



COVID-19 vaccination programme 2020/21: Enhanced Service

COVID-19 ES Vaccination Collaboration Agreement

Published: 4 December 2020



Tel: 01483 511555 Email: info@drsolicitors.com

This document was created from the template COVID-19 ES Vaccination Collaboration Agreement published on 4 December 2020 by the NHS Commissioning Board. All drafting notes and amendments to the template made by DR Solicitors Ltd are provided for illustrative purposes only and do not constitute legal advice nor give rise to a solicitor/client relationship. DR Solicitors Ltd shall not be liable for any damage (including, without limitation, damage for loss of business or loss of profits) arising from the use of this document or any of the drafting notes or amendments contained in it. Nothing in this disclaimer shall:-

- (a) limit or exclude any liability for death or personal injury resulting from negligence;
- (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- (c) limit any liability in any way that is not permitted under applicable law; or
- (d) exclude any liability that may not be excluded under applicable law.

COVID-19 ES Vaccination Collaboration Agreement

INTRODUCTION

The purpose of this COVID-19 ES Vaccination Collaboration Agreement (this “**Agreement**”) is to support the delivery of the individual and collective responsibilities of the Collaborating Practices as part of the COVID-19 vaccination programme as set out in [COVID-19 vaccination programme 2020/21 Enhanced Service Specification](#) (the “**ES**”) (as amended from time to time).

Signatories to this Agreement are referred to as “Collaborating Practices” which are primary medical services providers which hold GMS, PMS or APMS contracts (“**Contracts**”) and will have signed up to and are responsible for delivering the requirements of the ES.

It is recognised that the successful delivery of the COVID-19 vaccination programme will require strong relationships and the creation of an environment of trust and collaboration. This Collaboration Agreement seeks to support those relationships and to establish a “**PCN Grouping**” for the purpose of delivering the requirements of the ES.

This Agreement supplements and operates in conjunction with the Collaborating Practices’ existing Contracts and the respective obligations under these Contracts continue.

References in this Agreement to the “**Commissioner**” are to the NHS Commissioning Board which is also known as NHS England.

COLLABORATING PRACTICES

The Collaborating Practices of our PCN Grouping are:

Name and address of Collaborating Practice	Name of signatory	Signature of signatory and date of signature

In this Agreement, “**we**” or “**us**” means all Collaborating Practices.

AGREED TERMS

COMMENCEMENT AND STATUS

1. This Agreement sets out how we will work together as a PCN Grouping to deliver the requirements of the ES to eligible patients.
2. This Agreement will be effective on the date that it is signed by all of the Collaborating Practices (the “**Commencement Date**”) and will continue, unless terminated earlier in accordance with this Agreement until the expiry of the ES.
3. Each Collaborating Practice warrants that it has confirmed its participation in the ES in accordance with the process set out in the ES.
4. We agree that this Agreement is legally binding and is not an NHS Contract pursuant to section 9 of the National Health Service Act 2006.

PRINCIPLES

5. We acknowledge that nothing in this Agreement is intended to vary, relax or waive any rights or obligations contained in our primary medical services contracts.
6. We will work together to deliver the requirements of the ES.
7. We will co-operate with each other (and others so far as is reasonable) in a timely and effective way and give to each other such assistance as may reasonably be required in connection with this Agreement and the delivery of the services under the ES.
8. We will openly, honestly and efficiently share information with each other (and others so far as is reasonable and lawful) that is relevant to the requirements of the ES.
9. We will aim to update this Agreement to incorporate any relevant statutory changes and any changes in the way we work together as agreed in accordance with the decision-making process set out in this Agreement.
10. We will aim to update this Agreement as and when required. We understand that the Covid-19 vaccination programme is fast moving and that the ES will be updated from time to time. We will endeavour to ensure that the arrangements between us are in line with the ES, as it is amended from time to time.

Commented [DRS1]: The Collaboration Agreement document comprises two parts: (i) the 80+ operational clauses at the beginning and (ii) the 8 Schedules and 1 Annex at the end. Part (i), as it appears in this draft, can be used by any PCN Grouping (the ‘PCN Grouping’ being the Collaborating Practices which sign up to this agreement). Part (ii) has been tailored for use by an existing PCN and, specifically, a PCN which has Schedules to the Mandatory Agreement prepared by DR Solicitors. As will be detailed further on, the modifications required to make it useable by any PCN are not extensive. The modifications needed to make it useable for a PCN Grouping which doesn’t map directly on to an existing PCN are going to be more extensive.

GENERAL OBLIGATIONS

11. We will carry out our obligations under this Agreement.
12. We will carry out our obligations with all due care, skill and ability and use our best endeavours to promote the interests of patients.
13. We will devote such time as may be required to properly carry out our obligations.
14. In carrying out our obligations, we will comply with all applicable laws and have regard to all relevant guidance published by the Commissioner or referenced within the ES.
15. We are each responsible for ensuring our individual regulatory compliance.
16. Where any incident that may impact on patient safety arises or where there is any potential breach of the ES, we will ensure that all Collaborating Practices are made aware as soon as practicable after we become aware of the issue. This is in addition to any action that may be required by our own Contracts.
17. Where any patient safety incident or potential breach of the ES is investigated by a commissioner or a regulator, we will work collectively to respond to such investigation and share all relevant information with each other, the commissioner or regulator (as relevant) for the purpose of that investigation.
18. Where any of us propose any change to how we deliver the requirements of the ES as set out in this Agreement, we will discuss how best to involve and/or inform patients of those proposed changes in line with our collective and individual patient engagement obligations.

ACTIVITIES

19. We have nominated, and the Commissioner has approved, the premises detailed in **Schedule 1** as the premises from which the COVID-19 vaccination as set out in the ES will be delivered to eligible patients (the “**Designated Site**”). The property arrangements for the use of the Designated Site(s) are set out at **Schedule 1**.
20. We have agreed that the [insert name] practice shall be the Host Practice, which shall provide the Host Services set out at **Schedule 2** from the Commencement Date and subject to **Clause 66** unless or until it is terminated in accordance with **Clause 2**.
21. We agree that we will work together in a collaborative manner to deliver the requirements of the ES. The arrangements for this collaborative working are set out in **Schedule 3** which describes the activities which will be undertaken by us and includes our arrangements for how we will deliver the clinics and responsibility is shared between us. We each agree to comply with our individual obligations as set out in **Schedule 3**.

Commented [DRS2]: Please insert the name of the Host Practice, which amongst other things is the practice which is going to receive the ES money on behalf of the PCN Grouping, but please see our embedded comment at Schedule 2 first.

