

Dated: 9<sup>th</sup> May 2023

- (1) **NHS ENGLAND**
- and -
- (2) **NHS CHESHIRE AND MERSEYSIDE INTEGRATED  
CARE BOARD**
- and -
- (3) **NHS GREATER MANCHESTER INTEGRATED  
CARE BOARD**
- and -
- (4) **NHS LANCASHIRE AND SOUTH CUMBRIA  
INTEGRATED CARE BOARD**

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

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

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

- (1) **NHS England** of Quarry House, Quarry Hill, Leeds LS2 7UE (acting under the name NHS England) ("**NHS England**"); and
- (2) **NHS Cheshire and Merseyside Integrated Care Board** of Regatta Place, Brunswick Business Park, Liverpool, L3 4BL ("NHS Cheshire and Merseyside ICB");
- (3) **NHS Greater Manchester Integrated Care Board** of 3 Piccadilly Place, Manchester, M1 3BN ("NHS Greater Manchester ICB"); and
- (4) **NHS Lancashire and South Cumbria Integrated Care Board** of Chorley House, Lancashire Enterprise Business Park, Centurion Way, Leyland, Lancashire, PR26 6TT ("NHS Lancashire and South Cumbria ICB").

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

NHS Cheshire and Merseyside **ICB**, NHS Greater Manchester **ICB** and NHS Lancashire and South Cumbria **ICB** are together referred to in this Agreement as the "**ICBs**", and "**ICB**" shall mean any of them.

**BACKGROUND**

- (A) NHS England has statutory functions to make arrangements for the provision of prescribed services for the purposes of the NHS.
- (B) The ICBs have statutory functions to make arrangements for the provision of services for the purposes of the NHS in their areas, apart from those commissioned by NHS England.
- (C) Pursuant to section 65Z5 of the NHS Act, NHS England and the ICBs are able to establish and maintain joint arrangements in respect of the discharge of their commissioning functions.
- (D) NHS England and the ICBs agree to jointly exercise the Joint Functions through the decisions of the Joint Committee under section 65Z5 of the NHS Act and as set out in this Agreement and the Terms of Reference.
- (E) NHS England and the ICBs acknowledge and agree that making arrangements to involve the ICBs in the exercise of NHS England's Commissioning Functions is likely to lead to an improvement in the way the Commissioning Functions of all Partners are exercised.
- (F) This Agreement sets out the arrangements that will apply between NHS England and the ICBs in relation to the joint commissioning of Specialised Services for the ICBs' Populations. These arrangements are intended to give the ICBs greater involvement in the commissioning of Specialised Services to better align and transform pathways of care around the needs of local populations.
- (G) NHS England and the ICBs have entered into this Agreement to define their arrangements for joint working. To avoid doubt, none of the Partners are delegating the exercise of any of their Commissioning Functions or any other functions to any other Partner under this Agreement.
- (H) This Agreement is intended for use in the 2023/24 financial year, to govern what are envisaged to be transitional joint working arrangements prior to the delegation of specialised commissioning functions from NHS England to ICBs, effective from 2024.

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<sup>1</sup> Complete Partners' names as appropriate.

**NOW IT IS HEREBY AGREED** as follows:

**1. COMMENCEMENT AND DURATION**

- 1.1 This Agreement has effect from the date of this Agreement and will remain in force for the Initial Term unless terminated in accordance with Clause 20 (Leaving the Joint Committee) below.
- 1.2 The Partners may extend this Agreement beyond the Initial Term for a further period, by written agreement prior to the expiry of the Initial Term.

**2. PRINCIPLES AND AIMS**

- 2.1 The Partners acknowledge that, in exercising their obligations under this Agreement, each Partner must comply with the statutory duties set out in the NHS Act and must:
  - 2.1.1 consider how it can meet its legal duties to involve patients and the public in shaping the provision of services, including by working with local communities, under-represented groups and those with protected characteristics for the purposes of the Equality Act 2010;
  - 2.1.2 consider how, in performing its obligations, it can address health inequalities;
  - 2.1.3 at all times exercise functions effectively, efficiently and economically; and
  - 2.1.4 act at all times in good faith towards each other.
- 2.2 The Partners agree:
  - 2.2.1 that successfully implementing this Agreement will require strong relationships and an environment based on trust and collaboration;
  - 2.2.2 to seek to continually improve whole pathways of care including Specialised Services and to design and implement effective and efficient integration;
  - 2.2.3 to act in a timely manner;
  - 2.2.4 to share information and best practice, and work collaboratively to identify solutions, eliminate duplication of effort, mitigate risks and reduce cost;
  - 2.2.5 to act at all times in accordance with the scope of their statutory powers; and
  - 2.2.6 to have regard to each other's needs and views, irrespective of the relative contributions of the Partners to the commissioning of any Specialised Services and, as far as is reasonably practicable, take such needs and views into account.
- 2.3 The Partners' primary aim is to maximise the benefits to patients of integrating the Joint Functions with the ICBs' Commissioning Functions through designing and commissioning the Joint Specialised Services as part of the wider pathways of care of which they are a part and, in doing so, promote the Triple Aim.

### **3. SCOPE OF JOINT WORKING ARRANGEMENTS**

3.1 This Agreement sets out the arrangements through which the Partners will work together to exercise the Joint Functions as set out in Schedule 4, including:

3.1.1 the establishment of a Joint Committee;

3.1.2 the participation by all Partners in the work of the Joint Committee;

3.1.3 the development of leadership and expertise in respect of the Joint Specialised Services;

collectively referred to as the “Joint Working Arrangements”.

### **4. JOINT COMMITTEE**

4.1 NHS England shall together with the ICBs establish a Joint Committee which will operate in accordance with the Terms of Reference set out in Schedule 2 (Joint Committee – Terms of Reference). The Joint Committee (and each member of the Joint Committee) will act at all times in accordance with the Terms of Reference.

4.2 The Partners shall nominate Authorised Officers to the Joint Committee in accordance with Schedule 2.

4.3 Subject to Clauses 4.4 and 8.1 and the terms of the Schedules, NHS England shall exercise the Joint Functions collaboratively with the ICBs in accordance with this Agreement and must reach decisions in relation to the Joint Functions through discussion and agreement. Where in exceptional cases consensus cannot be reached between the members of the Joint Committee in respect of matters under consideration, the voting arrangements set out in the Terms of Reference will apply.

4.4 NHS England may at any time exercise the Joint Functions outside of the Joint Working Arrangements where, in its view, that is necessary for reasons of urgency, and in such circumstances it shall inform the Partners of such action at the earliest reasonable opportunity.

4.5 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. Any such sub-groups or sub-committees that are in place at the commencement of this Agreement may be documented in the Local Terms (Schedule 9).

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

4.7 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.

### **5. JOINT FUNCTIONS**

5.1 This Agreement shall include such Joint Functions as identified in Schedule 4 in respect of the Joint Specialised Services.

- 5.2 The Joint Committee must establish effective, safe, efficient and economic arrangements for the discharge of the Joint Functions.
- 5.3 The Joint Committee must exercise the Joint Functions in accordance with:
- 5.3.1 the terms of this Agreement;
  - 5.3.2 all applicable Law;
  - 5.3.3 Guidance;
  - 5.3.4 the Terms of Reference; and
  - 5.3.5 Good Practice.
- 5.4 In exercising the Joint Functions, the Joint Committee must comply with the Mandated Guidance set out in Schedule 8, or otherwise referred to in this Agreement, and such further Mandated Guidance as may be issued by NHS England from time to time, including on the NHS England or FutureNHS websites.
- 5.5 The Joint Committee must perform the Joint Functions:
- 5.5.1 in such a manner as to ensure NHS England's compliance with NHS England's statutory duties in respect of the Joint Functions and to enable NHS England to fulfil its Reserved Functions; and
  - 5.5.2 having regard to NHS England's accountability to the Secretary of State and Parliament in respect of both the Joint Functions and Reserved Functions.

## **6. THE RESERVED FUNCTIONS**

- 6.1 NHS England will exercise the Reserved Functions, including but not limited to those set out in Schedules 5 (Retained Services) and 6 (Reserved Functions).
- 6.2 The Reserved Functions include all of NHS England's Specialised Commissioning Functions other than the Joint Functions.
- 6.3 The Partners acknowledge that NHS England may ask the ICBs to provide certain administrative and management services to NHS England in relation to Reserved Functions.

## **7. FURTHER COLLABORATIVE WORKING**

- 7.1 An ICB may, at its discretion, table for discussion at any Joint Committee meeting an item relating to any ICB Function, where such ICB Function relates to Specialised Commissioning Functions, in order to facilitate engagement and promote integration and collaborative working. Decision-making in respect of such discussions will remain with the relevant ICB. For the avoidance of doubt, the Joint Committee will not have any authority to take decisions in respect of ICB Functions.
- 7.2 NHS England may, at its discretion, table for discussion at any Joint Committee meeting an item relating to a Reserved Function (including but not limited to the Part A Retained Services) or any such other of NHS England's Functions that it considers appropriate in order to facilitate engagement and promote integration and collaborative working. For the avoidance of doubt, the Joint Committee will only have authority to take decisions in respect of the Joint Functions. The decision-making will remain with NHS England for all other NHS England Functions.

## **8. FINANCE**

- 8.1 For the Initial Term, NHS England shall hold the Specialised Commissioning Budget and shall be responsible for paying for the Joint Specialised Services from the Specialised Commissioning Budget pursuant to the Specialised Services Contracts. NHS England will establish and maintain the financial and administrative support necessary to meet any auditing regulations applicable to NHS England. The Joint Committee shall ensure full compliance with the Finance Guidance and any other relevant Mandated Guidance.
- 8.2 For the avoidance of doubt, in the Initial Term, the ICBs are not required to financially contribute to the Specialised Commissioning Budget and the Partners do not intend to create a pooled fund or joint budget for the purpose of this Agreement. The NHS England Standing Financial Instructions shall apply in respect to the commissioning of all Joint Specialised Services.
- 8.3 Each Partner shall bear its own costs as they are incurred, unless expressly provided otherwise in this Agreement or otherwise agreed in advance in writing by the Partners. Such costs may include, but will not be limited to, costs of attendance at Joint Committee meetings and costs in complying with each Partner's relevant obligations in this Agreement.
- 8.4 Prior to the end of the first year of the Term, the Partners will review the financial arrangements described in this Clause 8 (Finance) and consider whether alternative arrangements should be put in place for any extended Term. Any changes to this Agreement to effect such new arrangements will be made in accordance with Clause 10 (Variations).

## **9. STAFFING**

- 9.1 During the Initial Term the Specialised Services Staff shall be employed by NHS England.
- 9.2 The Partners must comply with any Mandated Guidance issued by NHS England from time to time in relation to any NHS England Staff.

## **10. VARIATIONS**

- 10.1 The Partners acknowledge that the scope of the Joint Working Arrangements, including the scope of the Joint Functions, may be reviewed and amended from time to time.
- 10.2 This Agreement may be varied by the agreement of the Partners at any time in writing in accordance with the Partners' internal decision-making processes.

## **11. DATA PROTECTION**

- 11.1 The Partners must ensure that all Personal Data processed by or on behalf of them in the course of carrying out the Joint Working Arrangements is processed in accordance with the relevant Partner's obligations under Data Protection Legislation and Data Guidance, and the Partners must assist each other as necessary to enable each other to comply with these obligations.
- 11.2 Processing of any Personal Data or Special Category Personal Data shall be to the minimum extent necessary to achieve the Specified Purpose, and on a Need to Know basis. If any Partner:



- 11.2.1 becomes aware of any unauthorised or unlawful processing of any Relevant Information or that any Relevant Information is lost or destroyed or has become damaged, corrupted or unusable; or
- 11.2.2 becomes aware of any security breach,
- in respect of the Relevant Information it shall promptly notify the Joint Committee and NHS England. The Partners shall fully cooperate with one another to remedy the issue as soon as reasonably practicable.
- 11.3 In processing any Relevant Information further to this Agreement, each Partner shall at all times comply with all NHS England policies and guidance on the handling of data.
- 11.4 Any information governance breach must be responded to in accordance with Data Security and the Protection Incident Reporting tool. If any Partner is required under Data Protection Legislation to notify the Information Commissioner's Office or a Data Subject of an information governance breach, then, as soon as reasonably practical and in any event on or before the first such notification is made, the relevant Partner must fully inform NHS England and the Joint Committee 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.
- 11.5 Whether or not a Partner is a Data Controller or Data Processor will be determined in accordance with Data Protection Legislation and any Data Guidance from a Regulatory or Supervisory Body. The Partners acknowledge that a Partner may act as both a Data Controller and a Data Processor.
- 11.6 The Partners will share information to enable joint service planning, commissioning, and financial management subject to the requirements of law, including in particular the Data Protection Legislation in respect of any Personal Data.
- 11.7 Other than in compliance with judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise required by any Law, no information will be shared with any other Partners save as agreed by the Partners in writing.
- 11.8 Schedule 7 makes further provision about information sharing and information governance.

## **12. IT INTER-OPERABILITY**

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

## **13. FURTHER ARRANGEMENTS**

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

## **14. FREEDOM OF INFORMATION**

- 14.1 Each Partner acknowledges that the others are a public authority for the purposes of the Freedom of Information Act 2000 (“**FOIA**”) and the Environmental Information Regulations 2004 (“**EIR**”).
- 14.2 Each Partner may be statutorily required to disclose further information about the Agreement and the Relevant Information in response to a specific request under FOIA or EIR, in which case:
- 14.2.1 each Partner shall provide the other with all reasonable assistance and co-operation to enable them to comply with their obligations under FOIA or EIR;
  - 14.2.2 each Partner shall consult the other regarding the possible application of exemptions in relation to the information requested; and
  - 14.2.3 each Partner acknowledges that the final decision as to the form or content of the response to any request is a matter for the Partner to whom the request is addressed.
- 14.3 NHS England may, from time to time, issue a FOIA or EIR protocol or update a protocol previously issued relating to the dealing with and responding to of FOIA or EIR requests in relation to the Joint Working Arrangements. The Joint Committee and each Partner shall comply with such FOIA or EIR protocols.

