

DATED: 4th July 2022

Delegation Agreement in respect of:

(i) Primary Medical Services

between:

NHS England

-and-

NHS Humber and North Yorkshire Integrated Care Board

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Delegation Agreement for Primary Care & Dental 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 Humber and North Yorkshire Integrated Care Board |
| Area | Area of the ICB as defined in its Constitution |
| Date of Agreement | The date stated on the front page of this document |
| Effective Date of Delegation | 1 July 2022 |
| ICB Representative | Stephen Eames Chief Executive |
| ICB Email Address for Notices | HNYICB.Primarycare@nhs.net |
| NHS England Representative | Richard Barker Regional Director for the North East & Yorkshire |
| NHS England Email Address for Notices | richard_barker@nhs.net |

The following parts of Schedule 2 are included in this Agreement¹:

| | |
|--|---|
| Schedule 2A – Primary Medical Services | Yes |
| Schedule 2B – Primary Dental Services and Prescribed Dental Services | Primary Dental Services: No Prescribed Dental Services: No |
| Schedule 2C – Primary Ophthalmic Services | No |
| Schedule 2D – Pharmaceutical Services and Local Pharmaceutical Services | No |

1.2 This Agreement comprises:

1.2.1 the Particulars (clause 1);

1.2.2 the Terms and Conditions (clauses 2 to 31); and

¹ This table must be completed to indicate which services are included in the Delegation.

communities, under-represented groups and those with protected characteristics for the purposes of the Equality Act 2010;

- 5.1.5 consider how in performing their obligations they can address health inequalities;
- 5.1.6 at all times exercise functions effectively, efficiently and economically;
- 5.1.7 act in a timely manner;
- 5.1.8 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
- 5.1.9 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 the people of the Area, as further described in this Agreement (“**the Delegation**”).
- 6.2 The Delegated Functions are the functions described as being delegated to the ICB in such of the following Schedules as have been marked as included within this Agreement:
 - 6.2.1 Schedule 2A: Primary medical services;
 - 6.2.2 Schedule 2B: Primary dental services and prescribed dental services;
 - 6.2.3 Schedule 2C: Primary ophthalmic services;
 - 6.2.4 Schedule 2D: Pharmaceutical services and local pharmaceutical services.
- 6.3 The Delegation has effect from the Effective Date of Delegation.
- 6.4 NHS England may by Contractual Notice allocate Primary Care Contracts or Arrangements and Prescribed Dental Services Contracts in place at the Effective Date of Delegation to the ICB for the purposes of determining the scope of the Delegated Functions. The Delegated Functions must be exercised both in respect of the relevant Primary Care Contract or Arrangement or Prescribed Dental Services Contract and any related matters concerning the Primary Care Provider that is a party to that Primary Care Contract or Arrangement, or provider of Prescribed Dental Services that is party to that Prescribed Dental Services Contract.
- 6.5 Subsequent to the Effective Date of Delegation and for the duration of this Agreement, any new Primary Care Contract or Arrangement entered into in respect of premises in the Area shall be managed by the ICB in accordance with the provisions of this Agreement as if it had been allocated to the ICB in accordance with clause 6.4.
- 6.6 NHS England may by Contractual Notice add or remove Primary Care Contracts or Arrangements or Prescribed Dental Services Contracts to or from the list of those allocated to the ICB for the purposes of this Agreement. In particular, NHS England may add or remove Primary Care Contracts or Arrangements or Prescribed Dental Services Contracts where this is associated with an extension or reduction of the scope of the Delegated Functions.

- 6.7 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.
- 6.8 The ICB is not authorised by this Agreement to take any step or make any decision in respect of Primary Care Services or Prescribed Dental Services beyond the scope of the Delegated Functions.
- 6.9 NHS England may, at its discretion, substitute its own decision for any decision which the ICB purports to make that is outside the scope of the Delegated Functions. This will take the form of NHS England considering the issue and decision purportedly made by the ICB and then making its own decision. The ICB must provide any information, assistance and support as NHS England requires to enable it to determine whether to make any such decision. In any event such a decision by NHS England shall not extend to those actions or decisions that are of themselves not capable of being delegated by NHS England to the ICB.
- 6.10 The terms of clause 6.9 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 agrees that it will exercise the Delegated Functions in accordance with:
- 7.1.1 the terms of this Agreement;
 - 7.1.2 any Contractual Notices, including without limitation any Standing Financial Instructions;
 - 7.1.3 all applicable Law and Guidance;
 - 7.1.4 the ICB's constitution;
 - 7.1.5 the requirements of any assurance arrangements made by NHS England, and;
 - 7.1.6 Good Practice.
- 7.2 In exercising the Delegated Functions, the ICB must comply with the Mandated Guidance set out at SCHEDULE 9 or otherwise referred to in this Agreement and such further Mandated Guidance as may be issued by NHS England from time to time, including on the Direct Commissioning Guidance Webpage.
- 7.3 NHS England may, at its discretion, issue Contractual Notices from time to time relating to the manner in which the Delegated Functions must be exercised by the ICB. Contractual Notices will have effect as variations to this Agreement.
- 7.4 The ICB must establish effective, safe, efficient and economic arrangements for the discharge of the Delegated Functions.
- 7.5 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 sections 65Z5 and 75 of the NHS Act.
- 7.6 The ICB must develop an operational scheme 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 of delegation within its general organisational scheme of delegation.

- 7.7 Subject to clauses 7.1 to 7.6, the ICB may determine the arrangements for the exercise of the Delegated Functions.
- 7.8 The ICB must perform the Delegated Functions:
- 7.8.1 in such a manner as to ensure NHS England's compliance with NHS England's statutory duties in respect of the Delegated Functions and to enable NHS England to fulfil its Reserved Functions; and
 - 7.8.2 having regard to NHS England's accountability to the Secretary of State and Parliament in respect of both the Delegated Functions and Reserved Functions.

8. PERFORMANCE OF THE RESERVED FUNCTIONS

- 8.1 NHS England will exercise the Primary Care Functions and functions in respect of Prescribed Dental Services, other than the Delegated Functions, including but not limited to those set out in SCHEDULE 3 to this Agreement ("the Reserved Functions").
- 8.2 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 25 (*Variations*) of this Agreement.
- 8.3 NHS England will work collaboratively with the ICB when exercising the Reserved Functions.
- 8.4 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.
- 8.5 The Parties acknowledge that, as from the date of this Agreement, the ICB shall provide administrative and management services to NHS England in relation to certain Reserved Functions and that such administrative and management services are as follows:
- 8.5.1 the administrative and management services in relation to the Capital Expenditure Functions and the Capital Expenditure Funds as more particularly set out in clauses 9.14 to 9.17; and
 - 8.5.2 the administrative and management services in relation to the Section 7A Functions and Section 7A Funds as more particularly set out in clauses 9.18 to 9.21.
- 8.6 The Parties further acknowledge that NHS England may ask the ICB to provide certain administrative and management services to NHS England in relation to other Reserved Functions.
- 8.7 Notwithstanding any arrangement for or provision of administrative or management services in respect of certain Reserved Functions, NHS England shall retain and be accountable for the exercise of such Reserved Functions.

9. FINANCE

- 9.1 Without prejudice to any other provision in this Agreement, the ICB must comply with the NHS England central finance team's operational process (as such process is updated from time to time) for the reporting and accounting of funds used for the purposes of the Delegated Functions.

- 9.2 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.
- 9.3 Subject to clause 9.4, the ICB may use:
- 9.3.1 its Annual Allocation and the Delegated Funds in the exercise of the Delegated Functions; and
 - 9.3.2 the Delegated Funds and its Annual Allocation in the exercise of the ICB’s functions other than the Delegated Functions.
- 9.4 The ICB’s expenditure on the Delegated Functions must be no less than that necessary to:
- 9.4.1 ensure that NHS England is able to fulfil its functions, including without limitation the Reserved Functions, effectively and efficiently;
 - 9.4.2 meet all liabilities arising under or in connection with all Primary Care Contracts and Arrangements allocated to the ICB in accordance with clauses 6.4 to 6.6;
 - 9.4.3 meet all liabilities arising under or in connection with all Prescribed Dental Services Contracts allocated to the ICB in accordance with clauses 6.4 to 6.6 in so far as they relate to the Delegated Functions; and
 - 9.4.4 meet national commitments from time to time on expenditure on specific Delegated Functions including, without limitation, the Community Pharmacy Contractual Framework.
- 9.5 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:
- 9.5.1 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 Primary Care Contracts or Arrangements or otherwise;
 - 9.5.2 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;
 - 9.5.3 to take into account any Losses of NHS England for which the ICB is required to indemnify NHS England under clause 15;
 - 9.5.4 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 and/or funds transferred (or that should have been transferred) to the ICB and in respect of which the ICB has management or administrative responsibility under clauses 9.14 to 9.23 of this Agreement; or
 - 9.5.5 in order to ensure compliance by NHS England with its obligations under the NHS Act (including without limitation, 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.
- 9.6 NHS England acknowledges that the intention of paragraph 9.5 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.

