
Collaboration Agreement For Delegated of Specialised Services 2025

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THIS AGREEMENT is made on the first day of April 2024

BETWEEN:

- (1) **NHS Lincolnshire Integrated Care Board** of Bridge House, The Point, Lions Way, Sleaford, NG34 8GG ("Lincolnshire ICB"); and
- (2) **NHS Nottingham & Nottinghamshire Integrated Care Board** of Sir John Robinson House, Sir John Robinson Way, Arnold, Nottingham, NG5 6DA ("Nottingham & Nottinghamshire ICB"); and
- (3) **NHS Leicester, Leicestershire & Rutland Integrated Care Board** of Room G30, Pen Lloyd Building, County Hall, Glenfield, Leicester, LE3 8TB ("Leicester, Leicestershire & Rutland ICB"); and
- (4) **NHS Northamptonshire Integrated Care Board** of Francis Crick House, 6 Summerhouse Road, Northampton, Northamptonshire, NN3 6BF ("Northamptonshire ICB"); and
- (5) **NHS Derby & Derbyshire Integrated Care Board** of Cardinal Square, 10 Nottingham Road, Derby, Derbyshire, DE1 3QT ("Derby & Derbyshire ICB").
- (6) **NHS Birmingham & Solihull Integrated Care Board** of floor 8, alpha tower, Suffolk Street Queensway, Birmingham B1 1TT ("Birmingham & Solihull ICB"); and
- (7) **NHS Black Country Integrated Care Board** of Civic Centre, St Peters Square, Wolverhampton WV1 1SD ("Black Country ICB"); and
- (8) **NHS Herefordshire & Worcestershire Integrated Care Board** of Kirkham House, John Comyn Drive, Perdiswell, Worcester, WR3 7NS ("Herefordshire & Worcestershire ICB"); and
- (9) **NHS Coventry & Warwickshire Integrated Care Board** of Westgate House, Market St, Warwick CV34 4DE ("Coventry & Warwickshire ICB"); and

- (10) **NHS Shropshire, Telford & Wrekin Integrated Care Board** of Halesfield 6, Halesfield, Telford, TF7 4BF ("Shropshire, Telford & Wrekin ICB"); and
- (11) **NHS Staffordshire & Stoke-on-Trent Integrated Care Board** of Stafford Education & Enterprise Park, Weston Road, Stafford, ST18 0BF ("Staffordshire & Stoke-on-Trent ICB");

each a "Partner" and together the "Partners".

NOW IT IS HEREBY AGREED as follows:

1. COMMENCEMENT AND DURATION

- 1.1 This Agreement has effect from the date of this Agreement and will remain in force unless terminated in accordance with Clause 23 (*Termination & Default*) below.

2. PRINCIPLES AND AIMS

2.1 BACKGROUND

- (A) NHS England has statutory functions to make arrangements for the provision of prescribed services for the purposes of the NHS.
- (B) The ICBs have statutory functions to make arrangements for the provision of services for the purposes of the NHS in their Areas, apart from those commissioned by NHS England.
- (C) Pursuant to section 65Z5 of the NHS Act, NHS England and the ICBs can establish and maintain joint arrangements in respect of the discharge of their Commissioning Functions.
- (D) Under the Delegation Agreement made pursuant to section 65Z5, NHS England has delegated the Delegated Functions to each of the ICBs. NHS England has retained responsibility for the NHS England Reserved Functions and commissioning of the Retained Services.
- (E) It is agreed that to exercise the Delegated Functions in the most efficient and effective manner, some of the Delegated Services are best commissioned collaboratively between multiple ICBs.

- (F) This Agreement sets out the arrangements that will apply between the ICBs and NHS England in relation to the collaborative commissioning of Specialised Services for the ICBs' Populations.

2.2 The Partners acknowledge that, in exercising their obligations under this Agreement, each Partner must comply with the statutory duties set out in the NHS Act and must

- 2.2.1 consider how it can meet its legal duties to involve patients and the public in shaping the provision of Services, including by working with local communities, under-represented groups, and those with protected characteristics for the purposes of the Equality Act 2010;
- 2.2.2 consider how, in performing its obligations, it can address health inequalities;
- 2.2.3 at all times exercise functions effectively, efficiently, and economically; and
- 2.2.4 act always in good faith towards each other.

2.3 The Partners agree:

- 2.3.1 that successfully implementing this Agreement will require strong relationships and an environment based on trust and collaboration;
- 2.3.2 to seek to continually improve whole pathways of care including Specialised Services and to design and implement effective and efficient integration;
- 2.3.3 to act in a timely manner;
- 2.3.4 to share information and best practice, and work collaboratively to identify solutions, eliminate duplication of effort, mitigate risks, maximise opportunities and reduce cost;
- 2.3.5 to act at all times, ensure the Partners comply with the requirements of the Delegation Agreements including Mandated Guidance;
- 2.3.6 to act at all times in accordance with the scope of their statutory powers; and

2.3.7 to have regard to each other's needs and views, irrespective of the relative contributions of the Partners to the commissioning of any Services and, as far as is reasonably practicable, take such needs and views into account.

2.4 The Partners' aims are:

2.4.1 to maximise the benefits to patients of integrating the Delegated Functions with the ICBs' Commissioning Functions through designing and commissioning the Specialised Services as part of the wider pathways of care of which they are a part and, in doing so, promote the Triple Aim;

3. SCOPE OF THE ARRANGEMENTS

3.1 This Agreement sets out the Joint Working Arrangements through which the Partners will work together to commission Services. This may include one or more of the following commissioning mechanisms (the "Flexibilities") although this list is not exhaustive:

3.1.1 Lead Commissioning Arrangements: where agreed Commissioning Functions are delegated to a lead Partner (Lead Partner);

3.1.2 Aligned Commissioning Arrangements: where there is no further delegation of the Commissioning Functions. However, the Partners agree mechanisms to co-operate in the commissioning of identified Services;

3.1.3 Joint Commissioning Arrangements: where the Partners exercise agreed Commissioning Functions jointly;

3.1.4 the establishment of one or more Joint Committees;

3.1.5 the establishment of one or more Commissioning Teams;

3.1.6 the establishment of one or more Pooled Funds;

3.1.7 the use of one or more Non-Pooled Fund.

3.2 At the Commencement Date the Partners agree that the following Joint Working Arrangements shall be in place:

3.2.1 Delegation by NHS England of the Delegated Functions to each individual ICB in accordance with the relevant Delegation Agreement.

3.2.2 Establishment of the following Joint Working Arrangements:

- Establishment of a Commissioning Team in accordance with Clause 5.1 through which agreed Delegated Services may be commissioned as set out in schedule 10 of the Delegation Agreement
- Delegation of responsibilities by the ICBs to the two Joint Committees for the East and West Midlands established under existing multi-ICB Joint Working Agreements;
- Approval of the two schemes for the commissioning of delegated specialised services for the East and West Midlands multi-ICBs;
- Establishment of financial risk share and pooled budget arrangement as set out in Schedule 4.

4. FUNCTIONS

4.1 The purpose of this Agreement is to establish a framework through which the Partners can secure the commissioning of health services in accordance with the terms of this Agreement.

4.2 This Agreement shall include such Commissioning Functions as shall be agreed from time to time by the Partners and set out in the relevant Scheme Specifications.

4.3 The Scheme Specifications for the Individual Schemes included as part of this Agreement at the Commencement Date are set out in Schedule 3.

4.4 Where the Partners add a new Individual Scheme to this Agreement, a Scheme Specification for each Individual Scheme shall be completed and approved by each Partner in accordance with the variation procedure set out in Clause 13 (*Variations*).

4.5 The Partners shall work in co-operation and shall endeavour to ensure that all Services are commissioned with all due skill, care and attention irrespective of the Joint Working Arrangements utilised.

4.6 Where there are Lead Commissioning Arrangements in respect of any Individual Scheme, unless the Scheme Specification otherwise provides, the Lead Partner shall:

4.6.1 exercise the Functions of each Partner as identified in the relevant Scheme Specification;

4.6.2 endeavour to ensure that all Commissioning Functions included in the relevant Individual Scheme are funded as agreed by each Partner in respect of each Financial Year;

4.6.3 comply with all relevant legal duties and Guidance of all Partners in relation to the Services being commissioned;

4.6.4 perform all commissioning obligations with all due skill, care and attention;

4.6.5 undertake performance management and contract monitoring of all service contracts including (without limitation) the use of contract notices where Services fail to deliver contracted requirements;

4.6.6 make payment of all sums due to a Provider pursuant to the terms of any Services Contract; and

4.6.7 keep the other Partner(s) regularly informed of the effectiveness of the Joint Working Arrangements including any forecasted Overspend or Underspend where there is a Pooled Fund or Non-Pooled Fund.

5. COMMISSIONING TEAM

5.1 The Partners agree to establish a Commissioning Team(s) as set out in Schedule 6 (*Commissioning Team Arrangements*).

6. STAFFING

6.1 The staffing arrangements in respect of each Individual Scheme shall be as set out in the relevant Scheme Specification and/or the Commissioning Team Agreement and Standard Operating Framework.

7. JOINT COMMITTEE

7.1 Where Partners intend to form a Joint Committee then the arrangements for the Joint Committee shall be as set out in Schedule 2 (*Governance Arrangements*); and the relevant Joint Committee Terms of Reference.

8. GOVERNANCE

8.1 Overall strategic oversight of partnership working between the Partners shall be as set out in Schedule 2 (*Governance Arrangements*).

8.2 Each Partner has internal reporting arrangements to ensure the standards of accountability and probity required by each Partner's own statutory duties and organisation are complied with.

8.3 The Governance Arrangements shall set out how the Partners shall provide overall oversight and approval of Individual Schemes and variations to those Individual Schemes.

8.4 Each Scheme Specification shall confirm the Governance Arrangements in respect of the Individual Scheme and how that Individual Scheme is reported to each partner.

9. POOLED FUNDS, NON-POOLED FUNDS AND RISK SHARING

9.1 The Partners may establish Pooled Funds, Non-Pooled Funds and agree Risk Sharing in accordance with Schedule 4 (*Financial Arrangements*).

10. REVIEW

10.1 Save where the Partners agree alternative arrangements (including alternative frequencies) the Partners shall undertake an Annual Review of the operation of this Agreement, any Pooled Fund and Non-Pooled Fund and the provision of the Services within three (3) months of the end of each Financial Year.

10.2 Annual Reviews shall be conducted in good faith.

11. COMPLAINTS

- 11.1 Complaints will be managed by the specialised commissioning team hosted by Birmingham and Solihull ICB in line with the agreed complaints process.
- 11.2 A report summarising complaints, actions and lessons learnt will be provided to the East Midlands Joint Committee and West Midlands Joint Committee annually.

12. FINANCES

- 12.1 The financial arrangements shall be as agreed between the Partners in the relevant Scheme Specification and Schedule 4 (*Financial Arrangements*).
- 12.2 Unless expressly provided otherwise in this Agreement or otherwise agreed in advance in writing by the Partners, each Partner shall bear its own costs as they are incurred.

13. VARIATION

- 13.1 The Partners acknowledge that the scope of the Collaboration Arrangements may be reviewed and amended from time to time.
- 13.2 This Agreement may be varied by the agreement of the Partners at any time in writing in accordance with the Partners' internal decision-making processes.
- 13.3 No variations to this Agreement will be valid unless they are recorded in writing and signed for and on behalf of each of the Partners.
- 13.4 Where the Partners agree that there will be:
 - 13.4.1 a new Pooled Fund;
 - 13.4.2 a new Individual Scheme; or
 - 13.4.3 an amendment to a current Individual Scheme,

the Partners shall agree the new or amended Individual Scheme in accordance with the Governance Arrangements and, in respect of amendments, the Scheme Specification. Each new or amended Individual Scheme must be signed by each of

the Partners. A request to vary an Individual Scheme, which may include (without limitation) a change in the level of Financial Contributions or other matters set out in the relevant Scheme Specification, may be made by any Partner but will require agreement from all the Partners. The notice period for any variation unless otherwise agreed by the Partners shall be three (3) months or in line with the notice period for variations within the associated Service Contract(s), whichever is the shortest.

13.5 Partners may propose additional schemes to be added to this agreement via the Joint Committees.

13.6 The following approach shall, unless otherwise agreed, be followed by the Partners:

13.6.1 on receipt of a request from one Partner to vary the Agreement including (without limitation) the introduction of a new Individual Scheme or amendments to an existing Individual Scheme, the Partners will first undertake an impact assessment and identify the likely impact of the variation including those Individual Schemes and Service Contracts likely to be affected;

13.6.2 the Partners will agree any action to be taken because of the proposed variation. This shall include consideration of:

- governance and decision-making arrangements;
- oversight and assurance arrangements;
- contracting arrangements; and/or
- whether the proposed variation could have an impact on the Integrated Specialised Commissioning Team;

13.6.3 wherever possible agreement will be reached to reduce the level of funding in the Service Contract(s) in line with any reduction in budget; and

13.6.4 should this not be possible, and one Partner is left financially disadvantaged because of the proposed variation, then the financial risk will, unless otherwise agreed, be apportioned according to the financial risk share arrangement detailed in Schedule 4.