## **15. CONFLICTS OF INTEREST AND TRANSPARENCY ON GIFTS AND HOSPITALITY**

- 15.1 The Partners must and must ensure that, in delivering the Joint Functions, all Staff comply with Law, with Managing Conflicts of Interest in the NHS and other Guidance, and with Good Practice, in relation to gifts, hospitality and other inducements and actual or potential conflicts of interest.
- 15.2 Without prejudice to the general obligations set out in Clause 5 (Joint Functions), each ICB must maintain a register of interests in respect of all persons involved in decisions concerning the Joint Functions. This register must be publicly available. For the purposes of this clause, an ICB may rely on an existing register of interests rather than creating a further register.
- 15.3 Where any member of the Joint Committee has an actual or potential conflict of interest in relation to any matter under consideration by the Joint Committee, that member must not participate in meetings (or parts of meetings) in which the relevant matter is discussed or make a recommendation in relation to the relevant matter. The relevant appointing body may send an alternative representative to take the place of the conflicted member in relation to that matter.

## **16. CONFIDENTIALITY**

- 16.1 Except as this Agreement otherwise provides, Confidential Information is owned by the disclosing Partner and the receiving Partner has no right to use it.
- 16.2 Subject to Clause 16.3, the receiving Partner agrees:
- 16.2.1 to use the disclosing Partner’s Confidential Information only in connection with the receiving Partner’s performance under this Agreement;
  - 16.2.2 not to disclose the disclosing Partner’s Confidential Information to any third party or to use it to the detriment of the disclosing Partner; and

- 16.2.3 to maintain the confidentiality of the disclosing Partner's Confidential Information.
- 16.3 The receiving Partner may disclose the disclosing Partner's Confidential Information:
  - 16.3.1 in connection with any Dispute Resolution Procedure;
  - 16.3.2 to comply with the Law;
  - 16.3.3 to any appropriate Regulatory or Supervisory Body;
  - 16.3.4 to its staff, who in respect of that Confidential Information will be under a duty no less onerous than the Receiving Partner's duty under Clause 16.2;
  - 16.3.5 to NHS Bodies for the purposes of carrying out their functions;
  - 16.3.6 as permitted under any other express arrangement or other provision of this Agreement.
- 16.4 The obligations in Clause 16 will not apply to any Confidential Information which:
  - 16.4.1 is in or comes into the public domain other than by breach of this Agreement;
  - 16.4.2 the receiving Partner can show by its records was in its possession before it received it from the disclosing Party; or
  - 16.4.3 the receiving Partner can prove it obtained or was able to obtain from a source other than the disclosing Partner without breaching any obligation of confidence.
- 16.5 This Clause 16 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.
- 16.6 This Clause 16 will survive the termination of this Agreement for any reason for a period of 5 years.
- 16.7 This Clause 16 will not limit the application of the Public Interest Disclosure Act 1998 in any way whatsoever.

## **17. LIABILITIES**

- 17.1 Nothing in this Agreement shall affect:
  - 17.1.1 the liability of NHS England to any person in respect of NHS England's Commissioning Functions; or
  - 17.1.2 the liability of any of the ICBs to any person in respect of that ICB's Commissioning Functions.
- 17.2 NHS England shall be responsible for and shall retain the conduct of any Claim in relation to the Joint Functions and Reserved Functions.
- 17.3 Each ICB must:

- 17.3.1 comply with any policy issued by NHS England from time to time in relation to the conduct of or avoidance of Claims or the pro-active management of Claims;
- 17.3.2 if it receives any correspondence, issue of proceedings, claim document or other document concerning any Claim or potential Claim, immediately notify NHS England and send to NHS England all copies of such correspondence;
- 17.3.3 co-operate fully with NHS England in relation to such Claim and the conduct of such Claim;
- 17.3.4 provide, at its own cost, to NHS England all documentation and other correspondence that NHS England requires for the purposes of considering and/or resisting such Claim; and/or
- 17.3.5 at the request of NHS England, take such action or step or provide such assistance as may in NHS England's discretion be necessary or desirable having regard to the nature of the Claim and the existence of any time limit in relation to avoiding, disputing, defending, resisting, appealing, seeking a review or compromising such Claim or to comply with the requirements of the provider of an Indemnity Arrangement in relation to such Claim.

## **18. DISPUTE RESOLUTION**

- 18.1 Where any dispute arises within the Joint Committee in connection with this Agreement, the Partners must use their best endeavours to resolve that dispute within the Joint Committee in accordance with the Terms of Reference.
- 18.2 Where any dispute is not resolved under Clause 18.1 on an informal basis, any Authorised Officer may convene a special meeting of the Joint Committee to attempt to resolve the dispute.

## **19. BREACHES OF THE JOINT WORKING AGREEMENT**

- 19.1 If any Partner does not comply with the terms of this Agreement, then NHS England may:
  - 19.1.1 exercise its rights under this Agreement; and
  - 19.1.2 take such steps as it considers appropriate in the exercise of its other functions concerning the Partner.
- 19.2 Without prejudice to Clause 19.1, if any Partner does not comply with the terms of this Agreement (including if the Joint Committee or any Partner exceeds its authority under this Agreement), NHS England may (at its sole discretion):
  - 19.2.1 waive its rights in relation to such non-compliance in accordance with Clause 19.3;
  - 19.2.2 ratify any decision;
  - 19.2.3 terminate this Agreement in accordance with Clause 20 (Leaving the Joint Committee) below;
  - 19.2.4 exercise the dispute resolution procedure in accordance with Clause 18 (*Dispute Resolution Procedure*); and/or
  - 19.2.5 exercise its rights under common law.

19.3 NHS England may waive any non-compliance by a Partner with the terms of this Agreement provided that the Partner provides a written report to the Joint Committee as required by Clause 19.4 and, after considering the Partner's written report, NHS England is satisfied that the waiver is justified.

19.4 If:

19.4.1 a Partner does not comply with this Agreement; or

19.4.2 NHS England notifies a Partner that it considers the Partner has not complied, or may not be able to comply with, this Agreement;

then that Partner must provide a written report to the NHS England within ten (10) Operational Days of the non-compliance (or the date on which the relevant Partner considers that it may not be able to comply with this Agreement) or such notification pursuant to Clause 25 setting out:

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

19.4.4 if the non-compliance is capable of remedy, a plan for how the Partner proposes to remedy the non-compliance.

## **20. LEAVING THE JOINT COMMITTEE**

20.1 If an ICB wishes to exit the Joint Committee and end its participation in this Agreement, the relevant ICB must provide at least six (6) months' notice to NHS England of its intention to exit the Joint Committee and end its participation in this Agreement. Such notification shall only take effect from the end of 31 March in any calendar year.

20.2 NHS England and the ICBs will work together to ensure that there are suitable alternative arrangements in place in relation to the exercise of the Joint Functions.

20.3 The ICB(s) acknowledge that the exercise of the Joint Functions remains the responsibility of NHS England.

20.4 NHS England may terminate this Agreement forthwith where it considers it necessary or expedient to terminate the Joint Working Arrangements, but in reserving this power NHS England anticipates that this will only be used in exceptional circumstances and that in all instances it will use its reasonable endeavours to seek an orderly termination of the Joint Working Arrangements.

## **21. CONSEQUENCES OF TERMINATION**

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

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

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

21.2 The provisions of Clauses 11 (Data Protection), 14 (Freedom of Information), 16 (Confidentiality), 17 (Liabilities) and 21 (Consequences of Termination) shall survive termination or expiry of this Agreement.

## **22. PUBLICITY**

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

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

23.1 Nothing in this Agreement shall create or be deemed to create a legal partnership under the Partnership Act 1890 or the relationship of employer and employee between the Partners, or render any Partner directly liable to any third party for the debts, liabilities or obligations of any Partner.

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

## **24. THIRD PARTY RIGHTS**

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

## **25. NOTICES**

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

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

## **26. ASSIGNMENT AND SUBCONTRACTING**

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

## **27. SEVERABILITY**

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

## **28. WAIVER**

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

## **29. STATUS**

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

**30. ENTIRE AGREEMENT**

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

**31. GOVERNING LAW AND JURISDICTION**

31.1 Subject to the provisions of Clause 18 (Dispute Resolution) and Clause 29 (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.

**32. FAIR DEALINGS**

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

**33. COMPLAINTS**

33.1 Any complaints received by the Partners shall be dealt with in accordance with the statutory complaints procedure of the Partner to whose Commissioning Function(s) the complaint relates. For the avoidance of doubt, NHS England shall manage all complaints in respect of the Joint Specialised Services and Retained Services.

**34. COUNTERPARTS**

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

This Agreement has been entered into on the date stated at the beginning of it.

SIGNED by Richard Barker, Regional Executive Director



.....

for and on behalf of NHS England

(Signature)

09.05.2023  
(Date)

SIGNED by Clare Watson, Assistant Chief Executive

for and on behalf of NHS Cheshire and Merseyside Integrated Care Board



(Signature)

**03 April 2023**

(Date)

SIGNED by Sarah Price, Chief Officer for Population Health and Inequalities and Deputy Chief Executive

.....

(Signature)

for and on behalf of NHS Greater Manchester Integrated Care Board

.....

(Date)

SIGNED by Kevin Lavery, Chief Executive

.....

(Signature)

for and on behalf of NHS Lancashire and South Cumbria Integrated Care Board

.....

(Date)



## SCHEDULE 1: DEFINITIONS AND INTERPRETATIONS

### DEFINITIONS AND INTERPRETATION

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

<b>“Agreement”</b>	this agreement between the Partners comprising these terms and conditions together with all schedules attached to it;
<b>“Area”</b>	means the geographical area covered by the ICBs;
<b>“Assurance Processes”</b>	has the meaning in Paragraph 8 of Schedule 4 (Oversight and Assurance);
<b>"Authorised Officer"</b>	the individual(s) appointed as Authorised Officer in accordance with Schedule 2 (Terms of Reference);
<b>"Change in Law"</b>	a change in Law that is relevant to the arrangements made under this Agreement, which comes into force after the Commencement Date;
<b>“Claim”</b>	means for or in relation to the Joint Functions and Reserved Functions (a) any litigation or administrative, mediation, arbitration or other proceedings, or any claims, actions or hearings before any court, tribunal or the Secretary of State, any governmental, regulatory or similar body, or any department, board or agency or (b) any dispute with, or any investigation, inquiry or enforcement proceedings by any governmental, regulatory or similar body or agency;
<b>“Clinical Commissioning Policies”</b>	a nationally determined clinical policy sets out the commissioning position on a particular clinical treatment issue and defines accessibility (including a not for routine commissioning position) of a medicine, medical device, diagnostic technique, surgical procedure or intervention for patients with a condition requiring a specialised service;
<b>“Clinical Reference Groups”</b>	means a group consisting of clinicians, commissioners, public health experts, patient and public voice representatives and professional associations, which offers specific knowledge and expertise on the best ways that Specialised Services should be provided;
<b>“Collaborative Commissioning Agreement”</b>	means an agreement under which NHS Commissioners set out collaboration arrangements in respect of commissioning Specialised Services Contracts;
<b>"Commencement Date"</b>	means 1 April 2023;
<b>"Commissioning Functions"</b>	the respective statutory functions of the Partners in arranging for the provision of services as part of the health service;
<b>"Confidential Information"</b>	means information, data and/or material of any nature which any Partner may receive or obtain in connection with the operation of this Agreement or arrangements made pursuant to it and:  (a) which comprises Personal Data or which relates to any patient or his treatment or medical history;

	(b) the release of which is likely to prejudice the commercial interests of a Partner; or
	(c) which is a trade secret;
<b>“Contracting Standard Operating Procedure”</b>	means the Contracting Standard Operating Procedure produced by NHS England in respect of the Joint Specialised Services;
<b>“Core Membership”</b>	means the voting membership of the Joint Committee as set out in the Terms of Reference;
<b>“Data Controller”</b>	shall have the same meaning as set out in the Data Protection Legislation;
<b>“Data Processor”</b>	shall have the same meaning as set out in the Data Protection Legislation;
<b>“Data Guidance”</b>	means any applicable guidance, guidelines, direction or determination, framework, code of practice, standard or requirement regarding information governance, confidentiality, privacy or compliance with Data Protection Legislation to the extent published and publicly available or their existence or contents have been notified to the ICB 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;
<b>“Data Protection Legislation”</b>	means the UK General Data Protection Regulation, the Data Protection Act 2018, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003), the common law duty of confidentiality and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;
<b>“Data Protection Officer”</b>	shall have the same meaning as set out in the Data Protection Legislation;
<b>“Data Security and Protection Incident Reporting tool”</b>	the incident reporting tool for data security and protection incidents, which forms part of the Data Security and Protection Toolkit available at <a href="https://www.dsptoolkit.nhs.uk/">https://www.dsptoolkit.nhs.uk/</a> ;
<b>“Delegated Commissioning Group” “DCG”</b>	means a group hosted by NHS England whose terms shall include providing an assurance role in compliance with the Assurance Processes;
<b>“Dispute Resolution Procedure”</b>	the procedure set out in Clause 18 (Dispute Resolution);
<b>“Finance Guidance”</b>	guidance, rules and operating procedures produced by NHS England that relate to these Joint Working Arrangements, including but not limited to the following: <ul style="list-style-type: none"> <li>- Commissioning Change Management Business Rules;</li> </ul>