- 9.7 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.
- 9.8 NHS England may in respect of the Delegated Funds:
- 9.8.1 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;
- 9.8.2 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 without limitation, Part 11 of the NHS Act) or any action taken or direction made by the Secretary of State under the NHS Act.
- 9.9 SCHEDULE 5 (Financial Provisions and Decision Making Limits) sets out further financial provisions in respect of the exercise of the Delegated Functions and, in particular, Table 1 in SCHEDULE 5 (*Financial Provisions and Decision Making Limits*) sets out certain financial limits and approvals required in relation to the exercise of the Delegated Functions.
- 9.10 NHS England may issue Mandated Guidance in respect of the use of funds for the purposes of the Delegated Functions.

Payment and Transfer

- 9.11 NHS England will pay the Delegated Funds to the ICB monthly using the same revenue transfer process as used for the Annual Allocation or using such other process as notified to the ICB from time to time.
- 9.12 Without prejudice to any other obligation upon the ICB, the ICB agrees that it must use its resources for the purposes of the Delegated Functions in accordance with:
- 9.12.1 the terms and conditions of this Agreement;
- 9.12.2 the business rules as set out in NHS England's planning guidance or such other documents issued by NHS England from time to time;
- 9.12.3 any Capital Investment Guidance;
- 9.12.4 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); and
- 9.12.5 the HM Treasury guidance *Managing Public Money* (dated July 2013 and found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212123/Managing_Public_Money_AA_v2_-_chapters_annex_web.pdf).
- 9.13 Without prejudice to any other obligation upon the ICB, the ICB agrees that it must provide 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.

Administrative and/or Management Services and Funds in relation to the Capital Expenditure Functions

- 9.14 The Parties acknowledge that the Capital Expenditure Functions are a Reserved Function.
- 9.15 The Parties further acknowledge that:
- 9.15.1 accordingly, the Delegated Funds do not include any funds in respect of amounts payable in relation to the Capital Expenditure Functions (“**Capital Expenditure Funds**”); and
- 9.15.2 NHS England remains responsible and accountable for the discharge of the Capital Expenditure Functions and nothing in clauses 9.14 to 9.17 shall be construed as a divestment or delegation of NHS England’s Capital Expenditure Functions.
- 9.16 Without prejudice to clause 9.15 above, the ICB will comply with any Mandated Guidance issued in relation to the Capital Expenditure Functions and shall (on request from NHS England) provide the following administrative services to NHS England in respect of the Capital Expenditure Funds:
- 9.16.1 the administration and payment of sums that NHS England has approved as payable in relation to the Capital Expenditure Functions;
- 9.16.2 if requested by NHS England and taking into account (i) any other support or services provided to NHS England by NHS Property Services Limited or otherwise and (ii) any Mandated Guidance issued in respect of the Capital Expenditure Functions, the provision of advice and/or recommendations to NHS England in respect of expenditure to be made under the Capital Expenditure Functions; and
- 9.16.3 such other support or administrative assistance to NHS England that NHS England may reasonably request in order to facilitate the discharge by NHS England of its responsibilities under or in respect of the Capital Expenditure Functions.
- 9.17 NHS England may, at the same time as it allocates the Delegated Funds to the ICB under paragraph 9.11, transfer to the ICB such amounts as are necessary to enable the discharge of the ICB’s obligations under this clause 9 (*Finance*) in respect of the Capital Expenditure Functions.

Administrative and/or Management Services and Funds in relation to Section 7A Functions

- 9.18 The Parties acknowledge that the Section 7A Functions are part of the Reserved Functions.
- 9.19 The Parties further acknowledge that:
- 9.19.1 accordingly, the Delegated Funds do not include any funds in respect of amounts payable in relation to the Section 7A Functions (whether such arrangements are included in or under Primary Care Contracts or Arrangements or not) (“**Section 7A Funds**”); and
- 9.19.2 NHS England remains responsible and accountable for the discharge of the Section 7A Functions and nothing in this clause 9 (*Finance*) shall be construed as a divestment or delegation of the Section 7A Functions.
- 9.20 The ICB will provide the following services to NHS England in respect of the Section 7A Funds:
- 9.20.1 the administration and payment of sums that NHS England has approved as payable under or in respect of arrangements for the Section 7A Functions; and

- 9.20.2 such other support or administrative assistance to NHS England that NHS England may reasonably request in order to facilitate the discharge by NHS England of its responsibilities under or in respect of the Section 7A Funds.
- 9.21 NHS England shall, at the same time as it allocates the Delegated Funds to the ICB under paragraph 9.11, allocate to the ICB such amounts as are necessary to enable the discharge of the ICB's obligations under this clause 9 (*Finance*) in respect of the Section 7A Funds.

Administrative and/or Management Services and Funds in relation to other Reserved Functions

- 9.22 NHS England may ask the ICB to provide certain management and/or administrative services to NHS England (from a date to be notified by NHS England to the ICB) in relation to the carrying out of any of the Reserved Functions.
- 9.23 If NHS England makes such a request to the ICB, then the ICB will, but only if the ICB agrees to provide such services, from the date requested by NHS England, comply with:
- 9.23.1 provisions equivalent to those set out above in relation to the Capital Expenditure Functions (clauses 9.14 to 9.17) and the Section 7A Functions (clauses 9.18 to 9.21) including in relation to the administration of any funds for such functions but only to the extent that such provisions are relevant to the management or administrative services to be provided; and
- 9.23.2 such other provisions in respect of the carrying out of such management and administrative services as agreed between NHS England and the ICB.

Pooled Funds

- 9.24 The ICB may, for the purposes of exercising the Delegated Functions under this Agreement, establish and maintain a pooled fund in respect of any part of the Delegated Funds with:
- 9.24.1 NHS England in accordance with sections 13V or 65Z6 of the NHS Act;
- 9.24.2 one or more ICBs in accordance with section 65Z6 of the NHS Act as part of a Further Arrangement; or
- 9.24.3 NHS England and one or more ICBs in accordance with section 13V of the NHS Act; and
- 9.24.4 NHS England and one or more ICBs in accordance with section 65Z6 of the NHS Act.
- 9.25 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.

10. INFORMATION, PLANNING AND REPORTING

- 10.1 The ICB must provide to NHS England:
- 10.1.1 all information or explanations in relation to the exercise of the Delegated Functions (including in relation to this Agreement), (and in such form) as requested by NHS England from time to time; and
- 10.1.2 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.

- 10.2 The provisions of this clause 10 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

- 10.3 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.
- 10.4 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

- 10.5 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.

11. FURTHER ARRANGEMENTS

- 11.1 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 sections 65Z5 and 75 of the NHS Act.
- 11.2 The ICB may only make arrangements with another person (a “Sub-Delegate”) concerning the exercise of the Delegated Functions (“Further Arrangements”), including without limitation arrangements under sections 65Z5 and 75 of the NHS Act, with the prior written approval of NHS England.
- 11.3 The approval of any Further Arrangements may:
- 11.3.1 include approval of the terms of the proposed Further Arrangements; and
 - 11.3.2 require conditions to be met by the ICB and the Sub-Delegate in respect of that arrangement.
- 11.4 All Further Arrangements must be made in writing.
- 11.5 The ICB must not:
- 11.5.1 terminate Further Arrangements; or
 - 11.5.2 make any material changes to the terms of Further Arrangements;
- without the prior written approval of NHS England.
- 11.6 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.
- 11.7 The terms of this clause 11 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.
- 11.8 NHS England requires the ICB to make arrangements for assistance and support in the exercise of the Delegated Functions with those persons described at SCHEDULE 6 and such other persons as NHS England may require from time to time.

11.9 Where Further Arrangements are made, any positive obligation or duty on the part of the ICB under this Agreement that is relevant to those Further Arrangements shall also require the ICB to ensure that all Sub-Delegates comply with that positive obligation or duty and support the ICB in doing so. In the same way, any negative duty or obligation on the part of the ICB under this Agreement that is relevant to Further Arrangement shall also require the ICB to ensure that all Sub-Delegates comply with that negative obligation or duty and support the ICB in doing so.

12. STAFFING

12.1 Subject to the terms of this Agreement, the Delegated Functions will be carried out by NHS England Staff in accordance with decisions concerning the Delegated Functions made by the ICB unless the Staff carrying out the Delegated Functions have transferred to the ICB (and/or the ICB has engaged or employed Staff for that purpose).

12.2 SCHEDULE 8 makes further provision about deployment of NHS England Staff to the ICB for the purposes of carrying out the relevant Delegated Functions.

12.3 The ICB must comply with any Mandated Guidance issued by NHS England from time to time in relation to the NHS England Staff.

12.4 For the avoidance of doubt, any breach by the ICB of the terms of this clause 12 (Staffing), including any breach of any Mandated Guidance issued in accordance with clause 12.3 above, will be a breach of the terms and conditions of this Agreement for the purposes of clauses 9.5 and 15.3.

13. BREACH

13.1 If the ICB does not comply with the terms of this Agreement, then NHS England may:

13.1.1 exercise its rights under this Agreement; and/or

13.1.2 take such steps as it considers appropriate in the exercise of its other functions concerning the ICB.

13.2 Without prejudice to clause 13.1, 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):

13.2.1 waive its rights in relation to such non-compliance in accordance with clause 13.3;

13.2.2 ratify any decision in accordance with clause 6.9;

13.2.3 revoke the Delegation and terminate this Agreement in accordance with clause 25.7 (*Termination*) below;

13.2.4 exercise the Escalation Rights in accordance with clause 14 (*Escalation Rights*); and/or

13.2.5 exercise its rights under common law.

13.3 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 13.4 and, after considering the ICB's written report, NHS England is satisfied that the waiver is justified.