14. DATA PROTECTION

- 14.1 The Partners must ensure that all Personal Data processed by or on behalf of them while carrying out the Joint Working Arrangements is processed in accordance with the relevant Partner's obligations under Data Protection Legislation and Data Guidance, and the Partners must assist each other as necessary to enable each other to comply with these obligations.
- 14.2 Processing of any Personal Data or Special Category Personal Data shall be to the minimum extent necessary to achieve the Specified Purpose, and on a need-to-know basis. If any Partner:
- 14.2.1 becomes aware of any unauthorised or unlawful processing of any Relevant Information or that any Relevant Information is lost or destroyed or has become damaged, corrupted, or unusable; or
- 14.2.2 becomes aware of any security breach,
- in respect of the Relevant Information, it shall promptly notify the relevant Partners and NHS England. The Partners shall fully cooperate with one another to remedy the issue as soon as reasonably practicable.
- 14.3 In processing any Relevant Information further to this Agreement, each Partner shall at all times comply with their own policies and any NHS England policies and guidance on the handling of data.
- 14.4 Any information governance breach must be responded to in accordance with the Information Governance Guidance for Serious Incidents. If any Partner is required under Data Protection Legislation to notify the Information Commissioner's Office or a Data Subject of an information governance breach, then, as soon as reasonably practical and in any event on or before the first such notification is made, the relevant Partner must fully inform the other Partners of the information governance breach. This clause does not require the relevant Partner to provide information which identifies any individual affected by the information governance breach were doing so would breach Data Protection Legislation.
- 14.5 Whether or not a Partner is a Data Controller or Data Processor will be determined in accordance with Data Protection Legislation and any Data Guidance from a

Regulatory or Supervisory Body. The Partners acknowledge that a Partner may act as both a Data Controller and a Data Processor.

- 14.6 The Partners will share information to enable joint service planning, commissioning, and financial management subject to the requirements of Law, including the Data Protection Legislation in respect of any Personal Data.
- 14.7 Other than in compliance with judicial, administrative, governmental, or regulatory process in connection with any action, suit, proceedings or claim or otherwise required by any Law, no information will be shared with any third parties save as agreed by the Partners in writing.
- 14.8 Schedule 5 (*Further Information Governance and Sharing Provisions*) makes further provision about information sharing and information governance.

15. IT INTER-OPERABILITY

- 15.1 The Partners will work together to ensure that all relevant IT systems operated by the Partners in respect of the Joint Working Arrangements are inter-operable and that data may be transferred between systems securely, easily and efficiently.
- 15.2 The Partners will each use reasonable endeavours to help develop initiatives to further this aim.

16. FURTHER ARRANGEMENTS

- 16.1 The Partners must give due consideration to whether any of the Commissioning Functions should be exercised collaboratively with other NHS bodies or Local Authorities including, without limitation, by means of arrangements under section 65Z5 and section 75 of the NHS Act. The Partners must comply with any Guidance around the commissioning of Specialised Services by means of arrangements under section 65Z5 or 75 of the NHS Act.

17. FREEDOM OF INFORMATION

- 17.1 Each Partner acknowledges that the others are a public authority for the purposes of the Freedom of Information Act 2000 (“FOIA”) and the Environmental Information Regulations 2004 (“EIR”).
- 17.2 Each Partner may be statutorily required to disclose further information about the Agreement and the FOIA or EIA Information in response to a specific request under FOIA or EIR, in which case:
- 17.2.1 each Partner shall provide the other Partners with all reasonable assistance and co-operation to enable them to comply with their obligations under FOIA or EIR;
 - 17.2.2 each Partner shall consult the other Partners as relevant regarding the possible application of exemptions in relation to the FOIA or EIA Information requested; and
 - 17.2.3 each Partner acknowledges that the final decision as to the form or content of the response to any request is a matter for the Partner to whom the request is addressed, or the ICB responsible for the geographical area the service sits if any correspondence is addressed to the commissioning team.
- 17.3 The commissioning team will respond to all FOIA requests on behalf of Partners as part of the administrative responsibility set out in Schedule 6 (Commissioning Team Agreement and Standard Operating Framework).

18. CONFLICTS OF INTEREST AND TRANSPARENCY ON GIFTS AND HOSPITALITY

- 18.1 The Partners must ensure that, in delivering the Joint Working Arrangements, all Staff comply with Law, with Managing Conflicts of Interest in the NHS and other Guidance, and with Good Practice, in relation to gifts, hospitality and other inducements and actual or potential conflicts of interest.
- 18.2 Each ICB must maintain a register of interests in respect of all persons involved in decisions concerning the Joint Working Arrangements. This register must be publicly available. For the purposes of this clause, an ICB may rely on an existing register of interests rather than creating a further register.

19. CONFIDENTIALITY

- 19.1 Except as this Agreement otherwise provides, Confidential Information is owned by the disclosing Partner and the receiving Partner has no right to use it.
- 19.2 Subject to Clause 19.3, the receiving Partner agrees:
- 19.2.1 to use the disclosing Partner's Confidential Information only in connection with the receiving Partner's performance under this Agreement;
 - 19.2.2 not to disclose the disclosing Partner's Confidential Information to any third party or to use it to the detriment of the disclosing Partner; and
 - 19.2.3 to maintain the confidentiality of the disclosing Partner's Confidential Information.
- 19.3 The receiving Partner may disclose the disclosing Partner's Confidential Information:
- 19.3.1 in connection with any Dispute Resolution Procedure;
 - 19.3.2 to comply with the Law;
 - 19.3.3 to any appropriate Regulatory or Supervisory Body;

- 19.3.4 to its Staff, who in respect of that Confidential Information will be under a duty no less onerous than the Receiving Partner's duty under Clause 0;
 - 19.3.5 to NHS bodies for the purposes of carrying out their functions; and
 - 19.3.6 as permitted under any other express arrangement or other provision of this Agreement.
- 19.4 The obligations in Clause 19 will not apply to any Confidential Information which:
- 19.4.1 is in or comes into the public domain other than by breach of this Agreement;
 - 19.4.2 the receiving Partner can show by its records was in its possession before it received it from the disclosing Partner; or
 - 19.4.3 the receiving Partner can prove it obtained or was able to obtain from a source other than the disclosing Partner without breaching any obligation of confidence.
- 19.5 This Clause 0 does not prevent NHS England making use of or disclosing any Confidential Information disclosed by an ICB where necessary for the purposes of exercising its functions in relation to that ICB.
- 19.6 This Clause 19 will survive the termination of this Agreement for any reason for a period of five (5) years.
- 19.7 This Clause 19 will not limit the application of the Public Interest Disclosure Act 1998 in any way whatsoever.

20. LIABILITIES

- 20.1 Subject to Clause 20.2, and 20.3, if a Partner ("First Partner") incurs a Loss arising out of or in connection with this Agreement (including a Loss arising under an Individual Scheme) as a consequence of any act or omission of another Partner ("Other Partner") which constitutes negligence, fraud or a breach of contract in relation to this Agreement then the Other Partner shall be liable to the First Partner for that Loss.

- 20.2 Clause 20.1 shall only apply to the extent that the acts or omissions of the Other Partner contributed to the relevant Loss. Furthermore, it shall not apply if such act or omission occurred as a consequence of the Other Partner acting in accordance with the instructions or requests of the First Partner. Clause 20.1 shall not apply in respect of Loss where an alternative arrangement has been agreed by the Partners and set out in the relevant Scheme Specification.
- 20.3 If any third party makes a Claim or intimates an intention to make a Claim against any Partner, which may reasonably be considered as likely to give rise to liability under this Clause 20, the Partner that may have a Claim against the Other Partner will:
- 20.3.1 as soon as reasonably practicable give written notice of that matter to the Other Partner specifying in reasonable detail the nature of the relevant Claim;
 - 20.3.2 not make any admission of liability, agreement, or compromise in relation to the relevant Claim without the prior written consent of the Other Partner (such consent not to be unreasonably conditioned, withheld or delayed); and
 - 20.3.3 give the Other Partner and its professional advisers reasonable access to its premises and Staff and to any relevant assets, accounts, documents and records within its power or control so as to enable the Other Partner and its professional advisers to examine such premises, assets, accounts, documents and records and to take copies at their own expense for the purpose of assessing the merits of, and if necessary defending, the relevant Claim.
- 20.4 Each Partner shall at all times take all reasonable steps to minimise and mitigate any loss for which one party is entitled to bring a Claim against the other pursuant to this Agreement.
- 20.5 Unless expressly agreed otherwise, nothing in this Agreement shall affect:
- 20.5.1 the liability of NHS England to any person in respect of NHS England's Commissioning Functions; or

20.5.2 the liability of any of the ICBs to any person in respect of that ICB's Commissioning Functions.

20.6 Each ICB must:

20.6.1 comply with any requirements set out in the Delegation Agreement in respect of Claims and any policy issued by NHS England from time to time in relation to the conduct of or avoidance of Claims or the pro-active management of Claims;

20.6.2 if it receives any correspondence, issue of proceedings, claim document or other document concerning any Claim or potential Claim, immediately notify the other Partners and send each relevant Partner all copies of such correspondence; and

20.6.3 co-operate fully with each relevant Partner in relation to such Claim and the conduct of such Claim.

21. DISPUTE RESOLUTION

21.1 Where any dispute arises between the ICBs in connection with this Agreement, the Partners must use their best endeavours to resolve that dispute.

21.2 Where any dispute is not resolved under Clause 0 on an informal basis, any Authorised Officer may convene a special meeting of the Partners to attempt to resolve the dispute.

22. BREACHES OF THE AGREEMENT

22.1 If any Partner ("Relevant Partner") fails to meet any of its obligations under this Agreement, the other Partners (acting jointly) may by notice require the Relevant Partner to take such reasonable action within a reasonable timescale as the other Partners may specify to rectify such failure. Should the Relevant Partner fail to rectify such failure within such reasonable timescale, the matter shall be referred for resolution in accordance with Clause 21 (*Dispute Resolution*).

22.2 Without prejudice to Clause 22.1, if any Partner does not comply with the terms of this Agreement (including if any Partner exceeds its authority under this Agreement), the other Partners may at their discretion agree to:

22.2.1 waive their rights in relation to such non-compliance;

22.2.2 ratify any decision;

22.2.3 terminate this Agreement in accordance with Clause 23 (*Termination and Default*) below; or

22.2.4 exercise the Dispute Resolution Procedure in accordance with Clause 21 (*Dispute Resolution*).

23. TERMINATION AND DEFAULT

23.1 If an ICB wishes to end its participation in this Agreement, the relevant ICB must provide at least six (6) months' notice to the other Partners of its intention to end its participation in this Agreement and must have given prior notification to NHS England. Such notification shall only take effect from the end of 31 March in any calendar year and shall only take effect where alternative arrangements for the provision of the Delegated Services and effective exercise of the Delegated Functions are in place for the period immediately following termination.

23.2 Each Individual Scheme may be terminated in accordance with the terms set out in the relevant Scheme Specification provided that each Partner is assured that the relevant Services will continue to be appropriately commissioned.

23.3 The ICBs will work together to ensure that there are suitable alternative arrangements in place in relation to the Services.

24. CONSEQUENCES OF TERMINATION

24.1 Upon termination of this Agreement (in whole or in part), for any reason whatsoever, the following shall apply:

- 24.1.1 the Partners agree that they will work together and co-operate to ensure that the winding down of these arrangements is carried out smoothly and with as little disruption as possible to patients, employees, the Partners and third parties, to minimise costs and liabilities of each Partner in doing so;
- 24.1.2 where there are Commissioning Team arrangements in place the Partners shall discuss and agree arrangements for the Staff and any financial arrangements;
- 24.1.3 where a Partner has entered a Service Contract in exercise of the Functions of any other Partner which continues after the termination of this Agreement, all Partners shall continue to provide necessary funding in accordance with the agreed contribution for that Service prior to termination and will enter all appropriate legal documentation required in respect of this;
- 24.1.4 where there are Lead Commissioning Arrangements in place, the Lead Partner shall make reasonable endeavours to amend or terminate a Service Contract (which shall for the avoidance of doubt not include any act or omission that would place the Lead Partner in breach of the Service Contract) where the other Partner requests the same in writing provided that the Lead Partner shall not be required to make any payments to a Service provider for such amendment or termination unless the Partners shall have agreed in advance who shall be responsible for any such payment;
- 24.1.5 where there are Joint Commissioning Arrangements in place, the Partners shall co-operate with each other as reasonably necessary to amend or terminate a Service Contract (which shall for the avoidance of doubt not include any act or omission that would place any Partner in breach of the Service Contract) where a Partner requests the same in writing provided that no Partner shall be required to make any payments to a Service provider for such amendment or termination unless the Partners shall have agreed in advance who shall be responsible for any such payment;
- 24.1.6 where a Service Contract held by a Lead Partner relates all or partially to services which relate to the other Partner's Functions and provided that the Service Contract allows, the other Partner may request that the Lead Partner

assigns the Service Contract in whole or part upon the same terms as the original contract; and

24.1.7 termination of this Agreement shall have no effect on the liability, rights or remedies of any Partner already accrued, prior to the date upon which such termination takes effect.

