

30<sup>th</sup> September 2021

**By email**

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Dear all

**REVISED ENTRUSTMENT ARRANGEMENTS – SUPPLY CHAIN COORDINATION LIMITED – ADDENDUM TO THE ACT OF ENTRUSTMENT DATED 28<sup>TH</sup> MARCH 2019**

I am writing this letter to update the terms and governance arrangements for the official mandate that was granted to Supply Chain Coordination Limited (**SCCL**) dated 28<sup>th</sup> March 2019 regarding its administration of the new operating model, introduced as part of the wider restructuring of the NHS Supply Chain (known as the “**Procurement Transformation Programme**”). This letter is necessary to address and reflect: (a) the new legal framework that applies following the UK’s withdrawal from the European Union and the end of the implementation period; (b) certain changes regarding the ownership and governance structure of SCCL; and (c) the conferral of additional functions on SCCL in response to the Covid-19 pandemic, which I outline below.

This letter should be read in conjunction with, and treated as an addendum to, the original letter of entrustment dated 28<sup>th</sup> March 2019 and should be referred to as the “**Addendum to the Act of Entrustment**”.

**Background**

*Original Entrustment*

On 28<sup>th</sup> March 2019, I issued a letter of entrustment to SCCL, which sets out its purpose, entrusted public service responsibilities (the “**SGEI Tasks**”) and Key Performance Indicators (“**KPIs**”). A copy of that letter, which was intended to serve as the “act of entrustment” for the purpose of Article 106(2) TFEU and Article 4 of EU Commission’s Decision 2012/21/EU and the equivalent provisions of retained EU law under the European Withdrawal Act 2018 (the “**original Act of Entrustment**”) is attached at the Annex to this letter.

The original Act of Entrustment was accompanied by a number of other formal measures underpinning the governance arrangements for SCCL, including the issuance of:

- the “Accountability Letter” dated 7<sup>th</sup> December 2018 to Mr. James Spittle following his appointment as the non-executive chairperson of SCCL;
- the “2018-19 Director Accountability” letter dated 23<sup>rd</sup> January 2019 to Mr. Jin Sahota as the Chief Executive Officer of SCCL (at the time) and the Senior Responsibility Officer of the Procurement Transformation Programme;
- the “Funding Letter” dated 28<sup>th</sup> March 2019 from the Finance Director of the Department of Health and Social Care (DHSC) setting out terms pursuant to which DHSC would make funds available to SCCL to finance its operations and monitor its performance and profitability for the 2019/2020 financial year;
- the (amended) Articles of Association for SCCL adopted by SCCL on 18<sup>th</sup> April 2019 (“**2019 Amended Articles of Association**”); and
- the “Service Agreement” dated 31<sup>st</sup> July 2019 between DHSC and SCCL setting out the terms and conditions under which SCCL was to deliver the public services entrusted to SCCL in respect of administering the new operating model. (together, the “**Corporate Governance arrangements**”).

The original Act of Entrustment explicitly provided that there should be an opportunity to review and adjust the management and funding of SCCL after 6 months and after 12 months, in the light of any initial unexpected developments.

#### *Subsequent legal developments*

On 31 January 2020, the United Kingdom left the European Union and the implementation period expired on 31 December 2020. With effect from 31 December 2020, the EU provisions regarding competition and state aid law no longer apply as EU Retained Law in the United Kingdom, although they continue to have effect in Northern Ireland by virtue of the Northern Ireland Protocol.<sup>1</sup> Consequently, there is the need to update and future-proof the original Act of Entrustment to refer not just to the EU provisions but also to the regime for services of public economic interest (“**SPEI**”) established in Article 365 of the UK-EU Trade and Cooperation Agreement (“**TCA**”), paragraph 4 of Schedule 3 of the Competition Act 1998 (“**CA98**”) and section 29 of the draft Subsidy Control Bill, which is expected to be adopted in Autumn 2021.

Accordingly, pursuant to this letter, I designate SCCL as a SPEI enterprise that is assigned with carrying out the tasks set out in the original Act of Entrustment and the Corporate Governance arrangements in the public interest for the purpose of Article 365 TCA, as implemented by section 29 of the Future Relations Act 2020.