13.4 If:

13.4.1 the ICB does not comply (or, based on the risk register maintained by the ICB in accordance with clause 10.5 or any other information available to it the ICB considers that it may not be able to comply) with this Agreement; or

13.4.2 NHS England notifies the ICB that it considers the ICB has not complied, or 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 considers that it may not be able to comply with this Agreement) or such notification pursuant to clause 13.4.2 setting out:

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

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

14. **ESCALATION RIGHTS**

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

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

14.1.2 NHS England may require the ICB to prepare an action plan and report within twenty (20) 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).

14.2 Nothing in clause 14 (*Escalation Rights*) will affect NHS England's right to revoke the Delegation and/or terminate this Agreement in accordance with clause 26 (*Termination*) below.

15. **LIABILITY AND INDEMNITY**

15.1 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 15.3).

15.2 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.

15.3 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 and, 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 9.5. The ICB shall not be liable to the extent that the Losses arose prior to the date of this Agreement.

15.4 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 s65Z5(6) of the NHS Act.

- 15.5 The ICB indemnifies NHS England and shall keep it indemnified on a continuing basis from and against any and all Losses which NHS England may incur by reason of any claim by any NHS England Staff:
- 15.5.1 arising out of a breach of duty by the ICB (whether under common law, statute or otherwise) to the extent that such claim is not met by either the ICB's or NHS England's insurance or indemnity cover;
 - 15.5.2 under the Equality Act 2010 or Part V of the Employment Rights Act 1996 arising out of acts or omissions by the ICB (or any of its employees, directors or officers);
 - 15.5.3 arising from any acts or omissions by the ICB resulting in the termination of their employment, including any claim arising from any instruction by the ICB to NHS England to discipline or dismiss any person.
- 15.6 Each Party shall co-operate with the other in making all reasonable efforts to minimise any liabilities and Losses in connection with the employment of NHS England Staff in Delegated Functions.
- 15.7 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.

16. CLAIMS AND LITIGATION

- 16.1 Nothing in this clause 16 (*Claims and Litigation*) shall be interpreted as affecting the reservation to NHS England of the Reserved Functions.
- 16.2 Except in the circumstances set out in clause 16.5 and subject always to compliance with this clause 16 (*Claims and Litigation*), the ICB shall be responsible for and shall retain the conduct of any Claim.
- 16.3 The ICB must:
- 16.3.1 comply with any policy issued by NHS England from time to time in relation to the conduct of or avoidance of Claims and/or the pro-active management of Claims;
 - 16.3.2 if it receives any correspondence, issue of proceedings, claim document or other document concerning any Claim or potential Claim, immediately notify NHS England and send to NHS England all copies of such correspondence;
 - 16.3.3 co-operate fully with NHS England in relation to such Claim and the conduct of such Claim;
 - 16.3.4 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/or
 - 16.3.5 at the request of NHS England, take such action 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.

- 16.4 Subject to clauses 16.3 and 16.5 and SCHEDULE 5 (Financial Provisions and Decision Making Limits) 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

- 16.5 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. In such cases:
- 16.5.1 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 16.5.3 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
- 16.5.2 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
- 16.5.3 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 9.5.3 for the purposes of meeting any Claim Losses associated with that Claim.

Claim Losses

- 16.6 The ICB and NHS England shall notify each other within a reasonable time period of becoming aware of any Claim Losses.
- 16.7 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 9.5.3 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 9.5.3. 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 9.5.3.

17. DATA PROTECTION, FREEDOM OF INFORMATION AND TRANSPARENCY

- 17.1 The Parties must ensure that all Personal Data processed by or on behalf of them in the course of 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.
- 17.2 The ICB must respond to any information governance breach in accordance with IG 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

- 20.2 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:
- 20.2.1 to revoke the Delegation; and
 - 20.2.2 to recover from the ICB the amount or value of any gift, consideration or commission concerned; and
 - 20.2.3 to recover from the ICB any loss or expense sustained in consequence of the carrying out of the Prohibited Act.
- 20.3 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).
- 20.4 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, the counter-fraud arrangements put in place by the ICB.
- 20.5 The ICB must implement any reasonable modifications to its counter-fraud arrangements required by a person referred to in clause 20.4 in order to meet the appropriate standards within whatever time periods as that person may reasonably require.
- 20.6 The ICB must, on becoming aware of:
- 20.6.1 any suspected or actual bribery, corruption or fraud involving public funds; or
 - 20.6.2 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.
- 20.7 On the request of NHS England or the 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 5 Operational Days following the date of the request, access to:
- 20.7.1 all property, premises, information (including records and data) owned or controlled by the ICB; and
 - 20.7.2 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.

21. **CONFIDENTIAL INFORMATION OF THE PARTIES**

- 21.1 Except as this Agreement otherwise provides, Confidential Information is owned by the disclosing Party and the receiving Party has no right to use it.
- 21.2 Subject to clauses 21.3 to 21.5, the receiving Party agrees:
- 21.2.1 to use the disclosing Party's Confidential Information only in connection with the receiving Party's performance under this Agreement;
 - 21.2.2 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

22.3 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 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.

23. NOTICES

23.1 Any notices given under this Agreement must be sent by e-mail to the other Party's address set out in the Particulars.

23.2 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.

24. DISPUTES

24.1 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.

24.2 If a Dispute arises out of or in connection with this Agreement then the Parties must follow the procedure set out in this clause:

24.2.1 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;

24.2.2 if the Agreement Representatives are, for any reason, unable to resolve the Dispute within twenty (20) 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

24.2.3 if the people referred to in clause 24.2.2 are for any reason unable to resolve the Dispute within twenty (20) 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 Solve. 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 Solve. The mediation will start not later than ten (10) days after the date of the ADR notice.

24.3 If the Dispute is not resolved within thirty (30) 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) days, or the mediation terminates before the expiration of the period of thirty (30) days, the Dispute must be referred to the Secretary of State, who shall resolve the matter and whose decision shall be binding upon the Parties.

25. VARIATIONS

25.1 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.

- 25.2 NHS England may notify the ICB of a Variation Proposal in respect of this Agreement.
- 25.3 The Variation Proposal will set out the variation proposed and the date on which NHS England requires the variation to take effect.
- 25.4 The ICB must respond to a Variation Proposal within thirty (30) Operational Days following the date that it is issued by serving notice on NHS England confirming either:
 - 25.4.1 that it accepts the Variation Proposal; or
 - 25.4.2 that it refuses to accept the Variation Proposal, and setting out reasonable grounds for that refusal.
- 25.5 If the ICB accepts the Variation Proposal, the ICB agrees (without delay) 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.
- 25.6 If the ICB refuses to accept the Variation Proposal or to take such steps as are required to give effect to the variation, NHS England may terminate this Agreement in respect of some or all of the Delegated Functions.
- 25.7 The provisions of this clause 25 are without prejudice to the ability of NHS England to issue Contractual Notices which have the effect of varying this Agreement.
- 25.8 The Parties acknowledge that this Agreement is likely to require variation to take effect from 1 April 2023 as initial delegation arrangements are developed further. Accordingly, both Parties agree to engage constructively with a view to agreeing any such variation proposal in line with the provisions of this clause 25. In particular, the Parties agree to act reasonably and with the understanding that a single variation proposal will need to be accepted by all ICBs to ensure consistency across all delegation arrangements.

26. **TERMINATION**

- 26.1 The ICB may:
 - 26.1.1 notify NHS England that it requires NHS England to revoke the Delegation; and
 - 26.1.2 terminate this Agreement;

with effect from the end of 31 March in any calendar year, provided that:

 - 26.1.3 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 intention to terminate this Agreement; and
 - 26.1.4 the ICB meets with NHS England within ten (10) Operational Days of NHS England receiving the notice set out at clause 26.1.3 above to discuss arrangements for termination and transition of the Delegated Functions to a successor commissioner;

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.
- 26.2 NHS England may revoke the Delegation at the end of 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 26.4 will apply.

- 26.3 The Delegation may be revoked, and this Agreement may be terminated by NHS England at any time, including in (but not limited to) the following circumstances:
- 26.3.1 the ICB acts outside of the scope of its delegated authority;
 - 26.3.2 the ICB fails to perform any material obligation of the ICB owed to NHS England under this Agreement;
 - 26.3.3 the ICB persistently commits non-material breaches of this Agreement;
 - 26.3.4 NHS England is satisfied that its intervention powers under section 14Z61 of the NHS Act apply;
 - 26.3.5 to give effect to legislative changes, including conferral of any of the Delegated or Reserved Functions on the ICB;
 - 26.3.6 failure to agree to a variation in accordance with clause 25 (*Variations*);
 - 26.3.7 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
 - 26.3.8 the ICB merges with another ICB or other body.
- 26.4 This Agreement will terminate upon revocation or termination of the Delegation (including revocation and termination in accordance with this clause 26 (*Termination*)) except that the provisions referred to at clause 28 (*Provisions Surviving Termination*) will continue in full force and effect.
- 26.5 Without prejudice to clause 13.3 and to avoid doubt, NHS England may waive any right to terminate this Agreement under this clause 26 (*Termination*). Any such waiver is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 26.6 As an alternative to termination of the Agreement in respect of all the Delegated Functions, NHS England may alternatively 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.

