Dated 2024

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| (1) | **[l] INTEGRATED CARE BOARD** |  |
|  | **- and -** |  |
| (2) | **[l] INTEGRATED CARE BOARD**  **- and -** |  |
| (3) | **[l] INTEGRATED CARE BOARD** |  |
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ICB Collaboration Agreement

DRAFT - NOT AVAILABLE FOR ACCEPTANCE

THIS IS A TEMPLATE DOCUMENT FOR PARTNERS TO ADAPT AND COMPLETE

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**THIS AGREEMENT** is made on the\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_2024

BETWEEN:

1. **[l] Integrated Care Board** of [insert address] ("[l] ICB");
2. **[l] Integrated Care Board** of [insert address] ("[l] ICB"); and
3. **[l] Integrated Care Board** of [insert address] ("[l] ICB"; and

[GUIDANCE: add in any partners including NHS England if to be a partner].

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

[l] ICB, [l] ICB and [l] ICB are together referred to in this Agreement as the “ICBs”, and “ICB” shall mean any of them.

BACKGROUND

1. NHS England has statutory functions to make arrangements for the provision of prescribed services for the purposes of the NHS.
2. The ICBs have statutory functions to make arrangements for the provision of services for the purposes of the NHS in their Areas, apart from those commissioned by NHS England.
3. Pursuant to section 65Z5 of the NHS Act, NHS England and the ICBs are able to establish and maintain joint arrangements in respect of the discharge of their Commissioning Functions.
4. Under the Delegation Agreement made pursuant to section 65Z5, NHS England has delegated the Delegated Functions to each of the ICBs. NHS England has retained responsibility for the NHS England Reserved Functions and commissioning of the Retained Services.
5. It is agreed that in order to exercise the Delegated Functions in the most efficient and effective manner, some of the Delegated Services are best commissioned collaboratively between multiple ICBs.
6. This Agreement sets out the arrangements that will apply between the ICBs in relation to the collaborative commissioning of Specialised Services for the ICBs’ Populations.

1. [GUIDANCE: the Partners may wish to add further background here to underpin the arrangements they are introducing].

NOW IT IS HEREBY AGREED as follows:

# COMMENCEMENT AND DURATION

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

# principles and aims

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

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

### consider how, in performing its obligations, it can address health inequalities;

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

### act at all times in good faith towards each other.

## The Partners agree:

### that successfully implementing this Agreement will require strong relationships and an environment based on trust and collaboration;

### to seek to continually improve whole pathways of care including Specialised Services and to design and implement effective and efficient integration;

### to act in a timely manner;

### to share information and best practice, and work collaboratively to identify solutions, eliminate duplication of effort, mitigate risks and reduce cost;

### to act at all times ensure the Partners comply with the requirements of the Delegation Agreements including Mandated Guidance;

### to act at all times in accordance with the scope of their statutory powers; and

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

## The Partners’ aims are:

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

### [GUIDANCE: the Partners can insert further aims of the Agreement here].

# SCOPE OF THE ARRANGEMENTS

## This Agreement sets out the Joint Working Arrangements through which the Partners will work together to commission Services. This may include one or more of the following commissioning mechanisms (the “Flexibilities”):

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

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

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

### the establishment of one or more Joint Committees;

### the establishment of one or more Commissioning Teams;

### the establishment of one or more Pooled Funds;

### the use of one or more Non Pooled Fund.

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

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

### Establishment of the following Joint Working Arrangements:

[GUIDANCE: Partners to include high level confirmation of the Joint Working Arrangements agreed at the commencement date.]

#### Establishment of a Commissioning Team in accordance with Clause 5.1 through which agreed Delegated Services may be commissioned [as set out in the Commissioning Team Agreement];

#### [Establishment of a Joint Committee];

#### [INSERT ALL OTHER AGREED SCHEMES].

[GUIDANCE: Partners can include ICB non-delegated functions within the scope of this Agreement here]

# Functions

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

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

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

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

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

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

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

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

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

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

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

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

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

# COMMISSIONING TEAM

## The Partners agree to establish a Commissioning Team(s) as set out in Schedule 7 (*Commissioning Team Arrangements*).

# STAFFING

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

# JOINT COMMITTEE

## [GUIDANCE: a template Terms of Reference for the Joint Committee is available as part of the release materials for this Agreement].

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

# Governance

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

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

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

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

# Pooled funds, Non-Pooled Funds and risk sharing

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

# Review

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

## Annual Reviews shall be conducted in good faith.

# Complaints

## Unless otherwise agreed, the Partners’ own complaints procedures shall apply to this Agreement. Where the Partners agree an alternative procedure for management of complaints arising from the provision of Services commissioned through a Joint Working Arrangement then this shall be set out in the Scheme Specification for each relevant Individual Scheme or in a specific Individual Scheme for jointly dealing with complaints.

# Finances

## The financial arrangements shall be as agreed between the Partners in the relevant Scheme Specification and Schedule 4 (*Financial Arrangements*).

## Unless expressly provided otherwise in this Agreement or otherwise agreed in advance in writing by the Partners, each Partner shall bear its own costs as they are incurred.

# Variation

## The Partners acknowledge that the scope of the Joint Working Arrangements may be reviewed and amended from time to time.

## This Agreement may be varied by the agreement of the Partners at any time in writing in accordance with the Partners' internal decision-making processes.

## No variations to this Agreement will be valid unless they are recorded in writing and signed for and on behalf of each of the Partners.

## Where the Partners agree that there will be:

### a new Pooled Fund;

### a new Individual Scheme; or

### an amendment to a current Individual Scheme,

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

[GUIDANCE: The Partners may find it helpful to set out a procedure for agreeing to add a new scheme. Partners may wish consider the following and amend as needed]

## [The following approach shall, unless otherwise agreed, be followed by the Partners:]

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

### the Partners will agree any action to be taken as a result of the proposed variation. This shall include consideration of:

#### governance and decision making arrangements;

#### oversight and assurance arrangements;

#### contracting arrangements; and/or

#### whether the proposed variation could have an impact on a Commissioning Team and/or any Staff;

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

### should this not be possible and one Partner is left financially disadvantaged as a result of the proposed variation, then the financial risk will, unless otherwise agreed, be [shared equally between the Partners].

# Data Protection

## The Partners must ensure that all Personal Data processed by or on behalf of them in the course of carrying out the Joint Working Arrangements is processed in accordance with the relevant Partner’s obligations under Data Protection Legislation and Data Guidance, and the Partners must assist each other as necessary to enable each other to comply with these obligations.

## Processing of any Personal Data or Special Category Personal Data shall be to the minimum extent necessary to achieve the Specified Purpose, and on a Need to Know basis. If any Partner:

### becomes aware of any unauthorised or unlawful processing of any Relevant Information or that any Relevant Information is lost or destroyed or has become damaged, corrupted or unusable; or

### becomes aware of any security breach,

### in respect of the Relevant Information it shall promptly notify the relevant Partners and NHS England. The Partners shall fully cooperate with one another to remedy the issue as soon as reasonably practicable.

## In processing any Relevant Information further to this Agreement, each Partner shall at all times comply with their own policies and any NHS England policies and guidance on the handling of data.

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

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

## The Partners will share information to enable joint service planning, commissioning, and financial management subject to the requirements of Law, including in particular the Data Protection Legislation in respect of any Personal Data.

