

Dated _____ 2025

(1) **NHS ENGLAND**

- and -

(2) **NHS DERBY AND DERBYSHIRE INTEGRATED CARE BOARD**

**Delegation Agreement between NHS England and
NHS Derby and Derbyshire ICB in relation to
Specialised Commissioning Functions**

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DELEGATION AGREEMENT FOR SPECIFIED FUNCTIONS

1. PARTICULARS

- 1.1 This Agreement records the particulars of the agreement made between NHS England and the Integrated Care Board (ICB) named below.

Integrated Care Board	NHS Derby and Derbyshire Integrated Care Board
Area	Derbyshire and Derby City
Date of Agreement	[Date]
ICB Representative	Chris Clayton, Chief Executive
ICB Email Address for Notices	chris.clayton@nhs.net
NHS England Representative	Dale Bywater, Regional Director (Midlands)
NHS England Email Address for Notices	england.midlandscorporate@nhs.net

- 1.2 This Agreement comprises:
- 1.2.1 the Particulars (Clause 1);
 - 1.2.2 the Terms and Conditions (Clauses 2 to 32);
 - 1.2.3 the Schedules; and
 - 1.2.4 the Mandated Guidance

Signed by **NHS England**
Dale Bywater
Regional Director – Midlands
(for and on behalf of NHS England)

Signed by **NHS Derby and Derbyshire Integrated Care Board**
[Insert name of Authorised Signatory]
[Insert title of Authorised Signatory]
[for and on behalf of] NHS Derby and Derbyshire Integrated Care Board

TERMS AND CONDITIONS

2. INTERPRETATION

- 2.1 This Agreement is to be interpreted in accordance with Schedule 1 (*Definitions and Interpretation*).
- 2.2 If there is any conflict or inconsistency between the provisions of this Agreement, that conflict or inconsistency must be resolved according to the following order of priority:
- 2.2.1 the Developmental Arrangements;
 - 2.2.2 the Particulars and Terms and Conditions (Clauses 1 to 32);
 - 2.2.3 Mandated Guidance;
 - 2.2.4 all Schedules excluding Developmental Arrangements and Local Terms; and
 - 2.2.5 Local Terms.
- 2.3 This Agreement constitutes the entire agreement and understanding between the Parties relating to the Delegation and supersedes all previous agreements, promises and understandings between them, whether written or oral, relating to its subject matter.
- 2.4 Where it is indicated that a provision in this Agreement is not used, that provision is not relevant and has no application in this Agreement.
- 2.5 Where a particular clause is included in this Agreement but is not relevant to the ICB because that clause relates to matters which do not apply the ICB (for example, if the clause only relates to functions that are not Delegated Functions in respect of the ICB), that clause is not relevant and has no application to this Agreement.

3. BACKGROUND

- 3.1 NHS England has statutory functions (duties and powers) conferred on it by legislation to make arrangements for the provision of prescribed services known as Specialised Services. These services support people with a range of rare and complex conditions. They are currently set out in the Prescribed Specialised Services Manual. The legislative basis for identifying these Specialised Services is Regulation 11 and Schedule 4 of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012/2996.
- 3.2 The ICBs have statutory functions to make arrangements for the provision of services for the purposes of the NHS in their Areas, apart from those commissioned by NHS England.
- 3.3 Pursuant to section 65Z5 of the NHS Act, NHS England is able to delegate responsibility for carrying out its Commissioning Functions to an ICB. NHS England will remain accountable to Parliament for ensuring that statutory requirements to commission all Specialised Services, and duties set out in the mandate, are being met.
- 3.4 By this Agreement, NHS England delegates the functions of commissioning certain Specialised Services (the “Delegated Functions”) to the ICB under section 65Z5 of the NHS Act.
- 3.5 This Agreement also sets out the elements of commissioning those Specialised Services for which NHS England will continue to have responsibility (the “Reserved Functions”).
- 3.6 Arrangements made under section 65Z5 may be made on such terms and conditions (including terms as to payment) as may be agreed between NHS England and the ICB.

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3.7 This Agreement sets out the terms that apply to the exercise of the Delegated Functions by the ICB. It also sets out each Party's responsibilities and the measures required to ensure the effective and efficient exercise of the Delegated Functions and Reserved Functions.

4. TERM

4.1 This Agreement has effect from the Date of Agreement set out in the Particulars and will remain in force unless terminated in accordance with Clause 27 (*Termination*) below.

5. PRINCIPLES

5.1 In complying with the terms of this Agreement, NHS England and the ICB must:

5.1.1 at all times have regard to the Triple Aim;

5.1.2 at all times act in good faith and with integrity towards each other;

5.1.3 consider how they can meet their 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;

5.1.4 consider how in performing their obligations they can address health inequalities;

5.1.5 at all times exercise functions effectively, efficiently and economically;

5.1.6 act in a timely manner;

5.1.7 share information and Best Practice, and work collaboratively to identify solutions and enhance the evidence base for the commissioning and provision of health services, eliminate duplication of effort, mitigate risk and reduce cost; and

5.1.8 have regard to the needs and views of the other Party and as far as is lawful and reasonably practicable, take such needs and views into account.

6. DELEGATION

6.1 In accordance with its statutory powers under section 65Z5 of the NHS Act, NHS England hereby delegates the exercise of the Delegated Functions to the ICB to empower it to commission a range of services for its Population, as further described in this Agreement ("Delegation").

6.2 The Delegated Functions are the functions described as being delegated to the ICB as have been identified and included within Schedule 3 to this Agreement but excluding the Reserved Functions set out within Schedule 4.

6.3 The Delegation in respect of each Delegated Function has effect from the Effective Date of Delegation.

6.4 Decisions of the ICB in respect of the Delegated Functions and made in accordance with the terms of this Agreement shall be binding on NHS England and the ICB.

6.5 To the extent that this Agreement applies:

6.5.1 The ICB must ensure that its officers or employees do not make statutory or financial decisions that allocate NHS England resources.

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- 6.5.2 NHS England must ensure that its officers or employees do not make statutory or financial decisions that allocate ICB resources, except as provided for in this Agreement.
- 6.6 Unless expressly provided for in this Agreement, the ICB is not authorised to take any step or make any decision in respect of Reserved Functions. Any such purported decision of the ICB is invalid and not binding on NHS England unless ratified in writing by NHS England in accordance with the NHS England Scheme of Delegation and Standing Financial Instructions.
- 6.7 NHS England may, acting reasonably and solely to the extent that the decision relates to the Delegated Functions, substitute its own decision for any decision which the ICB purports to make where NHS England reasonably considers that the impact of the ICB decision could cause the ICB to be acting unlawfully, in breach of this Agreement including Mandated Guidance, or in breach of any Contract. The ICB must provide any information, assistance and support as NHS England requires to enable it to determine whether to make any such decision.
- 6.8 The terms of Clauses 6.5, 6.6 and 6.7 are without prejudice to the ability of NHS England to enforce the terms of this Agreement or otherwise take action in respect of any failure by the ICB to comply with this Agreement.

7. EXERCISE OF DELEGATED FUNCTIONS

- 7.1 The ICB must establish effective, safe, efficient and economic arrangements for the discharge of the Delegated Functions.
- 7.2 The ICB agrees that it will exercise the Delegated Functions in accordance with:
 - 7.2.1 the terms of this Agreement;
 - 7.2.2 Mandated Guidance;
 - 7.2.3 any Contractual Notices;
 - 7.2.4 the Local Terms;
 - 7.2.5 any Developmental Arrangements;
 - 7.2.6 all applicable Law and Guidance;
 - 7.2.7 the ICB's constitution;
 - 7.2.8 the requirements of any assurance arrangements made by NHS England; and
 - 7.2.9 Good Practice.
- 7.3 The ICB must perform the Delegated Functions in such a manner:
 - 7.3.1 so as to ensure NHS England's compliance with NHS England's statutory duties in respect of the Reserved Functions and to enable NHS England to fulfil its Reserved Functions; and
 - 7.3.2 having regard to NHS England's accountability to the Secretary of State and Parliament in respect of both the Delegated Functions and Reserved Functions; and
 - 7.3.3 so as to ensure that the ICB complies with its statutory duties and requirements including those duties set out in Section 14Z32 to Section 14Z44 of the NHS Act and the NICE Regulations.

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- 7.4 In exercising the Delegated Functions, the ICB must comply with all Mandated Guidance as set out in this Agreement or as otherwise may be issued by NHS England from time to time including, but not limited to, ensuring compliance with National Standards and following National Specifications.
- 7.5 Where Developmental Arrangements conflict with any other term of this Agreement, the Developmental Arrangements shall take precedence until such time as NHS England agrees to the removal or amendment of the relevant Developmental Arrangements in accordance with Clause 26 (*Variations*).
- 7.6 The ICB must develop an operational scheme(s) of delegation defining those individuals or groups of individuals, including committees, who may discharge aspects of the Delegated Functions. For the purposes of this clause, the ICB may include the operational scheme(s) of delegation within its general organisational scheme of delegation.
- 7.7 NHS England may by Contractual Notice allocate Contracts to the ICB such that they are included as part of the Delegation. The Delegated Functions must be exercised both in respect of the relevant Contract and any related matters concerning any Specialised Service Provider that is a party to a Contract. NHS England may add or remove Contracts where this is associated with an extension or reduction of the scope of the Delegated Functions.
- 7.8 Subsequent to the Effective Date of Delegation and for the duration of this Agreement, unless otherwise agreed any new Contract entered into in respect of the Delegated Functions shall be managed by the ICB in accordance with the provisions of this Agreement.
- 7.9 Subject to the provisions of this Agreement, the ICB may determine the arrangements for the exercise of the Delegated Functions.

8. REQUIREMENT FOR ICB COLLABORATION ARRANGEMENT

- 8.1 Subject to the provisions of Clause 12 (*Further Arrangements*), the ICB must establish appropriate ICB Collaboration Arrangements with other ICBs in order to ensure that the commissioning of the Delegated Services can take place across an appropriate geographical footprint for the nature of each particular Delegated Service with consideration of population size, provider landscape and patient flow. Such ICB arrangements in respect of the Delegated Functions must be approved in advance by NHS England.
- 8.2 The ICB must establish, as part of or separate to the arrangements set out in Clause 8.1, an agreement that sets out the arrangements in respect of the Commissioning Team as required by Clause 13.
- 8.3 The ICB must participate in discussions, review evidence and provide objective expert input to the best of their knowledge and ability, and endeavour to reach a collective view with the other ICBs within the ICB Collaboration Arrangement. The members of the ICB Collaboration Arrangement shall have a collective responsibility for the operation of the ICB Collaboration Arrangement.
- 8.4 The ICB shall ensure that any ICB Collaboration Arrangement is documented and such documentation must include (but is not limited to) the following:
 - 8.4.1 membership which is limited solely to ICBs unless otherwise approved by NHS England;
 - 8.4.2 clear governance arrangements including reporting lines to the ICBs' Boards;

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- 8.4.3 provisions for independent scrutiny of decision making;
 - 8.4.4 the Delegated Functions or elements thereof which are the subject of the arrangements;
 - 8.4.5 the Delegated Services which are subject to the arrangements;
 - 8.4.6 financial arrangements and any pooled fund arrangements;
 - 8.4.7 data sharing arrangements including evidence of a Data Protection Impact Assessment;
 - 8.4.8 terms of reference for decision making; and
 - 8.4.9 limits on onward delegation.
- 8.5 The ICB must not terminate an ICB Collaboration Arrangement in respect of the Delegated Functions without the prior written approval of NHS England.
9. **PERFORMANCE OF THE RESERVED FUNCTIONS AND COMMISSIONING SUPPORT ARRANGEMENTS**
- 9.1 NHS England will remain responsible for the performance of the Reserved Functions.
 - 9.2 For the avoidance of doubt, the Parties acknowledge that the Delegation may be amended, and additional functions may be delegated to the ICB, in which event consequential changes to this Agreement shall be agreed with the ICB pursuant to Clause 26 (*Variations*) of this Agreement.
 - 9.3 Where it considers appropriate NHS England will work collaboratively with the ICB when exercising the Reserved Functions.
 - 9.4 If there is any conflict or inconsistency between functions that are named as Delegated Functions and functions that are named as Reserved Functions, then such functions shall be interpreted as Reserved Functions unless and until NHS England confirms otherwise. If an ICB identifies such a conflict or inconsistency, it will inform NHS England as soon as is reasonably practicable.
 - 9.5 The Parties acknowledge that they may agree for the ICB to provide Administrative and Management Services to NHS England in relation to certain Reserved Functions and Retained Services in order to assist in the efficient and effective exercise of such functions. Any such Commissioning Team Arrangements shall be set out in writing.
 - 9.6 Notwithstanding any arrangement for or provision of Administrative and Management Services in respect of the Retained Services and Reserved Functions, NHS England shall retain statutory responsibility for, and be accountable for, the commissioning of the Retained Services.
 - 9.7 The Parties acknowledge that they may agree for NHS England to provide Administrative and Management Services to ICBs in relation to certain Delegated Functions and Delegated Services in order to assist in the efficient and effective exercise of such Delegated Functions. Any such Administrative and Management Services shall be set out in writing.
 - 9.8 Notwithstanding any arrangement for or provision of Administrative and Management Services in respect of the Delegated Services, the ICB shall retain delegated responsibility for the commissioning of the Delegated Services.
 - 9.9 Any arrangement made between the ICB and NHS England under Clauses 9.5 or 9.7 must be made in accordance with: Clause 6.5, Clause 10.14 and Paragraph 4.2 of Schedule 4.

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10. FINANCE

- 10.1 Without prejudice to any other provision in this Agreement, the ICB must comply with the Finance Guidance and any such financial processes as required by NHS England for the management, reporting and accounting of funds used for the purposes of the Delegated Functions.
- 10.2 The ICB acknowledges that it will receive funds from NHS England in respect of the Delegated Functions (the “Delegated Funds”) and that these are in addition to the funds allocated to it within its Annual Allocation.
- 10.3 Subject to Clause 10.4 and any provisions in the Schedules or Mandated Guidance, the ICB may use:
 - 10.3.1 its Annual Allocation and the Delegated Funds in the exercise of the Delegated Functions; and
 - 10.3.2 the Delegated Funds and its Annual Allocation in the exercise of the ICB's Functions other than the Delegated Functions.
- 10.4 The ICB's expenditure on the Delegated Functions must be sufficient to:
 - 10.4.1 ensure that NHS England is able to fulfil its functions, including without limitation the Reserved Functions, effectively and efficiently;
 - 10.4.2 meet all liabilities arising under or in connection with all Contracts in so far as they relate to the exercise of the Delegated Functions;
 - 10.4.3 appropriately commission the Delegated Services in accordance with Mandatory Guidance, National Specifications, National Standards and Guidance; and
 - 10.4.4 meet national commitments from time to time on expenditure on specific Delegated Functions.
- 10.5 NHS England may increase or reduce the Delegated Funds in any Financial Year, by sending a notice to the ICB of such increase or decrease:
 - 10.5.1 in order to take into account any monthly adjustments or corrections to the Delegated Funds that NHS England considers appropriate, including without limitation, adjustments following any changes to the Delegated Functions, changes in allocations, changes in Contracts, to implement Mandated Guidance or otherwise;
 - 10.5.2 in order to comply with a change in the amount allocated to NHS England by the Secretary of State pursuant to section 223B of the NHS Act;
 - 10.5.3 to take into account any Losses of NHS England for which the ICB is required to indemnify NHS England under Clause 17 (*Claims and Litigation*);
 - 10.5.4 to take into account any adjustments that NHS England considers appropriate (including without limitation in order to make corrections or otherwise to reflect notional budgets) to reflect funds transferred (or that should have been transferred) to the ICB in respect of the Delegated Functions or funds transferred (or that should have been transferred) to the ICB in respect of Administrative and Management Services; and
 - 10.5.5 in order to ensure compliance by NHS England with its obligations under the NHS Act (including, Part 11 of the NHS Act) or any action taken or direction made by the Secretary of State in respect of NHS England under the NHS Act.

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- 10.6 NHS England acknowledges that the intention of Clause 10.5 is to reflect genuine corrections and adjustments to the Delegated Funds and may not be used to change the allocation of the Delegated Funds unless there are significant or exceptional circumstances that would require such corrections or adjustments.
- 10.7 The ICB acknowledges that it must comply with its statutory financial duties, including those under Part 11 of the NHS Act to the extent that these sections apply in relation to the receipt of the Delegated Funds.
- 10.8 NHS England may in respect of the Delegated Funds:
- 10.8.1 notify the ICB regarding the required payment of sums by the ICB to NHS England in respect of charges referable to the valuation or disposal of assets and such conditions as to records, certificates or otherwise;
 - 10.8.2 by notice, require the ICB to take such action or step in respect of the Delegated Funds, in order to ensure compliance by NHS England of its duties or functions under the NHS (including Part 11 of the NHS Act) or any action taken or direction made by the Secretary of State under the NHS Act.
- 10.9 The Schedules to this Agreement may identify further financial provisions in respect of the exercise of the Delegated Functions.
- 10.10 NHS England may issue Mandated Guidance in respect of the financial arrangements in respect of the Delegated Functions.
- 10.11 NHS England will pay the Delegated Funds to the ICB using the revenue transfer process as used for the Annual Allocation or such other process as notified to the ICB from time to time.
- 10.12 Without prejudice to any other obligation upon the ICB, for the purposes of the Delegated Functions the ICB agrees that it must use its resources in accordance with:
- 10.12.1 the terms and conditions of this Agreement including any Mandated Guidance issued by NHS England from time to time in relation to the use of resources for the purposes of the Delegated Functions (including in relation to the form or contents of any accounts);
 - 10.12.2 any NHS payment scheme published by NHS England;
 - 10.12.3 the business rules as set out in NHS England's planning guidance or such other documents issued by NHS England from time to time;
 - 10.12.4 any Capital Investment Guidance;
 - 10.12.5 the HM Treasury Guidance *Managing Public Money* (dated September 2022) as replaced or updated from time to time; and
 - 10.12.6 any other Guidance published by NHS England with respect to the financial management of Delegated Functions.
- 10.13 Without prejudice to any other obligation upon the ICB, the ICB agrees that it must provide:
- 10.13.1 all information, assistance and support to NHS England in relation to the audit and/or investigation (whether internal or external and whether under Law or otherwise) in relation to the use of or payment of resources for the purposes of the Delegated Functions and the discharge of those functions;

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- 10.13.2 such reports in relation to the expenditure on the Delegated Functions as set out in Mandated Guidance, the Schedules to this Agreement or as otherwise required by NHS England.

Ledger access and use of financial data

- 10.14 NHS England and the ICB agree that they shall not access a financial ledger or other finance system that is operated by another organisation, or use data directly obtained from such a financial ledger or other finance system.
- 10.15 Clause 10.14 applies unless that access or use has been approved in advance by the organisation that operates that financial ledger or other finance system, or as is otherwise expressly provided for in this Agreement.

Pooled Funds

- 10.16 Subject to the provisions of this Agreement, the ICB may, for the purposes of exercising the Delegated Functions under this Agreement, establish and maintain a pooled fund(s) in respect of any part of the Delegated Funds with:
- 10.16.1 NHS England in accordance with sections 13V or 65Z6 of the NHS Act;
 - 10.16.2 one or more ICBs in accordance with section 65Z6 of the NHS Act as part of a Further Arrangement; or
 - 10.16.3 NHS England and one or more ICBs in accordance with section 13V of the NHS Act; and
 - 10.16.4 NHS England and one or more ICBs in accordance with section 65Z6 of the NHS Act.
- 10.17 Where the ICB has decided to enter into arrangements under Clause 10.16 the agreement must be in writing and must specify:
- 10.17.1 the agreed aims and outcomes of the arrangements;
 - 10.17.2 the payments to be made by each partner and how those payments may be varied;
 - 10.17.3 the specific Delegated Functions which are the subject of the arrangements;
 - 10.17.4 the Delegated Services which are subject to the arrangements;
 - 10.17.5 the duration of the arrangements and provision for the review or variation or termination of the arrangements;
 - 10.17.6 the arrangements in place for governance of the pooled fund; and
 - 10.17.7 the arrangements in place for assuring, oversight and monitoring of the ICB's exercise of the functions referred to in 10.17.3.
- 10.18 At the date of this Agreement, details of the pooled funds (including any terms as to the governance and payments out of such pooled fund) of NHS England and the ICB are set out in the Local Terms.

11. INFORMATION, PLANNING AND REPORTING

- 11.1 The ICB must provide to NHS England:

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- 11.1.1 such information or explanations in relation to the exercise of the Delegated Functions as required by NHS England from time to time; and
 - 11.1.2 all such information (and in such form), that may be relevant to NHS England in relation to the exercise by NHS England of its other duties or functions including, without limitation, the Reserved Functions.
- 11.2 The provisions of this Clause 11 are without prejudice to the ability of NHS England to exercise its other powers and duties in obtaining information from and assessing the performance of the ICB.

Forward Plan and Annual Report

- 11.3 Before the start of each Financial Year, the ICB must describe in its joint forward plan prepared in accordance with section 14Z52 of the NHS Act how it intends to exercise the Delegated Functions.
- 11.4 The ICB must report on its exercise of the Delegated Functions in its annual report prepared in accordance with section 14Z58 of the NHS Act.

Risk Register

- 11.5 The ICB must maintain a risk register in respect of its exercise of the Delegated Functions and periodically review its content. The risk register must follow such format as may be notified by NHS England to the ICB from time to time.

12. FURTHER ARRANGEMENTS

- 12.1 In addition to any ICB Collaboration Arrangement agreed in accordance with Clause 8 (*ICB Collaboration Arrangements*) the ICB must give due consideration to whether any of the Delegated 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 (“Further Arrangements”).
- 12.2 The ICB may only make Further Arrangements with another person (a “Sub-Delegate”) with the prior written approval of NHS England.
- 12.3 The approval of any Further Arrangements may:
- 12.3.1 include approval of the terms of the proposed Further Arrangements; and
 - 12.3.2 require conditions to be met by the ICB and the Sub-Delegate in respect of that arrangement.
- 12.4 All Further Arrangements must be made in writing.
- 12.5 The ICB must not terminate Further Arrangements without the prior written approval of NHS England.
- 12.6 If the ICB enters into a Further Arrangement it must ensure that the Sub-Delegate does not make onward arrangements for the exercise of any or all of the Delegated Functions without the prior written approval of NHS England.
- 12.7 The terms of this Clause 12 do not prevent the ICB from making arrangements for assistance and support in the exercise of the Delegated Functions with any person, where such arrangements reserve the consideration and making of any decision in respect of a Delegated Function to the ICB.
- 12.8 Where Further Arrangements are made, and unless NHS England has otherwise given specific prior written agreement, any obligations or duties on the part of the ICB under this Agreement that are relevant to those Further Arrangements shall also require the

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ICB to ensure that all Sub-Delegates comply with such obligations or duties and support the ICB in doing so.