27. CONSEQUENCE OF TERMINATION

- 27.1 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.
- 27.2 Subject to clause 27.4, 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:
- 27.2.1 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 those staff engaged in the Delegated Functions and the date on which the successor delegate will take responsibility for the Delegated Functions;
 - 27.2.2 implement and comply with their respective obligations under the plan for transition agreed in accordance with clause 27.2.1 above; and
 - 27.2.3 act with a view to minimising any inconvenience or disruption to the commissioning of healthcare in the Area.

- 27.3 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:
- 27.3.1 co-operate with NHS England and any successor delegate in order to ensure continuity and a smooth transfer of the Delegated Functions; and
 - 27.3.2 at the reasonable request of NHS England:
 - (a) promptly provide all reasonable assistance and information to the extent necessary to effect an orderly assumption of the Delegated Functions by a successor delegate;
 - (b) deliver to NHS England all materials and documents used by the ICB in the exercise of any of the Delegated Functions; and
 - 27.3.3 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.
- 27.4 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.

28. PROVISIONS SURVIVING TERMINATION

- 28.1 Any rights, duties or obligations of any of the Parties which are expressed to survive, including those referred to in clause 28.2, 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.
- 28.2 The surviving provisions include the following clauses together with such other provisions as are required to interpret and give effect to them:
- 28.2.1 Clause 9 (Finance);
 - 28.2.2 Clause 12 (Staffing);
 - 28.2.3 Clause 15 (Liability and Indemnity);
 - 28.2.4 Clause 16 (Claims and Litigation);
 - 28.2.5 Clause 17 (Data Protection, Freedom of Information and Transparency);
 - 28.2.6 Clause 24 (Disputes);
 - 28.2.7 Clause 26 (Termination);
 - 28.2.8 SCHEDULE 4 (Further Information Governance and Sharing Provisions).

29. COSTS

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

30. SEVERABILITY

- 30.1 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

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| Assigned Staff | means those NHS England staff as agreed between NHS England and the ICB from time to time; |
| 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; |
| Caldicott Principles | means the patient confidentiality principles set out in the report of the Caldicott Committee (December 1997 as amended by the 2013 Report, The Information Governance Review – “ <i>To Share or Not to Share?</i> ”) and now included in the NHS Confidentiality Code of Practice, as may be amended from time to time; |
| Capital | shall have the meaning set out in the Capital Investment Guidance or such other replacement Mandated Guidance as issued by NHS England from time to time; |
| Capital Expenditure Functions | means those functions of NHS England in relation to the use and expenditure of Capital funds (but excluding the Premises Costs Directions Functions); |
| 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: <ul style="list-style-type: none"> - 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 (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; |
| Claim Losses | means all Losses arising in relation to any Claim; |

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| Effective Date of Delegation | means the Effective Date of Delegation as set out in the Particulars; |
| EIR | means the Environmental Information Regulations 2004; |
| Enhanced Services | means the nationally defined enhanced services, as set out in such directions made by the Secretary of State pursuant to his powers contained in sections 98A, 114A, 125A and 168A of the NHS Act as are in force from time to time, or which may be prescribed by NHS England under its Reserved Functions, and any other enhanced services schemes locally developed by the ICB in the exercise of its Delegated Functions (and excluding, for the avoidance of doubt, any enhanced services arranged or provided pursuant to the Section 7A Functions); |
| Escalation Rights | means the escalation rights as defined in clause 14 (<i>Escalation Rights</i>); |
| Financial Year | shall bear the same meaning as in section 275 of the NHS Act; |
| FOIA | the Freedom of Information Act 2000; |
| Further Arrangements | means arrangements for the exercise of Delegated Functions as defined at clause 11.2; |
| GDS Contract | means a General Dental Services contract made under section 100 of the NHS Act; |
| GMS Contract | means a General Medical Services contract made under section 84(1) of the NHS Act; |
| 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; |
| HSCA | means the Health and Social Care Act 2012; |

- 10.2.1 consider and use the form of Primary Medical Services Contract that will ensure compliance with NHS England's obligations under Law taking into account the persons to whom such Primary Medical Services Contracts may be awarded;
- 10.2.2 provide to NHS England confirmation as required from time to time that it has considered and complied with its obligations under this Agreement and the Law; and
- 10.2.3 for the avoidance of doubt, Schedule 5 (Financial Provisions and Decision Making Limits) deals with the sign off requirements for Primary Medical Services Contracts.

11. Primary Care Networks

- 11.1 In managing the design and commissioning of the Network Contract Directed Enhanced Services, including re-commissioning these services annually where appropriate, the ICB must plan and manage the Primary Care Networks in the Area, complying with published specifications and Mandated Guidance, including to:
 - 11.1.1 maintain or establish identified Network Areas to support the local population in the Area;
 - 11.1.2 review any waived PCN list size requirements wherever possible and appropriate to best support the local population in the Area;
 - 11.1.3 ensure that each PCN has at all times an accountable Clinical Director;
 - 11.1.4 align each PCN with an ICB that would best support delivery of services to the local population in the Area; and
 - 11.1.5 collaborate and work with other ICBs as appropriate to agree which ICB will be the lead ICB for the PCN.

12. Approving Primary Medical Services Provider Mergers and Closures

- 12.1 The ICB is responsible for approving Primary Medical Services Provider mergers and Primary Medical Services Provider closures in the Area.
- 12.2 The ICB must undertake all necessary consultation when taking any decision in relation to Primary Medical Services Provider mergers or Primary Medical Services Provider closures in the Area, including those set out under section 14Z45 of the NHS Act (duty for public involvement and consultation). The consultation undertaken must be appropriate and proportionate in the circumstances and should include consulting with the Local Medical Committee.
- 12.3 Prior to making any decision in accordance with this paragraph 12 (Approving Primary Medical Services Provider Mergers and Closures), the ICB must be able to clearly demonstrate the grounds for such a decision and must have fully considered any impact on the Primary Medical Services Provider's registered population and that of surrounding practices. The ICB must be able to clearly demonstrate that it has considered other options and has entered into dialogue with the Primary Medical Services Provider as to how any closure or merger will be managed.
- 12.4 In making any decisions pursuant to this paragraph 12 (Approving Primary Medical Services Provider Mergers and Closures), the ICB shall act in accordance with relevant Mandated Guidance and also take account of its obligations as set out in paragraph 16 (*Procurement and New Contracts*), below, where applicable.

13. Making Decisions in relation to Management of Poorly Performing Primary Medical Services Providers

- 17.1 The ICB will handle complaints made in respect of Primary Medical Services in accordance with the Complaints Regulations.

18. Commissioning ancillary support services

- 18.1 The ICB must procure, and undertake the management and monitoring of contracts for the provision of, such ancillary support services as are required to support the ICB in the effective discharge of the Delegated Functions, including, but not limited to the following:

18.1.1 collection and disposal of clinical waste;

18.1.2 provision of translation and interpretation services;

18.1.3 occupational health services for performers registered on the Performers List.

- 18.2 The arrangements for the provision of ancillary services to Primary Medical Services Providers are described in Schedule 7 (Local Terms).

19. Finance

Further requirements in respect of finance will be specified in Mandated Guidance.

20. Workforce

- 20.1 The arrangements for the provision and maintenance of sufficient and appropriately qualified, trained and experienced Staff in order for the ICB to fulfil its responsibilities for each of the Delegated Functions ("the Staffing Model"), will be communicated formally to the ICB by NHS England following recommendations made by the National Moderation Panel.

- 20.2 The ICB is not permitted to vary the Staffing Model agreed with NHS England as part of its application for delegation of the said functions however a variation can be applied for by the ICB and considered by the National Moderation Panel at any time.

that NHS England is able to continue to gather national data regarding the commissioning or performances of providers of Primary Ophthalmic Services;

- 2.7.2 such data/data sets as required by NHS England to ensure population of any national dashboards;
- 2.7.3 any other data/data sets as required by NHS England; and
- 2.7.4 the ICB shall procure that providers accurately record and report information so as to allow NHS England and other agencies to discharge their functions.

Part 2: Specific Obligations

3. Introduction

- 3.1 This Part 2 of Schedule 2C (*Primary Ophthalmic Services*) sets out further provision regarding the carrying out of each of the Delegated Functions.

4. Primary Ophthalmic Services Contract Management

- 4.1 The ICB must:
 - 4.1.1 comply with all current and future relevant national Mandated Guidance regarding General Ophthalmic Contract reviews and any other contract reviews;
 - 4.1.2 take on the responsibility for existing services provided pursuant to a Primary Ophthalmic Services Contract, and for commissioning new services;
 - 4.1.3 assume the responsibility for the award of new Primary Ophthalmic Services Contracts; and
 - 4.1.4 monitor contract performance with a view to achieving assurance and improvement in the delivery of services in the context of the ICB;

in each case acknowledging that the NHS Business Services Authority provides end-to-end support services in relation to these functions, as referred to in Schedule 6. The ICB accordingly agrees to co-operate with the NHS Business Services Authority in the delivery of these functions.

5. Transparency and freedom of information

- 5.1 The ICB must:
 - 5.1.1 Respond to requests for information from members and the public and the media, including requests made pursuant to the FOIA, whose subject-matter relates to the performance of the Delegated Functions in the ICB's Area; and
 - 5.1.2 Provide information and assistance as required to support NHS England in the preparation of responses to parliamentary questions in connection with the Delegated Functions.