## Other than in compliance with judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or Claim or otherwise required by any Law, no information will be shared with any third parties save as agreed by the Partners in writing.

## Schedule 6 *(Further Information Governance and Sharing Provisions)* makes further provision about information sharing and information governance.

# IT inter-operability

## The Partners will work together to ensure that all relevant IT systems operated by the Partners in respect of the Joint Working Arrangements are inter-operable and that data may be transferred between systems securely, easily and efficiently.

## The Partners will each use reasonable endeavours to help develop initiatives to further this aim.

# Further arrangements

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

# FREEDOM OF INFORMATION

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

## Each Partner may be statutorily required to disclose further information about the Agreement and the FOIA or EIA Information in response to a specific request under FOIA or EIR, in which case:

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

### each Partner shall consult the other Partners as relevant regarding the possible application of exemptions in relation to the FOIA or EIA Information requested; and

### each Partner acknowledges that the final decision as to the form or content of the response to any request is a matter for the Partner to whom the request is addressed.

# Conflicts of Interest and Transparency on Gifts and Hospitality

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

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

# CONFIDENTIALITY

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

## Subject to Clause 19.3, the receiving Partner agrees:

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

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

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

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

### in connection with any Dispute Resolution Procedure;

### 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 Partner’s duty under Clause 19.2;

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

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

## The obligations in Clause 19 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 Partner can show by its records was in its possession before it received it from the disclosing Partner; or

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

## This Clause 19 does not prevent NHS England making use of or disclosing any Confidential Information disclosed by an ICB where necessary for the purposes of exercising its functions in relation to that ICB.

## This Clause 19 will survive the termination of this Agreement for any reason for a period of five (5) years.

## This Clause 19 will not limit the application of the Public Interest Disclosure Act 1998 in any way whatsoever.

# liabilities

[GUIDANCE: Partners should consider what arrangements they want to include in relation to liability and indemnities. Suggested wording included below].

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

## Clause 20.1 shall only apply to the extent that the acts or omissions of the Other Partner contributed to the relevant Loss. Furthermore, it shall not apply if such act or omission occurred as a consequence of the Other Partner acting in accordance with the instructions or requests of the First Partner. Clause 20.1 shall not apply in respect of Loss where an alternative arrangement has been agreed by the Partners and set out in the relevant Scheme Specification.

## If any third party makes a Claim or intimates an intention to make a Claim against any Partner, which may reasonably be considered as likely to give rise to liability under this Clause 20, the Partner that may have a Claim against the Other Partner will:

### as soon as reasonably practicable give written notice of that matter to the Other Partner specifying in reasonable detail the nature of the relevant Claim;

### not make any admission of liability, agreement or compromise in relation to the relevant Claim without the prior written consent of the Other Partner (such consent not to be unreasonably conditioned, withheld or delayed); and

### give the Other Partner and its professional advisers reasonable access to its premises and Staff and to any relevant assets, accounts, documents and records within its power or control so as to enable the Other Partner and its professional advisers to examine such premises, assets, accounts, documents and records and to take copies at their own expense for the purpose of assessing the merits of, and if necessary defending, the relevant Claim.

## Each Partner shall at all times take all reasonable steps to minimise and mitigate any loss for which one party is entitled to bring a Claim against the other pursuant to this Agreement.

## Unless expressly agreed otherwise, nothing in this Agreement shall affect:

### the liability of NHS England to any person in respect of NHS England’s Commissioning Functions; or

### the liability of any of the ICBs to any person in respect of that ICB’s Commissioning Functions.

## Each ICB must:

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

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

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

# DISPUTE RESOLUTION

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

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

## [If the dispute is not resolved in accordance with Clause 21.2 then any ICB may refer the matter to NHS England for resolution.] [GUIDANCE: Partners to consider whether they want to retain this option].

# Breaches of the agreement

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

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

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

### ratify any decision;

### [terminate this Agreement in accordance with Clause 23 *(Termination and Default)* below; or] [GUIDANCE – Partners to consider whether they want to retain this option for termination]

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

# Termination AND Default

[GUIDANCE: we have set out a suggested approach to termination and default here as a basis for discussion. Partners should consider what termination arrangements should apply].

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

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

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

# CONSEQUENCES OF TERMINATION

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

### the Partners agree that they will work together and co-operate to ensure that the winding down of these arrangements is carried out smoothly and with as little disruption as possible to patients, employees, the Partners and third parties, so as to minimise costs and liabilities of each Partner in doing so;

### where there are Commissioning Team arrangements in place the Partners shall discuss and agree arrangements for the Staff and any financial arrangements;

### where a Partner has entered into a Service Contract in exercise of the Functions of any other Partner which continues after the termination of this Agreement, all Partner shall continue to provide necessary funding in accordance with the agreed contribution for that Service prior to termination and will enter into all appropriate legal documentation required in respect of this;

### where there are Lead Commissioning Arrangements in place, the Lead Partner shall make reasonable endeavours to amend or terminate a Service Contract (which shall for the avoidance of doubt not include any act or omission that would place the Lead Partner in breach of the Service Contract) where the other Partner requests the same in writing provided that the Lead Partner shall not be required to make any payments to a Service provider for such amendment or termination unless the Partners shall have agreed in advance who shall be responsible for any such payment;

### where there are Joint Commissioning Arrangements in place, the Partners shall co-operate with each other as reasonably necessary to amend or terminate a Service Contract (which shall for the avoidance of doubt not include any act or omission that would place any Partner in breach of the Service Contract) where a Partner requests the same in writing provided that no Partner shall be required to make any payments to a Service provider for such amendment or termination unless the Partners shall have agreed in advance who shall be responsible for any such payment;

### where a Service Contract held by a Lead Partner relates all or partially to services which relate to the other Partner's Functions and provided that the Service Contract allows, the other Partner may request that the Lead Partner assigns the Service Contract in whole or part upon the same terms as the original contract; and

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

## The provisions of Clauses 14 (*Data Protection*), 1717 (*Freedom of Information*), 19 (*Confidentiality*), 20 (*Liabilities*) and 24 (*Consequences of Termination*) shall survive termination or expiry of this Agreement.

# PUBLICITY

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

# EXCLUSION OF PARTNERSHIP OR AGENCY

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

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

# THIRD PARTY RIGHTS

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

# NOTICES

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

## 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.

# ASSIGNMENT AND SUBCONTRACTING

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

# SEVERABILITY

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

# WAIVER

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

# STATUS

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

# ENTIRE AGREEMENT

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

# GOVERNING LAW AND JURISDICTION

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

# FAIR DEALINGS

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

# COUNTERPARTS

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

This Agreement has been entered into on the Commencement Date

|  |  |
| --- | --- |
| SIGNED by ........................................................  for and on behalf of [l] Integrated Care Board | ................................................................  (Signature)  ................................................................  (Date) |
| SIGNED by ........................................................  for and on behalf of [l] Integrated Care Board | ................................................................  (Signature)  ................................................................  (Date) |
| SIGNED by ........................................................  for and on behalf of [l] Integrated Care Board | ................................................................  (Signature)  ................................................................  (Date) |