As the UK’s subsidy control regime is still undergoing consultation, there should be an opportunity to review and adjust the assignment of public interest tasks to SCCL over the next 12 months, in order to ensure that it is compatible with the eventual subsidy control legislation and guidance, once finalised.

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<sup>1</sup> The Northern Ireland Protocol (“**NIP**”) forms an integral part of the Withdrawal Agreement (Article 182) and applies in parallel to the TCA (Article 775, Part Seven, TCA). The NIP sets out arrangements to avoid a hard land border between Ireland and Northern Ireland which require Northern Ireland to remain aligned to specified EU single market, state aid and customs rules (Articles 5-10, NIP and Annex 10).

### *Subsequent ownership and governance developments*

With effect from 1<sup>st</sup> October 2021, my entire shareholding in SCCL will be transferred to the NHS Commissioning Board (“**NHS England**” or “**NHSE**”). From 1 October 2021 therefore, NHSE will own 100% of the share capital of SCCL and will exercise supervisory control over its activities, including replacing my authorised representative from DHSC with an authorised representative of NHSE on the SCCL Board of Directors (“**the Board**”).

In addition to this Addendum to the Act of Entrustment, I shall be novating my rights and obligations under the Service Agreement to NHSE. The terms of that novated Service Agreement will continue to govern the arrangements between SCCL and NHSE up and until it is amended. SCCL and NHSE will, in due course, enter into a revised agreement to reflect the transfer of powers and any adjustments made as part of the ongoing review process in the original Act of Entrustment and this Addendum to the Act of Entrustment (the “**revised Service Agreement**”)<sup>2</sup>.

This Addendum to the Act of Entrustment formally records that change of ownership and grant of delegated authority to NHSE and the release of the equivalent responsibilities for DHSC. It is written pursuant to the statutory powers vested in me by virtue of section 223(1) of the National Health Services Act 2006 (“**NHS Act**”). More specifically, this Addendum to the Act of Entrustment updates the original Act of Entrustment and should be read in conjunction with that document. The rest of this Addendum to the Act of Entrustment confirms the ancillary adjustments that are being made to the Corporate Governance arrangements to reflect the change in ownership of SCCL.

### *Additional SPEI tasks in response to the Covid-19 pandemic*

In exercising my public health functions under sections 2A and 12 of the NHS Act, I hereby authorise NHSE to make necessary arrangements with SCCL including as part of the revised Corporate Governance arrangements and revised Service Agreement, in relation to the supply and distribution of PPE to healthcare, social care and other recipients via the NHS Supply Chain to protect the public from disease and to treat and prevent the transmission of the Covid-19 virus.

Notwithstanding the conferral of any powers or responsibilities by me to other parties, including NHSE, this does not remove or limit my supervisory powers over SCCL under the original Act of Entrustment and/or this Addendum to the Act of Entrustment or preclude my ability to exercise my public health functions, whether acting directly, through DHSC or otherwise.

#### **A. Effect of Changes to the Ownership of SCCL**

The change in ownership will not affect the status of SCCL as a private company limited by shares under the Companies Act 2006 nor its function as the in-house management function of the NHS Supply Chain. With effect from 1<sup>st</sup> October 2021, the entire share capital of SCCL

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<sup>2</sup> Abbreviations, terminology and defined terms used in this Addendum are references to the terms of the existing Service Agreement that will be novated to NHSE with effect from 1 October 2021; those references will eventually be superseded by the terms and definitions in the revised Service Agreement upon the conclusion of the revised arrangements between NHSE and SCCL in due course.

will be transferred to NHSE who will replace my role (and the supervisory role of DHSC) as sole shareholder and owner.

Although, I will no longer participate as a shareholder in SCCL from 1<sup>st</sup> October, 2021, DHSC will continue to maintain an interest in the management and operation of SCCL as a public-private partnership created pursuant to s.223 of the NHS Act. Pursuant to s.223(2) of that Act, DHSC facilitates SCCL's provision of public interest services by providing it with consumables (to which DHSC retains title) and financial support in the form of advances for the purchase of such consumables for onward sale via the NHS Supply Chain. It is therefore important that DHSC and NHSE cooperate and coordinate to ensure the supervisory oversight of SCCL and its compliance with the SPEI regime. These arrangements will be set out in a memorandum of understanding between DHSC and NHSE commencing on and from the 1<sup>st</sup> of October, 2021 ("**MOU**") which will set out the framework for cooperation between DHSC and NHSE including the parameters for consultation between the parties and any prior rights of approval or veto that DHSC may exercise over decisions made by NHSE with regard to NHSE's management and operation of SCCL.