24.2 The provisions of Clauses 14 (*Data Protection*), 170 (*Freedom of Information*), 19 (*Confidentiality*), 20 (*Liabilities*) and 24 (*Consequences of Termination*) shall survive termination or expiry of this Agreement.

25. PUBLICITY

25.1 The Partners shall use reasonable endeavours to consult one another before making any public announcements concerning the subject matter of this Agreement, the Joint Working Arrangements or any Services provided under the Joint Working Arrangements.

26. EXCLUSION OF PARTNERSHIP OR AGENCY

26.1 Nothing in this Agreement shall create or be deemed to create a legal partnership under the Partnership Act 1890 or the relationship of employer and employee between the Partners.

26.2 Save as specifically authorised under the terms of this Agreement, no Partner shall hold itself out as the agent of any other Partner.

27. THIRD PARTY RIGHTS

27.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and accordingly the Partners to this Agreement do not intend that any third party should have any rights in respect of this Agreement by virtue of that Act.

28. NOTICES

28.1 Any notices given under this Agreement must be sent by e-mail to the relevant Authorised Officers or their nominated deputies.

28.2 Notices by email will be effective when sent in legible form, but only if, following transmission, the sender does not receive a non-delivery message.

29. ASSIGNMENT AND SUBCONTRACTING

29.1 This Agreement, and any rights and conditions contained in it, may not be assigned or transferred by a Partner, without the prior written consent of the other Partners, except to any statutory successor to the relevant Commissioning Function.

30. SEVERABILITY

30.1 If any term, condition, or provision contained in this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Agreement.

31. WAIVER

31.1 No failure or delay by a Partner to exercise any right or remedy provided under this Agreement or by Law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

32. STATUS

32.1 The Partners acknowledge that they are health service bodies for the purposes of section 9 of the NHS Act. Accordingly, this Agreement shall be treated as an NHS contract and shall not be legally enforceable.

33. ENTIRE AGREEMENT

33.1 This Agreement constitutes the entire agreement and understanding of the Partners and supersedes any previous agreement between the Partners relating to the subject matter of this Agreement.

34. GOVERNING LAW AND JURISDICTION

34.1 Subject to the provisions of Clause 21 (*Dispute Resolution*) and Clause 32 (*Status*), this Agreement shall be governed by and construed in accordance with English Law, and the Partners irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement.

35. FAIR DEALINGS

35.1 The Partners recognise that it is impracticable to make provision for every contingency which may arise during the life of this Agreement and they declare it to be their intention that this Agreement shall operate between them with fairness and without detriment to the interests of any Partner and that, if in the course of the performance of this Agreement, unfairness to any Partner does or may result, then the Relevant Partner(s) shall use reasonable endeavours to agree upon such action as may be necessary to remove the cause or causes of such unfairness.

36. COUNTERPARTS

36.1 This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all Partners shall constitute a full original of this Agreement for all purposes.

This Agreement has been entered into on the Commencement Date

SIGNED by John Turner
for and on behalf of NHS Lincolnshire Integrated Care Board (Signature)
.....
(Date)

SIGNED by Amanda Sullivan
for and on behalf of NHS Nottingham & Nottinghamshire Integrated Care Board (Signature)
.....
(Date)

SIGNED by Dr Caroline Trevithick
for and on behalf of NHS Leicester, Leicestershire (Signature)
& Rutland Integrated Care Board
(Date)

SIGNED by Toby Sanders
for and on behalf of NHS Northamptonshire (Signature)
Integrated Care Board
(Date)

SIGNED by Chris Clayton
for and on behalf of NHS Derby & Derbyshire (Signature)
Integrated Care Board
(Date)

SIGNED by Philip Johns
for and on behalf of NHS Coventry & (Signature)
Warwickshire Integrated Care Board
(Date)

SIGNED by Mark Axcell
for and on behalf of NHS Black Country (Signature)
Integrated Care Board
(Date)

SIGNED by Simon Trickett
for and on behalf of NHS Herefordshire & (Signature)
Worcestershire Integrated Care Board
(Date)

SIGNED by David Melbourne
for and on behalf of NHS Birmingham & Solihull (Signature)
Integrated Care Board
(Date)

SIGNED by Peter Axon

for and on behalf of NHS Staffordshire & Stoke-
on-Trent Integrated Care Board

(Signature)

.....

(Date)

SIGNED by Simon Whitehouse
for and on behalf of NHS Shropshire, Telford &
Wrekin Integrated Care Board

(Signature)

.....

.....

(Date)

SCHEDULE 1: DEFINITIONS AND INTERPRETATIONS

1. In this Agreement, unless the context otherwise requires, the following words and expressions shall have the following meanings:

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| “Agreement” | means this agreement between the Partners comprising these terms and conditions together with all schedules attached to it; |
| “Aligned Commissioning Arrangements” | means the arrangements by which the Partners agree to commission a Service in a co-ordinated and collaborative manner. For the avoidance of doubt, an aligned commissioning arrangement does not involve the delegation of any functions between ICBs; |
| “Annual Review” | means the annual review of the arrangements under this Agreement by the Partners; |
| “Area” | means the geographical area covered by the ICBs; |
| “Authorised Officer” | the individual(s) appointed as Authorised Officer in accordance with the agreed Terms of Reference; |
| “Claim” | means for or in relation to the Commissioning Functions (a) any litigation or administrative, mediation, arbitration or other proceedings, or any claims, actions or hearings before any court, tribunal, or the Secretary of State, any governmental, regulatory, or similar body, or any department, board or agency or (b) any dispute with, or any investigation, inquiry or enforcement proceedings by any governmental, regulatory or similar body or agency; |
| “Clinical Commissioning Policies” | a nationally determined clinical policy sets out the commissioning position on a particular clinical treatment issue and defines accessibility (including a not for routine commissioning position) of a medicine, medical device, diagnostic technique, surgical procedure, or intervention for patients with a condition requiring a specialised service; |
| “Collaborative Commissioning Agreement” | means an agreement under which NHS Commissioners set out collaboration arrangements in respect of commissioning Specialised Services Contracts; |
| “Commencement Date” | [means 1 April 2024]; |

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| "Commissioning Functions" | the respective statutory functions of the Partners in arranging for the provision of services as part of the health service; |
| "Commissioning Team" | <p>means a staffing arrangement for commissioning agreed Services through an integrated team structure. This can be either set up using:</p> <ul style="list-style-type: none"> i. Lead Commissioning (one Partner hosts the Unit as Lead and all functions are delegated to that Partner); or ii. Joint Commissioning or Aligned Commissioning (one Partner may host but no functions are delegated). The Partners will need to agree whether decisions are taken via a Joint Commissioning arrangement such as a Joint Committee or whether each Partner is required to take decisions; |
| "Confidential Information" | <p>means information, data and/or material of any nature which any Partner may receive or obtain in connection with the operation of this Agreement or Joint Working Arrangements made pursuant to it and:</p> <ul style="list-style-type: none"> i. which comprises Personal Data or which relates to any patient or his treatment or medical history; ii. the release of which is likely to prejudice the commercial interests of a Partner; or iii. which is a trade secret; |
| "Contracting Standard Operating Procedure" | means any contracting standard operating procedure produced by NHS England in respect of the Delegated Specialised Services; |
| "Data Controller" | shall have the same meaning as set out in the Data Protection Legislation; |
| "Data Processor" | shall have the same meaning as set out in the Data Protection Legislation; |
| "Data Sharing Agreement" | means any data sharing agreement entered in accordance with Schedule 5 (<i>Further Information Governance and Sharing Provisions</i>); |

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| “Data Guidance” | means any applicable guidance, guidelines, direction or determination, framework, code of practice, standard or requirement regarding information governance, confidentiality, privacy, or compliance with Data Protection Legislation to the extent published and publicly available or their existence or contents have been notified to the ICB by NHS England and/or any relevant Regulatory or Supervisory Body. This includes but is not limited to guidance issued by NHS Digital, the National Data Guardian for Health & Care, the Department of Health and Social Care, NHS England, the Health Research Authority, the UK Health Security Agency, and the Information Commissioner; |
| "Data Protection Legislation" | means the UK General Data Protection Regulation, the Data Protection Act 2018, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003), the common law duty of confidentiality and all applicable laws and regulations relating to the processing of Personal Data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner; |
| “Data Protection Officer” | shall have the same meaning as set out in the Data Protection Legislation; |
| “Data Security and Protection Toolkit” | means the toolkit at: https://digital.nhs.uk/data-and-information/looking-after-information/data-security-and-information-governance/data-security-and-protection-toolkit_or_as_amended_or_replaced_from_time_to_time |
| “Delegation Agreement(s)” | means the Delegation Agreements under which NHS England delegate specific NHS England Specialised Services Commissioning Functions to each ICB; |
| “Delegated Functions” | means the Specialised Services Commissioning Functions of NHS England delegated to each ICB under a Delegation Agreement; |
| “Delegated Services” | means those Specialised Services commissioned in exercise of the Delegated Functions; |

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| "Dispute Resolution Procedure" | the procedure set out in Clause 21 (<i>Dispute Resolution</i>); |
| "EIR" | means the Environmental Information Regulations 2004; |
| "Finance Guidance" | guidance, rules and operating procedures produced by NHS England that relate to these Joint Working Arrangements, including but not limited to the following: <ul style="list-style-type: none"> • Commissioning Change Management Business Rules; • Contracting Standard Operating Procedure; • Cashflow Standard Operating Procedure; • Finance and Accounting Standard Operating Procedure; • Service Level Framework Guidance; |
| "Flexibilities" | Mean the flexibilities that the Partners may use to work in a co-ordinated manner as set out at Clause 3 (<i>Scope of the Arrangements</i>); |
| "Financial Contribution" | means the financial contributions agreed by each Partner in respect of an Individual Scheme in any Financial Year; |
| "Financial Year" | means each financial year running from 1 April in any year to 31 March in the following calendar year; |
| "FOIA" | the Freedom of Information Act 2000 and any subordinate legislation made under it from time to time, together with any guidance or codes of practice issued by the Information Commissioner or relevant government department concerning this legislation; |
| "FOIA or EIR Information" | has the meaning given under section 84 of FOIA or the meaning given for "environmental information" under the EIR as applicable; |
| "Good Practice" | means using standards, practices, methods and procedures conforming to the law, reflecting up-to-date published evidence and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced commissioner; |
| "Governance Arrangements" | means the governance arrangements in respect of the Arrangements agreed by the Partners and as set out in Schedule 2 (<i>Governance Arrangements</i>); |

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| “Guidance” | means any applicable guidance, guidelines, direction or determination, framework, code of practice, standard or requirement to which the Partners have a duty to have regard (and whether specifically mentioned in this Agreement or not), to the extent that the same are published and publicly available or the existence or contents of them have been notified by any relevant Regulatory or Supervisory Body; |
| “High-Cost Drugs” | means medicines not reimbursed though national prices and identified on the NHS England high-cost drugs list; |
| “ICB Reserved Functions” | Where there is any delegation of an ICB’s Commissioning Functions or further delegation of Delegated Functions, those functions that remain reserved to each ICB; |
| “Indemnity Arrangement” | means either: (i) a policy of insurance; (ii) an arrangement made for the purposes of indemnifying a person or organisation; or (iii) a combination of (i) and (ii); |
| “Individual Scheme” | means an arrangement in relation to how the ICBs will work together using one or more of the Flexibilities which has been agreed by the Partners to be included within this Agreement as part of the Joint Working Arrangements; |
| “Joint Committee” | means the joint committee(s) established by the partners that perform functions under this Agreement on the terms set out in their Terms of Reference; |
| “Joint Functions” | any Functions that are delegated to a Joint Committee; |
| “Joint Commissioning” | means Partners agreeing to jointly exercise agreed Commissioning Functions on behalf of each other in exercise of the functions of each Partner part of that Individual Scheme. This may, for example, be through agreeing to enter into the same contract or by use of a Joint Committee; |
| “Joint Working Arrangements” | means the Flexibilities that the Partners have agreed to use to work in a co-ordinated manner which, at the Commencement Date, are as set out in Clause 3; |
| "Law" | means: <ul style="list-style-type: none"> i.any statute or proclamation or any delegated or subordinate legislation; ii.any guidance, direction or determination with which the Partner(s) or relevant third party (as applicable) are bound to |