SCHEDULE 3

Reserved Functions

1. Introduction

- 1.1 In accordance with clause 8.4 of this Agreement, all functions of NHS England other than those defined as Delegated Functions are Reserved Functions.
- 1.2 This SCHEDULE 3 (Reserved Functions) sets out further provision regarding the carrying out of the Reserved Functions.
- 1.3 The ICB will work collaboratively with NHS England and will support and assist NHS England to carry out the Reserved Functions.

2. Management of the national performers list

- 2.1 Subject to Paragraph 2.2, NHS England will continue to perform its functions under the National Health Service (Performers Lists) (England) Regulations 2013.
- 2.2 The ICB will carry out administrative tasks in respect of the Performers Lists as described at:
 - 2.2.1 Paragraph 9 of Part 2, Schedule 2A;
 - 2.2.2 Paragraph 9 of Part 2, Schedule 2B; and
 - 2.2.3 Paragraph 6 of Part 2, Schedule 2C.
- 2.3 NHS England's functions in relation to the management of the national performers list include:
 - 2.3.1 considering applications and decision-making in relation to inclusion on the national performers list, inclusion with conditions and refusals;
 - 2.3.2 identifying, managing and supporting primary care performers where concerns arise; and
 - 2.3.3 managing suspension, imposition of conditions and removal from the national performers list.
- 2.4 NHS England may hold local Performance Advisory Group ("PAG") meetings to consider all complaints or concerns that are reported to NHS England in relation to a named performer and NHS England will determine whether an initial investigation is to be carried out.
- 2.5 NHS England may notify the ICB of all relevant PAG meetings at least seven (7) days in advance of such meetings. NHS England may require a representative of the ICB to attend such meetings to discuss any performer concerns and/or quality issues that may impact on individual performer cases.
- 2.6 The ICB must develop a mechanism to ensure that all complaints regarding any named performer are escalated to the Local NHS England Team for review. The ICB will comply with any Mandated Guidance issued by NHS England in relation to the escalation of complaints about a named performer.

3. Management of the revalidation and appraisal process

- 3.1 NHS England will continue to perform its functions under the Medical Profession (Responsible Officers) Regulations 2010 (as amended by the Medical Profession (Responsible Officers) (Amendment) Regulations 2013).

- 3.2 All functions in relation to GP appraisal and revalidation will remain the responsibility of NHS England, including:
 - 3.2.1 the funding of GP appraisers;
 - 3.2.2 quality assurance of the GP appraisal process; and
 - 3.2.3 the responsible officer network.
- 3.3 Funding to support the GP appraisal is incorporated within the global sum payment to Primary Medical Services Provider.
- 3.4 The ICB must not remove or restrict the payments made to Primary Medical Services Provider in respect of GP appraisal.
- 3.5 Appraisal arrangements in respect of all other primary care practitioner groups shall also be Reserved Functions.

4. Administration of payments and related performers list management activities

- 4.1 NHS England reserves its functions in relation to the administration of payments to individual performers and related performers list management activities under the National Health Service (Performers Lists) (England) Regulations 2013 and other relevant legislation.
- 4.2 NHS England may continue to pay practitioners who are suspended from the national performers list in accordance with relevant determinations made by the Secretary of State.
- 4.3 For the avoidance of doubt, the ICB is responsible for any ad hoc or discretionary payments to Primary Medical Services Providers (including those under section 96 of the NHS Act) in accordance with SCHEDULE 2 (Delegated Functions) Part 1 paragraphs 7.1 and 7.2 of this Agreement, including where such payments may be considered a consequence of actions taken under the National Health Service (Performers Lists) (England) Regulations 2013.

5. Section 7A and Capital Expenditure Functions

- 5.1 In accordance with clause 9.18, NHS England retains the Section 7A Functions and will be responsible for taking decisions in relation to the Section 7A Functions.
- 5.2 In accordance with clauses 9.20 and 9.21, the ICB will provide certain management and/or administrative services to NHS England in relation to the Section 7A Functions.
- 5.3 In accordance with clause 9.14, NHS England retains the Capital Expenditure Functions and will be responsible for taking decisions in relation to the Capital Expenditure Functions.
- 5.4 In accordance with clauses 9.16 and 9.17, the ICB will provide certain management and/or administrative services to NHS England in relation to the Capital Expenditure Functions.

6. Such other ancillary activities that are necessary in order to exercise the Reserved Functions

- 6.1 NHS England will continue to comply with its obligations under the Controlled Drugs (Supervision of Management and Use) Regulations 2013.
- 6.2 The ICB must assist NHS England's controlled drug accountable officer ("CDAO") to carry out its functions under the Controlled Drugs (Supervision of Management and Use) Regulations 2013.

- 6.3 The ICB must nominate a relevant senior individual within the ICB (the “ICB CD Lead”) to liaise with and assist NHS England to carry out its functions under the Controlled Drugs (Supervision of Management and Use) Regulations 2013.
- 6.4 The ICB CD Lead must, in relation to the Delegated Functions:
 - 6.4.1 on request provide NHS England’s CDAO with all reasonable assistance in any investigation involving the Delegated Functions;
 - 6.4.2 report all complaints involving controlled drugs to NHS England’s CDAO;
 - 6.4.3 report all incidents or other concerns involving the safe use and management of controlled drugs to NHS England’s CDAO;
 - 6.4.4 analyse the controlled drug prescribing data available; and
 - 6.4.5 on request supply (or ensure organisations from whom the ICB commissions services involving the regular use of controlled drugs supply) periodic self-declaration and/or self-assessments to NHS England’s CDAO.

7. Reserved Functions – Primary Medical Services

- 7.1 The following functions and related activities shall continue to be exercised by NHS England (the “Reserved Primary Medical Services Functions”):
 - 7.1.1 determining the outcomes expected from Primary Medical Services and the main characteristics of high quality services, taking into account national priorities for improving NHS outcomes and the Department of Health and Social Care mandate;
 - 7.1.2 designing and delivering national transformation programmes in support of national priorities;
 - 7.1.3 the negotiation and agreement of matters concerning General Medical Services contracts with national stakeholders including, without limitation, the Department of Health and Social Care and bodies representing providers of primary medical services nationally;
 - 7.1.4 the development of national standard Primary Medical Service contracts and national contract variations and guidance to ensure an equitable approach to applying nationally agreed changes to all Primary Medical Services providers;
 - 7.1.5 the provision of commissioning and contracting policy and guidance to support ICBs to meet their delegated duties;
 - 7.1.6 the provision of nationally contracted services delivering digital, logistical and support services for Primary Medical Services in England (including but not limited to):
 - 7.1.6.1 Payments;
 - 7.1.6.2 Pensions;
 - 7.1.6.3 Patient Registration;
 - 7.1.6.4 Medical Records;
 - 7.1.6.5 Performer List;
 - 7.1.6.6 Supplies;

7.1.6.7 Call and Recall for Cervical screening (CSAS); and

7.1.6.8 Pharmacy Market Management.

7.2 The ICB will work collaboratively with NHS England, and will support and assist those nationally contracted services to carry out their services.

8. Reserved Functions – Primary Dental Services

8.1 The following functions and related activities shall continue to be exercised by NHS England (the “Reserved Primary Dental Services Functions”):

8.1.1 determining the outcomes expected from Primary Dental Services and the main characteristics of high quality services, taking into account national priorities for improving NHS outcomes; designing and delivering national transformation programmes in line with any applicable commissioning policies and guidance;

8.1.2 the negotiation and agreement of matters concerning Dental Services Contracts with national stakeholders including, without limitation, the Department of Health and Social Care and bodies representing providers of primary dental services nationally;

8.1.3 the development of national standard Dental Service Contracts and national contract variations and guidance to ensure an equitable approach to applying nationally agreed changes to all Primary Dental Services providers;

8.1.4 the provision of all dental commissioning and contracting policy and guidance to support ICBs to meet their delegated duties; and

8.1.5 the provision of nationally contracted services delivering digital, logistical and support services for Primary Dental Services in England (including but not limited to):

8.1.5.1 Payments;

8.1.5.2 Pensions;

8.1.5.3 Performer List; and

8.1.5.4 Market Management.

8.2 The ICB will work collaboratively with NHS England, and will support and assist those nationally contracted services to carry out their services.

9. Reserved Functions – Primary Ophthalmic Services

9.1 The following functions and related activities shall continue to be exercised by NHS England (the “Reserved Ophthalmic Functions”):

9.1.1 the Primary Ophthalmic Services Contracts policy and associated documentation;

9.1.2 the negotiation and agreement of matters concerning Primary Ophthalmic Services with national stakeholders including, without limitation, the Department of Health and Social Care and bodies representing providers of Ophthalmic Services nationally; and

9.1.3 the provision of nationally contracted services delivering digital, logistical and support services for Primary Ophthalmic Services in England (including but not limited to):

- 9.1.3.1 Payments;
- 9.1.3.2 Performers List;
- 9.1.3.3 Market Management/Entry; and
- 9.1.3.4 Contract management, assurance and post-payment verification.

9.2 The ICB will work collaboratively with NHS England, and will support and assist those nationally contracted services to carry out their services.