13. STAFFING, WORKFORCE AND COMMISSIONING TEAMS

- 13.1 Where there is an arrangement for NHS England to provide Administrative and Management Services to the ICB, the ICB shall provide full co-operation with NHS England and enter into any necessary arrangements with NHS England and, where appropriate, other ICBs in respect of the Specialised Services Staff.
- 13.2 The ICB shall, if and where required by NHS England, enter into appropriate arrangements with NHS England in respect of the transfer of Specialised Services Staff.
- 13.3 The ICB shall, where appropriate, enter into an agreement with other ICBs, in order to establish arrangements in respect of the Commissioning Team. Where appropriate, this agreement may be included as part of the ICB Collaboration Arrangement entered into in accordance with Clause 8.

14. BREACH

- 14.1 If the ICB does not comply with the terms of this Agreement, then NHS England may:
 - 14.1.1 exercise its rights under this Agreement; and
 - 14.1.2 take such steps as it considers appropriate in the exercise of its other functions concerning the ICB.
- 14.2 Without prejudice to Clause 14.1, if the ICB does not comply with the terms of this Agreement (including if the ICB exceeds its delegated authority under the Delegation), NHS England may (at its sole discretion):
 - 14.2.1 waive its rights in relation to such non-compliance in accordance with Clause 14.3;
 - 14.2.2 ratify any decision in accordance with Clause 6.6;
 - 14.2.3 substitute a decision in accordance with Clause 6.7;
 - 14.2.4 amend Developmental Arrangements or impose new Developmental Arrangements;
 - 14.2.5 revoke the whole or part of the Delegation and terminate this Agreement in accordance with Clause 27 (*Termination*) below;
 - 14.2.6 exercise the Escalation Rights in accordance with Clause 15 (*Escalation Rights*); and/or
 - 14.2.7 exercise its rights under common law.
- 14.3 NHS England may waive any non-compliance by the ICB with the terms of this Agreement provided that the ICB provides a written report to NHS England as required by Clause 14.4 and, after considering the ICB's written report, NHS England is satisfied that the waiver is justified.
- 14.4 If:
 - 14.4.1 the ICB does not comply with this Agreement;
 - 14.4.2 the ICB considers that it may not be able to comply with this Agreement;

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14.4.3 NHS England notifies the ICB that it considers the ICB has not complied with this Agreement; or

14.4.4 NHS England notifies the ICB that it considers that the ICB may not be able to comply with this Agreement,

then the ICB must provide a written report to NHS England within ten (10) Operational Days of the non-compliance (or the date on which the ICB identifies that it may not be able to comply with this Agreement) setting out:

14.4.5 details of and reasons for the non-compliance (or likely non-compliance) with the Agreement and/or the Delegation; and

14.4.6 a plan for how the ICB proposes to remedy the non-compliance.

15. ESCALATION RIGHTS

15.1 If the ICB does not comply with this Agreement, NHS England may exercise the following Escalation Rights:

15.1.1 NHS England may require a suitably senior representative of the ICB to attend a review meeting within ten (10) Operational Days of NHS England becoming aware of the non-compliance; and

15.1.2 NHS England may require the ICB to prepare an action plan and report within twenty (20) Operational Days of the review meeting (to include details of the non-compliance and a plan for how the ICB proposes to remedy the non-compliance).

15.2 If NHS England does not comply with this Agreement, the ICB may require a suitably senior representative of NHS England to attend a review meeting within ten (10) Operational Days of the ICB making NHS England aware of the non-compliance.

15.3 Nothing in Clause 15 (*Escalation Rights*) will affect NHS England's right to substitute a decision in accordance with Clause 6.7, revoke the Delegation or terminate this Agreement in accordance with Clause 27 (*Termination*) below.

16. LIABILITY AND INDEMNITY

16.1 NHS England is liable in respect of any Losses arising in respect of NHS England's negligence, fraud, recklessness or deliberate breach in respect of the Delegated Functions and occurring after the Effective Date of Delegation and, if the ICB suffers any Losses in respect of such actions by NHS England, NHS England shall make such adjustments to the Annual Allocation (or other amounts payable to the ICB) in order to reflect any Losses suffered by the ICB (except to the extent that the ICB is liable for such Losses pursuant to Clause 16.3).

16.2 For the avoidance of doubt, NHS England remains liable for a Claim relating to facts, events or circumstances concerning the Delegated Functions before the Effective Date of Delegation.

16.3 The ICB is liable to (and shall pay) NHS England for any Losses suffered by NHS England that result from or arise out of the ICB's negligence, fraud, recklessness or breach of the Delegation (including any actions that are taken that exceed the authority conferred by the Delegation) or this Agreement. In respect of such Losses, NHS England may, at its discretion and without prejudice to any other rights, either require payment from the ICB or make such adjustments to the Delegated Funds pursuant to Clause 10.5. The ICB shall not be liable to the extent that the Losses arose prior to the Effective Date of Delegation.

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- 16.4 Each Party acknowledges and agrees that any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by the ICB of any Delegated Function are enforceable by or against the ICB only, in accordance with section 65Z5(6) of the NHS Act.
- 16.5 Each Party will at all times take all reasonable steps to minimise and mitigate any Losses or other matters for which one Party is entitled to be indemnified by or to bring a claim against the other under this Agreement.

17. CLAIMS AND LITIGATION

- 17.1 Nothing in this Clause 17 (*Claims and Litigation*) shall be interpreted as affecting the reservation to NHS England of the Reserved Functions.
- 17.2 Except in the circumstances set out in Clause 17.5 and subject always to compliance with this Clause 17 (*Claims and Litigation*), the ICB shall be responsible for and shall retain the conduct of any Claim.
- 17.3 The ICB must:
- 17.3.1 comply with any policy issued by NHS England from time to time in relation to the conduct of or avoidance of Claims and the pro-active management of Claims;
 - 17.3.2 if it receives any correspondence, issue of proceedings, claim document or other document concerning any Claim or potential Claim, immediately notify NHS England and send to NHS England all copies of such correspondence;
 - 17.3.3 co-operate fully with NHS England in relation to such Claim and the conduct of such Claim;
 - 17.3.4 provide, at its own cost, to NHS England all documentation and other correspondence that NHS England requires for the purposes of considering and/or resisting such Claim; and
 - 17.3.5 at the request of NHS England, take such actions or step or provide such assistance as may in NHS England's 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.
- 17.4 Subject to Clauses 17.3 and 17.5 the ICB is entitled to conduct the Claim in the manner it considers appropriate and is also entitled to pay or settle any Claim on such terms as it thinks fit.

NHS England Stepping into Claims

- 17.5 NHS England may, at any time following discussion with the ICB, send a notice to the ICB stating that NHS England will take over the conduct of the Claim and the ICB must immediately take all steps necessary to transfer the conduct of such Claim to NHS England unless and until NHS England transfers conduct back to the ICB. In such cases:
- 17.5.1 NHS England shall be entitled to conduct the Claim in the manner it considers appropriate and is also entitled to pay or settle any Claim on such terms as it thinks fit, provided that if NHS England wishes to invoke Clause 17.5.3 it agrees to seek the ICB's views on any proposal to pay or settle that Claim prior to finalising such payment or settlement; and

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- 17.5.2 the Delegation shall be treated as being revoked to the extent that and for so long as NHS England has assumed responsibility for exercising those of the Delegated Functions that are necessary for the purposes of having conduct of the Claim; and
- 17.5.3 NHS England may, at its discretion and without prejudice to any other rights, either require payment from the ICB for such Claim Losses or make an adjustment to the Delegated Funds pursuant to Clause 10.5.3 for the purposes of meeting any Claim Losses associated with that Claim.

Claim Losses

- 17.6 The ICB and NHS England shall notify each other as soon as reasonably practicable of becoming aware of any Claim Losses.
- 17.7 The ICB acknowledges that NHS England will pay to the ICB the funds that are attributable to the Delegated Functions. Accordingly, the ICB acknowledges that it must pay any Claim Losses out of either the Delegated Funds or its Annual Allocation. NHS England may, in respect of any Claim Losses, at its discretion and without prejudice to any other rights, either require payment from the ICB for such Claim Losses or pursuant to Clause 10.5.3 make such adjustments to the Delegated Funds to take into account the amount of any Claim Losses (other than any Claim Losses in respect of which NHS England has retained any funds, provisions or other resources to discharge such Claim Losses). For the avoidance of doubt, in circumstances where NHS England suffers any Claim Losses, then NHS England shall be entitled to recoup such Claim Losses pursuant to Clause 10.5.3. If and to the extent that NHS England has retained any funds, provisions or other resources to discharge such Claim Losses, then NHS England may either use such funds to discharge the Claim Loss or make an upward adjustment to the amounts paid to the ICB pursuant to Clause 10.5.3.

18. **DATA PROTECTION, FREEDOM OF INFORMATION AND TRANSPARENCY**

- 18.1 The Parties must ensure that all Personal Data processed by or on behalf of them while carrying out the Delegated Functions and Reserved Functions is processed in accordance with the relevant Party's obligations under Data Protection Legislation and Data Guidance and the Parties must assist each other as necessary to enable each other to comply with these obligations.
- 18.2 The ICB must respond to any information governance breach in accordance with Information Governance Guidance for Serious Incidents. If the ICB 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 ICB must fully inform NHS England of the information governance breach. This clause does not require the ICB to provide NHS England with information which identifies any individual affected by the information governance breach where doing so would breach Data Protection Legislation.
- 18.3 Whether or not a Party 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 Parties acknowledge that a Party may act as both a Data Controller and a Data Processor.
- 18.4 NHS England may, from time to time, issue a data sharing protocol or update a protocol previously issued relating to the data sharing in relation to the Delegated Functions and/or Reserved Functions. The ICB shall comply with such data sharing protocols.
- 18.5 Each Party acknowledges that the other is a public authority for the purposes of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR").

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- 18.6 Each Party may be required by statute to disclose further information about the Agreement and the Relevant Information in response to a specific request under FOIA or EIR, in which case:
- 18.6.1 each Party shall provide the other with all reasonable assistance and co-operation to enable them to comply with their obligations under FOIA or EIR;
 - 18.6.2 each Party shall consult the other regarding the possible application of exemptions in relation to the information requested; and
 - 18.6.3 subject only to Clause 17 (*Claims and Litigation*), each Party acknowledges that the final decision as to the form or content of the response to any request is a matter for the Party to whom the request is addressed.
- 18.7 NHS England may, from time to time, issue a FOIA or EIR protocol or update a protocol previously issued relating to the handling and responding to of FOIA or EIR requests in relation to the Delegated Functions. The ICB shall comply with such FOIA or EIR protocols.
- 18.8 Schedule 6 (*Further Information Governance, Sharing and Processing Provisions*) makes further provision about information sharing, information governance and the Data Sharing Agreement.
19. **IT INTER-OPERABILITY**
- 19.1 The Parties will work together to ensure that all relevant IT systems they operate in respect of the Delegated Functions and Reserved Functions are inter-operable and that data may be transferred between systems securely, easily and efficiently.
- 19.2 The Parties will use their respective reasonable endeavours to help develop initiatives to further this aim.
20. **CONFLICTS OF INTEREST AND TRANSPARENCY ON GIFTS AND HOSPITALITY**
- 20.1 The ICB must ensure that, in delivering the Delegated 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 and other inducements and actual or potential conflicts of interest.
- 20.2 Without prejudice to the general obligations set out in Clause 20.1, the ICB must maintain a register of interests in respect of all persons making decisions concerning the Delegated Functions. This register must be publicly available. For the purposes of this clause, the ICB may rely on an existing register of interests rather than creating a further register.
21. **PROHIBITED ACTS AND COUNTER-FRAUD**
- 21.1 The ICB must not commit any Prohibited Act.
- 21.2 If the ICB or its Staff commits any Prohibited Act in relation to this Agreement with or without the knowledge of NHS England, NHS England will be entitled:
- 21.2.1 to revoke the Delegation;
 - 21.2.2 to recover from the ICB the amount or value of any gift, consideration or commission concerned; and
 - 21.2.3 to recover from the ICB any loss or expense sustained in consequence of the carrying out of the Prohibited Act.

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- 21.3 The ICB must put in place and maintain appropriate arrangements, including without limitation, Staff training, to address counter-fraud issues, having regard to any relevant Guidance, including from the NHS Counter Fraud Authority.
- 21.4 If requested by NHS England or the NHS Counter Fraud Authority, the ICB must allow a person duly authorised to act on behalf of the NHS Counter Fraud Authority or on behalf of NHS England to review, in line with the appropriate standards, any counter-fraud arrangements put in place by the ICB.
- 21.5 The ICB must implement any reasonable modifications to its counter-fraud arrangements required by a person referred to in Clause 21.4 in order to meet the appropriate standards within whatever time periods as that person may reasonably require.
- 21.6 The ICB must, on becoming aware of:
- 21.6.1 any suspected or actual bribery, corruption or fraud involving public funds; or
 - 21.6.2 any suspected or actual security incident or security breach involving Staff or involving NHS resources;
- promptly report the matter to NHS England and to the NHS Counter Fraud Authority.
- 21.7 On the request of NHS England or NHS Counter Fraud Authority, the ICB must allow the NHS Counter Fraud Authority or any person appointed by NHS England, as soon as it is reasonably practicable and in any event not later than five (5) Operational Days following the date of the request, access to:
- 21.7.1 all property, premises, information (including records and data) owned or controlled by the ICB; and
 - 21.7.2 all Staff who may have information to provide.
- relevant to the detection and investigation of cases of bribery, fraud or corruption, or security incidents or security breaches directly or indirectly in connection with this Agreement.

22. CONFIDENTIAL INFORMATION OF THE PARTIES

- 22.1 Except as this Agreement otherwise provides, Confidential Information is owned by the disclosing Party and the receiving Party has no right to use it.
- 22.2 Subject to Clauses 22.3 to 22.5, the receiving Party agrees:
- 22.2.1 to use the disclosing Party's Confidential Information only in connection with the receiving Party's performance under this Agreement;
 - 22.2.2 not to disclose the disclosing Party's Confidential Information to any third party or to use it to the detriment of the disclosing Party; and
 - 22.2.3 to maintain the confidentiality of the disclosing Party's Confidential Information.
- 22.3 The receiving Party may disclose the disclosing Party's Confidential Information:
- 22.3.1 in connection with any dispute resolution procedure under Clause 25;
 - 22.3.2 in connection with any litigation between the Parties;
 - 22.3.3 to comply with the Law;

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- 22.3.4 to any appropriate Regulatory or Supervisory Body;
 - 22.3.5 to its Staff, who in respect of that Confidential Information will be under a duty no less onerous than the receiving Party's duty under Clause 22.2;
 - 22.3.6 to NHS bodies for the purposes of carrying out their functions;
 - 22.3.7 as permitted under or as may be required to give effect to Clause 21 (*Prohibited Acts and Counter-Fraud*); and
 - 22.3.8 as permitted under any other express arrangement or other provision of this Agreement.
- 22.4 The obligations in Clauses 22.1 and 22.2 will not apply to any Confidential Information which:
- 22.4.1 is in, or comes into, the public domain other than by breach of this Agreement;
 - 22.4.2 the receiving Party can show by its records was in its possession before it received it from the disclosing Party; or
 - 22.4.3 the receiving Party can prove it obtained or was able to obtain from a source other than the disclosing Party without breaching any obligation of confidence.
- 22.5 This Clause 22 does not prevent NHS England making use of or disclosing any Confidential Information disclosed by the ICB where necessary for the purposes of exercising its functions in relation to the ICB.
- 22.6 The Parties acknowledge that damages would not be an adequate remedy for any breach of this Clause 22 by the receiving Party, and in addition to any right to damages the disclosing Party will be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this Clause 22.
- 22.7 This Clause 22 will survive the termination of this Agreement for any reason for a period of five (5) years.
- 22.8 This Clause 22 will not limit the application of the Public Interest Disclosure Act 1998 in any way whatsoever.
- 23. INTELLECTUAL PROPERTY**
- 23.1 The ICB grants to NHS England a fully paid-up, non-exclusive, perpetual licence to use the ICB Deliverables for the purposes of the exercise of its statutory and contractual functions.
 - 23.2 NHS England grants the ICB a fully paid-up, non-exclusive licence to use the NHS England Deliverables for the purpose of performing this Agreement and the Delegated Functions.
 - 23.3 The ICB must co-operate with NHS England to enable it to understand and adopt Best Practice (including the dissemination of Best Practice to other commissioners or providers of NHS services), and must supply such materials and information in relation to Best Practice as NHS England may reasonably request, and (to the extent that any Intellectual Property Rights ("IPR") attaches to Best Practice) grants NHS England a fully paid-up, non-exclusive, perpetual licence for NHS England to use Best Practice IPR for the commissioning and provision of NHS services and to share any Best Practice IPR with other commissioners of NHS services (and other providers of NHS services) to enable those parties to adopt such Best Practice.

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24. NOTICES

- 24.1 Any notices given under this Agreement must be sent by e-mail to the other Party's address set out in the Particulars or as otherwise notified by one Party to another as the appropriate address for this Clause 24.1.
- 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. DISPUTES

- 25.1 This clause does not affect NHS England's right to exercise its functions for the purposes of assessing and addressing the performance of the ICB.
- 25.2 If a Dispute arises out of, or in connection with, this Agreement then the Parties must follow the procedure set out in this clause:
- 25.2.1 either Party must give to the other written notice of the Dispute, setting out its nature and full particulars ("Dispute Notice"), together with relevant supporting documents. On service of the Dispute Notice, the Agreement Representatives must attempt in good faith to resolve the Dispute;
- 25.2.2 if the Agreement Representatives are, for any reason, unable to resolve the Dispute within twenty (20) Operational Days of service of the Dispute Notice, the Dispute must be referred to the Chief Executive Officer (or equivalent person) of the ICB and a director of or other person nominated by NHS England (and who has authority from NHS England to settle the Dispute) who must attempt in good faith to resolve it; and
- 25.2.3 if the people referred to in Clause 25.2.2 are for any reason unable to resolve the Dispute within twenty (20) Operational Days of it being referred to them, the Parties may attempt to settle it by mediation in accordance with the CEDR model mediation procedure. Unless otherwise agreed between the Parties, the mediator must be nominated by CEDR. To initiate the mediation, a Party must serve notice in writing ('Alternative Dispute Resolution' ("ADR" notice)) to the other Party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start no later than ten (10) Operational Days after the date of the ADR notice.
- 25.3 If the Dispute is not resolved within thirty (30) Operational Days after service of the ADR notice, or either Party fails to participate or to continue to participate in the mediation before the expiration of the period of thirty (30) Operational Days, or the mediation terminates before the expiration of the period of thirty (30) Operational Days, the Dispute must be referred to the NHS England Board, who shall resolve the matter and whose decision shall be binding upon the Parties.

26. VARIATIONS

- 26.1 The Parties acknowledge that the scope of the Delegated Functions may be reviewed and amended from time to time including by revoking this Agreement and making alternative arrangements.
- 26.2 NHS England may vary this Agreement without the ICB's consent where:
- 26.2.1 it is reasonably satisfied that the variation is necessary in order to comply with legislation, NHS England's statutory duties, or any requirements or direction given by the Secretary of State;

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- 26.2.2 where variation is as a result of amendment to or additional Mandated Guidance;
 - 26.2.3 it is satisfied that any Developmental Arrangements are no longer required;
 - 26.2.4 it reasonably considers that Developmental Arrangements are required under Clause 14 (*Breach*); or
 - 26.2.5 it is satisfied that such amendment or Developmental Arrangement is required in order to ensure the effective commissioning of the Delegated Services or other Specialised Services.
- 26.3 Where NHS England wishes to vary the Agreement in accordance with Clause 26.2 it must notice in writing to the ICB of the wording of the proposed variation and the date on which that variation is to take effect which must, unless it is not reasonably practicable, be a date which falls at least thirty (30) Operational Days after the date on which the notice under that clause is given to the ICB.
- 26.4 For the avoidance of doubt, NHS England may issue or update Mandated Guidance at any point during the term of the Agreement.
- 26.5 Either Party (“the Proposing Party”) may notify the other Party (the “Receiving Party”) of a Variation Proposal in respect of this Agreement including, but not limited to the following:
- 26.5.1 a request by the ICB to add, vary or remove any Developmental Arrangement; or
 - 26.5.2 a request by NHS England to include additional Specialised Services or NHS England Functions within the Delegation; and
- the Proposing Party will identify whether the proposed variation may have the impact of changing the scope of the Delegated Functions or Reserved Functions so that NHS England can establish the requisite level of approval required.
- 26.6 The Variation Proposal will set out the variation proposed and the date on which the Proposing Party requests the variation to take effect.
- 26.7 When a Variation Proposal is issued in accordance with 26.6, the Receiving Party must respond within thirty (30) Operational Days following the date that it is issued by serving notice confirming either:
- 26.7.1 that it accepts the Variation Proposal; or
 - 26.7.2 that it refuses to accept the Variation Proposal and setting out reasonable grounds for that refusal.
- 26.8 If the Receiving Party accepts the Variation Proposal issued in accordance with Clause 26.5, the Receiving Party agrees to take all necessary steps (including executing a variation agreement) in order to give effect to any variation by the date on which the proposed variation will take effect as set out in the Variation Proposal.
- 26.9 If the Receiving Party refuses to accept a Variation Proposal submitted in accordance with 26.5 to 26.7, or to take such steps as are required to give effect to the variation, then the provisions of Clause 15 (*Escalation Rights*) shall apply.
- 26.10 When varying the Agreement in accordance with Clause 26, the Parties must consider the impact of the proposed variation on any ICB Collaboration Arrangements and any Further Arrangements.

27. TERMINATION

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- 27.1 The ICB may:
- 27.1.1 notify NHS England that it requires NHS England to revoke the Delegation; and
 - 27.1.2 terminate this Agreement;
- with effect from the end of 31 March in any calendar year, provided that:
- 27.1.3 on or before 30 September of the previous calendar year, the ICB sends written notice to NHS England of its requirement that NHS England revoke the Delegation and its intention to terminate this Agreement; and
 - 27.1.4 the ICB meets with NHS England within ten (10) Operational Days of NHS England receiving the notice set out at Clause 27.1.3 above to discuss arrangements for termination and transition of the Delegated Functions to a successor commissioner in accordance with Clause 28.2; and
 - 27.1.5 the ICB confirms satisfactory arrangements for terminating any ICB Collaboration Arrangements or Further Agreements in whole or part as required including agreed succession arrangements for Commissioning Teams,
- in which case NHS England shall revoke the Delegation and this Agreement shall terminate with effect from the end of 31 March in the next calendar year.
- 27.2 NHS England may revoke the Delegation in whole or in part with effect from 23.59 hours on 31 March in any year, provided that it gives notice to the ICB of its intention to terminate the Delegation on or before 30 September in the year prior to the year in which the Delegation will terminate, and in which case Clause 27.4 will apply.
- 27.3 The Delegation may be revoked in whole or in part, and this Agreement may be terminated by NHS England at any time, including in (but not limited to) the following circumstances:
- 27.3.1 the ICB acts outside of the scope of its delegated authority;
 - 27.3.2 the ICB fails to perform any material obligation of the ICB owed to NHS England under this Agreement;
 - 27.3.3 the ICB persistently commits non-material breaches of this Agreement;
 - 27.3.4 NHS England is satisfied that its intervention powers under section 14Z61 of the NHS Act apply;
 - 27.3.5 to give effect to legislative changes, including conferral of any of the Delegated or Reserved Functions on the ICB;
 - 27.3.6 failure to agree to a variation in accordance with Clause 26 (*Variations*);
 - 27.3.7 NHS England and the ICB agree in writing that the Delegation shall be revoked and this Agreement shall terminate on such date as is agreed; and/or
 - 27.3.8 the ICB merges with another ICB or other body.
- 27.4 This Agreement will terminate upon revocation or termination of the full Delegation (including revocation and termination in accordance with this Clause 27 (*Termination*)) except that the provisions referred to in Clause 29 (*Provisions Surviving Termination*) will continue in full force and effect.