- Contracting Standard Operating Procedure;
- Cashflow Standard Operating Procedure;
- Finance and Accounting Standard Operating Procedure;
- Service Level Framework Guidance;

<b>"FOIA"</b>	the Freedom of Information Act 2000 and any subordinate legislation made under it from time to time, together with any guidance or codes of practice issued by the Information Commissioner or relevant government department concerning this legislation;
<b>"Guidance"</b>	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;
<b>"High Cost Drugs"</b>	Means medicines not reimbursed though national prices and identified on the NHS England high cost drugs list;
<b>"ICB Functions"</b>	the Commissioning Functions of the ICB;
<b>"Information"</b>	has the meaning given under section 84 of FOIA;
<b>"Indemnity Arrangement"</b>	mean either: (i) a policy of insurance; (ii) an arrangement made for the purposes of indemnifying a person or organisation; or (iii) a combination of (i) and (ii);
<b>"Information Sharing Agreement"</b>	any information sharing agreement entered into in accordance with Schedule 7 (Further Information Governance and Sharing Provisions);
<b>"Indemnity Arrangement"</b>	means either: (i) a policy of insurance; (ii) an arrangement made for the purposes of indemnifying a person or organisation; or (iii) a combination of (i) and (ii);
<b>"Initial Term"</b>	the period of one year from 1 April 2023;
<b>"Joint Committee"</b>	means the joint committee of NHS England and the ICBs, established under this Agreement on the terms set out in the Terms of Reference;
<b>"Joint Working Arrangements"</b>	means the arrangements for joint working as set out in Clause 3 (Scope of Joint Working Arrangements);
<b>"Joint Functions"</b>	those aspects of the NHS England Specialised Commissioning Functions, as set out in Schedule 4, that shall be jointly exercised by NHS England and the ICBs through the decisions of the Joint Committee in accordance with the Terms of Reference;
<b>"Joint Specialised Services"</b>	means those Specialised Services listed in Schedule 3 (Joint Specialised Services);
<b>"Law"</b>	means:

- (a) any statute or proclamation or any delegated or subordinate legislation;
- (b) any guidance, direction or determination with which the Partner(s) or relevant third party (as applicable) are bound to comply to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Partner(s) or relevant third party (as applicable); and
- (c) any judgment of a relevant court of law which is a binding precedent in England;

<b>“Mandated Guidance”</b>	means any protocol, policy, guidance, guidelines, framework or manual relating to the exercise of the Joint Functions and issued by NHS England from time to time as mandatory in respect of the Joint Working Arrangements. At the Commencement Date the Mandated Guidance in respect of the Joint Functions shall be as set out in Schedule 8;
<b>“National Standards”</b>	means the service standards for each Specialised Service, as set by NHS England and included in Clinical Commissioning Policies or National Specifications;
<b>“National Specifications”</b>	the service specifications published by NHS England in respect of Specialised Services;
<b>“Need to Know”</b>	has the meaning set out in Schedule 7;
<b>“NHS Act”</b>	the National Health Service Act 2006;
<b>“NHS England Functions”</b>	NHS England’s statutory functions exercisable under or by virtue of the NHS Act;
<b>“Non-Personal Data”</b>	means data which is not Personal Data;
<b>“Oversight Framework”</b>	means the NHS Oversight Framework, as may be amended or replaced from time to time, and any relevant associated Guidance published by NHS England;
<b>“Part A Retained Services”</b>	means those services listed in Part A of Schedule 5;
<b>“Part B Retained Services”</b>	means those services listed in Part B of Schedule 5;
<b>“Partners”</b>	the parties to this Agreement;
<b>“Personal Data”</b>	has the meaning set out in the Data Protection Legislation;
<b>“Population”</b>	means the population for which an ICB or all of the ICBs have the responsibility for commissioning health services;
<b>“Provider Collaborative”</b>	a group of Specialised Service Providers who have agreed to work together to improve the care pathway for one or more Specialised Services;

<b>“Provider Collaborative Arrangements”</b>	Means the contracting arrangements entered into in respect of a Provider Collaborative;
<b>“Provider Collaborative Guidance”</b>	Means the guidance published by NHS England in respect of Provider Collaboratives;
<b>“Regional Quality Group”</b>	A group set up to act as a strategic forum at which regional partners from across health and social care can share, identify and mitigate wider regional quality risks and concerns as well as share learning so that quality improvement and best practice can be replicated;
<b>“Regulatory or Supervisory Body”</b>	<p>means any statutory or other body having authority to issue guidance, standards or recommendations with which the relevant Party and/or Staff must comply or to which it or they must have regard, including:</p> <ul style="list-style-type: none"> <li>(i) CQC;</li> <li>(ii) NHS England;</li> <li>(iii) the Department of Health and Social Care;</li> <li>(iv) NICE;</li> <li>(v) Healthwatch England and Local Healthwatch;</li> <li>(vi) the General Medical Council;</li> <li>(vii) the General Dental Council;</li> <li>(viii) the General Optical Council;</li> <li>(ix) the General Pharmaceutical Council;</li> <li>(x) the Healthcare Safety Investigation Branch; and</li> <li>(xi) the Information Commissioner;</li> </ul>
<b>“Relevant Information”</b>	means the Personal Data and Non-Personal Data processed under this Agreement, and includes, where appropriate, “confidential patient information” (as defined under section 251 of the NHS Act), and “patient confidential information” as defined in the 2013 Report, The Information Governance Review – “ <i>To Share or Not to Share?</i> ”);
<b>“Request for Information”</b>	has the meaning set out in the FOIA;
<b>“Reserved Functions”</b>	those aspects of the Specialised Commissioning Functions that are not Joint Functions, including but not limited to those set out in Schedule 6;
<b>“Relevant Clinical Networks”</b>	means those clinical networks identified by NHS England as required to support the commissioning of Specialised Services for the Population;
<b>“Retained Services”</b>	means those Specialised Services for which NHS England shall retain commissioning responsibility, as set out in Schedule 5 and being the Part A Retained Services and the Part B Retained Services;

<b>“Shared Care Arrangements”</b>	these arrangements support patients receiving elements of their care closer to home, whilst still ensuring that they have access to the expertise of a specialised centre and that care is delivered in line with the expectation of the relevant National Specification;
<b>“Single Point of Contact”</b>	the member of Staff appointed by each relevant Partner in accordance with Paragraph 14 of Schedule 7;
<b>“Special Category Personal Data”</b>	has the meaning set out in the Data Protection Legislation;
<b>“Specialised Commissioning Budget”</b>	means the budget identified by NHS England for the purpose of exercising the Joint Functions;
<b>“Specialised Commissioning Functions”</b>	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);
<b>“Specified Purpose”</b>	means the purpose for which the Relevant Information is shared and processed to facilitate the exercise of the Joint Functions and Reserved Functions as specified in Schedule 7 ( <i>Further Information Governance and Sharing Provisions</i> ) to this Agreement;
<b>“Specialised Services”</b>	means the services commissioned in exercise of the Specialised Commissioning Functions;
<b>“Specialised Services Contract”</b>	a contract for the provision of Specialised Services entered into in the exercise of the Specialised Commissioning Functions;
<b>“Specialised Services Provider”</b>	a provider party to a Specialised Services Contract;
<b>“Specialised Services Staff”</b>	means the Staff carrying out the Joint Specialised Services Functions immediately prior to the date of this Agreement;
<b>“Staff”</b>	means the Partners’ employees, officers, elected members, directors, voluntary staff, consultants, and other contractors and sub-contractors acting on behalf of any Partner (whether or not the arrangements with such contractors and sub-contractors are subject to legally binding contracts) and such contractors’ and their sub-contractors’ personnel;
<b>“System quality group”</b>	means a group set up to identify and manage concerns across the local system. The system quality group shall act as a strategic forum at which partners from across the local health and social care footprint can share issues and risk information to inform response and management, identify and mitigate quality risks and concerns as well as share learning and best practice;
<b>“Term”</b>	the Initial Term, as may be varied by: <ul style="list-style-type: none"> <li>(a) any extensions to this Agreement that are agreed under Clause 1.1 (Commencement and Duration); or</li> </ul>

(b) the earlier termination of this Agreement in accordance with its terms;

**“Terms of Reference”** means the Terms of Reference for the Joint Committee agreed between NHS England and the ICBs at the first meeting of the Joint Committee, a draft of which is included at Schedule 2 (Joint Committee – Terms of Reference);

**“Triple Aim”** the duty on each of the Partners in making decisions about the exercise of their functions, to have regard to all likely effects of the decision in relation to:

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

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

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

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

**“Working Day”** any day other than Saturday, Sunday, a public or bank holiday in England.

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

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



## SCHEDULE 2: JOINT COMMITTEE – TERMS OF REFERENCE

<b>Document name:</b>	[Insert]	
<b>Senior Responsible Owner (SRO):</b>	[Insert]	
<b>Lead:</b>	[Insert]	
<b>Version</b>	[Insert]	<b>Date:</b> [Publish Date]

### Document management

#### Revision history

Version	Date	Summary of changes

#### Approved by

This document must be approved by the following people:



#### Related documents

Title	Owner	Location

#### Document control

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<p><b>Introduction and purpose</b></p>	<p>From April 2023, Integrated Care Boards (ICBs) entering joint working agreements with NHS England will become jointly responsible, with NHS England, for commissioning the Joint Specialised Services set out in Schedule 3 of the Agreement, and for any associated Joint Functions set out in Schedule 4.</p> <p>NHS England and ICBs will form a statutory joint committee to collaboratively make decisions on the planning and delivery of the Joint Specialised Services, to improve health and care outcomes and reduce health inequalities. Joint Committees are intended as a transitional mechanism prior to ICB taking on full delegated commissioning responsibility.</p> <p>Subject to Clauses 7.1 and 7.2 of this Agreement (Further Collaborative Working), the Partners may, to such extent that they consider it desirable, table an item at the Joint Committee relating to any other of their functions that is not a Joint Specialised Service or a Joint Function to facilitate engagement, promote integration and collaborative working.</p> <p>The Partners may, from time to time, establish sub-groups or sub-committees of the Joint Committee, with such terms of reference as may be agreed between them. Any such sub-groups or sub-committees that are in place at the commencement of this Agreement may be documented in the Local Terms (Schedule 9).</p>
<p><b>The Terms of Reference</b></p>	<p>These Terms of Reference provide a template to support effective collaboration between NHS England and ICBs acting through Joint Committees in 2023/24.</p> <p>The Terms of Reference set out the role, responsibilities, membership, decision-making powers, and reporting arrangements of the Joint Committee in accordance with the Agreement between the ICB and NHS England.</p> <p>It is acknowledged that Joint Working Arrangements aim to give ICBs greater involvement in the commissioning of Specialised Services to better align and transform pathways of care around the needs of local populations.</p> <p>The Joint Committee will operate as the decision-making forum for exercising the agreed Joint Functions in accordance with the Agreement.</p> <p>By agreement, the Partners may use an alternative title for the Joint Committee that reflects local arrangements, for example, 'Commissioning Committee.'</p>
<p><b>Statutory Framework</b></p>	<p>The Partners have arranged to exercise the Functions jointly pursuant to section 65Z5 of the NHS Act 2006.</p> <p>The Joint Committee is established pursuant to section 65Z6 of the NHS Act 2006.</p> <p>Apart from as set out in the Agreement, the Joint Committee does not affect the statutory responsibilities and accountabilities of the Partners.</p>

**Role of the Joint Committee**

The role of the Joint Committee is to provide strategic decision-making, leadership and oversight for the Joint Specialised Services and any associated activities. The Joint Committee will safely, effectively, efficiently and economically discharge the Joint Functions and deliver these Joint Specialised Services through the following key responsibilities:

- Determining the appropriate structure of the Joint Committee;
- Making joint decisions in relation to the planning and commissioning of the Joint Specialised Services, and any associated commissioning or statutory functions, for the population, for example, through undertaking population needs assessments;
- Making recommendations on the population-based Specialised Services financial allocation and financial plans;
- Oversight and assurance of the Joint Specialised Services in relation to quality, operational and financial performance, including co-ordinating risk and issue management and escalation, and developing the approach to intervention with Specialised Services Providers where there are quality or contractual issues;
- Identifying and setting strategic priorities and undertaking ongoing assessment and review of Joint Specialised Services within the remit of the Joint Committee, including tackling unequal outcomes and access;
- Supporting the development of partnership and integration arrangements with other health and care bodies that facilitate population health management and providing a forum that enables collaboration to integrate service pathways, improve population health and services and reduce health inequalities. This includes establishing links and working effectively with Provider Collaboratives and cancer alliances, and working closely with other ICBs, Joint Committees and NHS England where there are cross-border patient flows to providers;
- Ensuring the Joint Committee has effective engagement with stakeholders, including patients and the public, and involving them in decision-making;
- Ensuring the Joint Committee has appropriate clinical advice and leadership, including through Clinical Reference Groups and Relevant Clinical Networks;
- Commencing longer-term planning, particularly in view of the ICB(s) receiving full delegated commissioning responsibility in future;
- Discussing any matter which any member of the Joint Committee believes to be of such importance that it should be brought to the attention of the Joint Committee;
- Where agreed by the Partners, overseeing the Collaborative Commissioning Agreements set out in the Joint Working Arrangement;