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| | comply to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Partner(s) or relevant third party (as applicable); and |
| | ii.any judgment of a relevant court of law which is a binding precedent in England; |
| “Lead Commissioning Arrangements” | means the arrangements by which one Partner commissions Services in relation to an Individual Scheme on behalf of another Partner or Partners in exercise of the Commissioning Functions of the ICB Partners; |
| “Lead Partner” | means the Partner responsible for commissioning under a Lead Commissioning Arrangement; |
| “Loss” | means all damages, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or common law; |
| “Managing Conflicts of Interest in the NHS” | means the NHS publication by that name available at: https://www.england.nhs.uk/publication/managing-conflicts-of-interest-in-the-nhs-guidance-for-staff-and-organisations/ or such publication that amends or replaces that publication ; |
| “Mandated Guidance” | means any protocol, policy, guidance, guidelines, framework or manual relating to the exercise of Delegated Functions and issued by NHS England from time to time as mandatory; |
| “National Standards” | means the service standards for each Specialised Service, as set by NHS England and included in Clinical Commissioning Policies or National Specifications; |
| “National Specifications” | the service specifications published by NHS England in respect of Specialised Services; |
| “Need to Know” | has the meaning set out in Schedule 5 (<i>Further Information Governance and Sharing Provisions</i>); |
| “NHS Act” | the National Health Service Act 2006; |
| “NHS England Functions” | NHS England’s Commissioning Functions exercisable under or by virtue of the NHS Act; |
| “NHS England Reserved Functions” | those aspects of the Specialised Commissioning Functions for which NHS England retains commissioning responsibility; |
| “Non-Personal Data” | means data which is not Personal Data; |

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| “Non-Pooled Funds” | means the budget detailing the financial contributions of the Partners which are not included in a Pooled Fund in respect of a particular Service as set out in the relevant Scheme Specification; |
| “Operational Days” | means a day other than a Saturday, Sunday, Christmas Day, Good Friday or a bank holiday in England; |
| “Partners” | means the parties to this Agreement; |
| "Personal Data" | has the meaning set out in the Data Protection Legislation; |
| “Pooled Funds” | means any pooled fund established and maintained by the Partners as a pooled fund; |
| “Population” | means the population for which an ICB or all the ICBs have the responsibility for commissioning health services; |
| “Provider Collaborative” | means a group of Providers who have agreed to work together to improve the care pathway for one or more Services; |
| “Provider Collaborative Arrangements” | means the arrangements entered in respect of a Provider Collaborative; |
| “Provider Collaborative Guidance” | means any guidance published by NHS England in respect of Provider Collaboratives; |
| “Regional Quality Group” | means a group set up to act as a strategic forum at which regional partners from across health and social care can share, identify, and mitigate wider regional quality risks and concerns as well as share learning so that quality improvement and best practice can be replicated; |
| “Regulatory or Supervisory Body” | means any statutory or other body having authority to issue guidance, standards, or recommendations with which the relevant Party and/or Staff must comply or to which it or they must have regard, including: <ul style="list-style-type: none"> i.CQC; ii.NHS England; iii.the Department of Health and Social Care; iv.NICE; v.Healthwatch England and Local Healthwatch; vi.the General Medical Council; vii.the General Dental Council; viii.the General Optical Council; ix.the General Pharmaceutical Council; |

- x.the Healthcare Safety Investigation Branch; and
- i.the Information Commissioner;

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| “Relevant Information” | means the Personal Data and Non-Personal Data processed under this Agreement, and includes, where appropriate, “confidential patient information” (as defined under section 251 of the NHS Act), and “patient confidential information” as defined in the 2013 Report, The Information Governance Review – “ <i>To Share or Not to Share?</i> ”); |
| “Reserved Functions” | means NHS England Reserved Functions or ICB Reserved Functions; |
| “Retained Services” | means those Specialised Services for which NHS England shall retain commissioning responsibility, as set out the Delegation Agreement; |
| “Risk Sharing” | means an agreed arrangement for risk and benefit sharing between the Partners; |
| “Scheme Specification” | means a specification setting out the Joint Working Arrangements in respect of an Individual Scheme agreed by the Partners to be commissioned under this Agreement; |
| “Services” | means such health services as agreed from time to time by the Partners as commissioned under the Joint Working Arrangements and more specifically defined in each Scheme Specification; |
| “Service Contract” | means an agreement entered into by one or more of the Partners in exercise of its obligations under this Agreement to secure the provision of Services in accordance with the relevant Individual Scheme |
| “Single Point of Contact” | the member of Staff appointed by each relevant Partner in accordance with Paragraph 13 of Schedule 5 (<i>Further Information Governance and Sharing Provisions</i>) |
| “Special Category Personal Data” | has the meaning set out in the Data Protection Legislation; |
| “Specialised Commissioning Budget” | means the budget identified by NHS England in respect of each ICB for the purpose of exercising the Delegated Functions; |

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| “Specialised Commissioning Functions” | means the statutory functions conferred on NHS England under Section 3B of the NHS Act 2006 and Regulation 11 of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012/2996 (as amended or replaced); |
| “Specified Purpose” | means the purpose for which the Relevant Information is shared and processed to facilitate the exercise of the Joint Working Arrangements as specified in Schedule 5 (<i>Further Information Governance and Sharing Provisions</i>) to this Agreement; |
| “Specialised Services” | means the services commissioned in exercise of the Specialised Commissioning Functions; |
| “Specialised Services Contract” | means a contract for the provision of Specialised Services entered in the exercise of the Specialised Commissioning Functions; |
| “Specialised Services Provider” | means a provider party to a Specialised Services Contract; |
| “Staff” | means the Partners’ employees, officers, elected members, directors, voluntary staff, consultants, and other contractors and sub-contractors acting on behalf of any Partner (whether the arrangements with such contractors and sub-contractors are subject to legally binding contracts) and such contractors’ and their sub-contractors’ personnel; |
| “Standard Operating Framework” | means the agreement(s) that sets out the arrangements for a Commissioning Team; |
| “Terms of Reference” | means the Terms of Reference for the Joint Committee agreed between the Partners at the first meeting of the Joint Committee; |
| “Triple Aim” | means the duty on each of the Partners in making decisions about the exercise of their functions, to have regard to all likely effects of the decision in relation to: <ul style="list-style-type: none"> i. the health and well-being of the people of England; ii. the quality of services provided to individuals by the NHS; iii. efficiency and sustainability in relation to the use of resources by the NHS; |

“Underspend”

means any expenditure from a Pooled Fund or Non-Pooled Fund in a Financial Year which is less than the value of the agreed contributions by the Partners for that Financial Year;

“UK GDPR”

means [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27th April 2016](#) on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of [section 3 of the European Union \(Withdrawal\) Act 2018](#).

2. References to statutory provisions shall be construed as references to those provisions as respectively amended or re-enacted (whether before or after the Commencement Date) from time to time.
3. The headings of the Clauses in this Agreement are for reference purposes only and shall not be construed as part of this Agreement or deemed to indicate the meaning of the relevant Clauses to which they relate. Reference to Clauses are Clauses in this Agreement.
4. References to Schedules are references to the schedules to this Agreement and a reference to a Paragraph is a reference to the paragraph in the Schedule containing such reference.
5. References to a person or body shall not be restricted to natural persons and shall include a company, corporation, or organisation.
6. Words importing the singular number only shall include the plural.
7. Use of the masculine includes the feminine and all other genders.
8. Where anything in this Agreement requires the mutual agreement of the Partners, then unless the context otherwise provides, such agreement must be in writing.
9. Any reference to the Partners shall include their respective statutory successors, employees and agents.

10. In the event of a conflict, the conditions set out in the Clauses to this Agreement shall take priority over the Schedules.
11. Where a term of this Agreement provides for a list of items following the word "including" or "includes", then such list is not to be interpreted as being an exhaustive list.

SCHEDULE 2: GOVERNANCE ARRANGEMENTS

1. Joint Committees

- 1.1. The overall oversight and governance arrangements for these collaborative working arrangements will be discharged through the Joint Committees established by the ICBs through Joint Working Agreements between NHS Lincolnshire Integrated Care Board, NHS Nottingham and Nottinghamshire Integrated Care Board, NHS Leicester, Leicestershire and Rutland Integrated Care Board, NHS Northamptonshire Integrated Care Board and NHS Derby and Derbyshire Integrated Care Board (the “East Midlands ICBs”) and NHS Birmingham and Solihull Integrated Care Board, NHS Black Country Integrated Care Board, NHS Coventry and Warwickshire Integrated Care Board, NHS Herefordshire and Worcestershire Integrated Care Board, NHS Shropshire, Telford and Wrekin Integrated Care Board and NHS Staffordshire and Stoke-on-Trent Integrated Care Board (the “West Midlands ICBs”)
- 1.2. The Terms of Reference and other detailed arrangements that support the operation of the Joint Committees are detailed in the Joint Working Agreements between the East and West ICBs. They set out that the two Joint Committees will have delegated authority on behalf of the East and West ICBs respectively to discharge the functions delegated to the ICBs by NHS England in respect of Specialised Services, including establishing appropriate subsidiary arrangements to enable effective decision-making and detailed oversight of performance, finance, and quality.
- 1.3. In recognition that effective collaboration may require aligned decisions from all the partners, the Joint Committees may consider meeting ‘in common’ where this is appropriate and will ensure that decisions by either the East or West Joint Committee that impact on the other are made having taken relevant views from the other committee into account.
- 1.4. The NHS England regional team will continue to work jointly with the Joint Committees on the commissioning of retained specialised services. This will include, where appropriate, discharging its authority (through accountable directors) in consultation with the Joint Committees.

1.5. The subsidiary arrangements established by the Joint Committees will include appropriate schemes of reservation and delegation in place to enable Sub-Groups of the Joint Committees and/or members of staff employed by Joint Commissioning Team to have the authority to make decisions. These arrangements will be developed in collaboration with NHS England to support effective working on both the delegated and retained services.

2. Joint Subgroups

2.1. There will be four joint subgroups established by the partners to support these arrangements, these being:

- **Midlands Acute Specialised Commissioning Group (MASC)**
- **Mental Health Learning Disability & Autism Commissioning Group (MHLDACG)**
- **Specialised Commissioning Quality Group (Acute)**
- **Finance and Contracting Group**

2.2. Subsidiary arrangements established by the Joint Committees will include providing delegated authority to the **Midlands Acute Specialised Commissioning Group (MASC)** and **[Mental Health Learning Disability & Autism Commissioning Group]** (MHLDACG) Joint Sub-Groups established by all the partners to make decisions on delegated services.

2.3. The role of MASC and the MHLDACG will be to support the partners and the Joint Committees in ensuring that the delivery of the delegated and retained services is effective, efficient, and economical and in line with each partner's statutory responsibilities.

2.4. **Midlands Acute Specialised Commissioning Group** and the **Mental Health Learning Disability & Autism Commissioning Group** will report and make recommendations to the Joint Committees in respect of delegated services and to Midlands Commissioning Group in respect of the retained services and will always operate in accordance with its agreed terms of reference, and the relevant schemes of reservation and delegation and standing financial instructions for delegated and retained services.

- 2.5. Each of the partners will appoint one member to each of the **Midlands Acute Specialised Commissioning Group** and the **Mental Health Learning Disability & Autism Commissioning Group** who will be authorised to act as part of the group and participate in collective decision making on behalf of their organisation. **Midlands Acute Specialised Commissioning Group** and the **Mental Health Learning Disability & Autism Commissioning Group** will also ensure that its decisions are taken with the advice of suitable subject matter experts.
- 2.6. **Specialised Commissioning Quality Group** – This group, co-chaired by the Medical Director for Specialised Commissioning (MDSC) and Director of Specialised Nursing and Quality, will provide a forum to share and discuss potential and known issues which impact on the quality and safety of Specialised Commissioned services in the Midlands region and agree any remedial action.
- 2.7. The purpose of the Specialised Commissioning Quality Groups is to provide a forum for routinely and systematically bringing together partners from across ICSs and the region to share insight and intelligence in relation to quality concerns, to identify opportunities for improvement and to develop regional responses as required. The focus of the discussions will be on intelligence, learning, issues and risks that are recurrent and/ or have an impact wider than individual ICSs.
- 2.9 **Finance and Contracting Subgroup** – will have responsibility to oversee the management of the pooled fund on behalf of the Joint Committees.
- 2.10 The purpose of the Finance and Contracting Subgroup is to provide robust joint financial management of the pooled fund on behalf of the ICBs in line with the terms set out in schedule 4 of this agreement.
- 2.11 The Joint Committees will agree the terms of reference for the subgroups on behalf of the partners.