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- 27.5 Without prejudice to Clause 14.3 and to avoid doubt, NHS England may waive any right to terminate this Agreement under this Clause 27 (*Termination*). Any such waiver is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 27.6 As an alternative to termination of the Agreement in respect of all the Delegated Functions, NHS England may terminate the Agreement in respect of specified Delegated Functions (or aspects of such Delegated Functions) only, in which case this Agreement shall otherwise remain in effect.

28. CONSEQUENCE OF TERMINATION

- 28.1 Termination of this Agreement, or termination of the ICB's exercise of any of the Delegated Functions, will not affect any rights or liabilities of the Parties that have accrued before the date of that termination or which later accrue in respect of the term of this Agreement. For the avoidance of doubt, the ICB shall be responsible for any Claims or other costs or liabilities incurred in the exercise of the Delegated Functions during the period of this Agreement unless expressly agreed otherwise by NHS England.
- 28.2 Subject to Clause 28.4, on or pending termination of this Agreement or termination of the ICB's exercise of any of the Delegated Functions, NHS England, the ICB and, if appropriate, any successor delegate will:
- 28.2.1 agree a plan for the transition of the Delegated Functions from the ICB to the successor delegate, including details of the transition, the Parties' responsibilities in relation to the transition, the Parties' arrangements in respect of the Staff engaged in the Delegated Functions and the date on which the successor delegate will take responsibility for the Delegated Functions;
 - 28.2.2 implement and comply with their respective obligations under the plan for transition agreed in accordance with Clause 28.2.1; and
 - 28.2.3 act with a view to minimising any inconvenience or disruption to the commissioning of healthcare in the Area.
- 28.3 For a reasonable period before and after termination of this Agreement or termination of the ICB's exercise of any of the Delegated Functions, the ICB must:
- 28.3.1 co-operate with NHS England and any successor delegate to ensure continuity and a smooth transfer of the Delegated Functions; and
 - 28.3.2 at the reasonable request of NHS England:
 - 28.3.2.1 promptly provide all reasonable assistance and information to the extent necessary for an efficient assumption of the Delegated Functions by a successor delegate;
 - 28.3.2.2 deliver to NHS England all materials and documents used by the ICB in the exercise of any of the Delegated Functions; and
 - 28.3.2.3 use all reasonable efforts to obtain the consent of third parties to the assignment, novation or termination of existing contracts between the ICB and any third party which relate to or are associated with the Delegated Functions.
- 28.4 Where any or all of the Delegated Functions or Reserved Functions are to be directly conferred on the ICB, the Parties will co-operate with a view to ensuring continuity and a smooth transfer to the ICB.

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29. PROVISIONS SURVIVING TERMINATION

- 29.1 Any rights, duties or obligations of any of the Parties which are expressed to survive, including those referred to in Clause 29.2, or which otherwise by necessary implication survive the termination for any reason of this Agreement, together with all indemnities, will continue after termination, subject to any limitations of time expressed in this Agreement.
- 29.2 The surviving provisions include the following clauses together with such other provisions as are required to interpret and give effect to them:
- 29.2.1 Clause 10 (*Finance*);
 - 29.2.2 Clause 13 (*Staffing, Workforce and Commissioning Teams*);
 - 29.2.3 Clause 16 (*Liability and Indemnity*);
 - 29.2.4 Clause 17 (*Claims and Litigation*);
 - 29.2.5 Clause 18 (*Data Protection, Freedom of Information and Transparency*);
 - 29.2.6 Clause 25 (*Disputes*);
 - 29.2.7 Clause 27 (*Termination*);
 - 29.2.8 Schedule 6 (*Further Information Governance, Sharing and Processing Provisions*).

30. COSTS

- 30.1 Each Party is responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.

31. SEVERABILITY

- 31.1 If any provision or part of any provision of this Agreement is declared invalid or otherwise unenforceable, that provision or part of the provision as applicable will be severed from this Agreement. This will not affect the validity and/or enforceability of the remaining part of that provision or of other provisions.

32. GENERAL

- 32.1 Nothing in this Agreement will create a partnership or joint venture or relationship of principal and agent between NHS England and the ICB.
- 32.2 A delay or failure to exercise any right or remedy in whole or in part shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 32.3 This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

SCHEDULE 1: Definitions and Interpretation

1. The headings in this Agreement will not affect its interpretation.
2. Reference to any statute or statutory provision, Law, Guidance, Mandated Guidance or Data Guidance, includes a reference to that statute or statutory provision, Law, Guidance, Mandated Guidance or Data Guidance as from time to time updated, amended, extended, supplemented, re-enacted or replaced in whole or in part.
3. Reference to a statutory provision includes any subordinate legislation made from time to time under that provision.
4. References to clauses and schedules are to the clauses and schedules of this Agreement, unless expressly stated otherwise.
5. References to any body, organisation or office include reference to its applicable successor from time to time.
6. Any references to this Agreement or any other documents or resources includes reference to this Agreement or those other documents or resources as varied, amended, supplemented, extended, restated and/or replaced from time to time and any reference to a website address for a resource includes reference to any replacement website address for that resource.
7. Use of the singular includes the plural and vice versa.
8. Use of the masculine includes the feminine and all other genders.
9. Use of the term “including” or “includes” will be interpreted as being without limitation.
10. The following words and phrases have the following meanings:

“Administrative and Management Services”	means administrative and management support provided in accordance with Clause 9.5 or 9.7;
“Agreement”	means this agreement between NHS England and the ICB comprising the Particulars, the Terms and Conditions, the Schedules and the Mandated Guidance;
“Agreement Representatives”	means the ICB Representative and the NHS England Representative as set out in the Particulars or such person identified to the other Party from time to time as the relevant representative;
“Annual Allocation”	means the funds allocated to the ICB annually under section 223G of the NHS Act;
“Area”	means the geographical area covered by the ICB;
“Assurance Processes”	has the definition given in paragraph 3.1 of Schedule 3;
“Best Practice”	means any methodologies, pathway designs and processes relating to this Agreement or the Delegated Functions developed by the ICB or its Staff for the purposes of delivering the Delegated Functions and which are capable of wider use in the delivery of healthcare services for the purposes of the NHS, but not including inventions that are capable of patent protection

and for which patent protection is being sought or has been obtained, registered designs, or copyright in software;

“Capital Investment Guidance”

means any Mandated Guidance issued by NHS England from time to time in relation to the development, assurance and approvals process for proposals in relation to:

- the expenditure of Capital, or investment in property, infrastructure or information and technology; and
- the revenue consequences for commissioners or third parties making such investment;

“CEDR”

means the Centre for Effective Dispute Resolution;

“Claims”

means, for or in relation to the Delegated Functions (i) 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 (ii) any dispute with, or any investigation, inquiry or enforcement proceedings by, any governmental, regulatory or similar body or agency;

“Claim Losses”

means all Losses arising in relation to any Claim;

“Clinical Commissioning Policies”

means a nationally determined clinical policy setting 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;

“Clinical Reference Groups”

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 Specialised Services should be provided;

“Collaborative Commissioning Agreement”

means an agreement under which NHS Commissioners set out collaboration arrangements in respect of commissioning Specialised Services Contracts;

“Commissioning Functions”

means the respective statutory functions of the Parties in arranging for the provision of services as part of the health service;

“Commissioning Team”

means those Specialised Services Staff that support the commissioning of Delegated Services immediately prior to this Agreement and, at the point that Staff transfer from NHS England to an identified ICB, it shall mean those NHS England Staff and such other Staff appointed by that ICB to carry out a role in respect of commissioning the Delegated Services;

“Commissioning Team Arrangements”

means the arrangements through which the services of a Commissioning Team are made available to another NHS body for the purposes of commissioning the Delegated Services;

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“Complaints Sharing Protocol”	has the definition given in paragraph 7.5 of Schedule 3;
“Confidential Information”	means any information or data in whatever form disclosed, which by its nature is confidential or which the disclosing Party acting reasonably states in writing to the receiving Party is to be regarded as confidential, or which the disclosing Party acting reasonably has marked ‘confidential’ (including, financial information, strategy documents, tenders, employee confidential information, development or workforce plans and information, and information relating to services) but which is not information which is disclosed in response to an FOIA request, or information which is published as a result of NHS England or government policy in relation to transparency;
“Contracts”	means any contract or arrangement in respect of the commissioning of any of the Delegated Services;
“Contracting Standard Operating Procedure”	means the Contracting Standard Operating Procedure produced by NHS England in respect of the Delegated Services;
“Contractual Notice”	means a contractual notice issued by NHS England to the ICB, from time to time and relating to allocation of contracts for the purposes of the Delegated Functions;
“CQC”	means the Care Quality Commission;
“Data Controller”	shall have the same meaning as set out in the UK GDPR;
“Data Guidance”	means any applicable guidance, guidelines, direction or determination, framework, code of practice, standard or requirement regarding information governance, confidentiality, privacy or compliance with Data Protection Legislation to the extent published and publicly available or their existence or contents have been notified to the ICB by NHS England and/or any relevant Regulatory or Supervisory Body. This includes but is not limited to guidance issued by NHS Digital, the National Data Guardian for Health & Care, the Department of Health and Social Care, NHS England, the Health Research Authority, the UK Health Security Agency and the Information Commissioner;
“Data Protection Impact Assessment”	means an assessment to identify and minimise the data protection risks in relation to any data sharing proposals;
“Data Protection Officer”	shall have the same meaning as set out in the Data Protection Legislation;
“Data Processing Agreement”	means a data processing agreement which should be in substantially the same form as a Data Processing Agreement template approved by NHS England;
“Data Processor”	shall have the same meaning as set out in the UK GDPR;
“Data Protection Legislation”	means the UK GDPR, the Data Protection Act 2018 and all applicable Law concerning privacy, confidentiality or the processing of personal data including but not limited to the

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Human Rights Act 1998, the Health and Social Care (Safety and Quality) Act 2015, the common law duty of confidentiality and the Privacy and Electronic Communications (EC Directive) Regulations 2003;

“Data Sharing Agreement”	means a data sharing agreement which should be in substantially the same form as a Data Sharing Agreement template approved by NHS England;
“Data Subject”	shall have the same meaning as set out in the UK GDPR;
“Delegated Commissioning Group (DCG)”	means the advisory forum in respect of Delegated Services set up by NHS England currently known as the Delegated Commissioning Group for Specialised Services;
“Delegated Functions”	means the statutory functions delegated by NHS England to the ICB under the Delegation and as set out in detail in this Agreement;
“Delegated Funds”	means the funds defined in Clause 10.2;
“Delegated Services”	means the services set out in Schedule 2 of this Agreement and which may be updated from time to time by NHS England;
“Delegation”	means the delegation of the Delegated Functions from NHS England to the ICB as described at Clause 6.1;
“Developmental Arrangements”	means the arrangements set out in Schedule 9 as amended or replaced;
“Dispute”	a dispute, conflict or other disagreement between the Parties arising out of or in connection with this Agreement;
“Effective Date of Delegation”	means for the Specialised Services set out in Schedule 2, the date set out in Schedule 2 as the date delegation will take effect in respect of that particular Specialised Service and for any future delegations means the date agreed by the parties as the date that the delegation will take effect;
“EIR”	means the Environmental Information Regulations 2004;
“Escalation Rights”	means the escalation rights as defined in Clause 15 (<i>Escalation Rights</i>);
“Finance Guidance”	means the guidance, rules and operating procedures produced by NHS England that relate to these delegated arrangements, including but not limited to the following: <ul style="list-style-type: none">- Commissioning Change Management Business Rules;- Contracting Standard Operating Procedure;- Cashflow Standard Operating Procedure;- Finance and Accounting Standard Operating Procedure;

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- Service Level Framework Guidance;

“Financial Year”	shall bear the same meaning as in section 275 of the NHS Act;
“FOIA”	means the Freedom of Information Act 2000;
“Further Arrangements”	means arrangements for the exercise of Delegated Functions as defined at Clause 12;
“Good Practice”	means using standards, practices, methods and procedures conforming to the law, reflecting up-to-date published evidence and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced commissioner;
“Guidance”	means any applicable guidance, guidelines, direction or determination, framework, code of practice, standard or requirement to which the ICB has a duty to have regard (and whether specifically mentioned in this Agreement or not), to the extent that the same are published and publicly available or the existence or contents of them have been notified to the ICB by any relevant Regulatory or Supervisory Body but excluding Mandated Guidance;
“High Cost Drugs”	means medicines not reimbursed though national prices and identified on the NHS England high cost drugs list;
“Host ICB”	means the ICB that employs the Commissioning Team as part of the Commissioning Team Arrangements;
“ICB”	means an Integrated Care Board established pursuant to section 14Z25 of the NHS Act and named in the Particulars;
“ICB Collaboration Arrangement”	means an arrangement entered into by the ICB and at least one other ICB under which the parties agree joint working arrangements in respect of the exercise of the Delegated Functions;
“ICB Deliverables”	all documents, products and materials developed by the ICB or its Staff in relation to this Agreement and the Delegated Functions in any form and required to be submitted to NHS England under this Agreement, including data, reports, policies, plans and specifications;
“ICB Functions”	the Commissioning Functions of the ICB;
“Information Governance Guidance for Serious Incidents”	means the checklist Guidance for Reporting, Managing and Investigating Information Governance and Cyber Security Serious Incidents Requiring Investigation’ (2015) as may be amended or replaced;
“Indemnity Arrangement”	means either: (i) a policy of insurance; (ii) an arrangement made for the purposes of indemnifying a person or organisation; or (iii) a combination of (i) and (ii);

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“IPR”	means intellectual property rights and includes inventions, copyright, patents, database right, trademarks, designs and confidential know-how and any similar rights anywhere in the world whether registered or not, including applications and the right to apply for any such rights;
“Law”	means any applicable law, statute, rule, bye-law, regulation, direction, order, regulatory policy, guidance or code, rule of court or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body (including any Regulatory or Supervisory Body);
“Local Terms”	means the terms set out in Schedule 8 (<i>Local Terms</i>) and/or such other Schedule or part thereof as designated as Local Terms;
“Losses”	means all damages, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or common law;
“Managing Conflicts of Interest in the NHS”	the NHS publication by that name available at: https://www.england.nhs.uk/publication/managing-conflicts-of-interest-in-the-nhs-guidance-for-staff-and-organisations/ ;
“Mandated Guidance”	means any protocol, policy, guidance, guidelines, framework or manual relating to the exercise of the Delegated Functions and issued by NHS England to the ICB as Mandated Guidance from time to time, in accordance with Clause 7.4 which at the Effective Date of Delegation shall include the Mandated Guidance set out in Schedule 7;
“National Commissioning Group (NCG)”	means the advisory forum in respect of the Retained Services currently known as the National Commissioning Group for Specialised, Health and Justice and Armed Forces Services;
“National Standards”	means the service standards for each Specialised Service, as set by NHS England and included in Clinical Commissioning Policies or National Specifications;
“National Specifications”	the service specifications published by NHS England in respect of Specialised Services;
“Need to Know”	has the meaning set out in paragraph 1.2 of Schedule 6 (<i>Further Information Governance, Sharing and Processing Provisions</i>);
“NICE Regulations”	means the National Institute for Health and Care Excellence (Constitution and Functions) and the Health and Social Care Information Centre (Functions) Regulations 2013 as amended or replaced;
“NHS Act”	means the National Health Service Act 2006 (as amended by the Health and Social Care Act 2012 and the Health and Care Act 2022 and other legislation from time to time);

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“NHS Counter Fraud Authority”	means the Special Health Authority established by and in accordance with the NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017/958;
“NHS Digital Data Security and Protection Toolkit”	means the toolkit published by NHS Digital and available on the NHS Digital website at: https://digital.nhs.uk/data-and-information/looking-after-information/data-security-and-information-governance/data-security-and-protection-toolkit ;
“NHS England”	means the body established by section 1H of the NHS Act;
“NHS England Deliverables”	means all documents, products and materials NHS England in which NHS England holds IPRs which are relevant to this Agreement, the Delegated Functions or the Reserved Functions in any form and made available by NHS England to the ICB under this Agreement, including data, reports, policies, plans and specifications;
“NHS England Functions”	means all functions of NHS England as set out in legislation excluding any functions that have been expressly delegated;
“Non-Personal Data”	means data which is not Personal Data;
“Operational Days”	a day other than a Saturday, Sunday, Christmas Day, Good Friday or a bank holiday in England;
“Oversight Framework”	means the NHS Oversight Framework, as may be amended or replaced from time to time, and any relevant associated Guidance published by NHS England;
“Party/Parties”	means a party or both parties to this Agreement;
“Patient Safety Incident Response Framework”	means the framework published by NHS England and made available on the NHS England website at: https://www.england.nhs.uk/patient-safety/incident-response-framework/ ;
“Personal Data”	shall have the same meaning as set out in the UK GDPR and shall include references to Special Category Personal Data where appropriate;
“Population”	means, in relation to any particular delegated service, the group of people for which the ICB would have the duty to arrange for the provision of that service under section 3 of the NHS Act (hospital and other services), if it was not a service which NHS England had a duty to arrange under its Specialised Commissioning Functions; For guidance on the persons for whom an ICB is responsible for arranging services see <i>Who Pays? Determining which NHS commissioner is responsible for commissioning healthcare services and making payments to providers</i> ;
“Prescribed Specialised Services Manual”	means the document which may be amended or replaced from time to time which is currently known as the prescribed

specialised services manual which describes how NHS England and ICBs commission specialised services and sets out the identification rules which describe how NHS England and ICBs identify Specialised Services activity within data flows;

“Provider Collaborative”

means a group of Specialised Service Providers who have agreed to work together to improve the care pathway for one or more Specialised Services;

“Provider Collaborative Guidance”

means the guidance published by NHS England in respect of Provider Collaboratives;

“Prohibited Act”

means the ICB:

- (i) offering, giving, or agreeing to give NHS England (or an of their officers, employees or agents) any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining of performance of this Agreement, the Reserved Functions, the Delegation or any other arrangement with the ICB, or for showing or not showing favour or disfavour to any person in relation to this Agreement or any other arrangement with the ICB; and
- (ii) in connection with this Agreement, paying or agreeing to pay any commission, other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to NHS England; or
- (iii) committing an offence under the Bribery Act 2010;

“Regional Quality Group”

means a group set up to act as a strategic forum at which regional partners from across health and social care can share, identify and mitigate wider regional quality risks and concerns as well as share learning so that quality improvement and best practice can be replicated;

“Regulatory or Supervisory Body”

means any statutory or other body having authority to issue guidance, standards or recommendations with which the relevant Party and/or Staff must comply or to which it or they must have regard, including:

- (i) CQC;
- (ii) NHS England;
- (iii) the Department of Health and Social Care;
- (iv) the National Institute for Health and Care Excellence;
- (v) Healthwatch England and Local Healthwatch;
- (vi) the General Medical Council;
- (vii) the General Dental Council;
- (viii) the General Optical Council;

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- (ix) the General Pharmaceutical Council;
- (x) the Healthcare Safety Investigation Branch; and
- (xi) the Information Commissioner;

“Relevant Clinical Networks”	means those clinical networks identified by NHS England as required to support the commissioning of Specialised Services for the Population;
“Relevant Information”	means the Personal Data and Non-Personal Data processed under the Delegation and this Agreement, and includes, where appropriate, “confidential patient information” (as defined under section 251 of the NHS Act), and “patient confidential information” as defined in the 2013 Report, The Information Governance Review – “ <i>To Share or Not to Share?</i> ”;
“Reserved Functions”	means statutory functions of NHS England that it has not delegated to the ICB including but not limited to those set out in the Schedules to this Agreement;
“Retained Services”	means those Specialised Services for which NHS England shall retain commissioning responsibility, as set out in Schedule 5;
“Secretary of State”	means the Secretary of State for Health and Social Care;
“Shared Care Arrangements”	means arrangements put in place to 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;
“Single Point of Contact”	means the member of Staff appointed by each relevant Party in accordance with Paragraph 9.6 of Schedule 6;
“Special Category Personal Data”	shall have the same meaning as in UK GDPR;
“Specialised Commissioning Budget”	means the budget identified by NHS England for the purpose of exercising the Delegated Functions;
“Specialised Commissioning Functions”	means the statutory functions conferred on NHS England under Section 3B of the NHS Act and Regulation 11 and Schedule 4 of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012/2996 (as amended or replaced);
“Specialised Services”	means the services commissioned in exercise of the Specialised Commissioning Functions;
“Specialised Services Contract”	means a contract for the provision of Specialised Services entered into in the exercise of the Specialised Commissioning Functions;
“Specialised Services Provider”	means a provider party to a Specialised Services Contract;

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“Specialised Services Staff”	means the Staff or roles identified as carrying out the Delegated Functions immediately prior to the date of this Agreement;
“Specified Purpose”	means the purpose for which the Relevant Information is shared and processed, being to facilitate the exercise of the ICB’s Delegated Functions and NHS England’s Reserved Functions as specified in paragraph 2.1 of Schedule 6 (<i>Further Information Governance, Sharing and Processing Provisions</i>) to this Agreement;
“Staff or Staffing”	means the Parties’ employees, officers, elected members, directors, voluntary staff, consultants, and other contractors and sub-contractors acting on behalf of either Party (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;
“Sub-Delegate”	shall have the meaning in Clause 12.2;
“System Quality Group”	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;
“Triple Aim”	means the duty to have regard to wider effect of decisions, which is placed on each of the Parties under section 13NA (as regards NHS England) and section 14Z43 (as regards the ICB) of the NHS Act;
“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;
“Variation Proposal”	means a written proposal for a variation to the Agreement, which complies with the requirements of Clause 26.5.