	<ul style="list-style-type: none"> <li>▪ Otherwise ensuring that the roles and responsibilities set out in the Agreement between the Partners are discharged.</li> </ul> <p>The Partners must implement such arrangements as are necessary to demonstrate good decision-making and compliance with all statutory duties, guidance and good practice, including ensuring that the Joint Committee has sufficient independent scrutiny of its decision-making and processes.</p> <p>Guidance: in the development of the Agreement a range of options have been considered for ensuring independent scrutiny and assurance of Joint Committee decision-making. In accordance with the preceding paragraph, whilst the Partners will need to determine appropriate local arrangements, it is recommended that they consider the adoption of a minimum of one independent member as part of the membership of the Joint Committee. This could be achieved by external recruitment to this specific role or by identifying a Non-Executive Director from a partner ICB. This role would carry no voting rights but provide additional accountability and assurance around decision-making in line with the Partners' statutory duties.</p> <p><b>[PARTNERS SHOULD INSERT DETAIL ABOUT ARRANGEMENTS FOR INDEPENDENT SCRUTINY]</b></p> <p>It is recommended that the Partners use the following section to detail any additional functions that will be in-scope of the Joint Committee. In particular, those ICB or NHS England functions that are identified for Further Collaborative Working at Clauses 7.1 and 7.2.</p> <p><b>[PARTNERS TO INSERT ADDITIONAL ROLES AND RESPONSIBILITIES]</b></p> <p>The Joint Committee must adhere to these Terms of Reference but may otherwise regulate its own procedure.</p>
<p><b>Accountability and reporting</b></p>	<p>The Joint Committee will be formally accountable to the Board of NHS England through the relevant NHS England regional governance structure for specialised services.</p> <p><b>[NHS ENGLAND MUST DESCRIBE THE RELEVANT REGIONAL GOVERNANCE STRUCTURE FOR SPECIALISED SERVICES HERE.]</b></p> <p>The Joint Committee may report to the Delegated Commissioning Group (DCG) for Specialised Services on its proceedings and decisions.</p> <p>The Joint Committee's Chair(s) or, at the Chair's discretion, another member of the Joint Committee, may attend the DCG and report to the DCG on its proceedings.</p> <p>Where the DCG requests that the Joint Committee provides information or reports on its proceedings or decisions, the Partners must comply with that request within a reasonable timescale.</p>
<p><b>Membership</b></p>	<p><u>Core Membership</u></p> <p>Each of the Partners must nominate one Authorised Officer to be their representative at meetings of the Joint Committee. The Authorised Officers nominated by the Partners and present at a meeting of the Joint Committee comprise the voting membership of the Joint Committee.</p>

	<p>Each of the Partners may nominate a named substitute to attend meetings of the Joint Committee if its Authorised Officer is unavailable or unable to attend or because they are conflicted.</p> <p>Each of the Partners must ensure that its Authorised Officer (and any named substitute) is of a suitable level of seniority and duly authorised to act on its behalf and to agree to be bound by the final position or decision taken at any meeting of the Joint Committee.</p> <p>The Authorised Officers (or any substitute(s) appointed) form the Core Membership of the Joint Committee.</p> <p><u>Discretionary Membership</u></p> <p>Each of the Partners may be represented at meetings of the Joint Committee by representatives (who may be officers or, in the case of an ICB, non-executive members of the ICB) who may observe proceedings and contribute to the Joint Committee’s deliberations as required, but these representatives will not have the right to vote.</p> <p>The Partners may identify individuals or representatives of other organisations that may be invited to observe proceedings and contribute to the Joint Committee’s deliberations as required. These representatives will not have the right to vote.</p> <p><u>Term of membership</u></p> <p>Each member of the Core Membership (and any substitute appointed) will hold their appointment for a term of [one year]. The term of appointment of each member expires on the [first] anniversary of the first Joint Committee meeting at which the member is in attendance. Members will be eligible to be reappointed for further terms at the discretion of the Partners.</p> <p><u>Membership lists</u></p> <p>The Chair (or in the absence of a Chair, the Partners themselves) shall ensure that there is prepared (and updated from time to time) a list of the members and that this list is made available to the Partners.</p>
<b>Chair</b>	<p>At the first meeting of the Joint Committee, the Core Membership shall select a Chair, or joint Chairs, from among the membership.</p> <p>The Chair(s) shall hold office for a period of [one year] and be eligible for re-appointment for [xx] further term[s]. At the first scheduled Joint Committee meeting after the expiry of the Chair’s term of office, the Core Membership will select a Chair, or joint Chairs, who will assume office at that meeting and for the ensuing term.</p> <p>If the Chair(s) is/are not in attendance at a meeting, the Core Membership will select one of the members to take the chair for that meeting.</p>
<b>Remuneration</b>	<p>The Partners shall prepare a scheme for the remuneration of any external members and for meeting the reasonable expenses incurred by other classes of membership of the Joint Committee.</p> <p>The scheme shall be reviewed on an [annual] basis.</p>

<p><b>Meetings</b></p>	<p>The Joint Committee shall meet [xx] times per year, as a minimum.</p> <p>At its first meeting (and at the first meeting following each subsequent anniversary of that meeting) the Joint Committee shall prepare a schedule of meetings for the forthcoming year (“the Schedule”).</p> <p>The Chair(s) (or in the absence of a Chair, the Partners themselves) shall see that the Schedule is notified to the members.</p> <p>Either:</p> <ul style="list-style-type: none"> <li>▪ NHS England, or</li> <li>▪ The ICBs acting collectively,</li> </ul> <p>may call for a special meeting of the Joint Committee outside of the Schedule as they see fit, by giving notice of their request to the Chair. The Chair(s) may, following consultation with the Partners, confirm the date on which the special meeting is to be held and then issue a notice giving not less than [4 weeks] notice of the special meeting.</p>
<p><b>Quorum</b></p>	<p>A Joint Committee meeting is quorate if the following are in attendance:</p> <ul style="list-style-type: none"> <li>▪ the Authorised Officer (or substitute) nominated by NHS England;</li> <li>▪ each of the Authorised Officers (or substitutes) appointed by the ICBs.</li> </ul>
<p><b>Decisions and voting arrangements</b></p>	<p>The Joint Committee must seek to make decisions relating to the exercise of the Joint Functions and Joint Specialised Services on a consensus basis.</p> <p>The Partners must ensure that matters requiring a decision are anticipated and that sufficient time is allowed prior to Joint Committee meetings for discussions and negotiations between Partners to take place.</p> <p>In preparation for future delegation of Specialised Services and collaboration between them for this purpose, the ICBs should seek to adopt a common position on any matter to be decided.</p> <p>Decisions must be ratified by the Core Membership of the Joint Committee.</p> <p>Where it has not been possible, despite the best efforts of the Core Membership, to come to a consensus decision on any matter before the Joint Committee, the Chair(s) may require the decision to be put to a vote in accordance with the following provision.</p> <p><b>In developing these Terms of Reference, the Partners should discuss and agree to adopt one of the following options for decision-making in the event that consensus is not reach by the membership of the Joint Committee.</b></p> <p><b>Option 1: ICB collective voting with an NHS England casting vote: the ICBs have a single collective vote and NHS England has a vote. Where there is deadlock, NHS England will have the casting vote at the meeting of the Joint Committee.</b></p> <p><b>Option 2: Equal voting rights with NHS England casting vote: each ICB has a single vote and NHS England has a number of votes equal to the number</b></p>

	<p>of ICB votes. Where there is deadlock, NHS England has a casting vote at the meeting of the Joint Committee.</p> <p>Option 3: Individual votes for each organisation coupled with an NHS England right to substitute an alternative decision: each organisation that is a Core Member of the Joint Committee has a single vote. However, NHS England can substitute an alternative decision if it considers it is in the best interests of the health service. The reasons for substituting a decision should be documented. Core Members also have a right to refer the decision to the regional director for review.</p> <p>[PARTNERS TO INSERT THE AGREED OPTION FROM THE LIST ABOVE.]</p>
<p><b>Conduct and conflicts of interest</b></p>	<p>Members of the Joint Committee will be expected to act consistently with existing statutory guidance, NHS Standards of Business Conduct and relevant organisational policies.</p> <p>The NHS Standards of Business Conduct policy is available from: <a href="https://www.england.nhs.uk/publication/standards-of-business-conduct-policy/">https://www.england.nhs.uk/publication/standards-of-business-conduct-policy/</a></p> <p>Members should act in accordance with the Nolan Principles (the Seven Principles of Public Life). See: <a href="https://www.gov.uk/government/publications/the-7-principles-of-public-life">https://www.gov.uk/government/publications/the-7-principles-of-public-life</a>.</p> <p>Members should refer to and act consistently with the NHS England guidance: <i>Managing Conflicts of Interest in the NHS: Guidance for staff and organisations</i>. See: <a href="https://www.england.nhs.uk/ourwork/coi/">https://www.england.nhs.uk/ourwork/coi/</a>.</p> <p>Where any member of the Joint Committee has an actual or potential conflict of interest in relation to any matter under consideration by the Joint Committee, that member must not participate in meetings (or parts of meetings) in which the relevant matter is discussed, either by participating in discussion or by voting. A Partner whose Authorised Officer is conflicted in this way may secure that their appointed substitute attend the meeting (or part of meeting) in the place of that member.</p>
<p><b>Confidentiality of proceedings</b></p>	<p>The Joint Committee is not subject to the Public Bodies (Admissions to Meetings) Act 1960. Admission to meetings of the Joint Committee is at the discretion of the Partners.</p> <p>All members in attendance at a Joint Committee are required to give due consideration to the possibility that the material presented to the meeting, and the content of any discussions, may be confidential or commercially sensitive, and to not disclose information or the content of deliberations outside of the meeting's membership, without the prior agreement of the Partners.</p>
<p><b>Publication of notices, minutes and papers</b></p>	<p>The Partners shall provide sufficient resources, administration and secretarial support to ensure the proper organisation and functioning of the Joint Committee.</p> <p>The Chair(s) (or in the absence of a Chair, the Partners themselves) shall see that notices of meetings of the Joint Committee, together with an agenda listing the business to be conducted and supporting documentation, is issued to the Partners [XX weeks] (or, in the case of a special meeting, [XX weeks]) prior to the date of the meeting.</p>

	The proceedings and decisions taken by the Joint Committee shall be recorded in minutes, and those minutes circulated in draft form within [XX weeks] of the date of the meeting. The Joint Committee shall confirm those minutes at its next meeting.
<b>Review of the Terms of Reference</b>	These Terms of Reference will be reviewed [annually].



### SCHEDULE 3: JOINT SPECIALISED SERVICES

The following are the Specialised Services that NHS England has determined as being suitable and ready for greater ICB involvement:

PSS Manual Line	PSS Manual Line Description	Service Line Code	Service Line Description
2	Adult congenital heart disease services	13X	Adult congenital heart disease services (non-surgical)
		13Y	Adult congenital heart disease services (surgical)
3	Adult specialist pain management services	31Z	Adult specialist pain management services
4	Adult specialist respiratory services	29M	Interstitial lung disease
		29S	Severe asthma
5	Adult specialist rheumatology services	26Z	Adult specialist rheumatology services
7	Adult Specialist Cardiac Services	13A	Complex device therapy
		13B	Cardiac electrophysiology & ablation
		13C	Inherited cardiac conditions
		13E	Cardiac surgery (inpatient)
		13F	PPCI for ST- elevation myocardial infarction
		13H	Cardiac magnetic resonance imaging
		13T	Transcatheter Aortic Valve Replacement (TAVI)
9	Adult specialist endocrinology services	27E	Adrenal Cancer
		27Z	Adult specialist endocrinology services
11	Adult specialist neurosciences services	08E	Neurosurgery - Low Volume Procedures (National)
		08F	Neurosurgery - Low Volume Procedures (Regional)
		08G	Neurosurgery - Low Volume Procedures (Neuroscience Centres)
		08O	Neurology
		08P	Neurophysiology
		08R	Neuroradiology
		08S	Neurosurgery
		08T	Mechanical Thrombectomy
12	Adult specialist ophthalmology services	37C	Artificial Eye Service
		37Z	Adult specialist ophthalmology services
13	Adult specialist orthopaedic services	34A	Orthopaedic surgery
		34R	Orthopaedic revision
15	Adult specialist renal services	11B	Renal dialysis
		11C	Access for renal dialysis
16	Adult specialist services for people living with HIV	14A	Adult Specialised Services for people living with HIV
17	Adult specialist vascular services	30Z	Adult specialist vascular services
18	Adult thoracic surgery services	29B	Complex thoracic surgery
		29Z	Adult thoracic surgery services: outpatients
30	Bone conduction hearing implant services (adults and children)	32B	Bone anchored hearing aids service
		32D	Middle ear implantable hearing aids service
35	Cleft lip and palate services (adults and children)	15Z	Cleft lip and palate services
36	Cochlear implantation services (adults and children)	32A	Cochlear implantation services
40	Complex spinal surgery services (adults and children)	06Z	Complex spinal surgery services
54	Fetal medicine services (adults and adolescents)	04C	Fetal medicine services