3. Clinical Governance

- 3.1. Clinical engagement and leadership will be secured at multiple tiers across the Midlands region and will draw upon established clinical networks including those formally commissioned plus the informal networks that have been recognised over time.

- 3.2. The Specialised Services Operational Delivery Networks (ODNs) will continue to be formally commissioned by NHS England. NHS England will retain the financial responsibility for the ODNs and will continue to play a key role in supporting understanding of clinical quality for the relevant services.
- 3.3. At a senior clinical level, the Collaborative Clinical Executive Forum (CCEF), a regional forum of Acute Provider and ICB Chief Medical Officers (CMOs), will continue to meet regularly and engage with the Midlands Commissioning Team. Advice offered via that forum will feed into the decision -making process via the Midlands Acute Specialised Commissioning Group (MASCG) and into the Joint Committees.
- 3.4. Governance and decision-making for high-cost drugs assurance for delegated services will be via Joint Committees and their sub-groups, with links to the Regional Pharmacy Leadership Board. The pharmacy team for High Costs Drugs employed by NHS England will work across ICBs and NHS England informed by other senior pharmacists across the region e.g., HCD pharmacists, regional cancer pharmacists,
- 3.5. High-cost tariff excluded drugs will continue to be reimbursed through a national process by NHS England irrespective of whether they are used for delegated services, meaning that ICBs will not bear the financial risk of new specialised drugs growth.

4. Quality Governance

- 4.1 The Specialised Commissioning Quality Group will provide a forum for oversight on quality matters relevant to their service areas, including where further assurance and remedial action may be required.
- 4.2. Key quality concerns requiring escalation relating to the delegated services will be reported monthly to the Joint Committees by the Specialised Commissioning Quality Group and the Mental Health, Learning Disability & Autism Commissioning Group. Furthermore, key quality concerns for specialised services will continue to be reported to and discussed at the NHSE led Regional Quality Group, of which all ICBs are members. These groups will ensure key quality concerns are fed back into

systems to inform conversations at a local level. Criteria for and response to escalation will continue to be based on the **National Guidance on Quality Risk Response and Escalation in Integrated Care Systems**, which is jointly used by NHSE and ICBs.

4.3 Key quality concerns involving specialised services will also be reported into Midlands Acute Specialised Commissioning Group (MASCG) and the Mental Health Learning Disability & Autism Commissioning Group (MHLDACG) of which all 11 Midlands ICBs are members or have representation.

4.4. To be proactive in identification of areas for quality improvement, a Quality Surveillance and Improvement Framework (QSIF) has been developed for acute specialised services. Similarly, a Quality Assurance Framework (QAF) is in place for specialised MHLDA services. These frameworks aim to identify risks and implement mitigations and remedial actions. The QSIF/QAF involves proactive triangulation of intelligence and data from a range of sources (e.g., CQC reports, specialised services dashboards, national audit etc) to monitor the quality of each service and a workplan of service review will be agreed through the Quality Group which has ICB representation, is jointly chaired by the RMDC and an ICB representative.

5. **Financial Governance**

5.1 The Financial governance arrangements in Schedule 4 shall apply to the Collaborative Arrangements.

5.2 **Risk Management Arrangements** - In line with their overall role to provide strategic decision-making, leadership, and oversight for the joint services the Joint Committee will establish a monitoring and management in relation to risk and issue management and escalation, and co-ordinating the approach to intervention with providers where there are quality or contractual issues. This will include feeding back to individual ICBs for consideration of any impact on their own risk management arrangements.

5.3 A formal risk register will be maintained by the Midlands Specialised Commissioning Team and reported monthly through the Midlands Acute Specialised Commissioning Group to ensure ICBs & NHSE are aware of any risks

they may impact their systems.

6. Assurance arrangements

6.1. The Joint Committees will be responsible for ensuring that the ICBs are able to meet their obligations under the NHSE Oversight and Assurance Framework in relation to the delegation of specialised services which, requires that the ICBs must at all times operate in accordance with:

- (a) the Oversight and Assurance Framework published by NHS England;
- (b) any national oversight and/or assurance guidance in respect of Specialised Services and/or joint working arrangements; and
- (c) any other relevant NHS oversight and assurance guidance;

collectively known as the “Assurance Processes”.

6.2 And that the ICBs must:

- (a) Develop and operate in accordance with mutually agreed ways of working in line with the Assurance Processes.
- (b) Oversee the provision of Delegated Services and the outcomes being delivered for their patients and Populations in accordance with the Assurance Processes.
- (c) Assure Providers are meeting, or have an improvement plan in place to meet, National Standards.
- (d) Provide any information and comply with specific actions in relation to the Delegated Specialised Services, as required by NHS England, including metrics and detailed reporting in accordance with the Terms of Reference.

SCHEDULE 3: INDIVIDUAL SCHEMES

PART 1 – EAST MIDLANDS SCHEME

Unless the context otherwise requires, the defined terms used in this Scheme Specification shall have the meanings set out in the Agreement.

1 OVERVIEW OF THE EAST MIDLANDS SCHEME FOR DELEGATED SPECIALISED SERVICES

1.1 This scheme sets out the arrangements through which the Partners will work together to commission the specialised services delegated to the East Midlands Integrated Care Boards (ICBs) by NHS England.

1.2 The Partners' aims are:

- (a) to maximise the benefits to patients of integrating the Delegated Functions with the ICBs' Commissioning Functions through designing and commissioning the Specialised Services as part of the wider pathways of care of which they are a part and, in doing so, promote the Triple Aim.

2 SERVICES AND FUNCTIONS

2.1 NHS England has delegated the statutory function for the commissioning of the specified specialised services to the ICBs. The key powers and duties that the ICBs will be required to carry out in exercise of the delegated functions being, in summary:

- (a) decisions in relation to the commissioning and management of the delegated services;
- (b) planning delegated services for the population, including carrying out needs assessments;
- (c) undertaking reviews of delegated services in respect of the population;
- (d) supporting the management of the specialised commissioning budget for delegated services;
- (e) co-ordinating a common approach to the commissioning and delivery of delegated services with other health and social care bodies in respect of the population where appropriate; and
- (f) such other ancillary activities that are necessary to exercise the specialised commissioning functions.

2.2 A list of the delegated services included within the scheme are detailed within schedule 2 of the Delegation Agreement.

2.3 The services are being provided to the populations within the East Midlands ICBs geographical footprints.

3 PARTNERS

3.1 The partners of this scheme are Lincolnshire ICB, Nottingham & Nottinghamshire ICB, Leicester, Leicestershire & Rutland ICB, Northamptonshire ICB, Derby & Derbyshire ICB.

4 THE ARRANGEMENTS

4.1 The Scheme will be overseen by the East Midlands Joint Committee established via a Joint Working Agreement between the ICBs whose role shall be to carry out the strategic decision-making, leadership and oversight functions relating to the commissioning of specified delegated specialised services as agreed by the partners and outlined in Schedule 2 of the ICB Collaboration Agreement.

4.2 Administrative and management functions will be provided to the East Midlands multi-ICB by the Commissioning Team, which is hosted by Birmingham and Solihull ICB. Details of which are set out in an Commissioning Team Agreement and Standard Operating Framework between all parties.

4.3 Details of the financial arrangements relating to this scheme are contained with Schedule 4 of the ICB Collaboration Agreement.

5 GOVERNANCE ARRANGEMENTS

5.1 The scheme shall be governed by the East Midlands Joint Committee, as set out in Schedule 2 of the ICB Collaboration Agreement.

5.2 The terms of reference of the Joint Committee are set out in the in schedule 2 of the ICB Collaboration Agreement

6 COMMISSIONING, CONTRACTING, ACCESS

6.1 Commissioning Arrangements

Delegated services will be commissioned from providers on behalf of the ICBs by the Commissioning Team in line with legislative requirements, NHS planning guidance and the Delegation Agreement between the ICBs and NHS England.

6.2 Contracting Arrangements

The list of contracts which are in place across the Midlands for delegated specialised services are contained in Appendix 1. This includes details of Lead Commissioning arrangements where this has been determined.

6.2.1 The contracting arrangement for the scheme will be as follows:

- The scheme will encompass all existing contracts.
- The contracts will be agreed in line with the National Contracting SOP, the Delegation agreement and the ICB Collaboration Agreement.
- The contracts will be funded in line with the pooled budget arrangements detailed in Schedule 4 of the ICB Collaboration Agreement.
- The contracts will be managed on behalf of the East multi-ICB, by the Commissioning Team.

6.3 Access

The scheme will apply to all delegated specialised services provided via contracts with providers.

7. HIGH-COST DRUGS

7.1 All identified service lines that are delegated include any activities within these areas including High-Cost drugs and support through the networks. Financial responsibility for HCD and networks remains within NHSE, and responsibility will be managed through collaboration and appropriate decision making.

8. FINANCIAL GOVERNANCE ARRANGEMENTS

8.1. The financial governance arrangements are set out in Schedule 4 of the ICB Collaboration Agreement.

9. NON FINANCIAL RESOURCES

9.1. The non-financial resources required to deliver scheme will be provided by Birmingham and Solihull ICB in accordance with Schedule 6 of the ICB Collaboration Agreement.

10. STAFF

10.1. The commissioning team responsible for the operational delivery of specialised commissioning for delegated services will be hosted by Birmingham and Solihull ICB.

10.2. The arrangement through which the commissioning team will provide this support to the ICBs is set out in Schedule 6 of the ICB Collaboration Agreement.

11. ASSURANCE AND MONITORING

11.1. The arrangements in relation to assurance and monitoring in relation to this scheme are contained Schedule 4 of the ICB Collaboration Agreement.

12. AUTHORISED OFFICERS

12.1. The authorised officers for this scheme are as follows:

| Partner | Name of Authorised Officer – Tier 1 |
|--|--|
| Lincolnshire ICB | John Turner |
| Nottingham & Nottinghamshire ICB | Amanda Sullivan |
| Leicester, Leicestershire & Rutland ICB | Dr Caroline Trevithick |
| Northamptonshire ICB | Toby Sanders |
| Derby & Derbyshire ICB | Dr Chris Clayton |

13. INTERNAL APPROVALS

- 13.1. The levels of authority relating to this scheme are described within Schedule 4 of the ICB Collaboration Agreement.

14. REGULATORY REQUIREMENTS

- 14.1. Details in relation to regulatory requirements in relation to this scheme are contained within the delegation agreement and will be fulfilled on behalf of the ICBs by the Commissioning Team.

15. COMPLAINTS

- 15.1. Complaints will be managed by the specialised commissioning team hosted by the host ICB in line with the agreed complaints process.
- 15.2. A report summarising complaints, actions and lessons learnt will be provided to the East Midlands Joint Committee and West Midlands Joint Committee annually.

PART 2 – WEST MIDLANDS SCHEME

Unless the context otherwise requires, the defined terms used in this Scheme Specification shall have the meanings set out in the Agreement.

1 OVERVIEW OF THE WEST MIDLANDS SCHEME FOR DELEGATED SPECIALISED SERVICES

1.1 This scheme sets out the arrangements through which the Partners will work together to commission the specialised services delegated to the West Midlands Integrated Care Boards (ICBs) by NHS England.

1.2 The Partners' aims are:

- (i) to maximise the benefits to patients of integrating the Delegated Functions with the ICBs' Commissioning Functions through designing and commissioning the Specialised Services as part of the wider pathways of care of which they are a part and, in doing so, promote the Triple Aim.

2 SERVICES AND FUNCTIONS

2.1 NHS England has delegated the statutory function for the commissioning of the delegated specialised services. The key powers and duties that the ICBs will be required to carry out in exercise of the delegated functions being, in summary:

- (a) decisions in relation to the commissioning and management of the delegated services;
- (b) planning delegated services for the population, including carrying out needs assessments;
- (c) undertaking reviews of delegated services in respect of the population;
- (d) supporting the management of the specialised commissioning budget for delegated services;
- (e) co-ordinating a common approach to the commissioning and delivery of delegated services with other health and social care bodies in respect of the population where appropriate; and
- (f) such other ancillary activities that are necessary to exercise the specialised commissioning functions.

