Dated 2025

(1) **NHS ENGLAND**

- and -

(2) **NHS xxx INTEGRATED CARE BOARD**

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

draft - not available for acceptance

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**DELEGATION AGREEMENT FOR SPECIFIED FUNCTIONS**

# Particulars

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

|  |  |
| --- | --- |
| **Integrated Care Board** | NHS XXX Integrated Care Board |
| **Area** |  |
| **Date of Agreement** | 1 April 2025 |
| **ICB Representative** | [Insert details of name of manager of this Agreement for the ICB] |
| **ICB Email Address for Notices** | [Insert Address] |
| **NHS England Representative** | [Insert details of name of manager of this Agreement for NHS England] |
| **NHS England Email Address for Notices** | [Insert Address] |

## This Agreement comprises:

### the Particulars (Clause 1);

### the Terms and Conditions (Clauses 2 to 32);

### the Schedules; and

### the Mandated Guidance

|  |  |
| --- | --- |
| **Signed by** | **NHS England**  **[Name]**  **[Title]**  **(for and on behalf of NHS England)** |
| **Signed by** | **NHS XXX Integrated Care Board**  **[Insert name of Authorised Signatory]**  **[Insert title of Authorised Signatory]**  **for and on behalf of NHS XXX Integrated Care Board** |

**TERMS AND CONDITIONS**

# Interpretation

## This Agreement is to be interpreted in accordance with SCHEDULE 1 *(Definitions and Interpretation)*.

## If there is any conflict or inconsistency between the provisions of this Agreement, that conflict or inconsistency must be resolved according to the following order of priority:

### the Developmental Arrangements;

### the Particulars and Terms and Conditions (Clauses 1 to 32);

### Mandated Guidance;

### all Schedules excluding Developmental Arrangements and Local Terms; and

### Local Terms.

## This Agreement constitutes the entire agreement and understanding between the Parties relating to the Delegation and supersedes all previous agreements, promises and understandings between them, whether written or oral, relating to its subject matter.

## Where it is indicated that a provision in this Agreement is not used, that provision is not relevant and has no application in this Agreement.

## Where a particular clause is included in this Agreement but is not relevant to the ICB because that clause relates to matters which do not apply the ICB (for example, if the clause only relates to functions that are not Delegated Functions in respect of the ICB), that clause is not relevant and has no application to this Agreement.

# Background

## NHS England has statutory functions (duties and powers) conferred on it by legislation to make arrangements for the provision of prescribed services known as Specialised Services. These services support people with a range of rare and complex conditions. They are currently set out in the Prescribed Specialised Services Manual. The legislative basis for identifying these Specialised Services is Regulation 11 and Schedule 4 of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012/2996.

## The ICBs have statutory functions to make arrangements for the provision of services for the purposes of the NHS in their Areas, apart from those commissioned by NHS England.

## Pursuant to section 65Z5 of the NHS Act, NHS England is able to delegate responsibility for carrying out its Commissioning Functions to an ICB. NHS England will remain accountable to Parliament for ensuring that statutory requirements to commission all Specialised Services, and duties set out in the mandate, are being met.

## By this Agreement, NHS England delegates the functions of commissioning certain Specialised Services (the “Delegated Functions”) to the ICB under section 65Z5 of the NHS Act.

## This Agreement also sets out the elements of commissioning those Specialised Services for which NHS England will continue to have responsibility (the “Reserved Functions”).

## Arrangements made under section 65Z5 may be made on such terms and conditions (including terms as to payment) as may be agreed between NHS England and the ICB.

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

# Term

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

# Principles

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

### at all times have regard to the Triple Aim;

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

### consider how they can meet their legal duties to involve patients and the public in shaping the provision of services, including by working with local communities, under-represented groups and those with protected characteristics for the purposes of the Equality Act 2010;

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

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

### act in a timely manner;

### 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

### 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.

# Delegation

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

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

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

## 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.

## To the extent that this Agreement applies:

### The ICB must ensure that its officers or employees do not make statutory or financial decisions that allocate NHS England resources; and

### NHS England must ensure that its officers or employees do not make statutory or financial decisions that allocate ICB resources, except as provided for in this Agreement.

## Unless expressly provided for in this Agreement, the ICB is not authorised to take any step or make any decision in respect of Reserved Functions. Any such purported decision of the ICB is invalid and not binding on NHS England unless ratified in writing by NHS England in accordance with the NHS England Scheme of Delegation and Standing Financial Instructions.

## NHS England may, acting reasonably and solely to the extent that the decision relates to the Delegated Functions, substitute its own decision for any decision which the ICB purports to make where NHS England reasonably considers that the impact of the ICB decision couldcause the ICB to be acting unlawfully, in breach of this Agreement including Mandated Guidance, or in breach of any Contract. The ICB must provide any information, assistance and support as NHS England requires to enable it to determine whether to make any such decision.

## The terms of Clauses 6.5, 6.6 and 6.7 are without prejudice to the ability of NHS England to enforce the terms of this Agreement or otherwise take action in respect of any failure by the ICB to comply with this Agreement.

# Exercise of Delegated Functions

## The ICB must establish effective, safe, efficient and economic arrangements for the discharge of the Delegated Functions.

## The ICB agrees that it will exercise the Delegated Functions in accordance with:

### the terms of this Agreement;

### Mandated Guidance;

### any Contractual Notices;

### the Local Terms;

### any Developmental Arrangements;

### all applicable Law and Guidance;

### the ICB’s constitution;

### the requirements of any assurance arrangements made by NHS England; and

### Good Practice.

## The ICB must perform the Delegated Functions in such a manner:

### so as to ensure NHS England’s compliance with NHS England’s statutory duties in respect of the Reserved Functions and to enable NHS England to fulfil its Reserved Functions; and

### having regard to NHS England’s accountability to the Secretary of State and Parliament in respect of both the Delegated Functions and Reserved Functions; and

### so as to ensure that the ICB complies with its statutory duties and requirements including those duties set out in Section 14Z32 to Section 14Z44 of the NHS Act and the NICE Regulations.

## In exercising the Delegated Functions, the ICB must comply with all Mandated Guidance as set out in this Agreement or as otherwise may be issued by NHS England from time to time including, but not limited to, ensuring compliance with National Standards and following National Specifications.

## Where Developmental Arrangements conflict with any other term of this Agreement, the Developmental Arrangements shall take precedence until such time as NHS England agrees to the removal or amendment of the relevant Developmental Arrangements in accordance with Clause 26 (*Variations*).

## The ICB must develop an operational scheme(s) of delegation defining those individuals or groups of individuals, including committees, who may discharge aspects of the Delegated Functions. For the purposes of this clause, the ICB may include the operational scheme(s) of delegation within its general organisational scheme of delegation.

## NHS England may by Contractual Notice allocate Contracts to the ICB such that they are included as part of the Delegation. The Delegated Functions must be exercised both in respect of the relevant Contract and any related matters concerning any Specialised Service Provider that is a party to a Contract. NHS England may add or remove Contracts where this is associated with an extension or reduction of the scope of the Delegated Functions.

## Subsequent to the Effective Date of Delegation and for the duration of this Agreement, unless otherwise agreed any new Contract entered into in respect of the Delegated Functions shall be managed by the ICB in accordance with the provisions of this Agreement.

## Subject to the provisions of this Agreement, the ICB may determine the arrangements for the exercise of the Delegated Functions.

# Requirement for ICB Collaboration Arrangement

## Subject to the provisions of Clause 12 *(Further Arrangements)*, the ICB must establish appropriate ICB Collaboration Arrangements with other ICBs in order to ensure that the commissioning of the Delegated Services can take place across an appropriate geographical footprint for the nature of each particular Delegated Service with consideration of population size, provider landscape and patient flow. Such ICB arrangements in respect of the Delegated Functions must be approved in advance by NHS England.

## The ICB must establish, as part of or separate to the arrangements set out in Clause 8.1, an agreement that sets out the arrangements in respect of the Commissioning Team as required by Clause 13.

## The ICB must participate in discussions, review evidence and provide objective expert input to the best of their knowledge and ability, and endeavour to reach a collective view with the other ICBs within the ICB Collaboration Arrangement. The members of the ICB Collaboration Arrangement shall have a collective responsibility for the operation of the ICB Collaboration Arrangement.

## The ICB shall ensure that any ICB Collaboration Arrangement is documented and such documentation must include (but is not limited to) the following:

### membership which is limited solely to ICBs unless otherwise approved by NHS England;

### clear governance arrangements including reporting lines to the ICBs’ Boards;

### provisions for independent scrutiny of decision making;

### the Delegated Functions or elements thereof which are the subject of the arrangements;

### the Delegated Services which are subject to the arrangements;

### financial arrangements and any pooled fund arrangements;

### data sharing arrangements including evidence of a Data Protection Impact Assessment;

### terms of reference for decision making; and

### limits on onward delegation.

## The ICB must not terminate an ICB Collaboration Arrangement in respect of the Delegated Functions without the prior written approval of NHS England.

# Performance of the Reserved Functions and commissioning support arrangements

## NHS England will remain responsible for the performance of the Reserved Functions.

## For the avoidance of doubt, the Parties acknowledge that the Delegation may be amended, and additional functions may be delegated to the ICB, in which event consequential changes to this Agreement shall be agreed with the ICB pursuant to Clause 26 (*Variations*) of this Agreement.

## Where it considers appropriate NHS England will work collaboratively with the ICB when exercising the Reserved Functions.

## If there is any conflict or inconsistency between functions that are named as Delegated Functions and functions that are named as Reserved Functions, then such functions shall be interpreted as Reserved Functions unless and until NHS England confirms otherwise. If an ICB identifies such a conflict or inconsistency, it will inform NHS England as soon as is reasonably practicable.

## The Parties acknowledge that they may agree for the ICB to provide Administrative and Management Services to NHS England in relation to certain Reserved Functions and Retained Services in order to assist in the efficient and effective exercise of such functions. Any such Commissioning Team Arrangements shall be set out in Schedule 10 (*Administrative and Management Services*).

## Notwithstanding any arrangement for or provision of Administrative and Management Services in respect of the Retained Services and Reserved Functions, NHS England shall retain statutory responsibility for, and be accountable for, the commissioning of the Retained Services.

## The Parties acknowledge that they may agree for NHS England to provide Administrative and Management Services to ICBs in relation to certain Delegated Functions and Delegated Services in order to assist in the efficient and effective exercise of such Delegated Functions. Any such Administrative and Management Services shall be set out in Schedule 10 (*Administrative and Management Services*).

## Notwithstanding any arrangement for or provision of Administrative and Management Services in respect of the Delegated Services, the ICB shall retain delegated responsibility for the commissioning of the Delegated Services.

## Any arrangement made between the ICB and NHS England under Clauses 9.5 or 9.7 must be made in accordance with: Clause 6.5, Clause 10.14 and Paragraph 4.2 of Schedule 4.

# Finance

## Without prejudice to any other provision in this Agreement, the ICB must comply with the Finance Guidance and any such financial processes as required by NHS England for the management, reporting and accounting of funds used for the purposes of the Delegated Functions.

## 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.

## Subject to Clause 10.4 and any provisions in the Schedules or Mandated Guidance, the ICB may use:

### its Annual Allocation and the Delegated Funds in the exercise of the Delegated Functions; and

### the Delegated Funds and its Annual Allocation in the exercise of the ICB’s Functions other than the Delegated Functions.

## The ICB’s expenditure on the Delegated Functions must be sufficient to:

### ensure that NHS England is able to fulfil its functions, including without limitation the Reserved Functions, effectively and efficiently;

### meet all liabilities arising under or in connection with all Contracts in so far as they relate to the exercise of the Delegated Functions;

### appropriately commission the Delegated Services in accordance with Mandatory Guidance, National Specifications, National Standards and Guidance; and

### meet national commitments from time to time on expenditure on specific Delegated Functions.

## 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:

### in order to take into account any monthly adjustments or corrections to the Delegated Funds that NHS England considers appropriate, including without limitation, adjustments following any changes to the Delegated Functions, changes in allocations, changes in Contracts, to implement Mandated Guidance or otherwise;

### 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;

### to take into account any Losses of NHS England for which the ICB is required to indemnify NHS England under Clause 17 (*Claims and Litigation)*;

### to take into account any adjustments that NHS England considers appropriate (including without limitation in order to make corrections or otherwise to reflect notional budgets) to reflect funds transferred (or that should have been transferred) to the ICB in respect of the Delegated Functions or funds transferred (or that should have been transferred) to the ICB in respect of Administrative and Management Services; and

### in order to ensure compliance by NHS England with its obligations under the NHS Act (including, Part 11 of the NHS Act) or any action taken or direction made by the Secretary of State in respect of NHS England under the NHS Act.

## NHS England acknowledges that the intention of Clause 10.5 is to reflect genuine corrections and adjustments to the Delegated Funds and may not be used to change the allocation of the Delegated Funds unless there are significant or exceptional circumstances that would require such corrections or adjustments.

## 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.

## NHS England may in respect of the Delegated Funds:

### 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;

### by notice, require the ICB to take such action or step in respect of the Delegated Funds, in order to ensure compliance by NHS England of its duties or functions under the NHS (including Part 11 of the NHS Act) or any action taken or direction made by the Secretary of State under the NHS Act.

## The Schedules to this Agreement may identify further financial provisions in respect of the exercise of the Delegated Functions.

## NHS England may issue Mandated Guidance in respect of the financial arrangements in respect of the Delegated Functions.

## NHS England will pay the Delegated Funds to the ICB using the revenue transfer process as used for the Annual Allocation or such other process as notified to the ICB from time to time.

## Without prejudice to any other obligation upon the ICB, for the purposes of the Delegated Functions the ICB agrees that it must use its resources in accordance with:

### the terms and conditions of this Agreement including any Mandated Guidance issued by NHS England from time to time in relation to the use of resources for the purposes of the Delegated Functions (including in relation to the form or contents of any accounts);

### any NHS payment scheme published by NHS England;

### the business rules as set out in NHS England’s planning guidance or such other documents issued by NHS England from time to time;

### any Capital Investment Guidance;

### the HM Treasury Guidance *Managing Public Money* (dated September 2022) as replaced or updated from time to time; and

### any other Guidance published by NHS England with respect to the financial management of Delegated Functions.

## 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;

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

*Ledger access and use of financial data*

## NHS England and the ICB agree that they shall not access a financial ledger or other finance system that is operated by another organisation, or use data directly obtained from such a financial ledger or other finance system.

## Clause 10.14 applies unless that access or use has been approved in advance by the organisation that operates that financial ledger or other finance system, or as is otherwise expressly provided for in this Agreement.

*Pooled Funds*

## Subject to the provisions of this Agreement, the ICB may, for the purposes of exercising the Delegated Functions under this Agreement, establish and maintain a pooled fund(s) in respect of any part of the Delegated Funds with:

### NHS England in accordance with sections 13V or 65Z6 of the NHS Act;

### one or more ICBs in accordance with section 65Z6 of the NHS Act as part of a Further Arrangement; or

### NHS England and one or more ICBs in accordance with section 13V of the NHS Act; and

### NHS England and one or more ICBs in accordance with section 65Z6 of the NHS Act.

## Where the ICB has decided to enter into arrangements under Clause 10.16 the agreement must be in writing and must specify:

### the agreed aims and outcomes of the arrangements;

### the payments to be made by each partner and how those payments may be varied;

### the specific Delegated Functions which are the subject of the arrangements;

### the Delegated Services which are subject to the arrangements;

### the duration of the arrangements and provision for the review or variation or termination of the arrangements;

### the arrangements in place for governance of the pooled fund; and

### the arrangements in place for assuring, oversight and monitoring of the ICB’s exercise of the functions referred to in 10.17.3.

## 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.

# INFORMATION, Planning and Reporting

## The ICB must provide to NHS England:

### such information or explanations in relation to the exercise of the Delegated Functions as required by NHS England from time to time; and

### 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.

## The provisions of this Clause 11 are without prejudice to the ability of NHS England to exercise its other powers and duties in obtaining information from and assessing the performance of the ICB.

*Forward Plan and Annual Report*

## 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.

## 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*

## 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.

# Further arrangements

## In addition to any ICB Collaboration Arrangement agreed in accordance with Clause 8 (*ICB Collaboration Arrangements*) the ICB must give due consideration to whether any of the Delegated Functions should be exercised collaboratively with other NHS bodies or Local Authorities including, without limitation, by means of arrangements under section 65Z5 and section 75 of the NHS Act (“Further Arrangements”).

## The ICB may only make Further Arrangements with another person (a “Sub-Delegate”) with the prior written approval of NHS England.

## The approval of any Further Arrangements may:

### include approval of the terms of the proposed Further Arrangements; and

### require conditions to be met by the ICB and the Sub-Delegate in respect of that arrangement.

## All Further Arrangements must be made in writing.

## The ICB must not terminate Further Arrangements without the prior written approval of NHS England.

## 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.

## The terms of this Clause 12 do not prevent the ICB from making arrangements for assistance and support in the exercise of the Delegated Functions with any person, where such arrangements reserve the consideration and making of any decision in respect of a Delegated Function to the ICB.

## Where Further Arrangements are made, and unless NHS England has otherwise given specific prior written agreement, any obligations or duties on the part of the ICB under this Agreement that are relevant to those Further Arrangements shall also require the ICB to ensure that all Sub-Delegates comply with such obligations or duties and support the ICB in doing so.

# Staffing, Workforce and Commissioning Teams

## Where there is an arrangement for NHS England to provide Administrative and Management Services to the ICB, the ICB shall provide full co-operation with NHS England and enter into any necessary arrangements with NHS England and, where appropriate, other ICBs in respect of the Specialised Services Staff.

## The ICB shall, if and where required by NHS England, enter into appropriate arrangements with NHS England in respect of the transfer of Specialised Services Staff.

## The ICB shall, where appropriate, enter into an agreement with other ICBs, in order to establish arrangements in respect of the Commissioning Team. Where appropriate, this agreement may be included as part of the ICB Collaboration Arrangement entered into in accordance with Clause 8.

# Breach

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

### exercise its rights under this Agreement; and

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

## Without prejudice to Clause 14.1, if the ICB does not comply with the terms of this Agreement (including if the ICB exceeds its delegated authority under the Delegation), NHS England may (at its sole discretion):

### waive its rights in relation to such non-compliance in accordance with Clause 14.3;

### ratify any decision in accordance with Clause 6.6;

### substitute a decision in accordance with Clause 6.7;

### amend Developmental Arrangements or impose new Developmental Arrangements;

### revoke the whole or part of the Delegation and terminate this Agreement in accordance with Clause 27 *(Termination)* below;

### exercise the Escalation Rights in accordance with Clause 155 *(Escalation Rights)*; and/or

### exercise its rights under common law.

## NHS England may waive any non-compliance by the ICB with the terms of this Agreement provided that the ICB provides a written report to NHS England as required by Clause 14.4 and, after considering the ICB’s written report, NHS England is satisfied that the waiver is justified.

## If:

### the ICB does not comply with this Agreement;

### the ICB considers that it may not be able to comply with this Agreement;

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

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

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

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

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

# Escalation Rights

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

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

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

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

## Nothing in Clause 15 *(Escalation Rights)* will affect NHS England’s right to substitute a decision in accordance with Clause 6.87, revoke the Delegation or terminate this Agreement in accordance with Clause 27 *(Termination)* below.

# Liability and Indemnity

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

## 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.

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

## Each Party acknowledges and agrees that any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by the ICB of any Delegated Function are enforceable by or against the ICB only, in accordance with section 65Z5(6) of the NHS Act.

## 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.

# Claims and litigation

## Nothing in this Clause 17 *(Claims and Litigation)* shall be interpreted as affecting the reservation to NHS England of the Reserved Functions.

## Except in the circumstances set out in Clause **Error! Reference source not found.**17.5 and subject always to compliance with this Clause 17 *(Claims and Litigation)*, the ICB shall be responsible for and shall retain the conduct of any Claim.

## The ICB must:

### comply with any policy issued by NHS England from time to time in relation to the conduct of or avoidance of Claims and the pro-active management of Claims;

### 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;

### co-operate fully with NHS England in relation to such Claim and the conduct of such Claim;

### 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

### at the request of NHS England, take such actions or step or provide such assistance as may in NHS England’s discretion be necessary or desirable having regard to the nature of the Claim and the existence of any time limit in relation to avoiding, disputing, defending, resisting, appealing, seeking a review or compromising such Claim or to comply with the requirements of the provider of an Indemnity Arrangement in relation to such Claim.

## Subject to Clauses 17.3 and 17.5 the ICB is entitled to conduct the Claim in the manner it considers appropriate and is also entitled to pay or settle any Claim on such terms as it thinks fit.

*NHS England Stepping into Claims*

## NHS England may, at any time following discussion with the ICB, send a notice to the ICB stating that NHS England will take over the conduct of the Claim and the ICB must immediately take all steps necessary to transfer the conduct of such Claim to NHS England unless and until NHS England transfers conduct back to the ICB. In such cases:

### NHS England shall be entitled to conduct the Claim in the manner it considers appropriate and is also entitled to pay or settle any Claim on such terms as it thinks fit, provided that if NHS England wishes to invoke Clause 17.5.3 it agrees to seek the ICB’s views on any proposal to pay or settle that Claim prior to finalising such payment or settlement; and

### 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

### NHS England may, at its discretion and without prejudice to any other rights, either require payment from the ICB for such Claim Losses or make an adjustment to the Delegated Funds pursuant to Clause 10.5.3 for the purposes of meeting any Claim Losses associated with that Claim.

*Claim Losses*

## The ICB and NHS England shall notify each other as soon as reasonably practicable of becoming aware of any Claim Losses.

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

# Data Protection, Freedom of Information and Transparency

## The Parties must ensure that all Personal Data processed by or on behalf of them while carrying out the Delegated Functions and Reserved Functions is processed in accordance with the relevant Party’s obligations under Data Protection Legislation and Data Guidance and the Parties must assist each other as necessary to enable each other to comply with these obligations.

## The ICB must respond to any information governance breach in accordance with Information Governance Guidance for Serious Incidents. If the ICB is required under Data Protection Legislation to notify the Information Commissioner’s Office or a Data Subject of an information governance breach then as soon as reasonably practical and in any event on or before the first such notification is made the ICB must fully inform NHS England of the information governance breach. This clause does not require the ICB to provide NHS England with information which identifies any individual affected by the information governance breach where doing so would breach Data Protection Legislation.

## Whether or not a Party is a Data Controller or Data Processor will be determined in accordance with Data Protection Legislation and any Data Guidance from a Regulatory or Supervisory Body. The Parties acknowledge that a Party may act as both a Data Controller and a Data Processor.

## NHS England may, from time to time, issue a data sharing protocol or update a protocol previously issued relating to the data sharing in relation to the Delegated Functions and/or Reserved Functions. The ICB shall comply with such data sharing protocols.

## Each Party acknowledges that the other is a public authority for the purposes of the Freedom of Information Act 2000 (“FOIA”) and the Environmental Information Regulations 2004 (“EIR”).

## Each Party may be required by statute to disclose further information about the Agreement and the Relevant Information in response to a specific request under FOIA or EIR, in which case:

### each Party shall provide the other with all reasonable assistance and co-operation to enable them to comply with their obligations under FOIA or EIR;

### each Party shall consult the other regarding the possible application of exemptions in relation to the information requested; and

### subject only to Clause 17 *(Claims and Litigation)*, each Party acknowledges that the final decision as to the form or content of the response to any request is a matter for the Party to whom the request is addressed.

## NHS England may, from time to time, issue a FOIA or EIR protocol or update a protocol previously issued relating to the handling and responding to of FOIA or EIR requests in relation to the Delegated Functions. The ICB shall comply with such FOIA or EIR protocols.

## Delegated **Services**

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

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

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

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

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

The following Specialised Services will be delegated to the ICB on 1 April 2025:

| **PSS Manual Line** | **PSS Manual Line Description** | **Service Line Code** | **Service Line Description** |
| --- | --- | --- | --- |
| 2 | Adult congenital heart disease services | 13X | Adult congenital heart disease services (non-surgical) |
|  |  | 13Y | Adult congenital heart disease services (surgical) |
| 3 | Adult specialist pain management services | 31Z | Adult specialist pain management services |
| 4 | Adult specialist respiratory services | 29M | Interstitial lung disease (adults) |
|  |  | 29S | Severe asthma (adults) |
|  |  | 29L | Lung volume reduction (adults) |
|  |  | **29V** | Complex home ventilation (adults) |
| 5 | Adult specialist rheumatology services | 26Z | Adult specialist rheumatology services |
| 6 | Adult secure mental health services | 22S(a) | Secure and specialised mental health services (adult) (medium and low) – excluding LD/ASD/WEMS/ABI/DEAF |
|  |  | 22S(c) | Secure and specialised mental health services (adult) (Medium and low) – ASD MHLDA PC |
|  |  | 22S(d) | Secure and specialised mental health services (adult) (Medium and low) – LD MHLDA PC |
| 7 | Adult Specialist Cardiac Services | 13A | Complex device therapy |
|  |  | 13B | Cardiac electrophysiology & ablation |
|  |  | 13C | Inherited cardiac conditions |
|  |  | 13E | Cardiac surgery (inpatient) |
|  |  | 13F | PPCI for ST- elevation myocardial infarction |
|  |  | 13H | Cardiac magnetic resonance imaging |
|  |  | 13T | Complex interventional cardiology |
|  |  | 13Z | Cardiac surgery (outpatient) |
| 8 | Adult specialist eating disorder services | 22E | Adult specialist eating disorder services MHLDA PC |
| 9 | Adult specialist endocrinology services | 27E | Adrenal Cancer (adults) |
|  |  | 27Z | Adult specialist endocrinology services |
| 11 | Adult specialist neurosciences services | 08O | Neurology (adults) |
|  |  | 08P | Neurophysiology (adults) |
|  |  | 08R | Neuroradiology (adults) |
| 08S | Neurosurgery (adults) |
| 08T | Mechanical Thrombectomy |
| 58A | Neurosurgery LVHC national: surgical removal of clival chordoma and chondrosarcoma |
| 58B | Neurosurgery LVHC national: EC-IC bypass (complex/high flow) |
| 58C | Neurosurgery LVHC national: transoral excision of dens |
| 58D | Neurosurgery LVHC regional: anterior skull based tumours |
|  |  | 58E | Neurosurgery LVHC regional: lateral skull based tumours |
|  |  | 58F | Neurosurgery LVHC regional: surgical removal of brainstem lesions |
|  |  | 58G | Neurosurgery LVHC regional: deep brain stimulation |
|  |  | 58H | Neurosurgery LVHC regional: pineal tumour surgeries - resection |
|  |  | 58I | Neurosurgery LVHC regional: removal of arteriovenous malformations of the nervous system |
|  |  | 58J | Neurosurgery LVHC regional: epilepsy |
|  |  | 58K | Neurosurgery LVHC regional: insula glioma’s/complex low grade glioma’s |
|  |  | 58L | Neurosurgery LVHC local: anterior lumbar fusion |
|  | Adult specialist neurosciences services (continued) | 58M | Neurosurgery LVHC local: removal of intramedullary spinal tumours |
|  |  | 58N | Neurosurgery LVHC local: intraventricular tumours resection |
|  |  | 58O | Neurosurgery LVHC local: surgical repair of aneurysms (surgical clipping) |
|  |  | 58P | Neurosurgery LVHC local: thoracic discectomy |
|  |  | 58Q | Neurosurgery LVHC local: microvascular decompression for trigeminal neuralgia |
|  |  | 58R | Neurosurgery LVHC local: awake surgery for removal of brain tumours |
|  |  | 58S | Neurosurgery LVHC local: removal of pituitary tumours including for Cushing’s and acromegaly |
| 12 | Adult specialist ophthalmology services | 37C | Artificial Eye Service |
|  |  | 37Z | Adult specialist ophthalmology services |
| 13 | Adult specialist orthopaedic services | 34A | Orthopaedic surgery (adults) |
|  |  | 34R | Orthopaedic revision (adults) |
| 15 | Adult specialist renal services | 11B | Renal dialysis |
|  |  | 11C | Access for renal dialysis |
|  |  | 11T | Renal Transplantation |
| 16 | Adult specialist services for people living with HIV | 14A | Adult specialised services for people living with HIV |
| 17 | Adult specialist vascular services | 30Z | Adult specialist vascular services |
| 18 | Adult thoracic surgery services | 29B | Complex thoracic surgery (adults) |
|  |  | 29Z | Adult thoracic surgery services: outpatients |
| 29 | Haematopoietic stem cell transplantation services (adults and children) | 02Z | Haematopoietic stem cell transplantation  services (adults and children) |
|  |  | ECP | Extracorporeal photopheresis service  (adults and children) |
| 30 | Bone conduction hearing implant services (adults and children) | 32B | Bone anchored hearing aids service |
|  |  | 32D | Middle ear implantable hearing aids service |
| 32 | Children and young people’s inpatient  mental health service | 23K | Tier 4 CAMHS (general adolescent inc  eating disorders) MHLDA PC |
|  |  | 23L | Tier 4 CAMHS (low secure) MHLDA PC |
|  |  | 23O | Tier 4 CAMHS (PICU) MHLDA PC |
|  |  | 23U | Tier 4 CAMHS (LD) MHLDA PC |
|  |  | 23V | Tier 4 CAMHS (ASD) MHLDA PC |
| 35 | Cleft lip and palate services (adults and children) | 15Z | Cleft lip and palate services (adults and children) |
| 36 | Cochlear implantation services (adults and children) | 32A | Cochlear implantation services (adults and children) |
| 40 | Complex spinal surgery services (adults and children) | 06Z | Complex spinal surgery services (adults and children) |
|  |  | 08Z | Complex neuro-spinal surgery services (adults and children) |
| 45 | Cystic fibrosis services (adults and  children) | 10Z | Cystic fibrosis services (adults and children) |
| 54 | Fetal medicine services (adults and adolescents) | 04C | Fetal medicine services (adults and adolescents) |
| 58 | Specialist adult gynaecological surgery and urinary surgery services for females | 04A | Severe Endometriosis |
|  |  | 04D | Complex urinary incontinence and genital prolapse |
| 58A | Specialist adult urological surgery services for men | 41P | Penile implants |
|  |  | 41S | Surgical sperm removal |
|  |  | 41U | Urethral reconstruction |
| 59 | Specialist allergy services (adults and children) | 17Z | Specialist allergy services (adults and children) |
| 61 | Specialist dermatology services (adults and children) | 24Z | Specialist dermatology services (adults and children) |
| 62 | Specialist metabolic disorder services (adults and children) | 36Z | Specialist metabolic disorder services (adults and children) |
| 63 | Specialist pain management services for children | 23Y | Specialist pain management services for children |
| 64 | Specialist palliative care services for children and young adults | E23 | Specialist palliative care services for children and young adults |
| 65 | Specialist services for adults with infectious diseases | 18A | Specialist services for adults with infectious diseases |
|  |  | 18E | Specialist Bone and Joint Infection (adults) |
| 72 | Major trauma services (adults and children) | 34T | Major trauma services (adults and children) |
| 78 | Neuropsychiatry services (adults and children) | 08Y | Neuropsychiatry services (adults and children) |
| 83 | Paediatric cardiac services | 23B | Paediatric cardiac services |
| 94 | Radiotherapy services (adults and children) | 01R | Radiotherapy services (Adults) |
|  |  | 51R | Radiotherapy services (Children) |
|  |  | 01S | Stereotactic Radiosurgery / radiotherapy |
| 98 | Specialist secure forensic mental health  services for young people | 24C | FCAMHS MHLDA PC |
| 103A | Specialist adult haematology services | 03C | Castleman disease |
| 105 | Specialist cancer services (adults) | 01C | Chemotherapy |
|  |  | 01J | Anal cancer (adults) |
|  |  | 01K | Malignant mesothelioma (adults) |
|  |  | 01M | Head and neck cancer (adults) |
|  |  | 01N | Kidney, bladder and prostate cancer (adults) |
|  |  | 01Q | Rare brain and CNS cancer (adults) |
|  |  | 01U | Oesophageal and gastric cancer (adults) |
|  |  | 01V | Biliary tract cancer (adults) |
|  |  | 01W | Liver cancer (adults) |
|  |  | 01X | Penile cancer (adults) |
|  |  | 01Y | Cancer Outpatients (adults) |
|  |  | 01Z | Testicular cancer (adults) |
|  |  | 04F | Gynaecological cancer (adults) |
|  |  | 19V | Pancreatic cancer (adults) |
|  |  | 19C | Biliary tract cancer surgery (adults) |
|  |  | 19M | Liver cancer surgery (adults) |
|  |  | 19Q | Pancreatic cancer surgery (adults) |
|  |  | 24Y | Skin cancer (adults) |
|  |  | 29E | Management of central airway obstruction (adults) |
|  |  | 51A | Interventional oncology (adults) |
|  |  | 51B | Brachytherapy (adults) |
| 51C | Molecular oncology (adults) |
|  |  | 61M | Head and neck cancer surgery (adults) |
|  |  | 61Q | Ophthalmic cancer surgery (adults) |
|  |  | 61U | Oesophageal and gastric cancer surgery (adults) |
|  |  | 61Z | Testicular cancer surgery (adults) |
| 33C | Transanal endoscopic microsurgery (adults) |
| 33D | Distal sacrectomy for advanced and recurrent rectal cancer (adults) |
| 106 | Specialist cancer services for children and young adults | 01T | Teenage and young adult cancer |
|  |  | 23A | Children's cancer |
| 106A | Specialist colorectal surgery services (adults) | 33A | Complex surgery for faecal incontinence (adults) |
|  |  | 33B | Complex inflammatory bowel disease (adults) |
| 107 | Specialist dentistry services for children | 23P | Specialist dentistry services for children |
| 108 | Specialist ear, nose and throat services for children | 23D | Specialist ear, nose and throat services for children |
| 109 | Specialist endocrinology services for children | 23E | Specialist endocrinology and diabetes services for children |
| 110 | Specialist gastroenterology, hepatology and nutritional support services for children | 23F | Specialist gastroenterology, hepatology and nutritional support services for children |
| 112 | Specialist gynaecology services for children | 73X | Specialist paediatric surgery services - gynaecology |
| 113 | Specialist haematology services for children | 23H | Specialist haematology services for children |
| 114 | Specialist haemoglobinopathy services  (adults and children) | 38S | Sickle cell anaemia (adults and children) |
|  |  | 38T | Thalassemia (adults and children) |
| 115 | Specialist immunology services for  adults with deficient immune systems | 16X | Specialist immunology services for adults with deficient immune systems |
| 115A | Specialist immunology services for  children with deficient immune systems | 16Y | Specialist immunology services for children with deficient immune systems |
| 115B | Specialist maternity care for adults diagnosed with abnormally invasive placenta | 04G | Specialist maternity care for women diagnosed with abnormally invasive placenta |
| 118 | Neonatal critical care services | NIC | Specialist neonatal care services |
| 119 | Specialist neuroscience services for children | 23M | Specialist neuroscience services for children |
|  |  | 07Y | Paediatric neurorehabilitation |
|  |  | 08J | Selective dorsal rhizotomy |
| 120 | Specialist ophthalmology services for children | 23N | Specialist ophthalmology services for children |
| 121 | Specialist orthopaedic services for children | 23Q | Specialist orthopaedic services for children |
| 122 | Paediatric critical care services | PIC | Specialist paediatric intensive care services |
| 124 | Specialist perinatal mental health services (adults and adolescents) | 22P | Specialist perinatal mental health  services (adults and adolescents)  MHLDA PC |
| 125 | Specialist plastic surgery services for children | 23R | Specialist plastic surgery services for children |
| 126 | Specialist rehabilitation services for patients with highly complex needs (adults and children) | 07Z | Specialist rehabilitation services for patients with highly complex needs (adults and children) |
| 127 | Specialist renal services for children | 23S | Specialist renal services for children |
| 128 | Specialist respiratory services for children | 23T | Specialist respiratory services for children |
| 129 | Specialist rheumatology services for children | 23W | Specialist rheumatology services for children |
| 130 | Specialist services for children with infectious diseases | 18C | Specialist services for children with infectious diseases |
| 131 | Specialist services for complex liver, biliary and pancreatic diseases in adults | 19L | Specialist services for complex liver diseases in adults |
|  |  | 19P | Specialist services for complex pancreatic diseases in adults |
|  |  | 19Z | Specialist services for complex liver, biliary and pancreatic diseases in adults |
|  |  | 19B | Specialist services for complex biliary diseases in adults |
| 132 | Specialist services for haemophilia and other related bleeding disorders (adults and children) | 03X | Specialist services for haemophilia and other related bleeding disorders (Adults) |
|  |  | 03Y | Specialist services for haemophilia and other related bleeding disorders (Children) |
| 134 | Specialist services to support patients with complex physical disabilities (excluding wheelchair services) (adults and children) | 05C | Specialist augmentative and alternative  communication aids (adults and children) |
|  |  | 05E | Specialist environmental controls (adults and children) |
|  |  | 05P | Prosthetics (adults and children) |
| 135 | Specialist paediatric surgery services | 23X | Specialist paediatric surgery services - general surgery |
| 136 | Specialist paediatric urology services | 23Z | Specialist paediatric urology services |
| 139A | Specialist morbid obesity services for children | 35Z | Specialist morbid obesity services for children |
| 139AA | Termination services for patients with medical complexity and or significant co-morbidities requiring treatment in a specialist hospital | 04P | Termination services for patients with medical complexity and or significant co-morbidities requiring treatment in a specialist hospital |
| ACC | Adult Critical Care | ACC | Adult critical care |

SCHEDULE 3: Delegated Functions

1. **Introduction**
   1. Subject to the reservations set out in Schedule 4 (*Reserved Functions*) and the provisions of any Developmental Arrangements, NHS England delegates to the ICB the statutory function for commissioning the Delegated Services. This Schedule 3 sets out the key powers and duties that the ICB will be required to carry out in exercise of the Delegated Functions being, in summary:
      1. decisions in relation to the commissioning and management of Delegated Services;
      2. planning Delegated Services for the Population, including carrying out needs assessments;
      3. undertaking reviews of Delegated Services in respect of the Population;
      4. supporting the management of the Specialised Commissioning Budget;
      5. co-ordinating a common approach to the commissioning and delivery of Delegated Services with other health and social care bodies in respect of the Population where appropriate; and
      6. such other ancillary activities that are necessary to exercise the Specialised Commissioning Functions.
   2. When exercising the Delegated Functions, ICBs are not acting on behalf of NHS England but acquire rights and incur any liabilities in exercising the functions.
2. **General Obligations** 
   1. The ICB is responsible for planning the commissioning of the Delegated Services in accordance with this Agreement. This includes ensuring at all times that the Delegated Services are commissioned in accordance with the National Standards.
   2. The ICB shall put in place arrangements for collaborative working with other ICBs in accordance with Clause 8 (*Requirement for ICB Collaboration Arrangement*).
   3. The Developmental Arrangements set out in Schedule 9 shall apply.