PSS Manual Line	PSS Manual Line Description	Service Line Code	Service Line Description
58	Specialist adult gynaecological surgery and urinary surgery services for females	04A	Severe Endometriosis
		04D	Complex urinary incontinence and genital prolapse
58A	Specialist adult urological surgery services for men	41P	Penile implants
		41S	Surgical sperm removal
		41U	Urethral reconstruction
59	Specialist allergy services (adults and children)	17Z	Specialist allergy services
61	Specialist dermatology services (adults and children)	24Z	Specialist dermatology services
62	Specialist metabolic disorder services (adults and children)	36Z	Specialist metabolic disorder services
63	Specialist pain management services for children	23Y	Specialist pain management services for children
64	Specialist palliative care services for children and young adults	E23	Specialist palliative care services for children and young adults
65	Specialist services for adults with infectious diseases	18A	Specialist services for adults with infectious diseases
		18E	Specialist Bone and Joint Infection
72	Major trauma services (adults and children)	34T	Major trauma services
78	Neuropsychiatry services (adults and children)	08Y	Neuropsychiatry services
83	Paediatric cardiac services	23B	Paediatric cardiac services
94	Radiotherapy services (adults and children)	01R	Radiotherapy services (Adults)
		51R	Radiotherapy services (Children)
		01S	Stereotactic Radiosurgery / radiotherapy
105	Specialist cancer services (adults)	01C	Chemotherapy
		01J	Anal cancer
		01K	Malignant mesothelioma
		01M	Head and neck cancer
		01N	Kidney, bladder and prostate cancer
		01Q	Rare brain and CNS cancer
		01U	Oesophageal and gastric cancer
		01V	Biliary tract cancer
		01W	Liver cancer
		01Y	Cancer Outpatients
		01Z	Testicular cancer
		04F	Gynaecological cancer
		19V	Pancreatic cancer
24Y	Skin cancer		
106	Specialist cancer services for children and young adults	01T	Teenage and young adult cancer
		23A	Children's cancer
106A	Specialist colorectal surgery services (adults)	33A	Complex surgery for faecal incontinence
		33B	Complex inflammatory bowel disease
		33C	Transanal endoscopic microsurgery
		33D	Distal sacrectomy for advanced and recurrent rectal cancer
107	Specialist dentistry services for children	23P	Specialist dentistry services for children
108	Specialist ear, nose and throat services for children	23D	Specialist ear, nose and throat services for children
109	Specialist endocrinology services for children	23E	Specialist endocrinology and diabetes services for children
110	Specialist gastroenterology, hepatology and nutritional support services for children	23F	Specialist gastroenterology, hepatology and nutritional support services for children
112	Specialist gynaecology services for children	23X(b)	Specialist paediatric surgery services - Gynaecology
113	Specialist haematology services for children	23H	Specialist haematology services for children

PSS Manual Line	PSS Manual Line Description	Service Line Code	Service Line Description
115B	Specialist maternity care for adults diagnosed with abnormally invasive placenta	04G	Specialist maternity care for women diagnosed with abnormally invasive placenta
118	Neonatal critical care services	NIC	Specialist neonatal care services
119	Specialist neuroscience services for children	23M	Specialist neuroscience services for children
		07Y	Paediatric neurorehabilitation
		08J	Selective dorsal rhizotomy
120	Specialist ophthalmology services for children	23N	Specialist ophthalmology services for children
121	Specialist orthopaedic services for children	23Q	Specialist orthopaedic services for children
122	Paediatric critical care services	PIC	Specialist paediatric intensive care services
125	Specialist plastic surgery services for children	23R	Specialist plastic surgery services for children
126	Specialist rehabilitation services for patients with highly complex needs (adults and children)	07Z	Specialist rehabilitation services for patients with highly complex needs
127	Specialist renal services for children	23S	Specialist renal services for children
128	Specialist respiratory services for children	23T	Specialist respiratory services for children
129	Specialist rheumatology services for children	23W	Specialist rheumatology services for children
130	Specialist services for children with infectious diseases	18C	Specialist services for children with infectious diseases
131	Specialist services for complex liver, biliary and pancreatic diseases in adults	19L	Specialist services for complex liver diseases in adults
		19P	Specialist services for complex pancreatic diseases in adults
		19Z	Specialist services for complex liver, biliary and pancreatic diseases in adults
132	Specialist services for haemophilia and other related bleeding disorders (adults and children)	03X	Specialist services for haemophilia and other related bleeding disorders (Adults)
		03Y	Specialist services for haemophilia and other related bleeding disorders (Children)
134	Specialist services to support patients with complex physical disabilities (excluding wheelchair services) (adults and children)	05P	Prosthetics
135	Specialist paediatric surgery services	23X(a)	Specialist paediatric surgery services - General Surgery
136	Specialist paediatric urology services	23Z	Specialist paediatric urology services
139A	Specialist morbid obesity services for children	35Z	Specialist morbid obesity services for children
139AA	Termination services for patients with medical complexity and or significant co-morbidities requiring treatment in a specialist hospital	04P	Complex termination of pregnancy
ACC	Adult Critical Care	ACC	Adult critical care

## **SCHEDULE 4: JOINT FUNCTIONS**

### **1. Introduction**

- 1.1 This Schedule sets out in further detail the functions which are to be exercised jointly by the Partners, being, in summary:
  - 1.1.1 decisions in relation to the commissioning and management of Joint Specialised Services;
  - 1.1.2 planning Joint Specialised Services for the Population, including carrying out needs assessments;
  - 1.1.3 undertaking reviews of Joint Specialised Services in respect of the Population;
  - 1.1.4 supporting the management of the Specialised Commissioning Budget;
  - 1.1.5 co-ordinating a common approach to the commissioning and delivery of Joint Specialised Services with other health and social care bodies in respect of the Population where appropriate; and
  - 1.1.6 such other ancillary activities that are necessary in order to exercise the Specialised Commissioning Functions.

### **2. General Obligations**

- 2.1 The Partners are jointly responsible for planning the commissioning of the Joint Specialised Services in accordance with this Agreement, the Finance Guidance and the Mandated Guidance.
- 2.2 The role of the Joint Committee shall include:
  - 2.2.1 planning the commissioning of the Joint Specialised Services;
  - 2.2.2 assurance and oversight of the Joint Specialised Services, including compliance with the National Specifications and relevant Clinical Commissioning Policies;
  - 2.2.3 identifying and setting strategic priorities for the Joint Specialised Services;
  - 2.2.4 development of local commissioning expertise and advice structures.
- 2.3 The Joint Committee must comply with the National Specifications and relevant Clinical Commissioning Policies and ensure that all clinical Specialised Services Contracts accurately reflect Clinical Commissioning Policies and include the relevant National Specification where one exists in relation to the relevant Specialised Service.

### **Specific Obligations**

### **3. Procurement and Contract Management**

- 3.1 The Joint Committee will make procurement decisions and support NHS England to carry out any procurement processes in accordance with the Contracting Standard Operating Procedure.
- 3.2 In discharging these responsibilities, the Joint Committee must comply at all times with Law and any relevant Guidance including but not limited to Mandated Guidance; any

applicable procurement law and/or guidance on the selection of, and award of contracts to, providers of healthcare services.

- 3.3 When the Joint Committee makes decisions in connection with the awarding of Specialised Services Contracts, it should ensure that it is able to demonstrate compliance with requirements for the award of such Contracts, including that the decision was:
- 3.3.1 made in the best interest of patients, taxpayers and the population;
  - 3.3.2 robust and defensible, with conflicts of interests appropriately managed;
  - 3.3.3 made transparently; and
  - 3.3.4 compliant with relevant Guidance and Legislation.
- 3.4 The Joint Committee shall be consulted on contracting decisions relevant to the exercise of the Joint Commissioning Functions and shall ensure the performance of the following general obligations:
- 3.4.1 oversee the management of the Specialised Services Contracts and, except in relation to payment, performance of the obligations of the commissioner in accordance with the relevant terms;
  - 3.4.2 support the active management of the performance of the Specialised Services Providers in order to secure the needs of people who use the services, improve the quality of services and improve efficiency in the provision of the services, including, as appropriate, by ensuring that timely action is taken to enforce contractual breaches, serve notices or work with Specialised Services Providers to address any issues;
  - 3.4.3 review expenditure and collectively discuss how to obtain value for money in order to obtain value for money on behalf of NHS England;
  - 3.4.4 where required, support NHS England to undertake any investigations relating (among other things) to whistleblowing claims, infection control and patient complaints;
  - 3.4.5 collectively assess quality and outcomes including but not limited to clinical effectiveness, clinical governance, patient safety and the patient safety incident response framework, risk management, patient experience, and addressing health inequalities;
  - 3.4.6 consider any necessary variations (to be managed by NHS England) to the relevant Specialised Services Contract or services in accordance with Clinical Commissioning Policies, National Specifications, service user needs and clinical developments, including, where necessary, developing and implementing a service development improvement plan with Specialised Service Providers where they are not in position to meet any new National Standard or amendment to a National Specification or Clinical Commissioning Policy that is published in the future;
  - 3.4.7 agree information and reporting requirements to support NHS England to manage information breaches (which will include use of the NHS Digital Data Security and Protection Toolkit);

3.4.8 conduct review meetings and support NHS England to undertake contract management, including the issuing of contract queries and agreeing any remedial action plan or related contract management processes.

3.5 Where NHS England considers that it is necessary for the effective commissioning of the Joint Specialised Services, it may take any such decision that it considers necessary and appropriate and shall report such decision to the next Joint Committee.

#### **4. Finance**

4.1 Without prejudice to Clause 8 (Finance) of this Agreement, the Joint Committee must support NHS England to manage each of the relevant Specialised Services Contracts, including by:

4.1.1 ensuring proper financial management and governance for Joint Specialised Services in accordance with the Finance Guidance;

4.1.2 supporting the move towards management of population-based budgets for Joint Specialised Services; and

4.1.3 considering and inputting into local price agreements, managing agreements or proposals for local variations and local modifications to be implemented by NHS England.

#### **5. Service Planning and Strategic Priorities**

5.1 The Joint Committee is responsible for setting local commissioning strategy, policy and priorities and planning for and carrying out needs assessments for the Joint Specialised Services.

5.2 In planning, commissioning and managing the Joint Specialised Services, the Partners must have processes in place to assess and monitor equitable patient access, in accordance with the access criteria set out in Clinical Commissioning Policies and National Specifications, taking action to address any apparent anomalies.

5.3 The Joint Committee must ensure that the Partners work with Specialised Service Providers and Provider Collaboratives to translate local strategic priorities into operational outputs for Joint Specialised Services.

5.4 The Joint Committee shall provide input into any consideration by NHS England as to whether the commissioning responsibility in respect of any of the Part A Retained Services should be delegated the Joint Committee or ICB.

#### **6. Commissioning of High Cost Drugs**

6.1 The Joint Committee must support the effective and efficient commissioning of High Cost Drugs for Joint Specialised Services.

6.2 The Joint Committee must develop and implement Shared Care Arrangements across the Area of the Joint Committee.

6.3 The Joint Committee must provide clinical and commissioning leadership in the commissioning and management of High Cost Drugs. This includes supporting the Specialised Service Provider pharmacy services and each Partner in the development access to medicine strategies, and minimising barriers that may exacerbate health inequalities.

6.4 The Joint Committee must ensure:

- 6.4.1 safe and effective use of High Cost Drugs in line with national Clinical Commissioning Policies;
  - 6.4.2 effective introduction of new medicines;
  - 6.4.3 appropriate use of Shared Care Arrangements, ensuring that they are safe and well monitored; and
  - 6.4.4 consistency of prescribing and unwarranted prescribing variation are addressed.
- 6.5 The Joint Committee must have in place appropriate monitoring mechanisms, including prescribing analysis, to support the financial management of High Cost Drugs.
  - 6.6 The Joint Committee must engage in the development, implementation and monitoring of initiatives that enable use of better value medicines. Such schemes include those at a local, regional or national level.
  - 6.7 The Joint Committee must provide support to prescribing networks and forums, including but not limited to: immunoglobulin assessment panels, HIV prescribing networks and high cost drugs pharmacy networks.

## **7. Innovation and New Treatment**

- 7.1 The Joint Committee shall support local implementation of innovative treatments for Joint Specialised Services.

## **8. Oversight and Assurance**

- 8.1 The Joint Committee must at all times operate in accordance with:
  - 8.1.1 the Oversight Framework published by NHS England;
  - 8.1.2 any national oversight and assurance guidance in respect of Specialised Services and/or joint working arrangements; and
  - 8.1.3 any other relevant NHS oversight and assurance guidance;
 collectively known as the "Assurance Processes".
- 8.2 The Joint Committee must develop and operate in accordance with mutually agreed ways of working in line with the Assurance Processes.
- 8.3 The Partners must provide any information and comply with specific actions in relation to the Joint Specialised Services, as required by NHS England, including metrics and detailed reporting in accordance with the Terms of Reference.

## **9. Mental Health, Learning Disabilities and Autism NHS-led Provider Collaboratives**

- 9.1 The Joint Committee shall co-operate fully with NHS England in the development, management and operation of mental health, learning disability and autism NHS-led Provider Collaboratives including, where requested by NHS England, to consider the Provider Collaborative Arrangements where tabled by NHS England as an item for discussion under Clause 7.2.

## **10. Service Standards, National Specifications and Clinical Commissioning Policies**

- 10.1 The Joint Committee shall support the development of clinical leadership and expertise at a local level in respect of Specialised Services.
- 10.2 The Joint Committee shall support local and national groups including Relevant Clinical Networks and Clinical Reference Groups that are involved in developing Clinical Commissioning Policies, National Specifications, National Standards and knowledge around Specialised Services.
- 10.3 The Joint Committee must comply with the National Specifications and relevant Clinical Commissioning Policies and ensure that all clinical Specialised Commissioning Contracts accurately reflect Clinical Commissioning Policies and include the relevant National Specification, where one exists in relation to the relevant Joint Specialised Service.
- 10.4 The Joint Committee must co-operate with any NHS England activities relating to the assessment of compliance against National Standards, including through the Assurance Processes.
- 10.5 The Joint Committee must have appropriate mechanisms in place to ensure National Standards and National Specifications are being adhered to.
- 10.6 Where any Partner has identified that a Specialised Services Provider may not be complying with the National Standards set out in the relevant National Specification, the Joint Committee shall consider the action to take to address this in line with the Assurance Processes.

