for approval in accordance with Clause 8.9;monthly income and expenditure accounts of the Partnership to be supplied within fifteen (15) Working Days of the end of the Month to which they relate (the first Working Day being the first Working Day of the following month) and the accounts shall include activity report, a surplus and loss account, a balance sheet and a cashflow statement;
  - 1.1.7 promptly notify the SYB Pathology Partnership Board and the SYB Pathology Operational Management Team of any liabilities which it considers it is entitled

to seek indemnity protection or reimbursement from the other Trusts under this Agreement such notice to include:

(a) the quantum and nature of such liability;

details of the circumstances causing such liability;

any steps it has taken to minimise such liability (to the extent that such steps are appropriate) acknowledging the Partnership Host acts in accordance with the terms of this Agreement and the decisions of the SYB Pathology Partnership Board and the SYB Pathology Operational Management Team; and

other details regarding the liability, including details of any litigation;

1.1.8 operate the Partnership as the legal host on behalf of the Trusts in accordance with the decisions of and directions of the SYB Pathology Partnership Board and the SYB Pathology Operational Management Team;

1.1.9 must put into place and maintain in force appropriate insurance (or membership of an NHS Resolution risk sharing scheme) in respect of:

(a) employers liability;

clinical negligence, where the provision or non-provision of any part of the Services to be provided from time to time pursuant to the relevant Contract may result in a clinical negligence claim;

public liability; and

professional negligence; and

1.1.10 on a Trust's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance; and

1.1.11 perform the Hosting Obligations to the Hosting Standards (as applicable).

## **2. CONTRACT MANAGEMENT**

2.1 The Partnership Host shall be responsible for managing each Contract under the terms of the relevant Contract.

2.2 [The Partnership Host has appointed a Contract Manager who will act as the representative of the Partnership in connection with each Contract. The role description of the Contract Manager will be agreed between the Trusts through the SYB Pathology Partnership Board. The Contract Manager will, notwithstanding that he/she is employed by the Partnership Host, be expected to act equally in the best interests of all of the Trusts and in accordance with their joint instructions through the SYB Pathology Partnership Board and the SYB Pathology Operational Management Team. Where any Trust has concerns that the Contract Manager is not acting in their best interests the matter shall be referred to the dispute resolution procedure.]

**SCHEDULE 4**

**Hosting Obligations and Hosting Standards**

**Part 2**

**Hosting Standards**

**1. HOSTING STANDARDS**

- 1.1 In its performance of the Hosting Obligations, the Partnership Host shall:
- 1.1.1 comply with all instructions of the SYB Pathology Partnership Board and the SYB Pathology Operational Management Team in relation to the Partnership Business;
  - 1.1.2 perform the Hosting Obligations with the best care, skill and diligence in accordance with best practice in the supplier's industry, profession or trade;
  - 1.1.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Hosting Obligations are fulfilled in accordance with this Agreement;
  - 1.1.4 ensure that the Hosting Obligations conform with all descriptions and specifications set out in any reasonable written specification provided by the SYB Pathology Partnership Board or the SYB Pathology Operational Management Team;
  - 1.1.5 provide all equipment, tools and vehicles and such other items as are required to perform the relevant Hosting Obligations;
  - 1.1.6 use the best value goods, materials, standards and techniques, and ensure that all goods and materials supplied and used will be free from defects in workmanship, installation and design;
  - 1.1.7 obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations, in respect of the Hosting Obligations;
  - 1.1.8 observe all health and safety rules and regulations and any other security requirements that apply at any of the premises from which the Pathology Services or the Hosting Obligations are provided; and
  - 1.1.9 not do or omit to do anything which may cause any Trust to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business.

**SCHEDULE 4**

**Hosting Obligations and Hosting Standards**

**Part 3**

**Contract and Costs Management**

**Risk and Gain Share**

In February 2020 the Risk and Gain Share financial principles were agreed by the Finance Work Group for inclusion in the OBC and Partnership Agreement in support of a 'Fair Share Partnership' arrangement for SYB Pathology. The Finance Work Group considered options using both the costs and activity of the current Pathology services within SYB based on the NHSI returns collated by the Programme Team.

Consensus was reached that cost information, following agreed adjustments (baseline costs), should be used to accurately reflect the current level of Investment by each Trust in Pathology services and this was approved by SYB Directors of Finance at their meeting on 22<sup>nd</sup> April 2021.

In debating the Risk and Gain Share proposals it was noted that using the current cost methodology could penalise organisations that have been the most effective in implementing efficiency initiatives as the cost base would be lower, however this is negated by the opportunity to share in any future savings by joining a consolidated pathology network. Agreed percentages will be used to distribute savings / surplus income within the Partnership as a consequence of implementing the Full Business Case.

**Risk and Gain Share Proposals which reflect the existing investment in Pathology Services (19/20)**

|                                   | <b>BRILS</b>   | <b>DBTH</b>    | <b>SCH</b>    | <b>STH</b>     |
|-----------------------------------|----------------|----------------|---------------|----------------|
| <b>Baseline cost for OBC (£m)</b> | <b>£17,052</b> | <b>£12,997</b> | <b>£4,912</b> | <b>£37,476</b> |
| <b>% Share</b>                    | <b>24.0</b>    | <b>17.8</b>    | <b>6.8</b>    | <b>51.4</b>    |

- Note the above percentage values have been rounded.
- The current BRILS agreement between BHFT and TRHFT is a 50:50 split

All future investments / service improvements following the establishment of SYB Pathology will be considered on an 'individual basis' based on the merits of the proposal.

