

## Board of Directors' Meeting

### 11<sup>th</sup> February 2021

|                                    |  |   |                        |   |
|------------------------------------|--|---|------------------------|---|
| Agenda item                        | 028/21   |   |                        |   |
| Report                             | HSLI Provider Digitisation Programme   |   |                        |   |
| Executive Lead                     | James Drury, Interim Director of Finance   |   |                        |   |
|                                    | Link to strategic pillar:  |   | Link to CQC domain:    |   |
|                                    | Our patients and community   |   | Safe                   |   |
|                                    | Our people   |   | Effective              |   |
|                                    | Our service delivery   |   | Caring                 |   |
|                                    | Our partners   |   | Responsive             |   |
|                                    | Our governance   |   | Well Led               | X |
|                                    | Report recommendations:  |   | Link to BAF / risk:    |   |
|                                    | For assurance  |   | 1492                   |   |
|                                    | For decision / approval  |   | Link to risk register: |   |
|                                    | For review / discussion  |   |                        |   |
|                                    | For noting   |   |                        |   |
|                                    | For information  | X |                        |   |
|                                    | For consent  |   |                        |   |
| Presented to:                      | Finance and Performance Assurance Committee  |   |                        |   |
| Dependent upon<br>(if applicable): |  |   |                        |   |
| Executive summary:                 | The attached agreement sets out the arrangements in place for the third year (2020/21) of funding for the HSLI Provider Digitisation Programme, which was approved in 2018/19 by Trust Board and is presented for information. |   |                        |   |
| Appendices                         | Appendix 1: Provider Digitisation Programme Funding Agreement  |   |                        |   |

# Provider Digitisation Programme

The Shrewsbury and Telford Hospital NHS Trust

RXW

West Midlands

Y60

Shropshire Telford and Wrekin

QOC

Shropshire CCG

05N

Funding Agreement

between

NHS England on behalf of the Secretary of State for  
Health and Social Care

and

The Shrewsbury and Telford Hospital NHS Trust

for

Health System Led Investment (HSLI) in Provider  
Digitisation

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## Version control

| Version | Date      | Approval status                           | Project schedules included |
|---------|-----------|---|----------------------------|
| 2.0     | 27/8/2020 | Approved for use FY 20/21                 |                            |
| 3.0     | 15/9/2020 | Updated to include CCG signoff - Approved |                            |

# 1 Introduction

**THIS FUNDING AGREEMENT (the “Agreement”) is made on 25<sup>th</sup> January 2021 (the “Commencement Date”) BETWEEN:**

- (1) NHS ENGLAND ON BEHALF OF THE SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE** whose principal address is for these purposes Quarry House, Quarry Hill, Leeds, West Yorkshire LS2 7UB ("**Authority**");
- (2) The Shrewsbury and Telford Hospital NHS Trust, Mytton Oak Road, Shrewsbury SY3 8XQ ("Recipient");** and
- (3) Shropshire, Telford and Wrekin STP, stwstp.org.uk**
- (4) Shropshire CCG, William Farr House Site, Mytton Oak Road, Shrewsbury, SY3 8XL**

## 1.1 Management of the Agreement

Individuals from NHS England, the Recipient and the STP/ICS and CCG (where appropriate) will be nominated to represent the Parties for the purposes of this Agreement. Details of these individuals are provided in Schedule 1.

## 1.2 Definitions and Interpretation

The definitions and interpretation of terms used in this Funding Agreement are provided at Annex A.

## 1.3 Aim of the Agreement

The purpose of the Funding Agreement is to formally agree the funding arrangements for the centrally funded project(s) and to articulate the obligations on the parties involved.

The Agreement identifies requirements, terms, conditions and consequences associated with the Award, and sets out a series of commitments that the Recipient must meet, in return for the Award. The schedules capture key stakeholders in the Agreement, a governance approach, plans to phase out fax machines and details pertinent to each project covered by the Agreement.

## 1.4 Health System Led Investment in Provider Digitisation

The programme has been established to meet the following national capital investment objectives:

- Advance the digital maturity of secondary care providers
- Allow STPs to harness technology to help realise their transformation goals
- Enable information to be shared across local healthcare systems, laying the foundations for integrated care
- Catalyse STP-level leadership of the digital agenda at a local level

The Recipient has been identified by the corresponding STP/ICS, through an Investment Proposal approved by the Provider Digitisation Programme SRO, to receive investment from the STP/ICS's allocated funding, and to be either:

- The Lead Provider for one or more projects identified in the Investment Proposal
-

...and/or...

- Accountable to one or more Lead Providers to support the delivery of one or more projects identified in the Investment Proposal and will require funding to attain assets in association with those identified projects.

The Authority therefore agrees in principle to an award of funding (“**Award**”) to the Recipient, subject to the terms, conditions and requirements set out in the remainder of this Agreement.

Funding recipients must acknowledge with their STP/ICS that the amount detailed in Tables 1 and 2 reflects the budget split on a 70% Capital to 30% Revenue basis.

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## 1.5 Scope of the Agreement

The Agreement is for an Award for 2020/21 of up to £1,425,000.

An Award may be for one or more projects, with the capital funding being drawn down through one or more instalments by each NHS provider involved, however **each** funding agreement can only pertain to one NHS provider – the Recipient. It is recognised that some projects span more than one organisation, Tables 1&2 below must be used to inform the HSLI National Team where this is the case. The process for the distribution of Revenue funding is yet to be defined but will be appended to this agreement once it has been agreed.

Where there is a pan-organisation project the Lead Provider will be accountable to the Authority for the delivery of those projects and associated value creation. Where the capital assets to be procured/developed through the project that will be utilised by a number of NHS provider organisations, the Recipient needs to determine which of two options to take:

- Creating all the assets on their own asset register and being responsible for the consequential costs arising from the Award. They may choose to enter into local arrangements to apply local service charges in recognition of the consequential costs. (This option will require section D to be completed in the relevant Schedule 4).
- Arranging for funding to flow from DHSC (as PDC) to the other partnering NHS providers (assuming they meet the eligibility criteria in the HSLI Prospectus), for them to procure/develop assets to sit on their own asset registers and to be responsible for the consequential costs. This option will generate entries in the 'Funding to Partners' columns in Table 1 below and should mirror the entries the partner will enter in Table 2 of their own Funding agreement.

## 1.6 Funding Schedules

To enable the National Team to be informed of funding intentions there are three Funding Schedules (with examples) for Recipients to complete as applicable, observing all PDC funding is issued in rounded thousands of pounds (£000's):

Please complete Table 1 for projects where the Recipient is Sole or Lead Provider of a project, **inserting additional rows if required**. Use the "Project Agreed Funding to Partner NHS Providers" columns to list the amounts of PDC that, as Lead Provider you agree should be funded to Provider Partners. Please note: There should be one row entry for each project / ODS combination see Example Table 1 below. The Unique Project Identifier listed in Tables 1-3 should be taken from the approved Regional Investment Proposal document.

Funding recipients must acknowledge with their STP/ICS that the amount detailed in Tables 1 and 2 reflects the budget split on a 70% Capital to 30% Revenue basis.