22. Without prejudice and subject to the provisions of **paragraph** Error! Reference source not found. of **Schedule 4** we are satisfied that the Collaborating Practices, working together as the PCN Grouping is a joint enterprise and that the Patients who attend for Covid-19 vaccinations are attending what is deemed to be a temporary single medical practice for the purpose of regulation 3(8)(b) of the Human Medicines Regulations 2012.

STAFF SHARING ARRANGEMENTS

23. **Schedule 4** sets out arrangements, which, inter alia, deal with staff and any arrangements for the re-deployment of existing staff of the Collaborating Practices ("**Staff**") for the purposes of delivering the COVID 19 Vaccination Programme. By signing this Agreement we each agree to comply with our individual obligations as set out in **Schedule 4**.

FINANCIAL ARRANGEMENTS

24. We acknowledge that **Schedule 5** describes the financial arrangements between the Collaborating Practices. We each agree to comply with our individual obligations as set out in **Schedule 5**.
25. We each agree that payment is utilised in a manner that constitutes an efficient and effective use of NHS funding.

INFORMATION SHARING AND CONFIDENTIALITY

26. For the purposes of this Agreement, confidential information means the provisions of this Agreement and all information provided in connection with this Agreement which is secret or otherwise not publicly available (in both cases in its entirety or in part) including commercial, financial, marketing or technical information, know-how, trade secrets or business methods, in all cases whether disclosed orally or in writing before or after the date of this Agreement.
27. We may each request from any Collaborating Practice any information, including confidential information, which the requesting Collaborating Practice, acting reasonably, considers is necessary to enable us to carry out the activity of our PCN Grouping as set out in this Agreement. Such information may include (but is not limited to) patient records, information on expenditure on PCN Grouping related activity, information on performance of activity under this Agreement and information on, or relevant to, staff sharing arrangements.
28. Where information, including confidential information, is requested by a Collaborating Practice, acting reasonably, for submission to the Commissioner for the purposes of showing compliance with the requirements of the ES, we will, provided we are satisfied that there is a lawful basis for doing so, provide the information as requested.
29. Provided information is requested in accordance with **Clause 28** we agree that we will not unreasonably withhold agreement to share information following a request from another Collaborating Practice.

Commented [DRS3]: The draft supplied by NHSE contemplated a Memorandum of Understanding in a form set out in schedule 4 being signed as a separate document from the rest of this Agreement. This may have been so that the MOU could be signed with parties other than Collaborating Practices where it was proposed that such practices would provide staff. As this draft is based on all the staff being supplied by Collaborating Practices we have amended the document so that the Memorandum of Understanding is fully incorporated into the document. We have accordingly deleted many of the provisions from schedule 4 (e.g. confidentiality and data sharing) which duplicated provisions in the main body of the agreement. Any PCN Groupings which are contemplating staff sharing with entities other than Collaborating Practices would be advised to enter into a formal subcontracting arrangement with them, but failing that should sign the Memorandum of Understanding set out at Schedule 4.1 of the draft Collaboration Agreement supplied by NHSE.

30. We will ensure that any information provided to another Collaborating Practice in accordance with this Agreement is accurate in all material respects and we will provide such information within reasonable timescales and in the format requested, having regard to any due contractual, and subject to any other legal, obligations.
31. We agree that sharing and processing of patient records and other information considered to be personal data under any applicable data protection legislation will take place as and when it is required. We each agree to comply with our individual obligations as set out in the Data Sharing Agreement detailed at **Annex 1**.
32. Subject to **Clause 34** and/or unless the information is to be provided to the Commissioner to show compliance with the requirements of the ES, we will keep confidential all confidential information disclosed to any one of us by any Collaborating Practice in connection with this Agreement and we will use all reasonable endeavours to prevent staff in our organisations or any other person under our express or implied control from making any disclosure to any person of that information.
33. In addition to disclosing any confidential information to the Commissioner for the purposes of the ES (and payment and verification under the ES), any Collaborating Practice may disclose another Collaborating Practice's confidential information:
- a) to comply with applicable legislation;
 - b) to any appropriate regulatory body;
 - c) in connection with any dispute resolution or litigation between the Collaborating Practices; and
 - d) as permitted under any other express arrangement or other provision of this Agreement,
- provided that:
- e) the Collaborating Practice whose confidential information is being disclosed is, where practicable and permissible, given prior notification of the disclosure; and
 - f) the disclosure is reasonably considered to be necessary.

INDEMNITY ARRANGEMENTS

34. Nothing in this Agreement limits or purports to limit a Collaborating Practice's liability for:
- a) death or personal injury caused by its own negligence; or
 - b) fraud committed by it or on its behalf.

35. Without prejudice and subject to **Clause 37**, no Collaborating Practice shall be liable to any other for (a) any indirect or consequential loss or (b) any loss of use or loss of profits, business, contracts, revenues or anticipated savings whether arising from tort (including, without limitation, negligence or breach of statutory duty), breach of contract or otherwise.
36. Without prejudice and subject to **Clause 37**, the Host Practice excludes all liability to the Collaborating Practices arising otherwise than as a result of its own negligence in the performance of this Agreement.
37. **Each** Collaborating Practice (the indemnifying Collaborating Practice) agrees to indemnify and keep indemnified every other Collaborating Practice (the indemnified Collaborating Practice) against all costs, claims, demands, liabilities and damages incurred or suffered by the indemnified Collaborating Practice as a result of any act or omission of the indemnifying Collaborating Practice, its employees or agents except in so far as such costs, claims, demands, liabilities or damages arise or are contributed to as a result of act or omission of the indemnified Collaborating Practice (or of any of its employees or agents).
38. Each Collaborating Practice shall ensure that its indemnity and insurance arrangements during the term of this Agreement are sufficient to cover its liabilities under this Agreement, including liabilities in respect of Staff and any third parties attending any premises for the purposes of delivering the requirements of the ES. Any Collaborating Practice shall upon request produce to any other Collaborating Practice evidence that the indemnity and insurance arrangements are in place and up-to-date. The Clinical Negligence Scheme for General Practice (CNSGP) provides clinical negligence indemnity cover for all staff engaged by a Collaborating Practice under the CNSGP Regulations. It covers NHS activities delivered by a Part 4 contractor under a Primary Medical Services contract (including an NHS standard contract with Schedule 2L), a Primary Medical Services sub-contractor, or the provision of 'Ancillary Health Services' for a Part 4 contractor or Primary Medical Services sub-contractor such as an Enhanced Service. Cover under CNSGP is not restricted to a Collaborating Practice's registered patients so applies to the provision of the ES by a Collaborating Practice to a person who is not on the registered list of that Collaborating Practice.
39. The Collaborating Practices shall take reasonable steps to advise any relevant Staff that they should consider whether they are covered by appropriate professional indemnity arrangements in respect of their involvement or activities in delivering the requirements of the ES.
40. If and to the extent that the indemnity arrangements set out in **Clauses 35 to 39** conflict with indemnity arrangements in any other agreement or memorandum of understanding relating to the engagement of Staff to deliver the requirements of the ES, the provisions of this agreement shall apply.