**SCHEDULE 5**

**Target Operating Model**

**Recommended SYB Pathology TOM - August 2021**

| Hospital Site                         | Type of Lab                                   | Range of Services   |
|---------------------------------------|---|---|
| Northern General Hospital, Sheffield  | CSL for Blood Sciences and Microbiology<br>Sp | Main automated lab for Blood Sciences<br>Specialist centre for Blood Sciences<br>All Immunology<br>Main 24/7 lab for Microbiology<br>Specialist centre for Microbiology<br>All Virology<br>Frozen sections<br>Andrology<br>POCT |
| Royal Hallamshire Hospital, Sheffield | ESL *<br>Sp<br><br>**                         | ESL for Blood Sciences<br>Specialist centre for Haematology and Coagulation<br>Specialist centre or Gestational Trophoblastic Disease<br>Frozen sections<br>POCT  |
| Sheffield Children's                  | ESL *<br>Sp<br>Paediatric PM<br><br>**        | ESL for Blood Sciences<br>Specialist centre for paediatric biochemistry<br>Paediatric PM<br>Frozen sections<br>Brain smears<br>POCT   |
| Doncaster Royal Infirmary             | Ext ESL<br>Mini CSL                           | Extended ESL for Blood Sciences<br>Secondary lab for Microbiology (not 24/7)<br>Frozen sections<br>Andrology<br>POCT  |
| Rotherham Hospital                    | ESL   | ESL for Blood Sciences<br>Frozen sections<br>Andrology<br>POCT  |
| Barnsley Hospital                     | ESL   | ESL for blood sciences<br>POCT  |
| Bassetlaw Hospital                    | ESL   | ESL for Blood Sciences<br>POCT  |
| Chesterfield Royal Infirmary          |   | Frozen sections   |

\* A quality impact assessment is being completed to understand whether, to meet all of the critical Requirements, an ESL is required at both the RHH and SCH sites.

\*\* Two sites (Royal Hallamshire Hospital and Sheffield Children's) are being evaluated for the site of a single Histopathology CSL.

Key:

|          |   |
|----------|---|
| CSL      | Central Service Laboratory  |
| ESL      | Essential Service Laboratory  |
| EESL     | Extended Essential Service Laboratory undertaking a wider repertoire of automated tests than an ESL (but on ESL equipment) and/or a proportion of primary care work |
| Mini CSL | Ext ESL for Blood Sciences plus a secondary Microbiology Laboratory   |
| Sp       | Specialist Centre   |

**SCHEDULE 6**  
**Assets and Equipment**

**Part 1**  
**Transferring Assets and Equipment**

**Current Assets (primarily stocks)**

Non-host stocks to be sold to the host Trust at cost.

**Fixed Assets**

Non-host Trust laboratory buildings, plant, and non-clinical equipment that are still to be used as part of the SYB Pathology operational model will be retained by the non-host Trusts and a charge made to the host Trust.

Clinical equipment acquired through existing Managed Service Contracts (MSC) will be novated into the single SYB MSC where appropriate.

It is anticipated that Pathology clinical equipment assets will transfer to the balance sheet of the Host Organisation as they will be deemed to be in control of these assets. Donated Assets will be subject to individual agreement.

New/replacement assets will be subject to an agreed business case process as defined by the Partnership Agreement; this will be aligned with the host Trust's policies and processes.

**Trust Asset Lists**

Trust asset lists are attached. These lists are accurate as of 1<sup>st</sup> Jan 2022 but are subject to continual review and update.



**SCHEDULE 6**

**Assets and Equipment**

**Part 2**

**Retained Assets and Equipment**

Details of any assets and equipment that will not transfer to the Partnership Host but will be made available by the Trusts for use by the Partnership Host are to be inserted once finalised and confirmed. This should also include details of any charges for making such assets and equipment available as required.

## SCHEDULE 7

### Transferring Partnership Employees

#### Part 1

#### 1. INTERPRETATION

1.1 The definitions in this paragraph apply in this Schedule.

**Directive:** the Council of the European Union Directive 2001/23/EC;

**Employee Liability Information:** the employee liability information to be provided pursuant to regulation 11 of the Transfer Regulations;

**Losses:** all losses, claims, actions, costs, liabilities, damages or expenses, (including all reasonable legal and professional costs and expenses), proceedings, demands and charges whether arising under statute, contract or at common law but excluding loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature but excluding any of the same that relate to loss of revenue;

**Resource Transfer Date** means the date the Partnership Host takes responsibility for the provision of the Services or any part of the Services and the resources relating to the Services or any part of the Services are transferred to it by a Trust.

**Redundancy Costs** means notice pay (including any payment in lieu of notice), redundancy payments payable on termination of employment pursuant to any arrangement (including voluntary redundancy) whether contractual or statutory, any entitlement to early benefits on redundancy or early retirement benefits pursuant to the employee's terms and conditions of employment, any increased employment costs arising due to the application of a relevant pay protection policy and any employer national insurance liabilities associated with such payments and costs;

**Relevant Transfer:** a relevant transfer for purposes of the Transfer Regulations;

**Services:** means the Pathology Services as defined in Schedule 1

**Transferring Employees:** the persons employed by BHFT, DBTHFT, TRTF, SCFT (or a supplier or sub-contractor of the same) who are wholly or mainly engaged in the activities of the Services immediately before the Resource Transfer Date.

**Transferor Trusts** means BHFT, DBTHFT, TRTF, and/ or SCFT, as the context determines;

**Transfer Regulations:** the Transfer of Undertakings (Protection of Employment) Regulations 2006.

#### 2. RELEVANT TRANSFERS

2.1 The parties anticipate that the transfer of the Services to the Partnership Host will constitute a Relevant Transfer and that the contracts of employment (together with any collective agreements) of the Transferring Employees shall have effect (subject to Regulation 4(7) of the Transfer Regulations) thereafter as if originally made between the Transferring Employees and the Partnership Host except insofar as such contracts relate to any benefits for old age, invalidity or survivors under any occupational pension scheme (save as required under sections 257 and 258 of the Pensions Act 2004), however staff who are eligible to participate in, or who immediately before such Relevant Transfer are participating in, the NHS Pension Scheme shall continue to be provided with access or continued membership in the NHS Pension Scheme. On the occasion of a Relevant Transfer to any sub-contractor or supplier the Partnership Host shall procure that the former and any new sub-contractor or supplier shall comply with their obligations under the Transfer Regulations and with the provisions of Fair Deal for staff pensions: staff transfer from central government (October 2013).