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**Table 1: Funding Schedule 2020/21 Recipient being Sole Provider and/or Lead Provider**

| Project<br>(a)                  |                       | Overall<br>Project<br>Value (£k)<br><br>(b) | Funding to Recipient<br>(c) |             |                 |  |                  |                 |                |
|---------------------------------|-----------------------|---|-----------------------------|-------------|-----------------|--|------------------|-----------------|----------------|
| Unique<br>Project<br>Identifier | Name                  |   | ODS<br>code                 | Capital(£k) | Revenue<br>(£k) |  |                  |                 |                |
| Sole Provider Projects:         |                       |   |                             |             |                 |  |                  |                 |                |
| ME_QOC_R<br>XW_001              | EPR Readiness         |   | RXW                         | 997.5       | 427.5           |  |                  |                 |                |
| Lead Provider Projects:         |                       |   |                             |             |                 | Project Agreed Funding to Partner NHS Providers<br>(PDC from DHSC) |                  |                 |                |
|                                 |                       |   |                             |             |                 | (d)  |                  |                 |                |
|                                 |                       |   |                             |             |                 | Org name   | ODS<br>code      | Capital<br>(£k) | Revenue<br>(£) |
|                                 |                       |   |                             |             |                 |  |                  |                 |                |
|                                 |                       |   |                             |             |                 |  |                  |                 |                |
|                                 |                       |   |                             |             |                 |  |                  |                 |                |
|                                 | Overall Project Total | 1.425                                       | Recipient<br>Total          | 997.5       | 427.5           |  | Partner<br>Total |                 |                |

Further details of the projects detailed above are to be provided in the Project Schedules (Schedule 4) to this Agreement.



## 2 The Award

### 2.1 Requirements for Payments to be Made

An associated Funding Agreement needs to have been approved and signed by all parties. (See section 4). Project schedules need to be included in a Funding Agreement for all projects for which draw-down is sought.

**For the Capital portion of funding, an associated PDC Memorandum of Understanding (MOU), will also need to have been approved and signed by DHSC and the Recipient in due course.**

For each project, an associated detailed business case / business justification needs to have been approved by the Lead Provider senior management following their Standing Financial Instructions, and needs to be available for inspection by the Authority upon request. The approved document needs to be equivalent in scope to the Green Book Business Justification template for small / medium-sized investments, and should confirm any other funding required (beyond the national investment) has been committed.

For each project, a Value for Money (VfM) analysis will need to have been completed by the Lead Provider, drawing on the analysis of projected benefits and costs included in the business case / business justification.

Where the Recipient is in line to receive over £2m over the three years 18/19 to 20/21, or the project is deemed to be one of high value or higher risk, the Authority may require payments to be staged and conditional on achieving agreed milestones. Any such conditions will be negotiated with the Recipient and specified in the Project Schedules.

### 2.2 Requirements for Use of the Award

The Award must be spent within the year against which it is profiled and allocated. For the Capital component, capitalised assets of same value must be delivered. It cannot be rolled over into a subsequent year.

The Award shall be solely used by the Recipient to bring about the delivery of the project(s) identified in the STP Investment Proposal, and included in the Project Schedules of this Agreement (or Funding Agreement of the Lead Provider if different). Any VAT costs that are not recoverable should be included in the costing of investment proposals.

For Awards that are wholly or partly PDC, further conditions are set out in the PDC MOU.

### 2.3 Further Terms and Conditions of the Award

Additional detailed terms and conditions of the Award are set out in Annex B.

### 2.4 The Process for Making a Payment

Awards of capital to NHS Trusts are in the form of PDC, transferred from the Department of Health and Social Care to the Recipient. The process is set out in the PDC MOU.

Processes for awards of revenue and other funding for non-NHS provider partners will be distributed by NHSE/I.

Capital funding should not be drawn-down in advance of need, as set out in the PDC MOU. This may result in the need for multiple payments per Award or per project against the overall Award limit set.

### 2.5 Withholding, Suspension or Repayment of Award

In exceptional cases (as set out in Annex B), the Authority may withhold or suspend an Award, or pursue repayment of payments made under an Award.

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## 2.6 Consequential Costs

Awards cannot be used for any NHS capital charges, depreciation charges or any other consequential revenue or capital run-on costs arising from the Award.

These costs / charges and any associated VAT charges must be met by the Recipient.

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## 3 Recipient Commitments

### 3.1 Effective Governance

Effective governance arrangements should be in place to oversee spending, project delivery and value creation arising from the Award, and to monitor that this Agreement is being adhered to. There is an expectation that effective governance arrangements shall include representative clinical governance in place to oversee spending, project delivery and value creation. The level of clinical governance may vary based on local circumstances, but it is expected that representation will reflect the wider clinical workforce (medical, nursing, AHP and pharmacy) and that consideration has been given to clinical strategies and frameworks for driving digitisation and value creation. (i.e. [PRSB](#), [A Digital Framework for Allied Health Professionals](#), [Every Nurse is an E-Nurse](#)). These governance arrangements should be detailed in Schedule 2.

### 3.2 Responsiveness to Challenge and Support

The Recipient is expected to respond to interventions from STP/ICS-level or NHSE regional-level governance of the programme.

The STP/ICS and/or NHSE regional team will deploy resources on a targeted basis to offer support to the Recipient, and to challenge where appropriate.

### 3.3 Reporting on Spend

The Recipient is required to report at the end of each quarter on how they have spent investment provided through an Award.

### 3.4 Reporting on Progress

You are required to report at the end of each quarter on how you have spent investment provided through an Award. Further details will be provided through National and Regional teams.

You agree to establish or repurpose the role of an existing decision-making governance board to ensure the Programme is adequately governed and managed at the appropriate level. It is your responsibility to be proactive in the management of the Programme to time, cost, quality and scope.

### 3.5 Benefit Tracking and Reporting

The Recipient (where they are also Lead Provider) is expected to report on a quarterly basis on benefit delivery against each project supported by the Award. Due consideration should be given to the balance of organisational, efficiency benefits and clinical, staff and patient benefits.

In addition, projects with a total project value of over £2 million may be identified to receive an additional level of challenge and support around projecting benefits, identifying measurement / evidencing approaches and tracking benefits. Any such projects are expected to work closely with regional digital/national benefits teams.

The point at which benefit tracking and reporting can stop will be confirmed jointly by the Authority and STP/ICS.

### 3.6 Change Control

Any change to the programme/project deliverables (time, cost, scope or quality) will be agreed between the Parties and where appropriate, recorded in a Change Control Notice (CCN). A template will be provided for this if needed (regions may provide a template) and Trust's will work with their STP/ICS to complete.

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### 3.7 Interoperability Standards and Data Security

The Recipient is expected to be working towards achievement of interoperability standards and practices, e.g. sharing of structured documents for all transfers of care, near-real time export of information, use of FHIR based APIs and SMART technology.

The Recipient must take active steps to reduce cyber risks and mitigate the effects of future attack, and to reduce and eventually remove their current reliance on out-of-date technology such as fax machines and pagers.

Annex B15 sets out a set of interoperability and data security standards and features that the Recipient should be working towards.

### 3.8 Data Submissions

The Recipient is expected to be compliant with requirements for the submission of clinical datasets and statutory reporting to national systems – for example, Commissioning Data Sets (CDS) including critical care / maternity data tails where appropriate to SUS+. The content of data submissions are expected to be in accordance with national guidance, complete and submitted in line with national data submission timetables.

### 3.9 Blueprints

The Recipient (where they are also Lead Provider) is expected to confirm whether or not a Blueprint exists for their chosen project/innovation and if so, to review ahead of their own project delivery. A case study for each project supported by the Award is expected to be provided. This can take the form of a Blueprint where national support will be available to provide advice and guidance on production. Furthermore, projects with a total value of over £2m are expected to produce a Blueprint, the subject and timing of which will be agreed with the National Blueprinting Team in conjunction with the Regional Digital Leads.

### 3.10 Leveraging the Investment to Benefit Others

The Recipient (where they are also Lead provider) is expected to give due consideration to how the Award can be leveraged to benefit other organisations, and to provide an overview in the Project Schedules. The Recipient should act to realise this ambition in due course. In particular, any investment in bespoke software development must set out how this could be leveraged.

Initial / high-level thoughts on leveraging the STP/ICS-level investment are captured in the Investment Proposal.

### 3.11 Other Requests

From time-to-time, the Authority may request support from the Recipient in areas such as:

- Programme evaluation
- Responding to Freedom of Information requests
- Responding to Parliamentary Questions
- Ad hoc information requests

The Recipient is expected to cooperate with all reasonable requests.