SUB-CONTRACTING OF CLINICAL MATTERS

41. We have agreed the sub-contracting of clinical matters set out at **Schedule 6** which we consider is necessary to deliver the requirements of the ES. Each Party shall, before undertaking such sub-contracted clinical services, assure itself that the proposed sub-contracted services are covered by the indemnity arrangements

Commented [DR54]: There are three areas we have identified as potentially giving rise to liability. The first is clinical negligence, which is covered by Clause 38, to which we have made very few amendments from the original NHSE draft. As originally drafted by NHSE Clause 38 states that the CNSGP will provide cover irrespective of which practice's clinicians provide the service. The second is 'slips and trips' (e.g. a patient falling down the stairs at a surgery because of a loose carpet), which is again dealt with in Clause 38 and which should, in practice, be covered by the Occupiers' Liability insurance of the Designated Site. The third is employment claims such as bullying and harassment. This is covered by Clause 37, which we have extensively amended from the original because it only covered the Host Practice but not other Collaborating Practices. To give an example of how Clause 37 works, if Practice A is the Host Practice and provides the Designated Site, Practice B and Practice C both have clinicians working there, and a clinician from Practice B bullies a clinician from Practice C, the bullied clinician's employment claim as a matter of law will be against their employer, Practice C. The effect of Clause 37 is that in those circumstances Practice B will be liable for the claim.

INTELLECTUAL PROPERTY

42. For the purposes of this Agreement, intellectual property means rights in and to inventions, patents, design rights (registered or unregistered), copyrights, rights in confidential information, database rights and any similar or analogous rights that exist anywhere in the world and including any application for any registration of the foregoing.
43. Each of us has our own existing intellectual property and we will retain the ownership of our respective intellectual property rights.
44. If any of us creates any new intellectual property in the course of this Agreement, the Collaborating Practice which creates the intellectual property will own the rights to that intellectual property unless agreed otherwise.
45. We agree that in the interest of our PCN Grouping we will grant to each other a royalty free non-exclusive license to use our existing and newly created intellectual property for the purposes of fulfilment of our obligations under this Agreement.

MEETINGS AND DECISION-MAKING

Meetings

46. We will arrange and attend meetings as often as is necessary to discuss any issues relating to the ES including (but not limited to) performance, strategies and the operating environment relating to the delivery of the requirements of the ES.
47. We will agree an agenda prior to each meeting and ensure papers are circulated to each of Collaborating Practice in advance.
48. With the agreement of Collaborating Practices (such agreement not to be unreasonably withheld), partners who are not Collaborating Practices may attend meetings of the Collaborating Practices to participate in discussions for the efficient and effective delivery of the requirements of the ES.

Meetings generally and decision-making

49. Further arrangements relating to meetings of the Collaborating Practices including (but not limited to) ways in which meetings can be held, attendance and quorum requirements, and how decisions are made are detailed in **Schedule 7**.

JOINING THE PCN GROUPING

50. A person or organisation may from time to time indicate to one or more Collaborating Practices that it wishes to join our PCN Grouping. Where this occurs, the relevant Collaborating Practice(s) will notify the others and the request shall be discussed by all other Collaborating Practices as soon as practicable, as per the

51. In accordance with the arrangements for meetings and decision-making as detailed in **Schedule 7**, it will be considered and decided whether it is appropriate for that person or organisation to join our PCN Grouping.
52. We acknowledge that a person or organisation seeking to join our PCN Grouping must comply with the process of participation in the ES, which includes an agreement in writing with the Commissioner in relation to its participation in the ES.
53. Where a person or organisation joins our PCN Grouping, this Agreement will be updated in accordance with the variation procedure set out in **Clause 67** to include reference to that person or organisation as a Collaborating Practice and to reflect any consequential amendments to the Schedules of this Agreement that have been determined.

LEAVING THE PCN GROUPING

54. **Clauses 55 to 66** below set out the minimum requirements relating to situations where a Collaborating Practice departs or is required to leave our PCN Grouping.

Voluntary departure

55. A Collaborating Practice may choose to leave our PCN Grouping by giving no less than 35 days' notice to the other Collaborating Practices. From the date the Collaborating Practice leaves our PCN Grouping, that Collaborating Practice will be deemed no longer to be a party to this Agreement but the Agreement will continue in force as between the remaining Collaborating Practices unless determined otherwise in accordance with the decision-making arrangements detailed in **Schedule 7** and any requirements of the ES.
56. In accordance with the arrangements for meetings and decision-making as detailed in **Schedule 7**, the following matters will be considered or determined (as relevant):
- a) the consequences of that Collaborating Practice's departure in relation to our activities under this Agreement, financial arrangements, staffing arrangements and any other PCN Grouping related matters;
 - b) the actions required of the departing Collaborating Practice; and
 - c) the actual leaving date.
57. The departing Collaborating Practice agrees to comply with all reasonable actions that are determined to be required of it before the actual leaving date. Such actions may include executing such documents and/or providing such information as is required to ensure the delivery of the requirements of the ES can be continued by the remaining Collaborating Practices. If any actions are not completed prior to the actual leaving date, the departing Collaborating Practice will complete those actions as soon as practicable after that date.

Commented [DRS5]: Please note that, as per an earlier comment, this draft is specifically designed so that it can be used with an existing PCN. If this provision is exercised and a non-PCN practice joins the PCN Grouping, then many of the provisions in the schedules, particularly those in Schedule 7 which work by referring to the PCN Schedules, will need to be reworked because the new joiner won't be a party to the PCN arrangements to which Schedule 7 refers

Commented [DRS6]: See the comment above at clause 50, which apply equally if the PCN Grouping matches a PCN and a practice leaves the PCN Grouping but doesn't simultaneously leave the PCN.

58. With effect from the date the Collaborating Practice leaves our PCN Grouping, we will ensure that this Agreement is updated in accordance with the variation procedure set out in **Clause 67** to remove references to the departed Collaborating Practice and to reflect any changes to the **Schedules** that have been determined, including, without limitation, changes to our activities taking into account any relevant requirements of the ES.