### 3. EMPLOYEE LIABILITY INFORMATION AND MEASURES

- 3.1 Each Transferor Trust shall promptly respond to any reasonable requests from the Partnership Host for information about the workforce and working arrangements for purposes of determining the number and job titles of the individuals assigned to the Services for purposes of the Transfer Regulations and details of all unfilled vacancies in the Services and details of all roles currently filled by agency or bank staff working in the Services.
- 3.2 Each Transferor Trust has supplied to the Partnership Host the Employee Liability Information as at the date of this Agreement, which is contained in Part 2 of this Schedule 7, relating to each of those employees of the respective Transferor Trust who it is expected, if they remain in the employment of the relevant Transferor Trust or its sub-contractor or supplier until immediately before the Resource Transfer Date, would be Transferring Employees.
- 3.3 Each Transferor Trust warrants that the information it has supplied is accurate and complete. Each Transferor Trust shall severally indemnify and keep indemnified the Partnership Host in respect of any Losses:
- 3.3.1 which the Partnership Host incurs and which are reasonably attributable to a breach of this warranty, including but not limited to where the incompleteness or inaccuracies in such information resulted in the Partnership Host agreeing a lower fee or payment from the Transferor Trusts under this Agreement; and
  - 3.3.2 arising from any claim by any party as a result of the Transferor Trust (or sub-contractor or supplier) failing to provide or promptly provide the Partnership Host where requested by the Partnership Host, the Employee Liability Information or to provide full Employee Liability Information or as a result of any material inaccuracy in, or omission, from the Employee Liability Information.
- 3.4 Without prejudice to their obligations under this Schedule, the Transferor Trusts will provide the Employee Liability Information to the Partnership Host at such time or times as are required by the Transfer Regulations and update the Employee Liability Information to take account of any changes as required by the Transfer Regulations.
- 3.5 The parties agree to take all reasonable steps, including co-operation with reasonable requests for information to ensure that the Relevant Transfer takes place smoothly with the least possible disruption to the Services and to the Transferring Employees.
- 3.6 The Partnership Host shall immediately and in any event within five (5) Working Days following a written request by a Transferor Trust, provide to the relevant Transferor Trust details of any measures which the Partnership Host or any sub-contractor or supplier envisages it or they will take in relation to any Transferring Employees who are or who will be the subject of a Relevant Transfer, and if there are no measures, confirmation of that fact.

### 4. INDEMNITIES

- 4.1 The Transferor Trusts shall severally indemnify and keep indemnified in full the Partnership Host against all Losses incurred by the Partnership Host in connection with or as a result of any claim or demand by (i) a Transferring Employee of the Transferor Trust or by (ii) any trade union or staff association or employee representative in respect of all or any of the Transferring Employees, in either case that arises out of the employment or termination of the employment of any Transferring Employee of the Transferor Trust or its sub-contractor or supplier, provided that this arises from any act, fault or omission of the relevant Transferor Trust or its sub-contractor or supplier in relation to such employee prior to the Resource Transfer Date.
- 4.2 The Transferor Trusts shall remain (and procure that any sub-contractor or supplier shall remain) responsible for all their (or as relevant, sub-contractor's or supplier's) employees (other than the Transferring Employees) on or after the Resource Transfer Date and shall severally indemnify and keep indemnified the Partnership Host against all Losses incurred by the Partnership Host resulting from any

allegation or claim whatsoever, whether arising before on or after the Resource Transfer Date by or on behalf of any of the relevant Transferor Trust's employees or sub-contractor's or supplier's employees or persons engaged by the Transferor Trust or its sub-contractor or supplier who do not constitute the Transferring Employees.

- 4.3 Where any liability in relation to any of the Transferring Employees or former employee of the Transferor Trust or its sub-contractor or supplier in respect of their employment or its termination by the relevant Transferor Trust or its sub-contractor or supplier which transfers in accordance with the Transfer Regulations arises partly as a result of an act or omission occurring before the Resource Transfer Date and partly as a result of an act or omission occurring after the Resource Transfer Date, the relevant Transferor Trust shall severally indemnify and keep indemnified in full the Partnership Host against only such part of the Losses sustained by the Partnership Host as is reasonably attributable to an act fault or omission of the relevant Transferor Trust or its sub-contractor or supplier prior to the Resource Transfer Date.
- 4.4 The indemnities contained in paragraphs 4.1 shall apply as if references in that paragraph to any act, fault or omission of the Transferor Trust also included a reference to a sub-contractor or supplier employer of any Transferring Employee prior to the Resource Transfer Date.
- 4.5 The Partnership Host shall indemnify and keep indemnified in full the Transferor Trusts against:
- 4.5.1 all Losses incurred by a Transferor Trust in connection with or as a result of any claim or demand against a Transferor Trust by (i) any person who is, or has been, employed or engaged by the Partnership Host or any sub-contractor or supplier in connection with the provision of the Services or (ii) any trade union or staff association or employee representative in respect of such person, in either case where such claim arises as a result of any act, fault or omission of the Partnership Host or any sub-contractor or supplier on or after the Resource Transfer Date;
- 4.5.2 all Losses incurred by the Transferor Trusts in connection with, or as a result of, any claim by any employee, trade union or staff association or employee representative (whether or not recognised by the Partnership Host or any relevant sub-contractor or supplier in respect of all or any of the Transferring Employees) arising from, or connected with any failure by the Partnership Host and/or any sub-contractor or supplier to comply with any legal obligation to such trade union, staff association or other employee representative whether under Regulation 13 of the Transfer Regulations, under the Directive or otherwise and, whether any such claim arises or has its origin before on or after the Resource Transfer Date.
- 4.6 The Trusts agree to jointly and severally indemnify each other against all Losses incurred by the Transferor Trusts in connection with or as a result of:
- 4.6.1 any claim by any Transferring Employee that any proposed or actual substantial change by the Partnership Host to the Transferring Employees' working conditions, or any proposed measures of the Partnership Host or any relevant sub-contractor or supplier are to that employee's material detriment or to the material detriment of any person who would have been a Transferring Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of the Transfer Regulations) whether such claim arises before on or after the Resource Transfer Date; and
- 4.6.2 any claim arising out of any misrepresentation or mis-statement made by the Partnership Host or any sub-contractor or supplier (except where the Partnership Host is negligent) to the Transferring Employees or their representatives whether before, on or after the Resource Transfer Date and whether liability for any such claim arises before on or after the Resource Transfer Date.

## **5. PAY AND BENEFITS (INCLUDING REDUNDANCY PAY)**

- 5.1 Each Trust shall and shall procure that its sub-contractor or supplier shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of its Transferring Employees, including

without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions, statutory redundancy payments, contractual redundancy payments, payments on early retirement and otherwise, prior to the Resource Transfer Date.