2.2 A list of the delegated services included within the scheme are detailed within schedule 2 of the Delegation Agreement

2.3 The services are being provided to the populations within the West Midlands ICBs geographical footprints.

3 PARTNERS

3.1 The Partners of this scheme are The Black Country ICB, Staffordshire & Stoke-on-Trent ICB, Shropshire Telford & Wrekin ICB, Coventry and Warwickshire ICB, Herefordshire & Worcestershire ICB and Birmingham & Solihull ICB.

4 THE ARRANGEMENTS

4.1 The Scheme will be overseen by the West Midlands Joint Committee established via a Joint Working Agreement between the ICBs whose role shall be to carry out the strategic decision-making, leadership and oversight functions relating to the commissioning of specified delegated specialised services as agreed by the partners and outlined in Schedule 2 of the ICB Collaboration Agreement.

4.2 Administrative and management functions will be provided to the West Midlands multi-ICB by the Commissioning Team, which is hosted by Birmingham and Solihull ICB. Details of which are set out in a Commissioning Team Agreement and Standard Operating Framework between all parties.

4.3 Details of the financial arrangements relating to this scheme are contained with Schedule 4 of the ICB Collaboration Agreement.

5 GOVERNANCE ARRANGEMENTS

5.1 The scheme shall be governed by the West Midlands Joint Committee as set out in Schedule 2 of the ICB Collaboration Agreement.

5.2 The terms of reference of the Joint Committee are contained within the Joint Working Agreement between the ICBs.

6 COMMISSIONING, CONTRACTING, ACCESS

6.1 Commissioning Arrangements

Delegated services will be commissioned from providers on behalf of the ICBs by the Commissioning Team in line with legislative requirements, NHS planning guidance and the Delegation Agreement between the ICBs and NHS England.

6.2 Contracting Arrangements

The list of contracts which are in place across the Midlands for delegated specialised services are contained in Appendix 1. This includes details of Lead Commissioning arrangements where this has been determined.

The contracting arrangement for the scheme will be as follows:

- The scheme will encompass all existing contracts.
- The contracts will be agreed in line with the National Contracting SOP, the delegation agreement and the ICB Collaboration Agreement.
- The contracts will be funded in line with the pooled budget arrangements detailed in Schedule 4 of the ICB Collaboration Agreement.
- The contracts will be managed on behalf of the West Midlands multi-ICB, by the Commissioning Team.

6.3 Access

The scheme will apply to all delegated specialised services provided via contracts with providers.

7 HIGH-COST DRUGS

7.1 All identified service lines that are delegated include any activities within these areas including High-Cost drugs and support through the networks. Financial responsibility for HCD and networks remains within NHSE, and responsibility will be managed through collaboration and appropriate decision making.

8 FINANCIAL GOVERNANCE ARRANGEMENTS

8.1 The financial governance arrangements are set out in Schedule 4 of the ICB Collaboration Agreement.

9 NON FINANCIAL RESOURCES

9.1 The non-financial resources required to deliver scheme will be provided by Birmingham and Solihull ICB in accordance with Schedule 6 of the ICB Collaboration Agreement.

10 STAFF

10.1 The commissioning team responsible for the operational delivery of specialised commissioning for delegated services will be hosted by Birmingham and Solihull ICB.

10.2 The arrangement through which the commissioning team will provide this support to the ICBs is set out in Schedule 6 of the ICB Collaboration Agreement.

11 ASSURANCE AND MONITORING

11.1 The arrangements in relation to assurance and monitoring in relation to this scheme are contained within Schedule 4

12 AUTHORISED OFFICERS

12.1 The authorised officers for this scheme are as follows:

| Partner | Name of Authorised Officer – Tier 1 |
|--------------------------------------|--|
| Coventry & Warwickshire ICB | Philip Johns |
| The Black Country ICB | Mark Axcell |
| Herefordshire & Worcestershire ICB | Simon Trickett |
| Birmingham & Solihull ICB | David Melbourne |
| Staffordshire and Stoke-on-Trent ICB | Peter Axon |
| Shropshire Telford and Wrekin ICB | Simon Whitehouse |

13 INTERNAL APPROVALS

- 13.1 The levels of authority relating to this scheme are described within Schedule 4 of the ICB Collaboration Agreement.

14 REGULATORY REQUIREMENTS

- 14.1 Details in relation to regulatory requirements in relation to this scheme are contained within the delegation agreement and will be fulfilled on behalf of the ICBs by the Commissioning Team.

15 COMPLAINTS

- 15.1 Complaints will be managed by the specialised commissioning team hosted by the host ICB in line with the agreed complaints process.
- 15.2 A report summarising complaints, actions and lessons learnt will be provided to the East Midlands Joint Committee and West Midlands Joint Committee annually.

Appendix 1 List of CONTRACTS held with Providers

Acute Services Standard Contracts

| |
|---|
| BIRMINGHAM COMMUNITY HEALTHCARE NHS FOUNDATION TRUST |
| BIRMINGHAM WOMEN'S AND CHILDREN'S NHS FOUNDATION TRUST |
| CHESTERFIELD ROYAL HOSPITAL NHS FOUNDATION TRUST |
| DERBYSHIRE COMMUNITY HEALTH SERVICES |
| GEORGE ELIOT HOSPITAL NHS TRUST |
| HCRG |
| KETTERING GENERAL HOSPITAL NHS FOUNDATION TRUST |
| MIDLANDS PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST |
| NORTHAMPTON GENERAL HOSPITAL NHS TRUST |
| NORTHAMPTONSHIRE HEALTHCARE NHS FOUNDATION TRUST |
| NOTTINGHAM UNIVERSITY HOSPITALS NHS TRUST |
| SANDWELL AND WEST BIRMINGHAM HOSPITALS NHS TRUST |
| SHERWOOD FOREST HOSPITALS NHS FOUNDATION TRUST |
| SOUTH WARWICKSHIRE NHS FOUNDATION TRUST |
| THE DUDLEY GROUP NHS FOUNDATION TRUST |
| THE ROBERT JONES AND AGNES HUNT ORTHOPAEDIC HOSPITAL NHS FOUNDATION TRUST |
| THE ROYAL ORTHOPAEDIC HOSPITAL NHS FOUNDATION TRUST |
| THE ROYAL WOLVERHAMPTON NHS TRUST |
| THE SHREWSBURY AND TELFORD HOSPITAL NHS TRUST |
| UNITED LINCOLNSHIRE HOSPITALS NHS TRUST |
| UNIVERSITY HOSPITALS BIRMINGHAM NHS FOUNDATION TRUST |
| UNIVERSITY HOSPITALS COVENTRY AND WARWICKSHIRE NHS TRUST |
| UNIVERSITY HOSPITALS OF DERBY AND BURTON NHS FOUNDATION TRUST |
| UNIVERSITY HOSPITALS OF LEICESTER NHS TRUST |
| UNIVERSITY HOSPITALS OF NORTH MIDLANDS NHS TRUST |
| WALSALL HEALTHCARE NHS TRUST |
| WORCESTERSHIRE ACUTE HOSPITALS NHS TRUST |
| WYE VALLEY NHS TRUST |

Section 75 Contract

| |
|--|
| LINCOLNSHIRE COMMUNITY HEALTH SERVICES NHS TRUST |
|--|

Specialised Mental Health, Learning Disability and Autism Lead Provider Contracts

| Lead Provider | Coordinating Commissioner |
|---|---------------------------|
| NOTTINGHAMSHIRE HEALTHCARE NHS FOUNDATION TRUST (EM ADULT SECURE) | LLR ICB |
| NORTHAMPTONSHIRE HEALTHCARE NHS FOUNDATION TRUST (EM CYPMH) | LLR ICB |
| LEICESTERSHIRE PARTNERSHIP NHS TRUST (EM ADULT EATING DISORDER SERVICES) | LLR ICB |
| DERBYSHIRE HEALTHCARE NHS FOUNDATION TRUST (EM PERINATAL SERVICES) | LLR ICB |
| BIRMINGHAM AND SOLIHULL MENTAL HEALTH NHS FOUNDATION TRUST (WM ADULT SECURE) | BSOL ICB |
| BIRMINGHAM WOMEN'S AND CHILDREN'S NHS FOUNDATION TRUST (WM CYPMH) | BSOL ICB |
| MIDLANDS UNIVERSITY PARTNERSHIP NHS FOUNDATION TRUST (WM ADULT EATING DISORDER SERVICES) | SSOT ICB |
| MIDLANDS UNIVERSITY PARTNERSHIP NHS FOUNDATION TRUST (WM PERINATAL SERVICES) | SSOT ICB |

SCHEDULE 4: FINANCIAL ARRANGEMENTS

PART A: POOLED FUND MANAGEMENT

1 ESTABLISHMENT OF A RISK SHARE

- 1.1 The ICBs have agreed to establish and maintain a risk share arrangement for in-year financial management, based on the uncommitted element of allocations for variable services within the specialised commissioning contracts.
- 1.2 The principles of the risk management agreement are that in year financial risk will be managed collectively across the ICBs in the Midlands. All allocations not required for opening contract payments will be considered collectively as part of a notional pooled fund, managed by the specialised commissioning finance team on behalf of the ICBs. In year variation in contract performance will be monitored collectively and funds will be transferred between ICBs proportionately to fund the financial impact of in year variable activity to opening allocations.
- 1.3 The monies held in the notional Pooled Fund may only be expended on the following:
 - the Contract Price,
 - Third Party Costs where these are set out in the relevant Scheme Specification or as otherwise agreed in advance in writing in accordance with the relevant Scheme Specification;
 - Approved expenditure as set out in the relevant Scheme Specification or as otherwise agreed in advance in accordance with the relevant Scheme Specification.
(collectively known as "Permitted Expenditure")
- 1.4 The Pooled Fund is explicitly for the management of in year expenditure against specialised services contractual commitments. This includes all contractual commitments for the population of Midlands ICBs including any out of Region contractual arrangements.
- 1.5 The Pooled Fund is not intended to be the route for recurrent commissioning decisions for specialised services. Such decisions would be made through the governance structure established in East and West Midlands.

- 1.6 The Partners may only depart from the definition of Permitted Expenditure or exceed Pooled Fund budget with the express written agreement of each relevant Partner and in line with approved delegations.
- 1.7 The Specialised Commissioning Finance Team, on behalf of the Midlands ICBs, shall be responsible for:
- Providing the financial administrative systems for the Pooled Fund; and
 - The manager of the Pooled Fund (“Pooled Fund Manager”) will be the Director of Commissioning of Finance
 - Ensuring that the Pooled Fund Manager complies with its obligations under this Agreement.

2. RISK EXPOSURE

- 2.1. ICB population-based allocations have been developed on the basis of current contractual commitments as demonstrated in the document “ICB Baseline Development”.
- 2.2. All ICB 2025/26 opening baselines have been updated for 2024/25 variable activity levels and precommitments.
- 2.3. All ICB 2025/26 opening baselines are in recurrent financial balance and there is no risk exposure from opening contract baselines for 2025/26.
- 2.4. The specialised services contract is operated on a block basis and there is no financial exposure to activity variance through the block contract.
- 2.5. Elective activity is managed through the Elective Recovery Fund which will be managed on the same basis as 2023/24 with contract values and allocations being adjusted for activity variances. There will be no financial risk associated with the application of ERF.
- 2.6. There are a small number of variable services within the contract, these being:
- Chemotherapy
 - Diagnostic Imaging
 - Nuclear Medicine
 - PRT-CT
 - Molecular Radiotherapy

- Renal Transplant

- 2.7. These services are paid on a cost per case basis. Opening baselines for variable services will be based on 2025/26 outturn with growth applied based on historic activity.
- 2.8. 2025/26 NHS Payment Scheme Consultation proposes a financial cap on variable elective activity, including the delegated services within the above list. Any financial cap would be in line with the agreed opening contract and associated ICB budget. The application of this financial cap removes the risk of overspend within individual ICBs.
- 2.9. As the NHS Payment Scheme is still under consultation, there remains risk at an ICB and regional level of variance against contract and budget for variable services and as such risk management arrangements will remain in place for 2025/26.
- 2.10. **Any financial cap arrangements within the final NHS 2025/26 Payment Scheme will take precedent over locally agreed risk management arrangements.**

3. POOLED FUND MANAGEMENT

- 3.1. The Pooled Fund Manager for Pooled Fund shall have the following duties and responsibilities:
- The day-to-day operation and management of the notional Pooled Fund and risk management arrangements,
 - Ensuring that all expenditure from the Pooled Fund is in accordance with the provisions of this Agreement and the relevant Scheme Specification,
 - Maintaining an overview of all joint financial issues affecting the Partners in relation to the Services and the Pooled Fund,
 - Ensuring that full and proper records for accounting purposes are kept in respect of the Pooled Fund,
 - Reporting to the relevant governance group as required by this Agreement,
 - ensuring action is taken to manage any projected under or overspends relating to the Pooled Fund in accordance with this Agreement, and
 - preparing and submitting reports as required by the relevant Scheme Specification.