SCHEDULE 2: Delegated Services

Delegated Services

NHS England delegates to the ICB the statutory function for commissioning the Specialised Services set out in this Schedule 2 (*Delegated Services*) subject to the reservations set out in Schedule 4 (*Reserved Functions*) and the provisions of any Developmental Arrangements set out in Schedule 9.

The list of Delegated Services set out in Schedule 2 of this Agreement contains two categories of service: the first is drawn from the Prescribed Specialised Services (PSS) Manual and aligns to Schedule 4 of the 2012 Standing Rules Regulations; the second is the sub-service line codes that NHS England has introduced over time to assist in the commissioning of Specialised Services. From time-to-time, NHS England will amend the list of sub-service line codes, either to repurpose, remove or add a code.

This is done to support in the management of finances, activity or for other administrative reasons; or to support transformational work that may be ongoing in the service area that requires a sub-service line code to track and manage funding and activity. The intention is that any changes will be supportive of ICBs' commissioning responsibilities, and that there will be a small number of changes in the Delegated Services sub-service line codes in any one year.

All future changes to sub-service line codes relating to Delegated Services will be developed with ICBs. ICBs will be engaged and have the opportunity to provide comment on the proposed change before it is made. Changes to the sub-service line codes will be discussed at and agreed by the Delegated Commissioning Group, hosted by NHS England and attended by ICB representatives. If changes are agreed, the latest lists will be made available on the NHS England website here [\[NHS England » NHS England service codes by year 2024/25\]](#) and a more detailed version on the Future NHS site here [\[Service Portfolio Analysis - Integrating specialised services within Integrated Care Systems - FutureNHS Collaboration Platform\]](#).

The PSS Manual Lines in Schedule 2 of the Agreement, which derive from the 2012 Standing Rules Regulations, will not be altered unless there is a decision of the NHS England Board, which will necessitate wider engagement with ICBs and stakeholders.

The following Specialised Services through this agreement will be delegated to the ICB:

PSS Manual Line	PSS Manual Line Description	Service Line Code	Service Line Description
2	Adult congenital heart disease services	13X	Adult congenital heart disease services (non-surgical)
		13Y	Adult congenital heart disease services (surgical)
3	Adult specialist pain management services	31Z	Adult specialist pain management services
4	Adult specialist respiratory services	29M	Interstitial lung disease (adults)
		29S	Severe asthma (adults)
		29L	Lung volume reduction (adults)
		29V	Complex home ventilation (adults)
5	Adult specialist rheumatology services	26Z	Adult specialist rheumatology services

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PSS Manual Line	PSS Manual Line Description	Service Line Code	Service Line Description
		34R	Orthopaedic revision (adults)
15	Adult specialist renal services	11B	Renal dialysis
		11C	Access for renal dialysis
		11T	Renal Transplantation
16	Adult specialist services for people living with HIV	14A	Adult specialised services for people living with HIV
17	Adult specialist vascular services	30Z	Adult specialist vascular services
18	Adult thoracic surgery services	29B	Complex thoracic surgery (adults)
		29Z	Adult thoracic surgery services: outpatients
29	Haematopoietic stem cell transplantation services (adults and children)	02Z	Haematopoietic stem cell transplantation services (adults and children)
		ECP	Extracorporeal photopheresis service (adults and children)
30	Bone conduction hearing implant services (adults and children)	32B	Bone anchored hearing aids service
		32D	Middle ear implantable hearing aids service
32	Children and young people's inpatient mental health service	23K	Tier 4 CAMHS (general adolescent inc eating disorders) MHLDA PC
		23L	Tier 4 CAMHS (low secure) MHLDA PC
		23O	Tier 4 CAMHS (PICU) MHLDA PC
		23U	Tier 4 CAMHS (LD) MHLDA PC
		23V	Tier 4 CAMHS (ASD) MHLDA PC
35	Cleft lip and palate services (adults and children)	15Z	Cleft lip and palate services (adults and children)
36	Cochlear implantation services (adults and children)	32A	Cochlear implantation services (adults and children)
40	Complex spinal surgery services (adults and children)	06Z	Complex spinal surgery services (adults and children)
		08Z	Complex neuro-spinal surgery services (adults and children)
45	Cystic fibrosis services (adults and children)	10Z	Cystic fibrosis services (adults and children)
54	Fetal medicine services (adults and adolescents)	04C	Fetal medicine services (adults and adolescents)
58	Specialist adult gynaecological surgery and urinary surgery services for females	04A	Severe Endometriosis
		04D	Complex urinary incontinence and genital prolapse
58A	Specialist adult urological surgery services for men	41P	Penile implants
		41S	Surgical sperm removal
		41U	Urethral reconstruction
59	Specialist allergy services (adults and children)	17Z	Specialist allergy services (adults and children)
61	Specialist dermatology services (adults and children)	24Z	Specialist dermatology services (adults and children)
62	Specialist metabolic disorder services (adults and children)	36Z	Specialist metabolic disorder services (adults and children)
63	Specialist pain management services for children	23Y	Specialist pain management services for children
64	Specialist palliative care services for children and young adults	E23	Specialist palliative care services for children and young adults
65	Specialist services for adults with infectious diseases	18A	Specialist services for adults with infectious diseases
		18E	Specialist Bone and Joint Infection (adults)

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PSS Manual Line	PSS Manual Line Description	Service Line Code	Service Line Description
72	Major trauma services (adults and children)	34T	Major trauma services (adults and children)
78	Neuropsychiatry services (adults and children)	08Y	Neuropsychiatry services (adults and children)
83	Paediatric cardiac services	23B	Paediatric cardiac services
94	Radiotherapy services (adults and children)	01R	Radiotherapy services (Adults)
		51R	Radiotherapy services (Children)
		01S	Stereotactic Radiosurgery / radiotherapy
98	Specialist secure forensic mental health services for young people	24C	FCAMHS MHLDA PC
103A	Specialist adult haematology services	03C	Castleman disease
105	Specialist cancer services (adults)	01C	Chemotherapy
		01J	Anal cancer (adults)
		01K	Malignant mesothelioma (adults)
		01M	Head and neck cancer (adults)
		01N	Kidney, bladder and prostate cancer (adults)
		01Q	Rare brain and CNS cancer (adults)
		01U	Oesophageal and gastric cancer (adults)
		01V	Biliary tract cancer (adults)
		01W	Liver cancer (adults)
		01X	Penile cancer (adults)
		01Y	Cancer Outpatients (adults)
		01Z	Testicular cancer (adults)
		04F	Gynaecological cancer (adults)
		19V	Pancreatic cancer (adults)
		19C	Biliary tract cancer surgery (adults)
		19M	Liver cancer surgery (adults)
		19Q	Pancreatic cancer surgery (adults)
		24Y	Skin cancer (adults)
		29E	Management of central airway obstruction (adults)
		51A	Interventional oncology (adults)
		51B	Brachytherapy (adults)
		51C	Molecular oncology (adults)
		61M	Head and neck cancer surgery (adults)
61Q	Ophthalmic cancer surgery (adults)		
61U	Oesophageal and gastric cancer surgery (adults)		
61Z	Testicular cancer surgery (adults)		
33C	Transanal endoscopic microsurgery (adults)		
33D	Distal sacrectomy for advanced and recurrent rectal cancer (adults)		
106	Specialist cancer services for children and young adults	01T	Teenage and young adult cancer
		23A	Children's cancer
106A	Specialist colorectal surgery services (adults)	33A	Complex surgery for faecal incontinence (adults)
		33B	Complex inflammatory bowel disease (adults)
107	Specialist dentistry services for children	23P	Specialist dentistry services for children
108	Specialist ear, nose and throat services for children	23D	Specialist ear, nose and throat services for children
109	Specialist endocrinology services for children	23E	Specialist endocrinology and diabetes services for children
110	Specialist gastroenterology, hepatology and nutritional support services for children	23F	Specialist gastroenterology, hepatology and nutritional support services for children

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PSS Manual Line	PSS Manual Line Description	Service Line Code	Service Line Description
112	Specialist gynaecology services for children	73X	Specialist paediatric surgery services - gynaecology
113	Specialist haematology services for children	23H	Specialist haematology services for children
114	Specialist haemoglobinopathy services (adults and children)	38S	Sickle cell anaemia (adults and children)
		38T	Thalassemia (adults and children)
115	Specialist immunology services for adults with deficient immune systems	16X	Specialist immunology services for adults with deficient immune systems
115A	Specialist immunology services for children with deficient immune systems	16Y	Specialist immunology services for children with deficient immune systems
115B	Specialist maternity care for adults diagnosed with abnormally invasive placenta	04G	Specialist maternity care for women diagnosed with abnormally invasive placenta
118	Neonatal critical care services	NIC	Specialist neonatal care services
119	Specialist neuroscience services for children	23M	Specialist neuroscience services for children
		07Y	Paediatric neurorehabilitation
		08J	Selective dorsal rhizotomy
120	Specialist ophthalmology services for children	23N	Specialist ophthalmology services for children
121	Specialist orthopaedic services for children	23Q	Specialist orthopaedic services for children
122	Paediatric critical care services	PIC	Specialist paediatric intensive care services
124	Specialist perinatal mental health services (adults and adolescents)	22P	Specialist perinatal mental health services (adults and adolescents) MHLDA PC
125	Specialist plastic surgery services for children	23R	Specialist plastic surgery services for children
126	Specialist rehabilitation services for patients with highly complex needs (adults and children)	07Z	Specialist rehabilitation services for patients with highly complex needs (adults and children)
127	Specialist renal services for children	23S	Specialist renal services for children
128	Specialist respiratory services for children	23T	Specialist respiratory services for children
129	Specialist rheumatology services for children	23W	Specialist rheumatology services for children
130	Specialist services for children with infectious diseases	18C	Specialist services for children with infectious diseases
131	Specialist services for complex liver, biliary and pancreatic diseases in adults	19L	Specialist services for complex liver diseases in adults
		19P	Specialist services for complex pancreatic diseases in adults
		19Z	Specialist services for complex liver, biliary and pancreatic diseases in adults
		19B	Specialist services for complex biliary diseases in adults
132	Specialist services for haemophilia and other related bleeding disorders (adults and children)	03X	Specialist services for haemophilia and other related bleeding disorders (Adults)
		03Y	Specialist services for haemophilia and other related bleeding disorders (Children)
134	Specialist services to support patients with complex physical disabilities (excluding wheelchair services) (adults and children)	05C	Specialist augmentative and alternative communication aids (adults and children)
		05E	Specialist environmental controls (adults and children)
		05P	Prosthetics (adults and children)
135	Specialist paediatric surgery services	23X	Specialist paediatric surgery services - general surgery
136	Specialist paediatric urology services	23Z	Specialist paediatric urology services

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PSS Manual Line	PSS Manual Line Description	Service Line Code	Service Line Description
139A	Specialist morbid obesity services for children	35Z	Specialist morbid obesity services for children
139AA	Termination services for patients with medical complexity and or significant co-morbidities requiring treatment in a specialist hospital	04P	Termination services for patients with medical complexity and or significant co-morbidities requiring treatment in a specialist hospital
ACC	Adult Critical Care	ACC	Adult critical care

SCHEDULE 3: Delegated Functions

1 Introduction

- 1.1 Subject to the reservations set out in Schedule 4 (*Reserved Functions*) and the provisions of any Developmental Arrangements, NHS England delegates to the ICB the statutory function for commissioning the Delegated Services. This Schedule 3 sets out the key powers and duties that the ICB will be required to carry out in exercise of the Delegated Functions being, in summary:
- 1.1.1 decisions in relation to the commissioning and management of Delegated Services;
 - 1.1.2 planning Delegated Services for the Population, including carrying out needs assessments;
 - 1.1.3 undertaking reviews of Delegated Services in respect of the Population;
 - 1.1.4 supporting the management of the Specialised Commissioning Budget;
 - 1.1.5 co-ordinating a common approach to the commissioning and delivery of Delegated Services with other health and social care bodies in respect of the Population where appropriate; and
 - 1.1.6 such other ancillary activities that are necessary to exercise the Specialised Commissioning Functions.
- 1.2 When exercising the Delegated Functions, ICBs are not acting on behalf of NHS England but acquire rights and incur any liabilities in exercising the functions.

2 General Obligations

- 2.1 The ICB is responsible for planning the commissioning of the Delegated Services in accordance with this Agreement. This includes ensuring at all times that the Delegated Services are commissioned in accordance with the National Standards.
- 2.2 The ICB shall put in place arrangements for collaborative working with other ICBs in accordance with Clause 8 (*Requirement for ICB Collaboration Arrangement*).
- 2.3 The Developmental Arrangements set out in Schedule 9 shall apply.

Specific Obligations

3 Assurance and Oversight

- 3.1 The ICB must at all times operate in accordance with:
- 3.1.1 the Oversight Framework published by NHS England;
 - 3.1.2 any national oversight and/or assurance guidance in respect of Specialised Services and/or joint working arrangements; and
 - 3.1.3 any other relevant NHS oversight and assurance guidance;
- collectively known as the “Assurance Processes”.

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- 3.2 The ICB must:
- 3.2.1 develop and operate in accordance with mutually agreed ways of working in line with the Assurance Processes;
 - 3.2.2 oversee the provision of Delegated Services and the outcomes being delivered for its Population in accordance with the Assurance Processes;
 - 3.2.3 assure that Specialised Service Providers are meeting, or have an improvement plan in place to meet, National Standards;
 - 3.2.4 provide any information and comply with specific actions in relation to the Delegated Services, as required by NHS England, including metrics and detailed reporting.

4 Attendance at governance meetings

- 4.1 The ICB must ensure that there is appropriate representation at forums established through the ICB Collaboration Arrangement.
- 4.2 The ICB must ensure that an individual(s) has been nominated to represent the ICB at the Delegated Commissioning Group (DCG) and regularly attends that group. This could be a single representative on behalf of the members of an ICB Collaboration Arrangement. Where that representative is not an employee of the ICB, the ICB must have in place appropriate arrangements to enable the representative to feedback to the ICB.
- 4.3 The ICB should also ensure that they have a nominated representative with appropriate subject matter expertise to attend National Standards development forums as requested by NHS England. This could be a single representative on behalf of the members of an ICB Collaboration Arrangement. Where that representative is not an employee of the ICB, the ICB must have in place appropriate arrangements to enable the representative to feedback to the ICB.

5 Clinical Leadership and Clinical Reference Groups

- 5.1 The ICB shall support the development of clinical leadership and expertise at a local level in respect of Specialised Services.
- 5.2 The ICB shall support local and national groups including Relevant Clinical Networks and Clinical Reference Groups that are involved in developing Clinical Commissioning Policies, National Specifications, National Standards and knowledge around Specialised Services.

6 Clinical Networks

- 6.1 The ICB shall participate in the planning, governance and oversight of the Relevant Clinical Networks, including involvement in agreeing the annual plan for each Relevant Clinical Network. The ICB shall seek to align the network priorities with system priorities and to ensure that the annual plan for the Relevant Clinical Network reflects local needs and priorities.
- 6.2 The ICB will be involved in the development and agreement of a single annual plan for the Relevant Clinical Network.
- 6.3 The ICB shall monitor the implementation of the annual plan and receive an annual report from the Relevant Clinical Network that considers delivery against the annual plan.

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- 6.4 The ICB shall actively support and participate in dialogue with Relevant Clinical Networks and shall ensure that there is a clear and effective mechanism in place for giving and receiving information with the Relevant Clinical Networks including network reports.
- 6.5 The ICB shall support NHS England in the management of Relevant Clinical Networks.
- 6.6 The ICB shall actively engage and promote Specialised Service Provider engagement in appropriate Relevant Clinical Networks.
- 6.7 Where a Relevant Clinical Network identifies any concern, the ICB shall seek to consider and review that concern as soon as is reasonably practicable and take such action, if any, as it deems appropriate.
- 6.8 The ICB shall ensure that network reports are considered where relevant as part of exercising the Delegated Functions.

7 Complaints

- 7.1 This part (*Complaints*) applies from the Effective Date of Delegation or the date on which the Commissioning Team is transferred to the relevant Host ICB (whichever is the later) (“the Applicable Date”).
- 7.2 The ICB will be responsible for all complaints in respect of the Delegated Services that are received from the Applicable Date, regardless of whether the circumstances to which the complaint relates occurred prior to the Applicable Date.
- 7.3 For the avoidance of doubt, NHS England will retain responsibility for all complaints in respect of the Delegated Services that were received prior to the Applicable Date.
- 7.4 At all times the ICB shall operate in accordance with the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 and shall co-operate with other ICBs to ensure that complaints are managed effectively.
- 7.5 Where NHS England has provided the ICB with a protocol for sharing complaints in respect of any or all Specialised Services then those provisions shall apply and are deemed to be part of this Agreement (the “Complaints Sharing Protocol”).
- 7.6 The ICB shall:
 - 7.6.1 work with local organisations, including other ICBs that are party to the ICB Collaboration Arrangement or Commissioning Team, to ensure that arrangements are in place for the management of complaints in respect of the Delegated Services.
 - 7.6.2 consider, in the context of the ICB Collaboration Arrangement for the commissioning of the Delegated Services and employment arrangements for the Commissioning Team, whether it is best placed to manage the complaint, or whether it should be transferred to another ICB that is better placed to affect change.
 - 7.6.3 provide the relevant individuals at NHS England with appropriate access to complaints data held by the ICB that is necessary to carry out the complaints function as set out in the Complaints Sharing Protocol.
 - 7.6.4 Provide such information relating to key performance indicators (“KPIs”) as is requested by NHS England.

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- 7.6.5 co-operate with NHS England in respect of the review of complaints related to the Delegated Services and shall, on request, share any learning identified in carrying out the complaints function.
- 7.6.6 take part in any peer review process put in place in respect of the complaints function.

8 Commissioning and optimisation of High Cost Drugs

- 8.1 The ICB must support the effective and efficient commissioning of High Cost Drugs for Delegated Services.
- 8.2 The ICB must support NHS England in its responsibility for the financial management and reimbursement of High Cost Drugs for Specialised Services. The ICB and NHS England must agree the support to be provided. The support must be set out in writing and may include staffing, processes, reporting, prescribing analysis and oversight arrangements, but is not limited to these matters.
- 8.3 The ICB must ensure equitable access to High Cost Drugs used within the Delegated Services that may be impacted by health inequalities and develop a strategy for delivering equitable access.
- 8.4 The ICB must develop and implement Shared Care Arrangements across the Area of the ICB.
- 8.5 The ICB must provide clinical and commissioning leadership in the commissioning and management of High Cost Drugs.
- 8.6 The ICB must ensure:
 - 8.6.1 safe and effective use of High Cost Drugs in line with national Clinical Commissioning Policies, NICE technology appraisal or highly specialised technologies guidance;
 - 8.6.2 effective introduction of new medicines;
 - 8.6.3 compliance with all NHS England commercial processes and frameworks for High Cost Drugs;
 - 8.6.4 Specialised Services Providers adhere to all NHS England commercial processes and frameworks for High Cost Drugs;
 - 8.6.5 appropriate use of Shared Care Arrangements, ensuring that they are safe and well monitored; and
 - 8.6.6 consistency of prescribing and unwarranted prescribing variation are addressed.
- 8.7 The ICB must engage in the development, implementation and monitoring of initiatives that enable use of better value medicines. Such schemes include those at a local, regional or national level.
- 8.8 Where the relevant pharmacy teams have transferred to the ICB or Host ICB, the ICB must provide:
 - 8.8.1 support to prescribing networks and forums, including but not limited to, Immunoglobulin Assessment panels, prescribing networks and medicines optimisation networks;

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- 8.8.2 expert medicines advice and input into the Individual Funding Request process for Delegated Services;
- 8.8.3 advice and input to national procurement and other commercial processes relating to medicines and High Cost Drugs (for example, arrangements for Homecare);
- 8.8.4 advice and input to NHS England policy development relating to medicines and High Cost Drugs.

9 Contracting

- 9.1 The ICB shall be responsible for ensuring appropriate arrangements are in place for the commissioning of the Delegated Services which for the avoidance of doubt includes:
 - 9.1.1 co-ordinating or collaborating in the award of appropriate Specialised Service Contracts;
 - 9.1.2 drafting of the contract schedules so that it reflects Mandatory Guidance, National Specifications and any specific instructions from NHS England; and
 - 9.1.3 management of Specialised Services Contracts.
- 9.2 The ICB must comply with the Contracting Standard Operating Procedure issued by NHS England.
- 9.3 In relation to the contracting for NHS England Retained Services where the ICB has agreed to act as the co-ordinating commissioner, to implement NHS England's instructions in relation to those Retained Services and, where appropriate, put in place a Collaborative Commissioning Agreement with NHS England as a party.

10 Data Management and Analytics

- 10.1 The ICB shall:
 - 10.1.1 lead on standardised collection, processing, and sharing of data for Delegated Services in line with broader NHS England, Department of Health and Social Care and government data strategies;
 - 10.1.2 lead on the provision of data and analytical services to support commissioning of Delegated Services;
 - 10.1.3 ensure collaborative working across partners on agreed programmes of work focusing on provision of pathway analytics;
 - 10.1.4 share expertise and existing reporting tools with partner ICBs in the ICB Collaboration Arrangement;
 - 10.1.5 ensure interpretation of data is made available to NHS England and other ICBs within the ICB Collaboration Arrangement;
 - 10.1.6 ensure data and analytics teams within ICBs and NHS England work collaboratively on jointly agreed programmes of work focusing on provision of pathway analytics;
- 10.2 The ICB must ensure that the data reporting and analytical frameworks, as set out in Mandated Guidance or as otherwise required by NHS England, are in place to support the commissioning of the Delegated Services.

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11 Finance

11.1 The provisions of Clause 10 (*Finance*) of this Agreement set out the financial requirements in respect of the Delegated Functions.

12 Freedom of Information and Parliamentary Requests

12.1 The ICB shall lead on the handling, management and response to all Freedom of Information and parliamentary correspondence relating to Delegated Services.

13 Incident Response and Management

13.1 The ICB shall:

13.1.1 lead on local incident management for Delegated Services as appropriate to the stated incident level;

13.1.2 support national and regional incident management relating to Specialised Services; and

13.1.3 ensure surge events and actions relating to Specialised Services are included in ICB escalation plans.

13.2 In the event that an incident is identified that has an impact on the Delegated Services (such as potential failure of a Specialised Services Provider), the ICB shall fully support the implementation of any requirements set by NHS England around the management of such incident and shall provide full co-operation to NHS England to enable a co-ordinated national approach to incident management. NHS England retains the right to take decisions at a national level where it determines this is necessary for the proper management and resolution of any such incident and the ICB shall be bound by any such decision.

14 Individual Funding Requests

14.1 The ICB shall provide any support required by NHS England in respect of determining an Individual Funding Request and shall implement the decision of the Individual Funding Request panel.