To date, the Board has been constituted of representatives from DHSC and National Health Service Improvement ("**NHSI**") which are referred to as the "**Departmental Directors**". The Departmental Director employed by DHSC (the "**DHSC Departmental Director**") is my representative on the Board. The Board cannot consent to any matter (which is reserved for consent by the Board in SCCL's Articles of Association) without a vote in favour by the DHSC Departmental Director. There are also 4 non-executive external directors whose appointments I was responsible for approving and who are not affiliated with DHSC. With effect from 1 October 2021, those powers and responsibilities (of the Departmental Directors) will be transferred to NHSE, pursuant to further amended Articles of Association of SCCL (the "**2021 Amended Articles of Association**").

Further, to date, pursuant to the powers granted under the 2019 Amended Articles of Association, I have exercised control and influence over both the strategic objectives and significant decisions of SCCL. Such powers include, but are not limited to:

- Article 4(1): shareholder powers, by special resolution, to direct the directors to take, or refrain from taking, specified action;
- Article 7: the shareholder's right to exercise a veto over certain reserved matters, including changes to the share capital or nature of the authorised business of the company;
- Article 20: the power of the Secretary of State as sole shareholder of SCCL to appoint Directors to the Board;
- Article 8(2): the requirement for Board consent by a simple majority to include the support of one DHSC Departmental Director prior to the adoption of decisions relating to specific strategic and significant transactions or the approval of the Company's Business Plan. That means in practice that no consent can be given by the Board without approval of the DHSC Departmental Director in respect of those matters reserved for the consent of the Board in SCCL's Articles of Association.

With effect from 1 October 2021, all of those powers and responsibilities will be transferred to NHSE, pursuant to the 2021 Amended Articles of Association.

## **B. SCCL's Purpose**

The change of ownership and revisions to the Corporate Governance arrangements will not alter the nature of business of SCCL as stated in its records at the Companies House. The nature of the business of SCCL as stated in its records at the Companies House is general public administration activities. Its "*Business*" as defined in its 2021 Amended Articles of Association by reference to the first of SCCL's objects in Part 1 of the 2021 Amended Articles of Association has been slightly updated to read: "*the management and co-ordination of NHS supply chain services, including procurement, logistics, e-Commerce, reporting, analysis, quality control, communications, payments, supplier management, emergency response and consultancy services for the provision of everyday hospital consumables (including in respect of intensive care units), personal protective equipment, clinical products, home-care and capital equipment and associated services and supplies*".

## **C. Entrusted SPEI Tasks of SCCL**

The change of ownership and revisions to the Corporate Governance arrangements will not alter the nature or substance of the public service tasks that have already been entrusted to SCCL pursuant to Section C of the original Act of Entrustment<sup>3</sup>. Pursuant to the terms of this Addendum to the Act of Entrustment, I also assign SCCL with tasks in the public interest, subject to supervision and oversight by NHSE, to supply and distribute PPE to healthcare, social care and other recipients via the NHS Supply Chain to protect the public from disease and to treat and prevent the transmission of the Covid-19 virus and to supply and distribute hospital consumables including in respect of intensive care units ("**ICU**"). All of those tasks are to be regarded as SPEIs to be carried out in the United Kingdom. The original Act of Entrustment, as amended and updated by this Addendum to the Act of Entrustment, will continue in place for the entirety of the delivery period, until the expiry of the 10 year entrustment term on 27<sup>th</sup> March 2029.

For the avoidance of doubt, SCCL's objectives and public service tasks will be consolidated in the forthcoming revised Service Agreement, which will govern the arrangements between SCCL and NHSE and reflect the coordinated roles of DHSC and NHSE under the MOU.

## **D. Key Performance Indicators**

The change of ownership and revisions to the Corporate Governance arrangements will not alter the nature or substance of the KPIs that have been set for SCCL pursuant to Section D of the original Act of Entrustment and the existing Services Agreement<sup>4</sup>. For the avoidance of doubt, SCCL's KPIs (as amended/updated from time to time) will be consolidated in the supervening revised Service Agreement (as updated and amended from time to time), which will govern the arrangements between SCCL and NHSE for the performance of all SPEIs from its effective date.