Expulsion

59. A Collaborating Practice may be required to leave our PCN Grouping in certain circumstances. These include committing an act or omission set out in **Clause 60** or where an event set out in **Clause 62** below occurs. From the date a Collaborating Practice is expelled from or required to leave our PCN Grouping, that Collaborating Practice will be deemed no longer to be a party to this Agreement but the Agreement will continue in force as between the remaining Collaborating Practices unless determined otherwise in accordance with the decision-making arrangements detailed out in **Schedule 7** and any relevant requirements of the ES.
60. A Collaborating Practice must notify the other Collaborating Practices if it or another Collaborating Practice:
- a) fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 calendar days after being notified in writing to make such payment;
 - b) commits a material breach of any term of this Agreement and that breach is either irremediable or (if such breach is remediable) fails to remedy that breach within a reasonable period;
 - c) repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;

for the purposes of **Clause 60(b)** material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which one or more Collaborating Practices would otherwise derive from this Agreement.

61. Where a Collaborating Practice has notified the other Collaborating Practices in accordance with **Clause 60** then in accordance with the arrangements for meetings and decision-making as set out in **Schedule 7**, the following matters will be considered or determined (as relevant):
- a) the process to be followed for investigating the matter;
 - b) if it is determined that the relevant event occurred:
 - i. the consequences of the event in relation to the PCN Grouping activities, financial arrangements, staffing arrangements and any

other PCN Grouping related matters;

- i. the actions required of any Collaborating Practice including the Collaborating Practice determined to have committed the event;
- iii. whether, taking into account the seriousness of the event and any other relevant factors, the Collaborating Practice should be given the opportunity to rectify the matter or whether the relevant Collaborating Practice should be expelled from our PCN Grouping;

c) if it is determined that the Collaborating Practice is to be expelled, any actions required of that Collaborating Practice and the expulsion date.

62. A Collaborating Practice must notify all other Collaborating Practices as soon as it becomes aware that any of the events below may occur to that Collaborating Practice or another Collaborating Practice:

- a) its Contract expires or is terminated; or
- b) a Collaborating Practice undergoes an event of insolvency detailed in **Schedule 7**.

63. Where a Collaborating Practice has notified other Collaborating Practices in accordance with **Clause 62** then in accordance with the arrangements for meetings and decision-making as set out in **Schedule 7**, the following matters will be considered or determined (as relevant):

- a) the likelihood of the relevant event occurring;
- b) the consequences of the relevant event occurring in relation to PCN Grouping activities, financial arrangements, staffing arrangements and any other PCN Grouping related matters;
- c) if it is determined that the relevant event is likely to occur or has occurred,
 - i. the actions required by any Collaborating Practice including the Collaborating Practice to whom the event is likely to occur or has occurred;
 - ii. whether the Collaborating Practice to whom the event is likely to occur or has occurred is required to leave our PCN Grouping and if so the leaving date.

64. Where it is determined that a Collaborating Practice is to be expelled from or is required to leave our PCN Grouping, that Collaborating Practice agrees to comply with all reasonable actions that are determined to be required of it before the expulsion/leaving date. Such actions may include executing such documents and/or providing such information as is required to ensure the delivery of the ES can be continued by the remaining Collaborating Practices. If any actions are not

COVID-19 vaccination programme 2020/21: Enhanced Service
COVID-19 ES Vaccination Collaboration Agreement

completed prior to the expulsion date, the expelled Collaborating Practice will complete those actions as soon as practicable after that date.

65. With effect from the expulsion date, we will ensure that the Agreement is updated in accordance with the variation procedure to remove references to the expelled Collaborating Practice and to reflect any changes to the Schedules that have been determined.

Departure of the Host Practice

66. Where the Collaborating Practice that has chosen to leave the PCN Grouping or is expelled from the PCN Grouping in accordance with **Clauses 55 to 65** is also the Host Practice, the remaining Collaborating Practices shall agree a replacement Host Practice which shall provide the Host Services set out at **Schedule 2** from the leaving date of the original Host Practice until this Agreement is terminated in accordance with **Clause 2**.

VARIATION PROCEDURE

67. No variation of this Agreement shall be effective unless it is in writing and signed by all Collaborating Practices (or their authorised representatives).

TERMINATION

68. If all Collaborating Practices cease to be signed up to the ES or all Collaborating Practices wish to wind up our PCN Grouping, our PCN Grouping will be dissolved and this Agreement will terminate.

69. Prior to:

- a) the expiry of the ES; or
- b) all Collaborating Practices ceasing to be signed up to the ES or deciding to wind up our PCN Grouping,

and in accordance with the arrangements for meetings and decision-making as set out in **Schedule 7**, the following matters will be considered or determined (as relevant) having regard to any views of the Commissioner:

- c) the consequences of the expiry or termination in relation to PCN Grouping activities, financial arrangements, staffing arrangement and any other PCN Grouping related matters;
- d) the actions required of the Collaborating Practices; and
- e) the actual expiry or termination date.

70. We each agree to comply with all reasonable actions that are determined to be specifically required of our organisation before this Agreement expires or

terminates. If any actions are not completed prior to the expiry or termination date, we will complete those actions as soon as practicable after that date.

EVENTS OUTSIDE OUR CONTROL

71. If an event occurs that is reasonably considered to be outside the reasonable control of the relevant Collaborating Practices and that event prevents one or more of us from carrying out our obligations under this Agreement, the affected Collaborating Practice(s) must:
- a) notify all other Collaborating Practices as soon as practicable after the start of the event and after the event ceases;
 - b) take all reasonable steps to mitigate the consequences of that event;
 - c) resume performance of its obligations as soon as practicable; and
 - d) use all reasonable efforts to remedy its failure to perform its obligations under this Agreement.
72. We agree that, provided an affected Collaborating Practice has complied with **Clause 71**, we will not be entitled collectively or individually to bring a claim for breach of obligations against the affected Collaborating Practice. The affected Collaborating Practice will not incur any liability to any of us for any losses or damages incurred by one or more of us provided that the event prevents the affected Collaborating Practice from carrying out its obligations under this Agreement.

DISPUTE RESOLUTION

73. If any of us have a dispute in relation to this Agreement, we will seek to resolve the dispute in accordance with **Schedule 7**.