15 Innovation and New Treatments

15.1 The ICB shall support local implementation of innovative treatments for Delegated Services.

16 Mental Health, Learning Disability and Autism Specialised Services

16.1 The ICB will oversee the lead provider contract(s) relating to mental health, learning disability and autism (MHLDA) Provider Collaboratives that are transferred to the ICB on 1 April 2025 by NHS England. This includes complying with all terms and conditions of the contract(s), including in respect of notice periods and extensions.

16.2 If the ICB proposes to terminate a MHLDA lead provider contract before the end of its term, it must seek written approval from NHS England in advance.

16.3 In the performance of its commissioning responsibilities for MHLDA Specialised Services, the ICB shall:

16.3.1 Have regard to any commissioning guidance relating to MHLDA Specialised Services issued by NHS England;

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- 16.3.2 Comply with the requirements of the Mental Health Investment Standard and related guidance issued by NHS England;
- 16.3.3 Generally have regard to the need to commission MHLDA Specialised Services for the ICB's Population in such a manner as to ensure safe, efficient and effective services, across appropriate geographies, and which may require partnership working across other ICB or other organisational boundaries.
- 16.3.4 Ensure that its case management function will work collaboratively across Delegated Services and Retained Services to support the oversight and progression of individual patient care, including the movement across elements of the care pathway.

17 Provider Selection and Procurement

- 17.1 The ICB shall:
 - 17.1.1 run appropriate local provider selection and procurement processes for Delegated Services;
 - 17.1.2 align all procurement processes with any changes to national procurement policy (for example new legislation) for Delegated Services;
 - 17.1.3 support NHS England with national procurements where required with subject matter expertise on provider engagement and provider landscape; and
 - 17.1.4 monitor and provide advice, guidance and expertise to NHS England on the overall provider market and provider landscape.
- 17.2 In discharging these responsibilities, the ICB must comply at all times with Law and any relevant Guidance including but not limited to Mandated Guidance; any applicable procurement law and Guidance on the selection of, and award of contracts to, providers of healthcare services.
- 17.3 When the ICB makes decisions in connection with the awarding of Specialised Services Contracts, it should ensure that it can demonstrate compliance with requirements for the award of such Contracts, including that the decision was:
 - 17.3.1 made in the best interest of patients, taxpayers and the Population;
 - 17.3.2 robust and defensible, with conflicts of interests appropriately managed;
 - 17.3.3 made transparently; and
 - 17.3.4 compliant with relevant Guidance and legislation.

18 Quality

- 18.1 The ICB must ensure that appropriate arrangements for quality oversight are in place. This must include:
 - 18.1.1 clearly defined roles and responsibilities for ensuring governance and oversight of Delegated Services;

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- 18.1.2 defined roles and responsibilities for ensuring robust communication and appropriate feedback, particularly where Delegated Services are commissioned through an arrangement with one or more other ICBs;
 - 18.1.3 working with providers and partner organisations to address any issues relating to Delegated Services and escalate appropriately if such issues cannot be resolved;
 - 18.1.4 developing and standardising processes that align with regional systems to ensure oversight of the quality of Delegated Services, and participating in local System Quality Groups and Regional Quality Groups, or their equivalent;
 - 18.1.5 ensuring processes are robust and concerns are identified, mitigated and escalated as necessary;
 - 18.1.6 ensuring providers are held to account for delivery of safe, patient-focused and quality care for Delegated Services, including mechanisms for monitoring patient complaints, concerns and feedback; and
 - 18.1.7 the implementation of the Patient Safety Incident Response Framework for the management of incidents and serious events, appropriate reporting of any incidents, undertaking any appropriate patient safety incident investigation and obtaining support as required.
- 18.2 The ICB must establish a plan to ensure that the quality of the Delegated Services is measured consistently, using nationally and locally agreed metrics triangulated with professional insight and soft intelligence.
- 18.3 The ICB must ensure that the oversight of the quality of the Delegated Services is integrated with wider quality governance in the local system and aligns with the NHS England National Quality Board's recommended quality escalation processes.
- 18.4 The ICB must ensure that there is a System Quality Group (or equivalent) to identify and manage concerns across the local system.
- 18.5 The ICB must ensure that there is appropriate representation at any Regional Quality Groups or their equivalent.
- 18.6 The ICB must have in place all appropriate arrangements in respect of child and adult safeguarding and comply with all relevant Guidance.

19 Service Planning and Strategic Priorities

- 19.1 The ICB is responsible for setting local commissioning strategy, policy and priorities and planning for and carrying out needs assessments for the Delegated Services.
- 19.2 In planning, commissioning and managing the Delegated Services, the ICB must have processes in place to assess and monitor equitable patient access, in accordance with the access criteria set out in Clinical Commissioning Policies and National Specifications, taking action to address any apparent anomalies.
- 19.3 The ICB must ensure that it works with Specialised Service Providers and Provider Collaboratives to translate local strategic priorities into operational outputs for Delegated Services.
- 19.4 The ICB shall provide input into any consideration by NHS England as to whether the commissioning responsibility in respect of any of the Retained Services should be delegated.

20 National Standards, National Specifications and Clinical Commissioning Policies

- 20.1 The ICB shall provide input into national decisions on National Standards and national transformation regarding Delegated Services through attendance at governance meetings.
- 20.2 The ICB shall facilitate engagement with local communities on National Specification development.
- 20.3 The ICB must comply with the National Specifications and relevant Clinical Commissioning Policies and ensure that all clinical Specialised Services Contracts accurately reflect Clinical Commissioning Policies and include the relevant National Specification, where one exists in relation to the relevant Delegated Service.
- 20.4 The ICB must co-operate with any NHS England activities relating to the assessment of compliance against National Standards, including through the Assurance Processes.
- 20.5 The ICB must have appropriate mechanisms in place to ensure National Standards and National Specifications are being adhered to.
- 20.6 Where the ICB has identified that a Specialised Services Provider may not be complying with the National Standards set out in the relevant National Specification, the ICB shall consider the action to take to address this in line with the Assurance Processes.

21 Transformation

- 21.1 The ICB shall:
 - 21.1.1 prioritise pathways and services for transformation according to the needs of its Population and opportunities for improvement in ICB commissioned services and for Delegated Services;
 - 21.1.2 lead ICB and ICB Collaboration Arrangement driven transformation programmes across pathways for Delegated Services;
 - 21.1.3 lead the delivery locally of transformation in areas of national priority (such as Cancer, Mental Health and Learning Disability and Autism), including supporting delivery of commitments in the NHS Long Term Plan;
 - 21.1.4 support NHS England with agreed transformational programmes for Retained Services;
 - 21.1.5 support NHS England with agreed transformational programmes and identify future transformation programmes for consideration and prioritisation for Delegated Services where national co-ordination and enablement may support transformation;
 - 21.1.6 work collaboratively with NHS England on the co-production and co-design of transformation and improvement interventions and solutions in those areas prioritised; and
 - 21.1.7 ensure Relevant Clinical Networks and other clinical networks use levers to facilitate and embed transformation at a local level for Delegated Services.

SCHEDULE 4: Reserved Functions

Introduction

1. Reserved Functions in Relation to the Delegated Services

- 1.1. In accordance with Clause 6.2 of this Agreement, all functions of NHS England other than those defined as Delegated Functions, are Reserved Functions.
- 1.2. This Schedule sets out further provision regarding the carrying out of the Reserved Functions as they relate to the Delegated Functions.
- 1.3. The ICB will work collaboratively with NHS England and will support and assist NHS England to carry out the Reserved Functions.
- 1.4. The following functions and related activities shall continue to be exercised by NHS England.

2. Retained Services

- 2.1. NHS England shall commission the Retained Services set out in Schedule 5.

3. Reserved Specialised Service Functions

- 3.1. NHS England shall carry out the functions set out in this Schedule 4 in respect of the Delegated Services.

Reserved Functions

4. Assurance and Oversight

- 4.1. NHS England shall:
 - 4.1.1. have oversight of what ICBs are delivering (inclusive of Delegated Services) for their Populations and all patients;
 - 4.1.2. design and implement appropriate assurance of ICBs' exercise of Delegated Functions including the Assurance Processes;
 - 4.1.3. help the ICB to coordinate and escalate improvement and resolution interventions where challenges are identified (as appropriate);
 - 4.1.4. ensure that the NHS England Board is assured that Delegated Functions are being discharged appropriately;
 - 4.1.5. ensure specialised commissioning considerations are appropriately included in NHS England frameworks that guide oversight and assurance of service delivery; and
 - 4.1.6. host a Delegated Commissioning Group ("DCG") that will undertake an assurance role in line with the Assurance Processes. This assurance role shall include assessing and monitoring the overall coherence, stability and sustainability of the commissioning model of Specialised Services at a

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national level, including identification, review and management of appropriate cross-ICB risks.

- 4.2. Where an officer or employee of NHS England is performing its Reserved Functions in respect of assurance and oversight, NHS England must ensure that those officers or employees do not hold responsibility for, or undertake any, decision making in respect of the ICB's Delegated Functions.

5. Attendance at governance meetings

- 5.1. NHS England shall ensure that there is appropriate representation in respect of Reserved Functions and Retained Services at local governance forums (for example, the Regional Leadership Team) and at the National Commissioning Group (“NCG”).
- 5.2. NHS England shall:
 - 5.2.1. ensure that there is appropriate representation by NHS England subject matter expert(s) at National Standards development forums;
 - 5.2.2. ensure there is appropriate attendance by NHS England representatives at nationally led clinical governance meetings; and
 - 5.2.3. co-ordinate, and support key national governance groups.

6. Clinical Leadership and Clinical Reference Groups

- 6.1. NHS England shall be responsible for the following:
 - 6.1.1. developing local leadership and support for the ICB relating to Specialised Services;
 - 6.1.2. providing clinical leadership, advice and guidance to the ICB in relation to the Delegated Services;
 - 6.1.3. providing point-of-contact and ongoing engagement with key external bodies, such as interest groups, charities, NICE, DHSC, and Royal Colleges; and enabling access to clinical trials for new treatments and medicines.
- 6.2. NHS England will host Clinical Reference Groups, which will lead on the development and publication of the following for Specialised Services:
 - 6.2.1. Clinical Commissioning Policies;
 - 6.2.2. National Specifications, including National Standards for each of the Specialised Services.

7. Clinical Networks

- 7.1. Unless otherwise agreed between the Parties, NHS England shall put in place contractual arrangements and funding mechanisms for the commissioning of the Relevant Clinical Networks.
- 7.2. NHS England shall ensure development of multi-ICB, and multi-region (where necessary) governance and oversight arrangements for Relevant Clinical Networks that give line of sight between all clinical networks and all ICBs whose Population they serve.
- 7.3. NHS England shall be responsible for:
 - 7.3.1. developing national policy for the Relevant Clinical Networks;

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- 7.3.2. developing and approving the specifications for the Relevant Clinical Networks;
- 7.3.3. maintaining links with other NHS England national leads for clinical networks not focused on Specialised Services;
- 7.3.4. convening or supporting national networks of the Relevant Clinical Networks;
- 7.3.5. agreeing the annual plan for each Relevant Clinical Network with the involvement of the ICB and Relevant Clinical Network, ensuring these reflect national and regional priorities;
- 7.3.6. managing Relevant Clinical Networks jointly with the ICB; and
- 7.3.7. agreeing and commissioning the hosting arrangements of the Relevant Clinical Networks.

8. Complaints

- 8.1. NHS England shall manage all complaints in respect of the Delegated Services that are received prior to the Effective Date of Delegation or the date on which the Commissioning Team is transferred to the Host ICB (whichever is the later).
- 8.2. NHS England shall provide the relevant individuals at the ICB with appropriate access to complaints data held by NHS England that is necessary to carry out the complaints function as set out in the Complaints Sharing Protocol.
- 8.3. NHS England shall manage all complaints in respect of the Retained Services.
- 8.4. NHS England shall set out what information the ICB is required to provide when reporting on the key performance indicators. NHS England should notify the ICB in advance and provide sufficient time to allow compliance.

9. Commissioning and optimisation of High Cost Drugs

- 9.1. Unless otherwise agreed with the ICB, NHS England shall manage a central process for reimbursement of High Costs Drugs for Specialised Services. This may include making reimbursements directly to Specialised Services Providers.
- 9.2. In respect of pharmacy and optimisation of High Cost Drugs, NHS England shall:
 - 9.2.1. where appropriate, ensure that only validated drugs spend is reimbursed, there is timely drugs data and drugs data quality meets the standards set nationally;
 - 9.2.2. support the ICB on strategy for access to medicines used within Delegated Services, minimising barriers to health inequalities;
 - 9.2.3. provide support, as reasonably required, to the ICB to assist it in the commissioning of High Cost Drugs for Delegated Services including shared care agreements;
 - 9.2.4. seek to address consistency of prescribing in line with national commissioning policies, introduction of new medicines, and addressing unwarranted prescribing variation;
 - 9.2.5. develop medicines commissioning policies and criteria for access to medicines within Specialised Services;

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- 9.2.6. develop support tools, including prior approval criteria, and frameworks to support the delivery of cost-effective and high quality commissioning of High Cost Drugs;
- 9.2.7. co-ordinate the development, implementation and monitoring of initiatives that enable the use of better value medicines;
- 9.2.8. where appropriate, co-ordinate national procurement or other commercial processes to secure medicines or High Cost Drugs for Specialised Services.

10. Contracting

- 10.1. NHS England shall retain the following obligations in relation to contracting for Delegated Services:
 - 10.1.1. ensure Specialised Services are included in national NHS England contracting and payment strategy (for example, Aligned Payment Incentives);
 - 10.1.2. provide advice for ICBs on schedules to support the Delegated Services;
 - 10.1.3. set, publish or make otherwise available the Contracting Standard Operating Procedure and Mandated Guidance detailing contracting strategy and policy for Specialised Services; and
 - 10.1.4. provide and distribute contracting support tools and templates to the ICB.
- 10.2. In respect of the Retained Services, NHS England shall:
 - 10.2.1. where appropriate, ensure a Collaborative Commissioning Agreement is in place between NHS England and the ICB(s); and
 - 10.2.2. where appropriate, construct model template schedules for Retained Services and issue to ICBs.

11. Data Management and Analytics

- 11.1. NHS England shall:
 - 11.1.1. support the ICB by collaborating with the wider data and analytics network (nationally) to support development and local deployment or utilisation of support tools;
 - 11.1.2. support the ICB to address data quality and coverage needs, accuracy of reporting Specialised Services activity and spend on a Population basis to support commissioning of Specialised Services;
 - 11.1.3. ensure inclusion of Specialised Services data strategy in broader NHS England, DHSC and government data strategies;
 - 11.1.4. lead on defining relevant contractual content of the information schedule (Schedule 6) of the NHS Standard Contract for Clinical Services;
 - 11.1.5. work collaboratively with the ICB to drive continual improvement of the quality and coverage of data used to support commissioning of Specialised Services;
 - 11.1.6. provide a national analytical service to support oversight and assurance of Specialised Services, and support (where required) the national Specialised Commissioning team, Programmes of Care and Clinical Reference Groups; and

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- 11.1.7. provide access to data and analytic subject matter expertise to support the ICB when considering local service planning, needs assessment and transformation.

12. Finance

- 12.1. The provisions of Clause 10 shall apply in respect of the financial arrangements in respect of the Delegated Functions.
- 12.2. NHS England shall:
 - 12.2.1. hold the budgets for prescribed specialised services top-up payments for specialist centres;
 - 12.2.2. administer the top-up payments schemes; and
 - 12.2.3. make top-up payments to the Specialised Services Providers.
- 12.3. For the avoidance of doubt, the functions set out in 12.2 include top-up payments for the Delegated Services and Retained Services.

13. Freedom of Information and Parliamentary Requests

- 13.1. NHS England shall:
 - 13.1.1. lead on handling, managing and responding to all national FOIA and parliamentary correspondence relating to Retained Services; and
 - 13.1.2. co-ordinate a response when a single national response is required in respect of Delegated Services.

14. Incident Response and Management

- 14.1. NHS England shall:
 - 14.1.1. provide guidance and support to the ICB in the event of a complex incident;
 - 14.1.2. lead on national incident management for Specialised Services as appropriate to stated incident level and where nationally commissioned services are impacted;
 - 14.1.3. lead on monitoring, planning and support for service and operational resilience at a national level and provide support to the ICB; and
 - 14.1.4. respond to specific service interruptions where appropriate; for example, supplier and workforce challenges and provide support to the ICB in any response to interruptions.

15. Individual Funding Requests

- 15.1. NHS England shall be responsible for:
 - 15.1.1. leading on Individual Funding Requests (IFR) policy, IFR governance and managing the IFR process for Delegated Services and Retained Services;
 - 15.1.2. taking decisions in respect of IFRs at IFR Panels for both Delegated Services and Retained Services; and
 - 15.1.3. providing expertise for IFR decisions, including but not limited to pharmacy, public health, nursing and medical and quality.

16. Innovation and New Treatments

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- 16.1. NHS England shall support the local implementation of innovative treatments for Delegated Services.
- 16.2. NHS England shall ensure services are in place for innovative treatments such as advanced medicinal therapy products recommended by NICE technology appraisals within statutory requirements.
- 16.3. NHS England shall provide national leadership for innovative treatments with significant service impacts including liaison with NICE.

17. Mental Health, Learning Disability and Autism Specialised Services

- 17.1. NHS England shall issue commissioning guidance for MHLDA Specialised Services in relation to the Delegated Services and Retained Services.
- 17.2. NHS England shall prepare and issue National Specifications and Clinical Commissioning Policies for MHLDA Specialised Services.
- 17.3. NHS England will monitor the ICB's compliance with the Mental Health Investment Standard in respect of MHLDA Delegated Services.
- 17.4. NHS England shall ensure that its case management function will work collaboratively across Delegated Services and Retained Services to support the oversight and progression of individual patient care, including the movement across elements of the care pathway.

18. Provider Selection and Procurement

- 18.1. In relation to procurement, NHS England shall be responsible for:
 - 18.1.1. setting standards and agreeing frameworks and processes for provider selections and procurements for Specialised Services;
 - 18.1.2. monitoring and providing advice, guidance and expertise on the overall provider market in relation to Specialised Services; and
 - 18.1.3. where appropriate, running provider selection and procurement processes for Specialised Services.

19. Quality

- 19.1. In respect of quality, NHS England shall:
 - 19.1.1. work with the ICB to ensure oversight of Specialised Services through quality surveillance and risk management and escalate as required;
 - 19.1.2. work with the ICB to seek to ensure that quality and safety issues and risks are managed effectively and escalated to the National Specialised Commissioning Quality and Governance Group (QGG), or other appropriate forums, as necessary;
 - 19.1.3. work with the ICB to seek to ensure that the quality governance and processes for Delegated Services are aligned and integrated with broader clinical quality governance and processes in accordance with National Quality Board Guidance;
 - 19.1.4. facilitate improvement when quality issues impact nationally and regionally, through programme support, and mobilising intensive support when required on specific quality issues;

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- 19.1.5. provide guidance on quality and clinical governance matters and benchmark available data;
- 19.1.6. support the ICB to identify key themes and trends and utilise data and intelligence to respond and monitor as necessary;
- 19.1.7. report on quality to both NCG and DCG as well as QGG and Executive Quality Group as required;
- 19.1.8. facilitate and support the national quality governance infrastructure (for example, the QGG); and
- 19.1.9. identify and act upon issues and concerns that cross multiple ICBs, coordinating response and management as necessary.

20. National Standards, National Specifications and Clinical Commissioning Policies

- 20.1. NHS England shall carry out:
 - 20.1.1. development, engagement and approval of National Standards for Specialised Services (including National Specifications, Clinical Commissioning Policies, quality and data standards);
 - 20.1.2. production of national commissioning products and tools to support commissioning of Specialised Services;
 - 20.1.3. maintenance and publication of the Prescribed Specialised Services Manual and engagement with the DHSC on policy matters; and
 - 20.1.4. determination of content for national clinical registries.

21. Transformation

- 21.1. NHS England shall be responsible for:
 - 21.1.1. co-ordinating and enabling ICB-led specialised service transformation programmes for Delegated Services where necessary;
 - 21.1.2. supporting the ICB to implement national policy and guidance across its Populations for Retained Services;
 - 21.1.3. supporting the ICB with agreed transformational programmes where national transformation support has been agreed for Delegated Services;
 - 21.1.4. providing leadership for transformation programmes and projects that have been identified as priorities for national coordination and support, or are national priorities for the NHS, including supporting delivery of commitments in the NHS Long Term Plan;
 - 21.1.5. co-production and co-design of transformation programmes with the ICB and wider stakeholders; and
 - 21.1.6. providing access to subject matter expertise including Clinical Reference Groups, national clinical directors, Programme of Care leads for the ICB where it needs support, including in relation to local priority transformation.

SCHEDULE 5: Retained Services

NHS England shall retain the function of commissioning the Specialised Services that are not Delegated Services and as more particularly set out by NHS England and made available from time to time.

SCHEDULE 6: Further Information Governance, Sharing and Processing Provisions

PART 1

1. Introduction

- 1.1. This Schedule sets out the scope for the secure and confidential sharing of information between the Parties on a Need To Know basis, or where a Party acts as a Data Processor on behalf of the other Party in order to enable the Parties 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 each Party's 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 (including the details at Part 2 and 3 of this Schedule) and any Data Sharing Agreement and/or Data Processing Agreements entered into under this Schedule are designed to:
 - 1.3.1. provide information about the reasons why Relevant Information may need to be shared and/or processed on behalf of another Party and how this will be managed and controlled by the Parties;
 - 1.3.2. describe the purposes for which the Parties have agreed to share and/or the basis on which a Party is instructed to act as a Data Processor in relation to the Relevant Information;
 - 1.3.3. set out the lawful basis for the processing of Relevant Information and sharing of information between the Parties, 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 Parties;
 - 1.3.5. apply to the sharing and processing of Relevant Information relating to Specialised Services Providers and their Staff;
 - 1.3.6. apply to the sharing and processing 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 processed and how this sharing and processing will be managed;
 - 1.3.8. apply to the activities of the Parties' Staff; and
 - 1.3.9. describe how complaints relating to Personal Data sharing between the Parties and wider processing will be investigated and resolved, and how the information sharing and processing will be monitored and reviewed.

2. Purpose

- 2.1. The Specified Purpose of the data sharing and associated processing is to facilitate the exercise of the Delegated Functions and NHS England's Reserved Functions.

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- 2.2. Each Party must ensure that they have in place appropriate data sharing or data processing arrangements to enable data to be received from any third party organisations from which the Parties must obtain data in order to achieve the Specified Purpose.
- 2.3. Where necessary specific and detailed purposes must be set out in a Data Sharing Agreement or Data Processing 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 Delegated Services.

4. Lawful basis for sharing

- 4.1. The Parties 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 Parties 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. Further details regarding the Relevant Information to be shared shall be set out in a Data Sharing Agreement and/or Data Processing Agreement.