The Authority may also seek support from the Recipient in media activities and for conferences or events.

### 3.12 STP/ICS-specific Obligations



The STP/ICS has an additional obligation to ensure that:

- Funding issued in previous years has been drawn down and spent in full and appropriately prior to seeking further funding through this agreement
  - The amounts in tables 1 and 2 are in accordance with the overall STP/ICS Capital/Revenue budgetary split (70% Capital and 30% Revenue)
-

## 4 Agreement Signatories\*

The Parties approving this Funding Agreement are as follows:

**TO BE RETURNED WITH ALL CELLS COMPLETED EXCEPT FOR ROW 1**

| Area of Responsibility   | Name and email address                     | Position                 | Signature   | Date of Signature |
|--|--|--------------------------|---|-------------------|
| <b>SIGNED by NHS England on behalf of the Secretary of State for Health and Social Care acting by:</b> |  |                          |   |                   |
| <b>SIGNED by the Recipient Accountable Officer (executive level) by:</b>                               | James Drury<br>jamesdrury@nhs.net          | Interim Finance Director |   | 26.1.21           |
| <b>SIGNED by the Recipient Director of Finance</b>   | James Drury<br>jamesdrury@nhs.net          | Interim Finance Director |  | 26.1.21           |
| <b>SIGNED by an executive level representative of the STP/ICS by:</b>                                  | Jill Robinson<br>jill.robinson1@nhs.net    | STP Director of Finance  |   |                   |
| <b>SIGNED by the CCG Director of Finance</b>   | Claire Skidmore<br>Claire.skidmore@nhs.net | Director Of Finance      |   |                   |

Once the Funding Agreement has been signed by the Recipient, no further changes should be made to the main body of this document unless instructed by NHS England. If required insert PDF'd signatures into the table above.

# Schedule 1: Key Stakeholders in the Agreement

## TO BE COMPLETED BY PROVIDER

Note: this is specifically with respect to the Agreement, not to individual project delivery and governance

| Role  | Responsibility (wrt Agreement)   | Name              | Job title                          | E-mail and phone number                   |
|---|--|-------------------|------------------------------------|---|
| Accountable Officer (Agreement)   | Ultimately accountable for adherence to and management of the Agreement  | James Drury       | Interim Finance Director           | jamesdrury@nhs.net<br>01743 261114        |
| Senior Responsible Officer (for project set out in Schedule 4a)   | Responsible for successful delivery of the project to which the investment is directed                                 | Rebecca Gallimore | Director of Digital Transformation | r.gallimore1@nhs.net<br>Mob: 07710 673956 |
| [If appropriate, insert details of additional SROs associated with the FA, and ensure the project for which each is responsible is detailed; if not, delete this row] |  |                   |                                    |   |
| Finance Lead  | Requirements, terms, conditions and consequences associated with Award (Section 2 and PDC MOU)                         | Angela Parkinson  | Senior Financial Accountant        | Angela.parkinson5@nhs.net                 |
| Digital Lead  | Contributing to interoperability (3.7) and leveraging the investment (3.10), and other contributions where appropriate | Rebecca Gallimore | Director of Digital Transformation | r.gallimore1@nhs.net<br>Mob: 07710 673956 |
| Clinical Lead   | Contributing to benefit tracking (3.5) and case study (3.9), and other contributions where appropriate                 | Mrs Ashley May    | CCIO                               | Ashley.may1@nhs.net                       |
| NHSE Lead   | Agreeing project schedules (with Project manager and where appropriate, STP/ICS Lead); management of the Agreement     | Azher Mirza       | Head of Digital Transformation     | azher.mirza@nhs.net                       |



|                         |   |                 |                     |                         |
|-------------------------|---|-----------------|---------------------|-------------------------|
| CCG Director of Finance | Responsible for distribution of Revenue funding | Claire Skidmore | Director Of Finance | Claire.skidmore@nhs.net |
|-------------------------|---|-----------------|---------------------|-------------------------|

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## Schedule 2: Governance Arrangements

### TO BE COMPLETED BY PROVIDER

As set out in section 3.1, effective governance arrangements should be in place to oversee spending, project delivery and value creation arising from the Award. These arrangements may be new, an expansion of existing arrangements, or a combination of both.

Please detail the governance arrangements below, and note:

- Consider including diagrams / embedding documents where appropriate
- Set out the linkages to any STP/ICS-level governance arrangements
- Detail how the arrangements will evolve over time (where applicable)
- Detail differences in the arrangements across different projects (where applicable)
- If a delivery partner to another Lead Provider, provide relevant details

Governance in place as per years 1 and 2.

SATH Digital Programme Board receives monthly updates and feeds into Board level committees.

STP Digital Senior Leads receives updates which feed into the ICS Development Board. The STP governance is currently transitioning into the new ICS Governance.

## Schedule 3: Axe the Fax

Current number of fax machines in use across the organisation:

Projected number of fax machines at end-March 2021:

Outline in the box below the plans to phase out fax machines:

38-40 faxes remain across SaTH – 2 sites.

This will be reduced to a small number with the introduction of a Clinical Communications Tool. A pilot will be introduced which will partially fund the removal of some pagers and a full business case will be subsequently required to remove the remaining radio pagers.

The remaining faxes will be retained for disaster recovery purposes.

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# Schedule 4[a]: Project Schedule – [name of project 1]

## A. Core details

Project name: EPR Readiness

Project ref number: ME\_QOC\_RXW\_001

Project description:

|               |
|---------------|
| EPR Readiness |
|---------------|

Initial draw-down (MMM YY): 02/19

Go-live (MMM YY): Live

Benefit start (MMM YY): 10/21

HSLI Capital funding amount (20/21): £997,500

HSLI Revenue funding amount (20/21): £427,500

## B. Project manager

With respect to the Agreement, the project manager has day-to-day responsibility for: meeting the Recipient commitments (related to the project) set out in section 3; those sections of Annex B not related to the Award; completion and maintenance of this schedule (in collaboration with NHSE and the STP).

Name: Rebecca Gallimore

Job title: Director of Digital Transformation

E-mail address: r.gallimore1@nhs.net

Phone: 07710673956

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## C. Key milestones

| Milestone  | Target date |
|--|-------------|
| ED – phase 1 – for ED go live – delayed due to COVID-19    | October 21  |
| ED – phase 2 – beyond ED go live – delayed due to COVID-19 | February 22 |
| BadgerNet Maternity feeds                                  | October 21  |
| Real time COVID-19 dashboard feeds                         | June 21     |
| ICNet Feeds  | December 21 |

[Insert additional rows as appropriate]

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## D. Arrangements for pan-organisation projects (if applicable)

Provide summary details including:

- Pan-organisation governance arrangements
- Where all assets are remaining on the asset register of the Lead Provider, any local arrangements to apply local service charges in recognition of the consequential costs

N/A

## E. Leveraging the investment in the project

Outline the project activities / deliverables that could be leveraged to support other organisations, if applicable, as set out in section 3.9.

N/A

## F. Detailed business case / business justification

Refer to the requirement set out in the third paragraph of section 2.1.

Forum where agreed: Trust Board

Date agreed: 28/01/19



ME\_QOC\_RXW\_001-  
Business Case\_Versio

Document agreed:

## G. Value analysis

Refer to the requirement set out in the fourth paragraph of section 2.1.



Conv of

## H. Progress reporting regime

As set out in section 3.4, the initial regime will be influenced by the award amount.