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<sup>3</sup> With effect from 1 October 2021, any references to the Secretary of State or DHSC in that Section C should be read as referring to NHSE.

<sup>4</sup> With effect from 1 October 2021, any references to the Secretary of State or DHSC in that Section D should be read as referring to NHSE.

## **E. Financial Compensation**

### *Funding*

The change of ownership and revisions to the Corporate Governance arrangements will not alter the state investment in SCCL's share capital or the central government funding of SCCL's operational costs, which is made pursuant to s.223(2) of the NHS Act. The only change that will occur is that such funding is to be provided by NHSE (rather than DHSC); such arrangements will be reflected in the terms of the revised Service Agreement, governing the arrangements between SCCL and NHSE.

As part of those funding arrangements, NHSE and SCCL will determine which of its activities are to be regarded as included within the scope of the SPEIs and, of those, which are to be provided at net cost and which will be charged a margin ("**Chargeable Activities**").

The 80/20 ratio imposed over the use of that designated funding, as set out in Section F of the original Act of Entrustment will not be affected by the change in ownership<sup>5</sup>. Similarly the duties, checks and controls in the said Section F will continue but will be reflected (as appropriate) in the terms of the 2021 Amended Articles of Association and revised Service Agreement, which will govern the arrangements between SCCL and NHSE.

### *Avoidance and recovery of over-compensation*

A key aim of the original Act of Entrustment is that SCCL should not make excessive profit as its central funding should be limited to the level of reasonable compensation for the public services that it is providing. At the time of the original Act of Entrustment, it was envisaged that SCCL would not make any overall profit since its funding should be limited to its actual net costs and any additional profit would be returned to the NHS Supply Chain to generate additional cost savings. However, the precise approach and methodology for dealing with any profits and costs savings had not been determined as at the date of the original Act of Entrustment and was left to further consideration and adjustment as part of the ongoing review process.

Since that date, and as part of that review process, it has been decided that the default position is that any excess profit whether derived from the Chargeable Activities (as defined in the original Service Agreement) or otherwise shall be returned to the NHS Supply Chain unless another appropriate mechanism is determined by NHSE (following consultation between DHSC and NHSE under the MOU) pursuant to the terms of the revised Service Agreement. Such redistribution being in line with the overall aims and objectives of the Procurement Transformation Programme in order to drive efficiencies and reduce the burden on the tax payer.

The ongoing supervisory arrangements to ensure that any profits do not exceed the level of reasonable compensation and the mechanisms for allocating and returning any profits will be reflected in the terms of the revised Service Agreement, which will govern the arrangements

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<sup>5</sup> With effect from 1 October 2021, any references to the Secretary of State or DHSC in that Section F should be read as referring to NHSE. SCCL shall at all times maintain a ratio of above 80:20 ("**80:20 ratio**") in order to continue to satisfy the conditions for exemption from public procurement pursuant to regulations 12(1), 12(4) and/or 12(7) of the Public Contract Regulations 2015 (as applicable).

and methodology to be agreed between SCCL and NHSE and will be supervised by NHSE and DHSC pursuant to the terms of the MOU.

#### **F. Annual Review**

As a result of the change of ownership, the 2021 Amended Articles of Association and revised Service Agreement, NHSE will assume the responsibilities of DHSC for reviewing the operations of SCCL on a regular annual basis in accordance with Section G of the original Act of Entrustment and upon the expiration or earlier termination of the original Act of Entrustment or this Addendum to the Act of Entrustment<sup>6</sup>.

#### **G. Ongoing review and retrospective adjustment**

The revised Service Agreement will reflect the changes that have been made to the new operating model, the tariff or other mechanisms incorporated into the management and funding of SCCL as part of the review process set out in Section H of the original Act of Entrustment.

There may still be ongoing unexpected developments with the operation of the new operating model, its funding or profit distribution mechanisms as well as new legislative reforms for the UK's subsidy control regime and response to the Covid-19 pandemic. I therefore suggest that there should be a continued facility to review and adjust the new operating model, as part of an ongoing iterative process, every 12 months, in the light of the actual and forecasted savings that have been generated to ensure that SCCL's profitability does not exceed the level of reasonable compensation and that it is otherwise in compliance with its duties of equal treatment, non-discrimination and transparency.

