

Appendix A

MEMORANDUM OF UNDERSTANDING IN RELATION TO A STRATEGIC PARTNERSHIP

This Memorandum of Understanding (“**MOU**”) is entered this day of 2014 between:

- (1) Derby Hospitals NHS Foundation Trust of Royal Derby Hospitals, Uttoxeter Road, Derby, DE22 3NE (“**DHFT**”); and
- (2) Sherwood Forest Hospital NHS FT of x
- (3) Chesterfield Royal Hospital NHS FT of y

Individually a “Party” and together the “Parties”.

Introduction

- (A) The NHS faces exceptional challenges to reduce costs, increase value for tax payers, and manage the pressures from demographic and epidemiological change whilst improving care.
- (B) All three organisations believe that there are many opportunities where these challenges can best be met by delivering pathology services through a collaborative model, thus increasing value to the tax payer, whilst improving clinical quality and patient experience.
- (C) Following the recent, but abortive work, by commissioners to tender GP pathology services a good deal of work has already been completed to review our approach to service delivery. One of the bi-products of this work was a proposal to deliver a “Western Hub” pathology model for delivering pathology services across the three sites differently. The organisations see three phases of the benefits that such an approach could bring;
 1. This will look at ensuring we can deliver the most clinically and cost effective model for the current pathology provision, by harnessing the best approach to working across the three sites, and by leveraging a better approach with suppliers for pathology supplies and expertise.
 2. Then the review will look at how we ensure pathology is offering the maximum amount of benefits to patient pathways by ensuring all testing for secondary and primary care is offered with the right clinical advice and support, maximising the opportunities for pathology to contribute to improved patient care and by minimising any duplication of, or unnecessary, testing.
 3. The future of pathology could begin to see radical changes in the way services could be provided. The three organisations wish to ensure that they have right scale to maximise the benefits, working alongside other partners in the East Midlands pathology community, to ensure we maximise the benefits from emergent technology, including improved pathology testing and improved clinical decision support.
- (D) In light of these factors the Parties wish to enter into this MOU to provide a framework in which the Parties can exploit opportunities to work collaboratively, where appropriate, to provide pathology services to their local populations. It is anticipated that the first project the Parties will look to work together on is the delivery of a review of the current

approach to their pathology services to see if there is a better and more cost-effective model that could be pursued.

1. Principles of the MOU

- 1.1 Save in respect of clauses 2, 3, 4.2, 5, 6, 7 and 8 the terms of this MOU shall not be legally binding on the Parties.
- 1.2 Nothing in this MOU is intended to contravene the Principles and Rules for Cooperation and Competition or any other applicable legislation. The Parties shall consider each proposed joint working opportunity in light of the Principles and Rules for Cooperation and Competition and all other applicable legislation including without limitation the Competition Act 1998. The Parties shall seek further legal advice as to compliance with such rules and legislation before entering into legally binding agreements.
- 1.3 Except as otherwise provided in this MOU, nothing in this MOU shall prevent either Party from working with other third parties or on its own in relation to:
 - 1.3.1 the provision of health services; or
 - 1.3.2 the submission of tenders for work opportunities.
- 1.4 The Parties shall act in good faith towards each other at all times.
- 1.5 Where a Party identifies a tender opportunity for community services which it considers may be suitable for a joint bid from the Parties it shall notify the nominated representative for the other Party set out in clause 11 of the opportunity and the nature of it.
- 1.6 Where one Party has notified the other Party of a possible joint tender opportunity, that other Party shall review the tender opportunity and shall confirm to the first Party whether or not it wishes to submit a joint bid.
- 1.7 Where a Party has presented a joint working opportunity to the other Party and that other Party wishes to accept that opportunity the Parties shall enter into a MOU agreed by the respective Boards setting out:
 - 1.7.1 the terms on which the Parties shall work together to submit the joint bid;
 - 1.7.2 which Party shall act as the lead contractor;
 - 1.7.3 the terms on which the Parties shall, if successful in their bid, provide the services;
 - 1.7.4 the terms on which the Parties shall commit resources (including, without limitation, assets, employees and finances) to the preparation & submission of the bid and where successful the delivery of the services;
 - 1.7.5 the liability of the Parties to each other:
 - 1.7.5.1 in the preparation & submission of the bid;
 - 1.7.5.2 in relation to the provision of the services;
 - 1.7.6 such other terms as the Parties consider appropriate including, without limitation, indemnity arrangements.
- 1.8 Where a Party has presented a joint working opportunity to the other Party and that other Party does not wish to accept that opportunity or the Parties cannot agree the terms on which they would bid for or provide the services the first Party may pursue a joint bid approach with such other organisation as it considers appropriate and/or each Party may submit a bid in its own right.

- 1.9 Save where the Parties may not legally do so or are unable to do so due to the Principles and Rules on Cooperation and Competition or pre-existing contractual commitments the Parties shall work together to identify specific opportunities to develop innovative integrated care models which can be offered to commissioners to improve quality and reduce cost to achieve our health community challenge to deliver the cost savings required within the NHS.
- 1.10 The Parties shall work in such a way as to actively develop this strategic relationship and to have mechanisms in place to resolve and escalate any operational issues that may impact on this.
- 1.11 This MOU shall be reviewed at such intervals as are agreed by the board of each Party. At this time the Parties shall seek to confirm future commitment; review the operation of the MOU to date; and the operation of the MOU as against each Party's objectives.
- 1.12 Nothing in this MOU shall grant either Party any exclusive rights or privileged access to the other Party, its personnel, data, information or business knowledge. Each Party, in accordance with its statutory functions, is free to make available its personnel data, information or business knowledge to other agencies and other such organisations as it deems necessary to fulfil its statutory functions.