5. RISK SHARE ARRANGMENTS, OVERSPENDS AND UNDERSPEND

- 5.1. The Specialised Commissioning Team Pooled Fund manager shall manage expenditure within the notional pooled fund and shall use reasonable endeavours to ensure that the expenditure is limited to Permitted Expenditure.
- 5.2. The Pooled Funs Manager shall not be in breach of its obligations under this Agreement if an Overspend occurs provided that it has used reasonable endeavours to ensure that the only expenditure from a Pooled Fund has been incurred and it has informed the Partners of any variance.
- 5.3. In the event that the Pooled Fund Manager identifies an actual or projected Overspend the Pooled Fund Manager must ensure that the Partners are informed as soon as reasonably possible.
- 5.4. If expenditure from the Pooled Fund in any Financial Year is less than the aggregate value of the Financial Contributions made for that Financial Year, financial resources will be returned to the Partners proportionate to the contributions to the Pooled Fund. Arrangements shall be subject to the Law and the Standing Orders and Standing Financial Instructions of the Partners.
- 5.5. Any unmitigated net variance will need to be recognised in the Agreement of Balances exercise completed as part of the month 09 financial reporting process.
- 5.6. Residual variances (under or overspend), after mitigations and application of contingency, will be allocated to ICBs proportionately to contributions to the Pooled Fund.
- 5.7. An illustration of the application of the risk share using Chemotherapy variable activity performance is included in the table below.

| ICB | Contract | Forecast | Variance | % Variance | Apply risk share | Risk Shared Forecast | Risk Shared % variance | Impact of risk share |
|--------|----------|----------|----------|------------|------------------|----------------------|------------------------|----------------------|
| ICB 1 | 9,000 | 10,000 | 1,000 | 11.11% | 653 | 9,653 | 7.25% | 347 |
| ICB 2 | 8,500 | 9,000 | 500 | 5.88% | 617 | 9,117 | 7.25% | -117 |
| ICB 3 | 7,500 | 9,000 | 1,500 | 20.00% | 544 | 8,044 | 7.25% | 956 |
| ICB 4 | 8,500 | 10,000 | 1,500 | 17.65% | 617 | 9,117 | 7.25% | 883 |
| ICB 5 | 11,000 | 11,000 | 0 | 0.00% | 798 | 11,798 | 7.25% | -798 |
| ICB 6 | 9,500 | 10,500 | 1,000 | 10.53% | 689 | 10,189 | 7.25% | 311 |
| ICB 7 | 10,000 | 9,000 | -1,000 | -10.00% | 725 | 10,725 | 7.25% | -1,725 |
| ICB 8 | 9,000 | 9,500 | 500 | 5.56% | 653 | 9,653 | 7.25% | -153 |
| ICB 9 | 7,500 | 8,500 | 1,000 | 13.33% | 544 | 8,044 | 7.25% | 456 |
| ICB 10 | 5,000 | 5,500 | 500 | 10.00% | 363 | 5,363 | 7.25% | 137 |
| ICB 11 | 11,000 | 11,500 | 500 | 4.55% | 798 | 11,798 | 7.25% | -298 |
| Total | 96,500 | 103,500 | 7,000 | 7.25% | 7,000 | 103,500 | 7.25% | 0 |

6. CAPITAL EXPENDITURE

- 6.1. Pooled Funds shall not be applied towards any one-off expenditure on goods or services, which will provide continuing benefit and would historically have been funded from the capital budgets of one of the Partners. If a need for capital expenditure is identified this must be agreed by the Partners.

7. POOLED FUND FINANCIAL GOVERNANCE

- 7.1. The Birmingham and Solihull ICB hosted Specialised Services finance team will advise partner ICBs of the opening delegated specialised services contract values at the commencement of the financial year.
- 7.2. The partners in the Pooled Fund shall be notified of the resources available within the notional Pooled Fund.
- 7.3. The Specialised Commissioning Team will manage specialised services through the ICB ledgers.
- 7.4. All contractual payments including variable adjustments will be calculated by the Specialised Commissioning Team.
- 7.5. Payments to provider Trusts will be made through the payment mandate process through each individual ICB under the single joint Specialised Commissioning contract in line with the Contracting Standard Operating Procedure.
- 7.6. In year financial management will be undertaken at a multi ICB level across eleven ICBs in the Midlands region, mitigating the risk of variation between systems.
- 7.7. Regional financial variances (under or overspend) would be mitigated through the application of local financial management and the use of the contingency held by the Host, as agreed by partners, to minimise exposure to financial fluctuation.
- 7.8. Contract adjustments for variable activity will be advised to partner ICBs quarterly based on actual activity and transacted through amendments to the monthly contractual payments.
- 7.9. Residual variances (under or overspend), after mitigations and application of contingency, will

be allocated to ICBs proportionately to contributions to the Pooled Fund through transfer of financial allocation between ICBs.

8. POOLED FUND FINANCIAL REPORTING AND ASSURANCE

- 8.1. The finance subgroup of the Joint Committees will have responsibility to oversee the management of the pooled fund on behalf of the Joint Committees.
- 8.2. ICB level in year financial reporting will show contract payments in line with notified mandate schedules. In year reporting for ICBs will be based on actual notified variable activity. When forecasts are agreed they will represent the proportional share of variance under the risk share agreement.
- 8.3. Year-end reporting will be prepared in line with nationally produced annual accounts timetables recognising any locally agreed requirements.

PART B: OTHER FINANCIAL ARRANGEMENTS

9. BUDGETARY DELEGATION

- 9.1. Commissioning decisions will be made in line with the Arrangements agreed by the East/West Midlands Joint Commissioning Committee which has Delegated Authority to set approval limits in line with those arrangements.
- 9.2. ICBs have agreed to delegate budgetary responsibility via the joint committees to the specialised commissioning team for the processing and delivery of specialised services transactions. These delegations are to facilitate the delivery of contract signature, purchase orders and non-purchase order invoices and budgetary virement.
- 9.3. From April 2025 to June 2025, the specialised commissioning team will be employed by NHS England on behalf of the partner ICBs. From July 2025 the specialised commissioning team will be employed by the Host ICB.

10. AUDIT ARRANGEMENTS

- 10.1. Transactions through ICB ledgers will be subject to audit through existing internal audit arrangements. It will be the responsibility of ICBs to ensure that this appropriately referenced in the audit plan.
- 10.2. The Specialised Commissioning Team responsible for the management of specialised commissioning resources will be employed by NHS Birmingham and Solihull ICB but will access all ICB ledgers to process transactions for specialised services.

11. FINANCIAL MANAGEMENT

- 11.1. Financial transactions for the 70 delegated specialised services will be processed through the Oracle ISFE ledger system of the eleven Midlands ICBs. Specialised Commissioning team will have appropriate access to ICB ledgers enabled.
- 11.2. Financial monitoring reports will be produced by the NHS Birmingham and Solihull ICB hosted Specialised Commissioning Team on behalf of the ICBs.
- 11.3. Financial reports will be prepared monthly within ten working days of the end of the month. Forecast outturn positions will be included in the monitoring reports from quarter 2.
- 11.4. Monthly budget reporting with variance analysis and forecasting will be provided to Joint Committee Finance Subgroup, Host ICB, and Partner ICBs including:
 - ICB reporting based on pool contribution,
 - Overall pool financial performance report to be shared with all ICBs,
 - Management and review of reserves and investments.

Annex 1 to Schedule 4

Budgetary Delegation Schedule

| | | |
|---|---|--|
| Contract award, signature and variation | | |
| Description of delegation: Approval of contract award reports, providing requirements for competitive tendering have been met. Signature of contracts and contract variations, within the approved budget. | | |
| Delegated Limit | Up to £2m | Unlimited |
| Limits are annual values | | |
| Approvers and/or restrictions No variation can be granted to a contract awarded under the PCR threshold where the value of the variation results in the contract value exceeding the PCR threshold. | Commissioning Lead – Acute Specialised Commissioning (Contracting) | Director of Specialised Commissioning Director of Commissioning Finance (specialised commissioning). |

| | | | |
|---|---|--|--|
| Purchase Requisitions, invoices and non POs | | | |
| Description of delegation: Approval of purchase requisitions, purchase credit notes, invoices and non-purchase order invoices. Approval of contract payments to NHS providers. | | | |
| Delegated Limit | Up to £50k | Up to £2m or 1/12 of contract value for NHS Providers | Over £2m |
| Approvers and/or restrictions Expenditure must be covered by a relevant budget. Purchase orders should be raised for all nonhealthcare | Specialised commissioning: Contract Managers or Budget Holders | Director of Specialised Commissioning Director of Commissioning Finance (specialised) | Director of Specialised Commissioning or Director of Commissioning Finance (Specialised) And |

| | | | |
|---|--|--|----------------------|
| goods and services and the non-purchase order route should only be used in exceptional circumstances. | | | Pooled Fund Host CFO |
|---|--|--|----------------------|

| Budget Virements | | | |
|---|---|---|----------|
| Description of delegation: Approval of budget virements/movements within approved revenue and capital budgets. | | | |
| Delegated Limit | Up to £50k | Up to £2m | Over £2m |
| <p>Approvers and/or restrictions</p> <p>Expenditure must be covered by a relevant budget.</p> <p>Purchase orders should be raised for all nonhealthcare goods and services and the non-purchase order route should only be used in exceptional circumstances.</p> | <p>Specialised commissioning</p> <p>Contract Managers or Budget Holders</p> | <p>Director of Specialised Commissioning</p> <p>Director of Commissioning Finance (specialised)</p> | MASCG |

SCHEDULE 5: FURTHER INFORMATION GOVERNANCE AND SHARING PROVISIONS

PART 1

1. Introduction

- 1.1. This Schedule sets out the scope for the secure and confidential sharing of information between the Partners on a Need To Know basis, in order to enable the Partners to exercise their functions in pursuance of this Agreement.
- 1.2. References in this Schedule (*Further Information Governance and Sharing Provisions*) to the Need to Know basis or requirement (as the context requires) should be taken to mean that the Data Controllers' Staff will only have access to Personal Data or Special Category Personal Data if it is lawful for such Staff to have access to such data for the Specified Purpose in paragraph 2.1 and the function they are required to fulfil at that particular time, in relation to the Specified Purpose, cannot be achieved without access to the Personal Data or Special Category Personal Data specified.
- 1.3. This Schedule and the Data Sharing Agreements entered into under this Schedule are designed to:
 - 1.3.1. provide information about the reasons why Relevant Information may need to be shared and how this will be managed and controlled by the Partners;
 - 1.3.2. describe the purposes for which the Partners have agreed to share Relevant Information;
 - 1.3.3. set out the lawful basis for the sharing of information between the Partners, and the principles that underpin the exchange of Relevant Information;
 - 1.3.4. describe roles and structures to support the exchange of Relevant Information between the Partners;
 - 1.3.5. apply to the sharing of Relevant Information relating to Specialised Services Providers and their Staff;
 - 1.3.6. apply to the sharing of Relevant Information whatever the medium in which it is held and however it is transmitted;
 - 1.3.7. ensure that Data Subjects are, where appropriate, informed of the reasons why Personal Data about them may need to be shared and how this sharing will be managed;
 - 1.3.8. apply to the activities of the Partners' Staff; and

- 1.3.9. describe how complaints relating to Personal Data sharing between the Partners will be investigated and resolved, and how the information sharing will be monitored and reviewed.

2. Purpose

- 2.1. The Specified Purpose of the data sharing is to facilitate the exercise of the Joint Working Arrangements.
- 2.2. Each Partner must ensure that they have in place appropriate Data Sharing Agreements to enable data to be received from any third party organisations from which the Partners must obtain data in order to achieve the Specified Purpose. Where necessary specific and detailed purposes must be set out in a Data Sharing Agreement that complies with all relevant legislation and Guidance.

3. Benefits of information sharing

- 3.1. The benefits of sharing information are the achievement of the Specified Purpose, with benefits for service users and other stakeholders in terms of the improved delivery of the Services.

4. Lawful basis for sharing

- 4.1. The Partners shall comply with all relevant Data Protection Legislation requirements and Good Practice in relation to the processing of Relevant Information shared further to this Agreement.
- 4.2. The Partners shall ensure that there is a Data Protection Impact Assessment (“DPIA”) that covers processing undertaken in pursuance of the Specified Purpose. The DPIA shall identify the lawful basis for sharing Relevant Information for each purpose and data flow.
- 4.3. Where appropriate, the Relevant Information to be shared shall be set out in a Data Sharing Agreement.