5.2 The Partnership Host shall be responsible or shall procure that any relevant sub-contractor or supplier is responsible, for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees and any other person who is or will be employed or engaged by the Partnership Host or any sub-contractor or supplier in connection with the provision of the Services, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions, payments on early retirement and otherwise, on or after the Resource Transfer Date.

5.3 The Trusts agree to jointly and severally indemnify the Partnership Host for any and all Redundancy Costs arising from a redundancy of any Transferring Employee on or after the Resource Transfer Date. For the avoidance of doubt, each Trust including the Partnership Host will pay an equal share of the Redundancy Costs. No redundancies will be made without the agreement of the SYB Pathology Partnership Board.

## **6. OFFER OF EMPLOYMENT TO OBJECTING EMPLOYEES**

6.1 If any Transferring Employee objects to the transfer, the Trusts will take all necessary steps to offer employment to such employees and will seek to preserve continuity of employment. The Transferor Trust which employs the relevant Transferring Employee will take primary responsibility for searching for alternative employment, however, all Trusts must cooperate to search for employment and offer employment on the same terms as the relevant Transferring Employee was afforded immediately prior to the Resource Transfer Date.

## **7. CLAIMS AND GRIEVANCES**

7.1 The Trusts agree to take all reasonable steps to conclude internal grievance, disciplinary and appeal processes prior to the Resource Transfer Date.

7.2 In the event that any of the Transferring Employees bring or raise claims, grievances or appeals on or after the Resource Transfer Date that relate in whole or in part to their employment prior to the Resource Transfer Date, the Trusts agree to cooperate with the Partnership Host and to promptly comply with all reasonable requests for information and to afford the Partnership Host access to any of their employees who may be relevant witnesses in order to assist the Partnership Host in defending, responding to and investigating any such claims, grievances or appeals.

## **8. RECRUITMENT**

8.1 Between the date of this Agreement and transfer of the Services under TUPE the Trusts agree:

8.1.1 not to appoint to any existing vacancy within the Services without the agreement of the SYB Pathology Partnership Board;

8.1.2 not to advertise any new vacancy within the Services without the agreement of the SYB Pathology Partnership Board; and

8.1.3 to undertake all approved recruitment to the Services in accordance with the SYB Pathology Workforce Group vacancy control procedure.

## **9. EXIT ARRANGEMENTS**

9.1 In the event of a change of Partnership Host, termination of the Partnership, or any other event giving rise to a subsequent transfer under TUPE, the Trusts will agree exit terms and arrangements via the SYB Pathology Partnership Board at least two months in advance of the subsequent transfer of the Services (or as soon as reasonably practicable where two months is not possible).



**Part 2**

**Employee Liability Information**

Each Transferor Trust will supply the Partnership Host the Employee Liability Information as soon as finalised and confirmed. This is Information relating to each of those employees of the respective Transferor Trust who it is expected, if they remain in the employment of the relevant Transferor Trust or its sub-contractor or supplier until immediately before the Resource Transfer Date, would be Transferring Employees.

**SIGNATURE PAGE**

SIGNED by ..... (Signature)

(Role) .....

for and on behalf of ..... (Date)

**Barnsley Hospital NHS Foundation Trust**

SIGNED by ..... (Signature)

(Role) .....

for and on behalf of ..... (Date)

**Doncaster and Bassetlaw Teaching Hospitals NHS Foundation Trust**

SIGNED by ..... (Signature)

(Role) .....

for and on behalf of ..... (Date)

**The Rotherham NHS Foundation Trust**

SIGNED by ..... (Signature)

(Role) .....

for and on behalf of ..... (Date)

**Sheffield Children's NHS Foundation Trust**



SIGNED by .....  
.....  
*(Signature)*

(Role) .....  
.....

for and on behalf of  
**Sheffield Teaching Hospitals NHS Foundation Trust**  
*(Date)*

## SHEFFIELD TEACHING HOSPITALS NHS FOUNDATION TRUST

### REVIEW OF SYB PATHOLOGY PARTNERSHIP AGREEMENT FOR PROVISION OF CONSOLIDATED PATHOLOGY SERVICES

#### Background and scope of our review

1. The purpose of this report is to highlight any potential significant contractual and legal risks for Sheffield Teaching Hospitals NHS Foundation Trust (**STH**) arising from the proposed agreement (the **Partnership Agreement**) with Barnsley Hospital NHS Foundation Trust, Doncaster and Bassetlaw Teaching Hospitals NHS Foundation Trust, The Rotherham NHS Foundation Trust, and Sheffield Children's NHS Foundation Trust (each a **Partner** and together, the **Partners**) in relation to the South Yorkshire and Bassetlaw Pathology Partnership. In this review, the term **Trusts** is used to refer to all of the Partners and STH together.
2. We understand that, as part of wider plans to improve coordinated patient care under the South Yorkshire and Bassetlaw Integrated Care System, STH and the Partners have agreed to enter into the Partnership Agreement to govern the commercial, contractual, and financial arrangements in relation to the South Yorkshire and Bassetlaw Pathology Partnership. It has been agreed that STH will act as the Host Trust for the purposes of the Partnership, and will enter into contracts with third parties on behalf of STH and the Partners accordingly.
3. DAC Beachcroft has been instructed jointly by STH and the Partners to prepare the Partnership Agreement, but due to its unique risk position as Host Trust, STH has instructed us to conduct a secondary review of the Agreement from the perspective of STH. We have not been party to any discussions between the Trusts around the content of the Partnership Agreement and how particular risks are to be apportioned, but have been provided with some background as to the position of STH. This review does not provide a commentary on granular risks posed by each clause in the Partnership Agreement, but provides a review for STH on thematic issues that STH may wish to discuss and resolve with the Partners.
4. We have not been instructed to make any amendments to the Partnership Agreement, and our review is limited to advice on risks and potential liabilities raised within version 13 of the draft Partnership Agreement only. We understand that the draft Partnership Agreement is in its final stages of negotiation and we have taken this into account when conducting this review. The scope of our review does not include advice on any taxation issues in the documentation, and does not include any advice on specific TUPE and/or pensions issues. This review is prepared solely for the attention of STH and is not intended to be relied upon by any third party, including any of the Partners.