## I. Further draw-down dependencies

As set out in section 2.1, where the Recipient is in line to receive higher value payments or the project is of higher risk, the Authority may require payments to be staged and conditional on achieving agreed milestones. Where applicable, details should be set out below. If not applicable, then leave the table blank.

| Payment | £ | Condition |
|---------|---|-----------|
|         |   |           |
|         |   |           |
|         |   |           |
|         |   |           |

# Annex A: Definitions, Interpretations and Glossary

In this Agreement the following terms and abbreviations shall have the following meanings unless the context requires otherwise:

## INTERPRETATION

As used in this Funding Agreement:

- the terms and expressions set out in this Annex shall have the meanings ascribed herein;
- the masculine includes the feminine and the neuter genders;
- the singular includes the plural and vice versa;
- the words “include”, “includes”, “including” “for example”, “in particular” and words of similar effect are to be construed as if they were immediately followed by the words “without limitation”.

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

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

## DEFINITIONS

| Term                                     | Definition   |
|--|--|
| <b>Accountable Officer (AO)</b>          | The Accountable Officer is responsible for the management of and adherence to the Agreement  |
| <b>Achievement Criteria</b>              | Takes the form of a set of milestones as set out in the Agreement  |
| <b>Affected Party</b>                    | The Party or Parties adversely affected by a Force Majeure Event   |
| <b>Application</b>                       | The formal application submitted by the Recipient in relation to the programme/project   |
| <b>Authority</b>                         | NHS England acting on behalf of the Secretary of State for Health  |
| <b>Award</b>                             | The aggregate of the payments to be paid to the Recipient as detailed in accordance with this Agreement  |
| <b>Award Period</b>                      | The period from the Commencement Date to the End of the Award in accordance with this Agreement  |
| <b>Bribery Act</b>                       | The Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation           |
| <b>Capital Funding</b>                   | Funding to fund the purchase or construction of assets (building and equipment) which support the provision of clinical services and meets the Recipients Standing Financial Instructions definition of Capital Expenditure. |
| <b>Commencement Date</b>                 | The date of signature of this Funding Agreement and start date for the programme/project funding   |
| <b>Date of Acquisition</b>               | The date a change of control occurs in the event a Provider is acquired by an external third party.  |
| <b>Digital Maturity Assessment (DMA)</b> | The Digital Maturity Assessment measures the extent to which healthcare services in England are supported by the effective use of digital technology   |
| <b>Default</b>                           | Any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any   |

| Term   | Definition  |
|--|---|
|  | other default, act, omission, negligence or statement of the relevant Party, its employees, servants, agents or Subcontractors in connection with or in relation to the subject-matter of this Agreement and in respect of which such Party is liable to the other  |
| <b>Department of Health and Social Care (DHSC)</b> | The Department of Health and Social Care (DHSC) is a department of the United Kingdom government for government policy for health and social care matters for the National Health Services (NHS) in England   |
| <b>Dispute</b>                                     | <p>Any issue, difference or question of interpretation arising out of this Agreement which has or is likely to have a negative or adverse impact on one or both Parties' ability to deliver the services, products and outcomes of this Agreement. A Dispute may occur with, but is not limited to:</p> <ul style="list-style-type: none"> <li>• Disagreement over scope</li> <li>• Disagreement over metrics and their interpretation</li> <li>• Disagreement over utilisation of resources, including funding</li> <li>• Lack of clarity on allocation of risks</li> <li>• One party breaking the predefined rules</li> <li>• Lack of clarity on acceptance criteria/benefits</li> <li>• Lack of clarity on who is responsible for what</li> <li>• Interpersonal differences and attitudes</li> <li>• Ethical dilemmas between allocated tasks and individual values</li> <li>• The balance of 'business as usual' and project work.</li> </ul> |
| <b>End of the Award</b>                            | The date the Funding Award and funding for the programme/project ceases   |
| <b>Force Majeure Event</b>                         | Any event or cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government (excluding DH), local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute involving employees of the respective Party   |
| <b>Funding Agreement</b>                           | This document   |
| <b>GM H&amp;SC Partnership</b>                     | The Greater Manchester Health & Social Care Partnership   |
| <b>Integrated Care System (ICS)</b>                | A highly evolved Sustainability and Transformation Partnership with closer collaboration and increased autonomy   |
| <b>Intellectual Property Rights (IPR)</b>          | All patents, rights to inventions, copyright and related rights, moral rights, trademarks, trade names and domain names, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including the Know How and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply for and be granted) and all renewals or extensions 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 and rights to bring any proceedings in relation to all of the foregoing rights  |
| <b>Interoperability Toolkit</b>                    | A set of common specifications, frameworks and implementation guides to support interoperability within local organisations and across local health and social care communities   |
| <b>Know How</b>                                    | Information, data, reports, documents, procedures, forecasts, technology, know how or experience whether patentable or not and including but not limited to any technical and commercial information relating to research, design, development, manufacture, use or sale  |



| Term                                  | Definition   |
|---------------------------------------|--|
| <b>Lead Provider</b>                  | The partner who will be accountable to the Authority for project delivery and value creation. For pan-organisation projects, there will be a single Lead Provider.   |
| <b>NHS Digital</b>                    | Formerly known as the Health and Social Care Information Centre. The national provider of information, data and IT systems for commissioners, analysts and clinicians in health and social care  |
| <b>NHS England (NHSE)</b>             | The National Health Service Commissioning Board established under the NHS Act 2006 as amended by the Health and Social Care Act 2012   |
| <b>NHS Number</b>                     | Primary identifier on all patient data and correspondence  |
| <b>Party</b>                          | The parties to this Agreement, and 'Parties' shall be construed accordingly  |
| <b>Programme/Project</b>              | The programme/project described in this Agreement  |
| <b>Provider Digitisation</b>          | The terms and objectives used to describe the National Information Board (NIB) sponsored programme for Provider Digitisation to support achievement of the Paperless 2020 Agenda   |
| <b>Public Procurement Regulations</b> | means the Public Contracts Regulations 2006 (as amended) or any other equivalent or successor legislation  |
| <b>Open APIs</b>                      | (the term API stands for Application Programming Interface) means the sets of technologies that enable information systems to interact with each other   |
| <b>Open Source</b>                    | Open Source Software (OSS), often referred to as just 'open source', or Free / Libre Open Source Software (FOSS or FLOSS), is computer software for which the human readable source code and various other rights are made available in the public domain under the terms of a licence that meets the Open Source Definition (OSD), the custodian of which is the Open Source Initiative (OSI) ( <a href="http://www.opensource.org/about">www.opensource.org/about</a> )  |
| <b>Provider</b>                       | Means a NHS Trust or Foundation Trust the "Recipient".   |
| <b>Prohibited Act</b>                 | <p>(a) offering, giving or agreeing to give to any representative of the Authority any gift or consideration of any kind as an inducement or reward for:</p> <p>(i) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Authority; or</p> <p>(ii) showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Authority;</p> <p>(b) entering into this Agreement or any other contract with the Authority where a commission has been paid or has been agreed to be paid by the Recipient or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Authority;</p> <p>(c) committing any offence:</p> <p>(i) under the Bribery Act;</p> <p>(ii) under legislation creating offences in respect of fraudulent acts;</p> <p>(iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Authority; or</p> <p>(iv) defrauding or attempting to defraud or conspiring to defraud the Authority</p> |
| <b>Recipient</b>                      | The organisation to be the Lead Provider, and/or delivery partner to another Lead provider, for one or more projects identified as a priority for receiving investment from the STP's allocated funding  |

| Term   | Definition  |
|--|---|
| <b>Senior Responsible Officer</b>                          | The Senior Responsible Officer is responsible for ensuring the successful delivery of the programme/project to which the Award is directed  |
| <b>Revenue Funding</b>                                     | Funding for business activities and operations  |
| <b>SNOMED CT</b>   | Stands for the 'Systematized Nomenclature of Medicine Clinical Terms'. This is an internationally recognised standard that consists of comprehensive scientifically validated content including items such as presenting symptoms, procedures, diagnoses, medications and medical devices that are vital for electronic medical records |
| <b>Sustainability and Transformation Partnership (STP)</b> | The NHS and local councils have come together in 42 areas (STPs) covering all of England to develop proposals and make improvements to the health and care of the local population.   |
| <b>Working Day</b>   | Any day other than a Saturday, Sunday or public holiday or bank holiday in England  |

# Annex B: Detailed Terms and Conditions of the Award

## **B.1 GENERAL**

- B1.1 The annex provides further terms of the award and should be read in conjunction with the accompanying PDC MOU. The Recipient shall use the Award only in accordance with the terms and conditions set out in this Agreement and the accompanying PDC MOU.