5. Restrictions on use of the Shared Information

- 5.1. Each Party 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 Party 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 Parties' 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 Agreement and/or Data Processing Agreement should be taken to permit unrestricted access to data held by any of the Parties.
- 5.4. Neither Party shall subcontract any processing of the Relevant Information without the prior consent of the other Party. Where a Party subcontracts its obligations, it shall do so only by way of a written agreement with the sub-contractor which imposes the same

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obligations as are imposed on that Party under this Agreement, and shall remain liable for the performance of the subcontractor's obligations.

- 5.5. The Parties shall not cause or allow Relevant Information to be transferred to any territory outside the United Kingdom without the prior written permission of the responsible Data Controller.
- 5.6. Any particular restrictions on use of certain Relevant Information should be included in a Data Sharing Agreement and/or Data Processing 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 Parties 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 Party 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 Parties shall reasonably co-operate in undertaking any DPIA associated with the processing of data further to this Agreement, and in doing so engage with their respective Data Protection Officers in the performance by them of their duties pursuant to Article 39 UK GDPR.
- 6.4. Further provision in relation to specific data flows may be included in a Data Sharing Agreement and/or Data Processing Agreement between the Parties.

7. Governance: Staff

- 7.1. The Parties 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 Parties agree to treat all Relevant Information as confidential and imparted in confidence and must safeguard it accordingly. Where any of the Parties' Staff are not healthcare professionals (for the purposes of the Data Protection Act 2018), the employing Parties 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 Parties shall ensure that all Staff required to access Personal Data (including Special Category Personal Data) are informed of the confidential nature of the Personal

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

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

8. Governance: Protection of Personal Data

- 8.1. At all times, the Parties 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 Parties. The Parties shall co-operate 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 Party becomes aware of:
 - 8.4.1. any unauthorised or unlawful processing of any Relevant Information or that any Relevant Information is lost or destroyed or has become damaged, corrupted or unusable; or
 - 8.4.2. any security vulnerability or breach in respect of the Relevant Information, it shall promptly, within 48 hours, notify the other Parties. The Parties shall fully co-operate with one another to remedy the issue as soon as reasonably practicable, and in making information about the incident available to the Information Commissioner and Data Subjects where required by Data Protection Legislation.
- 8.5. In processing any Relevant Information further to this Agreement, the Parties shall process the Personal Data and Special Category Personal Data only:

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- 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 including any instructions set out in a Data Processing Agreement entered into under this Schedule, unless required by law (in which case, the processor shall inform the relevant Data Controller of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest);
 - 8.5.2. to the extent as is necessary for the provision of the Specified Purpose or as is required by law or any regulatory body; and
 - 8.5.3. in accordance with Data Protection Legislation requirements, in particular the principles set out in Article 5(1) and accountability requirements set out in Article 5(2) UK GDPR; and not in such a way as to cause any other Data Controller to breach any of their applicable obligations under Data Protection Legislation.
- 8.6. The Parties 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 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 Party 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 Party in order to transfer the Relevant Information to any third party;
 - 8.7.4. permit any other party 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 Party 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.

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- 8.8. The Parties shall adhere to the specific requirements as to information security set out in any Data Sharing Agreement and/or Data Processing Agreement entered into in accordance with this Schedule.
- 8.9. The Parties shall use best endeavours to achieve and adhere to the requirements of the NHS Digital Data Security and Protection Toolkit.
- 8.10. The Parties' 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 Parties

- 9.1. This paragraph supplements paragraph 8 of this Schedule.
- 9.2. Transfer of Personal Data between the Parties 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 and/or data is identified.
- 9.4. Any other special measures relating to security of transfer should be specified in a Data Sharing Agreement and/or Data Processing Agreement entered into in accordance with this Schedule.
- 9.5. Each Party shall keep an audit log of Relevant Information transmitted and received in the course of this Agreement.
- 9.6. The Parties' 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 Parties.

10. Governance: Quality of Information

- 10.1. The Parties 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 Party 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 Party that shared the Relevant Information. Once paper information is no longer required, paper records will be securely destroyed or securely returned to the Party they came from.
- 11.2. Each Party 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 Party 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 Parties in writing of that retention, giving details of the documents or materials that it must retain.

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- 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 Parties shall set out any special retention periods in a Data Sharing Agreement where appropriate.
- 11.6. The Parties 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 Party 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 Party 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 Parties 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 processing shall be reported to the Single Points of Contact and the ICB. Complaints about information sharing shall be routed through each Parties' own complaints procedure unless otherwise provided for in the Agreement or determined by the ICB. Where the complaint relates to processing undertaken by a Party acting as a Data Processor on behalf of the other Party, complaints shall be routed through the relevant Data Controller's own complaints procedure unless otherwise provided for in the Agreement.
- 12.3. The Parties 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 Party's publication scheme.

13. Governance: Single Points of Contact

- 13.1. The Parties 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 Parties shall monitor and review on an ongoing basis the sharing and wider processing 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 and/or Data Processing Agreement.

SCHEDULE 6: Further Information Governance, Sharing and Processing Provisions

PART 2

Data Sharing Agreement

Description	Details
Subject matter of the processing	<p>Due to the complexities of Specialised Services and the distinctions between Delegated Functions and Reserved Functions, both the ICB Commissioning Teams (employed by the Host ICB) delivering Delegated Functions and the NHS England teams delivering Reserved Functions will need access to Relevant Information, which contains Personal Data.</p> <p>As set out in Schedule 6, Part 1, Paragraph 2.1, the Specified Purpose for sharing data is: <i>‘...to facilitate the exercise of the Delegated Functions and NHS England’s Reserved Functions.’</i> In order to achieve this purpose in the most effective, efficient and cost effective manner, the data will be hosted by NHS England in a collaborative working space which ICBs will have access to.</p> <p>NHS England will be responsible for ensuring that Commissioning Team staff have sufficient and appropriate access to Relevant Information to enable those staff to fulfil their commissioning functions in respect of the Delegated Services, including those described in Schedule 3 (Delegated Functions) to this agreement.</p> <p>In addition, NHS England may process the data for the following purposes:</p> <ul style="list-style-type: none"> • development, oversight, and the quality improvement of Specialised Commissioning Functions; • undertaking work to evaluate the effectiveness of innovation and changes in delivery models and advising other bodies and organisations about these functions; • arranging the provision of services to support commissioning activities, to enable reporting and evaluations; • undertaking analysis, audits, and inspections to assess and assure the quality of Specialised Commissioning Functions; • supporting healthcare organisations to interpret population health data and evidence, and to undertake reviews of the likely effectiveness and cost-effectiveness of a range of interventions; • development a of strategies on population health outcomes and to identify gaps or deficiencies in current care and to produce recommendations for improvements, including in relation to specific pathways of care; • using and supporting health organisations to use health economic tools to support decision-making and interpreting data about the surveillance or assessment of a population’s health to improve health outcomes and reduce health inequalities; • the development of population health policies and strategies, and their implementation
Duration of the processing	<p>Unless otherwise specified in this Data Sharing Agreement, the processing shall commence on the Effective Date of Delegation and, as per paragraph 11.1 of this Schedule, shall continue until the need to use it has passed or, if later, upon the termination of this Agreement.</p>

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Nature and purpose of the processing	<p>Personal Data is shared between the in relation to the delivery of the Delegated Functions. Such processing should ensure continued:</p> <ul style="list-style-type: none"> • Provision of live services and associated reporting; • Quality improvement and assurance of services; • Dissemination of data for health and research purposes.
Type of Personal Data being Processed	<p>Name / address / date of birth / NI number / telephone number / pay / NHS number / GP and clinical information e.g. patient escalations / complaints / FOIs / subject matter requests / bespoke patient planning.</p>
Categories of Data Subject	<p>Contracting data Finance data Supplier data Patient & public engagement data BI & analytical data Performance data Service provision & planning data Patient identifiable data HR and recruitment data Staff personal data</p>

SCHEDULE 6: Further Information Governance, Sharing and Processing Provisions

PART 3

Data Processing Agreement

Description	Details
Identity of the Controller and Processor	The ICB is the Data Controller and NHS England is the Data Processor.
Subject matter of the processing	<p>Both the ICB Commissioning Teams (employed by the Host ICB) delivering Delegated Functions and the NHS England teams delivering Reserved Functions will need access to Relevant Information. In order to achieve this purpose in the most effective, efficient and cost effective manner, the data will be hosted by NHS England in a collaborative working space which ICBs will have access to.</p> <p>Consequently, NHS England will act as a Data Processor on behalf of the ICB in relation to the Relevant Information required to commission the Delegated Services and fulfil the Delegated Functions.</p>
Duration of the processing	Unless otherwise specified in this Data Processing Agreement the processing shall commence on the Effective Date of Delegation and, as per paragraph 11.1 of this Schedule, shall continue until the need to use it has passed or, if later, upon the termination of this Agreement.
Plan for return and destruction of the data once the processing is complete	As set out in paragraph 11.1 of this Schedule
Nature and purpose of the processing	<p>This Data Processing Agreement considers processing of any data by NHS England on behalf of the ICB Commissioning Teams in relation to the delivery of the Delegated Functions. Such processing should ensure continued:</p> <ul style="list-style-type: none"> • Provision of live services and associated reporting; • Quality improvement and assurance of services; • Dissemination of data for health and research purposes.
Type of Personal Data being Processed	Name / address / date of birth / NI number / telephone number / pay / NHS number / GP and clinical information e.g. patient escalations / complaints / FOIs / subject matter requests / bespoke patient planning.
Categories of Data Subject	<p>Contracting data Finance data Supplier data Patient & public engagement data BI & analytical data Performance data Service provision & planning data Patient identifiable data HR and recruitment data Staff personal data</p>

SCHEDULE 7: 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.
- Information Governance 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.
- Guidance relating to the processes for making and handling individual funding requests, including:
 - [Commissioning policy: Individual funding requests;](#)
 - [Standard operating procedures: Individual funding requests.](#)

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 Prescribed Specialised Services Manual

SCHEDULE 8: Local Terms

General

Where there is a Dispute as to the content of this Schedule, the Parties should follow the Disputes procedure set out at Clause 25.

Following signature of the Agreement, this Schedule can be amended by the Parties using the Variations procedure at Clause 26.

NHS England can amend this Schedule without the ICB's consent by using the variation procedure set out in Clause 26.2 but the expectation is that variations should be by consent.

Part 1 – the services to be planned or commissioned at an ICB level

There are no specialised services that are planned at an individual ICB level.

Part 2 – the services to be planned or commissioned by an ICB Collaboration Arrangement

All delegated specialised services included in Schedule 2 will be planned on across the 11 ICBs working through the ICB Collaboration Agreement delivered by the integrated commissioning team detailed in Schedule 10.

Part 3 – Workforce and Commissioning Team Arrangements

The workforce delivering the commissioning responsibilities for the safe and effective commissioning of Specialised Acute and Mental Health Learning Disability and Autism for Retained NHSE services and Delegated ICB services will work together as one integrated commissioning team working across all 12 NHS commissioning bodies in the midlands. The details of what services will be delivered employees of the host ICB and employees of NHSE are described in schedule 10 of this agreement.

Part 4 – ICB Collaboration Arrangements

The 11 ICBs in the Midlands region will establish a Collaboration Agreement and will include all the requirements set out in clause 8.4, the Collaboration Agreement is a separate document.

Part 5 – Pooled Funds and Non-Pooled Funds

Clause 10.16 permits the ICB to establish pooled fund arrangements under Section 65Z5 or section 75 of the NHS Act. These should be with the prior approval of NHS England.

Pooling arrangements will be detailed in the collaboration agreement

Part 6 – MHLDA Provider Collaboratives

East Midlands

A single ICB will host the following four lead provider contracts on behalf of the five ICBs in the East Midlands:

Leicester, Leicestershire & Rutland ICB

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- Adult Low & Medium Secure – Nottinghamshire Healthcare NHS Trust
- CYPMHS – Northamptonshire Healthcare NHS Trust
- Adult Eating Disorder – Leicestershire Partnership NHS Trust
- Perinatal Inpatient Services – Derbyshire Healthcare NHS Trust

West Midlands

Two ICB's will host the following four lead provider contracts on behalf of the six ICBs in the West Midlands:

Birmingham & Solihull ICB

- Adult Low & Medium Secure – Birmingham & Solihull Mental Health NHS Trust
- CYPMHS – Birmingham Women's & Children's NHS Trust

Staffordshire & Stoke on Trent ICB

- Adult Eating Disorder – Midlands University Partnership NHS Trust
- Perinatal Inpatient Services – Midlands University Partnership NHS Trust

Process to transfer commissioning responsibilities

The draft national commissioning guidance that is in development, which is aligned to national policy advice for 2025/26 recommends that as the existing Lead Provider contracts are 2-year contracts, expiring on 31 March 2026, the NHSE regional team should complete a notice under General Condition 12 (GC12)¹ to assign commissioning responsibilities under the existing contracts to the relevant ICBs.

At the point NHSE completes a notice under GC12, NHSE will no longer have any commissioning responsibilities under these contracts and therefore the named ICB will become the coordinating commissioner.

Roles and responsibilities for the coordinating ICB and associate ICBs, will need to be outlined in the collaborative commissioning agreement between the relevant ICB's with responsibilities listed in Schedule 5C of the contract.

Part 7 – Further Governance Arrangements

Governance arrangements are in place operating through two formal joint committees which has delegated decision making from each of their member ICB for the commissioning of defined services which include specialised Acute and MHLDA services outlined in this delegation agreement. The two joint committees are

The East Midlands Joint Committee made up of:

Lincolnshire ICB, Nottingham & Nottinghamshire ICB, Leicester, Leicestershire & Rutland ICB, Northamptonshire ICB, Derby & Derbyshire ICB.

and

The West Midlands Joint Committee made up of

Birmingham & Solihull ICB, Black Country ICB, Herefordshire & Worcestershire ICB, Coventry & Warwickshire ICB, Shropshire, Telford & Wrekin ICB and Staffordshire & Stoke-on-Trent ICB

There are four formal sub groups of the joint committees which cover all 11 ICBs and NHSE, these sub groups have delegated decision making responsibilities as outlined in both Joint Committee terms of reference.

¹ <https://www.england.nhs.uk/wp-content/uploads/2024/02/04-NHS-Standard-Contract-2024-to-2025-General-Conditions-full-length-version-1-February-2024.pdf>

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These sub committees are:

- Finance and Contracting
- Clinical & Quality
- Midlands Specialised Commissioning Group
- Midlands MHLDA Commissioning Group

There may be additional advisory non-decision-making groups which will be detailed in the terms of reference of either of the Joint Committees for either of the sub-committees.

SCHEDULE 9: Developmental Arrangements

These Development Arrangements take precedence over the terms of this Agreement including other Schedules, and the Agreement shall be read as varied by these Developmental Arrangements. Save as varied by these Developmental Arrangements the Agreement remains in full force and effect.

The Developmental Arrangements

The following Developmental Arrangements apply to this Agreement:

For all ICBS in NOF3 or NOF4, any decision that impacts on the overall spend of the specialised service allocation must have NHSE Regional approval before the commissioning change is made or any change process is begun.

NHSE guidance on the review application and governance of developmental arrangements will be applied and updated as appropriate.

SCHEDULE 10: Administrative and Management Services

The purpose of this schedule is to set out the functions that will operate to support the overall delivery of specialised services within the Midlands, improving outcomes for our local populations, and working on behalf of patients accessing care in providers outside the region.

The Midlands have developed a clear commitment to maintaining an integrated approach to the commissioning of the nationally prescribed specialised services across delegated and retained provision. This will require a collaborative approach to working as represented through the integrated governance structures set out. In some cases, individual functions will be conducted by teams hosted by the ICBs or managed by NHSE. These arrangements will be set out in this schedule.

1. Specialised Commissioning functions: Delegated and Retained

Listed below are the key functions and roles that have been split between the ICB commissioning team and the NHSE retained team (including any roles/functions that have a wider responsibilities)

Functions/Areas	Midlands Specialised Commissioning Team (Delegated Function) ICB Hosted	Midlands Specialised Commissioning Team (Retained Function) NHSE Employed	Shared/joint roles /functions/issues
Commissioning	<p>Team function (contracting, finance, quality and corporate) responsible and working on behalf of 11 ICBs through the Joint Committees (East and West Midlands)</p> <p>Hosted (employed by BSOL ICB) from July 2025</p>	<p>Team function (contracting, finance, quality and corporate) responsible and working on retained services.</p> <p>Employed by NHSE</p>	<p>Programme of care advice and guidance across the team structure</p>
Executive Leadership	<p>MSCT (delegated) Senior Leadership Team:</p> <ul style="list-style-type: none"> • Director of specialised /collaborative commissioning • Director of Commissioning finance • Director of Nursing & Quality • Medical Director <p>Line management reporting to BSOL ICB (details to be refined across the first six months as the team settles into the new hosting).</p> <p>Supported through the Executive Leadership</p>	<p>MSCT (retained) Senior Leadership Team:</p> <ul style="list-style-type: none"> • Deputy Director of retained specialised commissioning • Assistant Director of commissioning Finance • Deputy Director of Nursing • Assistant Director of Specialised Pharmacy • Medical Director (0.4 WTE) <p>Reporting to Regional Director of Commissioning & Integration</p>	<p>Medical Director will be seconded back to NHSE to complete 0.4 WTE equivalent activity agreed to a clear specification</p> <p>It is expected both sets of leaders will work towards promoting and leading areas of integration.</p> <p>A coordinated single operational plan will be developed and agreed ensuring a coordinated approach to specialised provision and maximising opportunity with all systems.</p>

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	Group (ELG) for East and West Midlands.		
Finance	National red line related to access to NHSE Ledger	National Red line related to access to ICB ledgers	Finance teams will work to support the single operational plan with a focus on enabling value in system delivery. There will remain a separate governance for financial decision making.
Communications & media	No posts/function transferred.	Communications & media function	NHSE hosted communications team to provide coordination through to national team and in the management of approach for specialised services (delegated and retained) working with ICB leads as needed.
Clinical networks	<p>The staff team for commissioning and overseeing the clinical Networks will be transferred</p> <p>Coordination of work programme delivery including delegated and retained service areas working with the retained teams.</p> <p>The Programme of Care team provide the Business-as-Usual point of contact for all networks, and this will be coordinated by the transferred teams.</p>	<p>No posts /function</p> <p>Resources for Networks retained by NHSE.</p>	Decisions related to the funding and model for Clinical Networks will be jointly developed and commissioned and financially governed through NHSE.
Contracting	<p>Contracting lead and function for Acute and MHLDA for delegated functions.</p> <p>Provider relationship management and coordination including with ICB teams on behalf of all services.</p>	<p>Contracting Lead and function for Acute and MHLDA retained services</p> <p>Resource to enable development of contract schedules including role for Midlands and East of England (Geographical Unit)</p>	Contracting model and SOP

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BI & Analytics function	CSU analytics support for ICB delegated services through NHSE contract Deputy Director of Planning & BI will work closely with the retained commission development support team and embedded CSU team to ensure data quality	CSU analytical support for 25/26 remains commissioned by NHSE with the contract being centrally managed and overseen by the retained Commissioning development function.	Further work during 25/26 to finalise April 2026 end state for core Commissioning Support Unit (CSU) provided BI services agreed position through joint governance.
High-Cost Drugs	No posts/function	Dedicated pharmacy team	Clinical & pharmaceutical support and expertise provided to ICBs and in partnership with Midlands Specialised Commissioning Team (delegated) from NHSE retained function. Leadership of the delivery for specialised commissioning.
Estates	BSOL ICB as host providing option of estate. ICBs to confirm general access as needed to sites. National agreed position for team access to NHSE estate	NHSE based offices Consideration of practical access to wider sites.	Agreed approach to maintaining team connectivity to be set out by the integrated leadership.
Targeted Clinical responsibilities	Case Management function for Neurorehabilitation pathway hosted on behalf of delegated and retained services, including direct employment. Peer Review capacity to operate across all specialised services	MHLDA Clinical Advice aligned to mental act and quality networks Death in Custody reviews completed for all specialised service lines	
Other advice /support	Continued commitment and opportunity to engage with NHSE Medical and commissioning Integration Senior Leadership Team.	NHSE Commissioning leadership attends Joint Committees in line with agreed ToR.	
Public Health	No transferring function	The healthcare public health team (Public Health directorate) will continue to provide public health advice and work in relation to all retained and delegated prescribed specialised services	Links with system Public Health teams will be made where beneficial.

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Geographical Unit	N/A	The team will work as part of the NHSE Operating Model in a geographical unit with East of England	
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** If at any time in the future any roles/functions that support both teams change then this must be mutually agreed and approved regarding any resource implications or risks.*

** Complaints function is defined in the Collaboration agreement. The MSCT will support complaint responses for specialised services meeting statutory requirements*

2. Integrated Commissioning approach – Our team of teams

One of the key principles that has been agreed is that we should not lose the opportunities for teams to work jointly together across the entire specialised services and commissioning portfolio. The benefits would ensure:

- Integrated approach and ways of working maintained
- Consistency of delivery across pathways
- Common strategic approach to problem solving
- Reduction in duplication and bureaucracy
- Simplifying policy and decision making
- Transparency for providers across the whole commissioning portfolio
- Opportunity to share joint objectives where it adds value.

This will be achieved through consideration of a set of 'team of teams' principles that will guide our ways of working and enable opportunities to work together more consistently and effectively. Our committed behaviours are:

- Assumptions that doing once and well together will achieve better outcomes for our population
- Our differences in approaches and responsibilities create opportunities for exploring new ways of working, rather than barriers to working together

We articulate and act with common purpose to improve care, reduce waste and improve efficiency. The areas where it is felt the combined teams would integrate and work together include:

Area /work programme	Description of work
Planning across whole pathways at scale Development of a single integrated operational plan for specialised services across delegated and retained service lines.	This would be reflective of ICB and NHSE priorities which form part of each teams' individual plans. Further work is required to work through how /which teams would liaise and co-ordinate the production. The benefit of having a single integrated plan would be to be visible /transparent to stakeholders and providers.
Strategy Development Development, delivery and reporting of a prioritised list of specialised services strategies which reflect both ICB and NHSE priorities and link to the strategic intent of improving health equity, improving efficiency and reducing unwarranted variation	Each year ICBs and NHSE would agree a programme of work for strategy development work that would benefit from a single consistent approach across all services /populations. An agreed resource plan to support the work would also be agreed
Mutual support and aid Regular joint meetings across delegated, retained and ICB leadership teams to ensure an integrated and joined up approach enabling sharing of risks and benefits	Strengthen opportunities to meet and ensure the teams can benefit and learn from each other

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The concept of Integrated working between the teams will need to be further refined and developed over the next year to allow clear roles and responsibilities and best use of resources. This will be agreed jointly through integrated governance across the three parts of specialised commissioning (retained, delegated and Midlands ICBs).

The opportunities and available resources to support an integrated commissioning approach will recognise the size and complexity of the portfolio and workload of all the teams.