#### Summary review

5. In summary, our initial advice is that the Partnership Agreement is generally well balanced and fit for purpose. Ultimately, the governance and dispute resolution processes will be key to the mitigation of any risks posed. There are some clauses where the Partnership Agreement would benefit from greater clarity and there is scope for some of the drafting to be refined to reduce these uncertainties. Other areas appear to still be work in progress and the Trusts have provisions and policies still to agree, which represent a technical risk due to their unknown nature. The Partnership Agreement does contain some key protections for STH and in general appears to be governed by a principle of unanimous voting which would allow STH to block any decisions that could otherwise prejudice it. The key risks for STH presented in the Partnership Agreement include the financial risk of liability for costs that cannot be recovered from the Partners, the increased commitments as Partnership Host (and the consequential increased risk of being held in breach by the Partners), and the potential inability if you elect to leave the Partnership Agreement once it commences (though this is a risk shared with all of the Partners).

6. If you have any queries on this review or on the Agreement, please contact Esther Venning ([esther.venning@hilldickinson.com](mailto:esther.venning@hilldickinson.com)) or David Baines ([david.baines@hilldickinson.com](mailto:david.baines@hilldickinson.com)).

### Structure of the Report

1. Definitions used in this report are those used in the Agreement.
2. We have divided our findings into three categories as follows:

| Category | Description   | Action  |
|----------|---|---|
|          | Matters of high importance that require your immediate attention                                    | These matters are of greatest concern – for clarification and/or negotiation and amendment with the Partners.   |
|          | Matters of medium importance that should be addressed   | These matters will need to be discussed internally to determine whether to escalate internally or whether additional information is required from DAC Beachcroft and/or the Partners. |
|          | Matters that do not currently require your attention but are of note or could otherwise be improved | Points to note, minor contract clarifications, or areas where the parties appear to be in agreement but this is not fully reflected in the drafting.                                  |

### Substantive Report

| Comment Number | Topic                            | Issue  | Recommendation  | Category | Treatment in revised draft                       |
|----------------|----------------------------------|--|---|----------|--|
| 1.             | General risk as Partnership Host | We understand that the Partnership Agreement has been drafted under joint instruction by the Trusts and is intended to provide a balanced and fair position for all Trusts. Generally speaking, the Partnership Agreement appears to follow this intention.<br><br>As Partnership Host, STH carries the burden of most obligations under the | This is a general point of note for STH which bears consideration in regard to the Partnership Agreement. Each of the risks highlighted in this report should be read as including this general risk.<br><br>Primarily, this is for STH to note, as even with a balanced agreement it is a risk integral to the role of the |          | Proposed that this is accepted as a general risk |

|    |                           |   |   |  |  |
|----|---------------------------|---|---|--|--|
|    |                           | <p>Partnership Agreement as you would expect. This means that STH is at risk of being more adversely affected by neutral provisions that the other Partners because STH has a greater risk profile/risk exposure than the other Partners. STH is the party at greatest risk of committing a material breach, for example, simply because there are more provisions for the Partnership Host to comply with/breach.</p> <p>Mechanisms are in place to mitigate these risks such as at clauses 5.3 and 11.2, and the use of Partnership Host Policies (see comment 3).</p>                    | Partnership Host that cannot be completely removed.   |  |  |
| 2. | General drafting language | <p>There are a few places in the Partnership Agreement where an obligation is imposed on one or more of the Trusts and the burden is quite high, or the timescale for compliance is specified as "immediately" or otherwise allows only a short time frame. Examples include clauses 16.2, 17.2 and under Schedule 8.</p> <p>To the extent these timescales are dictated by relevant legislation it is appropriate that they remain, but in other areas they impose an unnecessarily high burden on the party complying (which is likely to be STH more often than the other Partners).</p> | <p>We recommend that, for the benefit of all Trusts, obligations with impractical thresholds or timescales such as "immediately" are softened to terms such as "promptly" or "as soon as reasonably practicable" to allow for the practicalities within the Trusts.</p> <p>This change would benefit STH the most due to the increased obligations on it as Partnership Host.</p> |  | This has been discussed and considered with DACB; but is generally viewed as being helpful or standard drafting, and therefore not changed |
| 3. | Term, expiry and exit     | Under clause 3, the Partnership Agreement is set to run for the duration of each Contract entered into by STH unless  | To the extent this is intended, there is no issue – and there is merit in a situation like this to keeping the parties  |  | Propose to accept this point – i.e., that this Agreement indicates the   |

|    |                      |   |  |  |   |
|----|----------------------|---|--|--|---|
|    |                      | <p>terminated earlier. The Partnership Agreement will then automatically expire unless the Trusts agree to extend it.</p> <p>Under clause 12, neither STH nor any of the Partners has a right to withdraw from the Partnership Agreement, and termination is limited to circumstances for cause e.g., material breach or a dispute that cannot be resolved.</p> <p>This flexible term combined with the lock-in effect created by the lack of termination rights gives STH protection that it covers the duration of its commitments under the Contracts, but it also means that it appears neither STH nor the Partners will be able to leave the Partnership Agreement voluntarily once it commences.</p> | <p>bound together for the duration so that one party does not exit early at the first sign of an issue.</p> <p>However, STH should review and confirm that it is satisfied with the proposal.</p> <p>It may also be beneficial for the Trusts to clarify that the term will only expire after the expiry of the last surviving Contract, which appears to be intended but not fully reflected in the drafting.</p>                       |  | <p>future model of delivery, to which all partners are fully committed; without a plan to 'undo' these changes</p>  |
| 4. | Partnership Policies | <p>The Partnership Agreement provides that Partnership Policies will be agreed by the Trusts within 12 months of the Commencement Date.</p> <p>This is a practical solution to pressing timescales, but the agreement to agree these documents in future raises the risk of issues arising once the Partnership Agreement has already engaged.</p> <p>As STH is the Partnership Host, it is potentially at greater risk of as-yet-unknown obligations than the Partners. However, this risk is mitigated considerably due to the fact that the Partnership Policies may not contradict or</p>   | <p>The Partnership Host Policies should be listed/populated with the relevant STH policies that it wants to include. This mechanism is important as it allows STH to set a firm benchmark for the Partnership Policies that are still to be agreed.</p> <p>The definition of Partnership Host Policies should also be updated to clarify that the Policies may change from time to time, as per the intention set out in clause 8.6.</p> |  | <p>The reference to "in place from time to time" is included now at the definition of Partnership Host Policies; clause 4.4 now references twelve months.</p> |