**Specific Obligations**

1. **Assurance and Oversight** 
   1. The ICB must at all times operate in accordance with:
      1. the Oversight Framework published by NHS England;
      2. any national oversight and/or assurance guidance in respect of Specialised Services and/or joint working arrangements; and
      3. any other relevant NHS oversight and assurance guidance;

collectively known as the “Assurance Processes”.

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

1. **Attendance at governance meetings**
   1. The ICB must ensure that there is appropriate representation at forums established through the ICB Collaboration Arrangement.
   2. The ICB must ensure that an individual(s) has been nominated to represent the ICB at the Delegated Commissioning Group (DCG) and regularly attends that group. This could be a single representative on behalf of the members of an ICB Collaboration Arrangement. Where that representative is not an employee of the ICB, the ICB must have in place appropriate arrangements to enable the representative to feedback to the ICB.
   3. The ICB should also ensure that they have a nominated representative with appropriate subject matter expertise to attend National Standards development forums as requested by NHS England. This could be a single representative on behalf of the members of an ICB Collaboration Arrangement. Where that representative is not an employee of the ICB, the ICB must have in place appropriate arrangements to enable the representative to feedback to the ICB.
2. **Clinical Leadership and Clinical Reference Groups** 
   1. The ICB shall support the development of clinical leadership and expertise at a local level in respect of Specialised Services.
   2. The ICB shall support local and national groups including Relevant Clinical Networks and Clinical Reference Groups that are involved in developing Clinical Commissioning Policies, National Specifications, National Standards and knowledge around Specialised Services.
3. **Clinical Networks** 
   1. The ICB shall participate in the planning, governance and oversight of the Relevant Clinical Networks, including involvement in agreeing the annual plan for each Relevant Clinical Network. The ICB shall seek to align the network priorities with system priorities and to ensure that the annual plan for the Relevant Clinical Network reflects local needs and priorities.
   2. The ICB will be involved in the development and agreement of a single annual plan for the Relevant Clinical Network.
   3. The ICB shall monitor the implementation of the annual plan and receive an annual report from the Relevant Clinical Network that considers delivery against the annual plan.
   4. The ICB shall actively support and participate in dialogue with Relevant Clinical Networks and shall ensure that there is a clear and effective mechanism in place for giving and receiving information with the Relevant Clinical Networks including network reports.
   5. The ICB shall support NHS England in the management of Relevant Clinical Networks.
   6. The ICB shall actively engage and promote Specialised Service Provider engagement in appropriate Relevant Clinical Networks.
   7. Where a Relevant Clinical Network identifies any concern, the ICB shall seek to consider and review that concern as soon as is reasonably practicable and take such action, if any, as it deems appropriate.
   8. The ICB shall ensure that network reports are considered where relevant as part of exercising the Delegated Functions.
4. **Complaints** 
   1. This part (*Complaints*) applies from the Effective Date of Delegation or the date on which the Commissioning Team is transferred to the relevant Host ICB (whichever is the later) (“the Applicable Date”).
   2. The ICB will be responsible for all complaints in respect of the Delegated Services that are received from the Applicable Date, regardless of whether the circumstances to which the complaint relates occurred prior to the Applicable Date.
   3. For the avoidance of doubt, NHS England will retain responsibility for all complaints in respect of the Delegated Services that were received prior to the Applicable Date.
   4. At all times the ICB shall operate in accordance with the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 and shall co-operate with other ICBs to ensure that complaints are managed effectively.
   5. Where NHS England has provided the ICB with a protocol for sharing complaints in respect of any or all Specialised Services then those provisions shall apply and are deemed to be part of this Agreement (the “Complaints Sharing Protocol”).
   6. The ICB shall:
      1. work with local organisations, including other ICBs that are party to the ICB Collaboration Arrangement or Commissioning Team, to ensure that arrangements are in place for the management of complaints in respect of the Delegated Services.
      2. consider, in the context of the ICB Collaboration Arrangement for the commissioning of the Delegated Services and employment arrangements for the Commissioning Team, whether it is best placed to manage the complaint, or whether it should be transferred to another ICB that is better placed to affect change.
      3. provide the relevant individuals at NHS England with appropriate access to complaints data held by the ICB that is necessary to carry out the complaints function as set out in the Complaints Sharing Protocol.
      4. Provide such information relating to key performance indicators (“KPIs”) as is requested by NHS England.
      5. co-operate with NHS England in respect of the review of complaints related to the Delegated Services and shall, on request, share any learning identified in carrying out the complaints function.
      6. take part in any peer review process put in place in respect of the complaints function.
5. **Commissioning and optimisation of High Cost Drugs** 
   1. The ICB must support the effective and efficient commissioning of High Cost Drugs for Delegated Services.
   2. The ICB must support NHS England in its responsibility for the financial management and reimbursement of High Cost Drugs for Specialised Services. The ICB and NHS England must agree the support to be provided. The support must be set out in writing and may include staffing, processes, reporting, prescribing analysis and oversight arrangements, but is not limited to these matters.
   3. The ICB must ensure equitable access to High Cost Drugs used within the Delegated Services that may be impacted by health inequalities and develop a strategy for delivering equitable access.
   4. The ICB must develop and implement Shared Care Arrangements across the Area of the ICB.
   5. The ICB must provide clinical and commissioning leadership in the commissioning and management of High Cost Drugs.
   6. The ICB must ensure:
      1. safe and effective use of High Cost Drugs in line with national Clinical Commissioning Policies, NICE technology appraisal or highly specialised technologies guidance;
      2. effective introduction of new medicines;
      3. compliance with all NHS England commercial processes and frameworks for High Cost Drugs;
      4. Specialised Services Providers adhere to all NHS England commercial processes and frameworks for High Cost Drugs;
      5. appropriate use of Shared Care Arrangements, ensuring that they are safe and well monitored; and
      6. consistency of prescribing and unwarranted prescribing variation are addressed.
   7. The ICB must engage in the development, implementation and monitoring of initiatives that enable use of better value medicines. Such schemes include those at a local, regional or national level.
   8. Where the relevant pharmacy teams have transferred to the ICB or Host ICB, the ICB must provide:
      1. support to prescribing networks and forums, including but not limited to, Immunoglobulin Assessment panels, prescribing networks and medicines optimisation networks;
      2. expert medicines advice and input into the Individual Funding Request process for Delegated Services;
      3. advice and input to national procurement and other commercial processes relating to medicines and High Cost Drugs (for example, arrangements for Homecare);
      4. advice and input to NHS England policy development relating to medicines and High Cost Drugs.
6. **Contracting** 
   1. The ICB shall be responsible for ensuring appropriate arrangements are in place for the commissioning of the Delegated Services which for the avoidance of doubt includes:
      1. co-ordinating or collaborating in the award of appropriate Specialised Service Contracts;
      2. drafting of the contract schedules so that it reflects Mandatory Guidance, National Specifications and any specific instructions from NHS England; and
      3. management of Specialised Services Contracts.
   2. The ICB must comply with the Contracting Standard Operating Procedure issued by NHS England.
   3. In relation to the contracting for NHS England Retained Services where the ICB has agreed to act as the co-ordinating commissioner, to implement NHS England’s instructions in relation to those Retained Services and, where appropriate, put in place a Collaborative Commissioning Agreement with NHS England as a party.
7. **Data Management and Analytics** 
   1. The ICB shall:
      1. lead on standardised collection, processing, and sharing of data for Delegated Services in line with broader NHS England, Department of Health and Social Care and government data strategies;
      2. lead on the provision of data and analytical services to support commissioning of Delegated Services;
      3. ensure collaborative working across partners on agreed programmes of work focusing on provision of pathway analytics;
      4. share expertise and existing reporting tools with partner ICBs in the ICB Collaboration Arrangement;
      5. ensure interpretation of data is made available to NHS England and other ICBs within the ICB Collaboration Arrangement;
      6. ensure data and analytics teams within ICBs and NHS England work collaboratively on jointly agreed programmes of work focusing on provision of pathway analytics;
   2. The ICB must ensure that the data reporting and analytical frameworks, as set out in Mandated Guidance or as otherwise required by NHS England, are in place to support the commissioning of the Delegated Services.
8. **Finance** 
   1. The provisions of Clause 10 (*Finance*) of this Agreement set out the financial requirements in respect of the Delegated Functions.
9. **Freedom of Information and Parliamentary Requests** 
   1. The ICB shall lead on the handling, management and response to all Freedom of Information and parliamentary correspondence relating to Delegated Services.
10. **Incident Response and Management** 
    1. The ICB shall:
       1. lead on local incident management for Delegated Services as appropriate to the stated incident level;
       2. support national and regional incident management relating to Specialised Services; and
       3. ensure surge events and actions relating to Specialised Services are included in ICB escalation plans.
    2. In the event that an incident is identified that has an impact on the Delegated Services (such as potential failure of a Specialised Services Provider), the ICB shall fully support the implementation of any requirements set by NHS England around the management of such incident and shall provide full co-operation to NHS England to enable a co-ordinated national approach to incident management. NHS England retains the right to take decisions at a national level where it determines this is necessary for the proper management and resolution of any such incident and the ICB shall be bound by any such decision.
11. **Individual Funding Requests** 
    1. The ICB shall provide any support required by NHS England in respect of determining an Individual Funding Request and shall implement the decision of the Individual Funding Request panel.
12. **Innovation and New Treatments** 
    1. The ICB shall support local implementation of innovative treatments for Delegated Services.
13. **Mental Health, Learning Disability and Autism Specialised Services** 
    1. The ICB will oversee the lead provider contract(s) relating to mental health, learning disability and autism (MHLDA) Provider Collaboratives that are transferred to the ICB on 1 April 2025 by NHS England. This includes complying with all terms and conditions of the contract(s), including in respect of notice periods and extensions.
    2. If the ICB proposes to terminate a MHLDA lead provider contract before the end of its term, it must seek written approval from NHS England in advance.
    3. In the performance of its commissioning responsibilities for MHLDA Specialised Services, the ICB shall:
       1. Have regard to any commissioning guidance relating to MHLDA Specialised Services issued by NHS England;
       2. Comply with the requirements of the Mental Health Investment Standard and related guidance issued by NHS England;
       3. Generally have regard to the need to commission MHLDA Specialised Services for the ICB's Population in such a manner as to ensure safe, efficient and effective services, across appropriate geographies, and which may require partnership working across other ICB or other organisational boundaries.
       4. Ensure that its case management function will work collaboratively across Delegated Services and Retained Services to support the oversight and progression of individual patient care, including the movement across elements of the care pathway.
14. **Provider Selection and Procurement** 
    1. The ICB shall:
       1. run appropriate local provider selection and procurement processes for Delegated Services;
       2. align all procurement processes with any changes to national procurement policy (for example new legislation) for Delegated Services;
       3. support NHS England with national procurements where required with subject matter expertise on provider engagement and provider landscape; and
       4. monitor and provide advice, guidance and expertise to NHS England on the overall provider market and provider landscape.
    2. In discharging these responsibilities, the ICB must comply at all times with Law and any relevant Guidance including but not limited to Mandated Guidance; any applicable procurement law and Guidance on the selection of, and award of contracts to, providers of healthcare services.
    3. When the ICB makes decisions in connection with the awarding of Specialised Services Contracts, it should ensure that it can demonstrate compliance with requirements for the award of such Contracts, including that the decision was:
       1. made in the best interest of patients, taxpayers and the Population;
       2. robust and defensible, with conflicts of interests appropriately managed;
       3. made transparently; and
       4. compliant with relevant Guidance and legislation.
15. **Quality** 
    1. The ICB must ensure that appropriate arrangements for quality oversight are in place. This must include:
       1. clearly defined roles and responsibilities for ensuring governance and oversight of Delegated Services;
       2. defined roles and responsibilities for ensuring robust communication and appropriate feedback, particularly where Delegated Services are commissioned through an arrangement with one or more other ICBs;
       3. working with providers and partner organisations to address any issues relating to Delegated Services and escalate appropriately if such issues cannot be resolved;
       4. developing and standardising processes that align with regional systems to ensure oversight of the quality of Delegated Services, and participating in local System Quality Groups and Regional Quality Groups, or their equivalent;
       5. ensuring processes are robust and concerns are identified, mitigated and escalated as necessary;
       6. ensuring providers are held to account for delivery of safe, patient-focused and quality care for Delegated Services, including mechanisms for monitoring patient complaints, concerns and feedback; and
       7. the implementation of the Patient Safety Incident Response Framework for the management of incidents and serious events, appropriate reporting of any incidents, undertaking any appropriate patient safety incident investigation and obtaining support as required.
    2. The ICB must establish a plan to ensure that the quality of the Delegated Services is measured consistently, using nationally and locally agreed metrics triangulated with professional insight and soft intelligence.
    3. The ICB must ensure that the oversight of the quality of the Delegated Services is integrated with wider quality governance in the local system and aligns with the NHS England National Quality Board’s recommended quality escalation processes.
    4. The ICB must ensure that there is a System Quality Group (or equivalent) to identify and manage concerns across the local system.
    5. The ICB must ensure that there is appropriate representation at any Regional Quality Groups or their equivalent.
    6. The ICB must have in place all appropriate arrangements in respect of child and adult safeguarding and comply with all relevant Guidance.
16. **Service Planning and Strategic Priorities** 
    1. The ICB is responsible for setting local commissioning strategy, policy and priorities and planning for and carrying out needs assessments for the Delegated Services.
    2. In planning, commissioning and managing the Delegated Services, the ICB must have processes in place to assess and monitor equitable patient access, in accordance with the access criteria set out in Clinical Commissioning Policies and National Specifications, taking action to address any apparent anomalies.
    3. The ICB must ensure that it works with Specialised Service Providers and Provider Collaboratives to translate local strategic priorities into operational outputs for Delegated Services.
    4. The ICB shall provide input into any consideration by NHS England as to whether the commissioning responsibility in respect of any of the Retained Services should be delegated.
17. **National Standards, National Specifications and Clinical Commissioning Policies** 
    1. The ICB shall provide input into national decisions on National Standards and national transformation regarding Delegated Services through attendance at governance meetings.
    2. The ICB shall facilitate engagement with local communities on National Specification development.
    3. The ICB must comply with the National Specifications and relevant Clinical Commissioning Policies and ensure that all clinical Specialised Services Contracts accurately reflect Clinical Commissioning Policies and include the relevant National Specification, where one exists in relation to the relevant Delegated Service.
    4. The ICB must co-operate with any NHS England activities relating to the assessment of compliance against National Standards, including through the Assurance Processes.
    5. The ICB must have appropriate mechanisms in place to ensure National Standards and National Specifications are being adhered to.
    6. Where the ICB has identified that a Specialised Services Provider may not be complying with the National Standards set out in the relevant National Specification, the ICB shall consider the action to take to address this in line with the Assurance Processes.
18. **Transformation** 
    1. The ICB shall:
       1. prioritise pathways and services for transformation according to the needs of its Population and opportunities for improvement in ICB commissioned services and for Delegated Services;
       2. lead ICB and ICB Collaboration Arrangement driven transformation programmes across pathways for Delegated Services;
       3. lead the delivery locally of transformation in areas of national priority (such as Cancer, Mental Health and Learning Disability and Autism), including supporting delivery of commitments in the NHS Long Term Plan;
       4. support NHS England with agreed transformational programmes for Retained Services;
       5. support NHS England with agreed transformational programmes and identify future transformation programmes for consideration and prioritisation for Delegated Services where national co-ordination and enablement may support transformation;
       6. work collaboratively with NHS England on the co-production and co-design of transformation and improvement interventions and solutions in those areas prioritised; and
       7. ensure Relevant Clinical Networks and other clinical networks use levers to facilitate and embed transformation at a local level for Delegated Services.

SCHEDULE 4: Reserved Functions

**Introduction**

1. **Reserved Functions in Relation to the Delegated Services** 
   1. In accordance with Clause 6.2 of this Agreement, all functions of NHS England other than those defined as Delegated Functions, are Reserved Functions.
   2. This Schedule sets out further provision regarding the carrying out of the Reserved Functions as they relate to the Delegated Functions.
   3. The ICB will work collaboratively with NHS England and will support and assist NHS England to carry out the Reserved Functions.
   4. The following functions and related activities shall continue to be exercised by NHS England.
2. **Retained Services** 
   1. NHS England shall commission the Retained Services set out in Schedule 5.
3. **Reserved Specialised Service Functions**
   1. NHS England shall carry out the functions set out in this Schedule 4 in respect of the Delegated Services.

**Reserved Functions**

1. **Assurance and Oversight** 
   1. NHS England shall:
      1. have oversight of what ICBs are delivering (inclusive of Delegated Services) for their Populations and all patients;
      2. design and implement appropriate assurance of ICBs’ exercise of Delegated Functions including the Assurance Processes;
      3. help the ICB to coordinate and escalate improvement and resolution interventions where challenges are identified (as appropriate);
      4. ensure that the NHS England Board is assured that Delegated Functions are being discharged appropriately;
      5. ensure specialised commissioning considerations are appropriately included in NHS England frameworks that guide oversight and assurance of service delivery; and
      6. host a Delegated Commissioning Group (“DCG”) that will undertake an assurance role in line with the Assurance Processes. This assurance role shall include assessing and monitoring the overall coherence, stability and sustainability of the commissioning model of Specialised Services at a national level, including identification, review and management of appropriate cross-ICB risks.
   2. Where an officer or employee of NHS England is performing its Reserved Functions in respect of assurance and oversight, NHS England must ensure that those officers or employees do not hold responsibility for, or undertake any, decision making in respect of the ICB's Delegated Functions.
2. **Attendance at governance meetings** 
   1. NHS England shall ensure that there is appropriate representation in respect of Reserved Functions and Retained Services at local governance forums (for example, the Regional Leadership Team) and at the National Commissioning Group (“NCG”).
   2. NHS England shall:
      1. ensure that there is appropriate representation by NHS England subject matter expert(s) at National Standards development forums;
      2. ensure there is appropriate attendance by NHS England representatives at nationally led clinical governance meetings; and
      3. co-ordinate, and support key national governance groups.
3. **Clinical Leadership and Clinical Reference Groups** 
   1. NHS England shall be responsible for the following:
      1. developing local leadership and support for the ICB relating to Specialised Services;
      2. providing clinical leadership, advice and guidance to the ICB in relation to the Delegated Services;
      3. providing point-of-contact and ongoing engagement with key external bodies, such as interest groups, charities, NICE, DHSC, and Royal Colleges; and enabling access to clinical trials for new treatments and medicines.
   2. NHS England will host Clinical Reference Groups, which will lead on the development and publication of the following for Specialised Services:
      1. Clinical Commissioning Policies;
      2. National Specifications, including National Standards for each of the Specialised Services.
4. **Clinical Networks**
   1. Unless otherwise agreed between the Parties, NHS England shall put in place contractual arrangements and funding mechanisms for the commissioning of the Relevant Clinical Networks.
   2. NHS England shall ensure development of multi-ICB, and multi-region (where necessary) governance and oversight arrangements for Relevant Clinical Networks that give line of sight between all clinical networks and all ICBs whose Population they serve.
   3. NHS England shall be responsible for:
      1. developing national policy for the Relevant Clinical Networks;
      2. developing and approving the specifications for the Relevant Clinical Networks;
      3. maintaining links with other NHS England national leads for clinical networks not focused on Specialised Services;
      4. convening or supporting national networks of the Relevant Clinical Networks;
      5. agreeing the annual plan for each Relevant Clinical Network with the involvement of the ICB and Relevant Clinical Network, ensuring these reflect national and regional priorities;
      6. managing Relevant Clinical Networks jointly with the ICB; and
      7. agreeing and commissioning the hosting arrangements of the Relevant Clinical Networks.
5. **Complaints**
   1. NHS England shall manage all complaints in respect of the Delegated Services that are received prior to the Effective Date of Delegation or the date on which the Commissioning Team is transferred to the Host ICB (whichever is the later).
   2. NHS England shall provide the relevant individuals at the ICB with appropriate access to complaints data held by NHS England that is necessary to carry out the complaints function as set out in the Complaints Sharing Protocol.
   3. NHS England shall manage all complaints in respect of the Retained Services.
   4. NHS England shall set out what information the ICB is required to provide when reporting on the key performance indicators. NHS England should notify the ICB in advance and provide sufficient time to allow compliance.
6. **Commissioning and optimisation of High Cost Drugs**
   1. Unless otherwise agreed with the ICB, NHS England shall manage a central process for reimbursement of High Costs Drugs for Specialised Services. This may include making reimbursements directly to Specialised Services Providers.
   2. In respect of pharmacy and optimisation of High Cost Drugs, NHS England shall:
      1. where appropriate, ensure that only validated drugs spend is reimbursed, there is timely drugs data and drugs data quality meets the standards set nationally;
      2. support the ICB on strategy for access to medicines used within Delegated Services, minimising barriers to health inequalities;
      3. provide support, as reasonably required, to the ICB to assist it in the commissioning of High Cost Drugs for Delegated Services including shared care agreements;
      4. seek to address consistency of prescribing in line with national commissioning policies, introduction of new medicines, and addressing unwarranted prescribing variation;
      5. develop medicines commissioning policies and criteria for access to medicines within Specialised Services;
      6. develop support tools, including prior approval criteria, and frameworks to support the delivery of cost-effective and high quality commissioning of High Cost Drugs;
      7. co-ordinate the development, implementation and monitoring of initiatives that enable the use of better value medicines;
      8. where appropriate, co-ordinate national procurement or other commercial processes to secure medicines or High Cost Drugs for Specialised Services.
7. **Contracting**
   1. NHS England shall retain the following obligations in relation to contracting for Delegated Services:
      1. ensure Specialised Services are included in national NHS England contracting and payment strategy (for example, Aligned Payment Incentives);
      2. provide advice for ICBs on schedules to support the Delegated Services;
      3. set, publish or make otherwise available the Contracting Standard Operating Procedure and Mandated Guidance detailing contracting strategy and policy for Specialised Services; and
      4. provide and distribute contracting support tools and templates to the ICB.
   2. In respect of the Retained Services, NHS England shall:
      1. where appropriate, ensure a Collaborative Commissioning Agreement is in place between NHS England and the ICB(s); and
      2. where appropriate, construct model template schedules for Retained Services and issue to ICBs.
8. **Data Management and Analytics**
   1. NHS England shall:
      1. support the ICB by collaborating with the wider data and analytics network (nationally) to support development and local deployment or utilisation of support tools;
      2. support the ICB to address data quality and coverage needs, accuracy of reporting Specialised Services activity and spend on a Population basis to support commissioning of Specialised Services;
      3. ensure inclusion of Specialised Services data strategy in broader NHS England, DHSC and government data strategies;
      4. lead on defining relevant contractual content of the information schedule (Schedule 6) of the NHS Standard Contract for Clinical Services;
      5. work collaboratively with the ICB to drive continual improvement of the quality and coverage of data used to support commissioning of Specialised Services;
      6. provide a national analytical service to support oversight and assurance of Specialised Services, and support (where required) the national Specialised Commissioning team, Programmes of Care and Clinical Reference Groups; and
      7. provide access to data and analytic subject matter expertise to support the ICB when considering local service planning, needs assessment and transformation.
9. **Finance** 
   1. The provisions of Clause 10 shall apply in respect of the financial arrangements in respect of the Delegated Functions.
   2. NHS England shall:
      1. hold the budgets for prescribed specialised services top-up payments for specialist centres;
      2. administer the top-up payments schemes; and
      3. make top-up payments to the Specialised Services Providers.
   3. For the avoidance of doubt, the functions set out in 12.2 include top-up payments for the Delegated Services and Retained Services.
10. **Freedom of Information and Parliamentary Requests**
    1. NHS England shall:
       1. lead on handling, managing and responding to all national FOIA and parliamentary correspondence relating to Retained Services; and
       2. co-ordinate a response when a single national response is required in respect of Delegated Services.
11. **Incident Response and Management**
    1. NHS England shall:
       1. provide guidance and support to the ICB in the event of a complex incident;
       2. lead on national incident management for Specialised Services as appropriate to stated incident level and where nationally commissioned services are impacted;
       3. lead on monitoring, planning and support for service and operational resilience at a national level and provide support to the ICB; and
       4. respond to specific service interruptions where appropriate; for example, supplier and workforce challenges and provide support to the ICB in any response to interruptions.
12. **Individual Funding Requests** 
    1. NHS England shall be responsible for:
       1. leading on Individual Funding Requests (IFR) policy, IFR governance and managing the IFR process for Delegated Services and Retained Services;
       2. taking decisions in respect of IFRs at IFR Panels for both Delegated Services and Retained Services; and
       3. providing expertise for IFR decisions, including but not limited to pharmacy, public health, nursing and medical and quality.
13. **Innovation and New Treatments**
    1. NHS England shall support the local implementation of innovative treatments for Delegated Services.
    2. NHS England shall ensure services are in place for innovative treatments such as advanced medicinal therapy products recommended by NICE technology appraisals within statutory requirements.
    3. NHS England shall provide national leadership for innovative treatments with significant service impacts including liaison with NICE.
14. **Mental Health, Learning Disability and Autism Specialised Services** 
    1. NHS England shall issue commissioning guidance for MHLDA Specialised Services in relation to the Delegated Services and Retained Services.
    2. NHS England shall prepare and issue National Specifications and Clinical Commissioning Policies for MHLDA Specialised Services.
    3. NHS England will monitor the ICB's compliance with the Mental Health Investment Standard in respect of MHLDA Delegated Services.
    4. NHS England shall ensure that its case management function will work collaboratively across Delegated Services and Retained Services to support the oversight and progression of individual patient care, including the movement across elements of the care pathway.
15. **Provider Selection and Procurement**
    1. In relation to procurement, NHS England shall be responsible for:
       1. setting standards and agreeing frameworks and processes for provider selections and procurements for Specialised Services;
       2. monitoring and providing advice, guidance and expertise on the overall provider market in relation to Specialised Services; and
       3. where appropriate, running provider selection and procurement processes for Specialised Services.
16. **Quality**
    1. In respect of quality, NHS England shall:
       1. work with the ICB to ensure oversight of Specialised Services through quality surveillance and risk management and escalate as required;
       2. work with the ICB to seek to ensure that quality and safety issues and risks are managed effectively and escalated to the National Specialised Commissioning Quality and Governance Group (QGG), or other appropriate forums, as necessary;
       3. work with the ICB to seek to ensure that the quality governance and processes for Delegated Services are aligned and integrated with broader clinical quality governance and processes in accordance with National Quality Board Guidance;
       4. facilitate improvement when quality issues impact nationally and regionally, through programme support, and mobilising intensive support when required on specific quality issues;
       5. provide guidance on quality and clinical governance matters and benchmark available data;
       6. support the ICB to identify key themes and trends and utilise data and intelligence to respond and monitor as necessary;
       7. report on quality to both NCG and DCG as well as QGG and Executive Quality Group as required;
       8. facilitate and support the national quality governance infrastructure (for example, the QGG); and
       9. identify and act upon issues and concerns that cross multiple ICBs, coordinating response and management as necessary.
17. **National Standards, National Specifications and Clinical Commissioning Policies** 
    1. NHS England shall carry out:
       1. development, engagement and approval of National Standards for Specialised Services (including National Specifications, Clinical Commissioning Policies, quality and data standards);
       2. production of national commissioning products and tools to support commissioning of Specialised Services;
       3. maintenance and publication of the Prescribed Specialised Services Manual and engagement with the DHSC on policy matters; and
       4. determination of content for national clinical registries.
18. **Transformation**
    1. NHS England shall be responsible for:
       1. co-ordinating and enabling ICB-led specialised service transformation programmes for Delegated Services where necessary;
       2. supporting the ICB to implement national policy and guidance across its Populations for Retained Services;
       3. supporting the ICB with agreed transformational programmes where national transformation support has been agreed for Delegated Services;
       4. providing leadership for transformation programmes and projects that have been identified as priorities for national coordination and support, or are national priorities for the NHS, including supporting delivery of commitments in the NHS Long Term Plan;
       5. co-production and co-design of transformation programmes with the ICB and wider stakeholders; and
       6. providing access to subject matter expertise including Clinical Reference Groups, national clinical directors, Programme of Care leads for the ICB where it needs support, including in relation to local priority transformation.

