

Dated \_\_\_\_\_ 2023

<b>West Midlands Integrated Care Boards</b>	<b>NHS Birmingham and Solihull Integrated Care Board</b>
	<b>NHS Black Country Integrated Care Board</b>
	<b>NHS Coventry and Warwickshire Integrated Care Board</b>
	<b>NHS Herefordshire and Worcestershire Integrated Care Board</b>
	<b>NHS Shropshire, Telford and Wrekin Integrated Care Board</b>
	<b>NHS Staffordshire and Stoke-on-Trent Integrated Care Board</b>

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Agreement in relation to the establishment and operation of  
joint working arrangements –

**“Tier One”: Joint Committee West Midlands**

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THIS AGREEMENT is made on the \_\_\_\_\_ day of \_\_\_\_\_ 2023

**BETWEEN<sup>1</sup>:**

**(1) NHS Birmingham and Solihull Integrated Care Board**

**(2) NHS Black Country Integrated Care Board**

**(3) NHS Coventry and Warwickshire Integrated Care Board**

**(4) NHS Herefordshire and Worcestershire Integrated Care Board**

**(5) NHS Shropshire, Telford and Wrekin Integrated Care Board**

**And**

**(6) NHS Staffordshire and Stoke-on-Trent Integrated Care Board**

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

{●} ICB, {●} ICB and {●} ICB are together referred to in this Agreement as the "ICBs", and "ICB" shall mean any of them.

## **BACKGROUND**

- (A) 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 NHSE.
- (B) Pursuant to section 65Z5 of the NHS Act, NHSE and the ICBs are able to establish and maintain joint arrangements in respect of the discharge of their commissioning functions.
- (C) ICBs agree to exercise decisions of the Joint Committee(s) under section 65Z5 of the NHS Act and as set out in this Agreement and the Terms of Reference.
- (D) ICBs acknowledge and agree that making joint arrangements to exercise ICB Commissioning Functions is likely to lead to an improvement in the way the Commissioning Functions of all Partners are exercised.
- (E) This Agreement sets out the arrangements that will apply the ICBs in relation to the joint exercising of the Joint Working / Joint Commissioning Functions for the ICBs' populations. These arrangements are intended to better align and transform pathways of care around the needs of local populations.
- (F) ICBs have entered into this Agreement to define their arrangements for joint working. To avoid doubt, none of the Partners are delegating the exercise of any of their Commissioning Functions or any other functions to any other Partner under this Agreement.
- (G) This Agreement is intended for use in the 2023/24 financial year, to govern defined Services; ICBs will:
  - (A) Govern the joint working between ICBs in relation to the commissioning functions delegated to the Joint Committee by the ICBs and as defined in Schedule 4 of this agreement. The Joint Committee will discharge the delegated functions through its subgroups and in accordance with the Scheme of Reservation and Delegation defined by the joint committee

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**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 for the Initial Term unless terminated in accordance with Clause 19 (Leaving the Joint Committee) below.
- 1.2 The Partners may extend this Agreement beyond the Initial Term for a further period, by written agreement prior to the expiry of the Initial Term.

**2. PRINCIPLES AND AIMS**

- 2.1 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:
  - 2.1.1 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;
  - 2.1.2 consider how, in performing its obligations, it can address health inequalities;
  - 2.1.3 at all times exercise functions effectively, efficiently and economically; and
  - 2.1.4 act at all times in good faith towards each other.
- 2.2 The Partners agree:
  - 2.2.1 that successfully implementing this Agreement will require strong relationships and an environment based on trust and collaboration;
  - 2.2.2 to seek to continually improve whole pathways of care pertinent to the Joint Working / Joint Commissioning services and to design and implement effective and efficient integration;
  - 2.2.3 to act in a timely manner;
  - 2.2.4 to share information and best practice, and work collaboratively to identify solutions, eliminate duplication of effort, mitigate risks and reduce cost;
  - 2.2.5 to act at all times in accordance with the scope of their statutory powers; and
  - 2.2.6 to have regard to each other's needs and views, irrespective of the relative contributions of the Partners to the commissioning of any Joint Working and Joint Commissioning services and, as far as is reasonably practicable, take such needs and views into account.
- 2.3 The Partners' primary aim is to maximise the benefits to patients of integrating the Joint Functions with the ICBs' Commissioning Functions through designing and commissioning the Joint Working / Joint Commissioning 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 JOINT WORKING ARRANGEMENTS

- 3.1 This Agreement sets out the arrangements through which the Partners will work together to exercise the Joint Functions as set out in Schedule 4, including:
- 3.1.1 the establishment of a Joint Committee;
  - 3.1.2 the participation by all Partners in the work of the Joint Committee;
  - 3.1.3 the development of leadership and expertise in respect of the Joint Working / Joint Commissioning services, collectively referred to as the “Joint Working Arrangements”.

### 4. JOINT COMMITTEE

- 4.1 The Partner ICBs shall together establish a Joint Committee which will operate in accordance with the Terms of Reference set out in Schedule 3.
- 4.2 The Joint Committee may establish sub-groups or sub-committees of the Joint Committee, which will operate in accordance with the relevant Terms of Reference agreed by the Joint Committee.
- 4.3 The Partners shall nominate Authorised Officers to the Joint Committee in accordance with Schedule 3.
- 4.4 Subject to Clauses **Error! Reference source not found.** to 17.4 and the terms of the Schedules, ICBs in accordance with this Agreement must reach decisions in relation to the Joint Functions through discussion and agreement. Where in exceptional cases consensus cannot be reached between the members of the Joint Committee in respect of matters under consideration, any voting arrangements set out in the Terms of Reference will apply.
- 4.5 The ICBs shall ensure that their Authorised Officers have appropriate delegated authority, in accordance with each ICB’s internal governance arrangements, to represent the interests of each ICB in the Joint Committee and any other sub-groups or sub-committees established by it.
- 4.6 The Partners recognise the need to ensure that any potential conflicts of interest on the part of any Partner, including its representatives, in respect of this Agreement and the establishment or operation of the Joint Committee and any sub-group or sub-committee of it must be appropriately identified, recorded and managed.

### 5. JOINT FUNCTIONS

- 5.1 This Agreement shall include functions that the ICBs delegate to it as outlined in Schedule 4 in respect of the Joint Working / Joint Commissioning services.
- 5.2 The Partners must establish effective, safe, efficient and economic arrangements for the discharge of the Joint Functions.
- 5.3 Partners must exercise the Joint Functions outline in the Joint Committee in accordance with:
- 5.3.1 the terms of this Agreement;
  - 5.3.2 all applicable Law;

- 5.3.3 Guidance;
  - 5.3.4 the Terms of Reference; and
  - 5.3.5 Good Practice.
- 5.4 In exercising the Joint Functions, the Joint Committee must comply with the Mandated Guidance set out in Schedule 6, or otherwise referred to in this Agreement, and such further Mandated Guidance as may be issued by NHSE from time to time, including on NHSE or FutureNHS websites.
- 5.5 The Joint Committee must perform the Joint Functions:
- 5.5.1 in such a manner as to ensure ICBs compliance with its statutory duties in respect of the Joint Functions;
  - 5.5.2 having regard to NHSE's accountability to the Secretary of State and Parliament in respect of any NHSE delegated Functions.