|    |                                    |  |   |  |   |
|----|------------------------------------|--|---|--|---|
|    |                                    | replace the Partnership Host Policies (per clause 8.7).  | In addition, Clause 4.4 should be updated to align to the new 12-month time frame under clause 8.7.   |  |   |
| 5. | Payment of costs and reimbursement | <p>Clauses 5 and 7 provide details on the financial arrangements between the Trusts. Primarily, they provide that the detailed arrangements for calculation and payment will be set out in Schedules 3 and 4. Each of the Trusts commits to funding its share according to these provisions (and generally according to the Risk and Gain Share). Clause 10.1.2 also provides for a default payment term, but this is not fully linked into the preceding provisions. Clause 12 provides for further mop-up provisions regarding costs on the expiry of the Partnership Agreement which may conflict.</p> <p>However (with the potential exception of liabilities/defaults), the reimbursement of STH is limited to the defined terms "Contract Costs" and "Project Delivery Costs". Any other costs will be borne by the party that incurs them, unless otherwise agreed in writing by all Trusts.</p> <p>This means that, where any costs do not get caught by these definitions, they will not be caught by the Risk and Gain Share provisions.</p> <p>At present, the provisions of Schedules 3 and 4 do not provide sufficient detail to give STH certainty on costs, and in some sections these still appear to be</p> | <p>Due to STH's role as Partnership Host any uncertainty over costs and reimbursement is a potentially risk.</p> <p>We recommend that the provisions regarding the billing processes are properly detailed within the Partnership Agreement and that Schedules 3 and 4 are developed further to this end.</p> <p>We also recommend that the Partnership Agreement could provide for greater clarity on the scope of Project Delivery Costs and Contract Costs, to avoid the risk of costs falling outside these categories and being borne by STH alone.</p> <p>It may be beneficial to clarify that clause 7.4 is subject to the provisions of clause 11, and to expand upon the intended interaction between clause 11.2.1 and the wider cost reimbursement provisions, as clarity here could significantly reduce any risk to STH.</p> |  | <p>SY Directors of Finance will review and clarify the definitions for Project Delivery Costs and Contract Costs; and how billing mechanisms will work in practice. It is not thought to materially affect the partnership and could be included in a future draft of the Agreement</p> <p>We have clarified that there is no exclusion of Clause 7.4 from the provisions of clause 11.</p> |

|    |                                   |  |   |  |  |
|----|-----------------------------------|--|---|--|--|
|    |                                   | <p>placeholder text. This means there is risk that, as Partnership Host, STH could be at greater risk of being responsible for the non defined costs than the Partners.</p> <p>There is also a greater risk to STH in terms of cashflow, as (for example) under clause 6 STH as Partnership Host manages the procurement of Contracts and will incur costs accordingly, but STH can only invoice for these quarterly and only where they fall within the agreed costs approved by the SYB Pathology Partnership Board.</p>   |   |  |  |
| 6. | Governance and Terms of Reference | <p>Under the provisions of the Partnership Agreement, decisions are delegated by the Trusts to the SYB Pathology Partnership Board and its sub-teams. To the extent these delegations and the decision making processes are unclear/uncertain, this raises the potential risk for a dispute to occur which may impact STH and its obligations as Partnership Host.</p> <p>At present, it appears that decisions must be made unanimously, and no decision can be made without referral to each Trust even if its delegate was not present at a quorate meeting. As long as this mechanism remains, STH should be able to mitigate its risks.</p> | <p>It may be beneficial for the Trusts to clarify in the terms of reference that this interpretation is correct (ie that delegated decisions cannot be made without approval by all board members, even when one or more of the Trusts were absent at an otherwise quorate meeting).</p> <p>The Trusts should also confirm the wording under clause 8.4.2 regarding the status of the SYB Pathology Partnership Board and whether or not it should be a committee of any Trust's board.</p> |  | <p>Clause 8.4.2 states that "SYB Pathology Operational Management Team is not a committee of any Trust's board."</p> |