SCHEDULE 5: Retained Services

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

SCHEDULE 6: Further Information Governance, Sharing and Processing Provisions

**PART 1**

1. **Introduction**
   1. This Schedule sets out the scope for the secure and confidential sharing of information between the Parties on a Need To Knowbasis, or where a Party acts as a Data Processor on behalf of the other Party in order to enable the Parties to exercise their functions in pursuance of this Agreement.
   2. References in this Schedule *(Further Information Governance and Sharing Provisions)* to the Need to Know basis or requirement (as the context requires) should be taken to mean that each Party’s Staff will only have access to Personal Data or Special Category Personal Data if it is lawful for such Staff to have access to such data for the Specified Purpose in paragraph 2.1 and the function they are required to fulfil at that particular time, in relation to the Specified Purpose, cannot be achieved without access to the Personal Data or Special Category Personal Data specified.
   3. This Schedule (including the details at Part 2 and 3 of this Schedule) and any Data Sharing Agreement and/or Data Processing Agreements entered into under this Schedule are designed to:
      1. provide information about the reasons why Relevant Information may need to be shared and/or processed on behalf of another Party and how this will be managed and controlled by the Parties;
      2. describe the purposes for which the Parties have agreed to share and/or the basis on which a Party is instructed to act as a Data Processor in relation to the Relevant Information;
      3. set out the lawful basis for the processing of Relevant Information and sharing of information between the Parties, and the principles that underpin the exchange of Relevant Information;
      4. describe roles and structures to support the exchange of Relevant Information between the Parties;
      5. apply to the sharing and processing of Relevant Information relating to Specialised Services Providers and their Staff;
      6. apply to the sharing and processing of Relevant Information whatever the medium in which it is held and however it is transmitted;
      7. ensure that Data Subjects are, where appropriate, informed of the reasons why Personal Data about them may need to be shared and processed and how this sharing and processing will be managed;
      8. apply to the activities of the Parties’ Staff; and
      9. describe how complaints relating to Personal Data sharing between the Parties and wider processing will be investigated and resolved, and how the information sharing and processing will be monitored and reviewed.
2. **Purpose**
   1. The Specified Purpose of the data sharing and associated processing is to facilitate the exercise of the Delegated Functions and NHS England’s Reserved Functions.
   2. Each Party must ensure that they have in place appropriate data sharing or data processing arrangements to enable data to be received from any third party organisations from which the Parties must obtain data in order to achieve the Specified Purpose.
   3. Where necessary specific and detailed purposes must be set out in a Data Sharing Agreement or Data Processing Agreement that complies with all relevant legislation and Guidance.
3. **Benefits of information sharing**
   1. The benefits of sharing information are the achievement of the Specified Purpose, with benefits for service users and other stakeholders in terms of the improved delivery of the Delegated Services.
4. **Lawful basis for sharing**
   1. The Parties shall comply with all relevant Data Protection Legislation requirements and Good Practice in relation to the processing of Relevant Information shared further to this Agreement.
   2. The Parties shall ensure that there is a Data Protection Impact Assessment (“DPIA”) that covers processing undertaken in pursuance of the Specified Purpose. The DPIA shall identify the lawful basis for sharing Relevant Information for each purpose and data flow.
   3. Further details regarding the Relevant Information to be shared shall be set out in a Data Sharing Agreement and/or Data Processing Agreement.
5. **Restrictions on use of the Shared Information**
   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.
   2. Access to, and processing of, the Relevant Information provided by a Party must be the minimum necessary to achieve the Specified Purpose. Information and Special Category Personal Data will be handled at all times on a restricted basis, in compliance with Data Protection Legislation requirements, and the Parties’ Staff should only have access to Personal Data on a justifiable Need to Knowbasis.
   3. Neither the provisions of this Schedule nor any associated Data Sharing Agreement and/or Data Processing Agreement should be taken to permit unrestricted access to data held by any of the Parties.
   4. Neither Party shall subcontract any processing of the Relevant Information without the prior consent of the other Party. Where a Party subcontracts its obligations, it shall do so only by way of a written agreement with the sub-contractor which imposes the same obligations as are imposed on that Party under this Agreement, and shall remain liable for the performance of the subcontractor’s obligations.
   5. The Parties shall not cause or allow Relevant Information to be transferred to any territory outside the United Kingdom without the prior written permission of the responsible Data Controller.
   6. Any particular restrictions on use of certain Relevant Information should be included in a Data Sharing Agreement and/or Data Processing Agreement.
6. **Ensuring fairness to the Data Subject**
   1. In addition to having a lawful basis for sharing information, the UK GDPR generally requires that the sharing must be fair and transparent. In order to achieve fairness and transparency to the Data Subjects, the Parties will take the following measures as reasonably required:
      1. amendment of internal guidance to improve awareness and understanding among Staff;
      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;
      3. ensuring that information and communications relating to the processing of data is clear and easily accessible; and
      4. giving consideration to carrying out activities to promote public understanding of how data is processed where appropriate.
   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.
   3. The Parties shall reasonably co-operate in undertaking any DPIA associated with the processing of data further to this Agreement, and in doing so engage with their respective Data Protection Officers in the performance by them of their duties pursuant to Article 39 UK GDPR.
   4. Further provision in relation to specific data flows may be included in a Data Sharing Agreement and/or Data Processing Agreement between the Parties.
7. **Governance: Staff**
   1. The Parties must take reasonable steps to ensure the suitability, reliability, training and competence, of any Staff who have access to Personal Data, and Special Category Personal Data, including ensuring reasonable background checks and evidence of completeness are available on request.
   2. The Parties agree to treat all Relevant Information as confidential and imparted in confidence and must safeguard it accordingly. Where any of the Parties’ Staff are not healthcare professionals (for the purposes of the Data Protection Act 2018), the employing Parties must procure that Staff operate under a duty of confidentiality which is equivalent to that which would arise if that person were a healthcare professional.
   3. The Parties shall ensure that all Staff required to access Personal Data (including Special Category Personal Data) are informed of the confidential nature of the Personal Data. The Parties shall include appropriate confidentiality clauses in employment/service contracts of all Staff that have any access whatsoever to the Relevant Information, including details of sanctions for acting in a deliberate or reckless manner that may breach the confidentiality or the non-disclosure provisions of Data Protection Legislation requirements, or cause damage to or loss of the Relevant Information.
   4. Each Party shall provide evidence (further to any reasonable request) that all Staff that have any access to the Relevant Information whatsoever are adequately and appropriately trained to comply with their responsibilities under Data Protection Legislation and this Agreement.
   5. The Parties shall ensure that:
      1. only those Staff involved in delivery of the Agreement use or have access to the Relevant Information;
      2. that such access is granted on a strict Need to Know basis and shall implement appropriate access controls to ensure this requirement is satisfied and audited. Evidence of audit should be made freely available on request by the originating Data Controller; and
      3. specific limitations on the Staff who may have access to the Relevant Information are set out in any Data Sharing Agreement and/or Data Processing Agreement entered into in accordance with this Schedule.
8. **Governance: Protection of Personal Data**
   1. At all times, the Parties shall have regard to the requirements of Data Protection Legislation and the rights of Data Subjects.
   2. Wherever possible (in descending order of preference), only anonymised information, or, strongly or weakly pseudonymised information will be shared and processed by the Parties. The Parties shall co-operate in exploring alternative strategies to avoid the use of Personal Data in order to achieve the Specified Purpose. However, it is accepted that some Relevant Information shared further to this Agreement may be Personal Data or Special Category Personal Data.
   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.
   4. If any Party becomes aware of:
      1. any unauthorised or unlawful processing of any Relevant Information or that any Relevant Information is lost or destroyed or has become damaged, corrupted or unusable; or
      2. any security vulnerability or breach in respect of the Relevant Information,

it shall promptly, within 48 hours, notify the other Parties. The Parties shall fully co-operate with one another to remedy the issue as soon as reasonably practicable, and in making information about the incident available to the Information Commissioner and Data Subjects where required by Data Protection Legislation.

* 1. In processing any Relevant Information further to this Agreement, the Parties shall process the Personal Data and Special Category Personal Data only:
     1. in accordance with the terms of this Agreement and otherwise (to the extent that it acts as a Data Processor for the purposes of Article 27-28 GDPR) only in accordance with written instructions from the originating Data Controller in respect of its Relevant Information including any instructions set out in a Data Processing Agreement entered into under this Schedule, unless required by law (in which case, the processor shall inform the relevant Data Controller of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest);
     2. to the extent as is necessary for the provision of the Specified Purpose or as is required by law or any regulatory body; and
     3. in accordance with Data Protection Legislation requirements, in particular the principles set out in Article 5(1) and accountability requirements set out in Article 5(2) UK GDPR; and not in such a way as to cause any other Data Controller to breach any of their applicable obligations under Data Protection Legislation.
  2. The Parties shall act generally in accordance with Data Protection Legislation requirements. This includes implementing, maintaining and keeping under review appropriate technical and organisational measures to ensure and demonstrate that the processing of Personal Data is undertaken in accordance with Data Protection Legislation, and in particular to protect Personal Data (and Special Category Personal Data) against unauthorised or unlawful processing, and against accidental loss, destruction, damage, alteration or disclosure. These measures shall:
     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
     2. be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and Special Category Personal Data, and having the nature of the Personal Data and Special Category Personal Data which is to be protected.
  3. In particular, each Party shall:
     1. ensure that only Staff as provided under this Schedule have access to the Personal Data and Special Category Personal Data;
     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;
     3. obtain prior written consent from the originating Party in order to transfer the Relevant Information to any third party;
     4. permit any other party or their representatives (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the data processing activities carried out further to this Agreement (and/or those of its agents, successors or assigns) and comply with all reasonable requests or directions to enable each Party to verify and/or procure that the other is in full compliance with its obligations under this Agreement; and
     5. if requested, provide a written description of the technical and organisational methods and security measures employed in processing Personal Data.
  4. The Parties shall adhere to the specific requirements as to information security set out in any Data Sharing Agreement and/or Data Processing Agreement entered into in accordance with this Schedule.
  5. The Parties shall use best endeavours to achieve and adhere to the requirements of the NHS Digital Data Security and Protection Toolkit.
  6. The Parties’ Single Points of Contact set out in paragraph **Error! Reference source not found.** will be the persons who, in the first instance, will have oversight of third party security measures.

1. **Governance: Transmission of Information between the Parties**
   1. This paragraph supplements paragraph 8 of this Schedule.
   2. Transfer of Personal Data between the Parties shall be done through secure mechanisms including use of the N3 network, encryption, and approved secure (NHS.net or gcsx) e-mail.
   3. Wherever possible, Personal Data should be transmitted and held in pseudonymised form, with only reference to the NHS number in 'clear' transmissions. Where there are significant consequences for the care of the patient, then additional data items, such as the postcode, date of birth and/or other identifiers should also be transmitted, in accordance with good information governance and clinical safety practice, so as to ensure that the correct patient record and/or data is identified.
   4. Any other special measures relating to security of transfer should be specified in a Data Sharing Agreement and/or Data Processing Agreement entered into in accordance with this Schedule.
   5. Each Party shall keep an audit log of Relevant Information transmitted and received in the course of this Agreement.
   6. The Parties’ Single Point of Contact notified pursuant to paragraph 13 will be the persons who, in the first instance, will have oversight of the transmission of information between the Parties.
2. **Governance: Quality of Information**
   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.
3. **Governance: Retention and Disposal of Shared Information**
   1. A non-originating Party shall securely destroy or return the Relevant Information once the need to use it has passed or, if later, upon the termination of this Agreement, howsoever determined. Where Relevant Information is held electronically, the Relevant Information will be deleted and formal notice of the deletion sent to the Party that shared the Relevant Information. Once paper information is no longer required, paper records will be securely destroyed or securely returned to the Party they came from.
   2. Each Party shall provide an explanation of the processes used to securely destroy or return the information, or verify such destruction or return, upon request and shall comply with any request of the Data Controllers to dispose of data in accordance with specified standards or criteria.
   3. If a Party is required by any law, regulation, or government or regulatory body to retain any documents or materials that it would otherwise be required to return or destroy in accordance with this Schedule, it shall notify the other Parties in writing of that retention, giving details of the documents or materials that it must retain.
   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.
   5. The Parties shall set out any special retention periods in a Data Sharing Agreement where appropriate.
   6. The Parties shall ensure that Relevant Information held in paper form is held in secure files, and, when it is no-longer needed, destroyed using a cross cut shredder or subcontracted to a confidential waste company that complies with European Standard EN15713.
   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.
   8. Electronic records will be considered for deletion once the relevant retention period has ended.
   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.
4. **Governance: Complaints and Access to Personal Data**
   1. The Parties shall assist each other in responding to any requests made under Data Protection Legislation made by persons who wish to access copies of information held about them (“Subject Access Requests”), as well as any other exercise of a Data Subject’s rights under Data Protection Legislation or complaint to or investigation undertaken by the Information Commissioner.
   2. Complaints about processing shall be reported to the Single Points of Contact and the ICB. Complaints about information sharing shall be routed through each Parties’ own complaints procedure unless otherwise provided for in the Agreement or determined by the ICB. Where the complaint relates to processing undertaken by a Party acting as a Data Processor on behalf of the other Party, complaints shall be routed through the relevant Data Controller’s own complaints procedure unless otherwise provided for in the Agreement.
   3. The Parties shall use all reasonable endeavours to work together to resolve any dispute or complaint arising under this Schedule or any data processing carried out further to it.
   4. Basic details of the Agreement shall be included in the appropriate log under each Party’s publication scheme.
5. **Governance: Single Points of Contact** 
   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.
6. **Monitoring and review**
   1. The Parties shall monitor and review on an ongoing basis the sharing and wider processing of Relevant Information to ensure compliance with Data Protection Legislation and Best Practice. Specific monitoring requirements must be set out in the relevant Data Sharing Agreement and/or Data Processing Agreement.

**SCHEDULE 6: Further Information Governance~~,~~ Sharing and Processing Provisions**

**PART 2**

**Data Sharing Agreement**

|  |  |
| --- | --- |
| **Description** | **Details** |
| Subject matter of the processing | Due to the complexities of Specialised Services and the distinctions between Delegated Functions and Reserved Functions, both the ICB Commissioning Teams (employed by the Host ICB) delivering Delegated Functions and the NHS England teams delivering Reserved Functions will need access to Relevant Information, which contains Personal Data.  As set out in Schedule 6, Part 1, Paragraph 2.1, the Specified Purpose for sharing data is: *‘…to facilitate the exercise of the Delegated Functions and NHS England’s Reserved Functions.’*  In order to achieve this purpose in the most effective, efficient and cost effective manner, the data will be hosted by NHS England in a collaborative working space which ICBs will have access to.  NHS England will be responsible for ensuring that Commissioning Team staff have sufficient and appropriate access to Relevant Information to enable those staff to fulfil their commissioning functions in respect of the Delegated Services, including those described in Schedule 3 (Delegated Functions) to this agreement.  In addition, NHS England may process the data for the following purposes:   * development, oversight, and the quality improvement of Specialised Commissioning Functions; * undertaking work to evaluate the effectiveness of innovation and changes in delivery models and advising other bodies and organisations about these functions; * arranging the provision of services to support commissioning activities, to enable reporting and evaluations; * undertaking analysis, audits, and inspections to assess and assure the quality of Specialised Commissioning Functions; * supporting healthcare organisations to interpret population health data and evidence, and to undertake reviews of the likely effectiveness and cost-effectiveness of a range of interventions; * development a of strategies on population health outcomes and to identify gaps or deficiencies in current care and to produce recommendations for improvements, including in relation to specific pathways of care; * using and supporting health organisations to use health economic tools to support decision-making and interpreting data about the surveillance or assessment of a population’s health to improve health outcomes and reduce health inequalities; * the development of population health policies and strategies, and their implementation |
| Duration of the processing | Unless otherwise specified in this Data Sharing Agreement, the processing shall commence on the Effective Date of Delegation and, as per paragraph 11.1 of this Schedule, shall continue until the need to use it has passed or, if later, upon the termination of this Agreement. |
| Nature and purpose of the processing | Personal Data is shared between the in relation to the delivery of the Delegated Functions. Such processing should ensure continued:   * Provision of live services and associated reporting; * Quality improvement and assurance of services; * Dissemination of data for health and research purposes. |
| Type of Personal Data being Processed | Guidance note: please include details of the types of Personal Data that are being shared, as appropriate. Examples include: name, address, date of birth, NI number, telephone number, pay, images, biometric data. |
| Categories of Data Subject | Guidance note: please include details of the categories of Data Subject that are being shared, as appropriate. Examples include: Staff (including volunteers, agents, and temporary workers), customers/clients, suppliers, patients, students/pupils, members of the public, users of a particular website. |

**SCHEDULE 6: Further Information Governance~~,~~ Sharing and Processing Provisions**

**PART 3**

**Data Processing Agreement**

|  |  |
| --- | --- |
| **Description** | **Details** |
| Identity of the Controller and Processor | The ICB is the Data Controller and NHS England is the Data Processor. |
| Subject matter of the processing | Both the ICB Commissioning Teams (employed by the Host ICB) delivering Delegated Functions and the NHS England teams delivering Reserved Functions will need access to Relevant Information. In order to achieve this purpose in the most effective, efficient and cost effective manner, the data will be hosted by NHS England in a collaborative working space which ICBs will have access to.  Consequently, NHS England will act as a Data Processor on behalf of the ICB in relation to the Relevant Information required to commission the Delegated Services and fulfil the Delegated Functions. |
| Duration of the processing | Unless otherwise specified in this Data Processing Agreement the processing shall commence on the Effective Date of Delegation and, as per paragraph 11.1 of this Schedule, shall continue until the need to use it has passed or, if later, upon the termination of this Agreement. |
| Plan for return and destruction of the data once the processing is complete | As set out in paragraph 11.1 of this Schedule |
| Nature and purpose of the processing | This Data Processing Agreement considers processing of any data by NHS England on behalf of the ICB Commissioning Teams in relation to the delivery of the Delegated Functions. Such processing should ensure continued:   * Provision of live services and associated reporting; * Quality improvement and assurance of services; * Dissemination of data for health and research purposes. |
| Type of Personal Data being Processed | Guidance note: please include details of the types of Personal Data that are being processed, as appropriate. Examples include: name, address, date of birth, NI number, telephone number, pay, images, biometric data. |
| Categories of Data Subject | Guidance note: please include details of the categories of Data Subject that are being processed, as appropriate. Examples include: Staff (including volunteers, agents, and temporary workers), customers/clients, suppliers, patients, students/pupils, members of the public, users of a particular website. |

## 6 (*Further Information Governance, Sharing and Processing Provisions*) makes further provision about information sharing, information governance and the Data Sharing Agreement.

# IT inter-operability

## The Parties will work together to ensure that all relevant IT systems they operate in respect of the Delegated Functions and Reserved Functions are inter-operable and that data may be transferred between systems securely, easily and efficiently.

## The Parties will use their respective reasonable endeavours to help develop initiatives to further this aim.

# Conflicts of Interest and Transparency on Gifts and Hospitality

## The ICB must ensure that, in delivering the Delegated Functions, all Staff comply with Law, with Managing Conflicts of Interest in the NHS and other Guidance, and with Good Practice, in relation to gifts, hospitality and other inducements and actual or potential conflicts of interest.

## Without prejudice to the general obligations set out in Clause 20.1, the ICB must maintain a register of interests in respect of all persons making decisions concerning the Delegated Functions. This register must be publicly available. For the purposes of this clause, the ICB may rely on an existing register of interests rather than creating a further register.

# Prohibited Acts and Counter-Fraud

## The ICB must not commit any Prohibited Act.

## 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:

### to revoke the Delegation;

### to recover from the ICB the amount or value of any gift, consideration or commission concerned; and

### to recover from the ICB any loss or expense sustained in consequence of the carrying out of the Prohibited Act.

## 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.

## If requested by NHS England or the NHS Counter Fraud Authority, the ICB must allow a person duly authorised to act on behalf of the NHS Counter Fraud Authority or on behalf of NHS England to review, in line with the appropriate standards, any counter-fraud arrangements put in place by the ICB.

## The ICB must implement any reasonable modifications to its counter-fraud arrangements required by a person referred to in Clause 21.4 in order to meet the appropriate standards within whatever time periods as that person may reasonably require.

## The ICB must, on becoming aware of:

### any suspected or actual bribery, corruption or fraud involving public funds; or

### 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.

## On the request of NHS England or NHS Counter Fraud Authority, the ICB must allow the NHS Counter Fraud Authority or any person appointed by NHS England, as soon as it is reasonably practicable and in any event not later than five (5) Operational Days following the date of the request, access to:

### all property, premises, information (including records and data) owned or controlled by the ICB; and

### 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.

# Confidential Information of the Parties

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

## Subject to Clauses 22.3 to 22.5, the receiving Party agrees:

### to use the disclosing Party’s Confidential Information only in connection with the receiving Party’s performance under this Agreement;

### 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

### to maintain the confidentiality of the disclosing Party’s Confidential Information.

## The receiving Party may disclose the disclosing Party’s Confidential Information:

### in connection with any dispute resolution procedure under Clause 25;

### in connection with any litigation between the Parties;

### to comply with the Law;

### to any appropriate Regulatory or Supervisory Body;

### to its Staff, who in respect of that Confidential Information will be under a duty no less onerous than the receiving Party’s duty under Clause 22.2;

### to NHS bodies for the purposes of carrying out their functions;

### as permitted under or as may be required to give effect to Clause 21 (*Prohibited Acts and Counter-Fraud*); and

### as permitted under any other express arrangement or other provision of this Agreement.

## The obligations in Clauses 22.1 and 22.2 will not apply to any Confidential Information which:

### is in, or comes into, the public domain other than by breach of this Agreement;

### the receiving Party can show by its records was in its possession before it received it from the disclosing Party; or

### the receiving Party can prove it obtained or was able to obtain from a source other than the disclosing Party without breaching any obligation of confidence.

## This Clause 22 does not prevent NHS England making use of or disclosing any Confidential Information disclosed by the ICB where necessary for the purposes of exercising its functions in relation to the ICB.

## The Parties acknowledge that damages would not be an adequate remedy for any breach of this Clause 22 by the receiving Party, and in addition to any right to damages the disclosing Party will be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this Clause 22.

## This Clause 222 will survive the termination of this Agreement for any reason for a period of five (5) years.

## This Clause 22 will not limit the application of the Public Interest Disclosure Act 1998 in any way whatsoever.

# Intellectual Property

## The ICB grants to NHS England a fully paid-up, non-exclusive, perpetual licence to use the ICB Deliverables for the purposes of the exercise of its statutory and contractual functions.

## NHS England grants the ICB a fully paid-up, non-exclusive licence to use the NHS England Deliverables for the purpose of performing this Agreement and the Delegated Functions.

## The ICB must co-operate with NHS England to enable it to understand and adopt Best Practice (including the dissemination of Best Practice to other commissioners or providers of NHS services), and must supply such materials and information in relation to Best Practice as NHS England may reasonably request, and (to the extent that any Intellectual Property Rights (“IPR”) attaches to Best Practice) grants NHS England a fully paid-up, non-exclusive, perpetual licence for NHS England to use Best Practice IPR for the commissioning and provision of NHS services and to share any Best Practice IPR with other commissioners of NHS services (and other providers of NHS services) to enable those parties to adopt such Best Practice.

# Notices

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

## 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.

# Disputes

## 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.

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

### 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;

### if the Agreement Representatives are, for any reason, unable to resolve the Dispute within twenty (20) Operational Days of service of the Dispute Notice, the Dispute must be referred to the Chief Executive Officer (or equivalent person) of the ICB and a director of or other person nominated by NHS England (and who has authority from NHS England to settle the Dispute) who must attempt in good faith to resolve it; and

### if the people referred to in Clause 25.2.2 are for any reason unable to resolve the Dispute within twenty (20) Operational Days of it being referred to them, the Parties may attempt to settle it by mediation in accordance with the CEDR model mediation procedure. Unless otherwise agreed between the Parties, the mediator must be nominated by CEDR. To initiate the mediation, a Party must serve notice in writing (‘Alternative Dispute Resolution’ (“ADR) notice”) to the other Party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start no later than ten (10) Operational Days after the date of the ADR notice.

## If the Dispute is not resolved within thirty (30) Operational Days after service of the ADR notice, or either Party fails to participate or to continue to participate in the mediation before the expiration of the period of thirty (30) Operational Days, or the mediation terminates before the expiration of the period of thirty (30) Operational Days, the Dispute must be referred to the NHS England Board, who shall resolve the matter and whose decision shall be binding upon the Parties.

# Variations

## 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.

## NHS England may vary this Agreement without the ICB’s consent where:

### it is reasonably satisfied that the variation is necessary in order to comply with legislation, NHS England’s statutory duties, or any requirements or direction given by the Secretary of State;

### where variation is as a result of amendment to or additional Mandated Guidance;

### it is satisfied that any Developmental Arrangements are no longer required;

### it reasonably considers that Developmental Arrangements are required under Clause 14 (*Breach*); or

### it is satisfied that such amendment or Developmental Arrangement is required in order to ensure the effective commissioning of the Delegated Services or other Specialised Services.

## Where NHS England wishes to vary the Agreement in accordance with Clause 26.2 it must notice in writing to the ICB of the wording of the proposed variation and the date on which that variation is to take effect which must, unless it is not reasonably practicable, be a date which falls at least thirty (30) Operational Days after the date on which the notice under that clause is given to the ICB.

## For the avoidance of doubt, NHS England may issue or update Mandated Guidance at any point during the term of the Agreement.

## Either Party (“the Proposing Party”) may notify the other Party (the “Receiving Party”) of a Variation Proposal in respect of this Agreement including, but not limited to the following:

### a request by the ICB to add, vary or remove any Developmental Arrangement; or

### a request by NHS England to include additional Specialised Services or NHS England Functions within the Delegation; and

### the Proposing Party will identify whether the proposed variation may have the impact of changing the scope of the Delegated Functions or Reserved Functions so that NHS England can establish the requisite level of approval required.

## The Variation Proposal will set out the variation proposed and the date on which the Proposing Party requests the variation to take effect.

## When a Variation Proposal is issued in accordance with 26.6, the Receiving Party must respond within thirty (30) Operational Days following the date that it is issued by serving notice confirming either:

### that it accepts the Variation Proposal; or

### that it refuses to accept the Variation Proposal and setting out reasonable grounds for that refusal.

## If the Receiving Party accepts the Variation Proposal issued in accordance with Clause 26.5, the Receiving Party agrees to take all necessary steps (including executing a variation agreement) in order to give effect to any variation by the date on which the proposed variation will take effect as set out in the Variation Proposal.

## If the Receiving Party refuses to accept a Variation Proposal submitted in accordance with 26.5 to 26.7, or to take such steps as are required to give effect to the variation, then the provisions of Clause 15 (*Escalation Rights*) shall apply.

## When varying the Agreement in accordance with Clause 26, the Parties must consider the impact of the proposed variation on any ICB Collaboration Arrangements and any Further Arrangements.

# Termination

## The ICB may:

### notify NHS England that it requires NHS England to revoke the Delegation; and

### terminate this Agreement;

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

### on or before 30 September of the previous calendar year, the ICB sends written notice to NHS England of its requirement that NHS England revoke the Delegation and its intention to terminate this Agreement; and

### the ICB meets with NHS England within ten (10) Operational Days of NHS England receiving the notice set out at Clause 27.1.3 above to discuss arrangements for termination and transition of the Delegated Functions to a successor commissioner in accordance with Clause 28.2; and

### the ICB confirms satisfactory arrangements for terminating any ICB Collaboration Arrangements or Further Agreements in whole or part as required including agreed succession arrangements for Commissioning Teams,

in which case NHS England shall revoke the Delegation and this Agreement shall terminate with effect from the end of 31 March in the next calendar year.

## NHS England may revoke the Delegation in whole or in part with effect from 23.59 hours on 31 March in any year, provided that it gives notice to the ICB of its intention to terminate the Delegation on or before 30 September in the year prior to the year in which the Delegation will terminate, and in which case Clause 27.4 will apply.

## The Delegation may be revoked in whole or in part, and this Agreement may be terminated by NHS England at any time, including in (but not limited to) the following circumstances:

### the ICB acts outside of the scope of its delegated authority;

### the ICB fails to perform any material obligation of the ICB owed to NHS England under this Agreement;

### the ICB persistently commits non-material breaches of this Agreement;

### NHS England is satisfied that its intervention powers under section 14Z61 of the NHS Act apply;

### to give effect to legislative changes, including conferral of any of the Delegated or Reserved Functions on the ICB;

### failure to agree to a variation in accordance with Clause 26 *(Variations)*;

### 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

### the ICB merges with another ICB or other body.

## This Agreement will terminate upon revocation or termination of the full Delegation (including revocation and termination in accordance with this Clause 277 *(Termination)*) except that the provisions referred to in Clause 299 (*Provisions Surviving Termination*) will continue in full force and effect.

## Without prejudice to Clause 14.3 and to avoid doubt, NHS England may waive any right to terminate this Agreement under this Clause 27 *(Termination)*. Any such waiver is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

## As an alternative to termination of the Agreement in respect of all the Delegated Functions, NHS England may terminate the Agreement in respect of specified Delegated Functions (or aspects of such Delegated Functions) only, in which case this Agreement shall otherwise remain in effect.

# Consequence of Termination

## Termination of this Agreement, or termination of the ICB’s exercise of any of the Delegated Functions, will not affect any rights or liabilities of the Parties that have accrued before the date of that termination or which later accrue in respect of the term of this Agreement. For the avoidance of doubt, the ICB shall be responsible for any Claims or other costs or liabilities incurred in the exercise of the Delegated Functions during the period of this Agreement unless expressly agreed otherwise by NHS England.

## Subject to Clause 28.4, on or pending termination of this Agreement or termination of the ICB’s exercise of any of the Delegated Functions, NHS England, the ICB and, if appropriate, any successor delegate will:

### agree a plan for the transition of the Delegated Functions from the ICB to the successor delegate, including details of the transition, the Parties’ responsibilities in relation to the transition, the Parties’ arrangements in respect of the Staff engaged in the Delegated Functions and the date on which the successor delegate will take responsibility for the Delegated Functions;

### implement and comply with their respective obligations under the plan for transition agreed in accordance with Clause 28.2.1; and

### act with a view to minimising any inconvenience or disruption to the commissioning of healthcare in the Area.

## 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:

### co-operate with NHS England and any successor delegate to ensure continuity and a smooth transfer of the Delegated Functions; and

### at the reasonable request of NHS England:

#### promptly provide all reasonable assistance and information to the extent necessary for an efficient assumption of the Delegated Functions by a successor delegate;

#### deliver to NHS England all materials and documents used by the ICB in the exercise of any of the Delegated Functions; and

#### 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.

## 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.

# Provisions Surviving Termination

## Any rights, duties or obligations of any of the Parties which are expressed to survive, including those referred to in Clause 29.2, or which otherwise by necessary implication survive the termination for any reason of this Agreement, together with all indemnities, will continue after termination, subject to any limitations of time expressed in this Agreement.

## The surviving provisions include the following clauses together with such other provisions as are required to interpret and give effect to them:

### Clause 10 (*Finance*);

### Clause 13 (*Staffing, Workforce and Commissioning Teams*);

### Clause 16 *(Liability and Indemnity*);

### Clause 17 (*Claims and Litigation*);

### Clause 18 (*Data Protection, Freedom of Information and Transparency*);

### Clause 25 (*Disputes*);

### Clause 27 (*Termination*);

### Schedule 6 (*Further Information Governance, Sharing and Processing Provisions*).

# Costs

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

# Severability

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

# GENERAL

## Nothing in this Agreement will create a partnership or joint venture or relationship of principal and agent between NHS England and the ICB.