SCHEDULE : DEFINITIONS AND INTERPRETATIONS

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

|  |  |
| --- | --- |
| “Agreement" | means this agreement between the Partners comprising these terms and conditions together with all schedules attached to it; |
| “Aligned Commissioning Arrangements” | means the arrangements by which the Partners agree to commission a Service in a co-ordinated and collaborative manner. For the avoidance of doubt, an aligned commissioning arrangement does not involve the delegation of any functions between ICBs; |
| “Annual Review” | means the annual review of the arrangements under this Agreement by the Partners; |
| “Area” | means the geographical area covered by the ICBs; |
| "Authorised Officer" | the individual(s) appointed as Authorised Officer in accordance with the agreed Terms of Reference; |
| “Claim” | means for or in relation to the Commissioning Functions (a) any litigation or administrative, mediation, arbitration or other proceedings, or any claims, actions or hearings before any court, tribunal or the Secretary of State, any governmental, regulatory or similar body, or any department, board or agency or (b) any dispute with, or any investigation, inquiry or enforcement proceedings by any governmental, regulatory or similar body or agency; |
| “Clinical Commissioning Policies” | a nationally determined clinical policy sets out the commissioning position on a particular clinical treatment issue and defines accessibility (including a not for routine commissioning position) of a medicine, medical device, diagnostic technique, surgical procedure or intervention for patients with a condition requiring a specialised service; |
| **“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; |
| "Commencement Date" | [means 1 April 2024]; |
| "Commissioning Functions" | the respective statutory functions of the Partners in arranging for the provision of services as part of the health service; |
| **“Commissioning Team”** | means a staffing arrangement for commissioning agreed Services through an integrated team structure. This can be either set up using:   * 1. Lead Commissioning (one Partner hosts the Unit as Lead and all functions are delegated to that Partner); or   2. Joint Commissioning or Aligned Commissioning (one Partner may host but no functions are delegated). The Partners will need to agree whether decisions are taken via a Joint Commissioning arrangement such as a Joint Committee or whether each Partner is required to take decisions; |
| **“Commissioning Team Agreement”** | means the agreement(s) that sets out the arrangements for a Commissioning Team; |
| **"Confidential Information"** | means information, data and/or material of any nature which any Partner may receive or obtain in connection with the operation of this Agreement or Joint Working Arrangements made pursuant to it and:   1. which comprises Personal Data or which relates to any patient or his treatment or medical history; 2. the release of which is likely to prejudice the commercial interests of a Partner; or 3. which is a trade secret; |
| **“Contracting Standard Operating Procedure”** | means any contracting standard operating procedure produced by NHS England in respect of the Delegated Specialised Services; |
| **“Data Controller”** | shall have the same meaning as set out in the Data Protection Legislation; |
| **“Data Processor”** | shall have the same meaning as set out in the Data Protection Legislation; |
| "Data Sharing Agreement" | means any data sharing agreement entered into in accordance with Schedule 6 (*Further Information Governance and Sharing Provisions*); |
| **“Data Guidance”** | means any applicable guidance, guidelines, direction or determination, framework, code of practice, standard or requirement regarding information governance, confidentiality, privacy or compliance with Data Protection Legislation to the extent published and publicly available or their existence or contents have been notified to the ICB by NHS England and/or any relevant Regulatory or Supervisory Body. This includes but is not limited to guidance issued by NHS Digital, the National Data Guardian for Health & Care, the Department of Health and Social Care, NHS England, the Health Research Authority, the UK Health Security Agency and the Information Commissioner; |
| "Data Protection Legislation" | means the UK General Data Protection Regulation, the Data Protection Act 2018, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003), the common law duty of confidentiality and all applicable laws and regulations relating to the processing of Personal Data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner; |
| “Data Protection Officer” | shall have the same meaning as set out in the Data Protection Legislation; |
| “Data Security and Protection Toolkit” | means the toolkit at: <https://digital.nhs.uk/data-and-information/looking-after-information/data-security-and-information-governance/data-security-and-protection-toolkit> or as amended or replaced from time to time |
| “**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; |
| “Delegation Agreement(s)” | means the Delegation Agreements under which NHS England delegate specific NHS England Specialised Services Commissioning Functions to each ICB; |
| “Delegated Functions” | means the Specialised Services Commissioning Functions of NHS England delegated to each ICB under a Delegation Agreement; |
| “Delegated Services” | means those Specialised Services commissioned in exercise of the Delegated Functions; |
| "Dispute Resolution Procedure" | the procedure set out in Clause 21 (*Dispute Resolution*); |
| **“EIR”** | means the Environmental Information Regulations 2004; |
| “Finance Guidance” | guidance, rules and operating procedures produced by NHS England that relate to these Joint Working Arrangements, including but not limited to the following:   * Commissioning Change Management Business Rules; * Contracting Standard Operating Procedure; * Cashflow Standard Operating Procedure; * Finance and Accounting Standard Operating Procedure; * Service Level Framework Guidance; |
| “Flexibilities” | Mean the flexibilities that the Partners may use to work in a co-ordinated manner as set out at Clause 3 (*Scope of the Arrangements*); |
| “Financial Contribution” | means the financial contributions agreed by each Partner in respect of an Individual Scheme in any Financial Year; |
| “Financial Year” | means each financial year running from 1 April in any year to 31 March in the following calendar year; |
| "FOIA" | the Freedom of Information Act 2000 and any subordinate legislation made under it from time to time, together with any guidance or codes of practice issued by the Information Commissioner or relevant government department concerning this legislation; |
| "FOIA or EIR Information" | has the meaning given under section 84 of FOIA or the meaning given for “environmental information” under the EIR as applicable; |
| “Good Practice” | means using standards, practices, methods and procedures conforming to the law, reflecting up-to-date published evidence and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced commissioner; |
| “Governance Arrangements” | means the governance arrangements in respect of the Arrangements agreed by the Partners and as set out in Schedule 2 (*Governance Arrangements*); |
| “Guidance” | means any applicable guidance, guidelines, direction or determination, framework, code of practice, standard or requirement to which the Partners have a duty to have regard (and whether specifically mentioned in this Agreement or not), to the extent that the same are published and publicly available or the existence or contents of them have been notified by any relevant Regulatory or Supervisory Body; |
| “High Cost Drugs” | means medicines not reimbursed though national prices and identified on the NHS England high cost drugs list; |
| “ICB Reserved Functions” | Where there is any delegation of an ICB’s Commissioning Functions or further delegation of Delegated Functions, those functions that remain reserved to each ICB; |
| “Indemnity Arrangement” | means either: (i) a policy of insurance; (ii) an arrangement made for the purposes of indemnifying a person or organisation; or (iii) a combination of (i) and (ii); |
| “Individual Scheme” | means an arrangement in relation to how the ICBs will work together using one or more of the Flexibilities which has been agreed by the Partners to be included within this Agreement as part of the Joint Working Arrangements; |
| “Joint Committee” | means the joint committee(s) established under this Agreement on the terms set out in the Terms of Reference; |
| “Joint Functions” | any Functions that are delegated to a Joint Committee; |