## 6. **FURTHER COLLABORATIVE WORKING**

- 6.1 An ICB may, at its discretion, table for discussion at any Joint Committee meeting an item relating to any ICB Function, in order to facilitate engagement and promote integration and collaborative working. Decision-making in respect of such discussions will remain with the relevant ICB. For the avoidance of doubt, the Joint Committee will not have any authority to take decisions in respect of ICB Functions, outside of services defined in Schedule 4
- 6.2 NHSE may table for discussion at any Joint Committee meeting an item relating to NHSE's accountability to the Secretary of State and Parliament in respect of any NHSE delegated Functions or any such other of NHSE's Functions that it considers appropriate in order to facilitate engagement and promote integration and collaborative working.

## 7. **FINANCE**

- 7.1 The Joint Committee shall ensure full compliance with Finance Guidance and any other relevant Mandated Guidance.
- 7.2 Each Partner shall bear its own costs as they are incurred, unless expressly provided otherwise in this Agreement or otherwise agreed in advance in writing by the Partners. Such costs may include, but will not be limited to, costs of attendance at Joint Committee meetings and costs in complying with each Partner's relevant obligations in this Agreement.
- 7.3 Prior to the end of the first year of the Term, the Partners will review the financial arrangements described for the joint commissioning of services outlined in Schedule 4 and consider whether alternative arrangements should be put in place for any extended Term. Any changes to this Agreement to effect such new arrangements will be made in accordance with Clause 9 (Variations).
- 7.4 Any costs relating to the operation of the Joint Committee shall be shared equally by each Partner
- 7.5 Financial arrangements for costs associated with the joint commissioning of Services in Schedule 4 will be defined in the relevant Hosting agreement for the services

## 8. **STAFFING**

- 8.1 Staff employed to carry out the functions for commissioning and its associated functions for all services outlined in Schedule 4 and for the management for the Joint Committee will be defined in the relevant hosting agreement for the services

- 8.2 Any costs associated with the staffing for the Joint Commissioning of services will be met equally by each partner

## 9. VARIATIONS

- 9.1 The Partners acknowledge that the scope of the Joint Working Arrangements, including the scope of the Joint Functions, may be reviewed and amended from time to time.
- 9.2 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.

## 10. DATA PROTECTION

- 10.1 The Partners must ensure that all Personal Data processed by or on behalf of them in the course of 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.
- 10.2 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:
- 10.2.1 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
  - 10.2.2 becomes aware of any security breach,  
  
in respect of the Relevant Information it shall promptly notify the Joint Committee. The Partners shall fully co-operate with one another to remedy the issue as soon as reasonably practicable.
- 10.3 In processing any Relevant Information further to this Agreement, each Partner shall at all times comply with all NHSE policies and guidance on the handling of data.
- 10.4 Any information governance breach must be responded to in accordance with Data Security and the Protection Incident Reporting tool. 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 Joint Committee of the breach. This clause does not require the relevant Partner to provide information which identifies any individual affected by the breach where doing so would breach Data Protection Legislation.
- 10.5 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.
- 10.6 The Partners will share information to enable joint service planning, commissioning, and financial management subject to the requirements of law, including in particular the Data Protection Legislation in respect of any Personal Data.
- 10.7 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 other Partners save as agreed by the Partners in writing.

- 10.8 Schedule 5 makes further provision about information sharing and information governance.

## 11. IT INTER-OPERABILITY

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

## 12. FURTHER ARRANGEMENTS

- 12.1 The Partners must give due consideration to whether any of the Joint 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 Joint Specialised Services by means of arrangements under section 65Z5 or 75 of the NHS Act.

## 13. FREEDOM OF INFORMATION

- 13.1 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").
- 13.2 Each Partner may be statutorily required to disclose further information about the Agreement and the Relevant Information in response to a specific request under FOIA or EIR, in which case:
- 13.2.1 each Partner shall provide the other with all reasonable assistance and co-operation to enable them to comply with their obligations under FOIA or EIR;
  - 13.2.2 each Partner shall consult the other regarding the possible application of exemptions in relation to the information requested; and
  - 13.2.3 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.
- 13.3 NHS England may, from time to time, issue a FOIA or EIR protocol or update a protocol previously issued relating to the dealing with and responding to of FOIA or EIR requests in relation to the Joint Working Arrangements. The Joint Committee and each Partner shall comply with such FOIA or EIR protocols.

## 14. CONFLICTS OF INTEREST AND TRANSPARENCY ON GIFTS AND HOSPITALITY

- 14.1 The Partners must and must ensure that, in delivering the Joint Functions, 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 / other inducements and actual or potential conflicts of interest.
- 14.2 Without prejudice to the general obligations set out in Clause 5 (Joint Functions), each ICB must maintain a register of interests in respect of all persons involved in decisions concerning the Joint Functions. 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.
- 14.3 Where any member of the Joint Committee has an actual or potential conflict of interest in relation to any matter under consideration by the Joint Committee, that member must not

participate in meetings (or parts of meetings) in which the relevant matter is discussed or make a recommendation in relation to the relevant matter. The relevant appointing body may send an alternative representative to take the place of the conflicted member in relation to that matter.

## 15. **CONFIDENTIALITY**

- 15.1 Except as this Agreement otherwise provides, Confidential Information is owned by the disclosing Partner and the receiving Partner has no right to use it.
- 15.2 Subject to Clause 15.3, the receiving Partner agrees:
  - 15.2.1 to use the disclosing Partner's Confidential Information only in connection with the receiving Partner's performance under this Agreement;
  - 15.2.2 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
  - 15.2.3 to maintain the confidentiality of the disclosing Partner's Confidential Information.
- 15.3 The receiving Partner may disclose the disclosing Partner's Confidential Information:
  - 15.3.1 in connection with any Dispute Resolution Procedure;
  - 15.3.2 to comply with the Law;
  - 15.3.3 to any appropriate Regulatory or Supervisory Body;
  - 15.3.4 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 15.2;
  - 15.3.5 to NHS Bodies for the purposes of carrying out their functions;
  - 15.3.6 as permitted under any other express arrangement or other provision of this Agreement.
- 15.4 The obligations in Clause 15 will not apply to any Confidential Information which:
  - 15.4.1 is in or comes into the public domain other than by breach of this Agreement;
  - 15.4.2 the receiving Partner can show by its records was in its possession before it received it from the disclosing Party; or
  - 15.4.3 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.
- 15.5 This Clause 15 does not prevent an ICB making use of or disclosing any Confidential Information disclosed any other ICB where necessary for the purposes of exercising its functions in relation to that ICB.
- 15.6 This Clause 15 will survive the termination of this Agreement for any reason for a period of 5 years.
- 15.7 This Clause 15 will not limit the application of the Public Interest Disclosure Act 1998 in any way whatsoever.

## 16. **LIABILITIES**

- 16.1 Nothing in this Agreement shall affect:
- 16.1.1 the liability of any of the ICBs to any person in respect of that ICB's Commissioning Functions.
- 16.2 Partner ICBs shall be responsible for and shall retain the conduct of any Claim in relation to the Joint Functions.
- 16.3 Each ICB must:
- 16.3.1 comply with any agreed policy issued by Partners from time to time in relation to the conduct of or avoidance of Claims or the pro-active management of Claims;
  - 16.3.2 if it receives any correspondence, issue of proceedings, claim document or other document concerning any Claim or potential Claim, immediately notify the Joint Committee and send to them all copies of such correspondence;
  - 16.3.3 co-operate fully with Partners in relation to such Claim and the conduct of such Claim;
  - 16.3.4 provide, at its own cost, to Partners all documentation and other correspondence that Partners requires for the purposes of considering and/or resisting such Claim; and/or
  - 16.3.5 at the request of Partners, take such action or step or provide such assistance as may in Partners discretion be necessary or desirable having regard to the nature of the Claim and the existence of any time limit in relation to avoiding, disputing, defending, resisting, appealing, seeking a review or compromising such Claim or to comply with the requirements of the provider of an Indemnity Arrangement in relation to such Claim.