## **B.2 PURPOSE OF AWARD**

- B.2.1 Where the Recipient intends to apply to a third party for other funding for the programme/project, it will notify the Authority in advance of its intention to do so and, where such funding is obtained, it will provide the Authority with written details of the amount and purpose of that funding. The Recipient agrees and accepts that it shall not apply for duplicate funding in respect of any part of the or any related administration costs that the Authority is funding in full under this Agreement.
- B.2.2 Subject to clause B.2.1 above, where the Recipient has obtained funding from a third party in relation to its delivery of the Programme/project (including without limitation funding for associated administration and staffing costs), the amount of such funding shall be included in this Funding Agreement (and clearly identified as third party funding) together with a clear description of what that funding shall be used for and any relevant obligations or duties owed to the fund provider. For the avoidance of doubt, in the event of default or other liability to any third party by the Recipient, the Authority will not become liable on behalf of the Recipient in this regard.

## **B.3 USE OF AWARD**

- B.3.1 Any liabilities arising at the end of the programme/project including any redundancy liabilities for staff employed by the Recipient to deliver the programme/project must be managed and paid for by the Recipient. There will be no additional funding available from the Authority for this or any other purpose unless agreed under a separate agreement.
- B.3.2 Any VAT owing is payable by the Recipient and if not recoverable should be included in the costings for the project proposals. There will be no additional funding available from the Authority for this or any other purpose unless agreed within the project award. Or under separate agreement.
- B3.3 The Recipient cannot use the Award towards any match funding requirements set by other national programmes.

## **B.4 TERM AND TERMINATION**

- B.4.1 Subject to Clause B.26 of Annex B, unless terminated earlier, the terms of this Agreement shall apply from the Commencement Date until the End of the Award period.
- B.4.2 The Authority reserves the right to terminate this Agreement prior to the End of the Award period for breach, misrepresentation or for failure by the Recipient to adhere to the terms of this Agreement defined in section 2.2, sections 3.1 to 3.11, and in clauses B.2.1, B.2.2, B.3.1, B3.2, B3.3, B.9, B.12, B14, B17.1.1, B17.1.5, B17.1.6, B17.1.7 and B17.1.13 contained in Annex B.
- B.4.3 For any matters arising under clause B.4.2 which the Authority at its sole discretion considers have or are likely to have a serious negative impact on its reputation and public perception, the Authority reserves the right to provide 1 month's written notice of its intention to terminate this Agreement.
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## **B.5 ACCOUNTS AND RECORDS**

- B.5.1 The Recipient shall keep separate, accurate and up to date accounts and records of the receipt and expenditure of the Funding Award monies received by it.
- B.5.2 The Recipient shall keep all invoices, receipts, and accounts and any other relevant documents relating to the expenditure of the Award for a period of at least six years following receipt of any Award monies to which they relate. The Authority shall have the right to review, at the Authority's reasonable request, the Recipient's accounts and records that relate to the expenditure of the Award and shall have the right to take copies of such accounts and records. Any costs in relation to this review will be met by the Parties themselves.
- B.5.3 The Recipient shall comply and facilitate the Authority's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and the Authority at no further cost to the Authority.

## **B.6 MONITORING AND REPORTING (As detailed in the PDC MOU)**

- B.6.1 The Recipient shall closely monitor the delivery and success of the scheme(s) to ensure that the purpose of the award is being met. The Authority shall have the right to request The Recipient to provide detail of the delivery date, installation and when the facility is fully commissioned.
- B.6.2 The Recipient shall on request provide the Authority with such further information, explanations and documents as the Authority may reasonably require in order for it to establish that the Award has been used properly in accordance with this Agreement.
- B.6.3 The Recipient shall permit any person authorised by the Authority such reasonable access to employees, records, premises or facilities for the purpose of validating the status and progress of the planned work.
- B6.4 The Recipient may be requested to take part in meetings with the Authority, again, for the purpose of validating the status of the development.

## **B.7 INDEMNITY**

- B.7.1 Without prejudice to any rights or remedies of the Authority, the Recipient agrees to indemnify the Authority against all actions, demands, losses, expenses and costs (including legal costs) which the Authority may suffer or incur as a result of or in connection with any breach of this Agreement by the Recipient.
  - B.7.2 Nothing in this Agreement shall exclude or limit the liability of any Party in respect of fraudulent concealment or fraudulent misrepresentation.
  - B.7.3 If this Agreement is found by any court or administrative body of competent jurisdiction to be illegal, invalid or unenforceable, and the provision in question is not of a fundamental nature to this Agreement as a whole, the legality, validity or enforceability of the remainder of this Agreement shall not be affected and shall remain in force.
  - B.7.4 The failure to exercise, or delay in exercising, a right, power or remedy provided by this Agreement or by law shall not constitute a waiver of that right, power or remedy. If either Party waives a breach of any provision of this Agreement this shall not operate as a waiver of a subsequent breach of that provision, or as a waiver of a breach of any other provision.
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## **B.8 ACKNOWLEDGMENT AND PUBLICITY**

- B.8.1 The Recipient agrees to participate in and co-operate with promotional activities relating to the programme/project that may be instigated and/or organised by the Authority. The Recipient shall comply with all reasonable requests from the Authority to facilitate visits, provide reports, statistics, photographs and case studies that will assist the Authority in such promotional activities. The Recipient shall comply as 'good will' to these requests.
- B.8.2 Any financial gain made by the Recipient on the eventual disposal of any asset acquired under this Agreement must be notified to the Authority for audit purposes.
- B.8.3 The Authority may publicly acknowledge the Recipient's involvement in the Award as appropriate without prior notice. The Authority shall however endeavour to notify the Recipient in advance of any publicity which is to be released in relation to the Recipient's involvement in the Award, and where possible to obtain its input to the proposed communication.
- B8.4 Notwithstanding clause B.9 (Confidentiality and Disclosure), the Recipient shall acknowledge the existence of the Award and the support of the Authority in any materials that refer to the programme/project and in any written or spoken public presentations about the programme/project.
- B8.5 In using the Authority's name and logo, the Recipient shall comply with all reasonable branding guidelines issued.