| “Joint Commissioning” | means Partners agreeing to jointly exercise agreed Commissioning Functions on behalf of each other in exercise of the functions of each Partner part of that Individual Scheme. This may, for example, be through agreeing to enter into the same contract or by use of a Joint Committee; |
| “Joint Working Arrangements” | means the Flexibilities that the Partners have agreed to use to work in a co-ordinated manner which, at the Commencement Date, are as set out in Clause 3; |
| "Law" | means:   1. any statute or proclamation or any delegated or subordinate legislation; 2. any guidance, direction or determination with which the Partner(s) or relevant third party (as applicable) are bound to comply to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Partner(s) or relevant third party (as applicable); and 3. any judgment of a relevant court of law which is a binding precedent in England; |
| “Lead Commissioning Arrangements” | means the arrangements by which one Partner commissions Services in relation to an Individual Scheme on behalf of another Partner or Partners in exercise of the Commissioning Functions of the ICB Partners; |
| “Lead Partner” | means the Partner responsible for commissioning under a Lead Commissioning Arrangement; |
| **“Loss”** | means all damages, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or common law; |
| **“Managing Conflicts of Interest in the NHS”** | means the NHS publication by that name available at: <https://www.england.nhs.uk/publication/managing-conflicts-of-interest-in-the-nhs-guidance-for-staff-and-organisations/> or such publication that amends or replaces that publication; |
| “Mandated Guidance” | means any protocol, policy, guidance, guidelines, framework or manual relating to the exercise of Delegated Functions and issued by NHS England from time to time as mandatory; |
| **“National Standards”** | means the service standards for each Specialised Service, as set by NHS England and included in Clinical Commissioning Policies or National Specifications; |
| **“National Specifications”** | the service specifications published by NHS England in respect of Specialised Services; |
| “Need to Know” | has the meaning set out in Schedule 6 *(Further Information Governance and Sharing Provisions)*; |
| “NHS Act” | the National Health Service Act 2006; |
| “NHS England Functions” | NHS England’s Commissioning Functions exercisable under or by virtue of the NHS Act; |
| **“NHS England Reserved Functions”** | those aspects of the Specialised Commissioning Functions for which NHS England retains commissioning responsibility; |
| **“Non-Personal Data”** | means data which is not Personal Data; |
| **“Non-Pooled Funds”** | means the budget detailing the financial contributions of the Partners which are not included in a Pooled Fund in respect of a particular Service as set out in the relevant Scheme Specification; |
| **“Operational Days”** | means a day other than a Saturday, Sunday, Christmas Day, Good Friday or a bank holiday in England; |
| “Partners” | means the parties to this Agreement; |
| "Personal Data" | has the meaning set out in the Data Protection Legislation; |
| “Pooled Funds” | means any pooled fund established and maintained by the Partners as a pooled fund; |
| “Population” | means the population for which an ICB or all of the ICBs have the responsibility for commissioning health services; |
| **“Provider Collaborative”** | means a group of Providers who have agreed to work together to improve the care pathway for one or more Services; |
| **“Provider Collaborative Arrangements”** | means the arrangements entered into in respect of a Provider Collaborative; |
| **“Provider Collaborative Guidance”** | means any guidance published by NHS England in respect of Provider Collaboratives; |
| “Regional Quality Group” | means a group set up to act as a strategic forum at which regional partners from across health and social care can share, identify and mitigate wider regional quality risks and concerns as well as share learning so that quality improvement and best practice can be replicated; |
| “Regulatory or Supervisory Body” | means any statutory or other body having authority to issue guidance, standards or recommendations with which the relevant Party and/or Staff must comply or to which it or they must have regard, including:   * 1. CQC;   2. NHS England;   3. the Department of Health and Social Care;   4. NICE;   5. Healthwatch England and Local Healthwatch;   6. the General Medical Council;   7. the General Dental Council;   8. the General Optical Council;   9. the General Pharmaceutical Council;   10. the Healthcare Safety Investigation Branch; and   11. the Information Commissioner; |
| “Relevant Information” | means the Personal Data and Non-Personal Data processed under this Agreement, and includes, where appropriate, “confidential patient information” (as defined under section 251 of the NHS Act), and “patient confidential information” as defined in the 2013 Report, The Information Governance Review – “*To Share or Not to Share?”*); |
| “Reserved Functions” | means NHS England Reserved Functions or ICB Reserved Functions; |
| “**Relevant Clinical Networks”** | means those clinical networks identified by NHS England as required to support the commissioning of Specialised Services for the Population; |
| “Retained Services” | means those Specialised Services for which NHS England shall retain commissioning responsibility, as set out the Delegation Agreement; |
| “Risk Sharing” | means an agreed arrangement for risk and benefit sharing between the Partners; |
| “Scheme Specification” | means a specification setting out the Joint Working Arrangements in respect of an Individual Scheme agreed by the Partners to be commissioned under this Agreement; |
| “Services” | means such health services as agreed from time to time by the Partners as commissioned under the Joint Working Arrangements and more specifically defined in each Scheme Specification; |
| “Service Contract” | means an agreement entered into by one or more of the Partners in exercise of its obligations under this Agreement to secure the provision of Services in accordance with the relevant Individual Scheme |
| “Single Point of Contact” | the member of Staff appointed by each relevant Partner in accordance with Paragraph 13 of Schedule 6 *(Further Information Governance and Sharing Provisions)*; |
| “Special Category Personal Data” | has the meaning set out in the Data Protection Legislation; |
| “Specialised Commissioning Budget” | means the budget identified by NHS England in respect of each ICB for the purpose of exercising the Delegated Functions; |
| “Specialised Commissioning Functions” | means the statutory functions conferred on NHS England under Section 3B of the NHS Act 2006 and Regulation 11 of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012/2996 (as amended or replaced); |
| “Specified Purpose” | means the purpose for which the Relevant Information is shared and processed to facilitate the exercise of the Joint Working Arrangements as specified in Schedule 6 *(Further Information Governance and Sharing Provisions)* to this Agreement; |
| “Specialised Services” | means the services commissioned in exercise of the Specialised Commissioning Functions; |
| “Specialised Services Contract” | means a contract for the provision of Specialised Services entered into in the exercise of the Specialised Commissioning Functions; |
| “Specialised Services Provider” | means a provider party to a Specialised Services Contract; |
| “Staff” | means the Partners’ employees, officers, elected members, directors, voluntary staff, consultants, and other contractors and sub-contractors acting on behalf of any Partner (whether or not the arrangements with such contractors and sub-contractors are subject to legally binding contracts) and such contractors’ and their sub-contractors’ personnel; |
| **“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; |
| “Terms of Reference” | means the Terms of Reference for the Joint Committee agreed between the Partners at the first meeting of the Joint Committee; |
| “Triple Aim” | means the duty on each of the Partners in making decisions about the exercise of their functions, to have regard to all likely effects of the decision in relation to:   1. the health and well-being of the people of England; 2. the quality of services provided to individuals by the NHS; 3. efficiency and sustainability in relation to the use of resources by the NHS; |
| “Underspend” | means any expenditure from a Pooled Fund or Non-Pooled Fund in a Financial Year which is less than the value of the agreed contributions by the Partners for that Financial Year; |
| “UK GDPR” | means [Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016](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)). |