## 17. **DISPUTE RESOLUTION**

- 17.1 Where any dispute arises within the Joint Committee in connection with this Agreement, the Partners must use their best endeavours to resolve that dispute within the Joint Committee in accordance with the Terms of Reference.
- 17.2 Where any dispute is not resolved under Clause 17.1 on an informal basis, any Authorised Officer may convene a special meeting of the Joint Committee to attempt to resolve the dispute
- 17.3 Where any dispute is not resolved under Clause 17.1 or 18.2 the Joint Committee can appoint an independent mediator to attempt to resolve the dispute. The cost of mediation will be borne in equal shares between parties involved in the dispute.
- 17.4 Where any dispute is remains resolved The Joint Committee will commissioning an independent review. The Joint Committee will abide by the independent review findings. The cost will be borne in equal shares between parties involved in the dispute.

## 18. **BREACHES OF JOINT WORKING**

- 18.1 If any Partner does not comply with the terms of this agreement in relation to services delegated by ICBs then Patners may:
- 18.1.1 exercise its rights under this Agreement; and
  - 18.1.2 take such steps as it considers appropriate in the exercise of its other functions concerning the Partner.

- 18.2 Without prejudice to Clause 18.1, if any Partner does not comply with the terms of this Agreement (including if the Joint Committee or any Partner exceeds its authority under this Agreement), Partners may (at their discretion):
- 18.2.1 waive its rights in relation to such non-compliance in accordance with Clause 18.3;
  - 18.2.2 ratify any decision;
  - 18.2.3 terminate this Agreement in accordance with Clause 19 (Leaving the Joint Committee) below;
  - 18.2.4 exercise the dispute resolution procedure in accordance with Clause 17 (*Dispute Resolution Procedure*); and/or
  - 18.2.5 exercise its rights under common law.

18.3 Partner may waive any non-compliance by another Partner with the terms of this Agreement provided that the Partner provides a written report to the Joint Committee as required by Clause 18.4 and, after considering the Partner's written report, Partner is satisfied that the waiver is justified.

18.4 If:

- 18.4.1 a Partner does not comply with this Agreement; or
- 18.4.2 Partners notifies a Partner that it considers the Partner has not complied, or may not be able to comply with, this Agreement;

then that Partner must provide a written report to Partners within ten (10) Operational Days of the non-compliance (or the date on which the relevant Partner considers that it may not be able to comply with this Agreement) or such notification pursuant to Clause 24 setting out:

- 18.4.3 details of and reasons for the non-compliance (or likely non-compliance) with the Agreement; and
- 18.4.4 if the non-compliance is capable of remedy, a plan for how the Partner proposes to remedy the non-compliance.

## 19. LEAVING THE JOINT COMMITTEE

- 19.1 If any Partner wishes to exit the Joint Committee and end its participation in this Agreement, the relevant ICB must provide at least six (6) months notification to the Joint Committee of its intention to exit the Joint Committee and end its participation in this Agreement. Such notification shall only take effect from the end of 31 March in any calendar year.
- 19.2 Partners will work together to ensure that there are suitable alternative arrangements in place in relation to the exercise of the Joint Functions.
- 19.3 The exercise of the Joint Functions does not alter accountability any partner

## 20. CONSEQUENCES OF TERMINATION

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

- 20.1.1 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, so as to minimise costs and liabilities of each Partner in doing so;
- 20.1.2 termination of this Agreement shall have no effect on the liability of any rights or remedies of any Partner already accrued, prior to the date upon which such termination takes effect.
- 20.2 The provisions of Clauses 10 (Data Protection), 13 (Freedom of Information), 15 (Confidentiality), 16 (Liabilities) and 20 (Consequences of Termination) shall survive termination or expiry of this Agreement.

## 21. **PUBLICITY**

- 21.1 The Partners shall use reasonable endeavours to consult one another before making any public announcements concerning the subject matter of this Agreement.

## 22. **EXCLUSION OF PARTNERSHIP OR AGENCY**

- 22.1 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, or render any Partner directly liable to any third party for the debts, liabilities or obligations of any Partner.
- 22.2 Save as specifically authorised under the terms of this Agreement, no Partner shall hold itself out as the agent of any other Partner.

## 23. **THIRD PARTY RIGHTS**

- 23.1 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.

## 24. **NOTICES**

- 24.1 Any notices given under this Agreement must be sent by e-mail to the relevant Authorised Officers or their nominated deputies.
- 24.2 Notices by e-mail will be effective when sent in legible form, but only if, following transmission, the sender does not receive a non-delivery message.

## 25. **ASSIGNMENT AND SUBCONTRACTING**

- 25.1 This Agreement, and any right 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 function.

## 26. **SEVERABILITY**

- 26.1 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.

## 27. **WAIVER**

- 27.1 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.

**28. STATUS**

28.1 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.

**29. ENTIRE AGREEMENT**

29.1 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.

**30. GOVERNING LAW AND JURISDICTION**

30.1 Subject to the provisions of Clause 17 (Dispute Resolution) and Clause 28 (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.

**31. FAIR DEALINGS**

31.1 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 either of them and that, if in the course of the performance of this Agreement, unfairness to either of them does or may result, then the other shall use its reasonable endeavours to agree upon such action as may be necessary to remove the cause or causes of such unfairness.

**32. COMPLAINTS**

32.1 Any complaints received by the Partners shall be dealt with in accordance with the statutory complaints procedure of the Partner to whose Commissioning Function(s) the complaint relates. For the avoidance of doubt, Partners shall manage all complaints in respect of the Service in Schedule 4.

**33. COUNTERPARTS**

33.1 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 date stated at the beginning of it.

SIGNED by .....  
for and on behalf of **Integrated Care Board of NHS  
Birmingham and Solihull ("ICB");** (Signature)

.....  
(Date)

SIGNED by .....  
for and on behalf of **Integrated Care Board of NHS  
Black Country ("ICB");** (Signature)

.....  
(Date)

SIGNED by .....  
for and on behalf of **Integrated Care Board of NHS  
Coventry and Warwickshire ("● ICB").** (Signature)

.....  
(Date)

SIGNED by .....  
for and on behalf of **Integrated Care Board of NHS  
Staffordshire and Stoke-on-Trent ("● ICB").** (Signature)

.....  
(Date)

SIGNED by .....  
for and on behalf of **Integrated Care Board of  
Herefordshire and Worcestershire ("● ICB").** (Signature)

.....  
(Date)

SIGNED by .....

for and on behalf of **Integrated Care Board of NHS  
Shropshire, Telford and Wrekin** ("● ICB").

(Signature)

.....