As part of that process, the Board may be called upon to determine mechanics and safeguards to develop and refine the operating model, including in the light of the new subsidy control legislation and guidance, in which case I expect there may be a need for retrospective adjustments to the tariffs, rebates or margin paid and/or prospective changes to the operating model going forward (or a combination of the two). NHSE should have discretion to resolve such matters in the way it sees most appropriate in line with the Key Objectives set out in the original Act of Entrustment, this Addendum to the Act of Entrustment and the terms of the revised Service Agreement.

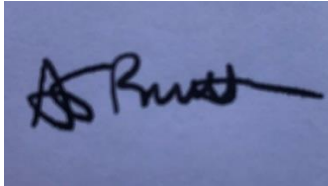
It is anticipated that additional SPEI tasks will be assigned to SCCL to distribute PPE and ICU consumables via its operating model in response to the Covid-19 pandemic, potentially within a year of this Addendum to the Act of Entrustment. I therefore suggest that the review process outlined above accommodates the introduction of these new SPEI tasks and contains the power to vary the operating model and compensation arrangements and clawback mechanisms, as required, to ensure that in the context of SCCL's new and ongoing tasks, the 80:20 ratio is respected, as well as any need for a clawback mechanism to avoid any excess profits. NHSE should have discretion to resolve these matters in the way it sees most

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<sup>6</sup> With effect from 1 October 2021, any references to the Secretary of State or DHSC in that Section G should be read as referring to NHSE.

appropriate in line with the Key Objectives set out in the Act of Entrustment, this Addendum to the Act of Entrustment and the eventual terms of the revised Service Agreement and MOU.

Yours sincerely

A handwritten signature in black ink on a light blue background. The signature appears to be 'A Brittain'.

Andy Brittain, Director General Finance, Department of Health and Social Care,  
For and on behalf of the Secretary of State for Health and Social Care.....

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## ANNEX

### original ACT OF ENTRUSTMENT



Department  
of Health &  
Social Care

*From the Rt Hon Matt Hancock MP  
Secretary of State for Health and Social Care*

*39 Victoria Street  
London  
SW1H 0EU*

*020 7210 4850*

*28 March 2019*

#### **By email**

Jin Sahota  
Chief Executive Officer,  
Supply Chain Coordination Ltd  
Skipton House,  
80 London Road,  
London SE1 6LH

Dear Jin,

#### **ACT OF ENTRUSTMENT – SUPPLY CHAIN COORDINATION LIMITED**

I am writing this letter to confirm the terms of your official mandate and to record my formal instructions in relation to the operation of Supply Chain Coordination Limited (SCCL) which was set up to administer a new operating model, introduced as part of the wider restructuring of the supply chain, through which the NHS would procure its goods and services (known as the “Procurement Transformation Programme”).

This letter of entrustment is one of various steps that have been initiated to ensure that SCCL has its governance arrangements formally documented. Two such steps have already been taken; namely, the issue of the “Accountability Letter” dated 7<sup>th</sup> December 2018 to Mr. James Spittle following his appointment as the non-executive chairperson of SCCL followed by the issue of the “2018-19 Director Accountability” letter dated 23<sup>rd</sup> January 2019 to yourself as the Chief Executive Officer of SCCL and the Senior Responsibility Officer of the Procurement Transformation Programme.

On 1<sup>st</sup> April 2019, SCCL will commence what will be the final and very significant phase of the setup of its operations. The intention is that on that date the NHS Supply Chain model will move to a

centrally funded model with a transparent pricing policy of “Buy Price = Sell Price” and the current arrangement with DHL for the operation of the Master Services Agreement (which provides procurement services for goods and services (except medicines) for the NHS) will come to an end.

I am sending this letter to you pursuant to the statutory powers vested in me by virtue of section 223(1) of the National Health Services Act 2006 (NHS Act). More specifically, the letter constitutes a formal act of entrustment for the purpose of Article 106(2) TFEU and Article 4 of the EU

Commission’s Decision 2012/21/EU and/or their domestic equivalent as retained EU law in the European Withdrawal Act 2018. It also is intended to have binding legal effect in assigning and defining the scope and operational conditions of the public service obligations conferred upon SCCL in the general economic interest (“SGEI tasks”).