## References to statutory provisions shall be construed as references to those provisions as respectively amended or re-enacted (whether before or after the Commencement Date) from time to time.

## The headings of the Clauses in this Agreement are for reference purposes only and shall not be construed as part of this Agreement or deemed to indicate the meaning of the relevant Clauses to which they relate. Reference to Clauses are Clauses in this Agreement.

## References to Schedules are references to the schedules to this Agreement and a reference to a Paragraph is a reference to the paragraph in the Schedule containing such reference.

## References to a person or body shall not be restricted to natural persons and shall include a company, corporation or organisation.

## Words importing the singular number only shall include the plural.

## Use of the masculine includes the feminine and all other genders.

## Where anything in this Agreement requires the mutual agreement of the Partners, then unless the context otherwise provides, such agreement must be in writing.

## Any reference to the Partners shall include their respective statutory successors, employees and agents.

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

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

SCHEDULE 2: GOVERNANCE ARRANGEMENTS

[GUIDANCE: the relevant Governance Arrangements and decision making processes should be detailed in this schedule where they are not covered by the Scheme Specification, or further information is required to be provided].

[RECOMMENDATION: where a Joint Committee is being used: whilst not a requirement for completion of the ICB Collaboration Agreement, the Partners may wish to insert the agreed Terms of Reference for the Joint Committee into this Schedule 2 to set out the Governance Arrangements being implemented].

SCHEDULE 3: INDIVIDUAL SCHEMES

* 1. – Template Schedule for Individual Schemes

[GUIDANCE: Part 1 can be deleted and replaced with completed Scheme Specifications]

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

1. OVERVIEW OF THE SCHEME

* *Insert details including:*
  + *Name of the Individual Scheme*
  + *Relevant context and background information*

1. AIMS AND OUTCOMES

* *Insert agreed aims of the Individual Scheme*

1. SERVICES and functions

* *What Services are going to be provided within this Individual Scheme?*
* *Are there contracts already in place?*
* *Are there any plans or agreed actions to change the Services?*
* *Who are the beneficiaries of the Services?*
* *Set out the particular Commissioning Functions which are the subject of the Individual Scheme.*
* *Consider whether there are any exclusions from the Commissioning Functions included i.e. ICB Retained Functions.*

1. THE ArrANGEMENTS

* *Set out which of the following Flexibilities apply in relation to the Individual Scheme. It could be more than one that applies:*
* *Lead Commissioning Arrangements: where agreed Commissioning Functions are delegated to a lead Partner (Lead Partner);*
* *Aligned Commissioning Arrangements: where there is no further delegation of the particular Commissioning Functions. However, the Partners agree mechanisms to co-operate in the commissioning of identified Services;*
* *Joint Commissioning Arrangements: where the Partners exercise agreed Commissioning Functions jointly;*
* *Joint Committee;*
* *Commissioning Team;*
* *the establishment of one or more Pooled Funds;*
* *the use of one or more Non Pooled Fund;*
* *What (if any) Pooled Funds and Non-Pooled Funds will be in place?*
* *Who will hold the Pooled Funds?*

1. Partners

* *Which Partners are in this particular Individual Scheme?*

1. GOVERNANCE ARRANGEMENTS
   * *What are the decision making arrangements?*
   * *Is there a Scheme Lead?*
   * *Is there a Committee/Sub-committee/Board/Group specific to this Individual Scheme? Who will report to that Group?*
   * *Who does that group report to? Is there be an overarching Committee/Board/Group in respect of the Joint Working Arrangements that will have high level oversight of this particular Scheme?*
   * *How will any changes to a scheme be agreed? Are there different changes to be agreed at different levels?*
2. COMMISSIONING, CONTRACTING, ACCESS

***Commissioning Arrangements***

* *Set out what arrangements will be in place. How will these arrangements work?*

***Contracting Arrangements***

* *Insert the following information about the Individual Scheme:*

*Relevant contracts*

*Arrangements for contracting:*

*Will terms be agreed by all Partners or will a Lead Partner have authority to agree terms?*

*Will one or more Partners enter into a contract?*

*Are there other relevant agreements or arrangements such as a Collaborative Commissioning Agreement?*

*Any funding arrangements in respect of contracts?*

*What contract management arrangements have been agreed?*

*What happens if the agreement terminates?*

***Access***

* *Set out details of the patients to whom the Individual Scheme relates. How will individuals be assessed as eligible?*

1. FINANCIAL CONTRIBUTIONS

* *What are the financial contributions of each ICB?*
* *How will this be determined going forwards?*

1. FINANCIAL GOVERNANCE ARRANGEMENTS

***Management of the Pooled Fund and Non-Pooled Funds***

* + - * + *What (if any) Pooled Funds and Non-Pooled Funds will be in place?*
        + *Who will hold the Pooled Funds?*
        + *Who will act as the Pooled Fund Manager?*

***Audit Arrangements***

* *What audit arrangements are needed?*

***Financial Management***

* *Which financial systems will be used?*
* *What monitoring arrangements are in place?*
* *Who will produce monitoring reports?*
* *What is the frequency of monitoring reports?*
* *What are the rules for managing overspends?*
* *Do budget managers have delegated powers to overspend?*
* *Who is responsible for means testing?*
* *Who will own capital assets?*
* *How will capital investments be financed?*
* *What management costs can legitimately be charged to pool?*
* *What are the arrangement for overheads?*
* *What closure of accounts arrangement need to be applied?*

1. NON FINANCIAL RESOURCES

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  |  |
| Premises |  |  |  |
| Assets and equipment |  |  |  |
| Contracts |  |  |  |
| Central support services |  |  |  |

1. STAFF

* *Consider:*
* *Who will employ the Staff?*
* *Is a TUPE transfer secondment required?*
* *How will Staff increments be managed?*
* *Have pension arrangements been considered?*
* *Will there need to be any secondment arrangements?*
* *Are the arrangements for Staff sufficiently covered by any Commissioning Team Agreement?*

1. ASSURANCE AND MONITORING

* *Set out the assurance framework in relation to the Individual Scheme. What are the arrangements for the management of performance? Will this be through the agreed performance measures in relation to the Individual Scheme?*
* *Consider the following:*
* *What is the overarching assurance framework in relation to the Individual Scheme?*
* *Has a risk management strategy been drawn up?*
* *Have performance measures been set up?*
* *Who will monitor performance?*
* *Have the form and frequency of monitoring information been agreed?*
* *Who will provide the monitoring information? Who will receive it?*

1. Authorised OFFICERS

| Partner | Name of Authorised Officer | Telephone Number | Email Address |
| --- | --- | --- | --- |
|  |  |  |  |
|  |  |  |  |

1. INTERNAL APPROVALS

* *Consider the levels of authority from the scheme of delegation and standing financial instructions in relation to the Individual Scheme;*
* *Consider the scope of authority of the Pooled Fund Manager and the Authorised Officers.*

1. RISK AND BENEFIT SHARE ARRANGEMENTS

* *Has a risk management strategy been drawn up?*
* *Set out arrangements, if any, for the sharing of risk and benefit in relation to the Individual Scheme.*

1. REGULATORY REQUIREMENTS

* *Are there any regulatory requirements that should be noted in respect of this particular Individual Scheme?*

1. INFORMATION SHARING AND COMMUNICATION

* *What are the information/data sharing arrangements?*
* *What data systems will be used?*
* *Are any public involvement or engagement processes required and who will be responsible?*
* *Consultation: Staff, people supported by the Partners, unions, providers, public, other agency.*