## A delay or failure to exercise any right or remedy in whole or in part shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

## This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

SCHEDULE : Definitions and Interpretation

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

|  |  |
| --- | --- |
| **“Administrative and Management Services”** | means administrative and management support provided in accordance with Clause 9.5 or 9.7; |
| **“Agreement”** | means this agreement between NHS England and the ICB comprising the Particulars, the Terms and Conditions, the Schedules and the Mandated Guidance; |
| **“Agreement Representatives”** | means the ICB Representative and the NHS England Representative as set out in the Particulars or such person identified to the other Party from time to time as the relevant representative; |
| **“Annual Allocation”** | means the funds allocated to the ICB annually under section 223G of the NHS Act; |
| **“Applicable Date”** | the Effective Date of Delegation or the date on which the Commissioning Team is transferred to the relevant Host ICB (whichever is the later); |
| **“Area”** | means the geographical area covered by the ICB; |
| **“Assurance Processes”** | has the definition given in paragraph 3.1 of Schedule 3; |
| **“Best Practice”** | means any methodologies, pathway designs and processes relating to this Agreement or the Delegated Functions developed by the ICB or its Staff for the purposes of delivering the Delegated Functions and which are capable of wider use in the delivery of healthcare services for the purposes of the NHS, but not including inventions that are capable of patent protection and for which patent protection is being sought or has been obtained, registered designs, or copyright in software; |
| **“Capital Investment Guidance”** | means any Mandated Guidance issued by NHS England from time to time in relation to the development, assurance and approvals process for proposals in relation to:   * the expenditure of Capital, or investment in property, infrastructure or information and technology; and * the revenue consequences for commissioners or third parties making such investment; |
| **“CEDR”** | means the Centre for Effective Dispute Resolution; |
| **“Claims”** | means, for or in relation to the Delegated Functions (i) any litigation or administrative, mediation, arbitration or other proceedings, or any claims, actions or hearings before any court, tribunal or the Secretary of State, any governmental, regulatory or similar body, or any department, board or agency or (ii) any dispute with, or any investigation, inquiry or enforcement proceedings by, any governmental, regulatory or similar body or agency; |
| **“Claim Losses”** | means all Losses arising in relation to any Claim; |
| “Clinical Commissioning Policies” | means a nationally determined clinical policy setting out the commissioning position on a particular clinical treatment issue and defines accessibility (including a not for routine commissioning position) of a medicine, medical device, diagnostic technique, surgical procedure or intervention for patients with a condition requiring a specialised service; |
| **“Clinical Reference Groups”** | means a group consisting of clinicians, commissioners, public health experts, patient and public voice representatives and professional associations, which offers specific knowledge and expertise on the best ways that Specialised Services should be provided; |
| **“Collaborative Commissioning Agreement”** | means an agreement under which NHS Commissioners set out collaboration arrangements in respect of commissioning Specialised Services Contracts; |
| “Commissioning Functions” | means the respective statutory functions of the Parties in arranging for the provision of services as part of the health service; |
| **“Commissioning Team”** | means those Specialised Services Staff that support the commissioning of Delegated Services immediately prior to this Agreement and, at the point that Staff transfer from NHS England to the relevant Host ICB, it shall mean those NHS England Staff and such other Staff appointed by that ICB to carry out a role in respect of commissioning the Delegated Services; |
| **“Commissioning Team Arrangements”** | means the arrangements through which the services of a Commissioning Team are made available to another NHS body for the purposes of commissioning the Delegated Services; |
| **“Complaints Sharing Protocol”** | has the definition given in paragraph 7.5 of Schedule 3; |
| **“Confidential Information”** | means any information or data in whatever form disclosed, which by its nature is confidential or which the disclosing Party acting reasonably states in writing to the receiving Party is to be regarded as confidential, or which the disclosing Party acting reasonably has marked ‘confidential’ (including, financial information, strategy documents, tenders, employee confidential information, development or workforce plans and information, and information relating to services) but which is not information which is disclosed in response to an FOIA request, or information which is published as a result of NHS England or government policy in relation to transparency; |
| **“Contracts”** | means any contract or arrangement in respect of the commissioning of any of the Delegated Services; |
| **“Contracting Standard Operating Procedure”** | means the Contracting Standard Operating Procedure produced by NHS England in respect of the Delegated Services; |
| **“Contractual Notice”** | means a contractual notice issued by NHS England to the ICB, from time to time and relating to allocation of contracts for the purposes of the Delegated Functions; |
| **“CQC”** | means the Care Quality Commission; |
| **“Data Controller”** | shall have the same meaning as set out in the UK GDPR; |
| **“Data Guidance”** | means any applicable guidance, guidelines, direction or determination, framework, code of practice, standard or requirement regarding information governance, confidentiality, privacy or compliance with Data Protection Legislation to the extent published and publicly available or their existence or contents have been notified to the ICB by NHS England and/or any relevant Regulatory or Supervisory Body. This includes but is not limited to guidance issued by NHS Digital, the National Data Guardian for Health & Care, the Department of Health and Social Care, NHS England, the Health Research Authority, the UK Health Security Agency and the Information Commissioner; |
| “Data Protection Impact Assessment” | means an assessment to identify and minimise the data protection risks in relation to any data sharing proposals; |
| “Data Protection Officer” | shall have the same meaning as set out in the Data Protection Legislation; |
| **“Data Processing Agreement”** | means a data processing agreement which should be in substantially the same form as a Data Processing Agreement template approved by NHS England; |
| **“Data Processor”** | shall have the same meaning as set out in the UK GDPR; |
| **“Data Protection Legislation”** | means the UK GDPR, the Data Protection Act 2018 and all applicable Law concerning privacy, confidentiality or the processing of personal data including but not limited to the Human Rights Act 1998, the Health and Social Care (Safety and Quality) Act 2015, the common law duty of confidentiality and the Privacy and Electronic Communications (EC Directive) Regulations 2003; |
| **“Data Sharing Agreement”** | means a data sharing agreement which should be in substantially the same form as a Data Sharing Agreement template approved by NHS England; |
| **“Data Subject”** | shall have the same meaning as set out in the UK GDPR; |
| **“Delegated Commissioning Group (DCG)”** | means the advisory forum in respect of Delegated Services set up by NHS England currently known as the Delegated Commissioning Group for Specialised Services; |
| **“Delegated Functions”** | means the statutory functions delegated by NHS England to the ICB under the Delegation and as set out in detail in this Agreement; |
| **“Delegated Funds”** | means the funds defined in Clause 10.2; |
| **“Delegated Services”** | means the services set out in Schedule 2 of this Agreement and which may be updated from time to time by NHS England; |
| **“Delegation”** | means the delegation of the Delegated Functions from NHS England to the ICB as described at Clause 6.1; |
| **“Developmental Arrangements”** | means the arrangements set out in Schedule 9 as amended or replaced; |
| **“Dispute”** | a dispute, conflict or other disagreement between the Parties arising out of or in connection with this Agreement; |
| **“Effective Date of Delegation”** | means for the Specialised Services set out in Schedule 2, the date set out in Schedule 2 as the date delegation will take effect in respect of that particular Specialised Service and for any future delegations means the date agreed by the parties as the date that the delegation will take effect; |
| **“EIR”** | means the Environmental Information Regulations 2004; |
| **“Escalation Rights”** | means the escalation rights as defined in Clause 15 *(Escalation Rights)*; |
| “Finance Guidance” | means the guidance, rules and operating procedures produced by NHS England that relate to these delegated arrangements, including but not limited to the following:   * Commissioning Change Management Business Rules; * Contracting Standard Operating Procedure; * Cashflow Standard Operating Procedure; * Finance and Accounting Standard Operating Procedure; * Service Level Framework Guidance; |
| **“Financial Year”** | shall bear the same meaning as in section 275 of the NHS Act; |
| **“FOIA”** | means the Freedom of Information Act 2000; |
| **“Further Arrangements”** | means arrangements for the exercise of Delegated Functions as defined at Clause 12; |
| **“Good Practice”** | means using standards, practices, methods and procedures conforming to the law, reflecting up-to-date published evidence and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced commissioner; |
| **“Guidance”** | means any applicable guidance, guidelines, direction or determination, framework, code of practice, standard or requirement to which the ICB has a duty to have regard (and whether specifically mentioned in this Agreement or not), to the extent that the same are published and publicly available or the existence or contents of them have been notified to the ICB by any relevant Regulatory or Supervisory Body but excluding Mandated Guidance; |
| “High Cost Drugs” | means medicines not reimbursed though national prices and identified on the NHS England high cost drugs list; |
| **“Host ICB”** | means the ICB that employs the Commissioning Team as part of the Commissioning Team Arrangements; |
| **“ICB”** | means an Integrated Care Board established pursuant to section 14Z25 of the NHS Act and named in the Particulars; |
| **“ICB Collaboration Arrangement”** | means an arrangement entered into by the ICB and at least one other ICB under which the parties agree joint working arrangements in respect of the exercise of the Delegated Functions; |
| **“ICB Deliverables”** | all documents, products and materials developed by the ICB or its Staff in relation to this Agreement and the Delegated Functions in any form and required to be submitted to NHS England under this Agreement, including data, reports, policies, plans and specifications; |
| “ICB Functions” | the Commissioning Functions of the ICB; |
| **“Information Governance Guidance for Serious Incidents”** | means the checklist Guidance for Reporting, Managing and Investigating Information Governance and Cyber Security Serious Incidents Requiring Investigation’ (2015) as may be amended or replaced; |
| **“Indemnity Arrangement”** | means either: (i) a policy of insurance; (ii) an arrangement made for the purposes of indemnifying a person or organisation; or (iii) a combination of (i) and (ii); |
| **“IPR”** | means intellectual property rights and includes inventions, copyright, patents, database right, trademarks, designs and confidential know-how and any similar rights anywhere in the world whether registered or not, including applications and the right to apply for any such rights; |
| **“Law”** | means any applicable law, statute, rule, bye-law, regulation, direction, order, regulatory policy, guidance or code, rule of court or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body (including any Regulatory or Supervisory Body); |
| **“Local Terms”** | means the terms set out in Schedule 8 *(Local Terms)* and/or such other Schedule or part thereof as designated as Local Terms; |
| **“Losses”** | means all damages, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or common law; |
| **“Managing Conflicts of Interest in the NHS”** | the NHS publication by that name available at: <https://www.england.nhs.uk/publication/managing-conflicts-of-interest-in-the-nhs-guidance-for-staff-and-organisations/> ; |
| **“Mandated Guidance”** | means any protocol, policy, guidance, guidelines, framework or manual relating to the exercise of the Delegated Functions and issued by NHS England to the ICB as Mandated Guidance from time to time, in accordance with Clause 7.34 which at the Effective Date of Delegation shall include the Mandated Guidance set out in Schedule 7; |
| **“National Commissioning Group (NCG)”** | means the advisory forum in respect of the Retained Services currently known as the National Commissioning Group for Specialised, Health and Justice and Armed Forces Services; |
| **“National Standards”** | means the service standards for each Specialised Service, as set by NHS England and included in Clinical Commissioning Policies or National Specifications; |
| **“National Specifications”** | the service specifications published by NHS England in respect of Specialised Services; |
| **“Need to Know”** | has the meaning set out in paragraph 1.2 of Schedule 6 (*Further Information Governance, Sharing and Processing Provisions)*; |
| **“NICE Regulations”** | means the National Institute for Health and Care Excellence (Constitution and Functions) and the Health and Social Care Information Centre (Functions) Regulations 2013 as amended or replaced; |
| **“NHS Act”** | means the National Health Service Act 2006 (as amended by the Health and Social Care Act 2012 and the Health and Care Act 2022 and other legislation from time to time); |
| **“NHS Counter Fraud Authority”** | means the Special Health Authority established by and in accordance with the NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017/958; |
| **“NHS Digital Data Security and Protection Toolkit”** | means the toolkit published by NHS Digital and available on the NHS Digital website at: <https://digital.nhs.uk/data-and-information/looking-after-information/data-security-and-information-governance/data-security-and-protection-toolkit> ; |
| **“NHS England”** | means the body established by section 1H of the NHS Act; |
| **“NHS England Deliverables”** | means all documents, products and materials NHS England in which NHS England holds IPRs which are relevant to this Agreement, the Delegated Functions or the Reserved Functions in any form and made available by NHS England to the ICB under this Agreement, including data, reports, policies, plans and specifications; |
| **“NHS England Functions”** | means all functions of NHS England as set out in legislation excluding any functions that have been expressly delegated; |
| **“Non-Personal Data”** | means data which is not Personal Data; |
| **“Operational Days”** | a day other than a Saturday, Sunday, Christmas Day, Good Friday or a bank holiday in England; |
| “**Oversight Framework**” | means the NHS Oversight Framework, as may be amended or replaced from time to time, and any relevant associated Guidance published by NHS England; |
| **“Party/Parties”** | means a party or both parties to this Agreement; |
| **“Patient Safety Incident Response Framework”** | means the framework published by NHS England and made available on the NHS England website at: <https://www.england.nhs.uk/patient-safety/incident-response-framework/> ; |
| **“Personal Data”** | shall have the same meaning as set out in the UK GDPR and shall include references to Special Category Personal Data where appropriate; |
| **“Population”** | means, in relation to any particular delegated service, the group of people for which the ICB would have the duty to arrange for the provision of that service under section 3 of the NHS Act (hospital and other services), if it was not a service which NHS England had a duty to arrange under its Specialised Commissioning Functions;  For guidance on the persons for whom an ICB is responsible for arranging services see *Who Pays? Determining which NHS commissioner is responsible for commissioning healthcare services and making payments to providers*; |
| **“Prescribed Specialised Services Manual”** | means the document which may be amended or replaced from time to time which is currently known as the prescribed specialised services manual which describes how NHS England and ICBs commission specialised services and sets out the identification rules which describe how NHS England and ICBs identify Specialised Services activity within data flows; |
| **“Provider Collaborative”** | means a group of Specialised Service Providers who have agreed to work together to improve the care pathway for one or more Specialised Services; |
| **“Provider Collaborative Guidance”** | means the guidance published by NHS England in respect of Provider Collaboratives; |
| **“Prohibited Act”** | means the ICB:   1. offering, giving, or agreeing to give NHS England (or an of their officers, employees or agents) any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining of performance of this Agreement, the Reserved Functions, the Delegation or any other arrangement with the ICB, or for showing or not showing favour or disfavour to any person in relation to this Agreement or any other arrangement with the ICB; and 2. in connection with this Agreement, paying or agreeing to pay any commission, other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to NHS England; or 3. committing an offence under the Bribery Act 2010; |
| “Regional Quality Group” | means a group set up to act as a strategic forum at which regional partners from across health and social care can share, identify and mitigate wider regional quality risks and concerns as well as share learning so that quality improvement and best practice can be replicated; |
| **“Regulatory or Supervisory Body”** | means any statutory or other body having authority to issue guidance, standards or recommendations with which the relevant Party and/or Staff must comply or to which it or they must have regard, including:  (i) CQC;  (ii) NHS England;  (iii) the Department of Health and Social Care;  (iv) the National Institute for Health and Care Excellence;  (v) Healthwatch England and Local Healthwatch;  (vi) the General Medical Council;  (vii) the General Dental Council;  (viii) the General Optical Council;  (ix) the General Pharmaceutical Council;  (x) the Healthcare Safety Investigation Branch; and  (xi) the Information Commissioner; |
| “**Relevant Clinical Networks”** | means those clinical networks identified by NHS England as required to support the commissioning of Specialised Services for the Population; |
| **“Relevant Information”** | means the Personal Data and Non-Personal Data processed under the Delegation and this Agreement, and includes, where appropriate, “confidential patient information” (as defined under section 251 of the NHS Act), and “patient confidential information” as defined in the 2013 Report, The Information Governance Review – “*To Share or Not to Share?”*); |
| **“Reserved Functions”** | means statutory functions of NHS England that it has not delegated to the ICB including but not limited to those set out in the Schedules to this Agreement; |
| “Retained Services” | means those Specialised Services for which NHS England shall retain commissioning responsibility, as set out in Schedule 5; |
| **“Secretary of State”** | means the Secretary of State for Health and Social Care; |
| “Shared Care Arrangements” | means arrangements put in place to support patients receiving elements of their care closer to home, whilst still ensuring that they have access to the expertise of a specialised centre and that care is delivered in line with the expectation of the relevant National Specification; |
| “Single Point of Contact” | means the member of Staff appointed by each relevant Party in accordance with Paragraph 9.6 of Schedule 6; |
| **“Special Category Personal Data”** | shall have the same meaning as in UK GDPR; |
| “Specialised Commissioning Budget” | means the budget identified by NHS England for the purpose of exercising the Delegated Functions; |
| "Specialised Commissioning Functions" | means the statutory functions conferred on NHS England under Section 3B of the NHS Act and Regulation 11 and Schedule 4 of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012/2996 (as amended or replaced); |
| “Specialised Services” | means the services commissioned in exercise of the Specialised Commissioning Functions; |
| “Specialised Services Contract” | means a contract for the provision of Specialised Services entered into in the exercise of the Specialised Commissioning Functions; |
| “Specialised Services Provider” | means a provider party to a Specialised Services Contract; |
| “Specialised Services Staff” | means the Staff or roles identified as carrying out the Delegated Functions immediately prior to the date of this Agreement; |
| **“Specified Purpose”** | means the purpose for which the Relevant Information is shared and processed, being to facilitate the exercise of the ICB’s Delegated Functions and NHS England’s Reserved Functions as specified in paragraph **Error! Reference source not found.** of Schedule 6 *(Further Information Governance, Sharing and Processing Provisions)* to this Agreement; |
| **“Staff or Staffing”** | means the Parties’ employees, officers, elected members, directors, voluntary staff, consultants, and other contractors and sub-contractors acting on behalf of either Party (whether or not the arrangements with such contractors and sub-contractors are subject to legally binding contracts) and such contractors’ and their sub-contractors’ personnel; |
| **“Sub-Delegate”** | shall have the meaning in Clause 12.2; |
| **“System Quality Group”** | means a group set up to identify and manage concerns across the local system. The system quality group shall act as a strategic forum at which partners from across the local health and social care footprint can share issues and risk information to inform response and management, identify and mitigate quality risks and concerns as well as share learning and best practice; |
| **“Transition Period”** | the period starting on 1 April 2025 and ending on the Applicable Date; |
| **“Triple Aim”** | means the duty to have regard to wider effect of decisions, which is placed on each of the Parties under section 13NA (as regards NHS England) and section 14Z43 (as regards the ICB) of the NHS Act; |
| **“UK GDPR”** | means [Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016](https://uk.westlaw.com/Document/I5001D540149911E9AF43FBE4B595A7D5/View/FullText.html?originationContext=document&transitionType=DocumentItem&contextData=(sc.DocLink)) on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of [section 3](https://uk.westlaw.com/Document/ICE2133E07A8D11E8A094CE87F0518B3C/View/FullText.html?originationContext=document&transitionType=DocumentItem&contextData=(sc.DocLink)) of the [European Union (Withdrawal) Act 2018](https://uk.westlaw.com/Document/ICE2133E07A8D11E8A094CE87F0518B3C/View/FullText.html?originationContext=document&transitionType=DocumentItem&contextData=(sc.DocLink)); |
| **“Variation Proposal”** | means a written proposal for a variation to the Agreement, which complies with the requirements of Clause 26.5. |

SCHEDULE 2: Delegated Services

**Delegated Services**

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

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

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

All future changes to sub-service line codes relating to Delegated Services will be developed with ICBs. ICBs will be engaged and have the opportunity to provide comment on the proposed change before it is made. Changes to the sub-service line codes will be discussed at and agreed by the Delegated Commissioning Group, hosted by NHS England and attended by ICB representatives. If changes are agreed, the latest lists will be made available on the NHS England website here [[NHS England » NHS England service codes by year 2024/25](https://www.england.nhs.uk/publication/nhs-england-service-codes/)] and a more detailed version on the Future NHS site here [[Service Portfolio Analysis - Integrating specialised services within Integrated Care Systems - FutureNHS Collaboration Platform](https://future.nhs.uk/NationalSpecialisedCommissioning/view?objectID=36248848)].

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

The following Specialised Services will be delegated to the ICB on 1 April 2025:

| **PSS Manual Line** | **PSS Manual Line Description** | **Service Line Code** | **Service Line Description** |
| --- | --- | --- | --- |
| 2 | Adult congenital heart disease services | 13X | Adult congenital heart disease services (non-surgical) |
|  |  | 13Y | Adult congenital heart disease services (surgical) |
| 3 | Adult specialist pain management services | 31Z | Adult specialist pain management services |
| 4 | Adult specialist respiratory services | 29M | Interstitial lung disease (adults) |
|  |  | 29S | Severe asthma (adults) |
|  |  | 29L | Lung volume reduction (adults) |
|  |  | **29V** | Complex home ventilation (adults) |
| 5 | Adult specialist rheumatology services | 26Z | Adult specialist rheumatology services |
| 6 | Adult secure mental health services | 22S(a) | Secure and specialised mental health services (adult) (medium and low) – excluding LD/ASD/WEMS/ABI/DEAF |
|  |  | 22S(c) | Secure and specialised mental health services (adult) (Medium and low) – ASD MHLDA PC |
|  |  | 22S(d) | Secure and specialised mental health services (adult) (Medium and low) – LD MHLDA PC |
| 7 | Adult Specialist Cardiac Services | 13A | Complex device therapy |
|  |  | 13B | Cardiac electrophysiology & ablation |
|  |  | 13C | Inherited cardiac conditions |
|  |  | 13E | Cardiac surgery (inpatient) |
|  |  | 13F | PPCI for ST- elevation myocardial infarction |
|  |  | 13H | Cardiac magnetic resonance imaging |
|  |  | 13T | Complex interventional cardiology |
|  |  | 13Z | Cardiac surgery (outpatient) |
| 8 | Adult specialist eating disorder services | 22E | Adult specialist eating disorder services MHLDA PC |
| 9 | Adult specialist endocrinology services | 27E | Adrenal Cancer (adults) |
|  |  | 27Z | Adult specialist endocrinology services |
| 11 | Adult specialist neurosciences services | 08O | Neurology (adults) |
|  |  | 08P | Neurophysiology (adults) |
|  |  | 08R | Neuroradiology (adults) |
| 08S | Neurosurgery (adults) |
| 08T | Mechanical Thrombectomy |
| 58A | Neurosurgery LVHC national: surgical removal of clival chordoma and chondrosarcoma |
| 58B | Neurosurgery LVHC national: EC-IC bypass (complex/high flow) |
| 58C | Neurosurgery LVHC national: transoral excision of dens |
| 58D | Neurosurgery LVHC regional: anterior skull based tumours |
|  |  | 58E | Neurosurgery LVHC regional: lateral skull based tumours |
|  |  | 58F | Neurosurgery LVHC regional: surgical removal of brainstem lesions |
|  |  | 58G | Neurosurgery LVHC regional: deep brain stimulation |
|  |  | 58H | Neurosurgery LVHC regional: pineal tumour surgeries - resection |
|  |  | 58I | Neurosurgery LVHC regional: removal of arteriovenous malformations of the nervous system |
|  |  | 58J | Neurosurgery LVHC regional: epilepsy |
|  |  | 58K | Neurosurgery LVHC regional: insula glioma’s/complex low grade glioma’s |
|  |  | 58L | Neurosurgery LVHC local: anterior lumbar fusion |
|  | Adult specialist neurosciences services (continued) | 58M | Neurosurgery LVHC local: removal of intramedullary spinal tumours |
|  |  | 58N | Neurosurgery LVHC local: intraventricular tumours resection |
|  |  | 58O | Neurosurgery LVHC local: surgical repair of aneurysms (surgical clipping) |
|  |  | 58P | Neurosurgery LVHC local: thoracic discectomy |
|  |  | 58Q | Neurosurgery LVHC local: microvascular decompression for trigeminal neuralgia |
|  |  | 58R | Neurosurgery LVHC local: awake surgery for removal of brain tumours |
|  |  | 58S | Neurosurgery LVHC local: removal of pituitary tumours including for Cushing’s and acromegaly |
| 12 | Adult specialist ophthalmology services | 37C | Artificial Eye Service |
|  |  | 37Z | Adult specialist ophthalmology services |
| 13 | Adult specialist orthopaedic services | 34A | Orthopaedic surgery (adults) |
|  |  | 34R | Orthopaedic revision (adults) |
| 15 | Adult specialist renal services | 11B | Renal dialysis |
|  |  | 11C | Access for renal dialysis |
|  |  | 11T | Renal Transplantation |
| 16 | Adult specialist services for people living with HIV | 14A | Adult specialised services for people living with HIV |
| 17 | Adult specialist vascular services | 30Z | Adult specialist vascular services |
| 18 | Adult thoracic surgery services | 29B | Complex thoracic surgery (adults) |
|  |  | 29Z | Adult thoracic surgery services: outpatients |
| 29 | Haematopoietic stem cell transplantation services (adults and children) | 02Z | Haematopoietic stem cell transplantation  services (adults and children) |
|  |  | ECP | Extracorporeal photopheresis service  (adults and children) |
| 30 | Bone conduction hearing implant services (adults and children) | 32B | Bone anchored hearing aids service |
|  |  | 32D | Middle ear implantable hearing aids service |
| 32 | Children and young people’s inpatient  mental health service | 23K | Tier 4 CAMHS (general adolescent inc  eating disorders) MHLDA PC |
|  |  | 23L | Tier 4 CAMHS (low secure) MHLDA PC |
|  |  | 23O | Tier 4 CAMHS (PICU) MHLDA PC |
|  |  | 23U | Tier 4 CAMHS (LD) MHLDA PC |
|  |  | 23V | Tier 4 CAMHS (ASD) MHLDA PC |
| 35 | Cleft lip and palate services (adults and children) | 15Z | Cleft lip and palate services (adults and children) |
| 36 | Cochlear implantation services (adults and children) | 32A | Cochlear implantation services (adults and children) |
| 40 | Complex spinal surgery services (adults and children) | 06Z | Complex spinal surgery services (adults and children) |
|  |  | 08Z | Complex neuro-spinal surgery services (adults and children) |
| 45 | Cystic fibrosis services (adults and  children) | 10Z | Cystic fibrosis services (adults and children) |
| 54 | Fetal medicine services (adults and adolescents) | 04C | Fetal medicine services (adults and adolescents) |
| 58 | Specialist adult gynaecological surgery and urinary surgery services for females | 04A | Severe Endometriosis |
|  |  | 04D | Complex urinary incontinence and genital prolapse |
| 58A | Specialist adult urological surgery services for men | 41P | Penile implants |
|  |  | 41S | Surgical sperm removal |
|  |  | 41U | Urethral reconstruction |
| 59 | Specialist allergy services (adults and children) | 17Z | Specialist allergy services (adults and children) |
| 61 | Specialist dermatology services (adults and children) | 24Z | Specialist dermatology services (adults and children) |
| 62 | Specialist metabolic disorder services (adults and children) | 36Z | Specialist metabolic disorder services (adults and children) |
| 63 | Specialist pain management services for children | 23Y | Specialist pain management services for children |
| 64 | Specialist palliative care services for children and young adults | E23 | Specialist palliative care services for children and young adults |
| 65 | Specialist services for adults with infectious diseases | 18A | Specialist services for adults with infectious diseases |
|  |  | 18E | Specialist Bone and Joint Infection (adults) |
| 72 | Major trauma services (adults and children) | 34T | Major trauma services (adults and children) |
| 78 | Neuropsychiatry services (adults and children) | 08Y | Neuropsychiatry services (adults and children) |
| 83 | Paediatric cardiac services | 23B | Paediatric cardiac services |
| 94 | Radiotherapy services (adults and children) | 01R | Radiotherapy services (Adults) |
|  |  | 51R | Radiotherapy services (Children) |
|  |  | 01S | Stereotactic Radiosurgery / radiotherapy |
| 98 | Specialist secure forensic mental health  services for young people | 24C | FCAMHS MHLDA PC |
| 103A | Specialist adult haematology services | 03C | Castleman disease |
| 105 | Specialist cancer services (adults) | 01C | Chemotherapy |
|  |  | 01J | Anal cancer (adults) |
|  |  | 01K | Malignant mesothelioma (adults) |
|  |  | 01M | Head and neck cancer (adults) |
|  |  | 01N | Kidney, bladder and prostate cancer (adults) |
|  |  | 01Q | Rare brain and CNS cancer (adults) |
|  |  | 01U | Oesophageal and gastric cancer (adults) |
|  |  | 01V | Biliary tract cancer (adults) |
|  |  | 01W | Liver cancer (adults) |
|  |  | 01X | Penile cancer (adults) |
|  |  | 01Y | Cancer Outpatients (adults) |
|  |  | 01Z | Testicular cancer (adults) |
|  |  | 04F | Gynaecological cancer (adults) |
|  |  | 19V | Pancreatic cancer (adults) |
|  |  | 19C | Biliary tract cancer surgery (adults) |
|  |  | 19M | Liver cancer surgery (adults) |
|  |  | 19Q | Pancreatic cancer surgery (adults) |
|  |  | 24Y | Skin cancer (adults) |
|  |  | 29E | Management of central airway obstruction (adults) |
|  |  | 51A | Interventional oncology (adults) |
|  |  | 51B | Brachytherapy (adults) |
| 51C | Molecular oncology (adults) |
|  |  | 61M | Head and neck cancer surgery (adults) |
|  |  | 61Q | Ophthalmic cancer surgery (adults) |
|  |  | 61U | Oesophageal and gastric cancer surgery (adults) |
|  |  | 61Z | Testicular cancer surgery (adults) |
| 33C | Transanal endoscopic microsurgery (adults) |
| 33D | Distal sacrectomy for advanced and recurrent rectal cancer (adults) |
| 106 | Specialist cancer services for children and young adults | 01T | Teenage and young adult cancer |
|  |  | 23A | Children's cancer |
| 106A | Specialist colorectal surgery services (adults) | 33A | Complex surgery for faecal incontinence (adults) |
|  |  | 33B | Complex inflammatory bowel disease (adults) |
| 107 | Specialist dentistry services for children | 23P | Specialist dentistry services for children |
| 108 | Specialist ear, nose and throat services for children | 23D | Specialist ear, nose and throat services for children |
| 109 | Specialist endocrinology services for children | 23E | Specialist endocrinology and diabetes services for children |
| 110 | Specialist gastroenterology, hepatology and nutritional support services for children | 23F | Specialist gastroenterology, hepatology and nutritional support services for children |
| 112 | Specialist gynaecology services for children | 73X | Specialist paediatric surgery services - gynaecology |
| 113 | Specialist haematology services for children | 23H | Specialist haematology services for children |
| 114 | Specialist haemoglobinopathy services  (adults and children) | 38S | Sickle cell anaemia (adults and children) |
|  |  | 38T | Thalassemia (adults and children) |
| 115 | Specialist immunology services for  adults with deficient immune systems | 16X | Specialist immunology services for adults with deficient immune systems |
| 115A | Specialist immunology services for  children with deficient immune systems | 16Y | Specialist immunology services for children with deficient immune systems |
| 115B | Specialist maternity care for adults diagnosed with abnormally invasive placenta | 04G | Specialist maternity care for women diagnosed with abnormally invasive placenta |
| 118 | Neonatal critical care services | NIC | Specialist neonatal care services |
| 119 | Specialist neuroscience services for children | 23M | Specialist neuroscience services for children |
|  |  | 07Y | Paediatric neurorehabilitation |
|  |  | 08J | Selective dorsal rhizotomy |
| 120 | Specialist ophthalmology services for children | 23N | Specialist ophthalmology services for children |
| 121 | Specialist orthopaedic services for children | 23Q | Specialist orthopaedic services for children |
| 122 | Paediatric critical care services | PIC | Specialist paediatric intensive care services |
| 124 | Specialist perinatal mental health services (adults and adolescents) | 22P | Specialist perinatal mental health  services (adults and adolescents)  MHLDA PC |
| 125 | Specialist plastic surgery services for children | 23R | Specialist plastic surgery services for children |
| 126 | Specialist rehabilitation services for patients with highly complex needs (adults and children) | 07Z | Specialist rehabilitation services for patients with highly complex needs (adults and children) |
| 127 | Specialist renal services for children | 23S | Specialist renal services for children |
| 128 | Specialist respiratory services for children | 23T | Specialist respiratory services for children |
| 129 | Specialist rheumatology services for children | 23W | Specialist rheumatology services for children |
| 130 | Specialist services for children with infectious diseases | 18C | Specialist services for children with infectious diseases |
| 131 | Specialist services for complex liver, biliary and pancreatic diseases in adults | 19L | Specialist services for complex liver diseases in adults |
|  |  | 19P | Specialist services for complex pancreatic diseases in adults |
|  |  | 19Z | Specialist services for complex liver, biliary and pancreatic diseases in adults |
|  |  | 19B | Specialist services for complex biliary diseases in adults |
| 132 | Specialist services for haemophilia and other related bleeding disorders (adults and children) | 03X | Specialist services for haemophilia and other related bleeding disorders (Adults) |
|  |  | 03Y | Specialist services for haemophilia and other related bleeding disorders (Children) |
| 134 | Specialist services to support patients with complex physical disabilities (excluding wheelchair services) (adults and children) | 05C | Specialist augmentative and alternative  communication aids (adults and children) |
|  |  | 05E | Specialist environmental controls (adults and children) |
|  |  | 05P | Prosthetics (adults and children) |
| 135 | Specialist paediatric surgery services | 23X | Specialist paediatric surgery services - general surgery |
| 136 | Specialist paediatric urology services | 23Z | Specialist paediatric urology services |
| 139A | Specialist morbid obesity services for children | 35Z | Specialist morbid obesity services for children |
| 139AA | Termination services for patients with medical complexity and or significant co-morbidities requiring treatment in a specialist hospital | 04P | Termination services for patients with medical complexity and or significant co-morbidities requiring treatment in a specialist hospital |
| ACC | Adult Critical Care | ACC | Adult critical care |

SCHEDULE 3: Delegated Functions

1. **Introduction**
   1. Subject to the reservations set out in Schedule 4 (*Reserved Functions*) and the provisions of any Developmental Arrangements, NHS England delegates to the ICB the statutory function for commissioning the Delegated Services. This Schedule 3 sets out the key powers and duties that the ICB will be required to carry out in exercise of the Delegated Functions being, in summary:
      1. decisions in relation to the commissioning and management of Delegated Services;
      2. planning Delegated Services for the Population, including carrying out needs assessments;
      3. undertaking reviews of Delegated Services in respect of the Population;
      4. supporting the management of the Specialised Commissioning Budget;
      5. co-ordinating a common approach to the commissioning and delivery of Delegated Services with other health and social care bodies in respect of the Population where appropriate; and
      6. such other ancillary activities that are necessary to exercise the Specialised Commissioning Functions.
   2. When exercising the Delegated Functions, ICBs are not acting on behalf of NHS England but acquire rights and incur any liabilities in exercising the functions.
2. **General Obligations** 
   1. The ICB is responsible for planning the commissioning of the Delegated Services in accordance with this Agreement. This includes ensuring at all times that the Delegated Services are commissioned in accordance with the National Standards.
   2. The ICB shall put in place arrangements for collaborative working with other ICBs in accordance with Clause 8 (*Requirement for ICB Collaboration Arrangement*).
   3. The Developmental Arrangements set out in Schedule 9 shall apply.

**Specific Obligations**

1. **Assurance and Oversight** 
   1. The ICB must at all times operate in accordance with:
      1. the Oversight Framework published by NHS England;
      2. any national oversight and/or assurance guidance in respect of Specialised Services and/or joint working arrangements; and
      3. any other relevant NHS oversight and assurance guidance;

collectively known as the “Assurance Processes”.