3. Hosting of the ICB commissioning Team

BSOL ICB has been agreed to be the host ICB employer for the ICB specialised commissioning team (on behalf of all 11 ICBs) Any changes to the host ICB will be agreed with NHSE. Full details of the hosting agreement will be covered in a separate hosting agreement to be in place before 1st July 25.

In summary the host ICB will provide:

Function	Description
Employment of staff	HR /training /payroll
Corporate support functions for staff including office space and IT requirements	Legal/IG etc
Senior leadership: <ul style="list-style-type: none">- Agreed joint objectives on behalf of 11 ICBs- Line management	

The hosted function will develop an appropriate identity as a team working on behalf of the 11 ICBs through the joint Committees.

The agreed OD programme will ensure that the hosted function, NHSE employed team and ICBs develop a coordinated approach to delivering improved access, outcomes, productivity and value in specialised services.

**Collaboration Agreement
For Delegated of Specialised Services
2025**

Midlands Specialised Services Collaboration Agreement 2025

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THIS AGREEMENT is made on the first day of April 2024

BETWEEN:

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

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

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

NOW IT IS HEREBY AGREED as follows:

1. COMMENCEMENT AND DURATION

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

2. PRINCIPLES AND AIMS

2.1 BACKGROUND

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

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

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

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

2.3 The Partners agree:

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

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- 2.3.7 to have regard to each other's needs and views, irrespective of the relative contributions of the Partners to the commissioning of any Services and, as far as is reasonably practicable, take such needs and views into account.
- 2.4 The Partners' aims are:
 - 2.4.1 to maximise the benefits to patients of integrating the Delegated Functions with the ICBs' Commissioning Functions through designing and commissioning the Specialised Services as part of the wider pathways of care of which they are a part and, in doing so, promote the Triple Aim;

3. SCOPE OF THE ARRANGEMENTS

- 3.1 This Agreement sets out the Joint Working Arrangements through which the Partners will work together to commission Services. This may include one or more of the following commissioning mechanisms (the "Flexibilities") although this list is not exhaustive:
 - 3.1.1 Lead Commissioning Arrangements: where agreed Commissioning Functions are delegated to a lead Partner (Lead Partner);
 - 3.1.2 Aligned Commissioning Arrangements: where there is no further delegation of the Commissioning Functions. However, the Partners agree mechanisms to co-operate in the commissioning of identified Services;
 - 3.1.3 Joint Commissioning Arrangements: where the Partners exercise agreed Commissioning Functions jointly;
 - 3.1.4 the establishment of one or more Joint Committees;
 - 3.1.5 the establishment of one or more Commissioning Teams;
 - 3.1.6 the establishment of one or more Pooled Funds;
 - 3.1.7 the use of one or more Non-Pooled Fund.

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

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

3.2.2 Establishment of the following Joint Working Arrangements:

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

4. FUNCTIONS

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

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

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

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

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

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- 4.6 Where there are Lead Commissioning Arrangements in respect of any Individual Scheme, unless the Scheme Specification otherwise provides, the Lead Partner shall:
- 4.6.1 exercise the Functions of each Partner as identified in the relevant Scheme Specification;
 - 4.6.2 endeavour to ensure that all Commissioning Functions included in the relevant Individual Scheme are funded as agreed by each Partner in respect of each Financial Year;
 - 4.6.3 comply with all relevant legal duties and Guidance of all Partners in relation to the Services being commissioned;
 - 4.6.4 perform all commissioning obligations with all due skill, care and attention;
 - 4.6.5 undertake performance management and contract monitoring of all service contracts including (without limitation) the use of contract notices where Services fail to deliver contracted requirements;
 - 4.6.6 make payment of all sums due to a Provider pursuant to the terms of any Services Contract; and
 - 4.6.7 keep the other Partner(s) regularly informed of the effectiveness of the Joint Working Arrangements including any forecasted Overspend or Underspend where there is a Pooled Fund or Non-Pooled Fund.

5. COMMISSIONING TEAM

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

6. STAFFING

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

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7. JOINT COMMITTEE

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

8. GOVERNANCE

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

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

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

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

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

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

10. REVIEW

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

10.2 Annual Reviews shall be conducted in good faith.

11. COMPLAINTS

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

12. FINANCES

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

13. VARIATION

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

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

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

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

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

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

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

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

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

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

14. DATA PROTECTION

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

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

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

15. IT INTER-OPERABILITY

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

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16. FURTHER ARRANGEMENTS

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

17. FREEDOM OF INFORMATION

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

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18. CONFLICTS OF INTEREST AND TRANSPARENCY ON GIFTS AND HOSPITALITY

18.1 The Partners must ensure that, in delivering the Joint Working Arrangements, all Staff comply with Law, with Managing Conflicts of Interest in the NHS and other Guidance, and with Good Practice, in relation to gifts, hospitality and other inducements and actual or potential conflicts of interest.

18.2 Each ICB must maintain a register of interests in respect of all persons involved in decisions concerning the Joint Working Arrangements. This register must be publicly available. For the purposes of this clause, an ICB may rely on an existing register of interests rather than creating a further register.

19. CONFIDENTIALITY

19.1 Except as this Agreement otherwise provides, Confidential Information is owned by the disclosing Partner and the receiving Partner has no right to use it.

19.2 Subject to Clause 19.3, the receiving Partner agrees:

19.2.1 to use the disclosing Partner's Confidential Information only in connection with the receiving Partner's performance under this Agreement;

19.2.2 not to disclose the disclosing Partner's Confidential Information to any third party or to use it to the detriment of the disclosing Partner; and

19.2.3 to maintain the confidentiality of the disclosing Partner's Confidential Information.

19.3 The receiving Partner may disclose the disclosing Partner's Confidential Information:

19.3.1 in connection with any Dispute Resolution Procedure;

19.3.2 to comply with the Law;

19.3.3 to any appropriate Regulatory or Supervisory Body;

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- 19.3.4 to its Staff, who in respect of that Confidential Information will be under a duty no less onerous than the Receiving Partner's duty under Clause 19.2;
 - 19.3.5 to NHS bodies for the purposes of carrying out their functions; and
 - 19.3.6 as permitted under any other express arrangement or other provision of this Agreement.
- 19.4 The obligations in Clause 19 will not apply to any Confidential Information which:
- 19.4.1 is in or comes into the public domain other than by breach of this Agreement;
 - 19.4.2 the receiving Partner can show by its records was in its possession before it received it from the disclosing Partner; or
 - 19.4.3 the receiving Partner can prove it obtained or was able to obtain from a source other than the disclosing Partner without breaching any obligation of confidence.
- 19.5 This Clause 19 does not prevent NHS England making use of or disclosing any Confidential Information disclosed by an ICB where necessary for the purposes of exercising its functions in relation to that ICB.
- 19.6 This Clause 19 will survive the termination of this Agreement for any reason for a period of five (5) years.
- 19.7 This Clause 19 will not limit the application of the Public Interest Disclosure Act 1998 in any way whatsoever.

20. LIABILITIES

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

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

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

20.6 Each ICB must:

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

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

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

21. DISPUTE RESOLUTION

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

21.2 Where any dispute is not resolved under Clause 21.1 on an informal basis, any Authorised Officer may convene a special meeting of the Partners to attempt to resolve the dispute.

22. BREACHES OF THE AGREEMENT

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

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

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

22.2.2 ratify any decision;

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

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

23. TERMINATION AND DEFAULT

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

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

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

24. CONSEQUENCES OF TERMINATION

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

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

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

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

24.2 The provisions of Clauses 14 (*Data Protection*), 17 (*Freedom of Information*), 19 (*Confidentiality*), 20 (*Liabilities*) and 24 (*Consequences of Termination*) shall survive termination or expiry of this Agreement.

25. PUBLICITY

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

26. EXCLUSION OF PARTNERSHIP OR AGENCY

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

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

27. THIRD PARTY RIGHTS

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

28. NOTICES

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

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

29. ASSIGNMENT AND SUBCONTRACTING

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

30. SEVERABILITY

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

31. WAIVER

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

32. STATUS

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

33. ENTIRE AGREEMENT

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

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34. GOVERNING LAW AND JURISDICTION

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

35. FAIR DEALINGS

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

36. COUNTERPARTS

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

This Agreement has been entered into on the Commencement Date

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

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

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

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

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

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

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

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

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

SIGNED by Peter Axon

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

(Signature)

.....

(Date)

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

(Signature)

.....

.....

(Date)

SCHEDULE 1: DEFINITIONS AND INTERPRETATIONS

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

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

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

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

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

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

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

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

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x.the Healthcare Safety Investigation Branch; and

i.the Information Commissioner;

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

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

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

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

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

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10. In the event of a conflict, the conditions set out in the Clauses to this Agreement shall take priority over the Schedules.

11. Where a term of this Agreement provides for a list of items following the word "including" or "includes", then such list is not to be interpreted as being an exhaustive list.

SCHEDULE 2: GOVERNANCE ARRANGEMENTS

1. Joint Committees

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

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

2. Joint Subgroups

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

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

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

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

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

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

3. Clinical Governance

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

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

4. Quality Governance

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

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

- 4.3 Key quality concerns involving specialised services will also be reported into Midlands Acute Specialised Commissioning Group (MASCG) and the Mental Health Learning Disability & Autism Commissioning Group (MHLDACG) of which all 11 Midlands ICBs are members or have representation.
- 4.4. To be proactive in identification of areas for quality improvement, a Quality Surveillance and Improvement Framework (QSIF) has been developed for acute specialised services. Similarly, a Quality Assurance Framework (QAF) is in place for specialised MHLDA services. These frameworks aim to identify risks and implement mitigations and remedial actions. The QSIF/QAF involves proactive triangulation of intelligence and data from a range of sources (e.g., CQC reports, specialised services dashboards, national audit etc) to monitor the quality of each service and a workplan of service review will be agreed through the Quality Group which has ICB representation, is jointly chaired by the RMDC and an ICB representative.

5. Financial Governance

- 5.1 The Financial governance arrangements in Schedule 4 shall apply to the Collaborative Arrangements.
- 5.2 **Risk Management Arrangements** - In line with their overall role to provide strategic decision-making, leadership, and oversight for the joint services the Joint Committee will establish a monitoring and management in relation to risk and issue management and escalation, and co-ordinating the approach to intervention with providers where there are quality or contractual issues. This will include feeding back to individual ICBs for consideration of any impact on their own risk management arrangements.
- 5.3 A formal risk register will be maintained by the Midlands Specialised Commissioning Team and reported monthly through the Midlands Acute Specialised Commissioning Group to ensure ICBs & NHSE are aware of any risks

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they may impact their systems.

6. Assurance arrangements

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

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

collectively known as the “Assurance Processes”.

6.2 And that the ICBs must:

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

SCHEDULE 3: INDIVIDUAL SCHEMES

PART 1 – EAST MIDLANDS SCHEME

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

1 OVERVIEW OF THE EAST MIDLANDS SCHEME FOR DELEGATED SPECIALISED SERVICES

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

1.2 The Partners' aims are:

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

2 SERVICES AND FUNCTIONS

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

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

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

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

3 PARTNERS

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

4 THE ARRANGEMENTS

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

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

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

5 GOVERNANCE ARRANGEMENTS

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

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

6 COMMISSIONING, CONTRACTING, ACCESS

6.1 Commissioning Arrangements

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

6.2 Contracting Arrangements

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

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

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

6.3 Access

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

7. HIGH-COST DRUGS

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

8. FINANCIAL GOVERNANCE ARRANGEMENTS

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

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9. NON FINANCIAL RESOURCES

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

10. STAFF

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

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

11. ASSURANCE AND MONITORING

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

12. AUTHORISED OFFICERS

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

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

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13. INTERNAL APPROVALS

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

14. REGULATORY REQUIREMENTS

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

15. COMPLAINTS

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

PART 2 – WEST MIDLANDS SCHEME

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

1 OVERVIEW OF THE WEST MIDLANDS SCHEME FOR DELEGATED SPECIALISED SERVICES

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

1.2 The Partners' aims are:

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

2 SERVICES AND FUNCTIONS

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

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

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

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

3 PARTNERS

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

4 THE ARRANGEMENTS

- 4.1 The Scheme will be overseen by the West Midlands Joint Committee established via a Joint Working Agreement between the ICBs whose role shall be to carry out the strategic decision-making, leadership and oversight functions relating to the commissioning of specified delegated specialised services as agreed by the partners and outlined in Schedule 2 of the ICB Collaboration Agreement.
- 4.2 Administrative and management functions will be provided to the West Midlands multi-ICB by the Commissioning Team, which is hosted by Birmingham and Solihull ICB. Details of which are set out in a Commissioning Team Agreement and Standard Operating Framework between all parties.
- 4.3 Details of the financial arrangements relating to this scheme are contained with Schedule 4 of the ICB Collaboration Agreement.

5 GOVERNANCE ARRANGEMENTS

- 5.1 The scheme shall be governed by the West Midlands Joint Committee as set out in Schedule 2 of the ICB Collaboration Agreement.
- 5.2 The terms of reference of the Joint Committee are contained within the Joint Working Agreement between the ICBs.

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6 COMMISSIONING, CONTRACTING, ACCESS

6.1 Commissioning Arrangements

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

6.2 Contracting Arrangements

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

The contracting arrangement for the scheme will be as follows:

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

6.3 Access

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

7 HIGH-COST DRUGS

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

8 FINANCIAL GOVERNANCE ARRANGEMENTS

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

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9 NON FINANCIAL RESOURCES

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

10 STAFF

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

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

11 ASSURANCE AND MONITORING

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

12 AUTHORISED OFFICERS

12.1 The authorised officers for this scheme are as follows:

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

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13 INTERNAL APPROVALS

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

14 REGULATORY REQUIREMENTS

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

15 COMPLAINTS

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

Appendix 1 List of CONTRACTS held with Providers

Acute Services Standard Contracts

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

Section 75 Contract

LINCOLNSHIRE COMMUNITY HEALTH SERVICES NHS TRUST
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Specialised Mental Health, Learning Disability and Autism Lead Provider Contracts

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

SCHEDULE 4: FINANCIAL ARRANGEMENTS

PART A: POOLED FUND MANAGEMENT

1 ESTABLISHMENT OF A RISK SHARE

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

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

2. RISK EXPOSURE

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

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- Renal Transplant

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

3. POOLED FUND MANAGEMENT

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

5. RISK SHARE ARRANGMENTS, OVERSPENDS AND UNDERSPEND

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

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

6. CAPITAL EXPENDITURE

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

7. POOLED FUND FINANCIAL GOVERNANCE

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

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

8. POOLED FUND FINANCIAL REPORTING AND ASSURANCE

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

PART B: OTHER FINANCIAL ARRANGEMENTS

9. BUDGETARY DELEGATION

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

10. AUDIT ARRANGEMENTS

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

11. FINANCIAL MANAGEMENT

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

Annex 1 to Schedule 4

Budgetary Delegation Schedule

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

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

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

SCHEDULE 5: FURTHER INFORMATION GOVERNANCE AND SHARING PROVISIONS

PART 1

1. Introduction

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

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

2. Purpose

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

3. Benefits of information sharing

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

4. Lawful basis for sharing

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

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5. Restrictions on use of the Shared Information

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

6. Ensuring fairness to the Data Subject

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

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- 6.1.2. amendment of respective privacy notices and policies to reflect the processing of data carried out further to this Agreement, including covering the requirements of articles 13 and 14 UK GDPR and providing these (or making them available to) Data Subjects;
 - 6.1.3. ensuring that information and communications relating to the processing of data is clear and easily accessible; and
 - 6.1.4. considering carrying out activities to promote public understanding of how data is processed where appropriate.
- 6.2. Each Partner shall procure that its notification to the Information Commissioner's Office, and record of processing maintained for the purposes of Article 30 UK GDPR, reflects the flows of information under this Agreement.
- 6.3. The Partners shall reasonably co-operate in undertaking any DPIA associated with the processing of data further to this Agreement, and in doing so engage with their respective Data Protection Officers in the performance by them of their duties pursuant to Article 39 UK GDPR.
- 6.4. Further provision in relation to specific data flows may be included in a Data Sharing Agreement between the Partners.
- 7. Governance: Staff**
- 7.1. The Partners must take reasonable steps to ensure the suitability, reliability, training and competence, of any Staff who have access to Personal Data, and Special Category Personal Data, including ensuring reasonable background checks and evidence of completeness are available on request.
- 7.2. The Partners agree to treat all Relevant Information as confidential and imparted in confidence and must safeguard it accordingly. Where any of the Partners' Staff are not healthcare professionals (for the purposes of the Data Protection Act 2018) the employing Partners must procure that Staff operate under a duty of confidentiality which is equivalent to that which would arise if that person were a healthcare professional.
- 7.3. The Partners shall ensure that all Staff required to access Personal Data (including Special Category Personal Data) are informed of the confidential nature of the Personal Data. The

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

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

8. **Governance: Protection of Personal Data**

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

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

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

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

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

9. **Governance: Transmission of Information between the Partners**

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

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

10. Governance: Quality of Information

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

11. Governance: Retention and Disposal of Shared Information

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

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

12. Governance: Complaints and Access to Personal Data

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

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

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

13. Governance: Single Points of Contact

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

14. Monitoring and review

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

SCHEDULE 6: MIDLANDS SPECIALISED COMMISSIONING TEAM (DELEGATED FUNCTIONS)

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

DATA PROTECTION IMPACT ASSESSMENT

Delegation of the identified Specialised Commissioning Services in the Midlands region of NHSE to their respective ICBs (no staff transfers)

1. Document contributors

The Data Protection Impact Assessment (DPIA) is owned by the team undertaking the processing and will be completed with the support of data protection and records management specialists from the Corporate IG team.

1.1 Document owners

To be completed by the business lead.

The individuals named below will be responsible for implementing all compliance activities required as a result of the assessment process.

Business owner

This should be the project or team lead responsible for completing this DPIA.

Names	Key contacts: Stacey Brittain, Development Manager – stacey.brittain@nhs.net
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Senior Responsible Owner (SRO)

This should be a relevant Band 9 or above accountable for the project or programme.

Name	RDC contact: Jo Melling, Deputy Director Commissioning Integration – jomelling@nhs.net
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1.2 Corporate IG specialist

To be completed by Corporate IG.

Corporate IG – the IG Officer, Manager or Lead supporting this DPIA.

Name	Rebecca Bray & Lindsay Ince
Job title	Snr IG Manager, RM Manager
Corporate IG work stream	PTT, Digital & Corporate Operations & Records management
Email address	rebecca.bray11@nhs.net Lindsay.ince@nhs.net england.ig-delegationsupport@nhs.net

2. Data Protection Impact Assessment (Level 1)

To be completed by the business owner and emailed to [Corporate IG](#).

2.1. Previous reviews

Has this project, programme or initiative been subject to a previous Data Protection Impact Assessment?

No	If yes, provide IG reference of previous DPIA	
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2.2. Purpose of the processing

Describe your project or initiative and the outcomes and benefits it hopes to achieve.

On the 1st April 2025 the final phase of the delegation of specialised services to ICBs will be complete.

[NHS commissioning » How commissioning is changing workspace homepage](#) – this holds the detail of the services being delegated, including other relevant material to both delegated and retained specialised commissioning functions.

The specialised commissioning team will transfer from NHS England to the host ICB on the 1st July 2025 and will form part of an integrated commissioning team working alongside staff employed by NHSE in the retained geographical Unit.

There will be little change to the data being collected and shared as there is already the commitment to work with ICBs, there are joint working arrangements and operating models (see appendix 4) already in place and these are continuously being updated by the regional Commissioning Integration team and respective ICBs.

The further identified services to be delegated will be added to the revised Delegation Agreement (DA) for April 2025. The current Joint Data controller agreement (JDCA) (see Appendix 3) will be updated to include the further 3 months between April and July 25. This change covers the interim period during which staff will remain with NHS England until 1 July 2025.

The Operating model for the Specialised Integrated Commissioning team made up of the ICB employed team for delegated specialised services and the NHSE employed team for retained specialised services will be appended to the document for reference when they are finalised. These will help us understand what changes or additional sharing and governance mechanisms we need to have in place at the point of staff transfer, on the 1st July 2025.

What is the anticipated timeframe for your project or initiative?

On 1st April 2025 the midlands ICBs will take responsibility for the delegated functions (detailed within the DA), however the regional NHSE Commissioning Integration team, will continue to process this data on behalf of the ICBs as staff will not transfer from NHSE to the relevant ICB host, until 1st July 2025 – the detail around this is in both the DA and JDC

IG Reference: Delegation: Spec comm April 2025

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<p>Agreement</p> <p>The Joint controller agreement currently in place with the NHSE regional commissioning teams and their relevant ICBs will need to be extended to cover the additional three months between 1st April 2025, when the further services are added to the DA agreement and 30th June 2025 when the staff will transfer to their respective ICBs.</p>
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2.3. Description of personal data to be processed

Who will the data you intend to use be about (e.g. cancer patients, NHSE staff)?

See list of functions in Appendix 1. This detail all functions/services which will be delegated to the ICBs.
--

Please select all relevant options below to describe the data you will receive and use.

Types of people

Patients	Yes
NHSE staff	Yes
Wider health and care staff	Yes
Other	Yes

Number of people

Less than 100	No
Between 100 and 999	No
Between 1,000 and 99,999	No
Between 100,000 and 10m	Yes
Over 10m	No

Types of data

Data concerning health	Yes
Racial or ethnic origin	Yes
Political opinions	No
Religious or philosophical beliefs	No
Trade union membership information	No
Genetic data	No
Biometric data	No
Sex life or sexual orientation	No
Criminal convictions	No

Sensitivity of data

Contains identifiers (e.g. name, address, NHS number)	Yes
Data about individual people with identifiers removed	Yes
Summary or aggregated data that does not describe individual people	Yes

2.4. How the personal data will be collected and used

Will **all** personal data to be processed for your project be received via the National Commissioning Data Repository (NCDR) or Strategic Information Platform (SIP)?

No, some but not ALL

If any personal data will be collected from sources other than the NCDR or SIP, describe where you will collect the personal data from.

Directly from providers and between commissioners.
Directly from patients (case workers only)

Describe how you intend to use this information and how you will ensure it is securely stored and managed.

For the delivery of the delegated commissioning specialised function which are delegated to the ICBs.

Will your use of the data result in automated decisions or actions being made about people in ways that could have a significant impact on them?

Yes	If yes, how will this impact people	Used to plan service provision and financial planning for these related services.
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Do you have a Records and Information Management Co-ordinator (RIMC) in your team?

Yes	If yes, confirm their name	Lindsay Ince
	Summarise their advice in relation to the storage, management and retention of any <u>corporate records</u> this processing may generate	Specific records management guidance and support materials, supported by Q&A sessions, with each region, will be provided.

If you do not have an RIMC, you may continue with the assessment. However, all teams should have a nominated co-ordinator, you must contact england.ig-corporate@nhs.net to arrange for a member of your team to be trained and registered.