1. DURATION and EXIT STRATEGY

* *What are the arrangements for the variation or termination of the Individual Scheme?*
* *Can part/all of the Individual Scheme be terminated on notice by a Partner?*
* *Can part/all of the Individual Scheme be terminated as a result of breach by either Partner?*
* *What is the duration of these arrangements?*
* *Set out what arrangements will apply upon termination of the Individual Service, including without limitation the following matters addressed in the main body of the Agreement:*
* *maintaining continuity of Services;*
* *allocation and/or disposal of any equipment relating to the Individual Scheme;*
* *responsibility for debts and on-going contracts;*
* *responsibility for the continuance of contract arrangements with Service Providers (subject to the agreement of any Partner to continue contributing to the costs of the contract arrangements);*
* *where appropriate, the responsibility for the sharing of the liabilities incurred by the Partners with the responsibility for commissioning the Services and/or the Host Partners*.
* *Consider arrangements for dealing with premises, records, information sharing (and the connection with staffing provisions set out in the Agreement).*

1. Complaints

* *Is there a single approach to complaints or will this differ between Schemes?*

1. OTHER PROVISIONS

* *Consider, for example:*
* *Any variations to the provisions of the Agreement;*
* *Bespoke arrangements for the treatment of records;*
* *Safeguarding arrangements.*

Part 2 – Agreed Scheme Specifications

[GUIDANCE: each of the Individual Schemes agreed by the Partners should be set out in this Part of the Agreement. This should include any agreed Pooled Fund, Non-Pooled Fund and Risk Share Arrangements]

SCHEDULE 4: FINANCIAL ARRANGEMENTS

1. Establishment of a Pooled Fund
   1. The Partners have agreed to establish and maintain such Pooled Funds for revenue expenditure as agreed by the Partners. Any Pooled Funds established at the Commencement Date shall be included as an Individual Scheme in Schedule 2 (*Governance Arrangements*).
   2. Each Pooled Fund shall be managed and maintained in accordance with the terms of this Agreement and the provisions of this Schedule 4 shall apply.
   3. Subject to Paragraph **Error! Reference source not found.**, it is agreed that the monies held in a Pooled Fund may only be expended on the following: [Guidance: This paragraph dictates what can be funded out of the Pooled Fund. Monies spent on other things would be in breach of this agreement and, therefore not recoverable by the Host Partner]
      1. the Contract Price;
      2. Third Party Costs where these are set out in the relevant Scheme Specification or as otherwise agreed in advance in writing in accordance with the relevant Scheme Specification;
      3. Approved expenditure as set out in the relevant Scheme Specification or as otherwise agreed in advance in accordance with the relevant Scheme Specification.
      4. Management Costs [GUIDANCE: Partners should discuss how to deal with management costs in relation to hosting arrangements. For example, should these be charged or will each Partner provide the services without recharging. If management costs and costs for hosting a Pooled Fund such as audit costs are to be charged to the Pooled fund this should be included as an additional point here].

(collectively known as "Permitted Expenditure")

* 1. The Partners may only depart from the definition of Permitted Expenditure to include or exclude other revenue expenditure with the express written agreement of each relevant Partner.
  2. For the avoidance of doubt, monies held in the Pooled Fund may not be expended on Loss unless this is agreed by all Partners included within the relevant Pooled Fund.
  3. Pursuant to this Agreement, the Partners agree to appoint a partner to host each Pooled Fund (“Host Partner”). The Host Partner shall be the Partner responsible for:
     1. holding all monies contributed to the Pooled Fund on behalf of itself and the other Partners;
     2. providing the financial administrative systems for the Pooled Fund; and
     3. appointing the manager of the Pooled Fund (“Pooled Fund Manager”);
     4. ensuring that the Pooled Fund Manager complies with its obligations under this Agreement.

1. Pooled Fund Management
   1. When introducing a Pooled Fund, the Partners shall agree:
      1. which of the Partners shall be the Host Partner; and
      2. which officer of the Host Partner shall act as the Pooled Fund Manager.
   2. The Pooled Fund Manager for each Pooled Fund shall have the following duties and responsibilities:
      1. the day-to-day operation and management of the Pooled Fund;
      2. ensuring that all expenditure from the Pooled Fund is in accordance with the provisions of this Agreement and the relevant Scheme Specification;
      3. maintaining an overview of all joint financial issues affecting the Partners in relation to the Services and the Pooled Fund;
      4. ensuring that full and proper records for accounting purposes are kept in respect of the Pooled Fund;
      5. reporting to the relevant governance group as required by this Agreement;
      6. ensuring action is taken to manage any projected under or overspends relating to the Pooled Fund in accordance with this Agreement; and
      7. preparing and submitting reports as required by the relevant Scheme Specification;
   3. The Partners may agree to the virement of funds between Pooled Funds or amending the allocation of the Pooled Fund between Individual Schemes.
2. Non-Pooled Funds

[GUIDANCE: these are funds that are notionally held in a joint fund but are not a pooled fund. This can be a virtual pool with contributions identified but held separately]

* 1. Any Financial Contributions agreed to be held within a Non-Pooled Fund will be notionally held in a fund established solely for the purposes agreed by the Partners.
  2. When introducing a Non-Pooled Fund in respect of an Individual Scheme, the Partners shall agree:
     1. which Partner shall host the Non-Pooled Fund;
     2. how and when Financial Contributions shall be made to the Non-Pooled Fund.
  3. The Host Partner will be responsible for establishing the financial and administrative support necessary to enable the effective and efficient management of the Non-Pooled Fund, meeting all required accounting and auditing obligations.
  4. The Partners shall ensure that any Services commissioned using a Non-Pooled Fund are commissioned solely in accordance with the relevant Scheme Specification.
  5. The Partners shall work in co-operation and shall endeavour to ensure that the Services funded from a Non-Pooled Fund are commissioned within the relevant Partner’s Financial Contribution to a Non-Pooled Fund for the relevant Services in each Financial Year.

1. Financial Contributions
   1. The Financial Contribution of the to any Pooled Fund or Non-Pooled Fund for the first Financial Year of operation shall be as set out the relevant Scheme Specification. [GUIDANCE: partners should decide how the invoicing/payment arrangements will work and whether this will vary from service to service]
   2. The Financial Contribution to any Pooled Fund or Non-Pooled Fund for each subsequent Financial Year of operation shall be subject to review by the Partners.

[GUIDANCE: The Partners should insert Provisions around how Financial Contributions will be determined going forward]

* 1. Financial Contributions will be paid as agreed in writing between the Partners.
  2. Unless otherwise agreed, no provision of this Agreement shall preclude the Partners from making additional contributions to a Pooled Fund from time to time by mutual agreement. Any such additional contributions of Non-Recurrent Payments shall be explicitly recorded in the budget statement as a separate item.

1. Risk share arrangments, Overspends and Underspends

**Risk share arrangements**

[GUIDANCE: A suggested approach to overspends and underspends is provided, however, the details will need to be considered by the Partners in the context of the specific Risk Sharing arrangements agreed between the Partners]

* 1. The Partners shall asset out any agreed risk share arrangements arising within the commissioning of services from the Pooled Funds in the relevant Scheme Specification.