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

1. **Attendance at governance meetings**
   1. The ICB must ensure that there is appropriate representation at forums established through the ICB Collaboration Arrangement.
   2. The ICB must ensure that an individual(s) has been nominated to represent the ICB at the Delegated Commissioning Group (DCG) and regularly attends that group. This could be a single representative on behalf of the members of an ICB Collaboration Arrangement. Where that representative is not an employee of the ICB, the ICB must have in place appropriate arrangements to enable the representative to feedback to the ICB.
   3. The ICB should also ensure that they have a nominated representative with appropriate subject matter expertise to attend National Standards development forums as requested by NHS England. This could be a single representative on behalf of the members of an ICB Collaboration Arrangement. Where that representative is not an employee of the ICB, the ICB must have in place appropriate arrangements to enable the representative to feedback to the ICB.
2. **Clinical Leadership and Clinical Reference Groups** 
   1. The ICB shall support the development of clinical leadership and expertise at a local level in respect of Specialised Services.
   2. The ICB shall support local and national groups including Relevant Clinical Networks and Clinical Reference Groups that are involved in developing Clinical Commissioning Policies, National Specifications, National Standards and knowledge around Specialised Services.
3. **Clinical Networks** 
   1. The ICB shall participate in the planning, governance and oversight of the Relevant Clinical Networks, including involvement in agreeing the annual plan for each Relevant Clinical Network. The ICB shall seek to align the network priorities with system priorities and to ensure that the annual plan for the Relevant Clinical Network reflects local needs and priorities.
   2. The ICB will be involved in the development and agreement of a single annual plan for the Relevant Clinical Network.
   3. The ICB shall monitor the implementation of the annual plan and receive an annual report from the Relevant Clinical Network that considers delivery against the annual plan.
   4. The ICB shall actively support and participate in dialogue with Relevant Clinical Networks and shall ensure that there is a clear and effective mechanism in place for giving and receiving information with the Relevant Clinical Networks including network reports.
   5. The ICB shall support NHS England in the management of Relevant Clinical Networks.
   6. The ICB shall actively engage and promote Specialised Service Provider engagement in appropriate Relevant Clinical Networks.
   7. Where a Relevant Clinical Network identifies any concern, the ICB shall seek to consider and review that concern as soon as is reasonably practicable and take such action, if any, as it deems appropriate.
   8. The ICB shall ensure that network reports are considered where relevant as part of exercising the Delegated Functions.
4. **Complaints** 
   1. This part (*Complaints*) applies from the Effective Date of Delegation or the date on which the Commissioning Team is transferred to the relevant Host ICB (whichever is the later) (“the Applicable Date”).
   2. The ICB will be responsible for all complaints in respect of the Delegated Services that are received from the Applicable Date, regardless of whether the circumstances to which the complaint relates occurred prior to the Applicable Date.
   3. For the avoidance of doubt, NHS England will retain responsibility for all complaints in respect of the Delegated Services that were received prior to the Applicable Date.
   4. At all times the ICB shall operate in accordance with the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 and shall co-operate with other ICBs to ensure that complaints are managed effectively.
   5. Where NHS England has provided the ICB with a protocol for sharing complaints in respect of any or all Specialised Services then those provisions shall apply and are deemed to be part of this Agreement (the “Complaints Sharing Protocol”).
   6. The ICB shall:
      1. work with local organisations, including other ICBs that are party to the ICB Collaboration Arrangement or Commissioning Team, to ensure that arrangements are in place for the management of complaints in respect of the Delegated Services.
      2. consider, in the context of the ICB Collaboration Arrangement for the commissioning of the Delegated Services and employment arrangements for the Commissioning Team, whether it is best placed to manage the complaint, or whether it should be transferred to another ICB that is better placed to affect change.
      3. provide the relevant individuals at NHS England with appropriate access to complaints data held by the ICB that is necessary to carry out the complaints function as set out in the Complaints Sharing Protocol.
      4. Provide such information relating to key performance indicators (“KPIs”) as is requested by NHS England.
      5. co-operate with NHS England in respect of the review of complaints related to the Delegated Services and shall, on request, share any learning identified in carrying out the complaints function.
      6. take part in any peer review process put in place in respect of the complaints function.
5. **Commissioning and optimisation of High Cost Drugs** 
   1. The ICB must support the effective and efficient commissioning of High Cost Drugs for Delegated Services.
   2. The ICB must support NHS England in its responsibility for the financial management and reimbursement of High Cost Drugs for Specialised Services. The ICB and NHS England must agree the support to be provided. The support must be set out in writing and may include staffing, processes, reporting, prescribing analysis and oversight arrangements, but is not limited to these matters.
   3. The ICB must ensure equitable access to High Cost Drugs used within the Delegated Services that may be impacted by health inequalities and develop a strategy for delivering equitable access.
   4. The ICB must develop and implement Shared Care Arrangements across the Area of the ICB.
   5. The ICB must provide clinical and commissioning leadership in the commissioning and management of High Cost Drugs.
   6. The ICB must ensure:
      1. safe and effective use of High Cost Drugs in line with national Clinical Commissioning Policies, NICE technology appraisal or highly specialised technologies guidance;
      2. effective introduction of new medicines;
      3. compliance with all NHS England commercial processes and frameworks for High Cost Drugs;
      4. Specialised Services Providers adhere to all NHS England commercial processes and frameworks for High Cost Drugs;
      5. appropriate use of Shared Care Arrangements, ensuring that they are safe and well monitored; and
      6. consistency of prescribing and unwarranted prescribing variation are addressed.
   7. The ICB must engage in the development, implementation and monitoring of initiatives that enable use of better value medicines. Such schemes include those at a local, regional or national level.
   8. Where the relevant pharmacy teams have transferred to the ICB or Host ICB, the ICB must provide:
      1. support to prescribing networks and forums, including but not limited to, Immunoglobulin Assessment panels, prescribing networks and medicines optimisation networks;
      2. expert medicines advice and input into the Individual Funding Request process for Delegated Services;
      3. advice and input to national procurement and other commercial processes relating to medicines and High Cost Drugs (for example, arrangements for Homecare);
      4. advice and input to NHS England policy development relating to medicines and High Cost Drugs.

1. **Contracting** 
   1. The ICB shall be responsible for ensuring appropriate arrangements are in place for the commissioning of the Delegated Services which for the avoidance of doubt includes:
      1. co-ordinating or collaborating in the award of appropriate Specialised Service Contracts;
      2. drafting of the contract schedules so that it reflects Mandatory Guidance, National Specifications and any specific instructions from NHS England; and
      3. management of Specialised Services Contracts.
   2. The ICB must comply with the Contracting Standard Operating Procedure issued by NHS England.
   3. In relation to the contracting for NHS England Retained Services where the ICB has agreed to act as the co-ordinating commissioner, to implement NHS England’s instructions in relation to those Retained Services and, where appropriate, put in place a Collaborative Commissioning Agreement with NHS England as a party.
2. **Data Management and Analytics** 
   1. The ICB shall:
      1. lead on standardised collection, processing, and sharing of data for Delegated Services in line with broader NHS England, Department of Health and Social Care and government data strategies;
      2. lead on the provision of data and analytical services to support commissioning of Delegated Services;
      3. ensure collaborative working across partners on agreed programmes of work focusing on provision of pathway analytics;
      4. share expertise and existing reporting tools with partner ICBs in the ICB Collaboration Arrangement;
      5. ensure interpretation of data is made available to NHS England and other ICBs within the ICB Collaboration Arrangement;
      6. ensure data and analytics teams within ICBs and NHS England work collaboratively on jointly agreed programmes of work focusing on provision of pathway analytics;
   2. The ICB must ensure that the data reporting and analytical frameworks, as set out in Mandated Guidance or as otherwise required by NHS England, are in place to support the commissioning of the Delegated Services.
3. **Finance** 
   1. The provisions of Clause 10 (*Finance*) of this Agreement set out the financial requirements in respect of the Delegated Functions.
4. **Freedom of Information and Parliamentary Requests** 
   1. The ICB shall lead on the handling, management and response to all Freedom of Information and parliamentary correspondence relating to Delegated Services.
5. **Incident Response and Management** 
   1. The ICB shall:
      1. lead on local incident management for Delegated Services as appropriate to the stated incident level;
      2. support national and regional incident management relating to Specialised Services; and
      3. ensure surge events and actions relating to Specialised Services are included in ICB escalation plans.
   2. In the event that an incident is identified that has an impact on the Delegated Services (such as potential failure of a Specialised Services Provider), the ICB shall fully support the implementation of any requirements set by NHS England around the management of such incident and shall provide full co-operation to NHS England to enable a co-ordinated national approach to incident management. NHS England retains the right to take decisions at a national level where it determines this is necessary for the proper management and resolution of any such incident and the ICB shall be bound by any such decision.
6. **Individual Funding Requests** 
   1. The ICB shall provide any support required by NHS England in respect of determining an Individual Funding Request and shall implement the decision of the Individual Funding Request panel.
7. **Innovation and New Treatments** 
   1. The ICB shall support local implementation of innovative treatments for Delegated Services.
8. **Mental Health, Learning Disability and Autism Specialised Services** 
   1. The ICB will oversee the lead provider contract(s) relating to mental health, learning disability and autism (MHLDA) Provider Collaboratives that are transferred to the ICB on 1 April 2025 by NHS England. This includes complying with all terms and conditions of the contract(s), including in respect of notice periods and extensions.
   2. If the ICB proposes to terminate a MHLDA lead provider contract before the end of its term, it must seek written approval from NHS England in advance.
   3. In the performance of its commissioning responsibilities for MHLDA Specialised Services, the ICB shall:
      1. Have regard to any commissioning guidance relating to MHLDA Specialised Services issued by NHS England;
      2. Comply with the requirements of the Mental Health Investment Standard and related guidance issued by NHS England;
      3. Generally have regard to the need to commission MHLDA Specialised Services for the ICB's Population in such a manner as to ensure safe, efficient and effective services, across appropriate geographies, and which may require partnership working across other ICB or other organisational boundaries.
      4. Ensure that its case management function will work collaboratively across Delegated Services and Retained Services to support the oversight and progression of individual patient care, including the movement across elements of the care pathway.
9. **Provider Selection and Procurement** 
   1. The ICB shall:
      1. run appropriate local provider selection and procurement processes for Delegated Services;
      2. align all procurement processes with any changes to national procurement policy (for example new legislation) for Delegated Services;
      3. support NHS England with national procurements where required with subject matter expertise on provider engagement and provider landscape; and
      4. monitor and provide advice, guidance and expertise to NHS England on the overall provider market and provider landscape.
   2. In discharging these responsibilities, the ICB must comply at all times with Law and any relevant Guidance including but not limited to Mandated Guidance; any applicable procurement law and Guidance on the selection of, and award of contracts to, providers of healthcare services.
   3. When the ICB makes decisions in connection with the awarding of Specialised Services Contracts, it should ensure that it can demonstrate compliance with requirements for the award of such Contracts, including that the decision was:
      1. made in the best interest of patients, taxpayers and the Population;
      2. robust and defensible, with conflicts of interests appropriately managed;
      3. made transparently; and
      4. compliant with relevant Guidance and legislation.
10. **Quality** 
    1. The ICB must ensure that appropriate arrangements for quality oversight are in place. This must include:
       1. clearly defined roles and responsibilities for ensuring governance and oversight of Delegated Services;
       2. defined roles and responsibilities for ensuring robust communication and appropriate feedback, particularly where Delegated Services are commissioned through an arrangement with one or more other ICBs;
       3. working with providers and partner organisations to address any issues relating to Delegated Services and escalate appropriately if such issues cannot be resolved;
       4. developing and standardising processes that align with regional systems to ensure oversight of the quality of Delegated Services, and participating in local System Quality Groups and Regional Quality Groups, or their equivalent;
       5. ensuring processes are robust and concerns are identified, mitigated and escalated as necessary;
       6. ensuring providers are held to account for delivery of safe, patient-focused and quality care for Delegated Services, including mechanisms for monitoring patient complaints, concerns and feedback; and
       7. the implementation of the Patient Safety Incident Response Framework for the management of incidents and serious events, appropriate reporting of any incidents, undertaking any appropriate patient safety incident investigation and obtaining support as required.
    2. The ICB must establish a plan to ensure that the quality of the Delegated Services is measured consistently, using nationally and locally agreed metrics triangulated with professional insight and soft intelligence.
    3. The ICB must ensure that the oversight of the quality of the Delegated Services is integrated with wider quality governance in the local system and aligns with the NHS England National Quality Board’s recommended quality escalation processes.
    4. The ICB must ensure that there is a System Quality Group (or equivalent) to identify and manage concerns across the local system.
    5. The ICB must ensure that there is appropriate representation at any Regional Quality Groups or their equivalent.
    6. The ICB must have in place all appropriate arrangements in respect of child and adult safeguarding and comply with all relevant Guidance.
11. **Service Planning and Strategic Priorities** 
    1. The ICB is responsible for setting local commissioning strategy, policy and priorities and planning for and carrying out needs assessments for the Delegated Services.
    2. In planning, commissioning and managing the Delegated Services, the ICB must have processes in place to assess and monitor equitable patient access, in accordance with the access criteria set out in Clinical Commissioning Policies and National Specifications, taking action to address any apparent anomalies.
    3. The ICB must ensure that it works with Specialised Service Providers and Provider Collaboratives to translate local strategic priorities into operational outputs for Delegated Services.
    4. The ICB shall provide input into any consideration by NHS England as to whether the commissioning responsibility in respect of any of the Retained Services should be delegated.
12. **National Standards, National Specifications and Clinical Commissioning Policies** 
    1. The ICB shall provide input into national decisions on National Standards and national transformation regarding Delegated Services through attendance at governance meetings.
    2. The ICB shall facilitate engagement with local communities on National Specification development.
    3. The ICB must comply with the National Specifications and relevant Clinical Commissioning Policies and ensure that all clinical Specialised Services Contracts accurately reflect Clinical Commissioning Policies and include the relevant National Specification, where one exists in relation to the relevant Delegated Service.
    4. The ICB must co-operate with any NHS England activities relating to the assessment of compliance against National Standards, including through the Assurance Processes.
    5. The ICB must have appropriate mechanisms in place to ensure National Standards and National Specifications are being adhered to.
    6. Where the ICB has identified that a Specialised Services Provider may not be complying with the National Standards set out in the relevant National Specification, the ICB shall consider the action to take to address this in line with the Assurance Processes.
13. **Transformation** 
    1. The ICB shall:
       1. prioritise pathways and services for transformation according to the needs of its Population and opportunities for improvement in ICB commissioned services and for Delegated Services;
       2. lead ICB and ICB Collaboration Arrangement driven transformation programmes across pathways for Delegated Services;
       3. lead the delivery locally of transformation in areas of national priority (such as Cancer, Mental Health and Learning Disability and Autism), including supporting delivery of commitments in the NHS Long Term Plan;
       4. support NHS England with agreed transformational programmes for Retained Services;
       5. support NHS England with agreed transformational programmes and identify future transformation programmes for consideration and prioritisation for Delegated Services where national co-ordination and enablement may support transformation;
       6. work collaboratively with NHS England on the co-production and co-design of transformation and improvement interventions and solutions in those areas prioritised; and
       7. ensure Relevant Clinical Networks and other clinical networks use levers to facilitate and embed transformation at a local level for Delegated Services.

SCHEDULE 4: Reserved Functions

**Introduction**

1. **Reserved Functions in Relation to the Delegated Services** 
   1. In accordance with Clause 6.2 of this Agreement, all functions of NHS England other than those defined as Delegated Functions, are Reserved Functions.
   2. This Schedule sets out further provision regarding the carrying out of the Reserved Functions as they relate to the Delegated Functions.
   3. The ICB will work collaboratively with NHS England and will support and assist NHS England to carry out the Reserved Functions.
   4. The following functions and related activities shall continue to be exercised by NHS England.
2. **Retained Services** 
   1. NHS England shall commission the Retained Services set out in Schedule 5.
3. **Reserved Specialised Service Functions**
   1. NHS England shall carry out the functions set out in this Schedule 4 in respect of the Delegated Services.

**Reserved Functions**

1. **Assurance and Oversight** 
   1. NHS England shall:
      1. have oversight of what ICBs are delivering (inclusive of Delegated Services) for their Populations and all patients;
      2. design and implement appropriate assurance of ICBs’ exercise of Delegated Functions including the Assurance Processes;
      3. help the ICB to coordinate and escalate improvement and resolution interventions where challenges are identified (as appropriate);
      4. ensure that the NHS England Board is assured that Delegated Functions are being discharged appropriately;
      5. ensure specialised commissioning considerations are appropriately included in NHS England frameworks that guide oversight and assurance of service delivery; and
      6. host a Delegated Commissioning Group (“DCG”) that will undertake an assurance role in line with the Assurance Processes. This assurance role shall include assessing and monitoring the overall coherence, stability and sustainability of the commissioning model of Specialised Services at a national level, including identification, review and management of appropriate cross-ICB risks.
   2. Where an officer or employee of NHS England is performing its Reserved Functions in respect of assurance and oversight, NHS England must ensure that those officers or employees do not hold responsibility for, or undertake any, decision making in respect of the ICB's Delegated Functions.
2. **Attendance at governance meetings** 
   1. NHS England shall ensure that there is appropriate representation in respect of Reserved Functions and Retained Services at local governance forums (for example, the Regional Leadership Team) and at the National Commissioning Group (“NCG”).
   2. NHS England shall:
      1. ensure that there is appropriate representation by NHS England subject matter expert(s) at National Standards development forums;
      2. ensure there is appropriate attendance by NHS England representatives at nationally led clinical governance meetings; and
      3. co-ordinate, and support key national governance groups.
3. **Clinical Leadership and Clinical Reference Groups** 
   1. NHS England shall be responsible for the following:
      1. developing local leadership and support for the ICB relating to Specialised Services;
      2. providing clinical leadership, advice and guidance to the ICB in relation to the Delegated Services;
      3. providing point-of-contact and ongoing engagement with key external bodies, such as interest groups, charities, NICE, DHSC, and Royal Colleges; and enabling access to clinical trials for new treatments and medicines.
   2. NHS England will host Clinical Reference Groups, which will lead on the development and publication of the following for Specialised Services:
      1. Clinical Commissioning Policies;
      2. National Specifications, including National Standards for each of the Specialised Services.
4. **Clinical Networks**
   1. Unless otherwise agreed between the Parties, NHS England shall put in place contractual arrangements and funding mechanisms for the commissioning of the Relevant Clinical Networks.
   2. NHS England shall ensure development of multi-ICB, and multi-region (where necessary) governance and oversight arrangements for Relevant Clinical Networks that give line of sight between all clinical networks and all ICBs whose Population they serve.
   3. NHS England shall be responsible for:
      1. developing national policy for the Relevant Clinical Networks;
      2. developing and approving the specifications for the Relevant Clinical Networks;
      3. maintaining links with other NHS England national leads for clinical networks not focused on Specialised Services;
      4. convening or supporting national networks of the Relevant Clinical Networks;
      5. agreeing the annual plan for each Relevant Clinical Network with the involvement of the ICB and Relevant Clinical Network, ensuring these reflect national and regional priorities;
      6. managing Relevant Clinical Networks jointly with the ICB; and
      7. agreeing and commissioning the hosting arrangements of the Relevant Clinical Networks.
5. **Complaints**
   1. NHS England shall manage all complaints in respect of the Delegated Services that are received prior to the Effective Date of Delegation or the date on which the Commissioning Team is transferred to the Host ICB (whichever is the later).
   2. NHS England shall provide the relevant individuals at the ICB with appropriate access to complaints data held by NHS England that is necessary to carry out the complaints function as set out in the Complaints Sharing Protocol.
   3. NHS England shall manage all complaints in respect of the Retained Services.
   4. NHS England shall set out what information the ICB is required to provide when reporting on the key performance indicators. NHS England should notify the ICB in advance and provide sufficient time to allow compliance.
6. **Commissioning and optimisation of High Cost Drugs**
   1. Unless otherwise agreed with the ICB, NHS England shall manage a central process for reimbursement of High Costs Drugs for Specialised Services. This may include making reimbursements directly to Specialised Services Providers.
   2. In respect of pharmacy and optimisation of High Cost Drugs, NHS England shall:
      1. where appropriate, ensure that only validated drugs spend is reimbursed, there is timely drugs data and drugs data quality meets the standards set nationally;
      2. support the ICB on strategy for access to medicines used within Delegated Services, minimising barriers to health inequalities;
      3. provide support, as reasonably required, to the ICB to assist it in the commissioning of High Cost Drugs for Delegated Services including shared care agreements;
      4. seek to address consistency of prescribing in line with national commissioning policies, introduction of new medicines, and addressing unwarranted prescribing variation;
      5. develop medicines commissioning policies and criteria for access to medicines within Specialised Services;
      6. develop support tools, including prior approval criteria, and frameworks to support the delivery of cost-effective and high quality commissioning of High Cost Drugs;
      7. co-ordinate the development, implementation and monitoring of initiatives that enable the use of better value medicines;
      8. where appropriate, co-ordinate national procurement or other commercial processes to secure medicines or High Cost Drugs for Specialised Services.
7. **Contracting**
   1. NHS England shall retain the following obligations in relation to contracting for Delegated Services:
      1. ensure Specialised Services are included in national NHS England contracting and payment strategy (for example, Aligned Payment Incentives);
      2. provide advice for ICBs on schedules to support the Delegated Services;
      3. set, publish or make otherwise available the Contracting Standard Operating Procedure and Mandated Guidance detailing contracting strategy and policy for Specialised Services; and
      4. provide and distribute contracting support tools and templates to the ICB.
   2. In respect of the Retained Services, NHS England shall:
      1. where appropriate, ensure a Collaborative Commissioning Agreement is in place between NHS England and the ICB(s); and
      2. where appropriate, construct model template schedules for Retained Services and issue to ICBs.
8. **Data Management and Analytics**
   1. NHS England shall:
      1. support the ICB by collaborating with the wider data and analytics network (nationally) to support development and local deployment or utilisation of support tools;
      2. support the ICB to address data quality and coverage needs, accuracy of reporting Specialised Services activity and spend on a Population basis to support commissioning of Specialised Services;
      3. ensure inclusion of Specialised Services data strategy in broader NHS England, DHSC and government data strategies;
      4. lead on defining relevant contractual content of the information schedule (Schedule 6) of the NHS Standard Contract for Clinical Services;
      5. work collaboratively with the ICB to drive continual improvement of the quality and coverage of data used to support commissioning of Specialised Services;
      6. provide a national analytical service to support oversight and assurance of Specialised Services, and support (where required) the national Specialised Commissioning team, Programmes of Care and Clinical Reference Groups; and
      7. provide access to data and analytic subject matter expertise to support the ICB when considering local service planning, needs assessment and transformation.
9. **Finance** 
   1. The provisions of Clause 10 shall apply in respect of the financial arrangements in respect of the Delegated Functions.
   2. NHS England shall:
      1. hold the budgets for prescribed specialised services top-up payments for specialist centres;
      2. administer the top-up payments schemes; and
      3. make top-up payments to the Specialised Services Providers.
   3. For the avoidance of doubt, the functions set out in 12.2 include top-up payments for the Delegated Services and Retained Services.
10. **Freedom of Information and Parliamentary Requests**
    1. NHS England shall:
       1. lead on handling, managing and responding to all national FOIA and parliamentary correspondence relating to Retained Services; and
       2. co-ordinate a response when a single national response is required in respect of Delegated Services.
11. **Incident Response and Management**
    1. NHS England shall:
       1. provide guidance and support to the ICB in the event of a complex incident;
       2. lead on national incident management for Specialised Services as appropriate to stated incident level and where nationally commissioned services are impacted;
       3. lead on monitoring, planning and support for service and operational resilience at a national level and provide support to the ICB; and
       4. respond to specific service interruptions where appropriate; for example, supplier and workforce challenges and provide support to the ICB in any response to interruptions.
12. **Individual Funding Requests** 
    1. NHS England shall be responsible for:
       1. leading on Individual Funding Requests (IFR) policy, IFR governance and managing the IFR process for Delegated Services and Retained Services;
       2. taking decisions in respect of IFRs at IFR Panels for both Delegated Services and Retained Services; and
       3. providing expertise for IFR decisions, including but not limited to pharmacy, public health, nursing and medical and quality.
13. **Innovation and New Treatments**
    1. NHS England shall support the local implementation of innovative treatments for Delegated Services.
    2. NHS England shall ensure services are in place for innovative treatments such as advanced medicinal therapy products recommended by NICE technology appraisals within statutory requirements.
    3. NHS England shall provide national leadership for innovative treatments with significant service impacts including liaison with NICE.
14. **Mental Health, Learning Disability and Autism Specialised Services** 
    1. NHS England shall issue commissioning guidance for MHLDA Specialised Services in relation to the Delegated Services and Retained Services.
    2. NHS England shall prepare and issue National Specifications and Clinical Commissioning Policies for MHLDA Specialised Services.
    3. NHS England will monitor the ICB's compliance with the Mental Health Investment Standard in respect of MHLDA Delegated Services.
    4. NHS England shall ensure that its case management function will work collaboratively across Delegated Services and Retained Services to support the oversight and progression of individual patient care, including the movement across elements of the care pathway.
15. **Provider Selection and Procurement**
    1. In relation to procurement, NHS England shall be responsible for:
       1. setting standards and agreeing frameworks and processes for provider selections and procurements for Specialised Services;
       2. monitoring and providing advice, guidance and expertise on the overall provider market in relation to Specialised Services; and
       3. where appropriate, running provider selection and procurement processes for Specialised Services.
16. **Quality**
    1. In respect of quality, NHS England shall:
       1. work with the ICB to ensure oversight of Specialised Services through quality surveillance and risk management and escalate as required;
       2. work with the ICB to seek to ensure that quality and safety issues and risks are managed effectively and escalated to the National Specialised Commissioning Quality and Governance Group (QGG), or other appropriate forums, as necessary;
       3. work with the ICB to seek to ensure that the quality governance and processes for Delegated Services are aligned and integrated with broader clinical quality governance and processes in accordance with National Quality Board Guidance;
       4. facilitate improvement when quality issues impact nationally and regionally, through programme support, and mobilising intensive support when required on specific quality issues;
       5. provide guidance on quality and clinical governance matters and benchmark available data;
       6. support the ICB to identify key themes and trends and utilise data and intelligence to respond and monitor as necessary;
       7. report on quality to both NCG and DCG as well as QGG and Executive Quality Group as required;
       8. facilitate and support the national quality governance infrastructure (for example, the QGG); and
       9. identify and act upon issues and concerns that cross multiple ICBs, coordinating response and management as necessary.
17. **National Standards, National Specifications and Clinical Commissioning Policies** 
    1. NHS England shall carry out:
       1. development, engagement and approval of National Standards for Specialised Services (including National Specifications, Clinical Commissioning Policies, quality and data standards);
       2. production of national commissioning products and tools to support commissioning of Specialised Services;
       3. maintenance and publication of the Prescribed Specialised Services Manual and engagement with the DHSC on policy matters; and
       4. determination of content for national clinical registries.
18. **Transformation**
    1. NHS England shall be responsible for:
       1. co-ordinating and enabling ICB-led specialised service transformation programmes for Delegated Services where necessary;
       2. supporting the ICB to implement national policy and guidance across its Populations for Retained Services;
       3. supporting the ICB with agreed transformational programmes where national transformation support has been agreed for Delegated Services;
       4. providing leadership for transformation programmes and projects that have been identified as priorities for national coordination and support, or are national priorities for the NHS, including supporting delivery of commitments in the NHS Long Term Plan;
       5. co-production and co-design of transformation programmes with the ICB and wider stakeholders; and
       6. providing access to subject matter expertise including Clinical Reference Groups, national clinical directors, Programme of Care leads for the ICB where it needs support, including in relation to local priority transformation.

SCHEDULE 5: Retained Services

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

SCHEDULE 6: Further Information Governance, Sharing and Processing Provisions

**PART 1**

1. **Introduction**
   1. This Schedule sets out the scope for the secure and confidential sharing of information between the Parties on a Need To Knowbasis, or where a Party acts as a Data Processor on behalf of the other Party in order to enable the Parties to exercise their functions in pursuance of this Agreement.
   2. References in this Schedule *(Further Information Governance and Sharing Provisions)* to the Need to Know basis or requirement (as the context requires) should be taken to mean that each Party’s Staff will only have access to Personal Data or Special Category Personal Data if it is lawful for such Staff to have access to such data for the Specified Purpose in paragraph 2.1 and the function they are required to fulfil at that particular time, in relation to the Specified Purpose, cannot be achieved without access to the Personal Data or Special Category Personal Data specified.
   3. This Schedule (including the details at Part 2 and 3 of this Schedule) and any Data Sharing Agreement and/or Data Processing Agreements entered into under this Schedule are designed to:
      1. provide information about the reasons why Relevant Information may need to be shared and/or processed on behalf of another Party and how this will be managed and controlled by the Parties;
      2. describe the purposes for which the Parties have agreed to share and/or the basis on which a Party is instructed to act as a Data Processor in relation to the Relevant Information;
      3. set out the lawful basis for the processing of Relevant Information and sharing of information between the Parties, and the principles that underpin the exchange of Relevant Information;
      4. describe roles and structures to support the exchange of Relevant Information between the Parties;
      5. apply to the sharing and processing of Relevant Information relating to Specialised Services Providers and their Staff;
      6. apply to the sharing and processing of Relevant Information whatever the medium in which it is held and however it is transmitted;
      7. ensure that Data Subjects are, where appropriate, informed of the reasons why Personal Data about them may need to be shared and processed and how this sharing and processing will be managed;
      8. apply to the activities of the Parties’ Staff; and
      9. describe how complaints relating to Personal Data sharing between the Parties and wider processing will be investigated and resolved, and how the information sharing and processing will be monitored and reviewed.
2. **Purpose**
   1. The Specified Purpose of the data sharing and associated processing is to facilitate the exercise of the Delegated Functions and NHS England’s Reserved Functions.
   2. Each Party must ensure that they have in place appropriate data sharing or data processing arrangements to enable data to be received from any third party organisations from which the Parties must obtain data in order to achieve the Specified Purpose.
   3. Where necessary specific and detailed purposes must be set out in a Data Sharing Agreement or Data Processing Agreement that complies with all relevant legislation and Guidance.
3. **Benefits of information sharing**
   1. The benefits of sharing information are the achievement of the Specified Purpose, with benefits for service users and other stakeholders in terms of the improved delivery of the Delegated Services.
4. **Lawful basis for sharing**
   1. The Parties shall comply with all relevant Data Protection Legislation requirements and Good Practice in relation to the processing of Relevant Information shared further to this Agreement.
   2. The Parties shall ensure that there is a Data Protection Impact Assessment (“DPIA”) that covers processing undertaken in pursuance of the Specified Purpose. The DPIA shall identify the lawful basis for sharing Relevant Information for each purpose and data flow.
   3. Further details regarding the Relevant Information to be shared shall be set out in a Data Sharing Agreement and/or Data Processing Agreement.
5. **Restrictions on use of the Shared Information**
   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.
   2. Access to, and processing of, the Relevant Information provided by a Party must be the minimum necessary to achieve the Specified Purpose. Information and Special Category Personal Data will be handled at all times on a restricted basis, in compliance with Data Protection Legislation requirements, and the Parties’ Staff should only have access to Personal Data on a justifiable Need to Knowbasis.
   3. Neither the provisions of this Schedule nor any associated Data Sharing Agreement and/or Data Processing Agreement should be taken to permit unrestricted access to data held by any of the Parties.
   4. Neither Party shall subcontract any processing of the Relevant Information without the prior consent of the other Party. Where a Party subcontracts its obligations, it shall do so only by way of a written agreement with the sub-contractor which imposes the same obligations as are imposed on that Party under this Agreement, and shall remain liable for the performance of the subcontractor’s obligations.
   5. The Parties shall not cause or allow Relevant Information to be transferred to any territory outside the United Kingdom without the prior written permission of the responsible Data Controller.
   6. Any particular restrictions on use of certain Relevant Information should be included in a Data Sharing Agreement and/or Data Processing Agreement.
6. **Ensuring fairness to the Data Subject**
   1. In addition to having a lawful basis for sharing information, the UK GDPR generally requires that the sharing must be fair and transparent. In order to achieve fairness and transparency to the Data Subjects, the Parties will take the following measures as reasonably required:
      1. amendment of internal guidance to improve awareness and understanding among Staff;
      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;
      3. ensuring that information and communications relating to the processing of data is clear and easily accessible; and
      4. giving consideration to carrying out activities to promote public understanding of how data is processed where appropriate.
   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.
   3. The Parties shall reasonably co-operate in undertaking any DPIA associated with the processing of data further to this Agreement, and in doing so engage with their respective Data Protection Officers in the performance by them of their duties pursuant to Article 39 UK GDPR.
   4. Further provision in relation to specific data flows may be included in a Data Sharing Agreement and/or Data Processing Agreement between the Parties.
7. **Governance: Staff**
   1. The Parties must take reasonable steps to ensure the suitability, reliability, training and competence, of any Staff who have access to Personal Data, and Special Category Personal Data, including ensuring reasonable background checks and evidence of completeness are available on request.
   2. The Parties agree to treat all Relevant Information as confidential and imparted in confidence and must safeguard it accordingly. Where any of the Parties’ Staff are not healthcare professionals (for the purposes of the Data Protection Act 2018), the employing Parties must procure that Staff operate under a duty of confidentiality which is equivalent to that which would arise if that person were a healthcare professional.
   3. The Parties shall ensure that all Staff required to access Personal Data (including Special Category Personal Data) are informed of the confidential nature of the Personal Data. The Parties shall include appropriate confidentiality clauses in employment/service contracts of all Staff that have any access whatsoever to the Relevant Information, including details of sanctions for acting in a deliberate or reckless manner that may breach the confidentiality or the non-disclosure provisions of Data Protection Legislation requirements, or cause damage to or loss of the Relevant Information.
   4. Each Party shall provide evidence (further to any reasonable request) that all Staff that have any access to the Relevant Information whatsoever are adequately and appropriately trained to comply with their responsibilities under Data Protection Legislation and this Agreement.
   5. The Parties shall ensure that:
      1. only those Staff involved in delivery of the Agreement use or have access to the Relevant Information;
      2. that such access is granted on a strict Need to Know basis and shall implement appropriate access controls to ensure this requirement is satisfied and audited. Evidence of audit should be made freely available on request by the originating Data Controller; and
      3. specific limitations on the Staff who may have access to the Relevant Information are set out in any Data Sharing Agreement and/or Data Processing Agreement entered into in accordance with this Schedule.
8. **Governance: Protection of Personal Data**
   1. At all times, the Parties shall have regard to the requirements of Data Protection Legislation and the rights of Data Subjects.
   2. Wherever possible (in descending order of preference), only anonymised information, or, strongly or weakly pseudonymised information will be shared and processed by the Parties. The Parties shall co-operate in exploring alternative strategies to avoid the use of Personal Data in order to achieve the Specified Purpose. However, it is accepted that some Relevant Information shared further to this Agreement may be Personal Data or Special Category Personal Data.
   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.
   4. If any Party becomes aware of:
      1. any unauthorised or unlawful processing of any Relevant Information or that any Relevant Information is lost or destroyed or has become damaged, corrupted or unusable; or
      2. any security vulnerability or breach in respect of the Relevant Information,

it shall promptly, within 48 hours, notify the other Parties. The Parties shall fully co-operate with one another to remedy the issue as soon as reasonably practicable, and in making information about the incident available to the Information Commissioner and Data Subjects where required by Data Protection Legislation.

* 1. In processing any Relevant Information further to this Agreement, the Parties shall process the Personal Data and Special Category Personal Data only:
     1. in accordance with the terms of this Agreement and otherwise (to the extent that it acts as a Data Processor for the purposes of Article 27-28 GDPR) only in accordance with written instructions from the originating Data Controller in respect of its Relevant Information including any instructions set out in a Data Processing Agreement entered into under this Schedule, unless required by law (in which case, the processor shall inform the relevant Data Controller of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest);
     2. to the extent as is necessary for the provision of the Specified Purpose or as is required by law or any regulatory body; and
     3. in accordance with Data Protection Legislation requirements, in particular the principles set out in Article 5(1) and accountability requirements set out in Article 5(2) UK GDPR; and not in such a way as to cause any other Data Controller to breach any of their applicable obligations under Data Protection Legislation.
  2. The Parties shall act generally in accordance with Data Protection Legislation requirements. This includes implementing, maintaining and keeping under review appropriate technical and organisational measures to ensure and demonstrate that the processing of Personal Data is undertaken in accordance with Data Protection Legislation, and in particular to protect Personal Data (and Special Category Personal Data) against unauthorised or unlawful processing, and against accidental loss, destruction, damage, alteration or disclosure. These measures shall:
     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
     2. be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and Special Category Personal Data, and having the nature of the Personal Data and Special Category Personal Data which is to be protected.
  3. In particular, each Party shall:
     1. ensure that only Staff as provided under this Schedule have access to the Personal Data and Special Category Personal Data;
     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;
     3. obtain prior written consent from the originating Party in order to transfer the Relevant Information to any third party;
     4. permit any other party or their representatives (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the data processing activities carried out further to this Agreement (and/or those of its agents, successors or assigns) and comply with all reasonable requests or directions to enable each Party to verify and/or procure that the other is in full compliance with its obligations under this Agreement; and
     5. if requested, provide a written description of the technical and organisational methods and security measures employed in processing Personal Data.
  4. The Parties shall adhere to the specific requirements as to information security set out in any Data Sharing Agreement and/or Data Processing Agreement entered into in accordance with this Schedule.
  5. The Parties shall use best endeavours to achieve and adhere to the requirements of the NHS Digital Data Security and Protection Toolkit.
  6. The Parties’ Single Points of Contact set out in paragraph **Error! Reference source not found.** will be the persons who, in the first instance, will have oversight of third party security measures.