(Date)

## SCHEDULE 1: DEFINITIONS AND INTERPRETATIONS

### DEFINITIONS AND INTERPRETATION

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

<b>"Agreement"</b>	this agreement between the Partners comprising these terms and conditions together with all schedules attached to it;
<b>"Area"</b>	means the geographical area covered by the ICBs;
<b>"Authorised Officer"</b>	the individual(s) appointed as Authorised Officer in accordance with Schedule 3 (Terms of Reference);
<b>"Change in Law"</b>	a change in Law that is relevant to the arrangements made under this Agreement, which comes into force after the Commencement Date;
<b>"Claim"</b>	means for or in relation to the Joint Functions and Reserved 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;
<b>"Clinical Commissioning Policies"</b>	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;
<b>"Clinical Reference Groups"</b>	means a group consisting of clinicians, commissioners, public health experts, patient and public voice representatives and professional associations, which offers specific knowledge and expertise on the best ways that Services detailed in Schedule 4 should be provided;
<b>"Collaborative Commissioning Agreement"</b>	means an agreement under which NHS Commissioners set out collaboration arrangements in respect of commissioning Services detailed in Schedule 4;
<b>"Commencement Date"</b>	{means 1 April 2023};
<b>"Commissioning Functions"</b>	the respective statutory functions of the Partners in arranging for the provision of services as part of the health service;
<b>"Confidential Information"</b>	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 arrangements made pursuant to it and:  (a) which comprises Personal Data or which relates to any patient or his treatment or medical history;  (b) the release of which is likely to prejudice the commercial interests of a Partner; or

	(c) which is a trade secret;
<b>“Contracting Standard Operating Procedure”</b>	means the Contracting Standard Operating Procedure produced by NHS England in respect of the Services detailed in Schedule 4;
<b>“Core Membership”</b>	means the voting membership of the Joint Committee as set out in the Terms of Reference;
<b>“Data Controller”</b>	shall have the same meaning as set out in the Data Protection Legislation;
<b>“Data Processor”</b>	shall have the same meaning as set out in the Data Protection Legislation;
<b>“Data Guidance”</b>	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 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 & Social Care, NHSE, the Health Research Authority, the UK Health Security Agency and the Information Commissioner;
<b>"Data Protection Legislation"</b>	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;
<b>“Data Protection Officer”</b>	shall have the same meaning as set out in the Data Protection Legislation;
<b>“Data Security and Protection Incident Reporting tool”</b>	the incident reporting tool for data security and protection incidents, which forms part of the Data Security and Protection Toolkit available at <a href="https://www.dsptoolkit.nhs.uk/">https://www.dsptoolkit.nhs.uk/</a> ;
<b>"Dispute Resolution Procedure"</b>	the procedure set out in Clause 17 (Dispute Resolution);
<b>“Finance Guidance”</b>	guidance, rules and operating procedures produced by ICBs that relate to these Joint Working Arrangements, including but not limited to the following: <ul style="list-style-type: none"> <li>- Commissioning Change Management Business Rules;</li> <li>- Contracting Standard Operating Procedure;</li> <li>- Cashflow Standard Operating Procedure;</li> <li>- Finance and Accounting Standard Operating Procedure;</li> <li>- Service Level Framework Guidance;</li> </ul>

<b>"FOIA "</b>	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;
<b>"ICB Functions"</b>	the Commissioning Functions of the ICB;
<b>"Information"</b>	has the meaning given under section 84 of FOIA;
<b>"Indemnity Arrangement"</b>	mean 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);
<b>"Information Sharing Agreement"</b>	any information sharing agreement entered into in accordance with Schedule 5 (Further Information Governance and Sharing Provisions);
<b>"Indemnity Arrangement"</b>	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);
<b>"Initial Term"</b>	the period of one year from 1 April 2023;
<b>"Joint Committee"</b>	means the joint committee of the ICBs, established under this Agreement on the terms set out in the Terms of Reference;
<b>"Joint Working Arrangements"</b>	means the arrangements for joint working as set out in Clause 3 (Scope of Joint Working Arrangements);
<b>"Joint Functions"</b>	as set out in Schedule 2, that shall be jointly exercised by the ICBs through the decisions of the Joint Committee in accordance with the Terms of Reference in Schedule 3;
<b>"Law"</b>	means: <ul style="list-style-type: none"> <li>(a) any statute or proclamation or any delegated or subordinate legislation;</li> <li>(b) any guidance, direction or determination with which the Partner(s) or relevant third party (as applicable) are bound to 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</li> <li>(c) any judgment of a relevant court of law which is a binding precedent in England;</li> </ul>
<b>"Mandated Guidance"</b>	means any protocol, policy, guidance, guidelines, framework or manual relating to the exercise of the Joint Functions and issued by NHSE from time to time as mandatory in respect of the Joint Working Arrangements. At the Commencement Date the Mandated Guidance in respect of the Joint Functions shall be as set out in Schedule 6;
<b>"National Standards"</b>	means the service standards for each Service, as set by NHSE and included in Clinical Commissioning Policies or National Specifications;

<b>“National Specifications”</b>	the service specifications published by NHSE in respect of Services detailed in Schedule 4 as applicable;
<b>“Need to Know”</b>	has the meaning set out in Schedule 5;
<b>“NHS Act”</b>	the National Health Service Act 2006;
<b>“NHS England Functions”</b>	NHSE’s statutory functions exercisable under or by virtue of the NHS Act;
<b>“Non-Personal Data”</b>	means data which is not Personal Data;
<b>“Oversight Framework”</b>	means the NHS Oversight Framework, as may be amended or replaced from time to time, and any relevant associated Guidance published by NHSE;
<b>“Partners”</b>	the parties to this Agreement;
<b>“Personal Data”</b>	has the meaning set out in the Data Protection Legislation;
<b>“Population”</b>	means the population for which an ICB or all of the ICBs have the responsibility for commissioning health services;
<b>“Regional Quality Group”</b>	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;
<b>“Regulatory or Supervisory Body”</b>	<p>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:</p> <ul style="list-style-type: none"> <li>(i) CQC;</li> <li>(ii) NHS England;</li> <li>(iii) the Department of Health and Social Care;</li> <li>(iv) NICE;</li> <li>(v) Healthwatch England and Local Healthwatch;</li> <li>(vi) the General Medical Council;</li> <li>(vii) the General Dental Council;</li> <li>(viii) the General Optical Council;</li> <li>(ix) the General Pharmaceutical Council;</li> <li>(x) the Healthcare Safety Investigation Branch; and</li> <li>(xi) the Information Commissioner;</li> </ul>

<b>“Relevant Information”</b>	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> ”;
<b>"Request for Information"</b>	has the meaning set out in the FOIA;
<b>“Reserved Functions”</b>	those aspects of the Specialised Commissioning Functions that are not Joint Functions, including but not limited to those set out in Schedule 6;
<b>“Relevant Clinical Networks”</b>	means those clinical networks identified by NHSE as required to support the commissioning of any Services detailed in Schedule 4 for the population;
<b>“Shared Care Arrangements”</b>	these arrangements support patients receiving elements of their care closer to home, whilst still ensuring that they have access to the expertise of a specialised centre and that care is delivered in line with the expectation of the relevant National Specification;
<b>“Single Point of Contact”</b>	the member of Staff appointed by each relevant Partner in accordance with the terms of reference in Schedule 3;
<b>“Special Category Personal Data”</b>	has the meaning set out in the Data Protection Legislation;
<b>“Commissioning Budget”</b>	means the budget identified by NHSE for the purpose of exercising the Joint Functions;
<b>“Specified Purpose”</b>	means the purpose for which the Relevant Information is shared and processed to facilitate the exercise of the Joint Functions and Reserved Functions as specified in Schedule 5 ( <i>Further Information Governance and Sharing Provisions</i> ) to this Agreement;
<b>“Services Staff”</b>	means the Staff carrying out the Joint Services Functions immediately prior to the date of this Agreement;
<b>“Staff”</b>	means the Partners’ employees, officers, elected members, directors, voluntary staff, consultants, and other contractors and sub-contractors acting on behalf of any Partner (whether or not the arrangements with such contractors and sub-contractors are subject to legally binding contracts) and such contractors’ and their sub-contractors’ personnel;
<b>“System quality group”</b>	means a group set up to identify and manage concerns across the local system. The system quality group shall act as a strategic forum at which partners from across the local health and social care footprint can share issues and risk information to inform response and management, identify and mitigate quality risks and concerns as well as share learning and best practice;
<b>"Term"</b>	the Initial Term, as may be varied by: <ul style="list-style-type: none"> <li>(a) any extensions to this Agreement that are agreed under Clause 1.1 (Commencement and Duration); or</li> <li>(b) the earlier termination of this Agreement in accordance with its terms;</li> </ul>
<b>“Terms of Reference”</b>	means the Terms of Reference for the Joint Committee agreed between the ICBs at the first meeting of the Joint Committee, a draft

of which is included at Schedule 3 (Joint Committee – Terms of Reference);