## **11. Networks**

- 11.1 The Joint Committee shall participate in the planning, governance and oversight of the Relevant Clinical Networks, including involvement in agreeing the annual plan for each Relevant Clinical Network. The Partners shall seek to align the network priorities with system priorities and to ensure that the annual plan for the Relevant Clinical Network reflects local needs and priorities.
- 11.2 The Joint Committee shall actively support and participate in dialogue with Relevant Clinical Networks and shall ensure that there is a clear and effective mechanism in place for giving and receiving information with the Relevant Clinical Networks including network reports.
- 11.3 The Joint Committee shall support NHS England in the management of Relevant Clinical Networks.
- 11.4 The Partners shall actively engage and promote Specialised Service Provider engagement in appropriate Relevant Clinical Networks.
- 11.5 Where a Relevant Clinical Network identifies any concern, the Joint Committee shall seek to consider and review that concern as soon as is reasonably practicable and take such action, if any, as it deems appropriate.
- 11.6 The Joint Committee shall ensure that network reports are considered where relevant as part of exercising the Joint Functions.

## **12. Transformation**

- 12.1 The Joint Committee must provide such support as may be requested by NHS England with transformational programmes which encompass the Joint Specialised Services.



- 12.2 The Joint Committee shall identify the pathways and services that are priorities for transformation according to the needs of their Population.
- 12.3 The Joint Committee shall oversee local implementation of transformation programmes in respect of the Joint Specialised Services for the Population.

### **13. Quality**

- 13.1 The Joint Committee must ensure that appropriate arrangements for quality oversight are in place. This must include the implementation of the Patient Safety Incident Response Framework for the management of incidents and serious events, appropriate reporting of any incidents, undertaking any appropriate patient safety incident investigation and obtaining support as required.
- 13.2 The Joint Committee must establish a plan to ensure that quality of the Specialised Services is measured consistently, using nationally and locally agreed metrics triangulated with professional insight and soft intelligence.
- 13.3 The Joint Committee must ensure that the oversight of the quality of the Specialised Services is integrated with wider quality governance in the local system and aligns with NHS England quality escalation processes.
- 13.4 The Joint Committee must ensure that there is a System Quality Group to identify and manage concerns across the local system.
- 13.5 The Joint Committee must ensure that there is appropriate representation at any Regional Quality Groups or their equivalent.
- 13.6 The Joint Committee must have in place all appropriate arrangements in respect of child and adult safeguarding and comply with all relevant Guidance.

### **14. Individual Funding Requests**

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

### **15. Data Management and Analytics**

- 15.1 The Joint Committee shall:
  - 15.1.1 lead on standardised collection, processing, and sharing of data for Joint Specialised Services, in line with broader NHS England, Department of Health and Social Care and government data strategies;
  - 15.1.2 lead on the provision of data and analytical service to support commissioning of Joint Specialised Services;
  - 15.1.3 ensure collaborative working across the Partners on agreed programmes of work focusing on provision of pathway analytics.
- 15.2 The Partners shall:
  - 15.2.1 share expertise, and, existing reporting tools, and shall ensure interpretation of data is made available to Joint Committees and other Partners to support the commissioning of the Joint Specialised Services;

15.2.2 work collaboratively with subject matter experts to ensure Partners are able to access data sources available to support the commissioning of the Joint Specialised Services.

15.3 The Joint Committee must ensure that the data reporting and analytical frameworks, as set out in Mandated Guidance or otherwise required by NHS England, are in place to support the commissioning of the Joint Specialised Services.

## **16. Incident Response**

16.1 The Joint Committee shall:

16.1.1 support local incident management for Joint Specialised Services as appropriate to stated incident level; and

16.1.2 support national and regional incident management relating to Joint Specialised Services.

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

## **17. Freedom of Information and Parliamentary Correspondence**

17.1 The Partners shall provide timely support in relation to the handling, management and response to all freedom of information and parliamentary correspondence relating to Joint Specialised Services.

## SCHEDULE 5: RETAINED SERVICES

### Part A Retained Services

The following are Retained Services that NHS England has determined are suitable but not yet ready for greater ICS leadership:

PSS Manual Line	PSS Manual Line Description	Service Line Code	Service Line Description
4	Adult specialist respiratory services	29E	Management of central airway obstruction
		29V	Complex home ventilation
15	Adult specialist renal services	11T	Renal transplantation
29	Haematopoietic stem cell transplantation services (adults and children)	02Z	Blood and marrow transplantation services
		ECP	Extracorporeal photopheresis service
45	Cystic fibrosis services (adults and children)	10Z	Cystic fibrosis services
55	Gender dysphoria services (children and adolescents)	22A	Gender identity development service for children and adolescents
56	Gender dysphoria services (adults)	22Z	Gender identity services
		42A	Gender dysphoria: genital surgery (trans feminine)
		42B	Gender dysphoria - genital surgery (trans masculine)
		42C	Gender dysphoria: chest surgery (trans masculine)
		42D	Gender dysphoria - non-surgical services
58	Specialist adult gynaecological surgery and urinary surgery services for females	42E	Gender dysphoria: other surgical services
		04K	Specialised Services for women with complications of mesh inserted for urinary incontinence and vaginal prolapse (16 years and above)
		04L	Reconstructive surgery and congenital anomalies of the female genital tract
65	Specialist services for adults with infectious diseases	18T	Tropical Disease
82	Paediatric and perinatal post mortem services	F23	Paediatric and perinatal post mortem services
87	Positron emission tomography-computed tomography services (adults and children)	01P	Positron emission tomography-computed tomography services (PETCT)
89	Primary malignant bone tumours service (adults and adolescents)	01O	Primary malignant bone tumours service (adults and adolescents)
101	Severe intestinal failure service (adults)	12Z	Severe intestinal failure service
103A	Specialist adult haematology services	03C	Castleman disease
105	Specialist cancer services (adults)	01L	Soft tissue sarcoma
		01X	Penile cancer
111	Clinical genomic services (adults and children)	20G	Genomic laboratory testing services
		20H	Pre-Implantation genetic diagnosis and associated in-vitro fertilisation services
		20Z	Specialist clinical genomics services
		MOL	Molecular diagnostic service
114	Specialist haemoglobinopathy services (adults and children)	38S (DPC)	Sickle cell anaemia -direct patient care
		38T (DPC)	Thalassemia - direct patient care
		38X (HCC)	Haemoglobinopathies coordinating centres (HCCs)
		38X (SHT)	Specialist Haemoglobinopathies Teams (SHTs)
115	Specialist immunology services for adults with deficient immune systems	16X	Specialist immunology services for adults with deficient immune systems
115A	Specialist immunology services for children with deficient immune systems	16Y	Specialist immunology services for children with deficient immune systems

PSS Manual Line	PSS Manual Line Description	Service Line Code	Service Line Description
134	Specialist services to support patients with complex physical disabilities (excluding wheelchair services) (adults and children)	05C	Specialist augmentative and alternative communication aids
		05E	Specialist environmental controls
137	Spinal cord injury services (adults and children)	06A	Spinal cord injury services (adults and children)
6	Adult secure mental health services	22S(a)	Secure and specialised mental health services (adult) (Medium and low) -including LD / ASD / WEMS / ABI / DEAF
		22S(b)	Secure and specialised mental health services (adult) (Medium and low) - Excluding LD / ASD / WEMS / ABI / DEAF
		22S(c)	Secure and specialised mental health services (adult) (Medium and low) - ASD
		22S(d)	Secure and specialised mental health services (adult) (Medium and low) - LD
		22S(e)	Secure and specialised mental health services (adult) Medium Secure Female WEMS
		22S(f)	Secure and specialised mental health services (adult) (Medium and low) - ABI
		22S(g)	Secure and specialised mental health services (adult) (Medium and low) - DEAF
		YYY	Specialised mental health services exceptional packages of care
8	Adult specialist eating disorder services	22E	Adult specialist eating disorder services
32	Children and young people's inpatient mental health service	22C	Tier 4 CAMHS (MSU)
		24E	Tier 4 CAMHS (children's service)
		23K	Tier 4 CAMHS (general adolescent inc eating disorders)
		23L	Tier 4 CAMHS (low secure)
		23O	Tier 4 CAMHS (PICU)
		23U	Tier 4 CAMHS (LD)
		23V	Tier 4 CAMHS (ASD)
98	Specialist secure forensic mental health services for young people	24C	FCAMHS
102	Severe obsessive compulsive disorder and body dysmorphic disorder service (adults and adolescents)	22F	Severe obsessive compulsive disorder and body dysmorphic disorder service
116	Specialist mental health services for Deaf adults	22D	Specialist mental health services for Deaf adults
124	Specialist perinatal mental health services (adults and adolescents)	22P	Specialist perinatal mental health services
133	Specialist services for severe personality disorder in adults	22T	Specialist services for severe personality disorder in adults

## Part B Retained Services

The following are Retained Services that NHS England has determined will remain nationally commissioned:

PSS Manual Line	PSS Manual Line Description	Service Line Code	Service Line Description
1	Adult ataxia telangiectasia services	23G	Adult ataxia telangiectasia services
2A	Adult oesophageal gastric services in the form of gastro-electrical stimulation for patients with intractable gastroparesis	39A	Gastro-electrical stimulation for patients with intractable gastroparesis
4	Adult specialist respiratory services	29G	Primary ciliary dyskinesia management (adult)
11	Adult specialist neurosciences services	08U	Transcranial magnetic resonance guided focused ultrasound (TcMRgFUS)
		43A	Inherited white matter disorders diagnostic and management service for adults
12	Adult specialist ophthalmology services	37D	Retinal Gene Therapy
		37E	Limbal Cell Treatment (Holoclar)
14	Adult specialist pulmonary hypertension services	13G	Adult specialist pulmonary hypertension services
15	Adult specialist renal services	36E	Cystinosis
19	Alkaptonuria service (adults)	20A	Alkaptonuria service (adults)
19A	Alpha 1 antitrypsin services (adults)	29H	Alpha 1 antitrypsin services
20	Alström syndrome service (adults and children)	H23	Alström syndrome service (adults and children)
21	Ataxia telangiectasia service for children	23J	Ataxia telangiectasia service for children
21A	Atypical haemolytic uraemic syndrome services (adults and children)	11A	Atypical haemolytic uraemic syndrome services (adults and children)
22	Autoimmune paediatric gut syndromes service	16A	Autoimmune paediatric gut syndromes service
23	Autologous intestinal reconstruction service for adults	12A	Autologous intestinal reconstruction service for adults
24	Bardet-Biedl syndrome service (adults and children)	20B	Bardet-Biedl syndrome service (adults and children)
25	Barth syndrome service (adults and children)	36A	Barth syndrome service (male adults and children)
26	Beckwith-Wiedemann syndrome with macroglossia service (children)	36B	Beckwith-Wiedemann syndrome with macroglossia service (children)
27	Behçet's syndrome service (adults and adolescents)	16B	Behçet's syndrome service (adults and adolescents)
28	Bladder exstrophy service (children)	D23	Bladder exstrophy service (children)
31	Pain-related complex cancer late effects rehabilitation service (adults)	01A	Breast radiotherapy injury rehabilitation service
33	Choriocarcinoma service (adults and adolescents)	01I	Choriocarcinoma service (adults and adolescents)
34	Chronic pulmonary aspergillosis service (adults)	29Q	Chronic pulmonary aspergillosis service (adults)
37	Complex childhood osteogenesis imperfecta service	K23	Complex childhood osteogenesis imperfecta service
38	Complex Ehlers Danlos syndrome service (adults and children)	M23	Complex Ehlers Danlos syndrome service (adults and children)
39	Complex neurofibromatosis type 1 service (adults and children)	08A	Complex neurofibromatosis type 1 service (adults and children)
41	Complex tracheal disease service (children)	B23	Complex tracheal disease service (children)
42	Congenital hyperinsulinism service (children)	N23	Congenital hyperinsulinism service (children)
43	Craniofacial service (adults and children)	15A	Craniofacial service (adults and children)
44	Cryopyrin associated periodic syndrome service (adults and children)	02A	Cryopyrin associated periodic syndrome service (adults and children)
46	Diagnostic service for amyloidosis (adults and children)	02B	Diagnostic service for amyloidosis (adults and children)
47	Diagnostic service for primary ciliary dyskinesia (adults and children)	29D	Diagnostic service for primary ciliary dyskinesia (adults and children)