**Overspends in Pooled Fund**

* 1. Subject to Paragraph 5.3, the Host Partner for the relevant Pooled Fund shall manage expenditure from a Pooled Fund within the Financial Contributions and shall use reasonable endeavours to ensure that the expenditure is limited to Permitted Expenditure.
  2. The Host Partner shall not be in breach of its obligations under this Agreement if an Overspend occurs provided that it has used reasonable endeavours to ensure that the only expenditure from a Pooled Fund has been in accordance with Permitted Expenditure and it has informed the Partners in accordance with the relevant Scheme Specification and Paragraph 5.4.
  3. In the event that the Pooled Fund Manager identifies an actual or projected Overspend the Pooled Fund Manager must ensure that the Partners are informed as soon as reasonably possible and the provisions of the relevant Scheme Specification shall apply.

**Overspends in Non-Pooled Funds**

* 1. Where a Partner forecasts an Overspend in relation to a Partner’s Financial Contribution to a Non-Pooled Fund that Partner shall as soon as reasonably practicable inform the other Partners and the terms of the relevant Scheme Specification shall apply.
  2. Where there is a Lead Commissioning Arrangement the Lead Partner is responsible for the management of the Non-Pooled Fund. The Lead Partner shall as soon as reasonably practicable inform the other Partners if an Overspend is forecast and the terms of the relevant Scheme Specification shall apply.

**Underspend**

* 1. In the event that expenditure from any Pooled Fund or Non-Pooled Fund in any Financial Year is less than the aggregate value of the Financial Contributions made for that Financial Year or where the expenditure in relation to an Individual Scheme is less than the agreed allocation to that particular Individual Scheme the Partners shall agree how the monies shall be spent, carried forward or returned to the Partners and the provisions of Schedule 3 (*Individual Schemes)* shall apply. Such arrangements shall be subject to the Law and the Standing Orders and Standing Financial Instructions (or equivalent) of the Partners.

1. Capital Expenditure
   1. Except as provided in Paragraph 1.3, neither Pooled Funds nor Non-Pooled Funds shall normally be applied towards any one-off expenditure on goods or services, which will provide continuing benefit and would historically have been funded from the capital budgets of one of the Partners. If a need for capital expenditure is identified this must be agreed by the Partners.

**Annex to Schedule 4**

**Insert any Pooled Fund/ Non-Pooled Fund/ Risk Share Arrangements**

SCHEDULE 5: JOINT COMMITTEES

## The ICBs have established a Joint Committee which will operate in accordance with the agreed Terms of Reference (“Terms of Reference”) known as [INSERT NAME OF JOINT COMMITTEE]. The Joint Committee (and each member of the Joint Committee) will act at all times in accordance with the Terms of Reference.

## The Partners shall nominate one Authorised Officer and substitutes to the Joint Committee in accordance with the Terms of Reference.

## The Partners may establish sub-groups or sub-committees of the Joint Committee with such Terms of Reference as may be agreed between them from time to time.

## The ICBs shall ensure that their Authorised Officer and substitutes have appropriate delegated authority, in accordance with each ICB’s internal governance arrangements, to represent the interests of each ICB in the Joint Committee and any other sub-groups or sub-committees established by the Joint Committee.

## The Partners recognise the need to ensure that any potential conflicts of interest on the part of any Partner, including its representatives, in respect of this Agreement and the establishment or operation of the Joint Committee and any sub-group or sub-committee of the Joint Committee must be appropriately identified, recorded and managed.

## The Partners shall identify the Joint Functions that will be delegated to the Joint Committee (“Joint Functions”). The Joint Committee must exercise the Joint Functions in accordance with:

### the terms of this Agreement;

### the terms of the Delegation Agreement for Specialised Services;

### Mandated Guidance;

### all applicable Law;

### Guidance;

### the Partners’ constitutions;

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

### the Terms of Reference; and

### Good Practice.

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

## The Joint Committee must perform the Joint Functions in such a manner as to ensure each Partner’s compliance with their own statutory duties in respect of the Joint Functions and to enable each Partner to fulfil its Reserved Functions.

SCHEDULE 6: FURTHER INFORMATION GOVERNANCE AND SHARING PROVISIONS

**PART 1**

1. **Introduction**
   1. This Schedule sets out the scope for the secure and confidential sharing of information between the Partners on a Need To Knowbasis, in order to enable the Partners 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 the Data Controllers’ Staff will only have access to Personal Data or Special Category Personal Data if it is lawful for such Staff to have access to such data for the Specified Purpose in paragraph 2.1 and the function they are required to fulfil at that particular time, in relation to the Specified Purpose, cannot be achieved without access to the Personal Data or Special Category Personal Data specified.
   3. This Schedule and the Data Sharing Agreements entered into under this Schedule are designed to:
      1. provide information about the reasons why Relevant Information may need to be shared and how this will be managed and controlled by the Partners;
      2. describe the purposes for which the Partners have agreed to share Relevant Information;
      3. set out the lawful basis for the sharing of information between the Partners, and the principles that underpin the exchange of Relevant Information;
      4. describe roles and structures to support the exchange of Relevant Information between the Partners;
      5. apply to the sharing of Relevant Information relating to Specialised Services Providers and their Staff;
      6. apply to the sharing 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 how this sharing will be managed;
      8. apply to the activities of the Partners’ Staff; and
      9. describe how complaints relating to Personal Data sharing between the Partners will be investigated and resolved, and how the information sharing will be monitored and reviewed.
2. **Purpose**
   1. The Specified Purpose of the data sharing is to facilitate the exercise of the Joint Working Arrangements.
   2. Each Partner must ensure that they have in place appropriate Data Sharing Agreements to enable data to be received from any third party organisations from which the Partners must obtain data in order to achieve the Specified Purpose. Where necessary specific and detailed purposes must be set out in a Data Sharing Agreement that complies with all relevant legislation and Guidance.
3. **Benefits of information sharing**
   1. The benefits of sharing information are the achievement of the Specified Purpose, with benefits for service users and other stakeholders in terms of the improved delivery of the Services.
4. **Lawful basis for sharing**
   1. The Partners shall comply with all relevant Data Protection Legislation requirements and Good Practice in relation to the processing of Relevant Information shared further to this Agreement.
   2. The Partners shall ensure that there is a Data Protection Impact Assessment (“DPIA”) that covers processing undertaken in pursuance of the Specified Purpose. The DPIA shall identify the lawful basis for sharing Relevant Information for each purpose and data flow.
   3. Where appropriate, the Relevant Information to be shared shall be set out in a Data Sharing Agreement.
5. **Restrictions on use of the Shared Information**
   1. Each Partner shall only process the Relevant Information as is necessary to achieve the Specified Purpose and, in particular, shall not use or process Relevant Information for any other purpose unless agreed in writing by the Data Controller that released the information to the other. There shall be no other use or onward transmission of the Relevant Information to any third party without a lawful basis first being determined, and the originating Data Controller being notified.
   2. Access to, and processing of, the Relevant Information provided by a Partner must be the minimum necessary to achieve the Specified Purpose. Information and Special Category Personal Data will be handled at all times on a restricted basis, in compliance with Data Protection Legislation requirements, and the Partners’ Staff should only have access to Personal Data on a justifiable Need to Knowbasis.
   3. Neither the provisions of this Schedule nor any associated Data Sharing Agreements should be taken to permit unrestricted access to data held by any of the Partners.
   4. Neither Partner shall subcontract any processing of the Relevant Information without the prior consent of the other Partner. Where a Partner subcontracts its obligations, it shall do so only by way of a written agreement with the sub-contractor which imposes the same obligations as are imposed on the Data Controllers under this Agreement.
   5. The Partners shall not cause or allow Data to be transferred to any territory outside the United Kingdom without the prior written permission of the responsible Data Controller.
   6. Any particular restrictions on use of certain Relevant Information should be included in a Data Sharing Agreement.
6. **Ensuring fairness to the Data Subject**
   1. In addition to having a lawful basis for sharing information, the UK GDPR generally requires that the sharing must be fair and transparent. In order to achieve fairness and transparency to the Data Subjects, the Partners will take the following measures as reasonably required:
      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 Partner shall procure that its notification to the Information Commissioner’s Office, and record of processing maintained for the purposes of Article 30 UK GDPR, reflects the flows of information under this Agreement.
   3. The Partners shall reasonably co-operate in undertaking any DPIA associated with the processing of data further to this Agreement, and in doing so engage with their respective Data Protection Officers in the performance by them of their duties pursuant to Article 39 UK GDPR.
   4. Further provision in relation to specific data flows may be included in a Data Sharing Agreement between the Partners.
7. **Governance:** **Staff**
   1. The Partners must take reasonable steps to ensure the suitability, reliability, training and competence, of any Staff who have access to Personal Data, and Special Category Personal Data, including ensuring reasonable background checks and evidence of completeness are available on request.
   2. The Partners agree to treat all Relevant Information as confidential and imparted in confidence and must safeguard it accordingly. Where any of the Partners’ Staff are not healthcare professionals (for the purposes of the Data Protection Act 2018) the employing Partners must procure that Staff operate under a duty of confidentiality which is equivalent to that which would arise if that person were a healthcare professional.
   3. The Partners shall ensure that all Staff required to access Personal Data (including Special Category Personal Data are informed of the confidential nature of the Personal Data. The Partners shall include appropriate confidentiality clauses in employment/service contracts of all Staff that have any access whatsoever to the Relevant Information, including details of sanctions for acting in a deliberate or reckless manner that may breach the confidentiality or the non-disclosure provisions of Data Protection Legislation requirements, or cause damage to or loss of the Relevant Information.
   4. Each Partner shall provide evidence (further to any reasonable request) that all Staff that have any access to the Relevant Information whatsoever are adequately and appropriately trained to comply with their responsibilities under Data Protection Legislation and this Agreement.
   5. The Partners 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 entered into in accordance with this Schedule.
8. **Governance: Protection of Personal Data**
   1. At all times, the Partners 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 Partners. The Partners 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 Partner 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 Partners. The Partners shall fully co-operate with one another to remedy the issue as soon as reasonably practicable, and in making information about the incident available to the Information Commissioner and Data Subjects where required by Data Protection Legislation.