**“Triple Aim”**

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:

(a) the health and well-being of the people of England;

(b) the quality of services provided to individuals by the NHS;

(c) efficiency and sustainability in relation to the use of resources by the NHS;

**“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;

**"Working Day"**

any day other than Saturday, Sunday, a public or bank holiday in England.

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: JOINT COMMITTEE OPERATING MODEL AND ITS SUB GROUPS

### 1.Introduction

1.1 The Joint Committee will operate in 2 parts these being

- Part 1: Functions of NHSE that are not yet delegated to ICB's which are designated for formal joint working
- Part 2: Functions and services delegated to it from the individual ICBs

1.2 The Terms of Reference for any sub groups operating on behalf of the joint committee must be formally approved by the Joint Committee

1.3 By entering into this JWA ICBs agree to work collaboratively with regard to the services for which they have commissioning responsibility and/ or delegated responsibility from NHSE as set out in schedule 4.

1.4 ICBs will also enter into a JWA agreement with NHSE for the purpose of specialised.

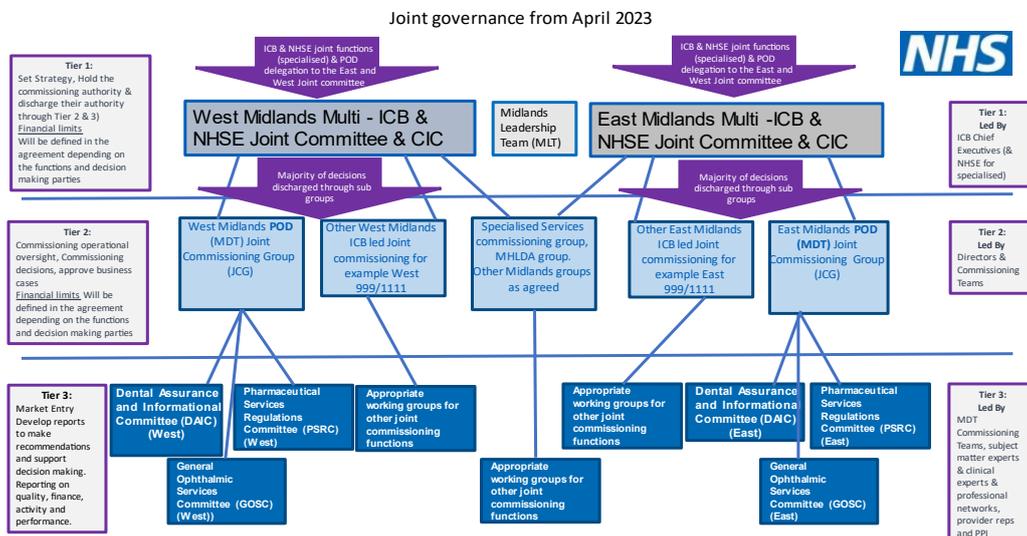
1.5 Both JWA align to the establishment of a single Joint Committee that will govern the discharging of the functions delegated to it.

1.6 The Joint Committee may at its determination establish a structure of commissioning groups/ subgroups through which the Joint Committee will discharge the functions delegated to it. An illustration of such a model can be seen below.

1.7 This illustration (figure 1 below) should not be considered as the exhaustive or approved structure the Joint Committee will approve the Scheme of Reservation and Delegation and Scheme of Matters Delegated to Officers that sets out how the powers/ functions and duties delegated to it are to be discharged.

1.8 The joint committee will set the parameters of the commissioning committees and subgroups and will approve the Terms of Reference of any aligned commissioning committee or subgroup.

Figure 1



**SCHEDULE 3: TIER 1 JOINT COMMITTEE – TERMS OF REFERENCE**

<b>Document name:</b>	<b>East/WEST</b> Midlands ICB Joint Committee Terms of Reference
<b>Senior Responsible Owner (SRO):</b>	[Insert]
<b>Lead:</b>	[Insert]
<b>Version</b> [Insert]	<b>Date:</b> [Publish Date]

Document management

**Revision history**

Version	Date	Summary of changes

**Approved by**

This document must be approved by the following people:

Name	Signature	Title	Date	Version

**Related documents**

Title	Owner	Location

<p><b>Introduction and purpose</b></p>	<p>The Joint Committee has been established by the ICBs as listed:</p> <p><b>NHS Birmingham &amp; Solihull Integrated Care Board ("Birmingham &amp; Solihull ICB"); and</b></p> <p><b>NHS Black Country Integrated Care Board ("Black Country ICB"); and</b></p> <p><b>NHS Herefordshire &amp; Worcestershire Integrated Care Board ("Herefordshire &amp; Worcestershire ICB"); and</b></p> <p><b>NHS Coventry &amp; Warwickshire Integrated Care Board ("Coventry &amp; Warwickshire ICB"); and</b></p> <p><b>NHS Shropshire, Telford &amp; Wrekin Integrated Care Board ("Shropshire, Telford &amp; Wrekin ICB"); and</b></p> <p><b>NHS Staffordshire &amp; Stoke-on-Trent Integrated Care Board ("Staffordshire &amp; Stoke-on-Trent ICB").</b></p> <p>In order to jointly discharge commissioning responsibilities covering the <b>EAST/west</b> Midlands geographical footprint defined in Schedule 4 of the Joint Working Agreement between the parties. This includes:-</p> <ul style="list-style-type: none"> <li>• Responsibilities for which the ICBs are responsible for (including those delegated to them by NHSE England). [PART B of the meeting].</li> <li>• The Joint Committee will collaboratively make decisions on the strategic planning and delivery, including resource allocation, oversight and assurance, to improve health and care outcomes and reduce health inequalities.</li> <li>• Subject to Clauses 6.1 and 6.2 of the Joint Working Agreement (Further Collaborative Working), the Partners may, to such extent that they consider it desirable, table an item at the Joint Committee relating to any other of their functions that is not a Joint Function to facilitate engagement, promote integration and collaborative working.</li> </ul> <p>The Partners may establish sub-groups or sub-committees of the Joint Committee, with such Terms of Reference as may be agreed between them. Any such arrangements that are in place at the commencement of the Joint Working Agreement may be documented in the Local Terms (Schedule 7).</p>
<p><b>The Terms of Reference</b></p>	<p>These Terms of Reference support effective collaboration between all Partners acting through this Joint Committee. They set out the role, responsibilities, membership, decision-making powers and reporting arrangements of the Joint Committee in accordance with the Joint Working Agreement between the ICBs, and ICBs &amp; NHSE.</p> <p>The Joint Committee will operate as the decision-making forum for exercising the agreed Joint Functions in accordance with the Joint Working Agreement.</p> <p>By agreement, the Partners may use an alternative title for the Joint Committee that reflects local arrangements, for example, 'Commissioning Committee.'</p>