GENERAL

74. If a conflict or inconsistency arises between any wording in a Clause of this Agreement and any wording included in a Schedule of this Agreement, the wording in the Clause will take precedence unless this Agreement expressly states that in relation to a particular Clause or Clauses, a Schedule takes precedence.
75. We may have individual arrangements that are relevant to this Agreement with organisations that are not party to this Agreement. We may set out those arrangements in **Schedule 8**. If a conflict or inconsistency arises between any wording in a Clause or a Schedule of this Agreement (other than **Schedule 8**) and any wording included in **Schedule 8**, the wording in the Clause or Schedule (other than **Schedule 8**) will take precedence.
76. Unless we list any arrangements in **Schedule 8**, this Agreement constitutes the entire agreement between us in relation to our PCN Grouping and the ES and

COVID-19 vaccination programme 2020/21: Enhanced Service
COVID-19 ES Vaccination Collaboration Agreement

supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between us, whether written or oral, relating to our PCN Grouping and the ES. This Agreement is entirely separate to any arrangements between the Collaborating Practices and/or other practices which are members of a Primary Care Network under the Network Contract Directed Enhanced Service.

77. Termination or expiry of this Agreement or the fact that a Collaborating Practice has been removed from this Agreement will not affect any rights, remedies, obligations or liabilities of the Collaborating Practices that have accrued up to the date of termination, expiry or removal, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination, expiry or removal.
78. If this Agreement expires, terminates or a Collaborating Practice is removed from this Agreement, those provisions of this Agreement which are expressly or by implication intended to come into or remain in force and effect following such expiry, termination or removal, will so continue and continue to apply to a Collaborating Practice.
79. Any relaxation or delay of any of us in exercising any right under this Agreement must not be taken as a waiver of that right and must not affect our ability subsequently to exercise that right.
80. If any part of this Agreement is declared invalid or otherwise unenforceable, it will be severed from this Agreement and this will not affect the validity and/or enforceability of the remaining provisions.
81. This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute one Agreement.
82. A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
83. Any notices given under this Agreement must be in writing and must be served by hand or post to the address of the relevant other Collaborating Practice(s) set out in the Agreement. Notices:
 - a) by post will be effective upon the earlier of actual receipt, or five calendar days after mailing; and
 - b) by hand will be effective upon delivery.
84. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and, subject to the dispute resolution provisions set out herein, each Collaborating Practice irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or

COVID-19 vaccination programme 2020/21: Enhanced Service
COVID-19 ES Vaccination Collaboration Agreement
its subject matter or formation (including non-contractual disputes or claims).

Schedule 1

Designated Site[s] (Property Arrangements)

The Designated Site as at the Commencement Date is [insert location][, which each of the Collaborating Practices is permitted to occupy [free of charge/at a rate of £[] per day] under licence].

In the event that there is a requirement to change the Designated Site or to add a further location as a designated site, the Collaborating Practices shall agree a site ("the nominated site") which the Host Practice shall apply to be designated (in accordance with the Designation Process of the Commissioner) as a Designated Site.

Commented [DRS7]: This schedule is an operational one which the practices are going to have to complete themselves to reflect their working arrangements. The wording in here is a modified and pared down version of what was in the NHSE template. In respect of charging licence fees check with your accountants as to whether there might be VAT implications (and if so specify whether the licence fee is inclusive or exclusive of VAT).
If the intention is for the location to be provided by an entity which is not a Collaborating Practice then Schedule 1 has no effect other than to document that the Collaborating Practices have accepted the arrangement. A separate licence to occupy would ideally be signed between the Collaborating Practices and the owner of the Designated Site. Consideration should also be given to whether CQC notification will need to be given if providing services from a third party location (see embedded comment at Schedule 2).

Schedule 2 Host Services

[This Schedule will need to reflect the local arrangements and it may be possible to have more than one Host Practice i.e. different practices leading on different elements of the arrangements). Collaborating Practices should consider the level of complexity involved in establishing more than one Host Practice and must ensure that the arrangements between the practices are clearly documented.]

The Host Practice will carry out the Host Services as described in this Schedule 2 exercising reasonable skill and care in accordance with this Agreement, the ES or otherwise to the reasonable satisfaction of the Collaborating Practices.

The Collaborating Practices shall provide the Host Practice with such information as may reasonably be required to permit the Host Practice to ensure that the Host Services are provided by appropriately skilled, qualified, experienced and trained personnel and shall be fully responsible and liable for the acts and omissions of such personnel arising out of this Agreement.

[The Host shall be responsible, on behalf of all of the Collaborating Practices for:

- Establishing, managing and circulating information from a central PCN grouping email address (which may be required on an urgent basis);
- arrangements for reporting of activity data, vaccine stock (to include stock use and stock forecasting which must include the brand of vaccine delivered and required by the PCN grouping), available capacity and submission of required data to commissioners as well as communicating with patients, including but not limited to call/re-call;
- arrangements to minimise wastage of vaccine;
- collaborating with any national and regional Sustainability and Transformation Partnership operations centre in relation to vaccine stock forecasting and ordering arrangements that are put in place, which will include providing daily updates on actual stock use, vaccinations delivered (including brand of vaccine used) and forecasted requirements;
- planning service delivery arrangements in line with stock forecasting and ordering arrangements including:
 - planning clinics according to expected vaccine supply;
 - coordinating required trained staff;
 - ordering required vaccine and consumables supply within required timeframes;
 - receiving and safely storing supply; and
 - organising the amendment of clinic schedules if there is a

Commented [DRS8]: This is the area in relation to which the practices are going to need to devote most of their attention and effort. As the matters to be dealt with here are exclusively clinical and operational there is a limit to the extent to which we, as lawyers, can help, and the only substantive changes we've made to NHSE's original wording for this schedule were to delete an unnecessary reference and to amend the paragraph on financing to reflect DR Solicitors' PCN model. Please note the following observations about the schedule: (i) You have to decide which will be the Host Practice (i.e. the one which provides the services listed in this schedule), though the practice providing the Designated Site is probably the obvious choice; (ii) you have to decide which services are being provided by the Host Practice and which are being provided by other or all Collaborating Practices jointly/collaboratively. The services listed in this schedule are the ones suggested by NHSE, but they seem to us to be primarily concerned with administration and not with day to day management of the service and clinical supervision, about which the wording in this schedule provided by NHSE seems largely silent; (iii) the issue of who takes responsibility for day to day management and clinical supervision is inextricably linked to clinical responsibility towards the CQC. The feedback we have been receiving is that PCN Groupings are organising in a number of different ways, and it is not always obvious where clinical responsibility will lie. The CQC has issued guidance to help practices consider this point, and we recommend that you read the guidance, decide on the best-fit model, make any necessary notifications to the CQC and document your agreed model in this Schedule 2, specifically stating who will have day to day management and clinical supervision of the programme. You will also need to conform the wording in Schedule 3 in respect of the final paragraph and also paragraph 7.2 of Schedule 4, but we have added embedded comments at both points highlighting this requirement. The CQC guidance can be found here: <https://www.cqc.org.uk/guidance-providers/registration/registration-flu-vaccination-arrangements>

COVID-19 vaccination programme 2020/21: Enhanced Service
COVID-19 ES Vaccination Collaboration Agreement

disruption to supply and undertake timely communication of
any changes to patients;

- receipt of funds under the ES on behalf of the Collaborating Practices and, if relevant, other healthcare providers (such as community pharmacies) outside of its PCN Grouping involved in local delivery of the ES and payment of such funds into the Network Bank **Account** pursuant to **Schedule 5**; and
- [arrangements in relation to the designation and use of the Designated Site (including security provisions) and any other relevant premises as set out at **Schedule 1**.]