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| 7. | Liabilities and indemnities | <p>Under clause 11.2 the Trusts agree that unless STH is fraudulent or willingly defaults on its obligations, all losses incurred by STH acting in its role as Partnership Host will be borne equally by all Trusts in the proportions determined by the SYB Pathology Partnership Board at the date the liabilities occurred. The Partners also agree to indemnify STH against all unavoidable Liabilities.</p> <p>In principle, this provision provides STH with an indemnity from the Partners against its losses. However, the share of the costs is stated under clause 11.2.1 as being a case by case basis at the discretion of the SYB Pathology Partnership Board. This means that there could be a dispute as to the apportionment of costs which leaves STH bearing the burden until it is resolved. There is also the risk that the Partners wish the 'default' position to match the Risk and Gain Share, which would still leave STH bearing the majority of such losses.</p> <p>This position under clause 11.2.1 potentially at odds with the indemnity under the other subclauses of clause 11, which raises further ambiguity.</p> <p>Clause 11.3 states that each of the Trusts shall be severally liable for the costs and losses incurred by the other Trusts to the extent it arises out of the "deliberate or</p> | <p>STH should ensure it is satisfied with the potential risk profile reflected by the Partnership Agreement.</p> <p>In practice, while there are mechanisms in the Partnership Agreement that give protection to STH, these mechanisms could stall due to governance deadlock and STH would bear a greater risk exposure than it otherwise expected. Dispute resolution processes will be key here to diffusing such risk.</p> <p>The uncertain interaction between clauses 11.2 and 11.3 raises a risk if STH breaches the Partnership Agreement. We recommend that the Trusts clarify:</p> <ul style="list-style-type: none"> <li>• whether clause 11.3 is intended to apply to any breach or only to deliberate/negligent breaches; and</li> <li>• (if it does apply to any breach) whether clause 11.2 is still intended to apply in STH's favour in the event that STH (acting as Partnership Host) breaches the Partnership Agreement.</li> </ul> <p>Due to the contentious nature of this topic, we recommend that the wording in clause 11 is revised to ensure all Trusts have clarity over the liabilities they will incur and the extent of the</p> |  | <p>We have confirmed with DACB and partners that:</p> <ul style="list-style-type: none"> <li>• Clause 11.3 applies to both – see section in blue and the highlighted “or” and “and/or” below</li> <li>• Clause 11.2 applies in relation to the Hosting Obligations. The revised draft adds “<i>and not withstanding Clause 11.2...</i>” to clause 11.3. (i.e. that the effect of clause 11.3 as drafted does not become extinguished by Clause 11.2).</li> </ul> |
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|    |                                     | <p>negligent acts or omissions and/or breach" of the Partnership Agreement.</p> <p>This wording is unclear as to whether the breach of the agreement has to be deliberate or negligent, but it is arguable that it applies to any breach. In such a situation, it is also unclear how clause 11.3 would interact with the protections STH has under clause 11.2 (i.e. whether STH would still benefit from the risk share if it 'innocently' breaches the Partnership Agreement, or whether it would bear full liability).</p>   | <p>indemnities they provide in order to mitigate the risk of disputes at the time when a liability is incurred.</p>  |  |  |
| 8. | Data processing and data protection | <p>Clause 16 of the Partnership Agreement provides a comprehensive set of provisions regarding the processing of personal data and it confirms that each of the Trusts will comply with its obligations under Data Protection Legislation.</p> <p>The majority of clause 16 addresses the situation where one of the Trusts processes personal data in the role of processor on behalf of another. These provisions generally match what we would expect to see in an agreement where an NHS body is contracting a data processor, but this does mean that the terms are quite onerous for the Processing Trust and in places exceed what is required by the Data Protection Legislation.</p> <p>Because of its role as Partnership Host, it is likely that STH will be regularly acting as the Processing Trust for the Partners,</p> | <p>To the extent that the obligations on a Processing Trust are already met through compliance with STH's own data processing and security policies, the risk will be significantly mitigated.</p> <p>However, we recommend that the drafting in clause 16 is generally amended to apply less onerous obligations and deadlines for compliance on the Processing Trust, and/or to clarify that costs incurred by the Processing Trust in performing the obligations will be reimbursed where the Processing Trust is the Partnership Host.</p> <p>We recommend that the intention behind clauses 16.12 and 16.13 is clarified (and the drafting is adjusted as appropriate) to avoid any</p> |  | <p>The revised draft relaxes a number of the obligations on the Processing Trust in Clause 16, such as removing requirements for specific policies and accepting evidence of compliance with the Data Security and Protection Toolkit as sufficient evidence for the purposes of the Agreement. The obligations are therefore significantly less onerous, such that it shouldn't be necessary for additional sums to be payable to the Partnership Host.</p> |

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|    |                                  | <p>and so these onerous obligations will bind on STH.</p> <p>Clause 16.1.1 also allows the obligations on the Processing Trust to be changed from time to time by the Controlling Trust, which may circumvent the governance processes of the Partnership Agreement.</p> <p>Cluse 16.7 prohibits subcontracting or the provision of data to a third party without approval by the Controlling Trust. Please see comment 9</p> <p>Clauses 16.12 and 16.13 state that STTH will act as an agent on behalf of the Partners under each Contract (contradicting clause 24.3) and refers to what is currently a blank Schedule 5. This Schedule will need populating if this wording remains, but where STH acts as the Processing Trust in respect of any Contracts it may not be needed.</p> | <p>uncertainty when procuring the Contracts.</p>   |  | <p>The agency arrangements are intended to allow the Partnership Host to manage the data protection aspects of the relationship between all of the Trusts and the third part suppliers, rather than each Trust managing a separate Controller to Processor relationship. Clause 24.3 has been amended.</p> <p>For the sake of brevity, Schedule 5 has been removed.</p> |
| 9. | Subprocessing and subcontracting | <p>Under clauses 16 and 20, subprocessing and subcontracting by either STH or any Partner are both prohibited without prior written consent of all Trusts.</p> <p>While this may be attractive from an equality perspective, this is likely to be impractical at least to some extent for the Partnership Host due to its need to manage the day-to-day running of the partnership. Please also see comment 8 in regard to data processing generally.</p>  | <p>To avoid any uncertainty, the Agreement should contain wording to allow the Partnership Host exemptions to these prohibitions in respect of:</p> <ul style="list-style-type: none"> <li>• contracts already in place as at the Commencement Date; and</li> <li>• as directed by SYB Pathology Partnership Board.</li> </ul> |  | <p>New provision inserted at Clauses 16.8 and 20.2, whereby there is deemed to have been consent to a sub-contracting arrangement where this was entered into before the Commencement Date and notice of the existence of that sub-contract has been given</p>  |

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|     |                     | Where Contracts are entered into by STH at the direction of the governance processes (such as the under the Procurement Process), this consent is likely to be given as an organic part of that process. However, this may not always be the case.  |  |  |   |
| 10. | Employment/<br>TUPE | <p>Schedule 8 of the agreement deals with the transferring staff from the Trusts to STH. It states that the Trusts will indemnify STH against any claims or losses that arise from the actions of the Trusts prior to the transfer e.g. allegations of discrimination or claims for equal pay that arise from events that occurred prior to the staff transferring to STH. STH also indemnifies the other Trusts against claims that arise from STH's actions after the transfer. This is generally reasonable.</p> <p>However, STH should be aware that it will be responsible for the cost and management time of addressing any staffing issues that take place after the transfer even if they arise from issues that occur prior to the transfer e.g. addressing difficult employment grievances, trade union disputes or claims that one employee discriminated against another after the transfer.</p> | <p>STH should review the employee liability information that it receives from the Trusts to consider whether it will inherit any difficult/complex employee situations e.g. long term sickness disciplinary action or grievances. STH will be responsible for managing such situations after the transfer.</p> <p>STH could consider requesting that any such additional management cost is recharged to the Trusts.</p> |  | Proposed that these risks are accepted as part of the Partnership Agreement |
| 11. | Employment/<br>TUPE | The consolidation of the pathology services into one host provider may give rise to a redundancy situation because 1) there may be an excess of staff for the   | STH should be aware that will require the partnership board's approval to make any redundancies.   |  | To note – see accompanying note (Appendix 3)                                |