10. Reserved Functions – Pharmaceutical Services and Local Pharmaceutical Services

- 10.1 The following functions and related activities shall continue to be exercised by NHS England (the “Reserved Pharmaceutical Functions”):
 - 10.1.1 publication of Pharmaceutical Lists;
 - 10.1.2 functions of NHS England as a determining authority in relation to pharmaceutical remuneration under Part 12 of the Pharmaceutical Regulations;
 - 10.1.3 functions in respect of lists of performers of pharmaceutical services and assistants, noting that as at the date of this Agreement regulations for the purposes of these functions have not been made¹⁷;
 - 10.1.4 the negotiation and agreement of matters concerning NHS pharmaceutical services with national stakeholders including, without limitation, the Department of Health and Social Care and bodies representing providers of Pharmaceutical Services nationally;
 - 10.1.5 the provision of commissioning and contracting policy and guidance to support ICBs to meet their delegated duties; and
 - 10.1.6 administration of the pharmacist pre-registration training grant scheme.

¹⁷ Part 7, Chapter 4A of the NHS Act (not currently in force)

SCHEDULE 4

Further Information Governance and Sharing Provisions

1. Introduction

- 1.1. The purpose of this Schedule 4 (*Further Information Governance and Sharing Provisions*) and the Personal Data Agreement at the Annex is to set out the scope for the secure and confidential sharing of information between the Parties on a **Need To Know** basis, in order to enable the Parties to exercise their functions in pursuance of this Agreement.
- 1.2. References in this Schedule 4 (*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' personnel will only have access to Personal Data or Special Category Personal Data if it is lawful for such personnel 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 Personal Data Agreement is 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 Parties;
 - 1.3.2. describe the purposes for which the Parties have agreed to share Relevant Information;
 - 1.3.3. set out the lawful basis for the 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 of Relevant Information relating to
 - 1.3.5.1. Primary Care Providers and Primary Care Provider Personnel; and
 - 1.3.5.2. Dental Services Providers and their personnel;
 - 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 Parties' personnel; and
 - 1.3.9. describe how complaints relating to Personal Data sharing between the Parties 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 ICB's Delegated Functions and NHS England's Reserved Functions as described in this Agreement.
- 2.2. Specific and detailed purposes are set out in the Personal Data Agreement annexed to this Schedule.

3. Benefits of information sharing

- 3.1. The benefits of sharing information are the achievement of the Specified Purpose set out above, with benefits for service users and other stakeholders in terms of the improved local delivery of Primary Care Services and Primary Dental Services.

4. Lawful basis for Sharing

- 4.1. Each Party shall comply with all relevant Information Law requirements and good practice in relation to the processing of Relevant Information shared further to this Agreement.
- 4.2. The Parties shall identify the lawful basis for sharing Relevant Information for each purpose and data flow, and document these in the Personal Data Agreement annexed to this Schedule.

5. Relevant Information to be shared

- 5.1. The Relevant Information to be shared is set out in the Personal Data Agreement annexed to this Schedule.

6. Restrictions on use of the Shared Information

- 6.1. 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.
- 6.2. 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 Information Law requirements, and the parties' personnel should only have access to Personal Data on a justifiable **Need to Know** basis.
- 6.3. Neither the provisions of this Schedule 4 (*Further Information Governance and Sharing Provisions*) nor the Personal Data Agreement annexed to this Schedule should be taken

to permit unrestricted access to data held by any Party. It lays the parameters for the safe and secure sharing and processing of information on a justifiable **Need to Know** basis.

- 6.4. Neither Party shall subcontract any processing of the Relevant Information without the prior written 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 obligations as are imposed on the Data Controllers under this Agreement.
- 6.5. Neither Party shall cause or allow Data to be transferred to any territory outside the United Kingdom without the prior written permission of the responsible Data Controller.
- 6.6. Any particular restrictions on use of certain Relevant Information are included in the Personal Data Agreement annexed to this Schedule.

7. Ensuring fairness to the Data Subject

- 7.1. 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:
 - 7.1.1. amendment of internal guidance to improve awareness and understanding among personnel;
 - 7.1.2. 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;
 - 7.1.3. ensuring that information and communications relating to the processing of data is easily accessible and easy to understand, and that clear and plain language be used; and
 - 7.1.4. giving consideration to carrying out activities to promote public understanding of how data is processed where appropriate.
- 7.2. 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.
- 7.3. Each Party shall reasonably cooperate with the other in undertaking any Data Protection Impact Assessment 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.
- 7.4. Further provision in relation to specific data flows is included in the Personal Data Agreement annexed to this Schedule.

8. Governance: personnel

- 8.1. Each Party must take reasonable steps to ensure the suitability, reliability, training and competence, of any personnel who have access to the Personal Data (and Special Category Personal Data) including reasonable background checks and evidence of completeness should be available on request by each Party.
- 8.2. The Parties agree to treat all Relevant Information as confidential and imparted in confidence and must safeguard it accordingly. Where any of the Parties' personnel are not healthcare professionals (for the purposes of the Data Protection Act 2018) the employing Parties must procure that personnel operate under a duty of confidentiality which is equivalent to that which would arise if that person were a healthcare professional.
- 8.3. Each Party shall ensure that all personnel required to access the Personal Data (including Special Category Personal Data) are informed of the confidential nature of the Personal Data and each Party shall include appropriate confidentiality clauses in employment/service contracts of all personnel 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 Information Law requirements, or causes damage to or loss of the Relevant Information.
- 8.4. Each Party shall provide evidence (further to any reasonable request) that all personnel that have any access to the Relevant Information whatsoever are adequately and appropriately trained to comply with their responsibilities under Information Law and this Agreement.
- 8.5. Each Party shall ensure that:
 - 8.5.1. only those personnel involved in delivery of the Agreement use or have access to the Relevant Information; and
 - 8.5.2. 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. These access controls are set out in the Personal Data Agreement annexed to this Schedule; and
 - 8.5.3. specific limitations on the personnel who may have access to the Information are set out in the Personal Data Agreement annexed to this Schedule.

9. Governance: Protection of Personal Data

- 9.1. At all times, the Parties shall have regard to the requirements of Information Law and the rights of Data Subjects.

- 9.2. Wherever possible (in descending order of preference), only anonymised information, or strongly or weakly pseudonymised information will be shared and processed by Parties, without the need to share easily identifiable Personal Data. The Parties shall cooperate in exploring alternative strategies to avoid the use of Personal Data in order to achieve the Specified Purpose. However, it is accepted that some Relevant Information shared further to this Agreement may be Personal Data/Special Category Personal Data.
- 9.3. 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. If either Party:
- 9.3.1. 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
 - 9.3.2. becomes aware of any security vulnerability or breach,
- in respect of the Relevant Information it shall promptly (and within 48 hours) notify the other Party. The Parties shall fully cooperate with one another to remedy the issue as soon as reasonably practicable, and in making information about the incident available to the Information Commissioner and Data Subjects where required by Information Law.
- 9.4. In processing any Relevant Information further to this Agreement, each Party shall:
- 9.4.1. process the Personal Data (including Special Category Personal Data) only 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;
 - 9.4.2. process the Personal Data (including Special Category Personal Data) only to the extent as is necessary for the provision of the Specified Purpose or as is required by law or any regulatory body;
 - 9.4.3. process the Personal Data (including Special Category Personal Data) only in accordance with Information Law requirements and shall not perform its obligations under this Agreement in such a way as to cause any other Data Controller to breach any of their applicable obligations under Information Law; and
 - 9.4.4. process the Personal Data in accordance with the requirements of Information Law and in particular the principles set out in Article 5(1) and accountability requirements set out in Article 5(2) UK GDPR.
- 9.5. Each Party shall act generally in accordance with Information Law requirements, and in particular shall implement, maintain and keep under review appropriate technical and organisational measures to ensure and to be able to demonstrate that the processing of Personal Data is undertaken in accordance with Information Law, 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:

- 9.5.1. 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
- 9.5.2. 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 regard to the nature of the Personal Data (and Special Category Personal Data) which is to be protected.

9.6. In particular, each Party shall:

- 9.6.1. ensure that only personnel authorised under this Agreement have access to the Personal Data (and Special Category Personal Data);
- 9.6.2. 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;
- 9.6.3. obtain prior written consent from the originating Party in order to transfer the Relevant Information to any third party;
- 9.6.4. permit the 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
- 9.6.5. if requested, provide a written description of the technical and organisational methods and security measures employed in processing Personal Data.

9.7. Each Party shall adhere to the specific requirements as to information security set out in the Personal Data Agreement.

9.8. Each Party shall use best endeavours to achieve and adhere to the requirements of the NHS Digital Data Security and Protection Toolkit.

9.9. The Parties' Single Points of Contact set out in paragraph 14 (*Governance: Single Points of Contact*) below will be the persons who, in the first instance, will have oversight of third party security measures.

10. Governance: Transmission of Information between the Parties

- 10.1. This paragraph supplements paragraph 9 (*Governance: Protection of Personal Data*) of this Schedule.

- 10.2. 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 / gcsx) email.
- 10.3. Wherever possible, Personal Data should be transmitted (and held) in pseudonymised form, with only reference to the NHS number in 'clear' transmissions. Where there are significant consequences for the care of the patient, then additional data items, such as the postcode, date of birth and/or other identifiers should also be transmitted, in accordance with good information governance and clinical safety practice, so as to ensure that the correct patient record / data is identified.
- 10.4. Any other special measures relating to security of transfer are specified in the Personal Data Agreement annexed to this Schedule.
- 10.5. Each Party shall keep an audit log of Relevant Information transmitted and received in the course of this Agreement.
- 10.6. The Parties' Single Point of Contact notified pursuant to paragraph 14 (*Governance: Single Points of Contact*) will be the persons who, in the first instance, will have oversight of the transmission of information between the Parties.