1. **Governance: Transmission of Information between the Parties**
   1. This paragraph supplements paragraph 8 of this Schedule.
   2. Transfer of Personal Data between the Parties shall be done through secure mechanisms including use of the N3 network, encryption, and approved secure (NHS.net or gcsx) e-mail.
   3. Wherever possible, Personal Data should be transmitted and held in pseudonymised form, with only reference to the NHS number in 'clear' transmissions. Where there are significant consequences for the care of the patient, then additional data items, such as the postcode, date of birth and/or other identifiers should also be transmitted, in accordance with good information governance and clinical safety practice, so as to ensure that the correct patient record and/or data is identified.
   4. Any other special measures relating to security of transfer should be specified in a Data Sharing Agreement and/or Data Processing Agreement entered into in accordance with this Schedule.
   5. Each Party shall keep an audit log of Relevant Information transmitted and received in the course of this Agreement.
   6. The Parties’ Single Point of Contact notified pursuant to paragraph 13 will be the persons who, in the first instance, will have oversight of the transmission of information between the Parties.
2. **Governance: Quality of Information**
   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.
3. **Governance: Retention and Disposal of Shared Information**
   1. A non-originating Party shall securely destroy or return the Relevant Information once the need to use it has passed or, if later, upon the termination of this Agreement, howsoever determined. Where Relevant Information is held electronically, the Relevant Information will be deleted and formal notice of the deletion sent to the Party that shared the Relevant Information. Once paper information is no longer required, paper records will be securely destroyed or securely returned to the Party they came from.
   2. Each Party shall provide an explanation of the processes used to securely destroy or return the information, or verify such destruction or return, upon request and shall comply with any request of the Data Controllers to dispose of data in accordance with specified standards or criteria.
   3. If a Party is required by any law, regulation, or government or regulatory body to retain any documents or materials that it would otherwise be required to return or destroy in accordance with this Schedule, it shall notify the other Parties in writing of that retention, giving details of the documents or materials that it must retain.
   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.
   5. The Parties shall set out any special retention periods in a Data Sharing Agreement where appropriate.
   6. The Parties shall ensure that Relevant Information held in paper form is held in secure files, and, when it is no-longer needed, destroyed using a cross cut shredder or subcontracted to a confidential waste company that complies with European Standard EN15713.
   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.
   8. Electronic records will be considered for deletion once the relevant retention period has ended.
   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.
4. **Governance: Complaints and Access to Personal Data**
   1. The Parties shall assist each other in responding to any requests made under Data Protection Legislation made by persons who wish to access copies of information held about them (“Subject Access Requests”), as well as any other exercise of a Data Subject’s rights under Data Protection Legislation or complaint to or investigation undertaken by the Information Commissioner.
   2. Complaints about processing shall be reported to the Single Points of Contact and the ICB. Complaints about information sharing shall be routed through each Parties’ own complaints procedure unless otherwise provided for in the Agreement or determined by the ICB. Where the complaint relates to processing undertaken by a Party acting as a Data Processor on behalf of the other Party, complaints shall be routed through the relevant Data Controller’s own complaints procedure unless otherwise provided for in the Agreement.
   3. The Parties shall use all reasonable endeavours to work together to resolve any dispute or complaint arising under this Schedule or any data processing carried out further to it.
   4. Basic details of the Agreement shall be included in the appropriate log under each Party’s publication scheme.
5. **Governance: Single Points of Contact** 
   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.
6. **Monitoring and review**
   1. The Parties shall monitor and review on an ongoing basis the sharing and wider processing of Relevant Information to ensure compliance with Data Protection Legislation and Best Practice. Specific monitoring requirements must be set out in the relevant Data Sharing Agreement and/or Data Processing Agreement.

**SCHEDULE 6: Further Information Governance~~,~~ Sharing and Processing Provisions**

**PART 2**

**Data Sharing Agreement**

|  |  |
| --- | --- |
| **Description** | **Details** |
| Subject matter of the processing | Due to the complexities of Specialised Services and the distinctions between Delegated Functions and Reserved Functions, both the ICB Commissioning Teams (employed by the Host ICB) delivering Delegated Functions and the NHS England teams delivering Reserved Functions will need access to Relevant Information, which contains Personal Data.  As set out in Schedule 6, Part 1, Paragraph 2.1, the Specified Purpose for sharing data is: *‘…to facilitate the exercise of the Delegated Functions and NHS England’s Reserved Functions.’*  In order to achieve this purpose in the most effective, efficient and cost effective manner, the data will be hosted by NHS England in a collaborative working space which ICBs will have access to.  NHS England will be responsible for ensuring that Commissioning Team staff have sufficient and appropriate access to Relevant Information to enable those staff to fulfil their commissioning functions in respect of the Delegated Services, including those described in Schedule 3 (Delegated Functions) to this agreement.  In addition, NHS England may process the data for the following purposes:   * development, oversight, and the quality improvement of Specialised Commissioning Functions; * undertaking work to evaluate the effectiveness of innovation and changes in delivery models and advising other bodies and organisations about these functions; * arranging the provision of services to support commissioning activities, to enable reporting and evaluations; * undertaking analysis, audits, and inspections to assess and assure the quality of Specialised Commissioning Functions; * supporting healthcare organisations to interpret population health data and evidence, and to undertake reviews of the likely effectiveness and cost-effectiveness of a range of interventions; * development a of strategies on population health outcomes and to identify gaps or deficiencies in current care and to produce recommendations for improvements, including in relation to specific pathways of care; * using and supporting health organisations to use health economic tools to support decision-making and interpreting data about the surveillance or assessment of a population’s health to improve health outcomes and reduce health inequalities; * the development of population health policies and strategies, and their implementation |
| Duration of the processing | Unless otherwise specified in this Data Sharing Agreement, the processing shall commence on the Effective Date of Delegation and, as per paragraph 11.1 of this Schedule, shall continue until the need to use it has passed or, if later, upon the termination of this Agreement. |
| Nature and purpose of the processing | Personal Data is shared between the in relation to the delivery of the Delegated Functions. Such processing should ensure continued:   * Provision of live services and associated reporting; * Quality improvement and assurance of services; * Dissemination of data for health and research purposes. |
| Type of Personal Data being Processed | Guidance note: please include details of the types of Personal Data that are being shared, as appropriate. Examples include: name, address, date of birth, NI number, telephone number, pay, images, biometric data. |
| Categories of Data Subject | Guidance note: please include details of the categories of Data Subject that are being shared, as appropriate. Examples include: Staff (including volunteers, agents, and temporary workers), customers/clients, suppliers, patients, students/pupils, members of the public, users of a particular website. |

**SCHEDULE 6: Further Information Governance~~,~~ Sharing and Processing Provisions**

**PART 3**

**Data Processing Agreement**

|  |  |
| --- | --- |
| **Description** | **Details** |
| Identity of the Controller and Processor | The ICB is the Data Controller and NHS England is the Data Processor. |
| Subject matter of the processing | Both the ICB Commissioning Teams (employed by the Host ICB) delivering Delegated Functions and the NHS England teams delivering Reserved Functions will need access to Relevant Information. In order to achieve this purpose in the most effective, efficient and cost effective manner, the data will be hosted by NHS England in a collaborative working space which ICBs will have access to.  Consequently, NHS England will act as a Data Processor on behalf of the ICB in relation to the Relevant Information required to commission the Delegated Services and fulfil the Delegated Functions. |
| Duration of the processing | Unless otherwise specified in this Data Processing Agreement the processing shall commence on the Effective Date of Delegation and, as per paragraph 11.1 of this Schedule, shall continue until the need to use it has passed or, if later, upon the termination of this Agreement. |
| Plan for return and destruction of the data once the processing is complete | As set out in paragraph 11.1 of this Schedule |
| Nature and purpose of the processing | This Data Processing Agreement considers processing of any data by NHS England on behalf of the ICB Commissioning Teams in relation to the delivery of the Delegated Functions. Such processing should ensure continued:   * Provision of live services and associated reporting; * Quality improvement and assurance of services; * Dissemination of data for health and research purposes. |
| Type of Personal Data being Processed | Guidance note: please include details of the types of Personal Data that are being processed, as appropriate. Examples include: name, address, date of birth, NI number, telephone number, pay, images, biometric data. |
| Categories of Data Subject | Guidance note: please include details of the categories of Data Subject that are being processed, as appropriate. Examples include: Staff (including volunteers, agents, and temporary workers), customers/clients, suppliers, patients, students/pupils, members of the public, users of a particular website. |

SCHEDULE 7: Mandated Guidance

**Generally applicable Mandated Guidance**

* [National Guidance on System Quality Groups.](https://www.england.nhs.uk/publication/national-guidance-on-system-quality-groups/)
* [Managing Conflicts of Interest in the NHS.](https://www.england.nhs.uk/ourwork/coi/)
* Arrangements for Delegation and Joint Exercise of Statutory Functions.
* Guidance relating to procurement and provider selection.
* Information Governance Guidance relating to serious incidents.
* All other applicable IG and Data Protection Guidance.
* Any applicable Freedom of Information protocols.
* Any applicable Guidance on Counter Fraud, including from The NHS Counter Fraud Authority.
* Any applicable Guidance relating to the use of data and data sets for reporting.
* Guidance relating to the processes for making and handling individual funding requests, including:
  + [Commissioning policy: Individual funding requests](https://www.england.nhs.uk/publication/commissioning-policy-individual-funding-requests/);
  + [Standard operating procedures: Individual funding requests](https://www.england.nhs.uk/publication/standard-operating-procedures-individual-funding-requests/).

**Workforce**

* [Guidance on the Employment Commitment.](https://www.england.nhs.uk/wp-content/uploads/2021/06/B0724-employment-commitment-guidance-supporting-ics-v1.pdf)

**Finance**

* [Guidance on NHS System Capital Envelopes.](https://www.england.nhs.uk/wp-content/uploads/2021/12/B1256-capital-guidance-for-2022-25.pdf)
* [Managing Public Money (HM Treasury)](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1075007/MPM_Spring_21_with_annexes_040322__1_.pdf).

**Specialised Services Mandated Guidance**

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

SCHEDULE 8: Local Terms

**General**

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

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

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

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

The Specialised Services listed in schedule 2 (page 37) will be delegated to the ICBs on 1 April 2025 and commissioned at an ICB level.

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

*This section is not applicable to the Delegation Agreement in North East and Yorkshire as no services are being commissioned in this manner.*

**Part 3 – Funding arrangements**

Allocations for those services to be delegated have been split by population and ICB for 2025/2026. The published allocations for 2025/2026 for the respective ICBs are shown in the table below.

|  |  |
| --- | --- |
| **2025/2026 Specialised Commissioning Physical Health Services** | **£000s** |
| **and Mental Health Baseline** |
| Humber and North Yorkshire ICB | 406,588 |
| North East and North Cumbria ICB | 741,463 |
| South Yorkshire ICB | 380,695 |
| West Yorkshire ICB | 570,815 |
| **TOTAL** | **2,099,561** |

Payment for contractual agreements will be made by each ICB against the allocation that they have received.

As signed off by the Joint Committee, a risk share agreement has been put in place for 2025/2026 across all 4 ICBs to cover acute delegated services only. This will be reviewed for 2026/2027 as to whether it is still appropriate or needs to change in any way. For delegated mental health services, 3 of the ICBs already have risk share arrangements in place.

Funding allocation for staff transfers will be confirmed prior to transfer as part of the consultation (note: the split by ICB will not be confirmed until June 2025). It is expected that the running cost allowance (RCA) will be adjusted accordingly and the 2025/2026 planning guidance refers to this point.

**Part 3 – Workforce and Commissioning Team Arrangements**

A single commissioning function will continue to operate, split into two teams: one whose employment will remain with NHS England to cover retained services and one to be hosted by South Yorkshire ICB to cover delegated services.  Both teams will work together to ensure the delivery of an integrated commissioning function for both delegated and retained services.

For delegated specialised acute services there will be two planning footprints (NENC and Y&H) with the teams capacity split to reflect this. The team will work across the respective ICB areas, with responsibility for managing the day-to-day operational delivery of ICBs specialised commissioning functions on their behalf. In doing so, the teams will work in accordance with the operating model, applying a matrix approach and working collaboratively with a wide range of ICB and ICS partners to deliver this. It will be important that the business of the team is transparent and visible to ICBs, with decisions reporting as appropriate.

An operating model setting how the purpose, principles and process for the commissioning team arrangements is set out in Schedule 9 of this agreement.

The retained commissioning team will continue to provide the commissioning function and work across and into all required programmes of work for the future commissioning hub.

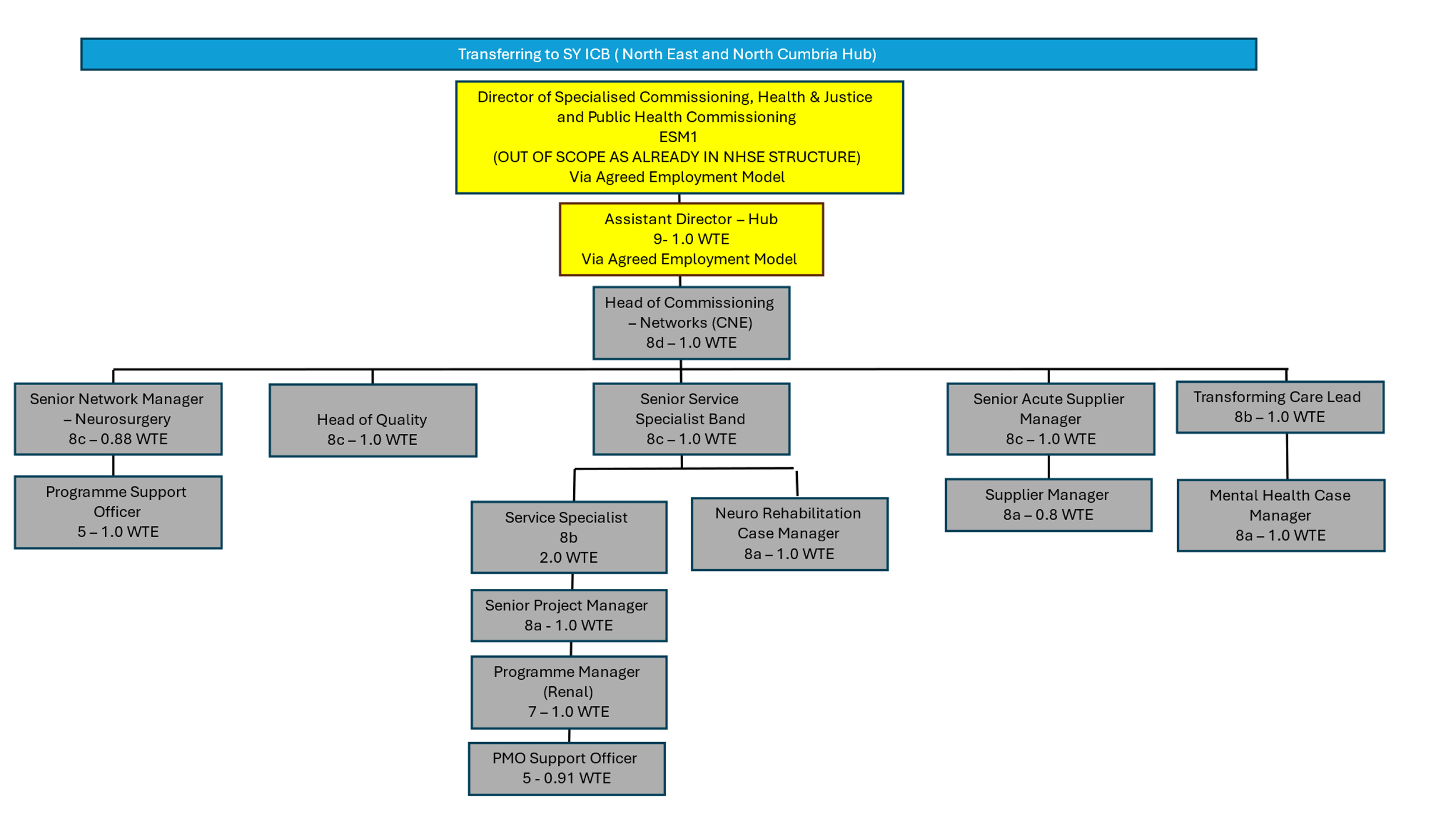
There will be a separate finance function that sits within the commissioning hub for delegated services, the finance resource for retained services will sit under the North wide geographical unit (ie the North East and Yorkshire Region and the North West Region).

ESM leadership into the ICB commissioning hubs will remain in place to ensure that service issues and risks are managed at a local level within the commissioning hub. Director roles will remain employed by NHSE.

**Team structures for transferring staff**

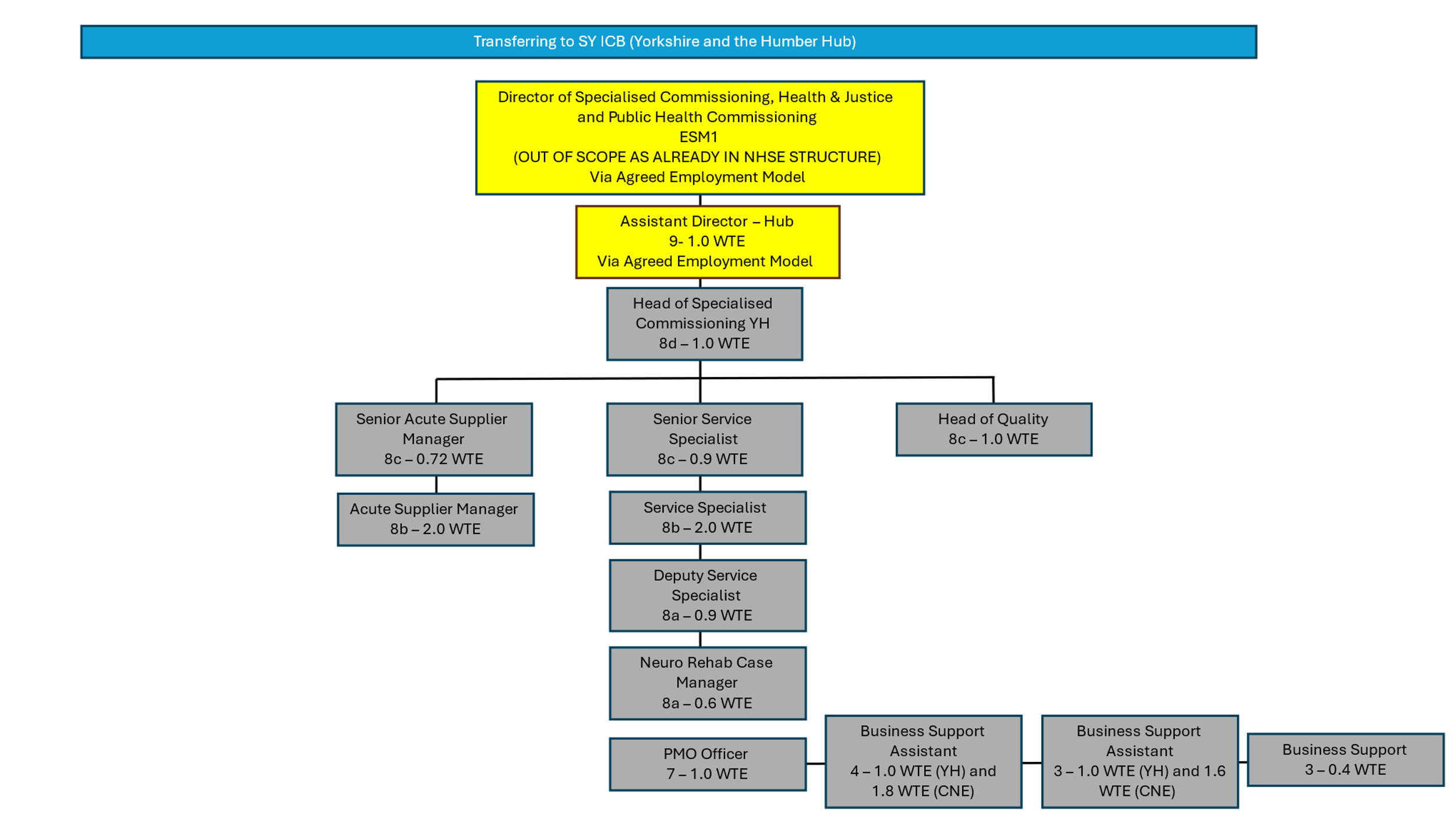
**SY ICB host hub: Commissioning team - North East and North Cumbria planning footprint**

|  |  |
| --- | --- |
|  | *NHS England employed posts* |
|  | *South Yorkshire ICB employed staff (transferred)* |



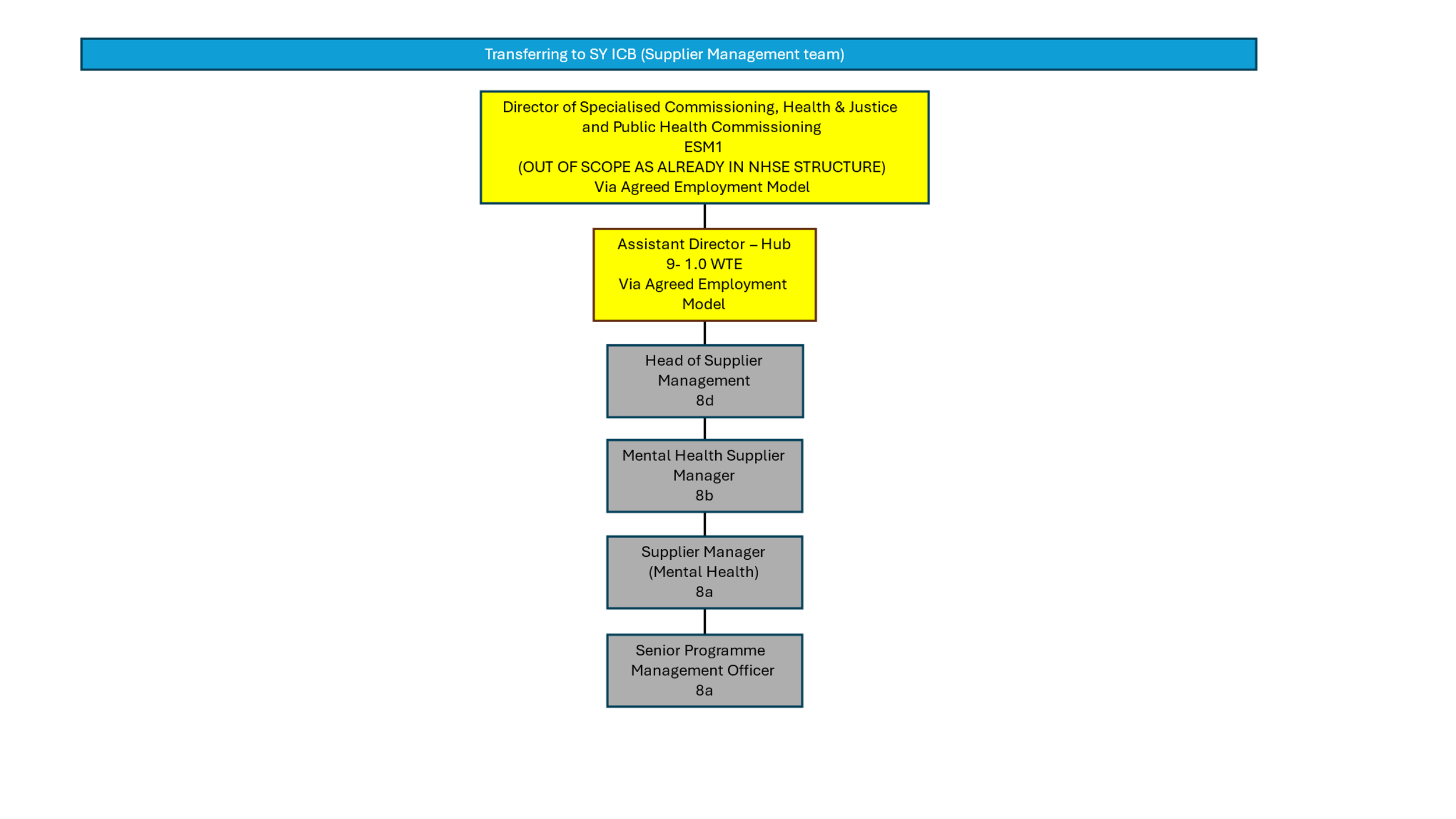
**SY ICB host hub: Commissioning team - Yorkshire and the Humber planning footprint**

|  |  |
| --- | --- |
|  | *ESM posts (NHS England employed)* |
|  | *South Yorkshire ICB employed staff (transferred)* |



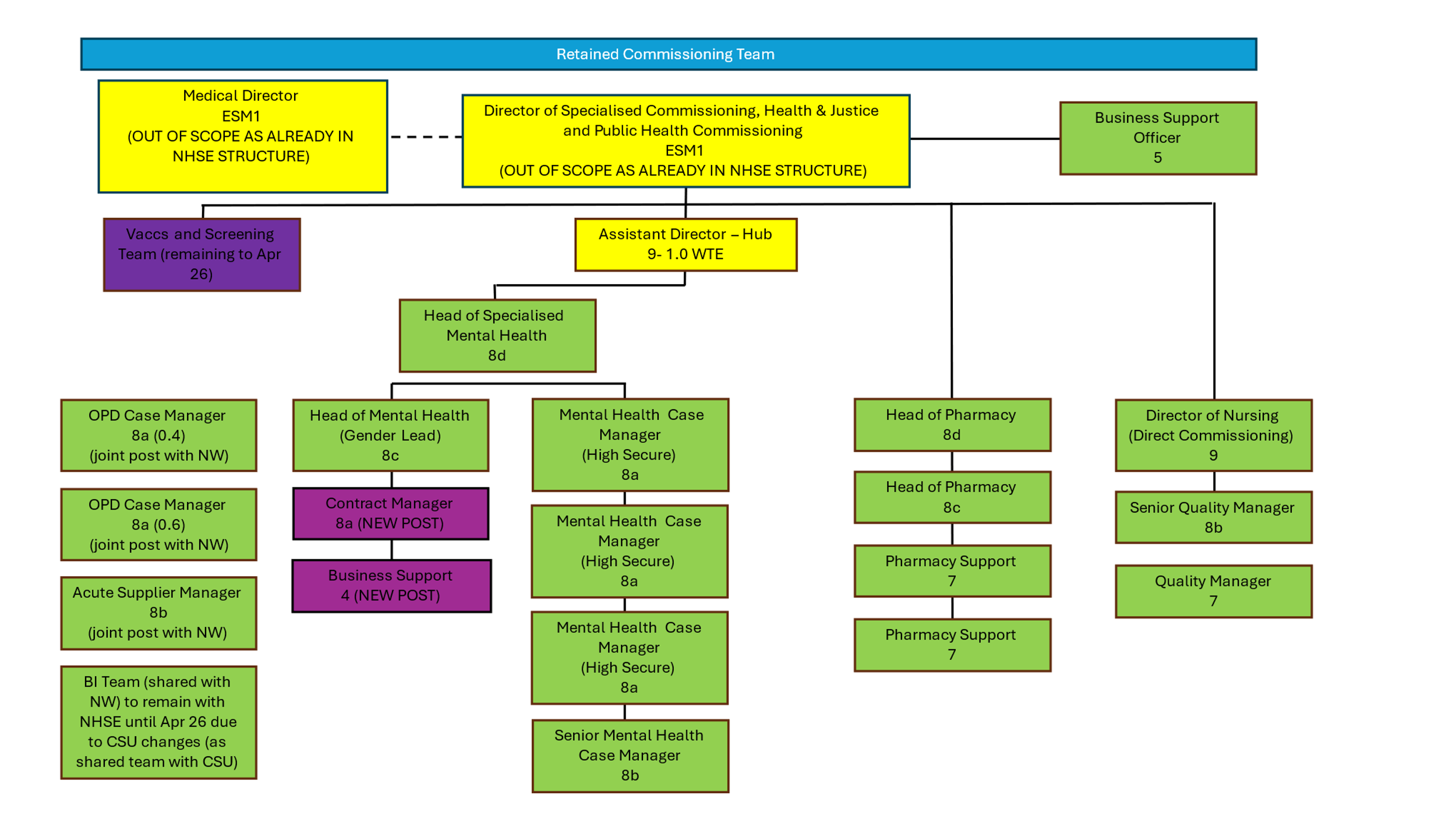
**SY ICB host hub: Commissioning team - Supplier Manager function**

|  |  |
| --- | --- |
|  | *ESM posts (NHS England employed)* |
|  | *South Yorkshire ICB employed staff (transferred)* |



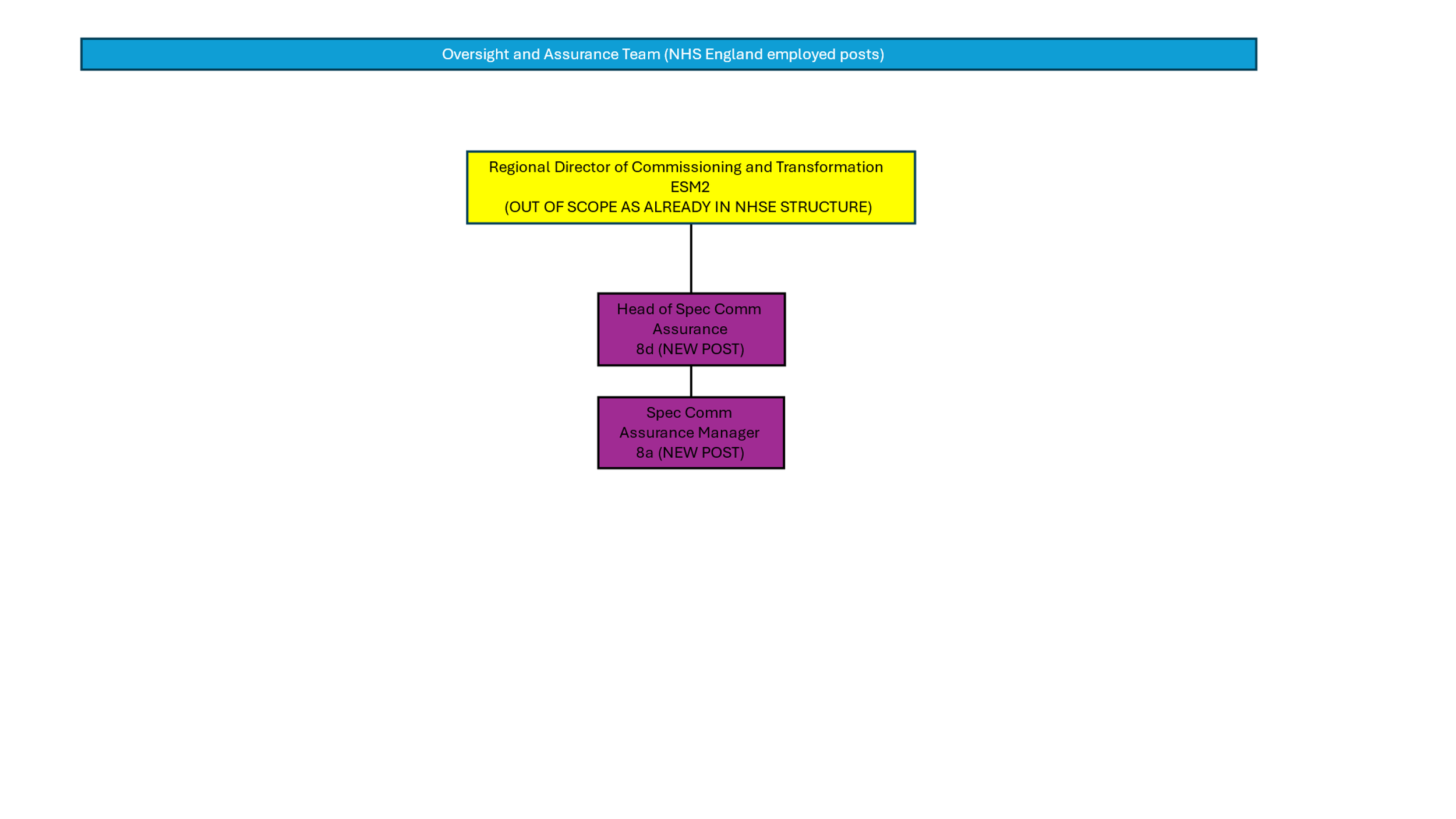
**Team structures for retained staff**

|  |  |
| --- | --- |
|  | *ESM Posts (NHS England employed posts)* |
|  | *Retained staff (NHS England employed)* |
|  | *New posts (NHS England employed)* |



**Oversight and assurance team**

|  |  |
| --- | --- |
|  | *ESM Posts (NHS England employed posts)* |
|  | *New posts (NHS England employed)* |



**Finance team**

There will be one finance team for North East and Yorkshire delegated specialised services that will be hosted by South Yorkshire ICB.

The retained specialised services finance is a separate team which will be delivered by a North wide finance team led by the North West Director of Commissioning Finance.