## **B.9 CONFIDENTIALITY AND DISCLOSURE**

- B.9.1 For the purpose of this Agreement, Confidential Information shall mean any and all information, which is supplied or disclosed, directly or indirectly, in writing or in any other means, by each Party to any other including, but not limited to, any documents, drawings, sketches, designs, materials, samples, prototypes, data, know-how, and which at the time of its disclosure or supply is identified as confidential.
  - B9.2 Subject to clause B.11 (Freedom of Information), each Party shall during the term of this Agreement and thereafter keep secret and confidential all IPRs or Know How or other business, technical or commercial information disclosed to it as a result of the Agreement which is designated confidential or which ought reasonably be considered to be confidential and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Agreement.
  - B.9.3 For the purpose of this Agreement "the Receiving Party" shall mean the Party receiving the Confidential Information disclosed by any other Party ("the Disclosing Party"). The Receiving Party shall:
    - B9.3.1 undertake to use the Confidential Information solely for the purpose of this Agreement and not to make any other use, whether commercial or non-commercial, without the prior written consent of the party disclosing it;
    - B.9.3.2 undertake to keep the Confidential Information confidential and not to disclose it nor to permit the disclosure of it to any third party, except in accordance with clause B11.4, and not to make it available to the public or accessible in any way, except with the prior written consent of the Party disclosing it.
  - B.9.4 The obligation of confidentiality contained in this clause shall not apply or shall cease to apply to any IPRs, Know How or other business, technical or commercial information which:
    - B.9.4.1 at the time of its disclosure by the Disclosing Party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this Agreement by the Receiving Party;
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- B.9.4.2 is already known to the Receiving Party as evidenced by written records at the time of its disclosure by the Disclosing Party and was not otherwise acquired by the Receiving Party from the Disclosing Party under any obligations of confidence; or
- B.9.4.3 is at any time after the date of this Agreement acquired by the Receiving Party from a third party having the right to disclose the same to the Receiving Party without breach of the obligations owed by that party to the Disclosing Party.
- B.9.4.4 the recipient proves the Confidential Information has been developed independently by its employees, who had no access to any of the Confidential Information disclosed by the Party disclosing it to the Receiving Party.
- B.9.5 The Receiving Party shall limit and control any copies and reproductions of the Confidential Information. The Receiving Party shall return all records or copies of the Confidential Information at the request of the other party and if required, on termination of this Agreement. This shall not apply to Confidential Information or copies thereof which must be stored by the Receiving Party according to mandatory law, provided that such Confidential Information or copies thereof shall be subject to an indefinite confidentiality obligation.
- B.9.6 The Receiving Party undertakes to disclose the Confidential Information only to its staff (employees and contractors) who:
- B.9.6.1 reasonably need to receive or access the Confidential Information for the purpose of this Agreement; and
- have been informed by the Receiving Party of the confidential nature of the Confidential Information under the terms of this Agreement; and
  - have been advised of and agree to be bound by equivalent obligations to those in this Agreement.
- B.9.7 All Confidential Information shall remain the exclusive property of each Party as well as all patent, copyright, trade secret, trade mark and other intellectual property rights therein. The Parties agree that this Agreement and the disclosure of the Confidential Information do not grant or imply any license, interest or right to the Recipient in respect to any intellectual property rights of the other Party.

## **B.10 INTELLECTUAL PROPERTY RIGHTS (IPR)**

- B.10.1 The Parties are required to secure value for money for the wider NHS through adopting appropriate IPR ownership and licensing arrangements in respect of any works, software, databases or other materials produced during the programme and/or created with the benefit of the Award (the "Programme Materials"). The Recipient is invited to set out any IPR arrangements it has or intends to put in place in respect of the Programme Materials, including that with any supplier they already have engaged. Any financial gain made by the Recipient on the eventual disposal of any asset acquired under this Agreement must be notified to the Authority for audit purposes.
- B10.2 If, pursuant to Clause B10.2 (and subject to Clause B10.3), the Parties agree that the Recipient should own the IPR in the Programme Materials, then it shall grant to the Authority a non-exclusive, transferrable, irrevocable, royalty-free licence to use and to sub-license to others the right to use the Programme Materials.
- B.10.3 The Recipient must comply with Cabinet Office, Government Digital Services, Digital By Default Service Standard #15 (Make all new source code open and reusable, and publish it under appropriate licenses (or give a convincing explanation as to why this can't be done for specific subsets of the source code)) (<https://www.gov.uk/service-manual/digital-by-default>).
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## **B.11 FREEDOM OF INFORMATION**

- B.11.1 The Parties acknowledge that each Party is subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 and shall assist and co-operate with the other Party to enable such other Party to comply with these information disclosure requirements.
- B.11.2 On receipt of a request regarding the other Party, the party receiving the request ("the Receiving Party") shall:
- B.11.2.1 transfer the request for information to the other Party ("the Disclosing Party") as soon as practicable after receipt and in any event within three Working Days of receiving a request for information;
  - B.11.2.2 provide all necessary assistance as reasonably requested by the Disclosing Party to enable the Disclosing Party to respond to a valid request for information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations 2004.
- B.11.3 The Disclosing Party shall be responsible for determining at its absolute discretion whether the information:
- B.11.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations 2004;
  - B.11.3.2 is to be disclosed in response to a request for information.
- B.11.4 In no event shall the Receiving Party respond directly to that request for information unless expressly authorised to do so by the Disclosing Party.
- B.11.5 The Recipient shall ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

## **B.12 DATA PROTECTION**

- B.12.1 The Recipient shall (and shall procure that any of its staff involved in connection with the activities under the Agreement shall) comply with any notification requirements under the General Data Protection Regulation ("GDPR") and Data Protection Act 2018 ("DPA2018") and both Parties will duly observe all their obligations under GDPR and DPA2018 which arise in connection with the Agreement.

## **B.13 WITHHOLDING, SUSPENDING AND REPAYMENT OF AWARD**

- B.13.1 Without prejudice to the Authority's other rights and remedies, the Authority may at its discretion withhold, reduce or suspend payment of the Award and/or require repayment of all or part of the Award if any of the following apply:
- B.13.1.1 no confirmation has been received by the Authority that spend has been capitalised;
  - B.13.1.2 the funding provided has led to the purchase of assets (building and equipment) later determined to be spent without the appropriate due diligence or not to have achieved the benefits set out in this Agreement;
  - B.13.1.3 the Recipient obtains duplicate funding from a third party for the programme/project;
  - B.13.1.4 the Recipient obtains funding from a third party which, in the reasonable opinion of the Authority, undertakes activities that are likely to bring the reputation of the programme/project or the Authority into disrepute;
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- B.13.1.5 the Recipient knowingly or negligently provides the Authority with any materially misleading or inaccurate information;
- B.13.1.6 the Recipient commits or committed a Prohibited Act;
- B.13.1.7 the Recipient breaches or is found to have breached any of the warranties in clause 16 (below);
- B.13.1.8 any member of the board, employee or volunteer of the Recipient has:
  - acted dishonestly or negligently at any time either directly or indirectly to the detriment of the programme/project; or
  - taken any actions which, in the reasonable opinion of the Authority, bring or are likely to bring the Authority's name or reputation into disrepute;
- B13.1.9 the Recipient ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);
- B.13.1.10 the Recipient becomes insolvent, or it is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due;
- B.13.1.11 the Recipient fails to meet its obligations set out in section 3 of this Agreement and (where capable of remedy) fails to remedy any such failure within 30 days of receiving written notice detailing the failure.

B.13.2 Without prejudice to clause B.13.1, where following the reporting on spend detailed in section 3.3 the Authority believes (in its sole opinion) that any of the provisions set out in clause B13.1.1 may apply, the Authority reserves the right to request a meeting with the Recipient. At this meeting the Parties will discuss in good faith whether, in the circumstances any reimbursement of funding that the Authority has provided under this Agreement is appropriate.

B.13.3 Where the Parties agree to such a reimbursement they will also agree how such reimbursement will be made. For the avoidance of doubt the Authority, acting reasonably, will have the final decision in respect of any such reimbursement due.

B.13.4 Wherever under the Agreement any sum of money is recoverable from or payable by the Recipient (including any sum that the Recipient is liable to pay to the Authority in respect of any breach of the Agreement as defined in clause B.4, the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Recipient under the Agreement or under any other agreement or contract with the Authority.

B.13.5 The Recipient shall make any payments due to the Authority without any deduction whether by way of set off, counterclaim, discount, abatement or otherwise.

B.13.6 Should the Recipient be subject to financial or other difficulties which are capable of having a material impact on its effective delivery of the programme/project or compliance with this Agreement it will notify the Authority as soon as possible so that, if possible, and without creating any legal obligation, the Authority will have an opportunity to take action to protect the Authority and the Award monies.

## **B.14 ANTI DISCRIMINATION**

B14.1 The Recipient shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, government policy or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).