11. Governance: Quality of Information

- 11.1. 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.
- 11.2. Special measures relating to ensuring quality are set out in the Personal Data Agreement annexed to this Schedule.

12. Governance: Retention and Disposal of Shared Information

- 12.1. The 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.
- 12.2. Each Party shall provide an explanation of the processes used to securely destroy or return the information, or verify such destruction or return, if requested by the other Party and shall comply with any request of the Data Controllers to dispose of data in accordance with specified standards or criteria.

- 12.3. If either 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 under this paragraph 12 (*Governance: Retention and Disposal of Shared Information*), it shall notify the other Party in writing of that retention, giving details of the documents or materials that it must retain.
- 12.4. 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.
- 12.5. Any special retention periods are set out in the Personal Data Agreement annexed to this Schedule.
- 12.6. Each Party 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.
- 12.7. 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.
- 12.8. Electronic records will be considered for deletion once the relevant retention period has ended.
- 12.9. 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.

13. Governance: Complaints and Access to Personal Data

- 13.1. Each Party shall assist the other in responding to any request made under Information Law made by persons who wish to access copies of information held about them ("**Subject Access Requests**"), as well as any other purported exercise of a Data Subject's rights under Information Law or complaint to or investigation undertaken by the Information Commissioner.
- 13.2. Complaints about information sharing shall be routed through each Party's own complaints procedure but reported to the Single Points of Contact set out in paragraph 14 (*Governance: Single Points of Contact*) below.
- 13.3. The Parties shall use all reasonable endeavours to work together to resolve any dispute or complaint arising under this Agreement or any data processing carried out further to it.

- 13.4. Basic details of the Agreement shall be included in the appropriate log under each Party's Publication Scheme.

14. Governance: Single Points of Contact

- 14.1. 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. Details of the single points of contact shall be set out in the Personal Data Agreement.

15. Monitoring and review

- 15.1. The Parties shall monitor and review on an ongoing basis the sharing of Relevant Information to ensure compliance with Information Law and best practice. Specific monitoring requirements are set out in the Personal Data Agreement annexed to this Agreement.

Annex

Template Personal Data Agreement

Data flow subject matter: [Description]

Data flow duration: *The duration of the delegation arrangement* [OR Insert alternative period]

Nature and purpose of processing: *Described in the Delegation Agreement at Schedule 4 paragraph 2.1 above*

Description of information flow and Single Points of Contact for parties involved

| | | | | |
|--|---------------------------------|--------------|------------------------|------------------------|
| Originating Data Controller | [Insert:] | | | |
| Contact details for Single Point of Contact for Originating Data Controller | Name of point of contact | Title | Contact (email) | Contact (phone) |
| | | | | |
| Recipient Data Controller | [Insert:] | | | |
| Contact details for Single Point of Contact of Recipient Data Controller | Name of point of contact | Title | Contact (email) | Contact (phone) |
| | | | | |

Description of information to be shared

| | |
|---|-----------------|
| Comprehensive description of Relevant Information to be shared – including the type(s) of personal data to be shared and categories of personal data | [Insert:] |
| Anonymised / not information about individual persons | Yes / No |
| Strongly pseudonymised | Yes / No |

| | |
|--|------------------|
| Weakly pseudonymised | Yes / No |
| Person -identifiable data | Yes / No |
| Justification for the level of identifiability required | [Insert or N/A:] |

Legal basis for disclosure and use

| | | |
|---|---|---|
| GDPR Article 6 Legitimising Condition/s | [Insert or N/A:] | |
| GDPR Article 9 Exemption/s | [Insert or N/A:] | |
| Confidentiality | Explicit consent | Yes / No [If yes, how documented?:] |
| | Implied Consent | Yes / No [If yes, how have you implied consent?:] |
| | Statutory required/permited disclosure | [Insert statutory basis:] |
| | Public interest disclosure | [Insert how the public interest favours use/disclosure of the information:] |
| | Other legal basis | [Insert:] |
| s. 13Z3 / 14Z61 NHS Act 2006 justification | S. 13Z3 condition(s) to permit disclosure | [Insert:] |
| | S. 14Z23 condition(s) to permit disclosure | [Insert:] |
| Other specific legal considerations | | |

Restrictions on use of information

| |
|-----------|
| [Insert:] |
|-----------|

Governance arrangements

| | |
|--|-----------|
| Specific measures to ensure fairness to the Data Subject, including privacy impact assessments undertaken | [Insert:] |
| Access controls on use of information | [Insert:] |
| Specific limitations on Personnel who may access information | [Insert:] |
| Other specific security requirements (transmission) | [Insert:] |
| Other specific security requirements (general) | [Insert:] |
| Specific requirements as to ensuring quality of information | [Insert:] |
| Specific requirements for retention and destruction of information | [Insert:] |
| Specific monitoring and review arrangements | [Insert:] |

SCHEDULE 5

Financial Provisions and Decision Making Limits

Financial Limits and Approvals

1. The ICB shall ensure that any decisions in respect of the Delegated Functions and which exceed the financial limits set out below are only taken:
 - 1.1 by the following persons and/or individuals set out in column 2 of Table 1 below; and
 - 1.2 following the approval of NHS England (if any) as set out in column 3 of the Table 1 below.
2. NHS England may, from time to time, update Table 1 by sending a notice to the ICB of amendments to Table 1.

| Table 1 – Financial Limits | | |
|---|---|--|
| Decision | Person/Individual | NHS England Approval |
| General | | |
| Taking any step or action in relation to the settlement of a Claim, where the value of the settlement exceeds £100,000 | ICB Chief Executive Officer or Chief Finance Officer or Chair | NHS England Head of Legal Services and Local NHS England Team Director or Director of Finance |
| Any matter in relation to the Delegated Functions which is novel, contentious or repercussive | ICB Chief Executive Officer or Chief Finance Officer or Chair | Local NHS England Team Director or Director of Finance or NHS England Region Director or Director of Finance or NHS England Chief Executive or Chief Financial Officer |
| Revenue Contracts | | |
| The entering into of any Primary Care Contract or Arrangement which has or is capable of having a term which exceeds five (5) years | ICB Chief Executive Officer or Chief Finance Officer or Chair | Local NHS England Team Director or Director of Finance |
| <p>Capital</p> <p>Note: As at the date of this Agreement, the ICB will not have delegated or directed responsibility for decisions in relation to Capital expenditure (and these decisions are retained by NHS England) but the ICB may be required to carry out certain administrative services in relation to Capital expenditure under paragraph 13 (<i>Financial Provisions and Liability</i>).</p> | | |

SCHEDULE 6

Mandated Assistance and Support

1. Primary Dental Services

- 2.1 NHS Business Services Authority has existing agreements with NHS England to support its delivery of the following services:
- 2.1.1 Contract management – end-to-end administration of contract variations and other regional team/ICB support activities;
 - 2.1.2 Performance management - provide mid and end of year administration process to support regional teams and ICBs and undertake risk based assurance reviews - PPV can also be instigated by the ICS or Counter Fraud;
 - 2.1.3 Clinical assurance reviews – provide clinical assurance of quality of dental services delivered, working in collaboration with regional teams/ICBs to identify and seek to address any concerns;
 - 2.1.4 Provide data reports to teams defining quantity and service delivery at a contractor level.

3. Primary Ophthalmic Services

- 3.1 NHS Business Services Authority have existing agreements with NHS England to support its delivery of the following services:
- 3.1.1 Contract management. End-to-end administration of new contract applications, contract variations and contract terminations.
 - 3.1.2 Contract assurance. Administration of the annual contractor assurance declaration and additional in-depth assurance declaration where appropriate. Provision of assurance reports at ICS and contractor level, supporting further assurance decisions.
 - 3.1.3 GOS complaints. Administration of the annual GOS complains survey.
 - 3.1.4 Post-Payment Verification (PPV). End-to-end process for identifying and verifying GOS claims as part of the national PPV framework. This includes obtaining and reviewing claims and carrying out a financial recovery where appropriate. PPV can also be instigated by the ICS or Counter Fraud.
 - 3.1.5 GOS 4 pre-authorisation of repair or replacement glasses.

4. Pharmaceutical Services and Local Pharmaceutical Services

- 4.1 NHS Business Services Authority has existing agreements with NHS England to support ICBs to discharge their assurance responsibilities by the delivery of the following services to ICBs:
- 4.1.1 Performance management – direct support to commissioners and community pharmacy contractors to implement corrective and preventative intervention;

- 4.1.2 Contract assurance – administration of the annual contractor assurance declaration and additional in-depth assurance declaration where appropriate, provision of assurance reports at ICS and contractor level supporting further assurance decisions by the ICB;
- 4.1.3 Post-Payment Verification (PPV) – end-to-end process for identifying and verifying claims as part of the national PPV framework to support ICBs to play their part in ensuring compliance with contractual requirements and delivery of quality and value for money. This includes obtaining and reviewing claims, investigation of outliers and other potential inappropriate claims, along with referrals and investigatory reports to the ICB to consider and decide overpayment recoveries, and carrying out the financial recovery where appropriate. PPV can also be instigated by the ICS or Counter Fraud.