North East and Yorkshire finance team leadership

The Director of Commissioning Finance will remain employed by NHS England, lead the delegated finance team on a day-to-day basis and provide advice and support to the ICBs. The Director of Commissioning Finance will represent ICB views and interests at key relevant forums, removing barriers to delivery and ensuring that ICB core purposes and other legislative requirements are met

Key management duties pertaining to the ICBs will include:

1. Support ICBs in the development of their financial strategy for specialised commissioning based on the decisions made via the ICB CFO who is responsible and accountable for the overall ICB financial strategy and the overarching development of plan and approval.
2. support ICBs to design integrated pathways and invest resources where they can have the best effect on outcomes, as set out in the NHSE roadmap for integrating specialised care.
3. Be the senior person who has an overview of specialised delegated finance for the hub that can input and feedback into the decision makers / committees.
4. Lead day to day planning for finance based on the ICB decisions, this will not involve making decisions for any organisation not directly employed by.
5. Lead programme development across delegated functions as agreed and directed by ICBs.
6. Team professional leadership and management.
7. Steer and guide individuals within teams on finance elements.
8. Lead day-to-day control and supervision of the activities allocated to the Staff.

For 2025/2026 the Deputy Director of Finance and Head of Finance (Y&H) will remain employed by NHS England due to their roles also covering retained specialised commissioning, Health and Justice and Public Health. These posts will also offer advice and support to the delegated finance team.

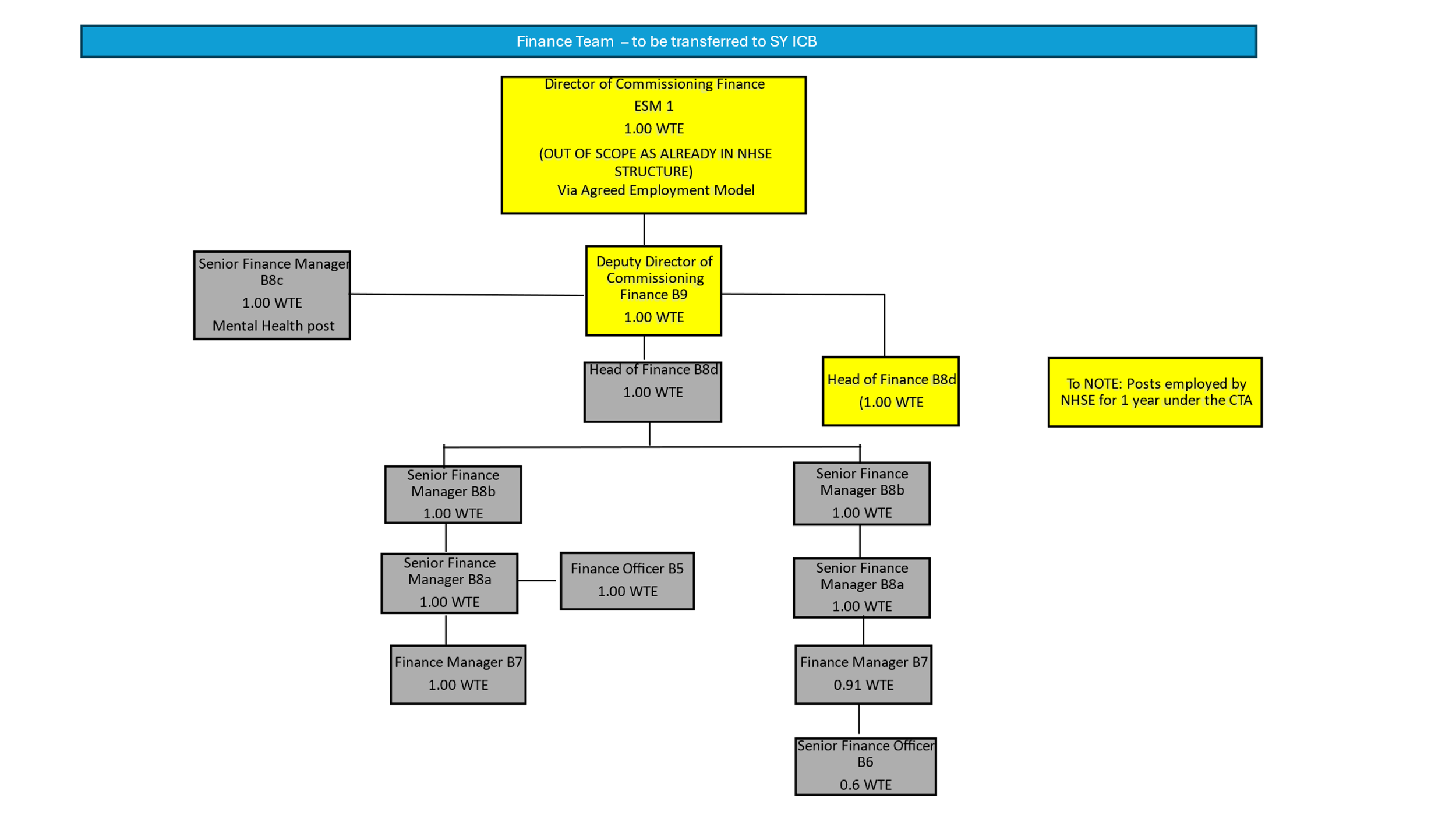
SY ICB host hub finance team

The tasks and functions to be undertaken by the NHS South Yorkshire Integrated Care Board Commissioning Finance (hosted) hub team are set out in the Procedures and Task List, in appendix 1 and 2. [Finance MoU appendices to be added at end of document]

Additional tasks e.g. cash management and collaborative provider payment will be agreed and added to the Procedures and Task list.

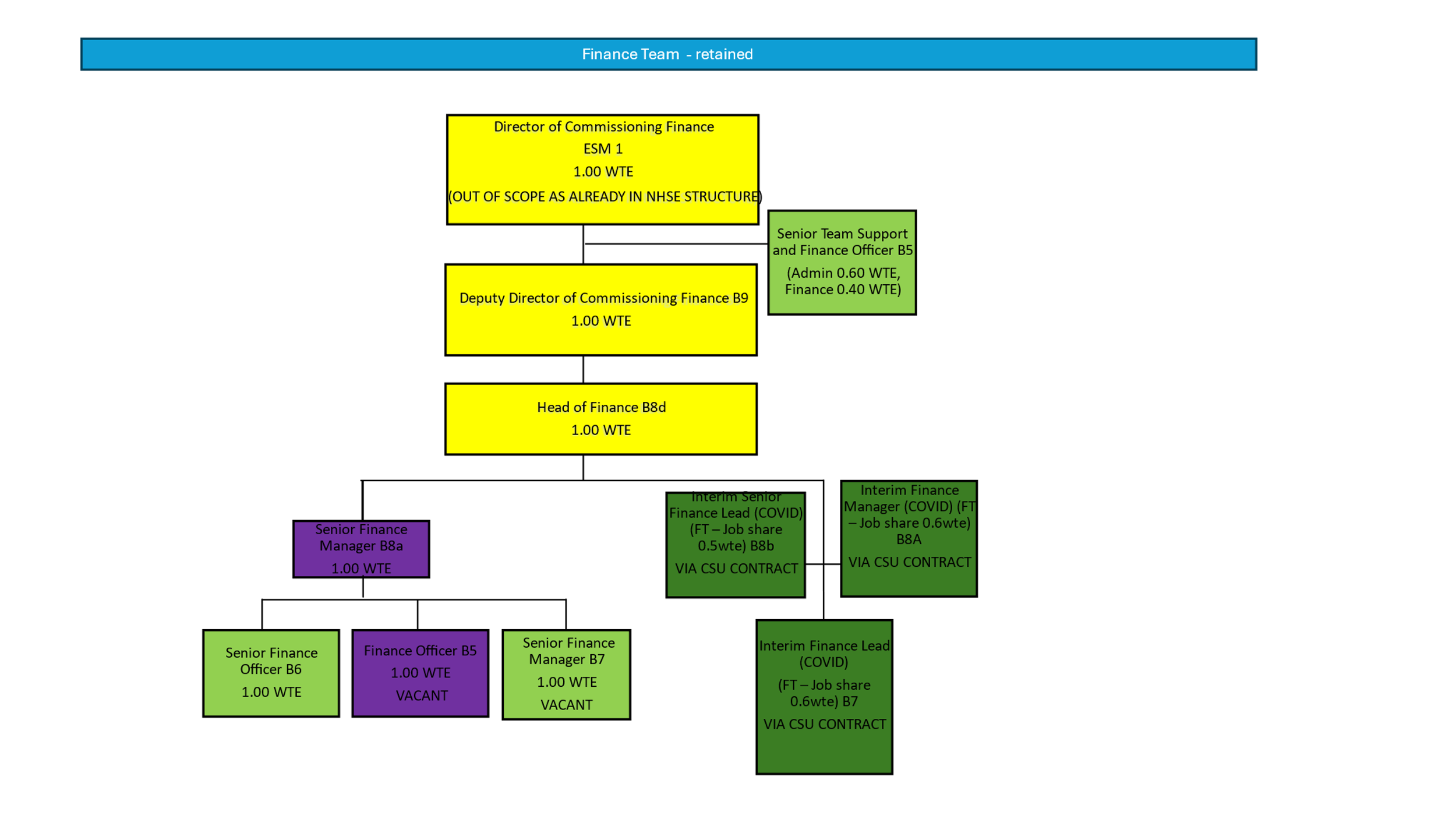
**SY ICB host hub: finance team**

|  |  |
| --- | --- |
|  | *ESM posts (NHS England employed)* |
|  | *South Yorkshire ICB employed staff (transferred)* |



**Retained specialised services finance team**

|  |  |
| --- | --- |
|  | *ESM Posts (NHS England employed posts)* |
|  | *Retained staff (NHS England employed)* |
|  |  |
|  |  |



**Commissioning team**

A small number of Executive Senior Manager (ESM) roles will guide and support the commissioning work across the region. These posts will be employed by NHS England and will provide day-to-day leadership to the commissioning staff, bot

Commissioning Leadership

h retained and transferred.

Their main duties will include:

* Provision of day-to-day operational leadership to the hub team, ensuring that all functions are carried out to a high standard.
* Provision of high quality advice and guidance to the executive directors, supporting them to make well informed decisions.
* To ensure connectivity into NHSE where applicable, including on interdependent retained programmes of work.
* To ensure ‘in-reach’ to both ICB Executive teams and through the SC hub so that they can effective represent ICB views and interests in relevant forums, and removing barriers to delivery.
* Represent ICB views and interests at key relevant forums, removing barriers to delivery and ensuring that ICB core purposes and other legislative requirements are met
* Support the teams to balance potentially competing local and national commitments to ensure an equitable or reasonable portion to each priority area ,that clearly reflects local healthcare need and supports the reduction of health inequalities to support each ICB to meet their 'triple aim'
* Contribute and support the ICB planning process, including supporting operational planning, contributions to Joint Forward Plans, Integrated Care Strategies and Annual Assessments, to ensure that the ‘triple aims’ of ICBs (to ensure quality of service provisions, equality for the population and effectiveness of delivery) will be demonstrable in the specialised commissioning work plans.

Regional Director of Specialised Commissioning and Health & *Justice*

The Regional Director of Specialised Commissioning and Health and Justice will remain employed by NHS England, lead the delegated commissioning team on a day-to-day basis and provide advice and support to the ICBs.

Overarching roles and responsibilities are described in the Operating Model. To support this, key leadership duties pertaining to the ICBs will include:

Key management duties pertaining to the ICBs will include:

1. Facilitate team cohesion over the implementation of the commissioning and specialised strategy across ICB/NHSE.
2. Senior person who has an overview of specialised retained and delegated commissioning for region that can input and feedback into the decision makers / committees.
3. Will oversee the implementation of the wider specialised commissioning strategy as directed by the ICB,
4. Support the Joint Committee and ICB SRO officers in system integration and transformation for specialised services with ICS system partners, enabling ICBs to design care that joins up around patient needs, as set out in the Roadmap for integrating specialised services
5. Ensure strong lateral connection between the hub and ESMs/Committees and other ICS senior stakeholders
6. Interface between NHSE National Policy Teams and regional/subregional delivery teams, ensuring advocacy and representation of ICB views and supporting delivery of ICBs’ triple aim,
7. Lead day to day planning as directed and agreed by the ICB,
8. Lead programme development across both retained / delegated functions, for the delegated functions as agreed and directed by ICBs,
9. Steer and guide individuals within teams on commissioning elements,

The *Deputy Director of Specialised Commissioning & Health and Justice (NE&Y)* will remain employed by NHS England due to their roles also covering retained specialised commissioning, Health and Justice and Public Health.

The Regional Medical Director - commissioning

This post will remain employed by NHS England, provide clinical leadership into the delegated commissioning team and provide advice and support to the ICBs.

Key management duties pertaining to the ICBs will include:

1. Provision of clinical leadership and advice to commissioning responsibilities across specialised services, health and justice services (including sexual assault and abuse services) and public health programmes.
2. Support system wide clinical leadership to deliver clinically lead transformation programmes for specialised services, and supporting opportunities to design care that joins up around patient needs, as set out in the NHSE Roadmap for integration specialised services.
3. Support the Medical Director [region] and the Medical Directors of responsible ICBs to ensure these services are safe, high-quality care and good patient experience and consistent with national clinical policies, specifications and standards
4. Support the Medical Director [Region] and Managing Director (commissioning and system development) in developing clinical governance, quality monitoring and clinical co-operation to ensure the successful delegation of specialised services to ICBs
5. Liaise with ICB Clinical leaders and provider medical directors to support effective delegated commissioning

Mental health commissioning

The Mental Health and Learning Disability and Autism commissioning function will be delivered across retained and delegated teams.

The members of the team hosted by South Yorkshire ICB are Mental Health Supplier Managers, PMO, the Learning Disability and Autism Lead and the Care and Treatment Review (CTR) Chair. The retained MHLDA Team will provide commissioning and quality management oversight to retained and delegated service portfolio and population. A case management function for retained services will also be provided in the retained team – this service has been transferred under lead provider arrangements for delegated services.

The Learning Disability Lead and CTR chair, although hosted by South Yorkshire ICB will provide this function for the North East and Noth Cumbria ICB only. Their role will be integrated and work into the established LDA structures and Governance of the NENC ICB. CTR chair role for YH has already been transferred to ICBs.

Members of the mental health team have clinical and professional backgrounds in mental health and learning disability services. Their professional and clinical registration is kept up to date to ensure that the commissioning, oversight, and assurance is led by clinical and commissioning expertise.

The Head of Mental Health will lead both delegated and the retained members of the team to continue to deliver and work to provide the clinical and commissioning expertise to the ICBs. This includes established oversight and assurance framework of Mental Health Provider Collaboratives (MHPCs). The Head of Mental Health will lead both delegated members of the team on a day-to day basis (inclusive of quality and the Senior Quality Manager for Spec Com) and provide assurance, advice, and support to ICBs.

The specialised commissioning hub team and NHSE MHLDA retained commissioning function will continue to manage and oversee MHLDA lead provider arrangements.  The team although split between delegated and retained staff, will continue to operate as a single commissioning function to undertake all of the roles and responsibilities of the lead/responsible commissioner and co-ordinating/collaboration commissioner on behalf of the ICBs including, but not limited to, the responsibilities set out in:

* Lead provider roles and responsibilities
* ICB commissioning responsibilities set out in NHSE guidance
* NHSE Quality Maturity Framework
* NHSE MHLDA escalation process

Ways of working, reporting and escalation will be through the governance and operating models set out in this agreement

In summary, support will include:

* Oversight and Assurance of delegated service lines (including via Lead Provider contract) and PC quality oversight/maturity framework, ensuring and maintaining links to ICB governance and assurance processes as set out in this agreement
* Support the alignment of MHLDA specialised commissioning priorities with ICB priorities, ensuring greater integration between local and specialised MHLDA pathways.
* Provide expertise and support to Provider Collaboratives (PCs) to achieve strategic ambitions​.
* Oversight and assurance of the transformation of specialised mental health services.
* Support PCs in the regions / ICB footprints to develop and deliver their transformation programme across spec comm and the wider pathway.
* Ensure quality engagement and involvement of Experts by Experience in all activities.
* Provide expertise and support to PCs to achieve strategic ambitions​.
* Garner learning, risks and issues within the local systems and PCs to inform learning and action at a national and system level.
* Provide professional leadership and management, including supervision and associated activities allocated to the Staff.
* Provide advice and support with escalations and legal cases.
* Lead on local actions as required in the NHSE briefing and escalation process, ensuring connectivity to ICBs and to NHSE regional team as required.

Contracting function

The contracting function will be part of the delegated team, in the SY ICB host hub.

Contracts with providers are managed by the Supplier Management function within the Commissioning Hub. This team ensures compliance with statutory obligations of commissioners to ensure adequate arrangements, contractual or otherwise, are in place when securing provision of specialised services. The function also supports the monitoring and governing of such arrangements. Additionally, the Supplier Management function supports annual planning rounds in respect of specialised services linking with local systems.

In 2025/26 Supplier Management will continue to be led by the Head of Supplier Management, with this post transferring to be employed by the Specialised Commissioning Hub along with all existing specific acute and mental health Supplier Management resource. The team is integrated through reporting into the Yorkshire and the Humber (Y&H) and North East and North Cumbria (NE&NC) SMTs. Escalation of reporting and decision making will feed via established governance to the Y&H Joint Committee and NENC Sub Committee as appliable. Additional expertise will be available within retained team resource (which will also include Supplier Management).

From 2025/26 and beyond the Supplier Management resource will continue to deliver contracting and planning and ongoing monitoring of delivery, the basis of this is documented in the North East and Yorkshire Joint Committee approved Contracting Strategy with clarity that delegated provision will be formally awarded and contracted via and NHS England led documentation for 2025/26 as in previous years.

The Contracting and Business Intelligence joint subgroup (with members from both ICBs and NHSE)\* will continue during 2025/26 to inform the contracting structure for 2026/27, principally to consider full integration (and implications thereof) into single ICB led provider contracts for 2026/27 for acute services as per the nationally preferred model. Specific contractual duties, roles and responsibilities for all delegated services are being mapped to ensure continued robust delivery.

*\* ICBs represented through senior contract Managers and Business Intelligence Leads*

Service specialist function

The service specialist function will sit in the delegated team.

Service Specialists support colleagues in implementing national care models within local networks and providers. They assess current processes, recommend best practices, document agreed changes, and oversee implementation, focussing on ensuring high-quality specialised services through recognised standards, good outcomes, and equal access.

Specialists drive service improvements aligned with national and local priorities and ensure compliance with national models and standards while working closely with clinical networks and providers to connect health professionals with NHS England’s commissioning framework.

Quality

Quality and oversight will be delivered by staff in delegated and retained teams and will continue to operate as a single commissioning function.

The Regional Director of Nursing will continue to provide leadership into the commissioning team and oversee the delivery of the quality function on a day-to-day basis. The delegated team will include the current quality leads who support the SMT functions and manage to day-to-day quality issues. Quality process have been agreed collectively with NHSE and ICB’s to ensure this support and align into current ICB quality processes.

**Retained functions**

Retained functions set out below will remain in the employment of NHSE but will continue to provide a single commissioning function applying the matrix approach as set out in the operating model, with staff transferred to the SY ICB host hub.

Business Intelligence

The Business Intelligence team will continue to operate as an integrated function with the North of England Care Systems Support (NECS). The contact for support is held nationally by Arden and Greater East Midlands Commissioning Support Unit (AGEM) and then sub-contracted to NECS, with some aspects still held by AGEM. The contract is being renewed for 2025/26. The contract position for support services beyond 2025/26 is as yet unclear.

The team is currently overseen by one Head of Service who manages the team in both organisations. The team will continue to provide analytics for delegated and retained services, working closely with the Commissioning Hubs to ensure there is clear alignment with both Regional and ICB priorities and work areas.

The team will continue to work with ICB BI teams to develop tools and functions to support the ICBs’ commissioning of specialised care.

The team will continue to produce regular reporting outputs to support contract monitoring, health inequalities, the drugs challenges process and direct service-related analysis. There will be no change to provider relationships and the existing robust processes around access to data and additional analysis will continue.

All staff hosted by South Yorkshire ICB will continue to access business intelligence support in the same manner and at the same level as prior to changes.

Pharmacy

The pharmacy team is an Integral members of Specialised Commissioning and support to the contracting teams, both in terms of planning and review. They will continue to provide essential input into the process and governance of the drugs data processes including raising drug challenges, ensuring policy compliance, and best value for the NHS. The pharmacy team plays a key role into the planning and delivery of the regional, and system, Improving Value plans. Equally, providing advice, guidance and actioning on issues relating to the safe, effective and equitable use of spec comm drugs (e.g. establishing shared-care and informal networks, or moderating access where caseload and expertise is scarce).

Public health/health inequality lens

The NEY Specialised Commissioning Public Health Team consists of two Consultants in Public Health, a public health specialist, and two Health & Justice Public Health Leads. The public health functions will continue to be employed and retained within NHS England and are responsible to the Regional Director of Public Health.

This team will continue to provide Public Health leadership, analytics, support and advice into both the delegated and retained NEY specialised commissioning teams. The types of support include, but are not limited to:

* evidence review;
* needs assessment/demand modelling;
* service and care pathway design;
* service review/evaluation;
* equity audit;
* equality Health Impact Assessment.

In addition to the regional role, the Public Health team also provides the NEY regional contribution into various national specialised commissioning functions including National Programmes of Care, Clinical Reference Groups and other projects such as national transformation programmes. It also supports the national IFR processes and rotas (both screening and panels). All of these functions will continue to be provided post delegation.

**Procurement support**

Procurement support will continue to be provided by Arden and Greater East Midlands Commissioning Support Unit. The contact for support is held nationally and is being continued in 2025/26. The contract covers procurement of Specialised Commissioning, Health and Justice, Public Health and Delegated Pharmacy, Optometry and Dental (POD) functions. The contract position for support services beyond 2025/26 is as yet unclear.

Specialised commissioning staff - both transferred and retained - will continue to access procurement support in the same manner and at the same level after delegation has taken place will ensure that ICB perspectives and priorities are reflected in procurement decisions.

**Oversight and assurance**

Assurance of delegated specialised services will be conducted through the broader assurance and oversight framework used by NHS England and the ICBs. The oversight and assurance function will operate to the partnership and collaboration principles set out in this agreement and in line with the NHS Oversight Framework, supporting the ICBs to develop specialised commissioning ambition for system-led delivery of integrated care, as set out in the NHS Long Term Plan and in line with the ICBs' triple aim'.

The assurance and oversight function will help integrated care boards to assess the effectiveness of specialised commissioning responsibilities, underpinned by the 6 function areas as set out in the NHSE framework. The roles will work seamlessly with the regional performance team, to ensure specialised commissioning assurance is integrated within the overall assurance mechanisms for Boards and does not put in place additional requirements or burdens.

A guidance document is being prepared by the specialised commissioning national team to assist with including specialised services in the assurance system.

**Individual Funding Requests (IFRs)**

An Individual Funding Request (IFR) is an application to fund a treatment which would not usually be provided by NHS England for a particular patient. IFRs in specialised care are dealt with nationally by a central team. All IFRs for specialised services, whether delegated or retained, will continue to be submitted and processed through the national IFR portal (there are no regional IFR panels).

Each NHSE region has members of staff that contribute to the national screening and panel rota, and will continue to do so. Invitations to be part of the national screening panel will, in future, also be extended to ICBs. IFR cases, when presented nationally, are anonymised.

Specialised services, whether delegated or retained, will continue to follow the NHSE policies, specifications and duties, and these have to be consistent across all geographies.

To note: most IFRs relate to drug therapies, which will continue to be commissioned by NHS England.

For information: please see the most recent National IRF annual report



ICBs understand that material costs associated with IFRs for delegated services are rare, but there may be exceptional circumstances where significant cost pressure arises.

Any costs additional costs required by a IFR relating to a delegated service will be need to be absorbed by the ICB within which the service is located and will need to be agreed within the delegated funds. Where this is considered to have a significant impact on an individual ICB financial plan, the Joint Committee/Executive Committee may agree for this to be addressed by the risk sharing agreement that has been put in place between ICBs.

**Complaints**

Complaints to commissioners of specialised services are received currently by the NHS England contact centre and are then forwarded to the Specialised Commissioning Team for response.

Complaints which were opened before July 2022 and remained open on 30 June 2023 have been retained by NHS England and will now be dealt with by the Customer Contact Centre (CCC).- check dates

Any cases about retained specialised services will continue be dealt with by the Customer Contact Centre.

**Outstanding sections to be added:**

* On-call and EPRR arrangements - under discussion

**Part 4 – ICB Collaboration Arrangements**

As required by Clause 8 of this agreement, the North East and Yorkshire ICBs\* have established a Collaboration Agreement to ensure commissioning of Specialised Services will take place efficiently and effectively.

The document is available here <hyperlink>

\* South Yorkshire ICB; West Yorkshire ICB; Humber and North Yorkshire ICB and North East and North Cumbria ICB.

**Part 5 – Pooled Funds and Non-Pooled Funds**

*There will be no pooled budget arrangements put in place across the 4 ICBs in NEY.*

**Part 6 – Provider Collaboratives**

ICBs work within a wider partnership of Integrated Care Systems (ICS) which all have a role in improving local health, care and wellbeing. Each ICS has a long-term strategy to improve health and social care services and people's health and wellbeing in the area. Provider collaboratives bring together providers to work at scale to plan, deliver and transform services, working across multiple places and with a shared purpose, The aim of provider collaboratives is to reduce unwarranted variation, improve resilience, and ensure there is specialisation and consolidation of services where this will provide better outcomes and value for money. Delegation of specialised commissioning brings opportunities to integrate commissioning within the wider ICS structures, working with provider collaboratives and ensuring greater cohesion and strategic alignment to contribute to the delivery of ICS priorities.

Provider Collaboratives in North East and Yorkshire do not have commissioning responsibilities as in other Regions, although some Mental Health Collaboratives in the Region have contracts with NHS England.  Provider collaboration representation is reflected in the membership of the Yorkshire and Humber Joint Committee and provides the opportunity for meaningful input into the commissioning process.

**Operational Delivery Networks-**

Operational Delivery Networks (ODNs) are clinically-led organisations working together across professional, organisational and geographical boundaries. Networks play a vital role in co-ordinating pathways of care, supporting equitable access to healthcare, and assuring and improving quality.

ODNs are strongly operationally focussed with an additional role in transformation, where they are the key delivery vehicle for national and local specialised transformation programmes. All make an important contribution to the operation of services, including recovery and efficiency alongside their focus on service improvement.

ODN work plans are determined by clinical need as agreed between providers and commissioners and their outcomes and outputs are included in the relevant commissioning service specifications.

Responsibility for assuring governance arrangements for ODNs sits with NHS England specialised commissioning and responsibility for ‘hosting’ the ODNs is agreed with a local provider organisation in most cases.

NHS England sets out the scope of work for specialised services clinical networks in a network specification. It clearly sets out the core functions of each type of network. These specifications are available on the NHS England web site and on the pages of the relevant clinical reference groups. Funding is also allocated nationally.

ODNs cover the following areas, with a functional footprint based on the appropriate geographical area for service provision:

|  |  |  |
| --- | --- | --- |
| **Operational footprint** | | |
| **Region-wide** | **Y&H and NENC** | **Individual ICB networks** |
| Burns | Children/Teenage & Young Adult Cancer | Adult critical care |
| Cardiac | Congenital heart disease | Hepatitis C |
| Neurosurgery | Neonatal critical care | Major trauma |
| Spinal Cord Injury | Paediatric critical care |  |
|  | Radiotherapy |  |
|  | Renal |  |
|  | Surgery in children |  |
|  | Spinal |  |

The focus of each network’s work is agreed through a single annual workplan that reflects both national priorities and local population health needs.

All clinical areas covered by ODNs (except burns) are amongst the services being delegated to ICBs. The hosting arrangements will remain the same, predominantly through providers in the Region. In developing and agreeing the single annual workplan for ODNs the specialised commissioning function will work with ODNs and ICB clinical and other system leadership to develop clinical consensus, ensure system wide clinical engagement, and drive clinical transformation of specialised services, aligned to ICS priorities for delegated services.

**Part 7 – Further Governance Arrangements**

The Specialised Commissioning staff across North East and Yorkshire will - whilst hosting is split between two different organisations - continue to function as one overall specialised commissioning unit, underpinned by the ‘Teams of Teams’ model. The team will operate, as now, within two geographical footprints, one covering the North East and North Cumbria ICS area and one covering the combined Yorkshire and thumber ICSs area comprising South Yorkshire, West Yorkshire, and Humber and North Yorkshire ICSs.

This is further described in the Operating Model in Schedule 9 of this agreement.

Work demands across delegated and retained services will carry equal weight for planning and operational purposes. A key principle is to ensure fairness of support for all services as required, and independent of the hosting arrangement for individual staff and teams.

Governance responsibilities will fall to ICBs for delegated services and to NHS England for retained services. Therefore decision-making, planning and escalation will be routed by specialised commissioning staff to the appropriate governance body as follows:

* For retained services, the NHS England Specialised Commissioning Regional Leadership Group and the North West Strategic Group.
* For delegated services within the Yorkshire and the Humber combined ICB footprint, the ICBs’ Specialised Services Joint Committee.
* For delegated services within the North East and North Cumbria ICB, the Specialised Commissioning Sub-Committee.
* Where a decision is required across the NEY footprint, the chairs of the Y&H JC and the NENC Sub committee may agree to convene an extraordinary meeting of both committees taking place at the same time. This meeting would take the form of a committees meeting in common with matters agreed by the respective chairs for decision across NEY being discussed together but with each committee making its own decisions in line with their agreed TOR

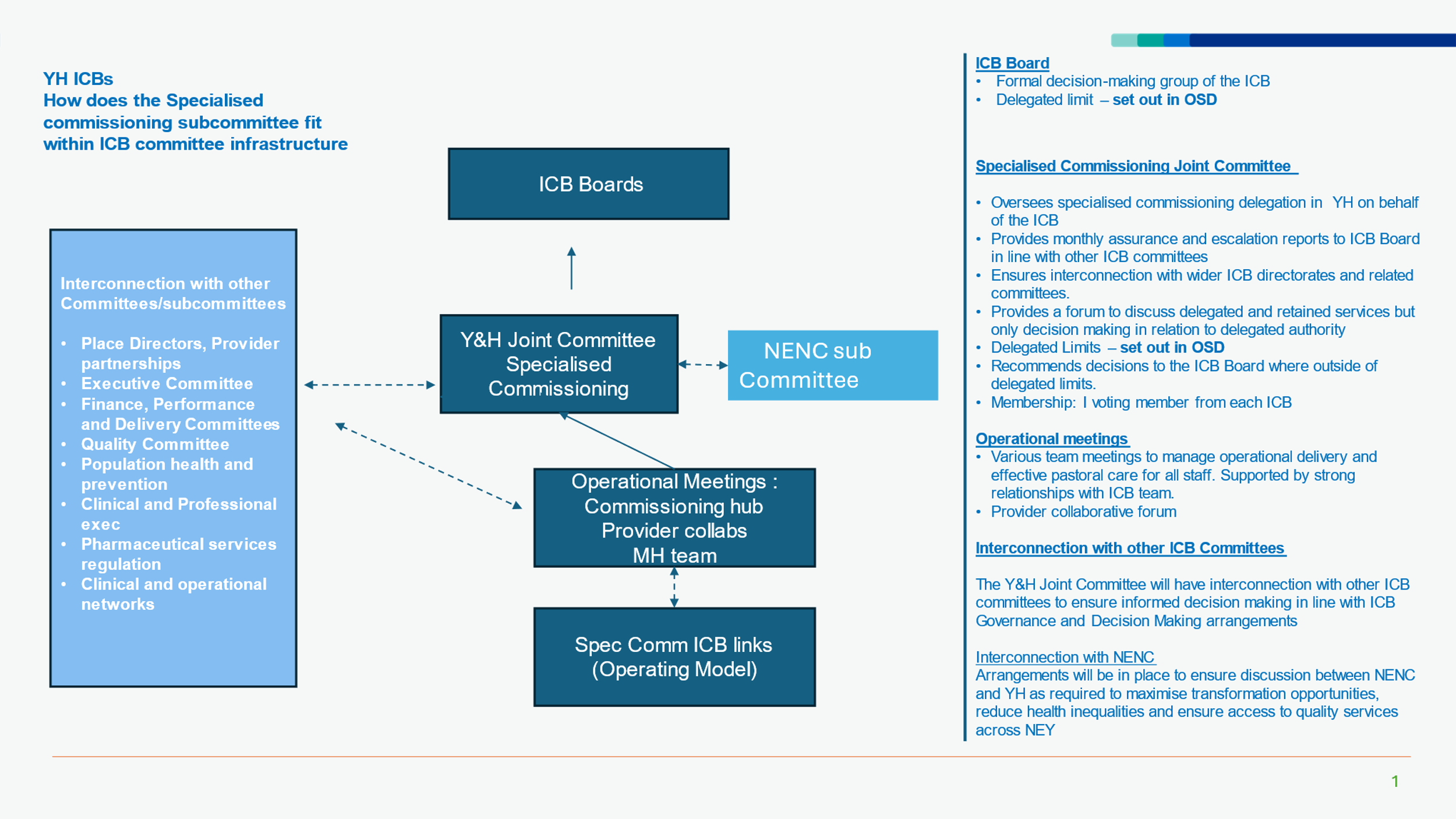
The teams will be supported by the leadership ESM team to balance potentially competing local and national commitments to ensure an equitable or reasonable portion to each priority area ,that clearly reflects local healthcare need and supports the reduction of health inequalities to support each ICB to meet their 'triple aim'

A key function of the ESM posts will be to support the leadership and management of planning and workload for both the transferred and retained teams, escalating within the governance structure if required.