5. Restrictions on use of the Shared Information

- 5.1. Each Partner shall only process the Relevant Information as is necessary to achieve the Specified Purpose and shall not use or process Relevant Information for any other purpose unless agreed in writing by the Data Controller that released the information to the other. There shall be no other use or onward transmission of the Relevant Information to any third party without a lawful basis first being determined, and the originating Data Controller being notified.
- 5.2. Access to, and processing of, the Relevant Information provided by a Partner must be the minimum necessary to achieve the Specified Purpose. Information and Special Category Personal Data will be always handled on a restricted basis, in compliance with Data Protection Legislation requirements, and the Partners' Staff should only have access to Personal Data on a justifiable Need to Know basis.
- 5.3. Neither the provisions of this Schedule nor any associated Data Sharing Agreements should be taken to permit unrestricted access to data held by any of the Partners.
- 5.4. Neither Partner shall subcontract any processing of the Relevant Information without the prior consent of the other Partner. Where a Partner subcontracts its obligations, it shall do so only by way of a written agreement with the sub-contractor which imposes the same obligations as are imposed on the Data Controllers under this Agreement.
- 5.5. The Partners shall not cause or allow Data to be transferred to any territory outside the United Kingdom without the prior written permission of the responsible Data Controller.
- 5.6. Any particular restrictions on use of certain Relevant Information should be included in a Data Sharing Agreement.

6. Ensuring fairness to the Data Subject

- 6.1. In addition to having a lawful basis for sharing information, the UK GDPR generally requires that the sharing must be fair and transparent. To achieve fairness and transparency to the Data Subjects, the Partners will take the following measures as reasonably required:
 - 6.1.1. amendment of internal guidance to improve awareness and understanding among Staff;

- 6.1.2. amendment of respective privacy notices and policies to reflect the processing of data carried out further to this Agreement, including covering the requirements of articles 13 and 14 UK GDPR and providing these (or making them available to) Data Subjects;
 - 6.1.3. ensuring that information and communications relating to the processing of data is clear and easily accessible; and
 - 6.1.4. considering carrying out activities to promote public understanding of how data is processed where appropriate.
- 6.2. Each Partner shall procure that its notification to the Information Commissioner's Office, and record of processing maintained for the purposes of Article 30 UK GDPR, reflects the flows of information under this Agreement.
- 6.3. The Partners shall reasonably co-operate in undertaking any DPIA associated with the processing of data further to this Agreement, and in doing so engage with their respective Data Protection Officers in the performance by them of their duties pursuant to Article 39 UK GDPR.
- 6.4. Further provision in relation to specific data flows may be included in a Data Sharing Agreement between the Partners.

7. Governance: Staff

- 7.1. The Partners must take reasonable steps to ensure the suitability, reliability, training and competence, of any Staff who have access to Personal Data, and Special Category Personal Data, including ensuring reasonable background checks and evidence of completeness are available on request.
- 7.2. The Partners agree to treat all Relevant Information as confidential and imparted in confidence and must safeguard it accordingly. Where any of the Partners' Staff are not healthcare professionals (for the purposes of the Data Protection Act 2018) the employing Partners must procure that Staff operate under a duty of confidentiality which is equivalent to that which would arise if that person were a healthcare professional.
- 7.3. The Partners shall ensure that all Staff required to access Personal Data (including Special Category Personal Data) are informed of the confidential nature of the Personal Data. The

Partners shall include appropriate confidentiality clauses in employment/service contracts of all Staff that have any access whatsoever to the Relevant Information, including details of sanctions for acting in a deliberate or reckless manner that may breach the confidentiality or the non-disclosure provisions of Data Protection Legislation requirements, or cause damage to or loss of the Relevant Information.

- 7.4. Each Partner shall provide evidence (further to any reasonable request) that all Staff that have any access to the Relevant Information whatsoever are adequately and appropriately trained to comply with their responsibilities under Data Protection Legislation and this Agreement.
- 7.5. The Partners shall ensure that:
 - 7.5.1. only those Staff involved in delivery of the Agreement use or have access to the Relevant Information;
 - 7.5.2. that such access is granted on a strict Need to Know basis and shall implement appropriate access controls to ensure this requirement is satisfied and audited. Evidence of audit should be made freely available on request by the originating Data Controller; and
 - 7.5.3. specific limitations on the Staff who may have access to the Relevant Information are set out in any Data Sharing Agreement entered in accordance with this Schedule.

8. Governance: Protection of Personal Data

- 8.1. At all times, the Partners shall have regard to the requirements of Data Protection Legislation and the rights of Data Subjects.
- 8.2. Wherever possible (in descending order of preference), only anonymised information, or strongly or weakly pseudonymised information will be shared and processed by the Partners. The Partners shall co-operate in exploring alternative strategies to avoid the use of Personal Data to achieve the Specified Purpose. However, it is accepted that some Relevant Information shared further to this Agreement may be Personal Data or Special Category Personal Data.
- 8.3. Processing of any Personal Data or Special Category Personal Data shall be to the minimum extent necessary to achieve the Specified Purpose, and on a Need-to-Know basis.
- 8.4. If any Partner becomes aware of:

- 8.4.1. any unauthorised or unlawful processing of any Relevant Information or that any Relevant Information is lost or destroyed or has become damaged, corrupted, or unusable; or
 - 8.4.2. any security vulnerability or breach in respect of the Relevant Information, it shall promptly, within 48 hours, notify the other Partners. The Partners shall fully co-operate with one another to remedy the issue as soon as reasonably practicable, and in making information about the incident available to the Information Commissioner and Data Subjects where required by Data Protection Legislation.
- 8.5. In processing any Relevant Information further to this Agreement, the Partners shall process the Personal Data and Special Category Personal Data only:
 - 8.5.1. in accordance with the terms of this Agreement and otherwise (to the extent that it acts as a Data Processor for the purposes of Article 27-28 GDPR) only in accordance with written instructions from the originating Data Controller in respect of its Relevant Information;
 - 8.5.2. to the extent as is necessary for the provision of the Specified Purpose or as is required by Law or any regulatory body; and
 - 8.5.3. in accordance with Data Protection Legislation requirements, in particular the principles set out in Article 5(1) and accountability requirements set out in Article 5(2) UK GDPR; and not in such a way as to cause any other Data Controller to breach any of their applicable obligations under Data Protection Legislation.
- 8.6. The Partners shall act generally in accordance with Data Protection Legislation requirements. This includes implementing, maintaining, and keeping under review appropriate technical and organisational measures to ensure and demonstrate that the processing of Personal Data is undertaken in accordance with Data Protection Legislation, and in particular to protect the Personal Data (and Special Category Personal Data) against unauthorised or unlawful processing, and against accidental loss, destruction, damage, alteration or disclosure. These measures shall:
 - 8.6.1. take account of the nature, scope, context, and purposes of processing as well as the risks, of varying likelihood and severity for the rights and freedoms of Data Subjects; and
 - 8.6.2. be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and Special Category Personal Data and having the nature of the Personal Data (and Special Category Personal Data) which is to be protected.

- 8.7. Each Partner shall:
- 8.7.1. ensure that only Staff as provided under this Schedule have access to the Personal Data and Special Category Personal Data;
 - 8.7.2. ensure that the Relevant Information is kept secure and in an encrypted form, and shall use all reasonable security practices and systems applicable to the use of the Relevant Information to prevent and to take prompt and proper remedial action against, unauthorised access, copying, modification, storage, reproduction, display, or distribution, of the Relevant Information;
 - 8.7.3. obtain prior written consent from the originating Partner to transfer the Relevant Information to any third party;
 - 8.7.4. permit any other Partner or their representatives (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the data processing activities carried out further to this Agreement (and/or those of its agents, successors, or assigns) and comply with all reasonable requests or directions to enable each Partner to verify and/or procure that the other is in full compliance with its obligations under this Agreement; and
 - 8.7.5. if requested, provide a written description of the technical and organisational methods and security measures employed in processing Personal Data.

The Partners shall adhere to the specific requirements as to information security set out in any Data Sharing Agreement entered in accordance with this Schedule.

- 8.8. The Partners shall use best endeavours to achieve and adhere to the requirements of the NHS Digital Data Security and Protection Toolkit.
- 8.9. The Partners' Single Points of Contact set out in paragraph 13 will be the persons who, in the first instance, will have oversight of third-party security measures.

9. Governance: Transmission of Information between the Partners

- 9.1. This paragraph supplements paragraph 8 of this Schedule.
- 9.2. Transfer of Personal Data between the Partners shall be done through secure mechanisms including use of the N3 network, encryption, and approved secure (NHS.net or gcsx) e-mail.

- 9.3. Wherever possible, Personal Data should be transmitted and held in pseudonymised form, with only reference to the NHS number in 'clear' transmissions. Where there are significant consequences for the care of the patient, then additional data items, such as the postcode, date of birth and/or other identifiers should also be transmitted, in accordance with good information governance and clinical safety practice, to ensure that the correct patient record and/or data is identified.
- 9.4. Any other special measures relating to security of transfer should be specified in a Data Sharing Agreement entered in accordance with this Schedule.
- 9.5. Each Partner shall keep an audit log of Relevant Information transmitted and received during this Agreement.
- 9.6. The Partners' Single Point of Contact notified pursuant to paragraph 13 will be the persons who, in the first instance, will have oversight of the transmission of information between the Partners.

10. Governance: Quality of Information

- 10.1. The Partners will take steps to ensure the quality of the Relevant Information and to comply with the principles set out in Article 5 UK GDPR.

11. Governance: Retention and Disposal of Shared Information

- 11.1. A non-originating Partner shall securely destroy or return the Relevant Information once the need to use it has passed or, if later, upon the termination of this Agreement, howsoever determined. Where Relevant Information is held electronically, the Relevant Information will be deleted, and formal notice of the deletion sent to the that shared the Relevant Information. Once paper information is no longer required, paper records will be securely destroyed or securely returned to the Partner they came from.
- 11.2. Each Partner shall provide an explanation of the processes used to securely destroy or return the information, or verify such destruction or return, upon request and shall comply with any request of the Data Controllers to dispose of data in accordance with specified standards or criteria.

- 11.3. If a Partner is required by any Law, regulation, or government or regulatory body to retain any documents or materials that it would otherwise be required to return or destroy in accordance with this Schedule, it shall notify the other Partners in writing of that retention, giving details of the documents or materials that it must retain.
- 11.4. Retention of any data shall comply with the requirements of Article 5(1)(e) GDPR and with all Good Practice including the Records Management NHS Code of Practice, as updated, or amended from time to time.
- 11.5. The Partners shall set out any special retention periods in a Data Sharing Agreement where appropriate.
- 11.6. The Partners shall ensure that Relevant Information held in paper form is held in secure files, and, when it is no-longer needed, destroyed using a crosscut shredder or subcontracted to a confidential waste company that complies with European Standard EN15713.
- 11.7. Each Partner shall ensure that, when no longer required, electronic storage media used to hold or process Personal Data are destroyed or overwritten to current policy requirements.
- 11.8. Electronic records will be considered for deletion once the relevant retention period has ended.
- 11.9. In the event of any bad or unusable sectors of electronic storage media that cannot be overwritten, the Partner shall ensure complete and irretrievable destruction of the media itself in accordance with policy requirements.

12. Governance: Complaints and Access to Personal Data

- 12.1. The Partners shall assist each other in responding to any requests made under Data Protection Legislation made by persons who wish to access copies of information held about them ("Subject Access Requests"), as well as any other exercise of a Data Subject's rights under Data Protection Legislation or complaint to or investigation undertaken by the Information Commissioner.
- 12.2. Complaints about information sharing shall be reported to each Partner. Complaints about information sharing shall be routed through each Partner's own complaints procedure unless otherwise provided for in the Joint Working.

12.3. The Partners shall use all reasonable endeavours to work together to resolve any dispute or complaint arising under this Schedule or any data processing carried out further to it.

12.4. Basic details of the Agreement shall be included in the appropriate log under each Partner's publication scheme.

13. Governance: Single Points of Contact

13.1. The Partners each shall appoint a Single Point of Contact to whom all queries relating to the particular information sharing should be directed in the first instance.

14. Monitoring and review

14.1. The Partners shall monitor and review on an ongoing basis the sharing of Relevant Information to ensure compliance with Data Protection Legislation and best practice. Specific monitoring requirements must be set out in the relevant Data Sharing Agreement.

SCHEDULE 6: MIDLANDS SPECIALISED COMMISSIONING TEAM (DELEGATED FUNCTIONS)

The Partners have agreed to establish a Midlands wide Commissioning Team (Delegated Functions) which will be hosted by BSOL ICB under a separate Hosting Agreement between the ICBs and detailed in Schedule 10 of the delegation agreement. The provisions of that agreement are hereby incorporated by reference and made a part of this agreement as if fully set out herein.