<b>Statutory Framework</b>	<p>The Partners have arranged to exercise the Relevant Functions jointly pursuant to section 65Z5 of the NHS Act 2006.</p> <p>The Joint Committee is established pursuant to section 65Z6 of the NHS Act 2006. Apart from as set out in the Agreement, the Joint Committee does not affect, and must act in accordance with, the statutory responsibilities and accountabilities of the Partners.</p>
<b>Role of the Joint Committee</b>	<p>The role of the Joint Committee for Part A and Part B is to provide strategic decision-making, leadership and oversight for the Joint Working and Joint Commissioning services and any associated activities. The Joint Committee and aligned subsidiary arrangements will safely, effectively, efficiently and economically discharge the Joint Functions and deliver these services through the following key responsibilities:-</p> <ul style="list-style-type: none"> <li>• Making relevant joint decisions in relation to the planning and commissioning of the services, and any associated commissioning or statutory functions, for the population, for example, through undertaking population needs assessments;</li> <li>• Making recommendations on population-based services financial allocation and financial plans;</li> <li>• Identifying and setting strategic priorities and undertaking ongoing assessment and review of services within the remit of the Joint Committee and aligned subsidiary arrangements, including tackling unequal outcomes and access;</li> <li>• Supporting the development of partnership and integration arrangements with other health and care bodies that facilitate population health management and providing a forum that enables collaboration to integrate service pathways, improve population health and services and reduce health inequalities. This includes establishing links and working effectively with Provider Collaboratives and cancer alliances, and working closely with other ICBs, Joint Committees and NHSE where there are cross-border patient flows to providers;</li> <li>• Will provide strategic quality leadership and oversight for services outlined in Schedule 4</li> <li>• Determining the appropriate structure of subsidiary arrangements to enable:-</li> <li>• Oversight and assurance of the services in relation to quality, operational and financial performance, including co-ordinating risk / issue management or escalation; and developing the approach to intervention with Specialised Services Providers where there are quality or contractual issues;</li> <li>• Effective engagement with stakeholders, including patients and the public, and involving them in decision-making;</li> <li>• The input of appropriate clinical advice and leadership, including through Clinical Reference Groups and Relevant Clinical Networks;</li> <li>• Otherwise ensuring that the roles and responsibilities set out in the Agreement between the Partners are discharged in compliance with all statutory duties, guidance and good practice, including ensuring that the Joint Committee and aligned subsidiary arrangements have sufficient independent scrutiny of its decision-making and processes.</li> </ul> <p>The Joint Committee must adhere to these Terms of Reference and will operate the meeting in in two parts, these being</p> <p>PART A – NHSE &amp; ICB</p>

	<p>NHS England will be a Partner for the commissioning of Specialised Services defined under a separate Joint Working Agreement. ICB and NHSE under that agreement will make joint decisions for the benefit of the population</p> <p>PART B – ICB Only</p> <p>ICBs defined in the Tier One Joint Committee of the <b>East/West</b> Midlands will make decisions regarding all services outlined in Schedule 4 and will act as a forum for discussion and make recommendations to ICBs on issues where further joint action or working between ICBs would be of benefit outside the arrangements delegated to it.</p> <ul style="list-style-type: none"> <li>• Joint Policy development</li> <li>• Links to other regional structures such as Academic Health Science Networks and Clinical networks.</li> </ul>
<p><b>Accountability and reporting</b></p>	<p>The Joint Committee will be formally accountable to the Boards of the ICBs for the functions delegated to the Joint Committee through the Schemes of Reservation and Delegation (SORDs).</p> <p>Where an ICB Board requests that the Joint Committee provides information or reports on its proceedings or decisions, the Partners must comply with that request within a reasonable timescale.</p>
<p><b>Membership</b></p>	<p><u>Core Membership</u></p> <p>The following individuals will be the core members of the Joint Committee:-</p> <ul style="list-style-type: none"> <li>• An Authorised Officer (the CEO) from each ICB</li> <li>• A Chair or a Non-Executive Member from each ICB</li> </ul> <p>Each of the Core Members may nominate a named substitute to attend meetings if they are unavailable or unable to attend or because they are conflicted. Each of the Partners must ensure that the members nominated on their behalf (and any named substitutes) are of a suitable level of seniority and duly authorised to act on its behalf and to agree to be bound by the final position or decision taken at any meeting of the Joint Committee.</p> <p>One of the authorised officers from a single ICB will act as the Executive Lead for the Joint Committee, it is expected therefore that the Chair of the Joint Committee be nominated from another ICB.</p> <p><u>Discretionary Membership</u></p> <p>Each of the Partners may be represented at meetings by representatives (who may be officers or, in the case of an ICB, Non-Executive Members / Directors of the ICB) who may observe proceedings and contribute to the deliberations as required, but these will not have the right to vote. The Partners may also identify individuals or representatives of other organisations that may be invited to observe proceedings and contribute to the Joint Committee's deliberations as required. These representatives will not have the right to vote.</p> <p><u>Term of Membership</u></p> <p>Members (and any substitutes appointed) will hold their appointment until the partner they represent nominates an alternative member or they cease to hold their substantive role with the relevant partner.</p> <p><u>Membership Lists</u></p>

	<p>The Chair (or in the absence of a Chair, the Partners themselves) shall ensure that there is prepared (and updated from time to time) a list of the members and that this list is made available to the Partners.</p>
<b>Chair</b>	<p>At the first meeting of the Joint Committee, the Core Membership shall select a Chair, or joint Chairs, from among the membership.</p> <p>The Chair(s) shall hold office for a period of two years and be eligible for re-appointment for one further term. At the first scheduled meeting after the expiry of the Chair's term of office, the Core Membership will select a Chair, or joint Chairs, who will assume office at that meeting and for the ensuing term. If the Chair(s) is / are not in attendance at a meeting, the Core Membership will select one of the members to take the chair for that meeting.</p>
<b>Meetings</b>	<p>The Joint Committee shall meet at least quarterly.</p> <p>At its first meeting (and at the first meeting following each subsequent anniversary of that meeting) the Joint Committee shall prepare a schedule of meetings for the forthcoming year ("the Schedule"). The Chair(s), or in the absence of a Chair, the Partners themselves, shall see that the Schedule is notified to the members.</p> <p>Any of the Partners may call for a special meeting outside of the Schedule as they see fit, by giving notice of their request to the Chair. The Chair(s) may, following consultation with the Partners, confirm the date on which the special meeting is to be held and then issue a notice giving not less than four weeks' notice of the special meeting.</p>
<b>Quorum</b>	<p>A Joint Committee meeting is quorate if the following are in attendance:</p> <ul style="list-style-type: none"> <li>• at least one representative member (or substitute) from each ICB.</li> <li>• One NED member from any Partner ICB</li> </ul> <p>Attendance at meetings by telephone/video conferencing will count towards the quorum.</p>
<b>Decisions and veto.</b>	<p>The Committee must seek to make decisions relating to the exercise of the Joint Functions on a consensus basis. The Partners must ensure that matters requiring a decision are anticipated and that sufficient time is allowed prior to Joint Committee meetings for discussions and negotiations between Partners to take place.</p> <p>Where it has not been possible, despite the best efforts of the Core Membership, to come to a consensus decision on any matter before the Joint Committee, Chair of Part B (s) may require the decision to be put to a vote in accordance with the following provisions:-</p> <ul style="list-style-type: none"> <li>• For decisions each ICB will have one vote with decisions being made by a simple majority of those voting. Any disputes will be resolved using the dispute resolution process outline in sections 17 of the joint working agreement.</li> </ul>