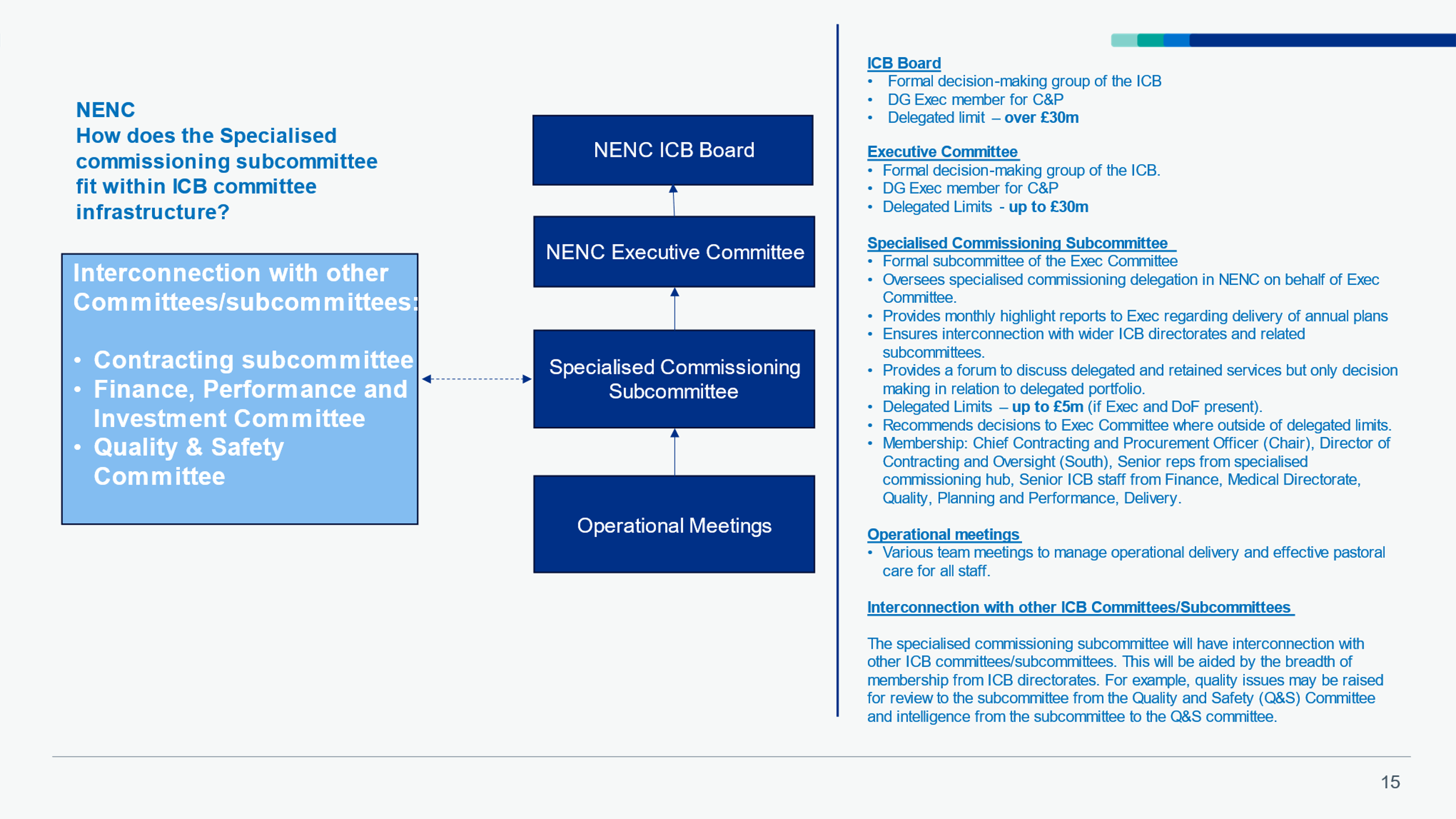
ESMs will also support the planning process, including supporting operational planning, contributions to Joint Forward Plans, Integrated Care Strategies and Annual Assessments, to ensure that the ‘triple aims’ of ICBs (to ensure quality of service provisions, equality for the population and effectiveness of delivery) will be demonstrable in the specialised commissioning work plans.

All parties have agreed that delegated decision making will be taken to the following executive meetings, these have commenced in shadow format from January 2025 ahead of delegation:

**Governance structures - Yorkshire and the Humber**



**Governance structures - North East and North Cumbria**



**Governance structures – national**

Specialised services commissioned by NHS England have been grouped into six national programmes of care (NPoC) that coordinate work across the services in that programme of care.

Each NPoC brings together clinical and commissioning leadership, an empowered patient and public voice, and policy expertise to support the commissioning of specialised services which meet population needs, provide consistently high-quality care and excellent patient experience, as part of an integrated care system and patient pathway transformation.

The NPoCs principally operate through a network of affiliated clinical reference groups, and task and finish groups, to define and specify the clinical content and operation of specialised services.

**Audit**

ICBs will ensure that both internal auditors are aware of the ICB taking on delegation of services from 1 April 2025 and that this is reflected appropriately within the respective audit plans.

The following additional documents will be provided to give further External Audit assurance:

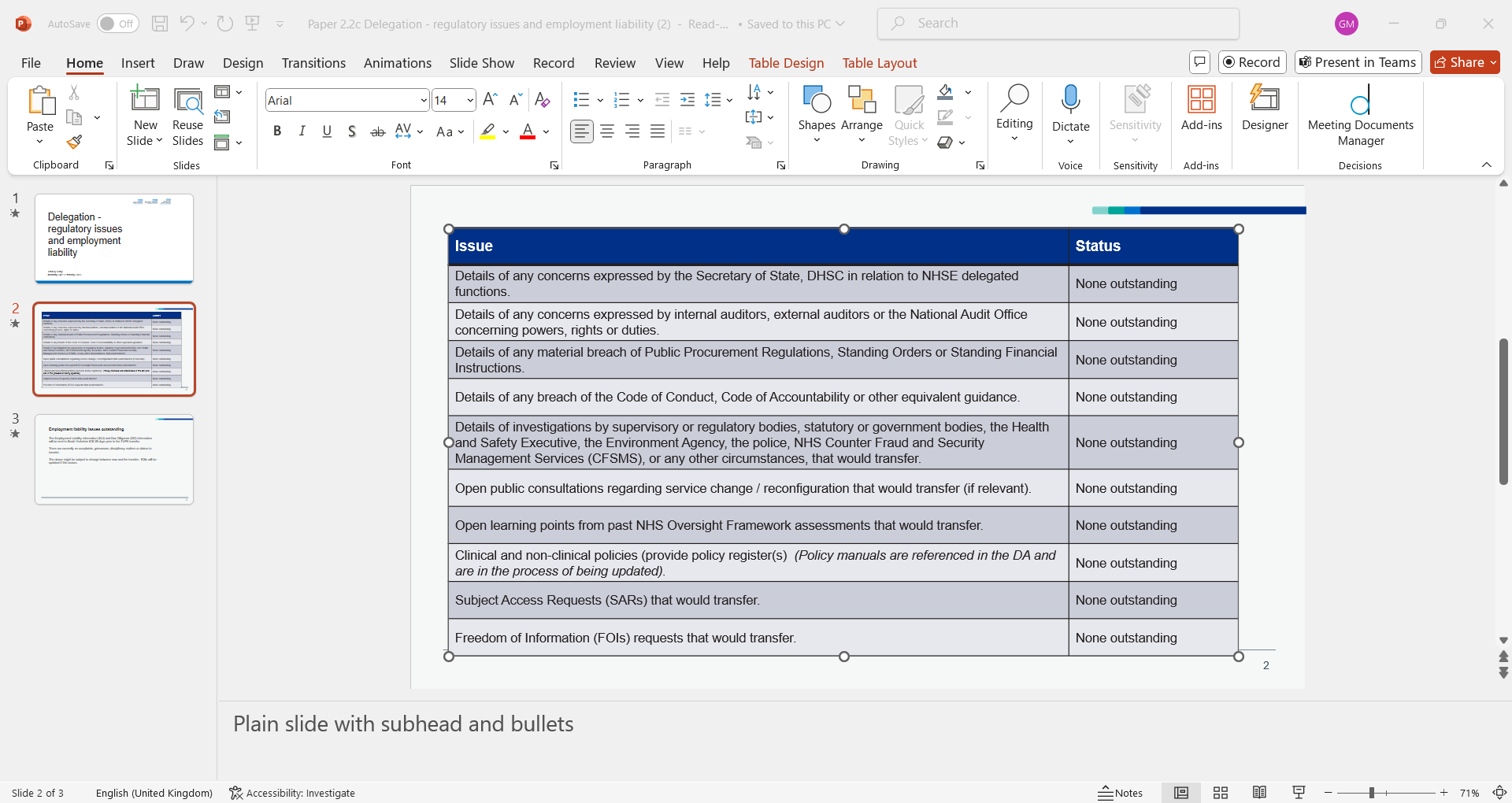
1. The flow of service provision from NHSE to the ICBs in Q1, and then between the SY ICB to the other 3 ICBs from Q2 onwards:

Receiving ICBs will require a document outlining the assurance of the provision of information that as receivers they can place reliance on services provided and if needed, on the Internal Audit of the NHSE service (i.e. audit to audit reliance, without the need for additional audits by each receiving ICB or the need for a more rigorous Service Auditor Report (SAR) type audit)

Prior to the completion of each year’s annual accounts the assurance arrangements in place for ledger management will be confirmed and agreed with each ICB and the NHS England Director of Commissioning Finance.  This will ensure that there will not be the requirement to undertake additional audits by each receiving ICB or the need for a more rigorous SAR type audit)

**Open risks to transfer**

Details of any open risks with regards to regulatory matters (detailed in the table below) will be shared with the ICBs at least 28 days prior to delegation.



The Employment Liability information (ELI) and Due Diligence (DD) information will be sent to South Yorkshire ICB, as the host ICB, 28 days prior to the TUPE transfer.

SCHEDULE 9: Developmental Arrangements

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

NHSE and the ICBs in this agreement are jointly committed to the integration of commissioning of specialised services with ICBs’ wider commissioning responsibilities, enabling ICBs to design care that joins up around patients’ needs, and invest resources where they can have the best effect on outcomes.

In ensuring the safe delegation of specialised services, NHSE and the ICBs recognise that there are a number of developmental areas required further transformation work post-delegation to achieve this ambition. Overtime, through the arrangements set out in this agreement, we aim to foster strong system leadership and collaborative cultures and behaviours that will be key to achieving these collective goals and to meet the ICB 'triple aim'.

NHSE and the ICBs are committed to continue development work in the following areas:

**Clinical leadership**

* Ensure the retained medical director and Commissioning team work with ICB medical directors, network leads and provider collaboratives to identify clinical leads and support their development
* Explore opportunities with the NHSE retained medical director and with ICB clinical leads to encourage and enhance ICB clinical involvement and engagement in national forums, including National Programmes of Care and Clinical Reference Groups.
* Aligning and integrating specialised commissioning clinical leadership into system wide system wide planning processes (covering all three layers of the planning process i.e.: NHS Operational Planning Guidance, Joint Forward Plans, Annual Assessments), including network plans, in support of delivering the ICB triple aim and achieving the benefits of delegation- ensuring ability to manage national and local priorities as part of this
* Ensure relevant ICB leads participate in the national IFR panels

**Networks**

In developing and agreeing the single annual workplan for ODNs the specialised commissioning function will work with ODNs and ICB clinical and other system leadership to develop clinical consensus, ensure system wide clinical engagement, and drive clinical transformation of specialised services, aligned to ICS priorities for delegated services. Ongoing development of network strategies and approaches between ODNs and ICB networks will support the aims of delegation by removing fragmentation of patient pathways and enabling transformation to develop opportunities to focus on preventive approaches to long term conditions. A joined up network development approach will:

* Ensure there is a mechanism in place for network intelligence to feed specialised commissioning plans and vice versa.
* Continue to develop co-production and clinical connectivity across ICS system partnerships and provider collaboratives to deliver pathway transformation and strategic priorities
* Ensure there is a clear route for escalation of network concerns
* Agree a sign off processes, including timeframes, for network plans via the Y&H Joint Committee

**Quality**

* Ensure connectivity of quality functions into the ICB structure with clearly defined roles and responsibilities and clarity of reporting into the Y&H Joint Committee.
* Ensure the escalation framework is fully embedded as core business
* Undertake a review with the Y&H Joint Committee to understand what has changed by the end of Q1 and to look for further ways to align the way risk is quantified and qualified

**Service Transformation and planning**

* Ensuring there is a focus on achieving the benefits of delegation in terms of whole pathway planning and integration, delivering a shift in need by increasing prevention and community provision and improving population health

Development of BI data to meet the future needs of the ICBs and in support of transformational work

* Development of communications and engagement strategy to involve wider health and social care partners and communities in transformation and planning
* Development of health inequalities strategy to support decision making and monitoring impact
* Develop relationships with collaboratives and networks in support of horizon scanning linked to population health improvement and HI strategy
* Development of system wide relationships and representation at national forum to ensure ICB views influence national decisions relating to service specification development, national standards and policies and nationally led procurements and do not accidentally impact on provider market and landscape impacting outcomes
* Develop a clear and timely process for agreeing transformation plans supported via the contracting process

**Finance and contracting**

* Continued development of contracting arrangements via the contracting sub group
* Continued development of financial arrangements and relationships via the finance sub group
* Clarification and mitigation where possible of the risks and requirements associated with extension of or change in the commissioning or contracting arrangements post 25/26
* Clarification and mitigation of risks where possible regarding any changes or extension of contract arrangements with Arden and GEMs post 25/26 and the SLA for BI support with NECS
* Development of processes and relationships to ensure ICBs are engaged in decision making regarding any future procurements (including the ongoing procurement of the Adult Critical Care Transport provision)
* Clarification of the management of any material financial risk to the ICBs resulting from decisions made by the national IFR panel. Ensure visibility of IFRs within the Joint Committee

**Staff support and development**

* Continued delivery of an agreed OD plan to support the Commissioning team to discharge the delegated functions within the ICB environment
* Connection and development of relationships between the Commissioning team and any relevant retained staff into ICB colleagues, including provider collaboratives and networks
* Development of ESM roles in support of connectivity, efficiency and achieving aims of delegation
* Identify and address training requirements for ICB on call staff with regards to incident management and EPRR

**Operating Model**

An operating model has been agreed by the shadow Joint Committee as part of the Safe Delegation transfer process and is set out below. The Parties acknowledge that the Operating Model set out in this Agreement has been developed collaboratively between the Parties, and the other North East & Yorkshire ICBs, and that it will be further developed during the term of this Agreement as the arrangements are embedded, the Commissioning Team transferred to South Yorkshire ICB, and ways of working are refined.

The Joint Committee will continue to review and revise the operating model, learning lessons through the transition period and after delegation for:

* Continued development of operating model post delegation to maximise connectivity and efficiency across the system
* Ensure the Oversight and Assurance process and the roles of the 2 new NHSE posts related to this are incorporated into the model

Purpose

The operating model has been developed to compliment the arrangements set out across this Delegation Agreement, the Collaboration Agreement and the Terms of Reference for the Y&H Joint Committee and NENC Sub-Committee, and scheme of delegation respectively.

The core purpose is to describe how the arrangements for ICBs commissioning of specialised services will be carried out in practice. The model sets out, at a high level, the ideal standard with a recognition that this will operate across complex systems and require collective endeavours to work towards the full implementation progressively.

The operating model is built from an understanding of the role, responsibilities and strengths of the current approach and team. This is complimented with consideration of how the hub team will interact with wider system teams and partners, to ensure that the new functions are integrated within the wider ICB portfolio and delivered in a way that reflects ICB ways of working and the opportunities of delegation. This is set out through three core areas:

1. **People** - The people involved, their roles and responsibilities
2. **Principles** - The principles by which we will operate to deliver specialised commissioning functions within ICBs and regionally.
3. **Process** - The processes that describe the functions of the team, and how the governance and ways of working will operate.

People

The people involved in the specialised commissioning function is, largely, a continuation of the current arrangements. This is important in retaining experience, skills and organisational memory – which will support ICBs in carrying out their newly delegated responsibilities.

Although the existing team will remain in place, the landscape they operate in is changing. This will introduce new ways of working, different expectations, and additional stakeholders. ICBs are committed to providing the team with the right organisational development support to manage this transition.

To harness the benefits of delegation, all people involved have an important role to play. Whilst the roles and responsibilities may evolve, the general expectations are as follows:

|  |  |
| --- | --- |
| **People** | **Roles and Responsibilities** |
| ICB Executive Directors | * Provide leadership and strategic direction to the team and ESMs. * Take decisions on behalf of their ICB, or delegate this via the team. * Connect the team and ESMs/team to the Board, Committees and key ICB stakeholders. * Collaborate amongst themselves to provide consistent direction to the team. * Provide constructive challenge and hold the team to account. |
| NHSE ESMs | * Provide day-to-day operational leadership to the hub team, ensuring that all functions are carried out to a high standard * Provide high quality advice and guidance to the executive directors, supporting them to make well informed decisions. * Ensure connectivity into NHSE where applicable, including on interdependent retained programmes of work, representing ICB views and interests in relevant forums, and removing barriers to delivery. |
| SC “hub” team | * Provide day-to-day functions for all core specialised commissioning business on behalf of the ICBs. * Enact decisions taken by the executive directors, and/or take decisions in line with agreed delegation parameters. * Connect into and collaborate with ICBs, other teams, and collaborate/integrate across a range of system partners to support relevant programmes of work. * Ensure strong connectivity and involvement of clinical leadership in all work, including via specialised networks, ODNs and other groups. * Deliver the transformation programmes/priorities that are agreed via the Joint Committee. * Ensure that opportunities to connect pieces of work across Y&H/NEY are identified and realised. |
| SC retained | * Provide services/functions to the hub team that are retained by NHSE but critical to the core business. |
| ICB teams | * Provide subject matter expertise, support, guidance and capacity on agreed and relevant programmes of work to the SC hub team, to deliver the whole pathway benefits associated with delegation. |
| Clinical networks and ODNs | * Delivery of agreed programmes of work focusing on service improvement and transformation. * Providing expertise, leadership and input into existing work, and support the team and JC with identifying areas of concern, future prioritisation. * Ensure connectivity of networks and clinical leads into SC and relevant ICB teams, and provide national representation as applicable. |
| Provider collaboratives | * Provide service expertise, leadership and input into relevant programmes of work. * Lead agreed programmes of work to improve services, and take decisions relevant to those services. * Ensure readiness and work with ICBs on model of future provide collaboration and delegation. * Support join up with interdependent services and decision-making that considers system-wide impact. * Collaborate amongst/across other ICB footprint provider collaboratives. |

Principles

The principles by which we operate are as important as the functions we deliver. They will govern how we work together to deliver responsibilities.

We will:

* Act with compassion, curiosity and a supportive “can-do” attitude towards one another and the work we do.
* Create and operate in a culture of high trust, accountability, and transparency.
* Build on what works, leveraging and learning from existing arrangements, ways of working and team strengths.
* Be clinically informed, using evidence, data and expertise to drive decision-making and service design that improves outcomes for patients.
* Act in a way that is fiscally responsible, ensuring that resources are well deployed, opportunities for efficiency are realised, and a contribution to broader socioeconomic development wherever possible.
* Engage in true and effective partnership working, recognising that all stakeholders are equal partners with an equal voice at the table, with ICBs working as one wherever possible, and ensuring that we harness the expertise of operational staff in shaping work and decisions.
* Delegate to and empower the specialised commissioning team to work autonomously and carry out functions in line with their skills and remit, whilst ensuring appropriate direction, oversight and accountability. *The thresholds for this are documented in the operational scheme of delegation.*
* Be clear on roles and responsibilities, taking into consideration maturity and support needs, and ensuring that we are acting in line with national standards and statutory duties.
* Be explicit in our focus on tackling inequalities and whole pathway improvement to enhance patient experience and outcomes, working across a range of system partners to this end.
* Focus on delivering statutory ICB responsibilities and the NHS triple aim, acting in the pursuit of the improvement of population health, quality of care and value for the system.
* Work together to manage the capacity of the team and ensure that the right balance of ICB priorities, national mandates and retained function asks is reflected in the business of the team.

Process

In working across complex systems, it is crucial that the processes adopted and followed are clear. This includes how the team delivers its core functions, how the specialised commissioning function operates in the wider ICB context, and how this fits together.

Overall, the team will provide the following functions:

|  |  |
| --- | --- |
| **Function** | **Summary** |
| Commissioning | Ensuring that there is a robust and joined up approach to planning, purchasing and monitoring service delivery. Includes working within ICBs to identify opportunities with other teams/commissioning functions that will improve care and/or generate efficiencies, and working across a multi-ICB footprint where economies of scale may be realised in joint commissioning. All commissioning activities will be done collaboratively with providers where appropriate. A consistent focus on monitoring risks and opportunities, reporting through the Joint Committee and ICB infrastructure. |
| Contracting | Ensuring that contracts are in place and monitored, and that they adhere to all national legislation and standards. The team will be responsible for connecting with ICB contracting teams as necessary. |
| Finance | Ensuring robust financial management and oversight of the delegated total budget, connecting with ICB finance teams and the retained NHSE finance team *(North-West hosted*) as appropriate, and providing advice and guidance on commissioning activities to the team and executive directors. |
| Quality | Providing oversight and management of quality risks and issues, connecting with ICB and provider quality teams, and providing subject matter expertise and input into |
| Corporate | This includes responsibilities for providing accurate information in response to requests for information received by the ICBs, including (but not limited to) FOIs, complaints, media requests, and queries from elected members. |
| Analytics and BI | Providing technical expertise and information in relation to data that supports contract monitoring and service planning in-line with the evidence, including to tackle inequalities. |
| Transformation and improvement | Ensuring that a continuous focus on transformation and improvement is apparent across all services and areas of responsibility. This will include through defined priority transformation programmes and realising opportunities in other areas. It will also be important that, in carrying out these functions, the team is aware of national programmes and contributes to ICB-wide initiatives. |
| Partnerships and collaboration | Cultivating and sustaining strong relationships and collaboration with key partners is a crucial part of how ICBs will deliver their specialised commissioning responsibilities. Practically, this means that the team will ensure join-up and a high degree of collaboration with interdependent ICB work programmes and places, and with providers and provider collaboratives to ensure a productive approach to contract management and that they are actively involved in coproducing work, solutions and are directly responsible for delivering priorities in agreed areas. |

Whilst separate components are set out, it is crucial that all parts of the operating model function as a whole to enable greater connectivity, improvement, collaboration and transformation. This is set out visually in the diagram below. All processes set out, both covering business as usual and transformation focused work, will be characterised by collaboration with key partners. This means that:

* There will be a bidirectional relationship with provider collaboratives and clinical networks – whereby they inform priorities, have an active role in decisions about services, and may lead on priority areas of work to improve services on behalf of the ICB or region. It will also be important that provider collaboratives across the ICBs are proactively collaborating amongst themselves.
* That other teams and colleagues within ICBs will be involved in both shaping and leading areas of work, including when work is focused on pathway transformation that may not be led by the SC team but that the SC play an active role in. This should also include connecting the SC team with the relevant ICB teams on matters such as advice (e.g. for contracting or finance approaches).
* That a range of clinical colleagues, networks and groups will be involved in the design, delivery and oversight of priority areas of work.

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**The Developmental Arrangements**

The following Developmental Arrangements apply to this Agreement:

Condition 1: Contingency to be set at 0.5% or, as a minimum, in line with planning guidance.

Condition 2: Establishment of a Joint/Multi ICB Committee in Yorkshire and the Humber, with clear governance in place for North East and North Cumbria ICB. This will include an arrangement whereby all 4 ICBs can plan together where this is required (for example, when services work across the two planning footprints or there needs to be an North East and Yorkshire Regional solution).

Condition 3: For all ICBs in NOF3 or NOF4, any decision that impacts on the overall spend of the specialised service allocation must have NHSE Regional approval before the commissioning change is made or any change process is begun.

**Developmental Arrangements relating to the NHS Oversight Framework and ICB decision making**

1. With reference to the Oversight Framework and the ICBs’ assessed status within the Oversight Framework, the ICB and NHS England agree that:

a. Any decision that impacts on the overall spend of the specialised service allocation (the Delegated Funds) must have NHS England (regional) approval before the commissioning change is made or any change process is begun.

2. This Developmental Arrangement:

a. applies if the ICB is assessed as within NOF3 or NOF4 of the Oversight Framework at the time of signing the agreement or, an equivalent score at the time the annual ICB capability assessment is undertaken.

b. should not act as barrier to innovation and change but does reflect NHS England’s continued accountability for Delegated Services, its role in oversight and assurance and the need to work together to support those systems facing the greatest challenges.

3. NHS England may issue further Guidance on this Developmental Arrangement to ensure it aligns with any amended Oversight Framework.

**Developmental Arrangements relating to the Transition Period**

NHS England and the ICB, together with the other ICBs in North East and Yorkshire region, have agreed the terms of the Transition MOU embedded below, which will apply during the Transition Period.

[insert Transition MOU]

**Developmental Arrangements relating to the Commissioning Team and Retained Staff Functions**

The following Developmental Arrangements concerning the roles, responsibilities and commissioning support functions NHS England will provide to the ICB apply to this Agreement.

The “Commissioning Team” referred to in this Schedule are the specialised services staff employed by NHS England that support the commissioning of Delegated Services immediately prior to this Agreement and who will transfer to South Yorkshire ICB as the Host ICB on 1 July 2025.

The “Retained Staff” are NHS England staff who are part of the commissioning function and will be retained by NHS England following 1 July 2025 and who support the commissioning of both Retained Services and Delegated Services. This does not include retained finance staff who will only work on NHS England retained functions unless otherwise specified.

NHS England will, working collaboratively with the ICB and in particular the Host ICB, implement the organisational development plan (“**OD Plan**”) (to be co-produced by NHS England and the North East and Yorkshire ICBs during the Transition Period in accordance with the Transition MOU), from 1 July 2025.

**Retained Staff and Retained Functions - Operational Arrangements following 1 July 2025 (or such later date as the Commissioning Team may transfer to the Host ICB) (the Transfer Date)**

NHS England will ensure that:

The Retained Staff provide at least the level of support and staff resource to the ICB as was provided in respect of the Delegated Functions before the Transfer Date to enable the ICB to exercise the Delegated Functions and comply with their obligations in accordance with this Agreement, such support to include the functions as set out in Schedule 8;

The Retained Staff discharge the roles and responsibilities as set out in the Operating Model (set out in Schedule 8 of this Agreement) and comply at all times with the operational scheme of delegation in respect of the Delegated Functions (the OSD being set out in Schedule 8 of this Agreement);

The Retained Staff comply at all times with the terms of this Agreement, the financial procedures set out in Schedule 8 and all agreed financial and contracting standard operating procedures as agreed with the ICB when providing support to the ICB; and

The Retained Staff resource is allocated equitably across each of the four North East & Yorkshire ICBs that are party to the Collaboration Agreement, reflective of local healthcare need and supportive of the reduction of health inequalities in line with the Triple Aim.

NHS England and the ICB will keep each other informed of any potential or actual risks or issues in respect of the Delegated Services in a timely way. NHS England will provide such information and assistance to the ICB as the ICB reasonably requires in order to exercise the Delegated Functions in line with the Operating Model.

It is recognised that there may be competing demands on the Commissioning Team and on the Retained Staff in respect of Retained Services and Delegated Services. NHS England will ensure that the Retained Staff (including senior NHS England staff supporting the Commissioning Team, such as the Executive Senior Managers (the “**ESMs**”)), balance such demands so as to ensure that the ICB is able to perform the Delegated Functions in accordance with this Agreement.

In the event that there are capacity issues within the Retained Staff such that there is a risk that the required level of support cannot be provided to the ICB, NHS England will ensure that procedures are in place to notify the ESMs leading the Commissioning Team and that where the ESMs cannot resolve such issues, the ESMs escalate such issues to the ICB’s Executive Directors without delay.

NHS England acknowledges that the ICB will be required to and will comply with all applicable guidance provided by NHS England in operating with the arrangements set out in this Agreement, where such guidance has been issued on or before 1 April 2025. In the event that NHS England issues new or amended guidance that materially impacts the commissioning of the Delegated Services in any way, NHS England will seek the views of the ICB in relation to the potential impact of such guidance and the Parties will seek to agree measures as appropriate in order to mitigate any negative financial impact on the ICB.

**Retained Commissioning Team - Staff Management**

NHS England and the ICB recognise that the Host ICB will be responsible for the overall direction and supervision of the Commissioning Team members and their day-to-day management following the Transfer Date.

NHS England remains responsible at all times for the following matters in relation to the Retained Staff:

* disciplinary and capability issues;
* grievances;
* appraisals and performance-related procedures;
* remuneration including pay progression;
* investigating, progressing and/or resolving issues relating to protected disclosures under the Employment Rights Act 1996 and requests for personal data under the Data Protection Act 2018;
* annual and other leave;
* any required travel, accommodation and any other expenses.

The ICB and NHS England agree to cooperate if they become aware of any matter that may give rise to a claim by or against the ICB or NHS England in respect of a Commissioning Team or Retained Staff member. The ICB and NHS England agree to provide notice of fact as soon as possible and cooperate in (as appropriate) investigating, responding to and defending such claim.

NHS England recognises that withdrawal of Retained Staff support to the ICB by NHS England could compromise the ICB’s abilities to carry out the Delegated Functions in accordance with this Agreement. As such, NHS England agrees that it will not withdraw any or all Retained Staff members from the arrangements under this Schedule without prior written agreement of the ICB (acting reasonably).

NHSE suggested wording:

*NHS England recognises that withdrawal of Retained Staff support to the ICB by NHS England could compromise the ICB’s abilities to carry out the Delegated Functions in accordance with this Agreement. As such, NHS England agrees that it will discuss any potential changes to the Retained Staff model that will impact on the Delegation support offer with ICB Executive Director’s, prior to any changes taking place, so that the impact can be understood, jointly managed, and mitigated wherever possible.*

Save to the extent that Losses are incurred as a result of the ICB’s negligence or breach of this Schedule 9, NHS England indemnifies the ICB against any and all Losses suffered or incurred by the ICB arising out of or resulting from the acts or omissions of NHS England in respect of their employment or engagement of a Retained Staff member (including ESMs) including but not limited to:

its breach of this Schedule 9;

the employment/engagement or termination of employment/engagement of the relevant Retained Staff member,

and including, where no other indemnity arrangements provided for by NHS Resolution may apply, liability for personal injury, accident or illness suffered, breach of contract or in tort, unfair dismissal, equal pay, discrimination of any kind or under any legislation applicable in the United Kingdom.

Save to the extent that Losses are incurred as a result of NHS England’s negligence or breach of this Schedule 9, the ICB indemnifies NHS England against any and all Losses suffered or incurred by NHS England arising out of or resulting from the acts or omissions of the ICB in respect of their employment or engagement of a Commissioning Team member after the Transfer Date including but not limited to:

its breach of this Schedule 9;

the employment/engagement or termination of employment/engagement of the relevant Commissioning Team member,

and including, where no other indemnity arrangements provided for by NHS Resolution may apply, liability for personal injury, accident or illness suffered, breach of contract or in tort, unfair dismissal, equal pay, discrimination of any kind or under any legislation applicable in the United Kingdom.

**Complaints**

**Procurement support and business intelligence**

As set out in Schedule 8, NHS England will ensure the continued provision to the ICB of business intelligence support from North of England Commissioning Support Unit (NECS) and procurement support from Arden & Greater East Midlands Commissioning Support Unit respectively. It is acknowledged that the contracts for both business intelligence and procurement support between NHS England and the two CSUs expire on 31 March 2026 and the arrangements from 1 April 2026 onwards are unclear as at the date of this Agreement. NHS England will work together with the ICB ahead of time to ensure that either the contracts are extended (and varied if required by the ICB to reflect the requirements for the Delegated Functions) or appropriate replacement services are put in place from 1 April 2026 so as to ensure continuity of services such that the ICB is able to comply with its obligations under this Agreement. In the event that there are additional costs associated with any replacement or varied services then the Parties agree that the ICB shall be provided with sufficient resource by way of running cost allowance to cover such additional costs as appropriate.

**Liabilities**

NHS England and the ICB acknowledge that there may be risks associated with the Delegated Functions which the ICB may not have full visibility of prior to 1 April 2025. NHS England agrees to take all reasonable steps to support the ICB in the discharge of the Delegated Functions under this Agreement and both Parties agree to work together in the interests of patients to mitigate any such risks.

NHS England and the ICB acknowledge and agree that the support to be provided by the Retained Staff to the ICB under this Schedule 9 and elsewhere in this Agreement is essential in order for the ICB to discharge the Delegated Functions and comply with its obligations under this Agreement. Where the ICB is unable to comply with its obligations under this Agreement and/or incurs Losses as a result of an act or omission of NHS England, or its breach of this Agreement, the ICB will be relieved from its obligations under this Agreement and NHSE will reimburse the ICB in respect of such Losses (save to the extent that such Losses are incurred as a result of the ICB’s negligence or breach of this Schedule 9).

NHS England agrees that where a decision concerning an Individual Funding Request (**IFR**) is made by NHS England’s IFR panel which has a material financial impact on the Delegated Funds such that there is a shortfall, the ICB will first consider funding such shortfall through use of the contingency referred to in paragraph X of this Schedule 9. If the shortfall cannot be met from the contingency then the ICB will seek to share the risk associated with the shortfall through its risk sharing arrangements agreed under the Collaboration Agreement with the other ICBs.

In the event that the ICB’s funding of any shortfall referred to in paragraph 17 above (whether from the contingency, or as a result of sharing the shortfall with the other ICBs) has the consequence that the ICB’s overall financial position is materially negatively impacted (i.e. the ICB is either placed in deficit as a result, or any existing ICB deficit is materially increased), then NHS England agrees that it will take into account the material impact of the IFR decision on the ICB’s financial position when undertaking its oversight and assurance functions in respect of the ICB.

SCHEDULE 10: Administrative and Management Services

GUIDANCE NOTE:

The Parties may enter details in this Schedule about the arrangements for the Commissioning Team and the provision of Administration and Management Services.

If this Schedule is not required (for example, because the Commissioning Team Agreement has been produced and agreed separately) then it can be deleted or left blank.

[To include

Reference to Initial Operating Model in Schedule 9/8

Roles and responsibilities and functions from the Initial Operating Model

Detail on what NHSE ESMs roles are going to be in relation to support provided to the ICB

Services to be provided by the Host ICB (not the ICB under this Agreement) to NHSE.

[

1. It is recognised that there may be competing demands on the Commissioning Team in respect of Retained Services and Delegated Services. NHS England and the ICB will work together to ensure that the Commissioning Team and senior NHS England staff in operational leadership roles balance such demands as far as practicable so as to ensure that the ICB is able to perform the Delegated Functions in line with the requirements of this Agreement.]