2. Confidentiality

- 2.1. Each Party shall maintain the security and confidentiality of the information belonging to or relating to the other Party, its finances, business affairs which is not in the public domain and which:
 - 2.1.1 has been marked as confidential by the Party to whom it belongs; or
 - 2.1.2 has been notified (whether in writing or orally) to the other Party as confidential in nature; or,
 - 2.1.3 due to its character or nature a reasonable person would treat as confidential("**Confidential Information**").
- 2.2. Neither Party shall, without the prior written consent of the other, use, disclose, copy or modify the other Party's Confidential Information (or permit others to do so) except in so far as it is necessary for that Party to comply with its obligations under this MOU.
- 2.3. Neither Party shall make use of, or otherwise process, any Confidential Information received, other than for the strict purpose or purposes which have been expressly agreed in this MOU.
- 2.4. Each Party shall restrict access to any Confidential Information received solely to its responsible staff members and/or to the responsible staff members of any authorised third party organisation(s) who need to have such access for the strict purpose or purposes which have been expressly agreed in this MOU.
- 2.5. Upon becoming aware of the same each Party shall give immediate notice to the other Party of any unauthorised misuse, disclosure, theft or loss of that Party's Confidential Information.

2.6. Either Party may request the return or destruction of their Confidential Information from/by the other Party at any time and upon reasonable notice. Following receipt of such a request the recipient Party shall as soon as is reasonably practicable and in accordance with the request of the originating Party either return or take all reasonable steps to destroy the Confidential Information and certify in writing that they no longer hold any Confidential Information belonging to the other Party.

3. Security of Information

3.1. Each Party shall when processing any:

3.1.1. personal data and/or sensitive personal data (as defined in the Data Protection Act 1998) comply fully and in all aspects with the provisions of the Data Protection Act 1998 and all other relevant legislation (including any sub-ordinate legislation or any amendment or re-enactment thereof); and/or

3.1.2. Confidential Information, without prejudice to the provisions of clause 2, comply with the Department of Health's Code of Practice on confidentiality in the NHS; and comply with the provisions of clause 3.2.

3.2 Each Party shall, therefore, as a minimum, ensure that:

3.2.1 all personal and sensitive personal data and/or Confidential Information is processed fairly and lawfully;

3.1.2 all personal and sensitive personal data and/or Confidential Information is obtained only for one or more specific and lawful purpose, and is not further processed in any manner incompatible with that purpose or those purposes;

3.1.3 all personal and sensitive personal data and/or Confidential Information is adequate, relevant and not excessive in relation to the purpose or purposes for which it is processed;

3.1.4 all personal and sensitive personal data and/or Confidential Information is accurate and, where necessary, kept up-to-date.

3.1.5 no personal or sensitive personal data and/or Confidential Information is kept for longer than necessary;

3.1.6 appropriate technical and organisational measures are taken against unauthorised or unlawful processing of personal and sensitive personal data and/or Confidential Information and against accidental loss or destruction, or damage to, personal and sensitive personal data information and/or Confidential Information.

4 Duration and Termination

4.1 This MOU shall come into effect on the date set out above and shall remain in full force and effect until such time as it is terminated by either Party serving on the other Party 3 months' written notice.

4.2 The following clauses shall survive termination of this Agreement 2, 3, 4.2, 5, 6, 7 and 8.

5 Liability and Indemnities

5.1 Each Party shall be liable to the other Party for and shall indemnify and shall keep indemnified the other Party against any and all liabilities, losses, costs, expenses, claims or proceedings whatsoever in respect of:

a. any loss of or damage to property (whether real or personal), and

b. any injury to any person, including injury resulting in death

in consequence of or in any way arising out of its breach of the legally binding provisions of this MOU except insofar as such loss, damage or injury shall have been caused by any act or omission undertaken in strict accordance with the instructions of that other Party or by any act or omission or negligence on the part of that other Party, its agents, sub-contractors and anyone else involved in or employed or engaged by that Party.

6 Costs

6.1 Each Party shall be responsible for its own costs incurred in the preparation and negotiation of this MOU.

6.2 Each Party shall comply with the Bribery Act 2010 and all NHS requirements in respect of the payment of bribes and the making of corrupt gifts.

7 Governing Law

7.1 In so far as the terms of this MOU are legally binding they shall be governed by English law and the Parties submit to the exclusive jurisdiction of the English courts.

8 Successors and Assigns

8.1 To the extent that this MOU is legally binding on the Parties it shall be binding on the representatives, assigns and successors of each Party and shall inure to the benefit of the assigns and successors of each Party; provided, however, that the rights and obligations of each Party hereunder are not assignable.

9 Headings

9.1 Headings used in this MOU are provided for convenience only and shall not be used to construe meaning or intent.

10 Publicity

10.1 Neither Party shall make any statement or issue publicity in connection with this MOU without prior consent of the other Party.

10.2 Neither Party shall use the other's name or logo without prior written consent of that other Party.

11 Nominated Persons

The Parties nominated persons shall be:

11.1 For DHFT [*insert details*]; and

11.2 For SFNFT [*insert details*]

11.3 For CRNFT [*insert details*]

or such other persons as one Party may notify to the other.

Signed for and on behalf of
Derby Hospitals NHS Foundation Trust

Signed for and on behalf of
Sherwood Forest Hospitals NHS FT

Signed for and on behalf of
Chesterfield Royal Hospitals NHS FT