<p><b>Conduct and conflicts of interest</b></p>	<p>Members will be expected to act consistently with existing statutory guidance, NHS Standards of Business Conduct and relevant organisational policies. The NHS Standards of Business Conduct policy is available from: <a href="https://www.england.nhs.uk/publication/standards-of-business-conduct-policy/">https://www.england.nhs.uk/publication/standards-of-business-conduct-policy/</a></p> <p>Members should act in accordance with the Nolan Principles (the Seven Principles of Public Life): <a href="https://www.gov.uk/government/publications/the-7-principles-of-public-life">https://www.gov.uk/government/publications/the-7-principles-of-public-life</a></p> <p>Members should refer to and act consistently with the NHSE guidance: <i>Managing Conflicts of Interest in the NHS: Guidance for staff and organisations</i>. See: <a href="https://www.england.nhs.uk/ourwork/coi/">https://www.england.nhs.uk/ourwork/coi/</a></p> <p>Where any member has an actual or potential conflict of interest in relation to any matter under consideration, the Chair (with appropriate advice) will determine the appropriate action to be taken in line with the principles of proportionality and preserving the spirit of collaborative decision making. Such action could include the member not participating in meetings (or parts of meetings) in which the relevant matter is discussed, or from the decision making and/or voting on the relevant item. A Partner whose Authorised Officer is conflicted in this way may secure . that their named substitute attends the meeting (or part of meeting) in the place of that member. A record of how the conflict has been managed will be recorded in the minutes.</p>
<p><b>Confidentiality of proceedings</b></p>	<p>The Committee is not subject to the Public Bodies (Admissions to Meetings) Act 1960. Admission to meetings is at the discretion of the Partners.</p> <p>All members in attendance are required to give due consideration to the possibility that the material presented to the meeting, and the content of any discussions, may be confidential or commercially sensitive, and to not disclose information or the content of deliberations outside of the meeting's membership, without the prior agreement of the Partners.</p>
<p><b>Publication of notices, minutes and papers</b></p>	<p>The Partners shall provide sufficient resources, administration and secretarial support to ensure the proper organisation and functioning of the Committee.</p> <p>The Chair(s), or in the absence of a Chair, the Partners themselves, shall see that notices of meetings, together with an agenda listing the business to be conducted and supporting documentation, is issued to the Partners one working week (or, in the case of a special meeting, three calendar days prior to the date of the meeting).</p> <p>The proceedings and decisions taken shall be recorded in minutes, and those minutes circulated in draft form within one week of the date of the meeting. The Committee shall confirm those minutes at its next meeting.</p>
<p><b>Review of the Terms of Reference</b></p>	<p>These terms of reference will be reviewed within twelve months of the committee's establishment and then at least annually thereafter.</p> <p>Any changes to the committee's decision-making membership or core functions must be approved by the partners. Other changes to the terms of reference may be agreed by the committee and reported to the Partners for assurance.</p>
<p><b>Date of Approval of Terms of Reference</b></p>	<p>TBC</p>

## **SCHEDULE 4: SCHEDULE OF SERVICES**

### **4A Dental Services**

The Joint functions in respect of Dental Care services are those delegated to the ICBs by NHSE which are, in summary:-

- Decisions in relation to the commissioning and management of Primary Prescribed Community Dental Services;
- Planning Primary Dental Services in the Area, in compliance with Mandated Guidance issued by NHS England, including carrying out needs assessments;
- Undertaking reviews of Primary Dental Services in the Area;
- Management of Dental Services Contracts in order to secure the needs of people who use the services, improve the quality of services and improve efficiency in the provision of the services including by:-
  - Reviewing and monitoring spending on services provided pursuant to Dental Services Contracts in the Area;
  - Reviewing and monitoring spending on Primary Dental Services commissioned in the Area;
  - Assessing quality and outcomes (including clinical effectiveness, patient experience and patient safety);
  - Managing variations to the relevant Dental Services Contract or services in accordance with national policy, service user needs and clinical developments;
  - Agreeing information and reporting requirements and managing information breaches (which will include use of the NHS Digital Data Security and Protection Toolkit);
  - Undertaking annual contract activity negotiations, including agreeing local prices, managing agreements or proposals for local variations and local modifications;
  - Conducting review meetings and undertaking contract management including the issuing of contract queries and agreeing any remedial action plan or related contract management processes;
  - Allocating sufficient resources for undertaking contract mediation; and
  - Complying with and implementing any relevant Mandated Guidance issued from time to time.
  - Taking timely action to enforce contractual breaches, serve notices or provide discretionary support ensure that it obtains value for money on behalf of NHS England, including by avoiding making any double payments under any Dental Services Contracts and reducing the number of contracts which are under-delivering so that funds can be reallocated to meet local oral health needs;
- Planning of the Provider landscape for Dental services, including considering and taking decisions in relation to:-
  - Establishing new Dental Services Providers in the Area;
  - managing Dental Services Providers providing inadequate standards of patient care;
  - the procurement or award of new Dental Services Contracts (in accordance with any procurement protocol or Guidance issued by NHS England from time to time); and
  - closure of practices.
- Management of the Delegated Funds for Primary Dental Services in the Area;
- Co-ordinating a common approach to the commissioning and delivery of Primary Dental Services with other health and social care bodies in respect of the Area where appropriate including working with NHS England to coordinate the exercise of their respective performance management functions and with a view to achieving greater integration of dentists into the Integrated Care System at the Primary Care Network level; and
- Such other ancillary activities that are necessary in order to exercise the Delegated Functions.

### **4B Pharmacy Services**

The Joint functions in respect of Pharmaceutical services are those delegated to the ICBs by NHSE which are, in summary:-

- Decisions in relation to the commissioning and management of Primary Prescribed Community Pharmaceutical Services;
- Planning Primary Pharmaceutical Services in the Area, in compliance with Mandated Guidance issued by NHS England, including carrying out needs assessments;
- Undertaking reviews of Primary Pharmaceutical Services in the Area;

- Maintaining and submitting Practitioners list of persons who have undertaken to provide pharmaceutical services from premises situated within the Area, including the provision of drugs, appliances, Electronic Prescription Service (Known as the “Pharmaceutical Lists)
- Managing and determining applications for inclusion in a Pharmaceutical List
- Overseeing the compliance of those included in the Pharmaceutical Lists exercising powers in respect of Performance Related Sanctions and Market Exit
- Management of Pharmaceutical Services Contracts in order to secure the needs of people who use the services, improve the quality of services and improve efficiency in the provision of the services including by:-
  - Reviewing and monitoring spending on services provided pursuant to Pharmaceutical Services Contracts in the Area;
  - Reviewing and monitoring spending on Primary Pharmaceutical Services commissioned in the Area;
  - Assessing quality and outcomes (including clinical effectiveness, patient experience and patient safety);
  - Managing variations to the relevant Pharmaceutical Services Contract or services in accordance with national policy, service user needs and clinical developments;
  - Agreeing information and reporting requirements and managing information breaches (which will include use of the NHS Digital Data Security and Protection Toolkit);
  - Undertaking annual contract activity negotiations, including agreeing local prices, managing agreements or proposals for local variations and local modifications;
  - Conducting review meetings and undertaking contract management including the issuing of contract queries and agreeing any remedial action plan or related contract management processes;
  - Allocating sufficient resources for undertaking contract mediation; and
  - Complying with and implementing any relevant Mandated Guidance issued from time to time.
  - Taking timely action to enforce contractual breaches, serve notices or provide discretionary support ensure that it obtains value for money on behalf of NHS England, including by avoiding making any double payments under any Pharmaceutical Services Contracts and reducing the number of contracts which are under-delivering so that funds can be reallocated to meet local pharmaceutical health needs;
- Planning of the Provider landscape for Pharmaceutical Services, including considering and taking decisions in relation to:-
  - Establishing new Pharmaceutical Services Providers in the Area;
  - managing Pharmaceutical Services Providers providing inadequate standards of patient care;
  - the procurement or award of new Pharmaceutical Services Contracts (in accordance with any procurement protocol or Guidance issued by NHS England from time to time); and
  - closure of practices.
- Management of the Delegated Funds for Primary Pharmaceutical Services in the Area;
- Co-ordinating a common approach to the commissioning and delivery of Primary Pharmaceutical Services with other health and social care bodies in respect of the Area where appropriate including working with NHS England to coordinate the exercise of their respective performance management functions and with a view to achieving greater integration of dentists into the Integrated Care System at the Primary Care Network level; and
- Such other ancillary activities that are necessary in order to exercise the Delegated Functions.