#### **A. Establishment and Ownership of the Company**

SCCL was established on the 25<sup>th</sup> of July 2017 as a private company limited by shares under the Companies Act 2006 with the intention that it should function as the in-house management function of the NHS Supply Chain. In my capacity as Secretary of State and sole shareholder I wholly own the company and have control over its activities.

SCCL’s Board of Directors is constituted of representatives from the Department of Health and Social Care (“DHSC”) and National Health Service Improvement (“NHSI”) which are referred to as the “Departmental Directors”. The Departmental Director employed by the DHSC (the “DHSC Departmental Director”) is my representative on the Board. The Board cannot consent to any matter (which is reserved for consent by the Board in SCCL’s Articles of Association) without a vote in favour by a DHSC Departmental Director. There are also 4 non-executive external directors whose appointments I was responsible for approving and who are not affiliated with the DHSC.

Further, pursuant to the powers granted under SCCL’s Articles of Association, I exercise control and influence over both the strategic objectives and significant decisions of SCCL. Such powers include, but are not limited to:

- Article 4(1): shareholder powers, by special resolution, to direct the directors to take, or refrain from taking, specified action;
- Article 7: the shareholder’s right to exercise a veto over certain reserved matters, including changes to the share capital or nature of the authorised business of the company;
- Article 20: the power of the Secretary of State as sole shareholder of SCCL to appoint Directors to the Board;
- Article 8(2): the requirement for Board consent by a simple majority to include the support of one DHSC Departmental Director prior to the adoption of decisions relating to specific strategic and significant transactions or the approval of the Company’s Business Plan. That means in practice that no consent can be given by the Board without approval of the DHSC Departmental Director in respect of those matters reserved for the consent of the Board in SCCL’s Articles of Association.

#### **B. Purpose of the Company**

The nature of business of SCCL as stated in its records at the Companies House is general public administration activities. Its “Business” as defined in its Articles of Association is “the

*management and co-ordination of NHS supply chain services, including procurement, logistics, e-Commerce, reporting, analysis, quality control, communications, payments, supplier management, emergency response and consultancy services for the provision of everyday hospital consumables, clinical products, home-care and capital equipment and associated services and supplies”.*

### **C. Entrusted SGEI Tasks of the Company**

Following its incorporation in July 2017, SCCL became operational in 2018 and has been administering the NHS Supply Chain pursuant to an agency arrangement with the NHS Business Services Agency (“BSA”). With effect from 1 April 2019, SCCL will replace BSA as the principal administrator of the NHS Supply Chain. SCCL will also manage and coordinate the financial administration of the National Health Service Supply Chain.

SCCL is hereby entrusted with services of general economic interest to manage and oversee the administration of the NHS Supply Chain in relation to NHS funded products and services. This means that, from the date of this Act of Entrustment (1<sup>st</sup> April 2019) until the 31<sup>st</sup> of March 2029 and subject to ongoing review, SCCL will be expected to deliver specific exclusive tasks and key objectives within the territory of the United Kingdom, including but not limited to:

- Overseeing the procurement and delivery of clinically assured products focused on patient safety within the NHS;
- Coordinating the procurement of a range of medical devices and clinical consumables from suppliers for the NHS;
- Ensuring the provision of reliable logistics services for the delivery of products to NHS Trusts;
- Managing the provision of IT services to provide systems platforms that support the operations of NHS Supply Chain;
- Administering the provision of transaction processing services to ensure that suppliers are paid, customers (NHS Trusts) receive and pay their invoices and accurate financial/statutory accounting is performed in a timely manner;
- Enabling the provision of customer engagement services so that NHS Trust customers can make effective best value judgments in exercising their choice of products for use in the provision of health services;
- Ensuring the provision of clinical and product assurance services to give NHS Trust customers confidence that the products they are using are of good quality and clinically suitable for their intended use;
- Complying with public procurement principles (where applicable) so that the above services are procured through open competitive conditions ensuring equal access and opportunity to all suppliers; and
- Exercising performance management and supervision powers to ensure that the above services are all delivered efficiently and effectively, providing best value for money.

### **D. Key Performance Indicators**

#### Specific KPIs in the SCCL Business Plan

- **Drive and Deliver system benefits:** Deliver a minimum of £150m incremental in year savings which NHS Trusts can apply in other needed areas to support and improve their services.