Commented [DRS9]: 'Network Bank Account' is a defined term used in the DR Solicitors model PCN Schedules. PCNs which don't have schedules based on our model will need to conform the wording to reflect the terms used in their schedules for the PCN's bank account. PCN Groupings which don't match an existing PCN (and PCNs which don't have a dedicated bank account, if any exist) will have to draft their own arrangements for covering this provision,

Schedule 3

The Services

We acknowledge that the requirement to provide the COVID-19 vaccination under the ES will begin on the date to be notified to us by the Commissioner.

The ES (as varied from time to time) shall be treated as if it is incorporated into this Schedule 3 and the Collaborating Practices shall ensure that it is complied with.

We agree that we shall joint and severally own the vaccine which is provided to us by the Commissioner to deliver the ES.

[Practices to insert the responsibilities of each of the Collaborating Practices to deliver the ES including the clinical model (i.e. how clinics are delivered (at the Designated Site(s), to Care Homes and in patients' homes) and responsibility is shared between Collaborating Practices within the PCN Grouping.))]

Commented [DRS10]: Again, this is an operational/clinical schedule to which lawyers can make little contribution. We have left the original NHSE wording in here completely unamended. The first three paragraphs seem fine to us, whilst the last paragraph isn't even supposed to be contractual wording but rather guidance to the practices as to what they need to cover. As detailed in our embedded comment at Schedule 2, the point in the last paragraph needs to be considered in conjunction with the Host Services in Schedule 2.

Schedule 4

Staff Sharing Arrangements

Staff Sharing between NHS Bodies To Facilitate the Administration of COVID-19 Vaccine

Commented [DRS11]: Please note the comment at clause 23.

BETWEEN:

Each **Participating Body** identified in the Introduction to this **Schedule 4**, collectively the "**Participating Bodies**".

INTRODUCTION:

- A. This **Schedule 4** is applicable to any organisation which is a signatory to the Collaboration Agreement (a "**Participating Body**").
- B. This **Schedule 4** sets out the intention of the Participating Bodies to work together to deliver the COVID-19 vaccination programme ("**the Vaccination Programme**") commencing in December 2020.
- C. The Participating Bodies have committed to working together in a collaborative and mutually supportive way to deliver the Vaccination Programme for the benefit of the public.
- D. This **Schedule 4** relates to members of staff ("**the Staff Members**", who may include, but are not limited to, employees, workers, self-employed general practitioners, volunteers and agency workers) who are employed or engaged by a Participating Body ("**a Sending Body**") but are provided to work in the delivery of the Vaccination Programme as set out in this **Schedule 4**.
- E. The Participating Bodies wish to ensure the proper compliance with clinical governance requirements, while avoiding unnecessary bureaucracy which may impede the movement of Staff Members, including pre-employment checks and training requirements.

THE PARTICIPATING BODIES AGREE AS FOLLOWS:

1. STATUS

This Agreement in no way changes or modifies any rights or obligations under any existing contract of employment, honorary contract or other contract held by a Staff Member with their employer or any other Participating Body.

2. COMMUNICATION BETWEEN PARTICIPATING BODIES

The Participating Bodies shall co-operate with each other in addressing any requests under this **Schedule 4** and in providing information to each other in order to ensure the effective operation of the Vaccination Programme.

3. STAFF MEMBERS

- 3.1. By agreement between the Participating Bodies (as set out more fully at paragraph 4 below), a Staff Member of a Sending Body may be provided on a temporary basis to work on the Vaccination Programme.
- 3.2. The Participating Bodies agree that the Staff Member shall remain an employee, worker or contractor (as the case may be) of their Sending Body at all times and that nothing in this Agreement creates (or is intended to create) an additional employment or other relationship between the Staff Member and any other Participating Body. The Staff Member shall not be entitled to receive any salary, pension, bonus or other benefits or payments from any other Participating Body but will continue to receive such remuneration and benefits as may be due to them from their employer or other Sending Body.

4. REQUEST PROCESS

Unless other arrangements are agreed between Participating Bodies, the following process will be adopted by the Participating Bodies before a Staff Member commences work:

- 4.1. The Host Practice will make a request via its local Primary Care Network grouping ("PCN grouping"), which will evaluate the request (the "Request") and may facilitate discussions with potential Sending Bodies. The Request shall identify:
 - 4.1.1. the numbers of Staff Members requested;
 - 4.1.2. the roles and/or job types of Staff Members (including where appropriate the required numbers of vaccinators, other healthcare professionals, stewards and administrative and other staff);
 - 4.1.3. when it is desirable for Staff Members to commence work in the Vaccination Programme;

- 4.1.4. if known at the time of making the request, the length of time that Staff Members are expected to be needed for the purpose of assisting in the administration of a batch of vaccine (a "Vaccination Session")
 - 4.1.5. if the Host Practice is aware that a number of batches of vaccine will be received for administration according to a known or proposed schedule, details of that schedule; and
 - 4.1.6. any other information which may be relevant.
- 4.2. Upon receipt of the Request via the PCN Grouping, each Sending Body will consider whether it can comply in whole or part with the Request and will confirm its position within 24 hours of receipt of a Request. If the Request can be agreed (either wholly or partially), the Participating Bodies, and any third party organisations whose involvement may be necessary to facilitate the implementation of the Request, will liaise to agree any practical arrangements required to implement the Request and will comply with any notification arrangements that may be in place at national, regional or local level for the provision of staff under this Agreement.
- 4.3. This Request process may be varied at any time by agreement between the Participating Bodies and the PCN.