* 1. In processing any Relevant Information further to this Agreement, the Partners 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;
     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 Partners shall act generally in accordance with Data Protection Legislation requirements. This includes implementing, maintaining and keeping under review appropriate technical and organisational measures to ensure and demonstrate that the processing of Personal Data is undertaken in accordance with Data Protection Legislation, and in particular to protect the Personal Data (and Special Category Personal Data) against unauthorised or unlawful processing, and against accidental loss, destruction, damage, alteration or disclosure. These measures shall:
     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 Partner 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 Partner in order to transfer the Relevant Information to any third party;
     4. permit any other Partner or their representatives (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the data processing activities carried out further to this Agreement (and/or those of its agents, successors or assigns) and comply with all reasonable requests or directions to enable each Partner to verify and/or procure that the other is in full compliance with its obligations under this Agreement; and
     5. if requested, provide a written description of the technical and organisational methods and security measures employed in processing Personal Data.

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

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

1. **Governance: Transmission of Information between the Partners**
   1. This paragraph supplements paragraph 8 of this Schedule.
   2. Transfer of Personal Data between the Partners shall be done through secure mechanisms including use of the N3 network, encryption, and approved secure (NHS.net or gcsx) e-mail.
   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 entered into in accordance with this Schedule.
   5. Each Partner shall keep an audit log of Relevant Information transmitted and received during the course of this Agreement.
   6. The Partners’ Single Point of Contact notified pursuant to paragraph 13 will be the persons who, in the first instance, will have oversight of the transmission of information between the Partners.
2. **Governance: Quality of Information**
   1. The Partners will take steps to ensure the quality of the Relevant Information and to comply with the principles set out in Article 5 UK GDPR.
3. **Governance: Retention and Disposal of Shared Information**
   1. A non-originating Partner shall securely destroy or return the Relevant Information once the need to use it has passed or, if later, upon the termination of this Agreement, howsoever determined. Where Relevant Information is held electronically, the Relevant Information will be deleted and formal notice of the deletion sent to the that shared the Relevant Information. Once paper information is no longer required, paper records will be securely destroyed or securely returned to the Partner they came from.
   2. Each Partner shall provide an explanation of the processes used to securely destroy or return the information, or verify such destruction or return, upon request and shall comply with any request of the Data Controllers to dispose of data in accordance with specified standards or criteria.
   3. If a Partner is required by any Law, regulation, or government or regulatory body to retain any documents or materials that it would otherwise be required to return or destroy in accordance with this Schedule, it shall notify the other Partners in writing of that retention, giving details of the documents or materials that it must retain.
   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.

* 1. The Partners shall set out any special retention periods in a Data Sharing Agreement where appropriate.
  2. The Partners shall ensure that Relevant Information held in paper form is held in secure files, and, when it is no-longer needed, destroyed using a cross cut shredder or subcontracted to a confidential waste company that complies with European Standard EN15713.
  3. Each Partner shall ensure that, when no longer required, electronic storage media used to hold or process Personal Data are destroyed or overwritten to current policy requirements.
  4. Electronic records will be considered for deletion once the relevant retention period has ended.

In the event of any bad or unusable sectors of electronic storage media that cannot be overwritten, the Partner shall ensure complete and irretrievable destruction of the media itself in accordance with policy requirements.

1. **Governance: Complaints and Access to Personal Data**
   1. The Partners shall assist each other in responding to any requests made under Data Protection Legislation made by persons who wish to access copies of information held about them (“Subject Access Requests”), as well as any other exercise of a Data Subject’s rights under Data Protection Legislation or complaint to or investigation undertaken by the Information Commissioner.
   2. Complaints about information sharing shall be reported to each Partner. Complaints about information sharing shall be routed through each Partner’s own complaints procedure unless otherwise provided for in the Joint Working.
   3. The Partners shall use all reasonable endeavours to work together to resolve any dispute or complaint arising under this Schedule or any data processing carried out further to it.
   4. Basic details of the Agreement shall be included in the appropriate log under each Partner’s publication scheme.
2. **Governance: Single Points of Contact** 
   1. The Partners each shall appoint a Single Point of Contact to whom all queries relating to the particular information sharing should be directed in the first instance.
3. **Monitoring and review**
   1. The Partners shall monitor and review on an ongoing basis the sharing of Relevant Information to ensure compliance with Data Protection Legislation and best practice. Specific monitoring requirements must be set out in the relevant Data Sharing Agreement.

SCHEDULE 7: COMMISSIONING TEAM ARRANGEMENTS

[GUIDANCE: the Partners can detail the arrangements for a Commissioning Team in this Schedule. This may obviate the need for a separate Commissioning Team Agreement].