## **B.15 INTEROPERABILITY STANDARDS AND DATA SECURITY FEATURES**

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- B15.1 The Recipient must comply with national interoperability standards designed to enable the effective sharing of data across care settings. This includes the use of:
- Open APIs (i.e. the CareConnect profiles) to enable sharing of elements of the care record
  - Transfer of care standards aligned with PRSB standards.
- B15.2 This will support the Standard Contract requirements:
- By Oct '18 that providers should have aligned their outpatient letters and inpatient, emergency care and mental health discharges to nationally published or have locally agreed plans in place to do so
  - By Dec '18 that providers should have enabled delivery of Open APIs using the CareConnect Profiles or have locally agreed plans in place to do so.
- B15.3 The Recipient should be working towards, and have delivery plans in place, for the key interoperability priorities, for which nationally published specifications will be provided:
- Sharing of structured basic observations
  - Sharing of structured dates and schedules
  - Sharing of structured basic pathology information
  - Sharing of medications that are machine readable and interoperable
  - Use of the NHS number at the point of care
  - The use of a consistent set of terminology and diagnostic codes (SNOMED CT and dm+d)
  - The use of a consistent staff identifier within any information exchange.
- B15.4 The Recipient should address basic issues such as the use of unsupported software like Windows XP, and be compliant with the National Data Guardian's 10 Cyber Security Standards. The Recipient should have undertaken a Cyber Essentials + assessment and have clear plans in place to be Cyber Essentials + accredited.
- B15.5 The Recipient should reduce and eventually remove their current reliance on out-of-date technology such as fax machines and pagers. Current numbers of fax machines and plans to phase out are requested in Schedule 3.

## **B.16 LIMITATION OF LIABILITY**

- B.16.1 The Authority accepts no liability for any consequences, whether direct or indirect, that may come about from the Recipient running the programme/project, the use of the Award or from withdrawal of the Award. The Recipient shall indemnify and hold harmless the Authority, its employees, agents, officers, suppliers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Recipient in relation to the programme/project, the non-fulfilment of obligations of the Recipient under this Agreement or its obligations to third parties.
- B.16.2 Subject to clause B.16.1, in so far as is permitted by law the Authority's liability under this Agreement is limited to the payment of the Award.
- B.16.3 Subject always to the above clause and except in respect of liability under Confidentiality, in no event shall any Party be liable to any other Party for:
- B.16.3.1 any indirect, special or consequential loss or damage; and/or
  - B.16.3.2 any loss of profits, turnover, business opportunities, anticipated savings or damage to goodwill (whether direct or indirect); and/or any loss of data.
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- B.16.3.3 any funding spent without the appropriate due diligence or charges rendered unnecessary and/or incurred by the Recipient arising from the Recipient's Default to the extent that such expenditure or charges can be shown to be direct losses provided that the Recipient shall use all reasonable endeavours to avoid and/or mitigate such costs or expenses.

## **B.17 WARRANTIES**

B.17.1 The Recipient warrants, undertakes and agrees that:

- B.17.1.1 it has full capacity to enter into and receive funding under this Agreement;
- B.17.1.2 this Agreement is executed by a duly authorised representative of the Recipient;
- B.17.1.3 as at the Commencement Date all statements and representations provided to the Authority are to the best of its knowledge, information and belief, true and accurate and that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render any such statement or representation to be false or misleading;
- B.17.1.4 it has and will continue to have all necessary resources and expertise to deliver the programme/project;
- B.17.1.5 it has not committed, nor shall it commit, any Prohibited Act;
- B.17.1.6 it shall at all times comply with all relevant legislation, all applicable codes of practice and other similar codes, recommendations and the Standards, and shall notify the Authority immediately of any significant departure from such legislation, codes, recommendations or Standards;
- B.17.1.7 it shall comply with the requirements of the Health and Safety at Work Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to employees and other persons working on the programme/project;
- B.17.1.8 it has and shall keep in place adequate procedures for dealing with any conflicts of interest;
- B.17.1.9 it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;
- B.17.1.10 it is not subject to any contractual or other restriction imposed by its own or any other organisation's rules or regulations or otherwise which may prevent or materially impede it from meeting its obligations in connection with the Award;
- B.17.1.11 it is not aware of anything in its own affairs, which it has not disclosed to the Authority or any of the Authority's advisers, which might reasonably have influenced the decision of the Authority to make the Award on the terms contained in this Agreement;
- B.17.1.12 since the date of its last accounts there has been no material change in its financial position or prospects; and
- B.17.1.13 it shall at all times comply with the law including (but not limited to) the Public Procurement Regulations (where appropriate).

B.17.2 NHS England warrants and represents that it has full capacity and authority and all necessary consents to enter into and to perform this Funding Agreement and that this Funding Agreement is executed by a duly authorised representative of NHS England.

## **B.18 SUPPLIER TERMS**

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- B.18.1 The Recipient shall ensure that its terms and conditions with any provider or supplier of services for the programme/project include all relevant terms set out in this Agreement.

## **B.19 COLLABORATION**

- B.19.1 The Recipient recognises that collaboration between the various contracting authorities engaging the same supplier could yield service improvement savings, economies of scale or cost of delivery reductions to the Recipient, the Supplier and the other contracting authorities that may not otherwise be possible without such collaboration taking place. Such savings would allow the supplier to deliver a higher standard of service as more resource would be available for other activities (e.g. product development and customer support). Similarly the Recipient and the other contracting authorities would directly benefit from such an approach by more effective services and reduced charges.
- B.19.2 The Recipient warrants that it will take the necessary steps to undertake and participate in the process of collaboration in order to:
- B.19.2.1 encourage and incentivise all suppliers engaged under separate contracts under the terms of this Funding Agreement to use best practise experience to deliver strategic outcomes based on effective processes, services and pricing structures to all its health economy customers;
  - B.19.2.2 encourage the supplier to actively support collaboration between its health economy customers;
  - B.19.2.3 include collaboration clauses with suppliers who are awarded contracts under the terms of this Award.

## **B.20 SUBCONTRACTING**

- B.20.1 The Recipient shall not subcontract any of its obligations under this Agreement, except as contemplated as part of the programme/project, without first obtaining the Authority's written approval.

## **B.21 ASSIGNMENT**

- B.21.1 The Recipient shall not sub-license or declare a trust in respect of its rights under all or a part of this Agreement or the benefit or advantage hereof without the consent of the Authority first being obtained in writing.
- B.21.2 The Recipient may not, without the prior written consent of the Authority, assign or in any other way transfer to any third party the benefit and/or the burden of the Award or this Agreement or, except as contemplated as part of the programme/project, transfer or pay to any other person any part of the Award.
- B.21.3 In the event the Recipient is acquired by a third party or suffers a change of control, the party acquiring control of the Recipient ("the Acquiring Party") shall either:
- B.21.3.1 subject to provision of any remaining funding by the Authority agree to be bound by the Recipient's commitment to provide the agreed deliverables and thereby agrees to be bound by the terms and conditions of this Funding Agreement unless agreed otherwise by the Authority, such agreement not to be unreasonably withheld, or
  - B.21.3.2 within fourteen (14) days of the formal Date of Acquisition, provide the Authority with its formal intention to cancel the programme/project and terminate this Funding Agreement.
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- B.21.4 Any costs incurred by the Recipient in accordance with the performance of activities under this Funding Agreement up to and including the Date of Acquisition will be met by the Authority.
- B.21.5 Notwithstanding Clause B.21.3.2, for the avoidance of doubt if the Acquiring Party continues to draw down funding as awarded under this Funding Agreement, the Acquiring Party will be considered as if it were the Recipient and agrees to be bound by the responsibilities and terms and conditions of this Funding Agreement.
- B.21.6 The Authority reserves its right to assure itself that the Acquiring Party agrees to be bound by the terms and conditions as defined in Clauses B.2, B.9, B.10, B.11, B.15, B.16 and B.27.
- B.21.7 The Acquiring Party agrees on a best endeavours basis to mitigate and reduce any actual or potential financial losses which may occur after the Date of Acquisition under the activities outlined in this Funding Agreement. For the avoidance of doubt, under the terms of this Agreement best endeavours is defined as convening, facilitating and attendance at a governance meeting where financial commitments and risk are discussed with the Authority within 1 (one) calendar month of the Date of Acquisition and an action plan is agreed.