5. STAFF ASSURANCE

- 5.1. The Participating Bodies and the PCN are satisfied and give assurance to each other that they have in place appropriate processes which have verified any relevant Staff Members falling under this Agreement as having passed any necessary mandatory checks and training necessary for that Staff Member to practise safely in their role at their Sending Body. For Immunisers, Registered Healthcare Professionals and Healthcare Assistants this includes assurance that the Staff Member has met the NHS Employment Check Standards issued under Health Circular HSC2002/008 (as revised from time to time), at the time of recruitment and on an ongoing basis, and that has completed mandatory and other training requirements deemed sufficient by their Sending Body to work in their substantive role. For the avoidance of doubt, where those mandatory checks involve Disclosure and Barring Service (DBS) checks, the Sending Body will as a minimum have carried out a "fast-track" check of the Adults' and Children's Barred Lists under the emergency fast-track COVID-19 arrangements put in place by the DBS, while awaiting the results of a full DBS check, and will notify the Host Practice of any Staff Member to whom only emergency Barred List checks have been completed so that the Host Practice may undertake a risk assessment and put in place appropriate monitoring and supervision arrangements in respect of such Staff Members. In such situation, each Sending Body will confirm to the other Participating Bodies

as soon as practicable after full DBS clearance of each relevant Staff Member has been received by the relevant Sending Body.

- 5.2. A Sending Body will not provide Staff Members for the Vaccination Programme without having carried out any reasonable medical checks and testing to ensure, as far as they reasonably can, that the Staff Members are not infected with SARS-CoV-2.
- 5.3. It will be the responsibility of each Sending Body to ensure that its Staff Members are properly trained, qualified and experienced to carry out their proposed roles in the Vaccination Programme and have given their full and informed consent to their deployment under such programme.
- 5.4. Following the provision of the Staff Members by each Sending Body, should any change(s) occur to any checks or any circumstance arises which leads a Sending Body to reasonably conclude that any Staff Member provided is not safe to practise, the Sending Body shall notify the other Participating Bodies of this as soon as practicable.
- 5.5. The Participating Bodies shall each comply with all relevant health and safety duties and obligations and exercise such duty of care over Staff Members sent by a Sending Body as if such Staff Members were the Participating Body's own employees.

6. TRANSPORT, ACCOMMODATION AND SUBSISTENCE

- 6.1. Upon receiving confirmation from a Sending Body of the identities of the Staff Members to be provided under the Vaccination Programme, the Host Practice shall be responsible, with the co-operation of the Sending Body as required, for making any necessary and reasonable travel, accommodation, subsistence and any other necessary practical arrangements for the benefit of the Staff Members in connection with their role in the Vaccination Programme.

7. WORKING ARRANGEMENTS

- 7.1. The Participating Bodies shall co-operate to ensure that the Staff Members are allocated, following consultation with them, appropriate induction, orientation and working arrangements, including provision of sufficient rest periods between shifts as appropriate.
- 7.2. Each Participating Body shall be responsible for the overall direction and supervision of their Staff Member and their Staff Member's conduct and actions during each Vaccination Session. However, for the duration of the Vaccination Session the Participating Bodies agree that the Staff Member will work under the day to day direction of the Host Practice and will explain this to the Staff Member before s/he goes to the Host Practice.
- 7.3. The Participating Bodies agree to co-operate fully and promptly with each other during the Vaccination Session in respect of any workforce matters arising which concern any Staff Member.

Commented [DRS12]: We haven't amended this clause in any way from NHSE's original wording, but you may need to amend the second sentence to reflect what you're proposing to do as regards clinical responsibility (of which day to day direction is a part). See our first comment at schedule 2.

- 7.4. The Participating Bodies agree that each Sending Body remains responsible for the following matters in relation to their Staff Members:
- 7.4.1. disciplinary and capability issues;
 - 7.4.2. grievances;
 - 7.4.3. appraisals and performance-related procedures;
 - 7.4.4. remuneration including pay progression; and
 - 7.4.5. annual and other leave.
- 7.5. Save where agreed otherwise, the Participating Bodies agree that, in respect of the following matters:
- 7.5.1. protected disclosures under the Employment Rights Act 1996; and
 - 7.5.2. requests for personal data under the Data Protection Act 2018,
- the Sending Body and the relevant Participating Body in respect of which the alleged issue or behaviour took place, or where the Staff Member was working at the relevant time, are jointly responsible for investigating, progressing and/or resolving these matters.
- 7.6. If a Participating Body becomes aware of any matter that may give rise to a claim (or similar action or challenge) by or against a Staff Member, notice of that fact shall be given as soon as possible to the relevant Sending Body and the Participating Bodies shall cooperate in (as appropriate) investigating, responding to and resolving such claim.
- 7.7. Unless the Participating Bodies agree alternative arrangements, the Host Practice shall keep a record of staff supplied and received under this Agreement and the hours worked.
- 7.8. The Participating Bodies may return any Staff Member to a Sending Body at any time, without notice.

Schedule 5

Financial Arrangements

The Host Practice has been nominated as the practice which will receive payment for: unregistered patients; patients registered on another primary medical services practice's list of registered patients, but which practice has not signed up to deliver this ES; care home workers; and primary medical services workers which are provided with COVID-19 Vaccinations.

The Host Practice will receive payments due under the ES for all of the Collaborating Practices. The payment is received for all reasons as agent of each of the Collaborating Practices. We understand that this is necessary to facilitate the payment system for this novel and complex situation where vaccination of the population across multiple locations and settings is required by the Commissioner (NHSE).

The following arrangements are in place between the Collaborating Practices as regards payments to each **other**:

- the Host Practice will pay any sums received in respect of the ES into the Network Bank Account as defined in schedule 4 to the mandatory agreement pursuant to which the [] PCN was established (the "Mandatory Agreement"), the provisions of such schedule applying to such funds other than as detailed in this **Schedule 5**;
- the following charges, costs and expenses (with terms not defined in the Collaboration Agreement being those defined in **Schedule 4**) will be deemed to be expenses chargeable to the Network Bank Account and reimbursed from such funds to the relevant party:
 - o reimbursement to the Sending Bodies of the direct costs and expenses of any Staff Members sent to a Collaborating Practice for the purposes of the Vaccination Programme including salaries, pension contributions, PAYE, employers' National Insurance contributions and any travel expenses required to be reimbursed to the Staff Member;
 - o reimbursement to the Sending Bodies of any such direct costs and expenses of any additional staffing requirements of any

Commented [DRS13]: The wording of the items below reflects terminology used in DR Solicitors' model for PCN Schedules. PCNs which don't have schedules based on our model will need to conform the wording to reflect the terminology used in their PCN Schedules. PCN Groupings which don't match an existing PCN (and PCNs which don't have a dedicated bank account) will have to draft their own arrangements for covering this provision,

Commented [DRS14]: Please insert the name of the PCN which constitutes the PCN Grouping.