Will NHS England colleagues be using a new IT platform that requires users to log in (i.e. with a username and password or other authentication process) or one that has substantially changed following a previous DPIA to process the personal data?

No

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If yes, you will need to produce or update a [System-Level Security Policy \(SLSP\)](#) before this review can be assured – please contact england.itsecurity@nhs.net. You must submit a copy of the approved SLSP with this DPIA to Corporate IG before your project can be signed off.

List any other organisations who will be given access to this data (for example, suppliers, data processors, contractors, consultancies, research agencies).

Organisation	Country of operation	Data to be shared
NHS Black Country ICB As per the appended Joint Data Controller agreement	United Kingdom	Contracting data / Performance data / Service provision & planning data / employment data and personal files / patient identifiable data
NHS Birmingham and Solihull ICB As per the appended Joint Data Controller agreement	United Kingdom	Contracting data / Performance data / Service provision & planning data / employment data and personal files / patient identifiable data
NHS Coventry & Warwickshire ICB As per the appended Joint Data Controller agreement	United Kingdom	Contracting data / Performance data / Service provision & planning data / employment data and personal files / patient identifiable data
NHS Derby and Derbyshire ICB As per the appended Joint Data Controller agreement	United Kingdom	Contracting data / Performance data / Service provision & planning data / employment data and personal files / patient identifiable data
NHS Herefordshire & Worcestershire ICB As per the appended Joint Data Controller agreement	United Kingdom	Contracting data / Performance data / Service provision & planning data / employment data and personal files / patient identifiable data
NHS Leicester, Leicestershire, and Rutland ICB As per the appended Joint Data Controller agreement	United Kingdom	Contracting data / Performance data / Service provision & planning data / employment data and personal files / patient identifiable data
NHS Lincoln and Lincolnshire ICB	United Kingdom	Contracting data / Performance data /

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As per the appended Joint Data Controller agreement		Service provision & planning data / employment data and personal files / patient identifiable data
NHS Northamptonshire ICB As per the appended Joint Data Controller agreement	United Kingdom	Contracting data / Performance data / Service provision & planning data / employment data and personal files / patient identifiable data
NHS Nottingham and Nottinghamshire ICB As per the appended Joint Data Controller agreement	United Kingdom	Contracting data / Performance data / Service provision & planning data / employment data and personal files / patient identifiable data
NHS Shropshire, Telford and Wrekin ICB As per the appended Joint Data Controller agreement	United Kingdom	Contracting data / Performance data / Service provision & planning data / employment data and personal files / patient identifiable data
NHS Staffordshire and Stoke on Trent ICB As per the appended Joint Data Controller agreement	United Kingdom	Contracting data / Performance data / Service provision & planning data / employment data and personal files / patient identifiable data

2.5. Lawful basis for processing the personal data

What is it in statute or common law that enables and/or entitles NHSE, TDA or Monitor to use information about people in the proposed way? (For example, this might be a specific clause(s) within the NHS Act 2006 or the Health and Social Care Act 2012, a set of Regulations, Ministerial Directions, or a clear common law task. A list of NHS England statutory duties can be found [here](#).)

Item 132 – Appendix 3

NHS England has statutory functions to arrange for the provision of prescribed services for the purposes of the NHS, including the **'Specialised Services'**. Pursuant to section 65Z5 of the NHS Act 2006 NHS England intends to delegate to ICBs (via the **'Delegation Agreement'**) the statutory functions for commissioning certain of those Specialised Services (**'the Delegated Specialised Services'**) to take effect from the beginning of the 2025/26 financial year.

However, staff to support the delivery of delegated commissioning functions won't transfer to the relevant ICBs until 1st July 2025, there will be supporting arrangements to cover this transitional period (Joint Data Controller Agreements 1 April – 30 June 2025). For this interim period NHS England will also continue to deliver supporting functions such as FOI, SRR and complaints as they will retain the data and staff required to fully answer these types of queries.

NHS England will continue to hold the statutory function for a number of Specialised Services who are not, at present, to be delegated to the ICBs (**'the Retained Specialised Services'**).

- NHS Act 2006, Schedule 1, paragraph 13(3) to obtain and analyse data.
- NHS Act 2006, Section 2 gives NHS England the power to do anything calculated to facilitate, or that is conducive or incidental to the discharge of any of the tasks given to it by the NHS 2006 Act. This includes sharing data when this is done for a proper purpose

Do any of the following statements apply?

We need the information to enact a contract between us and the person to whom the data relates	No
We will be seeking explicit and unconditional consent from each person to which the data relates	No
We are responding to a legally binding request from a court or other statutory agency to provide this information	No
We need the information to protect the life of an immediately endangered individual or persons	No

2.6. Risk assessment

This risk log should be updated throughout the DPIA process and may be contributed to by the business owner, IG Specialist, IG Management, the Data Protection Officer (DPO) or the SIRO.

Please record below any information risks associated with this programme, project or initiative. Several general information risks have been pre-populated and must be considered in all cases. Please also add any additional, project-specific information risks. All risks identified in this DPIA should be transferred to the project, programme or initiative’s local risk log for operational management by the business owner.

Risk scores should be calculated assuming any proposed mitigating actions have been successfully implemented, using the scoring matrix in the DPIA guidance.

Risk title	Description of how the risk impacts this activity or a justification of why it is not applicable	Risk score (Prior to mitigations)			Proposed solution(s) or mitigating action(s)	Action owner(s)	Action Due Date(s)	Risk score (After mitigations are implemented)			Status
		Likelihood	Impact	RAG status				Likelihood	Impact	RAG status	
1 There is a risk that personal data may be misused by those with access	New ways of working may invoke challenges and over sharing of data	2	3	A	There will be minimal data shared between NHSE and the ICBs further than what is already available already and that which is required to deliver the delegated functions. Shared work space minimises the risk as access controls will be mapped out and implemented prior to staff transfer.	NHSE and ICBs	31/03/2024	1	3	A	Closed
2 There is a risk that insufficient organisational measures are in place to ensure appropriate security of the personal data (e.g. policies, procedures, disciplinary controls)	minimal personal data being processed as part of this work.	1	2	G	Case managers have been identified as part of the data flow mapping appended to this DPIA, they will have access to relevant PID however their working folders will continue to be locked down only to those staff required to have access.	NHSE	31/03/2025	1	1	G	Closed
3 There is a risk that insufficient technical measures are in place to ensure appropriate security of the personal data (e.g. encryption, access controls)	minimal personal data being processed as part of this work.	1	2	G	As above. Similarly in terms of the contractually sensitive information, this data is managed so only those staff members who need access will have access, this is mapped out	NSHE	31/03/2025	1	1	G	Closed

Risk title	Description of how the risk impacts this activity or a justification of why it is not applicable	Risk score (Prior to mitigations)			Proposed solution(s) or mitigating action(s)	Action owner(s)	Action Due Date(s)	Risk score (After mitigations are implemented)			Status	
		Likelihood	Impact	RAG status				Likelihood	Impact	RAG status		
					within the data flow mapping document appended to this DPIA.							
4	There is a risk that insufficient testing has taken place to assess and improve the effectiveness of technical and organisational measures	New ways of working, delegation is new to these teams.	2	3	A	NHSE regional commissioning teams have already been working in a collaborative way and this year's arrangement should not bring any new risk as no new data will be made available that what is already in place/available to either party. In addition to this the access controls which have been mapped out will be tested and in place prior to staff transferring to the ICBs host hub.	NHSE and ICBs	31/03/2025	1	3	A	Closed
5	There is a risk that data that has had identifiers removed could be manipulated in some way to re-identify individual people	This would always be a risk due to the nature of the nature available to either organisation, however this is not the intention and data is always treated as confidential and care is always take to ensure only the minimum amount necessary is available to only those who require it.	3	3	AG	This is not the intention and data is always treated as confidential and care is always take to ensure only the minimum amount necessary is available to only those who require it.	NHSE and ICBs	31/03/2024	2	2	A	Closed
6	There is a risk that...		Select	Select	Select				Select	Select	Select	Select

Thank you for completing the Level 1 Data Protection Impact Assessment. Please submit it to [Corporate IG](#), where it will be assigned to a member of Corporate IG who will contact you to appraise the processing and complete the review. We aim to respond to you within ten working days.

3. DPIA (Level 1) Risk Screening

To be completed by the allocated Corporate IG specialist.

3.1. Type(s) of personal data

Fully identifiable	Yes
Pseudonymised	Yes
Anonymised in context	Yes
Fully anonymised	Yes

Will the processing involve fully identifiable data about patients?

Yes

3.2. Risk thresholds

There is no processing of personal data involved in this activity	No	If the answer to any of these statements is “Yes”, there is no need to progress further with the DPIA
Data has been fully aggregated with small-number suppression applied prior to processing	Yes (some, not all)	
NHS England is not a data controller or processor for this processing	No	

Any element of automated processing in which decisions are made about a person in the absence of human intervention (including profiling)	No	If all these statements are answered “No”, progress as Level 1 DPIA Complete Section 5 and seek local IG Manager approval
Processing of individual-level data that includes special categories or criminal convictions/offences (this does not apply to data from the SIP/NCDR or fully anonymised data)	Yes DSCRO CSUs only	
Processing of fully anonymised data about more than 10,000,000 people that includes special categories or criminal convictions/offences	No	If the answer to any of these statements is “Yes”, progress as Level 2 DPIA Complete Section 4 and Section 5 and seek DPO and SIRO approval
Systematic monitoring of a publicly accessible area involving more than 1,000 people	No	
Transfer, storage or access of personal data outside of the UK	No	
Any other risks to peoples’ rights and freedoms that cannot be mitigated below amber-red	No	

4 Data Protection Impact Assessment (Level 2)

To be completed by the business owner in discussion with the allocated IG Specialist if Corporate IG assess the processing as being high-risk.

4.1. Justification for personal data to be processed

Describe why it would not be possible to undertake your project or initiative without the personal data described in 2.3. Explain why this is the minimum amount of data necessary for the task and, if applicable, why you could not use de-identified data.

In order for NHSE to delegate the identified commissioning functions (listed in Appendix 1) to be updated for April 25, to include the additional services which have been added to the delegation agreement, ready for the staff transfer in July 2025.

Identifiable data is only used in a small percentage of services in Specialised commissioning, full details are within the associated Data flow mapping document.

Operating models will be jointly developed. To promote an open and collaborative approach to deliver specialised commissioning functions a shared repository workspace will be developed (on NHSE .net tenancy), for each region, accessible via SharePoint or Teams. Records management guidance and support will be provided to support this work within the regional teams.

Is the provision of personal data obligatory?

Yes	If yes, describe why this is the case	Some data is classed a pseudonymised level data, provided from the CSUs DSCROs. Both organisations already have access to this level of data. The only addition to this will be in relation to the case managers as detailed earlier in this document and in the data flow mapping document appended.
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What are the possible consequences for a data subject if there is a failure to provide the requested personal data?

The possible consequences are:

- The ICB could not fulfil their obligations to deliver the delegated functions.
- NHSE could not discharge these functions on behalf of the ICBs for this interim period until staff are transferred.
- NHSE would carry the risk associated with these functions as it remains overall accountable for all delegated services. It is in the interest of all organisations involved

to ensure the risks are addressed prior to delegation and for the staff transfer.

If the processing will result in a decision being made about an individual without any human intervention, describe the logic by which any decisions will be reached?

n/a

Will any personal data be used for direct marketing to data subjects?

No	If yes, provide further details	
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4.2. Additional information about personal data to be processed

Describe the dataset(s) that you intend to collect and process, who will have access to it and how it will be securely stored. Please either submit a comprehensive data flow diagram or complete the section below.

Dataset	Personal data items	To be accessed by	Secure storage
See Appendix 2			

List any flows of personal data into NHS England.

Sender	Content	Secure transfer mechanism	Recipient
N/A			

List any flows of personal data out of NHS England.

Sender	Content	Secure transfer mechanism	Recipient
See Appendix 2			

Will the personal data be recoverable in the event of a physical or technical incident?

No	If yes, explain how or refer to SLSP	
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If you are using a data processor, are arrangements in place to securely return or destroy the personal data at the end of the contract?

No	If yes, explain how or refer to SLSP	
----	--------------------------------------	--

Will it be possible to provide an individual, or another organisation, a copy of their personal data in a structured, commonly used and machine-readable format? Note this only applies in limited circumstances – your IG Specialist will support you with this.

NA	If yes, explain how	
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5 IG Assessment

To be completed by a Corporate IG specialist in discussion with the business owner and records management colleagues.

5.1. Controllers, processors and third parties

Confirm the controller(s) for this processing.

NHS England - all Spec comm retained services	Yes
ICBs - for all delegated services	Yes

List additional joint controller(s)/processors for this processing and upload evidence of the compliant joint data controller arrangements (e.g. Joint Controller Agreement/processing agreement).

Organisation	Evidence of arrangements
Regional teams within NHSE together with ICBs for the delegation specialised functions for the interim period between Delegation and staff transfer.	Joint Controller Agreement In support of the package of arrangements detailed in appendix 3
NHSE as host of the data related to all spec comm services , full details within the schedule detailed in the Delegation Agreement.	Delegation Agreement, Data Processing & Sharing schedule 6
ICB hub arrangements between all associated ICBs	Processing arrangements. Tbd between ICBs

List any Commissioning Support Units or Hosted Bodies that will undertake processing of personal data for this purpose and provide a copy of the relevant SLA or MoU that commissions the work.

CSU	MoU or SLA
ALL CSUs nationally via DSCROs	Under current arrangements, no new data flows.

5.2. International Transfers

If any of the organisations listed in Section 2.4 will process personal data outside of the UK, describe the arrangements in place. Ensure copies of any contractual agreements (e.g. standard contractual clauses, binding corporate rules) are attached in Section 5.1 above.

Organisation	Location	Control
n/a		Choose an item.

5.3. Lawful basis

Confirm the UK GDPR Article 6 condition for the processing.

Not made available to either party as identifiable data. Processed via the DSCROs in the CSUs.

Art 6.1a Consent	No
If yes, explain how consent will be sought and how data subjects can revoke it if required	
Art 6.1b Contract	No
If yes, describe the contract between NHSE/I and the data subject	
Art 6.1c Legal obligation	Yes
If yes, describe the legal obligation to which NHSE/I needs to adhere	Processing is necessary to comply with NHS England's statutory duties under the NHS Act 2006. DPA 2018 schedule 1, paragraph 2, (health or social care purposes).
Additional considerations:	
<ul style="list-style-type: none"> Statutory Function Justification: NHS England and ICBs have statutory duties under the Act 2006 to commission healthcare services. Data Protection Safeguards: Processing must comply with schedule 1, part 4 of DPA 2018, which requires appropriate policies and documentation (DPIA, JCA & Delegation Agreement and supporting information including Records Management documentation). 	
Art 6.1d Vital interests	No
If yes, describe why processing the data is necessary to protect someone's vital interests	
Art 6.1e Public authority	Yes
If yes, detail the clause(s) from an Act or Regulation that describes the legal duty	
Art 6.1f Legitimate interests	No
If yes, describe NHSE/I's legitimate interests to process this data	

Will the processing involve special categories of personal data?

Yes

Not made available to either party as identifiable data. Processed via the DSCROs in the CSUs.

If yes, confirm the UK GDPR Article 9 condition for the processing.

Art.9.2a Explicit consent	No
Art.9.2b Employment, social security, social protection law	No
Art.9.2c Vital interests	No
Art.9.2d Political, philosophical, religious or trade union not-for-profit body	No
Art.9.2e Data manifestly made public by the data subject	No
Art.9.2f Legal claims	No
Art.9.2g Public interest	No
Art.9.2h Health or social care system	Yes
Art.9.2i Public health	No
Art.9.2j Archiving, scientific or historical research	No

Will the processing involve disclosing data that is subject to a duty of confidentiality for a purpose other than direct care?

No

If yes, confirm the lawful basis for processing.

Consent	Yes/No
Safeguarding	Yes/No
Covered by Section 251 decision	Yes/No
Required by law (e.g. COPI regulations)	Yes/No
Overriding public interest	Yes/No

5.4. Information asset management

Does an information asset already exist in relation to this processing?

Yes

If yes, provide the asset number	
If no, confirm the new IAO	Jo Melling
If no, confirm the new IAA(s)	Stacey Brittain

5.1. Records and information management

Will any records be created or managed as part of this processing?

Yes	If yes, identify the types of record	Specialised Commissioning delegated and retained services working papers and digital records
	If yes, confirm where the records will be stored	Within the NHSE SharePoint environment, hosted on the NHS Mail tenancy. Most areas will be open to retained and delegated staff, with some exceptions (e.g. PID/historic contracts/ledgers) locked down to specified access permissions groups, specified on the Data Mapping spreadsheet. ICB staff will be given access to the SharePoint space via their email accounts, and folders can be managed down to different staff
	If yes, provide the retention period for the personal data and the basis for this retention period (e.g. <u>corporate retention schedule</u> , applicable guidance or rationale)	In line with NHSE Retention Schedules (applicable to legacy records pre-April 2025) and thereafter the retention schedule of the ICB for data April 2025 onwards.
	If yes, and where records are processed outside of NHSE premises or systems, how will they be securely returned for the remainder of the retention period(s) as and when this becomes necessary (e.g. following the closure of the project)?	Only nonidentifiable data that is already available to the ICBs via DSCROs; rest of data will be retained within NHSE environment.
	If yes, name of Corporate Records Management specialist who has reviewed the processing	Lindsay Ince IG Manager – Records Management

5.2. Fair processing

Is NHS England exempt from providing fair processing information under provisions specified in the UK GDPR?

No	If yes, describe exemption	Choose an item.
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If no, is the processing sufficiently described in NHS England's central privacy notice?

Yes- already updated

6 Approval

All Level 1 and Level 2 DPIAs must be assessed and assured by a Corporate IG Manager, Senior Manager or SMT Lead via section 6.1.

Processing activities subject to a Level 2 DPIA must also be submitted to the national Senior Information Risk Owner (SIRO) and Data Protection Officer (DPO) for approval – complete section 6.2.

6.1. Actions required

Select all mandatory actions that apply to this processing from the list below.

Action	Applies	Due date or pre-go-live	Complete
RIMC trained	Yes		Yes/No/NA
Asset registered or updated on IAMS	Yes		Yes/No/NA
Local privacy information provided	Yes		Yes/No/NA
Data processing and sharing agreements signed	Yes		Yes/No/NA
Mitigation of outstanding risks	Yes		Yes/No/NA

List any additional actions specific to this project or initiative below.

Action	Due date	Status
Joint Controller Agreement agreed and completed as part of the suit of documents jointly drafted by NHSE regional teams and the ICBs moving toward delegation. To be extended to include the interim period between April and July 2025	Prior to sign off	
Operating models appended to the DPIA to provide further detail not able to be articulated in this DPIA.	Prior to sign off	

6.2. DPIA Assurance (Level 1 and Level 2)

Outcome of IG Management assurance	Assurance pending
Date of IG Management assurance	

Corporate IG Manager, Senior Manager or SMT Lead

Name	Rebecca Bray
Job title	Senior Information Governance Manager
Corporate IG work stream	PTT, Digital and Operations
Email address	Rebecca.bray11@nhs.net

Submit Level 2 DPIAs to england.dpo@nhs.net for consideration by the Data Protection Officer and Senior Information Risk Owner

IG Reference: Delegation: Spec comm April 2025

6.3. DPIA Approval (Level 2 only)

Outcome of SIRO assessment	Choose an item.
Date of SIRO assessment	

Does the Data Protection Officer have any concerns regarding this processing that they feel have not been sufficiently mitigated?

Yes/No	If yes, provide details	
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Data Protection Officer or deputy

Name	
Job title	
Email address	

Senior Information Risk Owner or deputy

Name	
Signature	
Job title	
Email address	

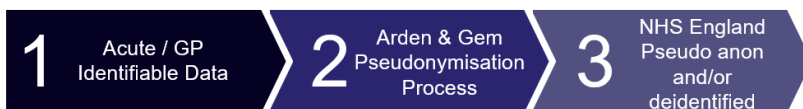
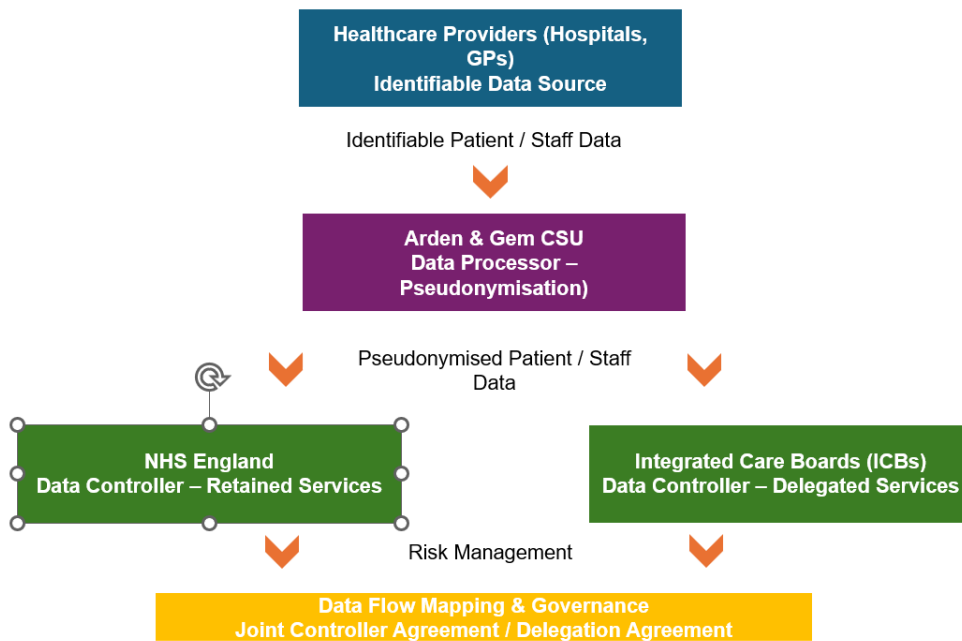
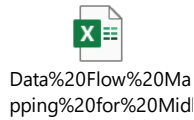
Ensure that this DPIA and its status is logged on the IG Advice Register and a copy saved in the relevant SharePoint folder.

Appendix 1: Delegated Commissioning Services



20241201%20SPA%
20List%20Mapping%:

Appendix 2: Data Sets and Flow



Appendix Three

The following documents referenced within this DPIA can be found on [NHS Futures](#)

- List of functions, to be delegated and those retained by NHSE
- Delegation Agreement for Specialised Services
- MOU and Collaboration Agreement for the Delegation of Specialised Services 2024/25
- Commissioning Team Agreement and Standard Operating Framework for 2024/25
- IG considerations for Delegation Phase 3
- Joint Controller Agreement



Joint Controller
Agreement

Contracting SOP [NHS Futures](#)

Finance SOP [NHS Futures](#)

Future resource pages [Tools](#)

Appendix Four

Operating models for delegated Hubs and Retained Units



Consultation Close
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