- **Serve NHS Trust customers efficiently:** Increase procurement volumes through the NHS Supply Chain to implement better informed procurement decisions in respect of products consumed.
- **Range Rationalisation:** Rationalise and centralise purchasing so as to reduce inefficient, fragmented and duplicative purchasing to maximise economies of scale, reduce spend and consolidate purchasing power.

#### **E. Other Key Objectives of the Operating Model**

- **Assure quality:** Clinically assure all new or re-procured framework agreements for the purchase of products for the NHS.
- **Balance finances:** Balance investment and operational expenses within resource allocation.
- **Build a capable organisation:** Proactively engage employees of the company.
- **Transform technology:** Transform the company's information technology systems to support the delivery of its objectives with modern digital infrastructure.
- **Ensure efficient use of taxpayers' money**
- **Efficient Cost management:**
  - Governing principle to manage the NHS Supply Chain on an efficient basis and at least cost to the community;
  - Cost forecasts to be budgeted and approved by Board and Secretary of State for Health and Social Care as sole shareholder;
  - All expenditure to reflect the actual efficiently incurred costs of the Category Tower Service Providers and providers of logistics and IT services (which facilitate the Category Towers), allowing them a reasonable profit margin;
  - Funding for SCCL's operating costs to be based on actual receipts and assessed by reference to efficiently incurred costs by a well-run provider;
  - It is under consideration whether, in order to achieve financial balance, SCCL can achieve this through the generation of additional income streams from trading outside of core NHS business and, if so, the precise terms on, and extent to, which such business may be conducted]
  - The general intention is that, save in exceptional circumstances, SCCL should not be paid or retain any profit or surplus profits nor receive a margin on the costs of management and administration services provided in respect of NHS funded products and services via the NHS Supply Chain.
- **Quality Requirements for discharge of SGEI functions**
  - Employment of best practice in respect of corporate governance including the effective functioning of appropriate committees for areas such as audit and remuneration;
  - Strong financial stewardship and effective financial management and reporting processes in place which function adequately;
  - Record activity, assure delivery by suppliers and payment to suppliers and recharge NHS customers and ensure that SCCL has robust delivery plans for implementing the necessary information systems and management processes;

- Operational Budget must be on a break-even basis and must not generate a material surplus or deficit.
- **Competition and Freedom of choice**
  - Principle of open and non-discriminatory access by NHS providers to the NHS Supply Chain;
  - The products in the catalogues held by the Category Tower Service Providers from which NHS Trusts make their selection of what they would like to procure are the result of competitive tender exercises amongst suppliers of the products.
  - Contracts held by the Category Tower Service Providers, IT and logistic services contracts to be renewed every 3+1+1 years
  - Objective criteria for review of contracts at Y3, and Y4 to ensure best value for money if renewed and re-let if not;
  - NHS Trusts free to exercise choice of suppliers – either products offered by Category Service Providers or from other sources on basis of best value for money;
  - No appreciable restrictions to be put in place regarding NHS Trusts' choice of supplier.
- **Principles of non-discrimination and transparency:**
  - Aim of centralised procurement to ensure that all NHS providers benefit from economies of scale and product rationalisation and will receive equal treatment;
  - No appreciable distortion of competition between the private healthcare sector and the NHS funded healthcare sector;
  - Precise mechanics to ensure equivalence of treatment of independent providers and NHS providers in both private healthcare and NHS healthcare sectors are under active consideration;
  - Principles of transparency and good administration to be observed by SCCL in its dealings with Category Tower Providers, IT and logistic service providers and independent and NHS providers.
- **Public service aims:**
  - Overall aim to improve the quality and efficiency of NHS services for the benefit of all members of society, regardless of their contribution to the NHS system or their state of health in line with the solidarity principle.
  - Aim to make NHS funded products and services more efficient to provide savings to NHS Trusts can apply in other needed areas to support and improve their services.
  - Ensure efficient use of taxpayers' money.
  - No less than 80% of SCCL's activities must be directed towards the administration of the procurement of facilities or services to persons or bodies who carry out healthcare services within the meaning of the NHS Act and which are funded by the Department of Health and Social Care.