#### **4C Primary Ophthalmic Services**

The Joint functions in respect of Primary Ophthalmic Services are those delegated to the ICBs by NHSE which are, in summary:-

- Decisions in relation to the commissioning and management of Primary Ophthalmic Services;
- Planning Primary Ophthalmic Services in the Area, in compliance with Mandated Guidance issued by NHS England, including carrying out needs assessments;
- Undertaking reviews of Primary Ophthalmic Services in the Area;
- Management of Primary Ophthalmic Services Contracts in order to secure the needs of people who use the services, improve the quality of services and improve efficiency in the provision of the services including by:-

- Reviewing and monitoring spending on services provided pursuant to Primary Ophthalmic Services Contracts in the Area;
- Reviewing and monitoring spending on Primary Ophthalmic Services commissioned in the Area;
- Assessing quality and outcomes (including clinical effectiveness, patient experience and patient safety);
- Managing variations to the relevant Primary Ophthalmic Services Contract or services in accordance with national policy, service user needs and clinical developments;
- Agreeing information and reporting requirements and managing information breaches (which will include use of the NHS Digital Data Security and Protection Toolkit);
- Undertaking annual contract activity negotiations, including agreeing local prices, managing agreements or proposals for local variations and local modifications;
- Conducting review meetings and undertaking contract management including the issuing of contract queries and agreeing any remedial action plan or related contract management processes;
- Allocating sufficient resources for undertaking contract mediation; and
- Complying with and implementing any relevant Mandated Guidance issued from time to time.
- Taking timely action to enforce contractual breaches, serve notices or provide discretionary support ensure that it obtains value for money on behalf of NHS England, including by avoiding making any double payments under any Primary Ophthalmic Services Contracts and reducing the number of contracts which are under-delivering so that funds can be reallocated to meet local eye health needs;
- Planning of the Provider landscape for Primary Ophthalmic Services, including considering and taking decisions in relation to:-
  - Establishing new Primary Ophthalmic Services Providers in the Area;
  - managing Primary Ophthalmic Services Providers providing inadequate standards of patient care;
  - the procurement or award of new Primary Ophthalmic Services Contracts (in accordance with any procurement protocol or Guidance issued by NHS England from time to time); and
  - closure of practices.
- Management of the Delegated Funds for Primary Ophthalmic Services in the Area;
- Co-ordinating a common approach to the commissioning and delivery of Primary Ophthalmic Services with other health and social care bodies in respect of the Area where appropriate including working with NHS England to coordinate the exercise of their respective performance management functions and with a view to achieving greater integration of dentists into the Integrated Care System at the Primary Care Network level; and
- Such other ancillary activities that are necessary in order to exercise the Delegated Functions.

## **SCHEDULE 5: FURTHER INFORMATION GOVERNANCE AND SHARING PROVISIONS**

### **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 Data Sharing Agreements entered into under it 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 Functions and NHSE's Reserved Functions.
- 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 Joint Specialised 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, in particular, 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 handled at all times 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 Personal Data 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. In order 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. giving consideration to 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 cooperate 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 Personal Data 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.

Each Party shall provide evidence (further to any reasonable request) that all personnel 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.

- 7.4. The Partners shall ensure that:
  - 7.4.1. only those Staff involved in delivery of the Agreement use or have access to the Relevant Information; and
  - 7.4.2. 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
  - 7.4.3. specific limitations on the Staff who may have access to the Information are set out in any Data Sharing Agreement entered into 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 cooperate in exploring alternative strategies to avoid the use of Personal Data in order 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
  - 8.4.1. 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
  - 8.4.2. becomes aware of 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 cooperate 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;
  - 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. In particular, 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 in order 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 into 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, so as to ensure that the correct patient record / data is identified.
- 9.4. Any other special measures relating to security of transfer should be specified in a Data Sharing Agreement entered into in accordance with this Schedule.
- 9.5. Each Partner shall keep an audit log of Relevant Information transmitted and received in the course of 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 cross cut 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 the Single Points of Contact and the Joint Committee. Complaints about information sharing shall be routed through each Partners’ own complaints procedure unless otherwise provided for in the Joint Working Arrangements or determined by the Joint Committee.

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: MANDATED GUIDANCE**

### **Generally applicable Mandated Guidance**

- National Guidance on System Quality Groups.
- Managing Conflicts of Interest in the NHS.
- Arrangements for Delegation and Joint Exercise of Statutory Functions.
- Guidance relating to procurement and provider selection.
- IG Guidance relating to serious incidents.
- All other applicable IG and Data Protection Guidance.
- Any applicable Freedom of Information protocols.
- Any applicable guidance on Counter Fraud, including from The NHS Counter Fraud Authority.
- Any applicable guidance relating to the use of data and data sets for reporting.

### **Workforce**

- Guidance on the Employment Commitment.

### **Finance**

- Guidance on NHS System Capital Envelopes.
- Managing Public Money (HM Treasury).

### **Specialised Services Mandated Guidance**

- Commissioning Change Management Business Rules.
- Cashflow Standard Operating Procedure.
- Finance and Accounting Standard Operating Procedure.
- Provider Collaborative Guidance.
- Clinical Commissioning Policies.
- National Specifications.
- National Standards.
- The 'Manual' for Specialised Commissioning.

## **SCHEDULE 7: LOCAL TERMS**

Guidance notes are provided in red text and can be deleted prior to completing the agreement.

This Schedule should be used by the Partners to agree local terms to the Agreement. Headings and guidance have been provided for areas that may need local agreement. Additional headings can be added as required to support local arrangements.

Sufficient detail should be provided to describe what ICBs have agreed to do, including any role of the relevant Joint Committee, where required.

### **General**

Where there is a dispute as to the content of this Schedule, the Partners should follow the Disputes Resolution procedure set out at Clause 18.

Following signature of the Agreement, this Schedule can be amended by the Partners using the Variations procedure at Clause 10.

### **Part 1 – Further Governance Arrangements**

The Partners can use this Part for any governance arrangements not covered by the main agreement or the existing Schedules.

It is advised that sub-committees (those forums with decision-making power) and sub-groups (those forums without decision-making power, but are advisory in nature) are set out in this part. It is advised that the role, purpose and membership of the sub-committees or sub-groups are set out in this part.