PSS Manual Line	PSS Manual Line Description	Service Line Code	Service Line Description
48	Diagnostic service for rare neuromuscular disorders (adults and children)	08B	Diagnostic service for rare neuromuscular disorders (adults and children)
49	Encapsulating peritoneal sclerosis treatment service (adults)	11D	Encapsulating peritoneal sclerosis treatment service (adults)
50	Epidermolysis bullosa service (adults and children)	24A	Epidermolysis bullosa service (adults and children)
51	Extra corporeal membrane oxygenation service for adults with respiratory failure	29F	Extra corporeal membrane oxygenation service for adults with respiratory failure
52	Extra corporeal membrane oxygenation service for neonates, infants and children with respiratory failure	R23	Extra corporeal membrane oxygenation service for neonates, infants and children with respiratory failure
53	Ex-vivo partial nephrectomy service (adults)	01D	Ex-vivo partial nephrectomy service (adults)
56A	Hand and upper limb transplantation service (adults)	40A	Hand and upper limb transplantation service (adults)
56ZA	Ovarian and testicular tissue cryopreservation for patients receiving gonadotoxic treatment who are at high risk of infertility and cannot store mature eggs or sperm	44A	Gonadal tissue cryopreservation services for children and young people at high risk of gonadal failure due to treatment or disease
57	Heart and lung transplantation service (including mechanical circulatory support) (adults and children)	13N	Heart and lung transplantation
		13V	Ventricular Assist Devices
58	Specialist adult gynaecological surgery and urinary surgery services for females	04J	Urinary Fistula
61	Specialist dermatology services (adults and children)	43S	Stevens-Johnson syndrome and toxic epidermal necrolysis (SJS-TEN)
62	Specialist metabolic disorder services (adults and children)	36F	CLN2 Disease
65	Specialist services for adults with infectious diseases	18D	Human T- Cell Lymphotropic Virus Type 1 and 2
		18J	Adult high consequence infectious airborne disease service
		18L	Adult high consequence infectious contact disease service
		18U	Infectious disease isolation units
66	Hyperbaric oxygen treatment services (adults and children)	28Z	Hyperbaric oxygen treatment services (adults and children)
67	Insulin-resistant diabetes service (adults and children)	27A	Insulin-resistant diabetes service (adults and children)
68	Islet transplantation service (adults)	27B	Islet transplantation service (adults)
69	Liver transplantation service (adults and children)	19T	Liver transplantation service (adults and children)
70	Lymphangiomyomatosis service (adults)	29C	Lymphangiomyomatosis service (adults)
71	Lysosomal storage disorder service (adults and children)	36C	Lysosomal storage disorder service (adults and children)
73	McArdle's disease service (adults)	26A	McArdle's disease service (adults)
75	Mitochondrial donation service	20D	Mitochondrial donation service
76	NF2-schwannomatosis service (adults and children)	08C	Neurofibromatosis type 2 service (adults and children)
77	Neuromyelitis optica service (adults and adolescents)	08D	Neuromyelitis optica service (adults and adolescents)
79	Ocular oncology service (adults)	01H	Ocular oncology service (adults)
80	Ophthalmic pathology service (adults and children)	37A	Ophthalmic pathology service (adults and children)
81	Osteo-odonto-keratoprosthesis service for corneal blindness (adults)	37B	Osteo-odonto-keratoprosthesis service for corneal blindness (adults)
84	Paediatric intestinal pseudo-obstructive disorders service	12B	Paediatric intestinal pseudo-obstructive disorders service
85	Pancreas transplantation service (adults)	27C	Pancreas transplantation service (adults)
86	Paroxysmal nocturnal haemoglobinuria service (adults and adolescents)	03A	Paroxysmal nocturnal haemoglobinuria service (adults and adolescents)

PSS Manual Line	PSS Manual Line Description	Service Line Code	Service Line Description
88	Primary ciliary dyskinesia management service (adults and children)	29P	Primary ciliary dyskinesia management service (adults and children)
90	Proton beam therapy service (adults and children)	01B	Proton beam therapy service (adults and children)
91	Pseudomyxoma peritonei service (adults)	01F	Pseudomyxoma peritonei service (adults)
92	Pulmonary hypertension service for children	13J	Pulmonary hypertension service for children
93	Pulmonary thromboendarterectomy service (adults and adolescents)	13M	Pulmonary thromboendarterectomy service (adults and adolescents)
95	Rare mitochondrial disorders service (adults and children)	36D	Rare mitochondrial disorders service (adults and children)
97	Retinoblastoma service (children)	01G	Retinoblastoma service (children)
99	Severe acute porphyria service (adults and children)	27D	Severe acute porphyria service (adults and children)
100	Severe combined immunodeficiency and related disorders service (children)	16C	Severe combined immunodeficiency and related disorders service (children)
103	Small bowel transplantation service (adults and children)	12D	Small bowel transplantation service (adults and children)
103A	Specialist adult haematology services	03T	Thrombotic thrombocytopenic purpura (TTP)
104	Specialist burn care services (adults and children)	09A	Specialist burn care services (adults)
		09C	Specialist burn care services (children)
106A	Specialist colorectal surgery services (adults)	33E	Cytoreductive surgery and hyperthermic intraperitoneal chemotherapy for colorectal cancer
108	Specialist ear, nose and throat services for children	32E	Auditory brainstem implants for children
114	Specialist haemoglobinopathy services (adults and children)	38S (NHP)	National haemoglobinopathy panel (NHP)
119	Specialist neuroscience services for children	08M	Spinal muscular atrophy: gene therapy
		43C	Inherited white matter disorders diagnostic and management service for children
		73M	Children's Epilepsy Surgery Service
		T23	Multiple Sclerosis Management service for children
		U23	Open Fetal surgery to treat fetuses with open spina bifida
123	Specialist paediatric liver disease service	C23	Specialist paediatric liver disease service
130	Specialist services for children with infectious diseases	14C	Specialist services for children with infectious diseases: HIV
		18K	High consequence infectious airborne disease services for children
		18M	High consequence infectious contact disease services for children
131	Specialist services for complex liver, biliary and pancreatic diseases in adults	19A	Total pancreatectomy with islet auto transplant
138	Stem cell transplantation service for juvenile idiopathic arthritis and related connective tissue disorders (children)	P23	Stem cell transplantation service for juvenile idiopathic arthritis and related connective tissue disorders (children)
139	Stickler syndrome service (adults and children)	20C	Stickler syndrome diagnostic service (adults and children)
139B	Uterine transplantation services (adults)	04U	Uterine transplantation services
140	Vein of Galen malformation service (adults and children)	A23	Vein of Galen malformation service (adults and children)
142	Wolfram syndrome service (adults and children)	Q23	Wolfram syndrome service (adults and children)
143	DNA Nucleotide Excision Repair Disorders Service (adults and children)	24D	DNA Nucleotide Excision Repair Disorders Service
6	Adult secure mental health services	22O	Offender personality disorder
		22U(a)	Secure and specialised mental health service (adult) (High) - Excluding LD
		22U(b)	Secure and specialised mental health service (adult) (High) - LD
74	Mental health service for deaf children & adolescents	22B	Mental health service for deaf children & adolescents

PSS Manual Line	PSS Manual Line Description	Service Line Code	Service Line Description
91A	Psychological medicine inpatient services for severe and complex presentations of medically unexplained physical symptoms (adults)	22V	Psychological medicine inpatient services for severe and complex presentations of medically unexplained physical symptoms
141	Integrated veterans' mental health and wellbeing service	22G	Veterans' mental health complex treatment service
		05V	Veterans' prosthetic service



## **SCHEDULE 6: RESERVED FUNCTIONS**

### **1. Introduction**

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

### **2. Retained Services**

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

### **3. Reserved Specialised Service Functions**

- 3.1 In addition to the commissioning of Retained Services set out in Schedule 5, NHS England shall also carry out the functions set out in this Schedule 6 in respect of the Joint Specialised Services.

### **4. Oversight and Assurance**

- 4.1 NHS England shall be responsible for developing national oversight and assurance guidance on joint working arrangements for Specialised Services.
- 4.2 NHS England shall be responsible for assuring the Joint Working Arrangements. Such assurance shall be undertaken in accordance with the Assurance Processes.
- 4.3 NHS England shall host a Delegated Commissioning Group that will undertake an assurance role in compliance with the Assurance Processes. This assurance role shall include monitoring and suggesting solutions to mitigate systemic risk to Joint Specialised Service provision.

### **5. Clinical Leadership and Clinical Reference Groups**

- 5.1 NHS England shall be responsible for the following:
  - 5.1.1 providing clinical leadership, advice and guidance to the Joint Committee in relation to the Joint Specialised Services;
  - 5.1.2 supporting ICB Partners to develop clinical leadership for Joint Specialised Services; and
  - 5.1.3 providing clinical and public health leadership for Specialised Services.
- 5.2 NHS England will host Clinical Reference Groups, which will lead on the development and publication of the following for Specialised Services:
  - 5.2.1 Clinical Commissioning Policies;

- 5.2.2 National Specifications, including National Standards for each of the Specialised Services.

## **6. Clinical Networks**

- 6.1 Unless otherwise agreed between the Partners, NHS England shall put in place contractual arrangements and funding mechanisms for the commissioning of the Relevant Clinical Networks.
- 6.2 NHS England shall be responsible for the following in respect of the Relevant Clinical Networks:
  - 6.2.1 developing national policy for the Relevant Clinical Networks;
  - 6.2.2 developing and approving the national specifications for the Relevant Clinical Networks;
  - 6.2.3 maintaining links with other NHS England national leads for clinical networks not focused on Specialised Services;
  - 6.2.4 convening or supporting national networks of the Relevant Clinical Networks;
  - 6.2.5 agreeing the annual plan for each Relevant Clinical Network with the involvement of the Joint Committee and Relevant Clinical Network, ensuring these reflect national and regional priorities;
  - 6.2.6 managing Relevant Clinical Networks jointly with the Joint Committee; and
  - 6.2.7 agreeing and commissioning the hosting arrangements of the Relevant Clinical Networks.

## **7. Complaints**

- 7.1 NHS England shall manage all complaints in respect of the Joint Specialised Services and Reserved Services.

## **8. Procurement**

- 8.1 In relation to procurement, NHS England shall be responsible for:
  - 8.1.1 setting standards and agreeing frameworks and processes for provider selections and procurements for Specialised Services;
  - 8.1.2 monitoring and providing advice, guidance and expertise on the overall provider market in relation to Specialised Services;
  - 8.1.3 running provider selection and procurement processes for Specialised Services.

## **9. Contracting**

- 9.1 NHS England shall retain the following obligations in relation to contracting:
  - 9.1.1 except where 9.1.2 applies, entering into Specialised Commissioning Contracts with Specialised Service Providers as Co-ordinating Commissioner including negotiation of the Specialised Services Contracts and creating all contract documents (including indicative activity plans) and

schedules for inclusion in the Specialised Services Contracts, including the process of negotiation;

- 9.1.2 where NHS England in its absolute discretion agrees to enter into Specialised Commissioning Contracts with Specialised Service Providers as Associate Commissioner and perform all contracting duties required of an associate as well as ensure oversight of the relevant Specialised Commissioning Contracts through the Joint Committee;
  - 9.1.3 setting, publishing or making otherwise available the Contracting Standard Operating Procedure and other Mandated Guidance detailing contracting strategy and policy for Specialised Services; and
  - 9.1.4 providing and distributing contracting support tools and templates to the Partners.
- 9.2 NHS England shall keep a record of all of the Specialised Services Contracts setting out the following details in relation to each Specialised Services Contract
- 9.2.1 name of the Specialised Services Provider;
  - 9.2.2 the name by which the Specialised Services Provider is known;
  - 9.2.3 commissioner name;
  - 9.2.4 Specialised Services Contract start date and end date;
  - 9.2.5 description of Specialised Services;
  - 9.2.6 location of provision of services; and
  - 9.2.7 amounts payable under the Specialised Services Contract (if a contract sum is payable) or amount payable in respect of each patient (if there is no contract sum).

## **10. Mental Health, Learning Disability and Autism NHS-led Provider Collaboratives**

- 10.1 NHS England shall commission and design Provider Collaborative Arrangements for mental health, learning disabilities and autism services. Where it considers appropriate, NHS England shall seek the input of the Joint Committee in relation to relevant Provider Collaborative Arrangements.

## **11. Finance**

- 11.1 NHS England shall be responsible for:
  - 11.1.1 Performing all necessary financial transactions associated with Specialised Services unless expressly agreed and set out in Local Terms;
  - 11.1.2 Setting financial policy and frameworks and developing the support tools necessary to enable commissioners to plan and deliver against a population-based allocation;
  - 11.1.3 Setting financial allocations for Specialised Services, including the move from historic actual to population-based allocations and including growth, inflation and efficiency targets;

- 11.1.4 Consolidating and reporting plans and in-year financial delivery against the Specialised Services Budget;
- 11.1.5 Developing financial impact assessments for National Specifications;
- 11.1.6 Overseeing dispute escalation and resolution where there are material changes to out-of-area cross-border flows;
- 11.1.7 Supporting the Joint Committee to ensure the financial delivery of the Joint Specialised Services according to financial business rules and financial frameworks including but not limited to:
  - 11.1.7.1 financial planning;
  - 11.1.7.2 investment and commissioning decision-making;
  - 11.1.7.3 budgetary control and delivery of efficiency targets;
  - 11.1.7.4 financial reporting and accounting;
  - 11.1.7.5 system financial oversight.

## **12. Individual Funding Requests (IFRs)**

- 12.1 NHS England shall be responsible for the following:
  - 12.1.1 Leading on IFR policy, supporting IFR governance and managing the IFR process; and
  - 12.1.2 Providing pharmacy activity input and public health medicines expertise into IFR decisions.

## **13. Data Management and Analytics**

- 13.1 NHS England shall:
  - 13.1.1 Lead on data collection, data acquisition and reporting;
  - 13.1.2 Provide leadership of data management and analytics to support the Partners, including professional network development, workforce development and information dissemination;
  - 13.1.3 Set Specialised Services data strategy and ensure alignment with broader NHS England, Department of Health and Social Care and government data strategies;
  - 13.1.4 Secure appropriate resource to support a national service for data processing and analytics for Specialised Services;
  - 13.1.5 Oversee standardised collection, processing and sharing of data used to support Specialised Services commissioning across the Partners, in line with national data strategy;
  - 13.1.6 Work collaboratively with all Partners to drive continual improvement of the quality and coverage of data used to support commissioning of Specialised Services; and

- 13.1.7 Support ICB data and analytic functions and wider data and analytic networks to develop, deploy locally and utilise business intelligence tools.

#### **14. Pharmacy and Optimisation of High Cost Drugs**

- 14.1 In respect of pharmacy and optimisation of High Cost Drugs, NHS England shall:
  - 14.1.1 support the Joint Committee on strategy for access to medicines, minimising barriers to health inequalities;
  - 14.1.2 provide financial management of High Cost Drugs spend, including prescribing analysis, to identify, scope, engage, deliver and record better value medicines strategy and initiatives;
  - 14.1.3 commission High Cost Drugs for Retained Services and of High Cost Drugs for Joint Specialised Services working jointly with Joint Committee;
  - 14.1.4 ensure consistency of prescribing in line with Clinical Commissioning Policies, introduction of new medicines, and addressing unwarranted prescribing variation;
  - 14.1.5 set medicines commissioning policy and criteria for access to certain medicines commissioned by Specialised Services including developing any necessary support tools;
  - 14.1.6 provide expert medicines advice and input into all Specialised Services activities; and
  - 14.1.7 provide direction and support to medicines leads at ICB level to support discharge of duties and delivery of strategic objectives and National Standards.