## **F. Financial Compensation**

### **Funding**

In order to facilitate the initial operation of SCCL in April 2018, I invested in the company through the purchase of 13,000, 001 ordinary shares of £1 each which are fully paid up. In March 2019 I invested a further £8,000,000 for the issuance and purchase of a further 8,000, 000 Ordinary Shares of £1 each. Furthermore, SCCL's operational costs are to be funded centrally, although the precise methodology for the allocation of that funding is subject to ongoing consultation. That financial provision is being made pursuant to my statutory powers in s.223(2) of the Act.

SCCL's designated funding shall be used for the following purposes:

- A minimum of 80% to fund contractual payments due to service providers by SCCL and so shall constitute reimbursement of actual costs incurred in the discharge of SCCL's entrusted obligations pursuant to this letter.
- A maximum of 20% to fund salaries and operating costs of SCCL.

The funding is not envisaged to exceed the net costs of discharging SCCL's entrusted obligations or efficiently incurred costs. To that end, the following checks and controls will be put in place:

- Appropriate Board control and scrutiny and shareholder's reservations, consents and vetoes over material expenditure, loans and investments as well as changes to the company business;
- Duty to comply with public procurement in award of Category Towers Service Provider and subject any future contract awards to competitive tender;
- Onwards duty to ensure that Category Tower Service Providers, Logistics and IT providers comply with public procurement law where applicable and secure best value for money;
- Board scrutiny of invitations to tender and tender awards of contracts to the Category Tower Service Providers Logistics and IT providers.
- Scrutiny of Annual Business Plan and Budget by the Board of Directors.
- Shareholder's approval required for the setting of salaries of senior executive officers of SCCL in accordance with HMT's Guidance for the Approval of Senior Pay.
- Scrutiny of costs savings and targets set for the next financial year by the Board and ultimately the shareholder through their approval of the Annual Business Plan;
- Regular review by the Board of attainment of the specific KPIs and compliance with Key Objectives.

### **Avoidance and recovery of over-compensation**

A key aim is that SCCL should not make any overall profit as its funding should be limited to its actual costs. To this end, a true-up exercise must be carried out in the final month of the Company's financial year.

That being said, should SCCL make any cost savings or surplus profits after discharging its obligations then consideration will be had on how best to invest these monies for the public interest in line with the objectives outlined above. The precise approach and methodology is subject to ongoing active consideration.

## **G. Annual Review**

The DHSC shall review the operations of SCCL on a regular basis in line with its entrusted obligations under this letter. This will involve:

- Review and approval of the Annual Business Plan by the Board and by DHSC and NHSI through their Departmental Directors on the Board ;
- Review and approval of the Annual Budget by the Board and by, DHSC and NHSI through their Departmental Directors on the Board;
- Review of performance of the specific KPIs and attainment of Key Objectives by the Board;
- Review of Directors' performance – oversight of the performance of the executive and nonexecutive directors of SCCL with appropriate disciplinary measures for lack of performance;
- Review of Financial Compensation Mechanisms and oversight of reinvestment of any cost savings or profits;
- Appropriate arrangements to set remuneration for SCCL's executive and other senior staff that are fair and represent value for money and ensuring consistency with the Company's Articles and with HMT's "Guidance for the Approval of Senior Pay"; and
- Production of management information by SCCL, the content and timing of which will be agreed with you by the DHSC Departmental Director.

## **H. Informal review and adjustment**

With any new operating model, I appreciate that there are likely to be initial unexpected developments which require slight adjustment to the model, the tariff or other mechanisms incorporated into the management and funding of SCCL. I therefore suggest that the funding for the new operating model is introduced as part of an iterative process, with the opportunity for review and adjustment, as necessary, after 6 and 12 months, in the light of the actual and forecasted savings generated.

As part of that process, the Board may be called upon to determine mechanics and safeguards to develop and refine the operating model. Examples include the mechanism to ensure that any surplus profits are invested for the public interest in line with the Key Objectives of the scheme. Another aspect will be to ensure parity of treatment between independent providers and NHS providers in terms of the contribution that they make towards SCCL's operating costs and thereby ensure a level playing field for the private healthcare and NHS healthcare sectors.

Once those mechanisms have been designed, it may be necessary to implement them after SCCL has come into operation, in which case I expect there may be a need for retrospective adjustments to the tariffs rebates or margin paid and/or prospective changes going forward or a combination of the two. DHSC should have discretion to resolve such matters in the way it sees most appropriate in line with the Key Objectives set out above.



**MATT HANCOCK**