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|     |                     | <p>shared service; or 2) some of these employees may transfer to STH but their contract will state that they are geographically based at a different location, and they may be unwilling to move.</p> <p>The other Trusts will indemnify STH against such redundancy costs (see Schedule 8 paragraph 5.3 of the agreement). However, it states that no redundancies will be made without the agreement of the SYB Pathology Partnership Board and redundancy costs does not include the costs of defending any claims relating to the redundancy dismissals.</p>  |   |  |                              |
| 12. | Employment/<br>TUPE | <p>The termination of this agreement may result in stranded employment costs for STH. For example, if the Trusts decided to take the services back 'in house' at each of the Trusts, the pathology staff may remain with STH as it may be difficult to identify a TUPE transfer if the services were fragmented.</p> <p>An agreement such as this would usually contain exit clauses dealing with the potential for such stranded costs and the smooth transfer of any staff at the end of the agreement (if there is a subsequent TUPE transfer).</p> <p>Schedule 8 paragraph 9 states that the parties will agree exit terms and arrangements via the SYB Pathology</p> | <p>STH should consider whether it is willing to accept the risk that a) hosting the service may give rise to stranded employment costs (e.g. redundancy costs) at the end of the agreement; and b) that any indemnities or other such exit clauses are currently unknown and would need to be negotiated at the end of the agreement.</p> |  | Proposed to accept this risk |

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|  |  | <p>Partnership Board at least two months in advance of the subsequent transfer of the Services (or as soon as reasonably practicable where two months is not possible). Therefore, such clauses have not been set out in the agreement and would need to be negotiated at the end of the agreement.</p> <p>It is unclear whether the indemnity in paragraph 5.3 of Schedule 8 would cover redundancy costs after the end of the agreement or whether it is limited to redundancy costs at the start and the duration of the agreement.</p> |  |  |  |
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## Appendix 3: Accompanying note for SYB Pathology Network Partnership Agreement

### Context

One of the significant programmes of South Yorkshire & Bassetlaw (SYB) Acute Federation is the establishment of an SYB Pathology Network. We have appointed an Operational Management Team for this work, we have secured significant capital investment for a network LIMS and for digital pathology; and are progressing a programme of huge scale and scope.

An important part of the process of establishment of the SYB Pathology Network is the formal legal Agreement for the partnership. This note accompanies this agreement.

The Agreement is clear that **Trust Boards are not delegating their statutory responsibilities to the SYB Pathology Partnership Board**; and that neither the **SYB Pathology Partnership Board** nor the SYB Pathology Operational Management Team **shall have any delegated statutory powers or functions** of the Trusts

The Partnership Agreement has been developed on the basis and agreement of all parties that partnership is the model for delivery of Pathology Services in SYB that we are all committing to for the long term. It is set to run for the duration of each contract for pathology services entered into by STH and only expiring if actively terminated earlier.

It is proposed that we adopt this partnership agreement on the basis of **'Going Live' with our Pathology Network from 1 April 2023**. The network itself will evolve and develop after this date, but this represents a clear statement of commitment, and when the terms of this agreement come into force and we move from working in 'shadow form'; to formally working as a network.

### Hosting responsibilities and relationship with the SYB pathology partnership board

As Host for the network, STH will be responsible for the day to day running of the Pathology Network: for the provision of pathology services across the network; for the contracts it enters into on behalf of the partnership; including regulatory matters (CQC, MHRA, HTA), HR matters, financial matters; insurance and public liability arrangements. This means that most day to day decisions relating to the partnership will be taken in line with STH's decision making arrangements.

An Executive Member of each partner Trust is part of **the SYB Pathology Partnership Board**. This Board can only make decisions unanimously, and no decision can be made without referral to each Trust even if its delegate was not present at a quorate meeting.

Matters reserved to this SYB Pathology Partnership Board are:

- Changes to the Partnership Agreement
- Changes to the Target Operating Model
- Financial decisions in line with Host Scheme of Delegation<sup>1</sup>

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<sup>1</sup> The agreement itself refers to 'Host SFIs', but we think this should refer to 'Host Scheme of Delegation'. For financial decisions, this would mean: Revenue proposals over £3.0 million over lifetime, or £1.2million p.a. (whichever is lower) would go to Partnership Board (as well as Trust Boards, where Schemes of

- Changes to the Workforce Model

The Agreement sets out that the SYB Pathology Partnership Board will approve the annual business plan (prepared by operational leadership team), including agreeing the contribution to the running of the Partnership to be made by the Trusts. It will appoint members of the Operational Management Team.

For those business cases that require recommendation at individual Trust Boards [*and this could be helpfully clarified in a future iteration of this Partnership Agreement*], these will be recommended by the SYB Pathology Partnership Board to Trusts' Boards. Note too that no redundancies can be made without the agreement of the SYB Pathology Partnership Board.

To facilitate the *process* of decision making, and as host of the partnership; **STH will use, and offer to the partnership, its existing decision-making processes**. Illustratively, this means:

1. Revenue cases to come through BPT (and TEG)
2. Capital proposals through CIT (and TEG)
3. At these meetings, discussions will probe whether or not partners' support is secured.
4. The SYB Pathology Partnership Board will be a forum for this support to be confirmed

For those matters that are reserved to the Partnership Board, STH internal processes will be used first where appropriate – so that the Partnership Board can have the confidence that the decisions it is asked to take have been scrutinised and challenged internally within STH, and in line with its existing decision making – *en route* to the Partnership Board.

The Operational Management Team will therefore operate as an STH team, but always working on behalf of the Partnership; and with the SYB Pathology Partnership Board providing this formal check and balance.

To illustrate how this process could work in practice: if the “**SYB Pathology**” team were proposing a business case for a new larger team/ or new premises, with capital requirements, they would:

- Develop the business plan
- >> Secure agreement/approval at STH's Business Planning Team and/or Capital Investment Team (where discussions would explore and check for partners' support)
- >> Secure agreement at STH's Trust Executive Group (again, confirmation sought about partners' support)
- >> Secure agreement/approval at SYB Pathology Partnership Board
- >> Secure agreement at each Trust Board, if that level of approval were required.

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Delegation require it); capital cases over £3.0 million would go to the Partnership Board, and on to Trust boards where Schemes of Delegation require it.