#### **15. Quality**

- 15.1 In respect of quality, NHS England shall:
  - 15.1.1 work with the Joint Committee to ensure oversight of Specialised Services through quality oversight and risk management;
  - 15.1.2 ensure that quality and safety issues and risks are managed effectively and escalated to the National Specialised Commissioning Quality and Governance Group, or other appropriate forums, as necessary;
  - 15.1.3 ensure that the Joint Specialised Services are aligned and integrated with broader clinical quality governance and processes;
  - 15.1.4 when quality issues relating to Specialised Services are identified, facilitate improvement through programme support, and mobilise intensive support when required on specific quality issues;
  - 15.1.5 facilitate review of Specialised Services where concerns arise, utilising peer reviews or clinical assessment, as appropriate;
  - 15.1.6 ensure all relevant intelligence is shared appropriately for quality and safety monitoring, including between organisations and at system quality groups or appropriate alternative forums;

- 15.1.7 identify and act upon issues and concerns that cross multiple ICBs, coordinating response and management as necessary;
- 15.1.8 provide guidance on quality and clinical governance matters and benchmark available data;
- 15.1.9 support Joint Committees to identify key themes and trends across their Area and utilise data and intelligence to respond and monitor as necessary;and
- 15.1.10 facilitate and support the national quality governance infrastructure (Specialised Commissioning Quality and Governance Group).

## **16. Service standards**

- 16.1 NHS England shall carry out the following:
  - 16.1.1 development, engagement and approval of National Standards for Specialised Services (including National Specifications, Clinical Commissioning Policies, quality and data standards);
  - 16.1.2 production of national commissioning products and tools to support commissioning of Specialised Services; and
  - 16.1.3 maintenance and publication of the 'Manual' of prescribed Specialised Services and engagement with the Department of Health and Social Care on policy matters.

## **17. Transformation**

- 17.1 NHS England shall be responsible for:
  - 17.1.1 providing leadership for transformation programmes and projects that have been identified as priorities for national coordination and support, and / or are national priorities for the NHS, including supporting delivery of commitments in the NHS Long Term Plan;
  - 17.1.2 co-production and co-design of transformation programmes with the Joint Committee and wider stakeholders; and
  - 17.1.3 supporting Joint Committees in co-ordinating and enabling Specialised Services transformation programmes for Joint Specialised Services where necessary.

## **18. Incident Response**

- 18.1 NHS England shall, lead on incident management for Specialised Services.
- 18.2 NHS England shall lead on monitoring, planning and support for service and operational resilience and provide support to the Joint Committee to develop its oversight of these arrangements.
- 18.3 NHS England shall respond to specific service interruptions; for example. supplier, workforce challenges and provide support to the Joint Committee in any response to interruptions.

**19. Innovation and New Treatment**

- 19.1 NHS England shall ensure the implementation of innovative treatments for Joint Specialised Services and Retained Services such as Advanced Medicinal Therapy Products (ATMPs), recommended by NICE technology appraisals within statutory requirements.
- 19.2 NHS England shall provide national leadership for innovative treatments with significant service impacts including liaison with NICE.

## SCHEDULE 7: FURTHER INFORMATION GOVERNANCE AND SHARING PROVISIONS

### 1. Introduction

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

### 2. Purpose

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



### **3. Benefits of information sharing**

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

### **4. Lawful basis for sharing**

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

### **5. Restrictions on use of the Shared Information**

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

### **6. Ensuring fairness to the Data Subject**

- 6.1. In addition to having a lawful basis for sharing information, the UK GDPR generally requires that the sharing must be fair and transparent. In order to achieve fairness and transparency to the Data Subjects, the Partners will take the following measures as reasonably required:
- 6.1.1. amendment of internal guidance to improve awareness and understanding among Staff;
- 6.1.2. amendment of respective privacy notices and policies to reflect the processing of data carried out further to this Agreement, including covering

the requirements of articles 13 and 14 UK GDPR and providing these (or making them available to) Data Subjects;

- 6.1.3. ensuring that information and communications relating to the processing of data is clear and easily accessible; and
- 6.1.4. giving consideration to carrying out activities to promote public understanding of how data is processed where appropriate.
- 6.2. Each Partner shall procure that its notification to the Information Commissioner's Office, and record of processing maintained for the purposes of Article 30 UK GDPR, reflects the flows of information under this Agreement.
- 6.3. The Partners shall reasonably cooperate in undertaking any DPIA associated with the processing of data further to this Agreement, and in doing so engage with their respective Data Protection Officers in the performance by them of their duties pursuant to Article 39 UK GDPR.
- 6.4. Further provision in relation to specific data flows may be included in a Personal Data Agreement between the Partners.

## **7. Governance: Staff**

- 7.1. The Partners must take reasonable steps to ensure the suitability, reliability, training and competence, of any Staff who have access to Personal Data, and Special Category Personal Data, including ensuring reasonable background checks and evidence of completeness are available on request.
- 7.2. The Partners agree to treat all Relevant Information as confidential and imparted in confidence and must safeguard it accordingly. Where any of the Partners' Staff are not healthcare professionals (for the purposes of the Data Protection Act 2018) the employing Partners must procure that Staff operate under a duty of confidentiality which is equivalent to that which would arise if that person were a healthcare professional.
- 7.3. The Partners shall ensure that all Staff required to access Personal Data (including Special Category Personal Data) are informed of the confidential nature of the Personal Data. The Partners shall include appropriate confidentiality clauses in employment/service contracts of all Staff that have any access whatsoever to the Relevant Information, including details of sanctions for acting in a deliberate or reckless manner that may breach the confidentiality or the non-disclosure provisions of Data Protection Legislation requirements, or cause damage to or loss of the Relevant Information.

Each Party shall provide evidence (further to any reasonable request) that all personnel that have any access to the Relevant Information whatsoever are adequately and appropriately trained to comply with their responsibilities under Data Protection Legislation and this Agreement.

- 7.4. The Partners shall ensure that:
  - 7.4.1. only those Staff involved in delivery of the Agreement use or have access to the Relevant Information; and
  - 7.4.2. that such access is granted on a strict Need to Know basis and shall implement appropriate access controls to ensure this requirement is satisfied and audited. Evidence of audit should be made freely available on request by the originating Data Controller; and

- 7.4.3. specific limitations on the Staff who may have access to the Information are set out in any Data Sharing Agreement entered into in accordance with this Schedule.

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

- 8.1. At all times, the Partners shall have regard to the requirements of Data Protection Legislation and the rights of Data Subjects.
- 8.2. Wherever possible (in descending order of preference), only anonymised information, or, strongly or weakly pseudonymised information will be shared and processed by the Partners. The Partners shall cooperate in exploring alternative strategies to avoid the use of Personal Data in order to achieve the Specified Purpose. However, it is accepted that some Relevant Information shared further to this Agreement may be Personal Data or Special Category Personal Data.
- 8.3. Processing of any Personal Data or Special Category Personal Data shall be to the minimum extent necessary to achieve the Specified Purpose, and on a Need to Know basis.
- 8.4. If any Partner
  - 8.4.1. becomes aware of any unauthorised or unlawful processing of any Relevant Information or that any Relevant Information is lost or destroyed or has become damaged, corrupted or unusable; or
  - 8.4.2. becomes aware of any security vulnerability or breach in respect of the Relevant Information,it shall promptly, within 48 hours, notify the other Partners. The Partners shall fully cooperate with one another to remedy the issue as soon as reasonably practicable, and in making information about the incident available to the Information Commissioner and Data Subjects where required by Data Protection Legislation.
- 8.5. In processing any Relevant Information further to this Agreement, the Partners shall process the Personal Data and Special Category Personal Data only:
  - 8.5.1. in accordance with the terms of this Agreement and otherwise (to the extent that it acts as a Data Processor for the purposes of Article 27-28 GDPR) only in accordance with written instructions from the originating Data Controller in respect of its Relevant Information;
  - 8.5.2. to the extent as is necessary for the provision of the Specified Purpose or as is required by law or any regulatory body;
  - 8.5.3. in accordance with Data Protection Legislation requirements, in particular the principles set out in Article 5(1) and accountability requirements set out in Article 5(2) UK GDPR; and not in such a way as to cause any other Data Controller to breach any of their applicable obligations under Data Protection Legislation.
- 8.6. The Partners shall act generally in accordance with Data Protection Legislation requirements. This includes implementing, maintaining and keeping under review appropriate technical and organisational measures to ensure and demonstrate that the processing of Personal Data is undertaken in accordance with Data Protection Legislation, and in particular to protect the Personal Data (and Special Category Personal Data) against unauthorised or unlawful processing, and against accidental loss, destruction, damage, alteration or disclosure. These measures shall:

- 8.6.1. take account of the nature, scope, context and purposes of processing as well as the risks, of varying likelihood and severity for the rights and freedoms of Data Subjects; and
- 8.6.2. be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and Special Category Personal Data, and having the nature of the Personal Data (and Special Category Personal Data) which is to be protected.

8.7. In particular, each Partner shall:

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

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

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

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

- 9.1. This paragraph supplements paragraph 8 of this Schedule.
- 9.2. Transfer of Personal Data between the Partners shall be done through secure mechanisms including use of the N3 network, encryption, and approved secure (NHS.net or gcsx) e-mail.
- 9.3. Wherever possible, Personal Data should be transmitted and held in pseudonymised form, with only reference to the NHS number in 'clear' transmissions. Where there are significant consequences for the care of the patient, then additional data items, such as the postcode, date of birth and/or other identifiers should also be transmitted, in accordance with good information governance and clinical safety practice, so as to ensure that the correct patient record / data is identified.

- 9.4. Any other special measures relating to security of transfer should be specified in a Data Sharing Agreement entered into in accordance with this Schedule.
- 9.5. Each Partner shall keep an audit log of Relevant Information transmitted and received in the course of this Agreement.
- 9.6. The Partners' Single Point of Contact notified pursuant to paragraph 13 will be the persons who, in the first instance, will have oversight of the transmission of information between the Partners.

#### **10. Governance: Quality of Information**

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

#### **11. Governance: Retention and Disposal of Shared Information**

- 11.1. A non-originating Partner shall securely destroy or return the Relevant Information once the need to use it has passed or, if later, upon the termination of this Agreement, howsoever determined. Where Relevant Information is held electronically, the Relevant Information will be deleted and formal notice of the deletion sent to the that shared the Relevant Information. Once paper information is no longer required, paper records will be securely destroyed or securely returned to the Partner they came from.
- 11.2. Each Partner shall provide an explanation of the processes used to securely destroy or return the information, or verify such destruction or return, upon request and shall comply with any request of the Data Controllers to dispose of data in accordance with specified standards or criteria.
- 11.3. If a Partner is required by any law, regulation, or government or regulatory body to retain any documents or materials that it would otherwise be required to return or destroy in accordance with this Schedule, it shall notify the other Partners in writing of that retention, giving details of the documents or materials that it must retain.
- 11.4. Retention of any data shall comply with the requirements of Article 5(1)(e) GDPR and with all good practice including the Records Management NHS Code of Practice, as updated or amended from time to time.
- 11.5. The Partners shall set out any special retention periods in a Data Sharing Agreement where appropriate.
- 11.6. The Partners shall ensure that Relevant Information held in paper form is held in secure files, and, when it is no-longer needed, destroyed using a cross cut shredder or subcontracted to a confidential waste company that complies with European Standard EN15713.
- 11.7. Each Partner shall ensure that, when no longer required, electronic storage media used to hold or process Personal Data are destroyed or overwritten to current policy requirements.
- 11.8. Electronic records will be considered for deletion once the relevant retention period has ended.
- 11.9. In the event of any bad or unusable sectors of electronic storage media that cannot be overwritten, the Partner shall ensure complete and irretrievable destruction of the media itself in accordance with policy requirements.

## **12. Governance: Complaints and Access to Personal Data**

- 12.1. The Partners shall assist each other in responding to any requests made under Data Protection Legislation made by persons who wish to access copies of information held about them (“**Subject Access Requests**”), as well as any other exercise of a Data Subject’s rights under Data Protection Legislation or complaint to or investigation undertaken by the Information Commissioner.
- 12.2. Complaints about information sharing shall be reported to the Single Points of Contact and the Joint Committee. Complaints about information sharing shall be routed through each Partners’ own complaints procedure unless otherwise provided for in the Joint Working Arrangements or determined by the Joint Committee.
- 12.3. The Partners shall use all reasonable endeavours to work together to resolve any dispute or complaint arising under this Schedule or any data processing carried out further to it.
- 12.4. Basic details of the Agreement shall be included in the appropriate log under each Partner’s Publication Scheme.

## **13. Governance: Single Points of Contact**

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

## **14. Monitoring and review**

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

## SCHEDULE 8: MANDATED GUIDANCE

### Generally applicable Mandated Guidance

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

### Workforce

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

### Finance

- [Guidance on NHS System Capital Envelopes.](#)
- [Managing Public Money \(HM Treasury\).](#)

### Specialised Services Mandated Guidance

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

## **SCHEDULE 9: LOCAL TERMS**

### **General**

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

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

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

All local arrangements will be included in the Target Operating Model which will be approved by the NWSSC.

### **Part 2 – Workforce Arrangements**

All local arrangements will be included in the Target Operating Model which will be approved by the NWSSC