5 Support Services directed by DHSC

- 5.1 NHS Business Services Authority is directed by DHSC to undertake specific activities as well as having existing agreements with NHS England to support its delivery of primary care services. These include (without limitation):
 - 5.1.1 The administration of national payment platforms for primary care services to dentists, pharmacy contractors, appliance contractors, oxygen contractors and special school eye care providers;
 - 5.1.2 The calculation of payment for covid-19 and flu vaccinations to PCNs and GP practices as well as payments to Dispensing Doctors and prescribing only doctors for personal administration claims and sharing this information accurately and in a timely manner;
 - 5.1.3 Clinical advisory support;
 - 5.1.4 Administration functions;
 - 5.1.5 Assurance services - performance and contract management of primary care providers;
 - 5.1.6 The provision of information to primary care organisations for all contractor groups via standardised reporting (eg. ePACT2, eDEN and eOPS);
 - 5.1.7 Working with NHS England and ICB Counter Fraud Teams to reduce loss across the system.

SCHEDULE 7

Local Terms

None

SCHEDULE 8

Deployment of NHS England Staff to the ICB

Note:

This schedule relates to the Deployment of Staff who are employed by NHS England only.

Deployment of NHS England Staff

1. NHS England may deploy Staff to the ICB for the purposes of carrying out the Delegated Functions.
2. The Parties have agreed that arrangements for the provision of NHS England Staff and the associated employment model envisaged by section 5.9 of the HR Framework (<https://www.england.nhs.uk/wp-content/uploads/2021/06/B1427-Human-resources-framework-for-developing-integrated-care-boards-version-2-March-2022.pdf>) will be determined by the National Moderation Panel convened for this purpose and endorsed by NHS England's Executive Group.
3. The Parties agree and acknowledge that the Staffing Models will be developed in conjunction with the ICB and are subject to the decision of the National Moderation Panel and cannot be varied without the express agreement of NHS England.
4. A proposal for a variation to any Staffing Model must be made by means of a formal submission to the National Moderation Panel which will determine the proposal, following which the proposal if approved, will be endorsed by NHS England's Executive Group.
5. Subject to any variation made in accordance with paragraphs 3 and 4 above, a Staffing Model determined in accordance with paragraph 2 will apply for the duration of this Agreement.

Availability of NHS England Staff

1. In addition to any Staff deployed in any communicated Staffing Model arrangement, NHS England may deploy additional Staff to the ICB to perform administrative and management support services together with such other services specified in SCHEDULE 7 (Local Terms) (the "Services") so as to facilitate the ICB in undertaking the Delegated Functions pursuant to the terms of this Agreement.
2. NHS England will take all reasonable steps to ensure that the NHS England Staff deployed for the purposes of carrying out the Delegated Functions shall:
 - 2.1 faithfully and diligently perform duties and exercise such powers as may from time to time be reasonably assigned to or vested in them; and
 - 2.2 perform all duties assigned to them pursuant to this Schedule 8.
3. The ICB shall notify NHS England if the ICB becomes aware of any act or omission by any NHS England Staff which may have a material adverse impact on the provision of the Services or constitute a material breach of the terms and conditions of employment of the NHS England Staff.
4. NHS England shall use all reasonable efforts to make its Staff available for the purposes of this Schedule 8 whilst the NHS England Staff are absent:
 - 4.1 by reason of industrial action;
 - 4.2 as a result of the suspension or exclusion of employment or secondment of any Staff by NHS England;

- 4.3 in accordance with the NHS England Staff's respective terms and conditions of employment and policies, including, but not limited to, by reason of training, holidays, sickness, injury, trade union duties, paternity leave or maternity or where absence is permitted or required by Law;
- 4.4 if making the NHS England Staff available would breach or contravene any Law;
- 4.5 as a result of the cessation of employment of any individual NHS England Staff; and/or
- 4.6 at such other times as may be agreed between NHS England and the ICB.

Employment of the NHS England Deployed Staff

1. NHS England shall employ their Staff and shall be responsible for the employment of their Staff at all times on whatever terms and conditions as NHS England and their Staff may agree from time to time.
2. NHS England shall pay their Staff their salaries and benefits and make any deductions for income tax liability and national insurance or similar contributions it is required to make from the Staff's salaries and other payments.
3. NHS England shall not, and shall procure that the NHS England Staff shall not, hold themselves out as employees of the ICB.

Management of NHS England staff

1. NHS England where appropriate, shall in consultation with the ICB, make arrangements to ensure the day-to-day control of the activities of their Staff is shared with the ICB and deal with any relevant management issues concerning their Staff including, without limitation, performance appraisal, discipline and leave requests.
2. The ICB agrees to provide all such assistance and co-operation that NHS England may reasonably request from time to time to resolve grievances raised by NHS England Staff and to deal with any disciplinary allegations made against NHS England Staff arising out of or in connection with the provision of the Services which shall include, without limitation, supplying NHS England with all information and the provision of access to all documentation and NHS England Staff as NHS England requires for the purposes of considering and dealing with such issues and participating promptly in any action which may be necessary.

Conduct of Claims

1. If the ICB becomes aware of any matter that may give rise to a claim by or against a member of NHS England Staff, notice of that fact shall be given as soon as possible to NHS England. NHS England and the ICB shall co-operate in relation to the investigation and resolution of any such claims or potential claims.
2. No admission of liability shall be made by or on behalf of the ICB and any such claim shall not be compromised, disposed of or settled without the consent of NHS England.

Confidential Information and Property

1. For the avoidance of doubt, this paragraph 17 (Confidential Information and Property) is without prejudice to any other provision of this Agreement in relation to confidential information.
2. It is acknowledged that to enable the NHS England Staff to provide the Services, the Parties may share Confidential Information.
3. The Parties agree to adopt all such procedures as the other party may reasonably require and to keep confidential all Confidential Information.

Intellectual Property

1. All IPR made, written, designed, discovered or originated by Staff (People Resources) deployed by NHS England, shall be the property of NHS England to the fullest extent permitted by Law and NHS England shall be the absolute beneficial owner of the copyright in any such IPR.

SCHEDULE 9

Mandated Guidance

Primary Medical Care

- [Primary Medical Care Policy and Guidance Manual](#).
- The 'Principles of Best Practice' and any other guidance relating to *the Premises Cost Directions 2013*.
- Guidance relating to the Minimum Practice Income Guarantee.
- Guidance relating to Primary Medical Care discretionary payments.
- Guidance for Commissioners: Interpreting and Translation Services in Primary Care.
- [Framework for Patient and Public Participation in Primary Care Commissioning](#).
- [NHS England National Primary Care Occupational Health Service Specification](#).
- Guidance relating to list cleansing in relation to Primary Medical Care providers.
- Guidance relating to mergers and closures of GP practices and/or Primary Medical Care providers.
- Guidance relating to Primary Medical Care and POD contract reviews.
- Guidance relating to the escalation of complaints from a named 'performer'.
 - Including: [Framework for Managing Performer Concerns](#).

Pharmaceutical Services and Local Pharmaceutical Services

- [Pharmacy Manual](#).

Primary Ophthalmic Services

- [Policy Book for Eye Health](#).

Primary and Prescribed Dental Services

- [Policy Book for Primary Dental Services](#).
- [Securing Excellence in Commissioning NHS Dental Services](#).
- Securing Excellence in Commissioning NHS Dental Services: Key facts.
- Securing Excellence in Commissioning NHS Dental Services: FAQs.
- [Quick Guide: Best use of unscheduled dental care services](#).
- [How to update NHS Choices for Dental Practices](#).
- [Flowchart for managing patients with a dental problem/pain](#).
- [Guidance on NHS 111 Directory of Services for dental providers](#).
- [Definitions – Unscheduled Dental Care](#).
- [Introductory Guide for Commissioning Dental Specialties](#).
- [Guide for Commissioning Dental Specialties: Orthodontics](#).
- [Guide for Commissioning Dental Specialties: Oral Surgery and Oral Medicine](#).
- [Guide for Commissioning Dental Specialties: Special Care Dentistry](#).
- [Guide for Commissioning Service Standards: Conscious Sedation in a Primary Care Setting](#).
- [Commissioning Standard for Dental Specialties: Paediatric Dentistry](#).
- [Commissioning Standard for Urgent Dental Care](#).
- [Commissioning Standard for Restorative Dentistry](#).
- [Commissioning Standard for Dental Care for People with Diabetes](#).
- [Accreditation of Performers and Providers of Level 2 Complexity Care](#).

Finance

- [Guidance on NHS System Capital Envelopes.](#)
- [Finance and Payments Guidance for Community Pharmacy, Dental and Primary Care Ophthalmology Services Delegated to ICBs from 2022.](#)
- [Managing Public Money \(HM Treasury\).](#)
- Guidance relating to Personal Service Medical Reviews.
 - Including: [Implementing Personal Medical Services Reviews.](#)

Workforce

- [Guidance on the Employment Commitment.](#)

Other Guidance

- [National Guidance on System Quality Groups.](#)
- [Managing Conflicts of Interest in the NHS.](#)
- Arrangements for Delegation and Joint Exercise of Statutory Functions.
- Guidance relating to procurement and provider selection.
- IG Guidance relating to serious incidents.
- All other applicable IG and Data Protection Guidance.
- Any applicable Freedom of Information protocols.
- Any applicable guidance on Counter Fraud, including from The NHS Counter Fraud Authority.
- Any applicable guidance relating to the use of data and data sets for reporting.
- Any applicable guidance relating to the commissioning and management of clinical waste in primary care e.g.
 - Including: [Management and disposal of healthcare waste](#)