## **B.22 WAIVER**

- B.22.1 No failure or delay by either Party to exercise any right or remedy under this Agreement shall be construed as a waiver of any other right or remedy.

## **B.23 NOTICES**

- B.23.1 All notices and other communications in relation to this Agreement shall be in writing and shall be served by delivering it personally or by sending it by pre-paid first class post, recorded delivery or registered post or by email ([england.ccio@nhs.net](mailto:england.ccio@nhs.net)) and for the attention of the relevant party specified in this Agreement (or such other address as that party may stipulate in accordance with this clause).
- B.23.2 A notice shall be deemed to have been received:
- B.23.2.1 If delivered personally, at the time of delivery;
  - B.23.2.2 In the case of pre-paid first-class post, three Working Days from the date of posting;
  - B.23.2.3 In the case of email, at the time that the email enters the information system of the intended recipient if sent before 16:00 hours of any Working Day and otherwise at 09:00 hours on the next Working Day and provided that no error message indicating failure to deliver has been received by the sender and provided further that within twenty four hours of transmission a hard copy of the email signed by or on behalf of the person giving it is sent by pre-paid first class post, recorded delivery or registered post to the intended recipient.
- B.23.3 In proving service, it shall be sufficient to prove that the envelope containing the notice was addressed to the relevant Party at its address previously notified for the receipt of notices (or as otherwise notified by that Party) and delivered either to that address or into the custody of the postal authorities as pre-paid first class post, recorded delivery, registered post or airmail letter, or that the notice was transmitted by fax to the fax number of the relevant Party at its fax number previously notified for the receipt of notices (or as otherwise notified by that party).

## **B.24 DISPUTE ESCALATION AND RESOLUTION**

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- B.24.1 The Parties will attempt in good faith to resolve any Dispute arising out of or in relation to this Agreement initially through the regular programme governance process.
- B.24.2 The Dispute Escalation and Resolution procedure can be initiated if either Party believes a Dispute exists or is likely to exist. A template has been provided in Annex A to support this process.
- B.24.3 Any Dispute which has occurred or, in the opinion of either Party, is likely to occur must be confirmed to the other Party in writing ("Dispute Notification"). The Dispute Notification must include:
- Date of Dispute
  - Cause of Dispute
  - Categorisation of Dispute:
    - Internal (between programme stakeholders) or
    - External (across the supply chain and/or with other third parties)
  - Interpretation of events leading to the Dispute
  - Where possible, documented evidence of events leading to the cause of the Dispute
  - Expected outcome of the Dispute if not resolved
  - Outline proposal for resolution of the Dispute
- B.24.4 If the Dispute cannot be settled amicably as defined in Clause B.23.1 within seven (7) days from the date on which either Party has served a Dispute Notification on the other then the remaining provisions of this Clause B.23 shall apply.
- B.24.5 Dispute Resolution has 3 stages as follows:
1. One to One interaction
  2. Group Involvement
  3. Forced Resolution
- B.24.5.1 Stage 1a: One to One Interaction
- Should the actions outlined under Clause 23.4 fail to deliver a resolution, within seven (7) days of the outcome of Clause 23.4 the Authority's representative and Recipient's Programme Manager will convene a meeting of the necessary parties to seek to understand their viewpoints and the implications for them, record the facts, propose solutions and act as mediator with the sole intention of reaching a resolution.
- B.24.5.2 Stage 1b: One to One Interaction
- Should stage 1a fail to deliver a resolution, after seven (7) days the Authority's representative will escalate to the Authority's Programme Director and Recipient's nominated executive who will convene a meeting of the necessary parties to seek to understand their viewpoints and the implications for them, record the facts, propose solutions and act as mediator with the sole intention of reaching a resolution.
- B.24.5.3 Stage 1c: One to One interaction
- Should stage 1b fail to deliver a resolution, after seven (7) days the Authority's Programme Director (or their nominated representative) and Recipient's CEO (or their nominated representative) will convene a meeting of the necessary parties to seek to understand their viewpoints and the implications for them, record the facts, propose solutions and act as mediator with the sole intention of reaching a resolution.
- B.24.5.4 Stage 2: Group Involvement
- Should stage 1c fail to deliver a resolution, after seven (7) days the Dispute will be escalated to the Authority's Programme Director by the Recipient's CEO who will provide the facts, options and implications to Programme Governance
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(Programme Board), via NHS SRO, and request specific decisions. They should set the timetable and prepare the disputing parties for group negotiations in advance of the Board. At the Board recommendations and actions made will be recorded and progress reviewed at the next Board if not sooner.

**B.24.5.5 Stage 3: Forced Resolution**

Should stage 2 fail to deliver a resolution during the timetable set by the parties under Clause B.23.5.4, the Dispute will be escalated to the NHS SRO by the Recipient's CEO who will provide the facts, options and implications to the NHS Digital Delivery Board ("DDB"), via the NHS CCIO, and request specific decisions. They should set the timetable and prepare conflicting parties for group negotiations in advance of the Board. At the Digital Delivery Board recommendations and actions made will be recorded and progress reviewed at the next Board if not sooner. The DDB can mandate action or advise on third party options to assist reaching resolution, giving the pros and cons of adjudication, arbitration, and judiciary and provide the necessary parties (mediators, arbitrators) with the appropriate facts.

- B.24.6 The Parties agree that a decision from the outcome of Stage 3 on a Dispute shall be final and binding and shall be enforceable as if it were an agreement made directly between the Parties.
- B.24.7 Unless this Agreement shall have been repudiated or terminated and notwithstanding that a Dispute remains unresolved, the Parties shall continue to carry out their respective obligations in accordance with this Agreement during the process of Dispute Resolution.
- B.24.8 Any costs incurred by the Parties in undertaking the Dispute Escalation and Resolution Procedure as defined in this Clause B.26 shall be met by the Party incurring those costs. Any joint costs incurred shall be divided equally between the Parties.

**B.25 NO PARTNERSHIP OR AGENCY**

- B.25.1 This Agreement shall not create any partnership or joint venture between the Authority and the Recipient, nor any relationship of principal and agent, nor authorise any Party to make or enter into any commitments for or on behalf of the other Party.

**B.26 FORCE MAJEURE**

- B.26.1 Subject to the remaining provisions of the Escalation and Dispute Resolution Procedure either Party to this Agreement may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event.
- B.26.2 A Party cannot claim relief if the Force Majeure Event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- B.26.3 The Affected Party cannot claim relief as a result of a failure or delay by any other Party in the performance of that other Party's obligations under a contract with the Affected Party (unless that other Party is itself prevented from or delayed in complying with its obligations as a result of a Force Majeure Event). The Affected Party shall give the other Party written notice of the Force Majeure Event as soon as reasonably practicable. The notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.
- B.26.4 As soon as practicable following the Affected Party's notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement. The Parties shall take all reasonable steps to overcome or minimise the consequences of the Force Majeure Event.
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B.26.5 The Affected Party shall notify the other Party as soon as reasonably practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.

**B.27 SURVIVORSHIP**

B.27.1 The following clauses shall survive the termination or expiry of this Agreement:

B.5 (Accounts and Records), B.8 (Acknowledgment and Publicity), B.9 (Confidentiality and Disclosure), B.10 (IPR), B.11 (Freedom of Information), B.12 (Data Protection), B.16 (Limitation of Liability), B.23 (Notices), B.24 (Escalation and Dispute Resolution) and B.29 (Governing Law).

**B.28 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

B.28.1 This Agreement does not and is not intended to confer any contractual benefit on any person pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999.

**B.29 GOVERNING LAW**

B.29.1 This Agreement shall be governed by and construed in accordance with the law of England and the Parties irrevocably submit to the exclusive jurisdiction of the English courts.

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