Commented [DRS15]: The principle which we're proposing is that certain expenses incurred by practices in performing the ES get reimbursed from the funds received from the commissioner before the balance is divided up (about which see more below). This is our suggested list of expenses that you need to consider and agree as being appropriate for reimbursement.

Sending Bodies incurred as a result of having to provide cover for any Staff Members participating in the Vaccination Programme;

- [[reimbursement/payment] to the Host Practice of [the direct costs and expenses of/a daily fee of [£] for] providing the Host Service];
 - [any licence fees payable pursuant to Schedule 1;] and
 - [reimbursement of any direct costs or expenses incurred by a Collaborating Practice as a result of allowing its premises to be used as a Designated Site pursuant to **Schedule 1**, including without limitation any which arise as a result of not being able to see its own patients at such premises];
- following reimbursement of expenses as detailed above, the balance of funds will be distributed on a monthly basis to the Collaborating Practices pro rata to their weighted patient list sizes;

The Collaborating Practices agree to provide the Host Practice with any and all information required to support claims for payment to the Commissioner on behalf of the Collaborating Practices in respect of vaccinations administered under the ES. This will include any information to support exceptional circumstances claims in line with the COVID-19 vaccination programme 2020/21 Enhanced Service Specification. The Collaborating Practices agree that the Host Practice will identify an individual or individuals who will be responsible for reviewing and confirming on behalf of the Collaborating Practices information provided by the Commissioner as part of the payment process on the total number of vaccinations to be claimed each month by the Collaborating Practices. The nominated individual will also submit on behalf of the Collaborating Practices claims for payment in respect of exceptional circumstances.

Commented [DRS16]: Beware of VAT becoming chargeable on any fees. We'd suggest that you check this with your accountants before agreeing it and specifying whether any fee is inclusive or exclusive of VAT.

Commented [DRS17]: This is our suggestion, but you're welcome to change it if you want, such as to raw rather than weighted list sizes, pro rata number of vaccinations carried out by clinicians from each practice or pro rata to the numbers of registered patients of each practice who are vaccinated. On the last of those possibilities we take the view that it's not worth the effort of trying to calculate it, given how small the differences are likely to be, and given that you may end up vaccinating unregistered patients and patients of nearby practices which aren't participating. It's a bit like dividing a restaurant bill equally between six diners rather than trying to work it out on the basis of who ordered what: not an exact science but close enough to be acceptable given the effort involved.

Schedule 6
Sub-Contracting of Clinical Matters

Not applicable.

Commented [DRS18]: Each practice has signed up to the ES and is therefore delivering services as a primary contractor in respect of its own patients. How it's going to be done in practice is an operational/clinical matter about which we, as lawyers, can only speculate. We assume that in a PCN Grouping patients attending the Designated Site will simply join a queue and be injected by the next clinician available, rather than wait for a clinician from the practice with which they are registered to become available. Technically, a patient injected by a clinician from a different practice might constitute 'subcontracting' but we don't believe that this is the type of subcontracting which this provision or the obligation to notify NHSE is intended to catch – particularly as it goes against the entire concept of the collaboration agreement and, indeed, workforce sharing within PCNs. We believe that this section is instead only intended to cover subcontracting to outside parties, such as an NHS Trust. Where the PCN Grouping is identical to a PCN and there is no outside supplier 'Not applicable' will apply. If there is an intention to sub-contract services to a third party then, as with the comment at Schedule 1 concerning occupation of third party premises, detailing it here has no effect other than to document that the Collaborating Practices have accepted the arrangement. A separate subcontract would ideally be signed between the Collaborating Practices and the sub-contractor (see embedded comment at Clause 23). Consideration should also be given to the CQC consequences of subcontracting (see embedded comment at Schedule 2).

Schedule 7

Governance Arrangements

Decisions in respect of the PCN Grouping will be taken in accordance with the decision-making processes set out in schedule 1 to the Mandatory Agreement.

Insolvency events for the purposes of **Clause 62.b)** will be those detailed in schedule 6 to the Mandatory Agreement.

The dispute resolution procedure for the purposes of **Clause 73** will be those detailed in schedule 2 to the Mandatory Agreement.

Commented [DRS19]: Although the title to Schedule 7 suggests that it only deals with decision-making, the NHSE draft also referenced Schedule 7 in respect of insolvency events and dispute resolution. On the basis that this draft is designed for PCN Groupings which mirror an existing PCN, we have simply cross-referred these matters to the provisions set out in the existing PCN Schedules. The precise wording mirrors the relevant provisions set out in the DR Solicitors model PCN Schedules but it can easily be adapted to refer to the relevant provisions in any PCN Schedules. PCN Groupings which don't match an existing PCN will have to draft their own provisions (which will probably need to be substantial and extensive) for covering these items,

Schedule 8

Individual Arrangements

Not applicable

Commented [DRS20]: This schedule deals with arrangements with outside organisations in relation to the collaboration as per Clauses 75 & 76 of the main body of the agreement (which we suggest that you read). Given that sub-contracting to third parties is dealt with in Schedule 6, we are somewhat in the dark as to what this schedule is supposed to cover, but speculate that it may have been intended to cover organisations such as patient groups. In any event, 'Not applicable' will be correct in respect of the overwhelming number of PCN Groupings.

Annex 1

Data Sharing Agreement

It is anticipated that all of the Collaborating Practices will be data controllers, and they therefore agree to be bound by the provisions of the Network Contract Directed Enhanced Service Template Data Sharing Agreement published by the Commissioner.

Commented [DRS21]: The basis on which we believe that all the Collaborating Practices are data controllers is the assumption we set out in the embedded comment at Schedule 6 to the effect that patients will see the next available clinician rather than the next available clinician from the practice with which they are registered. The DES Template Data Sharing Agreement is supposed to include within it a Data Sharing Protocol specifying matters such as the permitted purposes for processing, who the authorised users are, the retention period for records, the categories of personal data involved etc. In the absence of that protocol – we assume that no-one has time to carry out the required data analysis - this provision agreeing to be bound by the terms of the Template must suffice. Please note that the Template is designed for Data Sharing with a PCN. We have not carried out any analysis as to whether it is suitable for use in a PCN Grouping which doesn't match an existing PCN or suitable for use with a third party subcontractor. If an existing PCN has actually signed a Data Sharing Agreement then the wording can be changed to state that the Collaborating Practices have signed a Data Sharing Agreement which will cover data sharing (as opposed to agreeing to be bound by the provisions of the template).